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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, September 14, 2010, at 2 p.m.

Senate

TUESDAY, AUGUST 3, 2010

The Senate met at 9:30 a.m. and was called to order by the Honorable CARTE P. GOODWIN, a Senator from the State of West Virginia.

PRAYER

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

Eternal Lord God, who comforts us in all our troubles, be near to our lawmakers today. When they feel tired or unappreciated, remind them that You keep a record of their labors and will reward them for their faithfulness. May the realization that You are close beside them keep them from becoming weary in their efforts to keep America strong. As they remember that pleasing You should be their first priority, fill them with a peace the world can't give or take away. Lord, lead them into a future of faith, love, and peace. We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CARTE P. GOODWIN 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. INOUYE).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 3, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CARTE P. GOODWIN, a Senator from the State of West Virginia, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT

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 Elena Kagan, of Massachusetts, to be Associate Justice of the Supreme Court.

RECOGNITION OF THE MAJORITY LEADER

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

Mr. REID. Mr. President, while we continue working this week to create jobs and finish the unfinished business of this work period, we will also turn to the nomination of Supreme Court nominee Elena Kagan.

Giving the President the Senate's advice and consent, as prescribed by the Constitution for a lifetime appointment to the highest Court in the country, is one of this body's most solemn obligations.

Chairman LEAHY and Ranking Member SESSIONS oversaw, through the lengthy process, very thorough and respectful confirmation hearings. All of them were fair and I think were probative. I thank them both for their leadership.

Several Senators have already made known how they will vote on Ms. Kagan's nomination. Those Senators and many others will come to the floor in the next few days to explain their positions. I will be one of them speaking in support of this exceptional nominee. I will certainly give her my vote.

As the debate moves to the Senate floor and as we move toward a final vote, I look forward to a continuation of the passionate but civil discussion we have seen in the committee thus far. In this respect, perhaps we can draw inspiration from Ms. Kagan herself. In her confirmation hearing last year for the position she currently holds—as our Nation's Solicitor General, that is our Government's lawyer in cases that come before the U.S. Supreme Court—Ms. Kagan testified that one of the attributes she would bring to the job was an ''understanding of how to separate the truly important from spurious.''

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

In the final days of this process, I suggest we keep those words in mind. I hope my fellow Senators will bring to this debate the same appreciation for what is critical to the Court and to our country, that will keep it separate from what is not.

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

MEASURE PLACED ON CALENDAR—H.R. 5901

Mr. LEAHY. Mr. President, I understand that H.R. 5901 is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 5901) to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investment in United States real property interests, and for other purposes.

Mr. LEAHY. I object to any further proceedings on this measure at this time.

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

Mr. LEAHY. Mr. President, what is the order?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont, Senator LEAHY, will control the first 30 minutes, and the Senator from Alabama, Senator SESSIONS, will control the second 30 minutes.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, more than 12 weeks ago, President Obama nominated Elena Kagan to succeed Justice John Paul Stevens as an Associate Justice of the Supreme Court of the United States. When the President announced his choice on May 10, he talked about her legal mind, her intellect, her record of achievement, her temperament and her fair-mindedness.

Having heard from Solicitor General Kagan at her confirmation hearing 5 weeks ago, I believe the American people have a sense of her impressive knowledge of the law, her good humor, and her judicial philosophy. In her testimony, she made clear that she will base her approach to deciding cases on the law and the Constitution, not on politics, not on an ideological agenda. She indicated that she will not be the kind of Justice who will substitute her personal preferences, and overrule the efforts of Congress to protect hard-working Americans pursuant to our constitutional role. Solicitor General Kagan made one pledge to those of us who were at that hearing: that she will do her ''best to consider every case impartially, modestly, with commitment to principle, and in accordance with law.''

Incidentally, I might say, at the outset, I compliment Republicans and Democrats alike for the amount of time Senators spent at the hearing. I certainly compliment the ranking member, Senator SESSIONS. We may have disagreed on the outcome and on the vote, but I think Senators worked very hard to get questions asked, to make sure that the American people knew who Elena Kagan was. I note that Senator SESSIONS and I set the times for witnesses and all. We were constrained somewhat by the distinguished Presiding Officer's predecessor, who died that week, and we were trying to arrange time for many of us to go to the funeral. I wanted to publicly thank Senator SESSIONS for his help in working out that schedule.

No one can question the intelligence or achievements of this woman. No one should question her character either. Elena Kagan was the first woman to be the Dean of the prestigious Harvard Law School and the first woman in our Nation's history to serve as Solicitor General, a position often referred to as the ''Tenth Justice.'' As a student, she excelled at Princeton, Oxford and Harvard Law School. She worked in private practice and briefly for then-Senator JOE BIDEN on the Judiciary Committee. She taught law at two of the Nation's most respected law schools, and counseled President Clinton on a wide variety of issues. She clerked for two leading judicial figures, Judge Abner Mikva on the Court of Appeals for the District of Columbia Circuit, and then for Supreme Court Justice Thurgood Marshall, on one of the most extraordinary lawyers in American history.

I have been here since the time of President Gerald Ford, and I have long urged Presidents from both political parties to look outside what they call the ''judicial monastery,'' and not feel restricted to considering only Federal appellate judges to fill vacancies on the Supreme Court. This, of course, is what Presidents used to do. With his second nomination to the Court, President Obama has done just this; he has gone outside the judicial monastery. When confirmed, Elena Kagan will be the first non-sitting judge to be confirmed to the Supreme Court in almost 40 years, since the appointments of Lewis Powell and William Rehnquist.

I know there was criticism by some Republicans that this nominee lacks judicial experience. Of course, that ignores one key fact. President Clinton nominated her to the DC Circuit Court in 1999. The Senate was controlled by Republicans at the time and it was Senate Republicans who refused to consider her nomination. She was pocket filibustered. Had the Republicans not done so, Elena Kagan would have been confirmed and would have had more than 10 years judicial experience. To give you some idea of her abilities, instead, when she was not allowed to have a vote for the DC Circuit Court, she went on to become an outstanding law professor, the first woman Dean of Harvard Law School—one of the most prestigious law schools in the country, actually the world—and the first woman to serve as the Solicitor General of the United States. Her nomination to the Supreme Court received the highest possible rating from the American Bar Association's Standing Committee on the Federal Judiciary. Her credentials and legal abilities have been extolled by many across the political spectrum. Two of these individuals were Justice Sandra Day O'Connor and Justice Antonin Scalia. In addition, Michael McConnell, Kenneth Starr and Miguel Estrada have given praise to this nomination. Like Justices Hugo Black, Robert Jackson, Earl Warren, William Rehnquist and so many others, Solicitor General Kagan's experience outside the judicial monastery will be valuable to her when she is confirmed. No one can question the intelligence or achievements of this woman. I hope nobody would question her character either.

From the moment her nomination was announced, Solicitor General Kagan has spoken about the importance of upholding the rule of law and enabling all Americans to have a fair hearing. She said that ''law matters; because it keeps us safe, because it protects our most fundamental . . . freedoms; and because it is the foundation of our democracy.'' Like her, I believe the law does matter in people's lives. That is why I went to law school. That is why I practiced law and then became a prosecutor. That is why I ran for the Senate. I believe that the law matters in people's lives, because the Constitution is this amazing fabric of our Nation; it is our protection. She understands this, as did her mentor, Justice Thurgood Marshall.

In her contribution to the 1993 tribute to Justice Marshall by the Texas Law Review, Elena Kagan recalled how Justice Marshall's law clerks had tried to get him to rely on general notions of fairness, rather than a strict reading of the law, so they could allow an appeal to proceed on a discrimination claim. She wrote that the then 80-year-old Justice referred to his years trying civil rights cases and said: All you could hope for was that a court would not rule against you for illegitimate reasons. You could not expect that a court would bend the rules in your favor. That is the rule of law. Just as Sir Thomas More reminded his son-in-law in that famous passage from ''A Man for All Seasons,'' that the law is our protection, Justice Marshal reminded his law clerks that the existence of rules and the rule of law is the best protection for all, including the least powerful. Elena Kagan concluded, as I do, that Justice Marshall ''believed devoutly . . . in the rule of law.'' He was a man of the law in the highest sense. He understood the Constitution's promise of equality.

I was disappointed to see the manner in which his legacy was treated by some during the recent confirmation hearing, and to read that there are Republican Senators, currently serving, who recently said they would vote

against Thurgood Marshall's confirmation to the Supreme Court if he were up now. He was a giant, and I would hope that if he were here again, those Senators would reconsider whether they would vote for him.

With this nomination, Elena Kagan follows in the footsteps of Justice Marshall, who was also nominated to the Supreme Court from the position of Solicitor General. She broke a glass ceiling when she was appointed as the first woman to serve as Solicitor General of the United States and when she served as the first woman dean of the Harvard Law School. When the Supreme Court next convenes, for the first time in our history, I predict there will be three women serving together among the nine Justices.

The stakes at the Nation's highest court could not be higher. One need look no further than the Lilly Ledbetter case to understand the impact that each Supreme Court appointment has on the lives and freedoms of countless Americans. In the Ledbetter case, five Justices of the Supreme Court struck a severe blow to the rights of working families across our country. Congress acted to protect women and others against discrimination in the workplace more than 40 years ago, but we still struggle to ensure that all Americans—women and men—receive equal pay for equal work. It took a new Congress, joined by our new President, to reverse the activist conservative majority in the Supreme Court by passing the Lilly Ledbetter Act, striking down the immunity the Supreme Court had given to employers who discriminate against their employees and successfully hid their wrongdoing. The Ledbetter case said, in a decision I still find shocking, that they could pay men a higher rate than women for the same work. As long as they kept it hidden, it was OK.

Recently in the Citizens United case, just one vote on the Supreme Court determined that corporate money can drown out the voice of Americans in elections that decide the direction of our democracy. They said that if British Petroleum wanted to spend hundreds of millions of dollars to defeat people who want to tighten the controls on our offshore drilling, or want to tighten the kind of inspections required for offshore drilling, British Petroleum, according to the Supreme Court, could spend hundreds of millions of dollars to defeat these people.

I had hoped that Senate Republicans would join our effort to respond to the conservative activist majority of the Supreme Court, who wrongly decided to override its own precedent and 100 years of legal development in Citizens United. Unfortunately, last week they filibustered the DISCLOSE Act and gave their endorsement to unfettered corporate influence in American elections.

For all the talk about ''judicial modesty'' and ''judicial restraint,'' from the nominees of a Republican President at their confirmation hearings, we have seen a Supreme Court in the last 5 years that has been anything but modest and restrained. What we have seen all too often in these last years is the activist conservative members of the Supreme Court substituting their own judgment for that of the American people's elected representatives.

I have always championed judicial independence. I think it is important that judicial nominees understand that, as judges, they are not members of an administration—any administration, Democratic or Republican, but they are judicial officers. They should not be political partisans, but judges who uphold the Constitution and the rule of law for all Americans. That is what Justice Stevens did in Hamdan, which held the Bush administration's military tribunals unconstitutional, and what he tried to do in Citizens United. That is why intervention by an activist conservative majority in the 2000 Presidential election in Bush v. Gore was so jarring and wrong. Mr. Gore had gotten the majority of votes throughout the country, but there was just one vote on the Supreme Court that he didn't get—the one vote that decided the election. That one vote was given to President Bush.

During her confirmation hearings, Solicitor General Kagan reflected an understanding of the judicial role and the traditional view of deference to Congress and judicial precedent. This is the mainstream view and one once embraced by conservatives. She indicated she would not be the kind of Justice who would substitute her personal preferences and overrule congressional efforts designed to protect hard-working Americans pursuant to our constitutional role. In fact, it is precisely because of Solicitor General Kagan's independence that many Republicans have announced their opposition to her nomination. They oppose her not because she would be a judicial activist as they claim, but rather because she would not overrule Congress as much as they would like. They seem not to like the fact that she is genuinely committed to judicial restraint rather than furthering a conservative ideological agenda.

Some who oppose this nomination do so because they seek to make this nomination a continuation of the fight over health care. They seek to transform this policy dispute they lost in Congress into a constitutional one that goes against 100 years of law and Supreme Court precedents. They would turn back the clock by resurrecting long-discredited legal doctrines wisely rejected nearly a century ago. They oppose Solicitor General Kagan because she will not commit to a narrow and outmoded legal view that would undermine the constitutionality of health insurance reform.

Congress has enacted and the President has signed into law the landmark Patient Protection and Affordable Care Act. I believe Congress was right to do so in order to address our health care crisis and ensure that Americans who work hard their entire lives are not robbed of their family's security because health care is too expensive. We were right to make sure that hard-working Americans do not risk bankruptcy with every illness. Many Republican Senators disagreed, as is their right, and voted against the law. But many of those who opposed this law now seek to do in the courts what they could not do by obstruction in Congress. They are so adamant in seeking this result, that they would turn back the clock by resurrecting long-discredited legal doctrines wisely rejected a nearly a century ago.

In framing their opposition to health insurance reform as a constitutional attack, these critics would also undermine the constitutional basis of laws against child labor and those setting a minimum wage or the Social Security Act, Medicare, the Clean Water Act, the Clean Air Act, and the landmark Civil Rights Acts. All are constitutional because of Congress's authority to legislate pursuant to the core powers vested in Congress by article I, section 8 of the Constitution, including the general welfare clause, the commerce clause, and the necessary and proper clause. The radical consequences of a narrow-minded agenda would be to erode the Supreme Court's time-honored interpretation of these enumerated powers that give Congress the ability to promote the general welfare of the American people.

These critics wish to return to the conservative judicial activism of the early 1900s, a period known by reference to one of its most notorious cases, the 1905 Lochner decision in which the Supreme Court struck down a New York State law protecting the health of bakers by regulating the number of hours they could work.

During this period of unbridled conservative judicial activism, the Supreme Court substituted their own views of property for those of the elected branches in order to strike down nearly 200 laws, including laws outlawing child labor—something we take for granted today—and laws protecting Americans from sick chickens—something that created a huge health hazard. They envisioned their principal role as the defender of business's profits—profits they made with child labor—and the protector of unrestrained ability to perform contracts, however onerous or one-sided. The American people suffered. Their rights went unprotected. Congress was unable to provide assistance. That is not a time anyone should want to return to because it was based on artificial legal restraints that shackled the people's elected representatives in Congress.

Millions of Americans rely on Social Security, Medicare, unemployment benefits, minimum wage laws, and other programs to protect Americans in tough economic times. This radical conservative agenda is a threat to Federal disaster relief and environmental

regulations and even laws responding to the reckless and fraudulent behavior that wrecked our economy.

Progressive opponents of these artificial legal restraints ultimately succeeded, with the support of the American people, in establishing Social Security, minimum wage laws, and antidiscrimination laws to protect the American people. The programs of the New Deal that helped Americans through the Great Depression would be unconstitutional if radical conservative critics had their way. Radical conservatives who seek to again impose artificial legal restraints on Congress and the American people would abandon the New Deal programs of the 1930s such as social security and the Great Society programs of the 1960s such as Medicare to the detriment of the American people. These are the programs that for the last 75 years have helped the United States become a world leader, with the economic security of our citizens leading our economy to grow to lead the world.

Millions of Americans rely on Social Security, Medicare, unemployment benefits, minimum wage laws and other programs that protect American families in tough economic times such as these. This is no academic discussion. This radical conservative agenda is a threat to Federal disaster relief, environmental regulations, and even laws responding to the reckless and fraudulent behavior that wrecked the economy. America's great safety net for those in need would be left in tatters if this outmoded legal doctrine were to take root.

Ask our fellow Americans in the gulf, those who have lost their jobs in the recession and those who have lost their homes, whether the Court should adopt this radical view of the limits of Congress's power to help them. Ask them if they want to roll back the clock and overturn laws passed by Congress to protect hard-working Americans. The conservative agenda to restore the Lochner era would leave hard-working Americans without the protection their lifetimes of hard work have earned them.

The fact that Elena Kagan will not state that she shares the views of those who opposed helping hard-working Americans obtain access to affordable health care does not mean she is outside the mainstream—far from it. The fact that some Republican critics opposed health care reform does not make it unconstitutional.

The Constitution in fact provides a clear basis for Congress' authority to enact health care insurance reform. Our Constitution begins with a preamble that sets forth the purposes for which ''We the People of the United States'' ordained and established it. Among the purposes set forth by the Founders was that the Constitution was established to ''promote the general Welfare.'' It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health. The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. As I stated earlier, article I, section 8, sets forth several of the core powers of Congress, including the general welfare clause, the commerce clause and the necessary and proper clause. These clauses form the basis for Congress's power.

Any serious questions about congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. As noted by Tom Schaller, enforcing the individual mandate requirement by a tax penalty is far from unprecedented, despite the claims of critics. Individuals pay for Social Security and Medicare, for example, by payroll taxes collected under the Federal Insurance Contributions Act, FICA. These FICA payments are typically collected as deductions and noted on Americans' paychecks every month. Professor Schaller wrote:

> These are the two biggest government-sponsored insurance programs administered by the [Federal Government], and two of the largest line items in the federal budget. These paycheck deductions are not optional, and for all but the self-employed they are taken out immediately.

The individual mandate requirement in the Patient Protection and Affordable Care Act is hardly revolutionary when viewed against the background of Social Security and Medicare that have long required individual payments.

Congress has woven America's social safety net over the last threescore and 13 years, beginning before I was born. Congress's authority to use its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the better for it. Growing old no longer means growing poor. Being older or poor no longer means being without medical care. These developments are all due in part to congressional action.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare falls ''within the wide range of discretion permitted to the Congress.'' Turning then to the ''nation-wide calamity that began in 1929'' of unemployment spreading from state to state throughout the Nation, Justice Cardozo wrote of the Social Security Act: ''The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.'' In the Supreme Court's decision upholding the constitutionality of Social Security, Justice Benjamin Cardozo, one of our greatest jurists, explained that it is the people's elected representatives in Congress that consider the general welfare of the country and laws to secure it. He recognized that it was the people's wisdom as enacted through their representatives that was to be respected, not the personal preference of a small elite group of judges.

The Supreme Court reached its decisions upholding Social Security after the first Justice Roberts—Justice Owen Roberts—in the exercise of good judgment and judicial restraint began voting to uphold key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulation. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, and the Wagner Act on labor relations. In so doing, the Supreme Court abandoned its judicially created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

The opponents of health care insurance reform are now opposing the nomination of Elena Kagan and now going to the extreme to attempt to call into question the constitutionality of America's established social safety net. They would turn back the clock to the hardships of the Great Depression, and thrust modern America back into the conditions of a Charles Dickens novel. That path should be rejected again now, just as it was when Americans confronted great economic challenges more than 70 years ago. To attempt to strike down principles that have been settled for nearly three-quarters of a century is wrong, damaging to the Nation, and would stand the Constitution on its head.

Due to Republican obstruction, it took an extraordinary majority of 60 Senators, not a simple majority of 51, for the Senate's will to be done. The fact that Senate Republicans disagree with the effort to help hardworking Americans obtain access to affordable health care does not make it unconstitutional. As Justice Cardozo wrote for the Supreme Court 73 years ago in upholding Social Security:

> [W]hether wisdom or unwisdom resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must come from Congress, not the courts.

Justice Cardozo understood the separation of powers enshrined in the Constitution and the powers entrusted by our Constitution to Congress. This is true judicial modesty reflecting the understanding of the respective roles of Congress and the courts. Surely when Congress acts to provide for the general welfare of all Americans it does so pursuant to its constitutional authority.

I believe that Congress was right when it decided that the lack of affordable health care and health insurance and the rising health care costs that

burden the American people are problems, ''plainly national in area and dimensions.'' Those were the words Justice Cardozo used to describe the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it was right for Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. Whether other Senators agree or disagree, I would hope that none would contend that we should turn back the clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers, making its legislative determinations and helping the American people through tough economic times. Sadly, some are making precisely that argument and contend that this settled meaning of the Constitution should be upended.

The dark days of unbridled conservative judicial activism in which Congress's hands were tied from outlawing child labor and enacting a minimum wage and social security are long gone and better left behind. The Constitution, Supreme Court precedent, our history and the interests of the American people all stand on the side of Congress's authority to enact health care insurance reform legislation.

Under article I, section 8, Congress has the power ''to regulate Commerce . . . among the several States.'' Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. That is consistent with Elena Kagan's testimony.

In Solicitor General Kagan's responses to questions about the commerce clause I heard an echo of Justice Cardozo's explanation for why Social Security is constitutional and of Justice Oliver Wendell Holmes's famous dissent in Lochner. In particular, I recall Solicitor General Kagan's response to a question from Senator COBURN that he later admitted was intended to get her to signal how she would decide a constitutional challenge to health care insurance reform. He asked Solicitor General Kagan what she thought of a hypothetical law requiring Americans to eat three vegetables a day. She went on to explain:

I think the question of whether it's a dumb law is different from . . . the question of whether it's constitutional, and . . . I think that courts would be wrong to strike down laws that they think . . . are senseless just because they're senseless.

The Supreme Court long ago upheld laws like the Fair Labor Standards Act against legal challenges, overruling its decision barring Congress from outlawing child labor and establishing basic working conditions such as a minimum wage. The days when women and children could not be protected are gone. The time when the public could not be protected from sick chickens infecting them are gone. The years when farmers could not be protected from market failures or natural disasters are gone. The era of conservative activist judges voiding regulation that did not guarantee profits to corporations should be gone. The reach of Congress's commerce clause authority has been long established and well-settled. Solicitor General Kagan's answer to Senator COBURN's question reflects not only this well-settled understanding, but also the understanding of the proper roles of each of the branches that was restored when the Supreme Court rejected the misguided conservative activism of the Lochner era.

Since the great Chief Justice Marshall's interpretation of the commerce clause in 1824, Congress has been understood and acknowledged by the Supreme Court to have the power ''to prescribe rules'' to govern commerce that ''concerns more than one State.'' It was this same understanding that Justice Cardozo followed in upholding the Social Security Act and that Justice Felix Frankfurter later praised as Chief Justice Marshall's extraordinary achievement of capturing, for all time, the essential meaning of the commerce clause. Pursuant to this understanding of its power under the commerce clause, Congress enacted not only Federal disaster relief from the 18th century but also the 1964 Civil Rights Act prohibiting racial discrimination by public accommodations and the landmark Clean Air and Clean Water Acts, both of which President Nixon signed into law. Would conservative activists now argue that these acts, the Civil Rights Act, the Clean Air Act and the Clean Water Act, should suddenly be declared unconstitutional as beyond Congress's power?

Even recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana. This was upheld even though the marijuana was grown and consumed at home. It was upheld on the same rationale as Wickard v. Filburn in 1942, because of its impact on the national market for marijuana. Yet Republican Senators and conservative ideologues contend that Wickard should be discarded. Would they also demand that Federal laws against drugs be declared unconstitutional?

Justice Anthony Kennedy and Justice Sandra O'Connor, both conservative Justices appointed by Republican Presidents, astutely noted in their 1995 concurrence in United States v. Lopez:

[T]the Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point. [That] fundamental restraint on our power forecloses us from reverting to an understanding of commerce that would serve only an 18th-century economy . . . and mandates against returning to the time when congressional authority to regulate undoubted commercial activities was limited by a judicial determination that those matters had an insufficient connection to an interstate system.

They are right as a matter of law and right when it comes to the interests of the American people.

The Constitution also provides in article I, section 8, that Congress has the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by his Constitution in the United States.'' The Supreme Court settled the meaning of the necessary and proper clause almost 200 years ago in Justice Marshall's landmark decision for the Supreme Court in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall wrote that ''the clause is placed among the powers of Congress, not among the limitations on those powers.''

He continued:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

He concluded by declaring, in accordance with a proper understanding of the necessary and proper clause, that Congress should not be deprived ''of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to human affairs'' by judicial fiat. Chief Justice Marshall understood the Constitution, knew its text and knew the Framers. He rejected the constraints on Congress that conservative activists now propose in order to empower conservative judicial activism.

The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with economic impact. Just this year the Supreme Court upheld provisions of the Adam Walsh Child Protection and Safety Act, a law we passed to allow for the civil commitment of sexually dangerous Federal prisoners, which was based on the commerce clause and the necessary and proper clause of the Constitution. As Justice Breyer wrote for seven Justices, including Chief Justice Roberts:

[T]he Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are ''convenient, or useful'' or ''conducive'' to the authority's ''beneficial exercise.''

Congress passes laws like the Adam Walsh Act every year to protect the American people. Would those who want to redraft and limit the Constitution really want to declare the Adam Walsh Act and its provisions against pedophiles unconstitutional?

Solicitor General Kagan's testimony shows that she both understands and recognizes, in accordance with the longstanding judgments of both Congress and the Supreme Court, that Congress's power to legislate under the commerce clause power and the necessary and proper clause is broad but

not unlimited. Indeed, she agreed with the Senator from Texas that the Supreme Court's decisions in Lopez and Morrison limit Congress's power to legislate ''when the activity that's being regulated is not itself economic in nature and is activity that's traditionally been regulated by the States.'' But, she noted that ''to the extent that Congress regulates the channels of commerce, the instrumentalities of commerce, and . . . things that substantially affect interstate commerce, there the Court has given Congress broad discretion.'' She is right as a matter of law. The American people are able to act through their elected representatives in Congress to secure the blessings of liberty because of this meaning of our Constitution.

Through Social Security, Medicare, and Medicaid, Congress established some of the cornerstones of American economic security. And comprehensive health insurance reform has now joined them. Congress has acted within its constitutional authority to legislate for the general welfare of all Americans, whether they are from Vermont or West Virginia or Alabama or anywhere else. No conservative activist court should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress.

Those who would corrupt the Constitution by trying to revive the Lochner era are intent on a results-oriented litmus test. This litmus test would lead them now not just to vote against this nomination and the confirmation of Justice Thurgood Marshall as they have said, but also against Senate confirmation of Justice Sandra Day O'Connor, Justice David Souter, Justice John Paul Stevens, and Justice Anthony Kennedy—four Justices appointed by conservative Republican Presidents, all nominations I voted to confirm.

It is interesting. I was here when John Paul Stevens' nomination came up. He was seen as a conservative from Illinois. He was nominated by a conservative President, Gerald Ford. He nominated him, and 2½ weeks later, the Senate, which was overwhelmingly Democratic, voted unanimously to confirm Justice John Paul Stevens. I have not always agreed with every decision of his, but, boy, I have agreed with my vote for his confirmation.

With this litmus test I mentioned, it is not just Chief Justice Earl Warren, and Justice William Brennan and Justice Thurgood Marshall whose jurisprudence they are rejecting. Using these results-oriented litmus tests would require us to reject the vast majority of Justices who have served honorably on the U.S. Supreme Court, including Justice Benjamin Cardozo, Justice Oliver Wendell Holmes, Jr., Justice Harlan Fiske Stone, and Justice Charles Evans Hughes. I assume they would, as well, reject the greatest judge not to have been appointed to the Supreme Court, the Second Circuit's Judge Learned Hand, because he had been an outspoken critic of the so-called economic due process doctrine that allowed activist conservatives to substitute their views for those of Congress. Indeed, if they were to be consistent, they would have to rethink their support for the current Chief Justice, John Roberts, who testified at his confirmation hearing that during the Lochner era, when the Supreme Court was striking down economic regulations in the late 1800s to the early 1930s, to quote John Roberts, ''it's quite clear that they [were] not interpreting the law, they [were] making the law.'' I agree with him. I will say parenthetically that I wish he had stayed consistent to that principle since he became Chief Justice. The demand by critics that Solicitor General Kagan adhere to legal views that would put her at odds with so many great Justices as the price of their vote is a strong reminder of how far many are seeking to stray from basic constitutional principles and traditions.

We do not need judges or Justices to pass a litmus test from either the right or the left. In fact, I have urged Senators—they have heard me say this many times—do not listen to the single issue or special issue groups on either the right or the left when it comes to the Supreme Court. We have 300 million Americans in this great country. Most of the Justices we vote on will be here long after any one of us leaves this Chamber. There are only 100 Americans who actually get to vote on them. There are actually 101 people who are involved in this choice—first, the President, who nominates the person, but he cannot appoint the person unless we advise and consent. So we have 101 people with this awesome duty to pick somebody and to vote on somebody who is going to be there to protect the justice and the rights of all 300 million Americans. It is an awesome responsibility.

I tell groups of either the right or the left—and I have heard from many of them over the years on all these nominees on whom I voted—I am going to make up my own mind. I am going to bring my own Vermont principles, my own sense of Vermont fairness, my own experience, my own judgment to bear, and then I will make up my mind. I urge all Senators to do that. Ignore the special interest groups on the right or the left. Make up your own mind.

As I said, we do not need judges or Justices who would pass a litmus test from the right or the left. We need judges and Justices who will respect the laws as passed by Congress and appreciate that adherence to precedence is a foundation of public confidence in our courts.

(Mrs. SHAHEEN assumed the chair.)

Mr. LEAHY. It is important that we restore public confidence in our courts. They do protect our rights. They do protect the Constitution. But we have to make sure we respect what they do. We need judges and Justices who will fairly apply the law and use common sense, Justices and judges who appreciate the proper role of the courts in our democracy and make decisions in light of the fundamental purposes of the law. This is the standard I applied when reviewing this nomination. It is the same standard I applied to every Supreme Court nomination, including six Justices nominated by Republican Presidents for whom I have voted. It is a standard I believe Solicitor General Kagan has met.

Solicitor General Kagan not only has the necessary qualifications to be a Supreme Court Justice but has also demonstrated her respect for the rule of law, her appreciation for the separation of powers, and understands the meaning of our Constitution. Some may not want our country to move forward, to make progress, to move toward a more perfect union. But the issue squarely before this body is whether Solicitor General Kagan has the necessary qualifications, respect for the rule of law, and judicial independence to be confirmed by the Senate to serve on our Nation's highest court. I believe she does. This Vermonter will vote for Elena Kagan to be a Supreme Court Justice, and I will do it proudly.

Madam President—the Chair having changed during this speech, first presided over by the distinguished Senator from West Virginia, and now my distinguished neighbor, the State of New Hampshire—the distinguished Senator from New Hampshire presides. With that, I will close.

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

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

Mr. LEAHY. Madam President, I see the distinguished Senator from Alabama on the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I appreciate Chairman LEAHY. He is a strong and effective leader of our committee. We agree a lot of times. I try to work with him, and sometimes we disagree. One thing we will soon be doing that I look forward to very much is going to the White House—maybe in 30 minutes or so—to participate in the signing of a bill to eliminate the vast disparity between crack and powder cocaine sentences. The sentencing mechanism under the guidelines I think was unfair and needed to be corrected. I have been working on that issue for some time, and so has Chairman LEAHY. We certainly agree on a lot of issues and get some things done, but we do not agree on this nomination.

The office of Justice of the U.S. Supreme Court is one of the most important positions in our National Government. Justices are granted a degree of

independence unequaled anywhere in the United States. Justices hold lifetime terms, subject only to impeachment, and Congress may not even reduce their pay. Why did the Founders take such a step? They wanted our courts to be impartial, doing justice to the poor and the rich under the Constitution and laws of the United States, as their oath says, and they did not want them subject to political or other pressures that might affect their objectivity. They wanted judges who could do the right thing year after year, day after day.

Presidents get to nominate, but the Senate must confirm. This advise-and-consent power the Constitution gives is a confirmation process; it is not a coronation. Here, five Justices on the Supreme Court can hold—and four of them recently voted to, not the five necessary to render a majority opinion—that a company cannot publish a book or a pamphlet that criticizes a politician before an election. Five justices can hold that the government can allow States and cities to deny Americans the personal right to keep and bear arms, a right clearly stated in the Constitution.

The American people have no direct control over these Justices. All they have and what they have a right to expect is that our Justices exercise self-control year after year, decade after decade. If this young nominee, Elena Kagan, were to serve to the age of the individual she seeks to replace, she would serve 38 years on the Supreme Court.

Well, I am not able to support Elena Kagan for this office. I believe she does not have the gifts and the qualities of mind or temperament one must have to be a Justice. Worse still, she possesses a judicial philosophy that does not properly value discipline, restraint, and rigorous intellectual honesty. Instead, she seems to admire the view, and has as her judicial heroes, judges who favor expansive readings of what they call the living Constitution; whereby, judges seek—and in President Obama's words, who certainly shares this view—to advance ''a broader vision of what America should be.''

Well, I don't believe that is a responsibility or a power given to judges—to advance visions of what America should be. Whose vision is it they would advance, I would ask. It would be the judge's vision. But they weren't appointed for that purpose. They were appointed to adjudicate cases.

President Obama's judicial philosophy, I think, is flawed, and I certainly think Ms. Kagan shares his philosophy. The President basically said so when he appointed her. Her friends say it is so. Her critics say so. Her record of public action says so, and the style and manner of her testimony at the hearing evidenced such an approach to judging. I don't think it is a secret. I think this is pretty well known, that this is not a nominee committed to restraint or objectivity but one who believes in the power of judges to expand and advance the law and visions of what the judge may think is best for America.

Ms. Kagan has been described as collegial, engaging, a consensus builder. These are fine qualities in many circumstances, and I am sure she possesses them. She seems to. But as to personal discipline, clarity of mind, the ability to come quickly to the heart of a matter, objectivity or impartiality, and scrupulous intellectual honesty—characteristics essential for a judge—not so much has been said. Perhaps this is so because many liberal activists in America have lost faith in the idea of objectivity, which means they have lost faith in the reality of objective truth, the finding of which—the finding of truth—has been the goal, the central focus of the American legal system since its creation.

Our modern law school minds and some false intellectuals far removed from real trials—and I have had the honor and privilege to have spent 15 years trying cases before Federal judges and so I have a sense of this, I truly believe—are removed from these trials and from the necessity of rules for civil order. They think, many of them do—these professors and theoreticians—that laws are just tools for the powerful to control the powerless and that words can't have fixed meanings. Things change. We can't consult 16th century dictionaries to find out what the Founding Fathers meant when they wrote our Constitution. Indeed, Justice Sotomayor recently confirmed this when she quoted, with approval, the line: ''There is no objectivity, just a series of perspectives.''

Americans are sick of political spin by politicians, and they do not want it from judges. They reject judges who rely on their empathy, as the President said a judge must have and that is what he looks for in a judge. The American people don't believe judges should rely on their empathy to decide legal cases or seek to advance their vision of what America should be. They know Justices are not above the law. They know Justices should be neutral umpires, not taking sides in the game. Above all, they know judges—especially Supreme Court Justices—should not legislate from the bench.

I do not desire that the Supreme Court advance my political views. It is enough, day after day, that the Court follows the law deciding cases honestly. No more should ever be asked of them. I might not agree one day with this case or that one, but we have a right to expect those judges would be objective and not promote agendas. A recent commentator once said: ''We liberals have gotten to the point where we want the court to do for us that which we can no longer win at the ballot box.''

Well, this nominee, I think, in my honest evaluation, comes from that mold. Yes, she is young, but her philosophy is not. It is an old, bankrupt judicial activism—a philosophy the American people correctly reject. In her writings, her judicial heroes, her extensive political activities, her actions at Harvard to unlawfully restrict the military, her hostility to congressional actions against terrorism in a letter she wrote, her efforts to block restrictions on partial-birth abortion while in the Clinton White House, her arguments before the Supreme Court last year that Congress can ban pamphlets criticizing politicians and, perhaps the most disturbing to me as someone who spent 15 years in the Department of Justice, her actions as Solicitor General of the United States, whereby she failed to defend the don't ask, don't tell congressional law—not military policy, a law she had openly, deeply opposed but promised to vigorously defend were she to be confirmed as Solicitor General—leave no doubt what kind of judge she would be: an activist, liberal, progressive, politically minded judge who will not be happy simply to decide cases but will seek to advance her causes under the guise of judging.

In addition, her defense of these positions at her hearings, her testimony, in my opinion, lacked clarity, accuracy, and the kind of intellectual honesty you look for in someone who would sit on such a high and important Court. Indeed, her testimony was curious. She failed to convey to the committee, in my opinion, a recognition of the gravity of the issues with which she had been dealing and the nature of her role in dealing with some of these issues that she was involved with in her career. She seemed to suggest that things happened around her and she did all things right and no one should get upset about it.

Some of these concerns, I think, could have been overcome, had we seen the superb quality of testimony at her hearing as given by that of Justices Roberts and Alito at their hearings. But, alas, that we did not see, not even close. Glib, at times humorous, conversant on many issues but not impressive on any in a more serious way, in my view. Based on so little serious legal practice—only 2 years, right out of law school in a law firm and 14 months as Solicitor General—this perhaps should not be surprising. The power of the testimony of Roberts and Alito did not spring fully formed from their minds either, though both seemed to be naturally gifted in the skills needed for superior judges, and I fear Elena Kagan is not so blessed.

While she is truly intelligent, the exceptional qualities of her mind may be better suited to dealing with students and unruly faculty than with the daily hard work of deciding tough cases before the Supreme Court. But Roberts and Alito, on the other hand, were steeped in the law over many years as lawyers and judges. That is who they were. That is their skill. That was their craft. That was their business. They understood it. It showed. Ms. Kagan did not show that. I believe that

lack of experience was part of the reason her testimony was unconvincing.

I think a real lawyer or experienced judge who had seen the courtroom and the practice of law would not have tried, as she did, to float their way through the hearing in the manner she did. Her testimony failed to evidence an understanding of the gravity of the issues with which she was dealing and the important nature of her role in them. She seemed to suggest these events just happened around her, none of which was her responsibility. Several times in the course of her testimony she inaccurately described the circumstances and the nature of the matters in which she had been engaged, to a significant degree. Her testimony was more consistent with the spin the White House was putting out than the truth. I was surprised and disappointed that she was not more candid and did not, through accurate testimony, dispel some of the false spin that had been put out in her favor.

So now we are at the beginning of the discussion of the Kagan nomination. While I have been firm in my criticisms of the nominee, I have given considerable thought to the criticism that I have made and tried not to be inaccurate in them. I believe they are correct. But if I am in error, I will be pleased to admit and correct that error. No nominee should have their record unfairly sullied in this great Senate. That would be wrong. I, therefore, ask and challenge the supporters of the nominee to point out any errors in my remarks as we go forth so we can, above all, get the facts straight.

The matters I will set forth today and later are serious. There is disagreement, I believe, between what the record, the facts, and the testimony show and the White House spin and even the Kagan spin—and I use that word carefully. So let us, therefore, begin this debate in all seriousness. Let us get to the bottom of these matters. There is a truth. We can ascertain what happened. Let us find out what happened in these matters. Let us get to the bottom of it.

Some raise the question of how many Republicans will vote for the nominee. Another question to ask is: How many Democrats will vote against the nominee? I call on every Senator to study the record and make an informed and independent decision. We are not lemmings. We have a constitutional duty to make an independent decision. So I urge my Democratic colleagues to not just be a rubberstamp, to not allow political pressures to influence your decisions but conduct an independent and fair analysis of the nominee. I believe if Senators strongly advocate and believe judges should follow the law, not make it; that they should serve under the Constitution and not above it; that they should be impartial and objective—if Senators believe in that—they should have very serious trouble with this nomination.

At this moment I am going to briefly mention a few of the serious concerns that were raised in the committee. I will in greater detail go through each of them in the next several days. I am sure other Senators will talk about them also. I will attempt to do so honestly and fairly, and at the end I will be listening to see if somehow I have misjudged the nominee on these matters and whether I should change my views. But I am very serious when I say the actions of this nominee over the entirety of her career indicate an approach to judging that is inconsistent with the classic American view of a judge as one who shows restraint, who follows the law, who adjudicates the matters before the court, and who is objective and fair.

One of the more serious issues that has been discussed quite a bit is the nominee's handling of the U.S. military while she was dean at Harvard. She reversed Harvard's policy and banned the military from the campus recruiting office. During that period of time a protest against the military was held. She spoke to that protest crowd while in the building next door a military recruiter was attempting to recruit Harvard students for the U.S. military.

She participated in the writing of a brief to oppose the don't ask, don't tell policy which she deeply opposed.

The U.S. military did not have a policy called don't ask, don't tell. That was a law passed by the U.S. Congress and signed by President Clinton. It was the law of the land and it was not their choice. They followed, saluted, and did their duty. Yet Ms. Kagan barred them from the campus at Harvard. On four different occasions this Congress passed laws to try to ensure that our military men and women, during a time of two wars, were not discriminated against on college campuses in this country. One of them was a few months before, finally, it was written in a way they could not figure out a way to get around it. That was shortly before she barred them from the campus, subjecting Harvard to loss of Federal funds, which resulted in the military, when they finally realized that she had reversed this policy and found out they had been stonewalled and the front door of the university had been closed to them, appealed to the president of Harvard University and he reversed her position. It was not justified. It was wrong. It should not have been done.

She did not seem to complain about the policy when she worked for President Clinton, who signed the law. But she punished the men and women who were prepared to serve and defend our country, and Harvard's freedom to carry on whatever these silly activities they want to carry on. So this is not a little bitty matter.

When she was nominated for Solicitor General, this was raised and she was asked what if this don't ask, don't tell law is challenged in the Court? We know you oppose it. We know you have steadfastly opposed it. Will you defend it? It is the law of the land. You will be Solicitor General. You represent the U.S. Government before the Supreme Court. Will you defend it?

She flat out said that she would defend the laws passed by Congress and specifically promised to defend don't ask, don't tell. This is a matter of some importance. I asked her about it, gave her opportunity to respond. She took 10 minutes—I did not interrupt her—with her explanation of why she did not assert an appeal to the Ninth Circuit ruling that seriously undermined don't ask, don't tell, because we know President Obama opposes it and we know she opposed it. We know the ACLU opposed it. They were the litigants in this case. She met with the ACLU.

The ACLU did not want the Ninth Circuit case to go up to the Supreme Court. Why? The reason is they expected the Supreme Court would affirm the law. So what did Elena Kagan do? Did she vigorously defend the law? Did she take the opportunity to take this case to the Supreme Court and seek its affirmation by the Supreme Court? No, she allowed the case to be sent back—without appealing it—to a lower court to go through a long, prolonged process of discovery and trial that is disconnected to the plain fact of the legality of the policy. She did not properly defend the laws of the United States and she did not defend the law in this matter.

The Solicitor General has that duty whether they like the law or not. Congressional actions, when challenged, should be defended, particularly one so easily defended, in my opinion, as this one. I believe that is a serious matter, so serious that if my analysis is correct, that she failed to defend that action after explicitly having promised to do so, then this is disqualifying in itself. She would have allowed her personal views, political pressures from perhaps her appointing officer, President Obama, to influence her decision in a way that went against her duty as Solicitor General. We are going to talk about that in great detail as we go along.

As Solicitor General in the 14 months that she was there, she approved a filing of a brief calling on the Supreme Court to review and overturn a ruling by the Ninth Circuit Court of Appeals that had affirmed an Arizona law that said Arizona businesses that failed to use E-Verify or otherwise hire people who are illegally in the country would lose their business license. There is a Federal statute that explicitly says States can revoke licenses of businesses that violate our immigration laws.

This is quite a bit stronger case than the other Arizona case that I think is improvidently being challenged, also by the Obama Department of Justice. But she approved this and again the trial court had ruled the law was good. The Ninth Circuit, the most liberal activist circuit in the country, approved

it unanimously, and now it is before the Supreme Court and now she asked that the Supreme Court take it and reverse that.

I think this was bad judgment legally, and I believe it is another example of her personal policy views influencing the decisions she made as a government official—not the kind of thing you want in a Supreme Court Justice.

Then there was the time she was in the Clinton White House and became involved in the great debate we had in the Senate, that went on for a period of years, over the partial-birth abortion issue, where unborn babies are partially removed from the mother and there are techniques used to remove the child's brain. It is a horrible procedure. The physicians group, the American College of Obstetricians and Gynecologists, ACOG, had issued a finding that there was never any medical necessity for this horrible procedure that Senator Daniel Patrick Moynihan referred to as so terribly close to infanticide.

President Clinton apparently was prepared to support a ban on this procedure. But Ms. Kagan, as a member of his staff, advised that it might be unconstitutional. In her notes from her time at the Clinton White House, she said the groups, that is, the pro-abortion groups—the groups will go crazy. She even got ACOG to issue a new statement and was able to influence President Clinton to oppose the legislation. Six or 8 years went by before we finally passed a law banning the procedure.

When I raised this at her hearing, she tried to make it seem like she had nothing much to do with it, like she just happened to be in the White House. She said, ''at all times trying to ensure that President Clinton's views and objectives were carried forward.'' That is all I was doing.

She was asked about that: If that was your view, say so.

Well, I was just doing whatever the President wanted me to do.

I do not think that was an accurate analysis of it. Sometime after it became clear that ACOG had reversed its position—it caused quite a bit of national controversy. She was right at the center of that, contacting the leaders of ACOG and prompting them to change the wording of their statement without talking to the professionals on the committee that had issued the original analysis. There was never any need for this kind of procedure to take place. This was concerning to a lot of members of the committee. Her testimony is relevant to that.

With regard to the second amendment, she used the same language in her testimony to give the impression that she understood that the Heller and the McDonald cases, recently out of Chicago, were settled law and implied that if she were on the Court, she would vote to uphold the right to keep and bear arms, which is plainly in the Constitution. I went back and asked her again. Settled law became mere precedent. That precedent is the 5-to-4 decision in two cases, Heller and McDonald, where by one vote the Supreme Court is upholding the right to keep and bear arms. If one vote were to switch, the Court could rule 5 to 4 that any city and any State in America could ban completely the right to keep and bear arms, violating what I would say are the plain words of the Constitution. Her actions, both as a law clerk and in the Clinton White House, indicate she has a hostile view to gun ownership. She grew up on the upper west side of New York. It is pretty clear she is one of a group who sees the NRA as a bad group and does not believe in gun ownership as a constitutional right. This is a serious matter because it is such a narrowly decided Court.

Who is this nominee? We will learn more about it as the days go by. I believe her actions, her background, and her approach to judging is unhealthy. It is not the kind of thing we need on the Supreme Court. It evidences a tendency to promote her political agenda rather than being objective. Who is she? Vice President BIDEN's chief of staff, Ron Klain, a lawyer with whom she worked closely in the Clinton administration and a longtime friend, said of her not long ago:

> Elena is clearly a legal progressive . . . I think Elena is someone who comes from the progressive side of the spectrum. She clerked for judge Mikva

A renowned Federal activist judge—

clerked for Justice Marshall—

One of the most activist Justices on the Supreme Court—

worked in the Clinton administration, worked in the Obama administration. I don't think there's any mystery to the fact that she is, as I said, more of the progressive role than not.

What does that mean, a legal progressive? In the early 20th century, progressives thought that intellectuals and the elites in this country knew more than the great unwashed, and they were seeking to advance political agendas that went beyond what a lot of people thought was appropriate and constitutional. The progressives saw the Constitution as an impediment, not as a protector of our liberties, of our freedom, of our prosperity, of our property. They saw it as an impediment to getting done what they would like to do. It is a dangerous philosophy.

Ultimately, all our liberties depend on faithful adherence to the Constitution—the free speech, free press, the right to a trial by jury. All those things that are so important to our rights are in that document.

This nominee is indeed of that background. She is not sufficiently respectful of the plain words of the Constitution. She will be the kind of activist judge who seeks to advance her vision of what America should be. That is not an appropriate approach for a Justice on the Supreme Court to take. That is why I will be opposing the nomination.

I suggest the absence of a quorum and ask unanimous consent that time under the quorum call be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. I will proceed on leader time.

RECOGNITION OF THE MINORITY LEADER

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

The minority leader is recognized.

FMAP

Madam President, the American people are getting a good reminder this week of why they have lost faith in Washington Democrats. Not only is one of the last things Democrats plan to vote on here before the August recess another bailout, it is also just the kind of bloated, slapdash affair Americans have come to expect and to loathe from Democrats in Washington. Basically what we are seeing here this week is the final act in Washington's guide for responding to a recession.

On Thursday they threw together a bill without even knowing how much it would cost the taxpayers, expecting us to vote on it yesterday. When they found out last night it cost more than they thought it would, they threw another bill together and expect us to vote on that one tomorrow—just before Senators head out of town. This is precisely the kind of rushed and reckless approach to lawmaking that has most Americans thinking congressional Democrats can't go on their August recess fast enough. If it means one less bailout cobbled together without regard for details or its impact on the taxpayers or its impact on the debt, taxpayers would probably be glad to help book Democrats' plane tickets out of here.

Americans are fed up. They have had enough. The trillion-dollar stimulus bill was supposed to be timely, targeted and temporary. Yet here we are, a year and a half later, and they are already coming back for more. The $100 billion they got for State education budgets the first time wasn't enough, even though more than a third of the original $100 billion hasn't even been spent yet, and none of the extra money they are asking for will necessarily be used to save teachers' jobs. The purpose of this bill is clear: it is to create a permanent need for future State bailouts, at a time when we can least afford it.

Same goes for health care spending. The original stimulus included about $90 billion in additional Federal Medicaid spending. That too was supposed to be temporary. Yet here we are, a year and a half later, and they want more.

So, as I said, the purpose of this bill is clear. It is a last-minute effort by

Democrats in Washington to funnel more money to the public employee unions before an election and to set the stage for the massive tax hike that the administration plans to spring on America's small business owners on January 1 of next year. Once again, Democrats are showering money on their favored constituencies and asking the American people to pay for it with higher taxes, more government, and fewer private sector jobs.

It is time our friends on the other side actually do something to address the jobs crisis in this country. As it is, virtually every bill they pass adds more burdens on the very people we need to get us out of the recession and create jobs. If a bill doesn't kill jobs or make it harder to create them, they are not interested. It is time for a different approach. The approach of the past year and a half just is not working.

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. CARDIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CARDIN. Madam President, let me start by first expressing my appreciation to Senator LEAHY and Senator SESSIONS. I have the honor of serving on the Judiciary Committee, and I think our leadership—our chairman, Senator LEAHY, and our ranking Republican member, Senator SESSIONS—conducted the confirmation process in the best tradition of the Senate.

We had 4 days of hearings before the Judiciary Committee. Every member of the committee was afforded ample opportunity to question Solicitor General Kagan on a far range of issues, and we got complete responses. We had chances for followup questions. We even had a third round of questioning. We had outside witnesses who were before our committee. We had a chance to ask them questions as third-party validators. We also went through tens of thousands of pages of documents.

This was a very thorough confirmation process, a very open confirmation process, and a very fair confirmation process. I do thank Senator SESSIONS, the ranking Republican member, for the way he cooperated with Senator LEAHY to make sure the Senate did its business in getting a full record before voting to confirm Elena Kagan to be an Associate Justice of the Supreme Court of the United States.

Solicitor General Elena Kagan has the experience, the intelligence, the integrity, and the temperament to serve as an Associate Justice of the Supreme Court of the United States. As to her experience, she was the first woman Solicitor General in the history of our Nation. She was the first woman to be dean at the Harvard Law School. Her intelligence has been acknowledged by all as to her being a person who is very capable to be the next Associate Justice of the Supreme Court.

Previous Solicitor Generals, including Charles Fried, Ken Starr, Ted Olson, and Paul Clement—Democrats and Republicans—stated that Elena Kagan would ''bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law.'' They are Democratic and Republican former Solicitors General.

She has the integrity. We have seen third-party validators—Democrats and Republicans—testify to her integrity and legal career. She certainly has the temperament. She put up with the Senators' interrogations with a calm demeanor and good humor, which I think will serve her well on the Supreme Court of the United States.

She brings to this position experience from being a clerk for Justice Thurgood Marshall. I heard his name mentioned many times during this confirmation process. We in Maryland are particularly proud of Thurgood Marshall. He comes from the State of Maryland. He comes from Baltimore. He was one of the great leaders on the Supreme Court, one of the great lawyers of our time. I think we all are very proud of what America is today thanks to Justice Thurgood Marshall. I think it only adds to the qualifications of Solicitor General Elena Kagan to have clerked for Justice Thurgood Marshall.

I heard my colleague talk about her commitment to our military. Let me point this out: This was a very difficult issue for Harvard Law School in regard to their policies. But let me quote, if I might, from a letter from Iraqi war veterans:

> During her time as dean, she has created an environment that is highly supportive of students who have served in the military. . . .Under her leadership, Harvard Law School has also gone out of its way to highlight our military service. . . .

Students have complimented the way she acted as dean to support our veterans. She comes from a military family. In fact, during the time in question, the number of Harvard Law School students who were recruited into military service went up. So I think you have to look at the record. She has been extremely supportive of our veterans, extremely supportive of those who serve our Nation in military service.

As a last point, let me quote from Miguel Estrada. I think most people know Miguel Estrada. He was nominated to the DC Circuit Court of Appeals and considered to be one of the conservative nominees. He said:

> If such a person, who has demonstrated great intellect, high accomplishments and an upright life, is not easily confirmable, I fear we will have reached a point where no capable person will readily accept a nomination for judicial service.

So I would hope we all could agree that Solicitor General Elena Kagan is well qualified to serve as an Associate Justice on the Supreme Court of the United States.

What we want from an Associate Justice is a judge who will follow legal precedent, giving due deference to Congress, following the best traditions of the Supreme Court in protecting the rights of Americans against the abuses of power. To me, that is judicial restraint, to stay within the mainstream of American values.

I believe Solicitor General Kagan represents that best tradition of following legal precedent, giving due deference to Congress, standing for ordinary Americans against the abuse of power. For those reasons, I will vote to confirm her to be the next Associate Justice of the Supreme Court of the United States.

During the confirmation hearings, I used that opportunity to explain to my constituents, indeed, to the people of this Nation, that Supreme Court decisions have real consequences on the lives of our constituents. If you are a woman, if you are a consumer, if you are a worker, if you are a voter, if you care about the air you breathe or the water you drink, you should be very concerned about Supreme Court decisions. It affects your life.

I am very concerned, and I think my constituents are concerned, about recent 5-to-4 decisions where the majority, the so-called conservative Justices, legislated from the bench on the side of powerful corporate interests over protecting ordinary citizens.

During the confirmation process, I raised these issues and questioned Solicitor General Kagan on these cases in which there were 5-to-4 decisions, which reversed precedents. In my view, they were cases where they were legislating from the bench and they were restricting the rights of ordinary Americans.

I mentioned the Ledbetter case. I know the Presiding Officer is very familiar with the Ledbetter case, in which a 5-to-4 decision from the Supreme Court effectively told the women of our Nation they would have no effective rights to bring wage discrimination cases based upon gender. The Supreme Court basically said the statute of limitations would run even if you did not have knowledge of the discriminatory act. Lilly Ledbetter was denied her claim as a result of that decision.

I think it is going to be healthy for America to have more women on the Supreme Court of the United States. When Elena Kagan is confirmed, she will, for the first time in America's history, be the third woman out of nine on the Supreme Court of the United States. I think that is going to give us more commonsense justice in this Nation and certainly one that reflects the diversity of our country.

It was not just the Ledbetter case. There have been other cases in which workers have found the Supreme Court has ruled on the side of special interest corporate America over the rights of

ordinary workers. In the Gross case, the Supreme Court reversed precedent, here again by a 5-to-4 decision, and ruled that we would use a different test for age discrimination, effectively denying claims by those who were discriminated against because of their age. This is another example where the so-called conservative Justices on the Supreme Court reversed precedent, reversed the clear intent of Congress, and ruled against workers in favor of corporate America.

It is not just limited to worker cases or wage cases. In the Citizens United case—this is a case we have talked about a great deal on the floor—the Supreme Court not only ruled against Congress, because we had legislated the McCain-Feingold bill, but ruled against prior Supreme Court decisions to reverse the rights of ordinary Americans in their election process. What the Citizens United case said is corporate America could spend more on elections—not already spending enough, but they could spend more. Even though Congress had passed bipartisan laws to rein in the amount of special interest corporate money and even though other cases were upheld by the Supreme Court, the Supreme Court went out of its way, by a 5-to-4 decision, to rule on the side of corporate America against ordinary Americans.

Here, if I might, let me quote from Justice Stevens in his dissent. Justice Stevens said:

> Essentially, five Justices were unhappy with the limited nature of case before us, so they changed the case to give themselves an opportunity to change the law . . . there were principled, narrower paths that a Court that was serious about judicial restraint could have taken.

I agree with Justice Stevens. We all talk about wanting to see judicial restraint. We all talk about wanting to see a Supreme Court that will give due respect to the actions of Congress. We talk about following judicial precedent. We talk about following the tradition to protect your constitutional rights. Well, this Supreme Court, too many times, by 5-to-4 decisions by the so-called conservative Justices, has been the most activist Court on ruling on the side of corporate America over ordinary Americans.

It is also true in environmental cases—the Rapanos case. I have the honor of chairing the Water Subcommittee on the Environment and Public Works Committee. We work very hard, Congress has worked very hard, to protect our environment. It is not easy to get legislation passed in the Congress. I know all of us are frustrated that we cannot get more legislation passed. But we have gotten some very important bills passed to protect our environment, such as the Clean Water Act, and we have protected our waterways. The courts have upheld our power to do that.

But in the Rapanos case, the Court ruled, again, by the narrowest of margins, on the side of corporate America against protecting our environment, against congressional intent, against prior decisions of the Supreme Court, ruling on the side of corporate America over protecting our environment for future generations.

That was also true very recently in the Exxon v. Baker case. This was particularly important because it took over a decade for those who were damaged by the Exxon Valdez oilspill, by the episode in Alaska, to be able to get their claims brought through the courts. The Supreme Court, again, by the narrowest margin, reduced the claims of those who were damaged as a result of the Exxon Valdez spill.

I know all of us are very concerned about what is happening in the Gulf of Mexico. We want to make sure BP is held fully accountable for all the damage it has caused. We in Congress need to do our work to make sure that is done. I expect we will get it done. But we also need the Supreme Court of the United States to uphold the power of Congress to pass laws. We are the legislative branch of government, and too often this so-called conservative majority of the Supreme Court has ruled the other way.

I believe Solicitor General Elena Kagan will follow in the best traditions of the Supreme Court. She will follow legal precedent, allowing Congress to legislate. I say that, in part, because of her testimony before our committee. I questioned Solicitor General Kagan as to our environmental statutes and the role Congress plays.

She replied:

> Congress certainly has broad authority under the Constitution to enact legislation involving the protection of our environment. When Congress enacts such legislation, the job of the Court is to construe it consistent with Congressional intent.

That is the type of Justice I want on the Supreme Court in order to protect our air and protect our water, while yielding to Congress to pass the statutes rather than legislating from the bench. Basically, I want to make sure the next Associate Justice of the Supreme Court is on the side of ordinary Americans.

Once again, let me quote from Solicitor General Kagan from her opening statement to the Judiciary Committee. When she was talking about equal justice under the law she said:

> It means that everyone who comes before the Court—regardless of wealth or power or station—receives the same process and protections . . . What it promises is nothing less than a fair shake for every American.

That, again, is what I would like to see from the Supreme Court. I want them to be on the side of ordinary Americans, giving them a fair shake, protecting them from the abuses of power, whether those abuses come from the halls of government or from corporate America. In too many cases, this Supreme Court, by narrow margins through the more conservative Justices, has not been on the side of ordinary Americans. I believe Solicitor General Kagan, as Associate Justice Kagan, will give Americans a fair shake and will continue in the best traditions of the Supreme Court in advancing Americans' rights against the abuses of power. For that reason, I intend to vote for the confirmation of Elena Kagan to be the next Associate Justice of the Supreme Court of the United States.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. 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. CARDIN. Mr. President, while speaking in support of Solicitor General Elena Kagan, I quoted from a letter received from former Solicitors General in support of Solicitor General Kagan for the position of Associate Justice of the Supreme Court. It is dated June 22, 2010, signed by former Solicitors General in support of the confirmation of Elena Kagan.

I also spoke about the endorsement received from Miguel Estrada. He wrote an extraordinary letter that speaks to the qualifications of Solicitor General Elena Kagan for Associate Justice of the Supreme Court. It is addressed to the chairman of the committee, PATRICK LEAHY, and the ranking member, JEFF SESSIONS, dated May 14, 2010.

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

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

JUNE 22, 2010.

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 SENATOR SESSIONS: We write to support the nomination of Elena Kagan to be the next Associate Justice of the Supreme Court of the United States. We have served as Solicitors General in the administrations of Presidents Ronald Reagan, George H. W. Bush, William Clinton, and George W. Bush. We support the Kagan nomination in the same spirit of fairness and bipartisanship, and deference to presidential appointments of well-qualified individuals to serve on the Supreme Court, that was also due the nominations of then-Judges John G. Roberts, Jr. and Samuel A. Alito, Jr. to serve on the Supreme Court.

Elena Kagan would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law. In addition to her most recent service as Solicitor General, at various points of her career she has served as a law clerk to Supreme Court Justice Thurgood Marshall, she has been in private practice at one of America's leading law firms, she has served in the office of the Counsel to the President, she has been a policy advisor to the President, she has served

as a law professor at two of the nation's leading law schools, Harvard and Chicago, and she has served as Dean of the Harvard Law School.

During the past year, Kagan has honored the finest traditions of the Office of the Solicitor General and has served the government well before the Supreme Court. The job of Solicitor General provides an opportunity to grapple with almost the full gamut of issues that come before the Supreme Court and requires an understanding of the Court's approach to numerous issues from the criteria for certiorari review to the Justices' approach to oral argument. The constant interaction with the Supreme Court that comes with being the most-frequent litigator before the Court also ensures an appreciation for the rhythms and traditions of the Court and its workload. Moreover, as Solicitor General, Kagan had the opportunity to work with the immensely talented career lawyers in the Office of the Solicitor General, who have a deep understanding of and appreciation for the Court. Kagan's most recent experience as Solicitor General will serve her well as she wrestles with the difficult questions that come before the Court.

The Constitution gives the President broad leeway in fulfilling the enormously important responsibility of determining who to nominate for seat on the Supreme Court of the United States. In that spirit, we support the nomination of Elena Kagan to be Associate Justice and believe that, if confirmed, she will serve on the Court with distinction, as have prior Solicitor Generals who have had that great honor.

Respectfully,

WALTER DELLINGER;
THEODORE B. OLSEN

On behalf of:

CHARLES FRIED, *Solicitor General, 1985–1989;*
KENNETH W. STARR, *Solicitor General, 1989–1993;*
DREW S. DAYS III, *Solicitor General, 1993–1996;*
WALTER DELLINGER, *Acting Solicitor General, 1996–1997;*
SETH P. WAXMAN, *Solicitor General, 1997–2001;*
THEODORE B. OLSON, *Solicitor General, 2001–2004;*
PAUL CLEMENT, *Solicitor General, 2004–2008;*
GREGORY G. GARRE, *Solicitor General, 2008–2009.*

GIBSON, DUNN & CRUTCHER LLP,
Washington, DC, May 14, 2010.

Hon. PATRICK LEAHY,
Chairman, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Senate Committee on the Judiciary, U.S. Senate, Washington, DC.
Re: Nomination of Elena Kagan.

DEAR CHAIRMAN LEAHY AND SENATOR SESSIONS: I write in support of Elena Kagan's confirmation as an Associate Justice of the Supreme Court of the United States. I have known Elena for 27 years. We met as first-year law students at Harvard, where we were assigned seats next to each other for our classes. We were later colleagues as editors of the Law Review and as law clerks to different Supreme Court Justices; and we have been friends since.

Elena possesses a formidable intellect, an exemplary temperament and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments. Elena would also bring to the Court a wealth of experience at the highest levels of our government and of academia, including teaching at the University of Chicago, serving as the Dean of the Harvard Law School and experience at the White House and as the current Solicitor General of the United States. If such a person, who has demonstrated great intellect, high accomplishments and an upright life, is not easily confirmable, I fear we will have reached a point where no capable person will readily accept a nomination for judicial service.

I appreciate that considerations of this type are frequently extolled but rarely honored by one side or the other when the opposing party holds the White House. I was dismayed to watch the confirmation hearings for then-Judge Alito, at the time one of our most distinguished appellate judges, and find that they ranged from the anodyne and uninformative to the utterly disgraceful. And one could readily identify members of the current Senate majority, including several who serve on the Judiciary Committee, who, when they previously assessed the judicial nominees of the other party, earnestly articulated many of the same objections that doubtless will be raised against Elena (such as a lack of judicial experience, a perceived absence of a ''paper trail,'' or whether the nominee's views truly are in the legal mainstream). I respectfully submit that it brings no credit to our government, and risks affirmative harm to our courts, when our elected representatives simply swap talking points—emphasizing the same considerations they previously minimized or derided—only to revert to their former arguments as soon as electoral fortunes turn.

Lest my endorsement of Elena's nomination erode the support she should receive from her own party, I should make clear that I believe her views on the subjects that are relevant to her pending nomination—including the scope of the judicial role, interpretive approaches to the procedural and substantive law, and the balance of powers among the various institutions of government—are as firmly center-left as my own are center-right. If Elena is confirmed, I would expect her rulings to fall well within the mainstream of current legal thought, although on the side of what is popularly conceived of as ''progressive.'' This should come as a surprise to exactly no one: One of the prerogatives of the President under our Constitution is to nominate high federal officers, including judges, who share his (or her) governing philosophies. As has often been said, though rarely by senators whose party did not control the White House at the time, elections have consequences.

Elena Kagan is an impeccably qualified nominee. Like Louis Brandeis, Felix Frankfurter, Robert Jackson, Byron White, Lewis Powell and William Rehnquist—none of whom arrived at the Court with prior judicial service—she could become one of our great Justices. I strongly urge you to confirm her nomination without delay.

Very truly yours,

MIGUEL A. ESTRADA.

Mr. CARDIN. Mr. President, 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.

The PRESIDING OFFICER. The Senator from California.

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

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

Mrs. FEINSTEIN. Mr. President, I rise to speak in support of the nomination of Elena Kagan to be an Associate Justice on the Supreme Court.

Having served on the Senate Judiciary Committee now for 17 years, I have seen the impact that new Justices have on the Court, and I strongly believe these votes are among the most important we cast in this Chamber.

There is no question that the confirmation process has become heated in recent years. Outside interest groups and the 24-hour news cycle have placed far too much emphasis on sound bites, half truths, and hyperbole. But none of this should obscure the fact that these are, in fact, important votes because the stakes are high.

A Supreme Court Justice, once confirmed, will serve a life appointment on a Court that is truly foundational to our democratic system.

For over 200 years, our independent judiciary has served as a model to the world. We have watched as other countries have struggled with courts that have become beholden to political pressures or fallen subject to corruption.

I think of Pakistan, where in 2007 President Musharraf proclaimed a state of emergency and used it to suspend the country's constitution and remove justices from the supreme court; or Mexico, where corruption is so bad that in 2008 President Calderon called for a fundamental redesign of the entire judicial system.

In the United States we have guarded our judiciary, and it has served us well. Our Supreme Court has acted as a true check on government abuses, as a reliable and impartial tribunal for the resolution of private disputes, and as a final arbiter where the American people can come to seek protection of their fundamental constitutional rights.

As Justice Breyer said in a recent public address, the virtue is that ''a country of 300 million very diverse people will resolve their differences under law and not with guns on the street or through riots.''

In the context of world history, this is most impressive.

When it comes to the Supreme Court, nominations merit careful attention as well because any one Justice can have a substantial effect on the Court's rulings.

The cases that reach the Supreme Court are not easy ones. When the law is clear, a case is settled by the parties or resolved by the district courts or the courts of appeal. It is when the law is open to multiple interpretations or when constitutional values must be weighed against each other that a case is likely to reach the Supreme Court.

In these cases, decisions are not automatic. Instead, each of the nine Justices must examine the facts, study

the law, and reach his or her best conclusion about what the law requires. The Court's rulings stand not just as abstract statements for the law books but binding decisions with lasting impact on the lives of the American people.

There are examples in the newspaper every day. In 2005, the Justices held that a school district in Seattle had violated the equal protection clause by using race as one of a series of factors in assigning students to schools within that district. The real impact of this will be to make it far more difficult for school administrators to maintain racial diversity in our public schools.

Another example: In a recent antitrust case—Leegin Creative Leather Products v. PSKS—the Justices put forth a new interpretation of the law that will allow manufacturers to set minimum prices for certain products. What this means for Americans is, when they go to the store, they may find that a particular electronic device or even a shampoo has the same price at every store and can never be put on sale. Legislation to overturn this decision is still pending before the Senate.

In each of these cases, Justices were divided on the law. Five Justices agreed on the Court's ruling, but the remaining four Justices dissented and explained in vehement terms why they disagreed with their colleagues' reasoning and result. The decisions, in other words, were not formulaic.

So when I undertake my constitutional role of providing advice and consent, I do so with the understanding that every nominee to the Court is not the same, and each and every one could have a lasting impact on the future of our country.

With this in mind, I am very pleased to support the nomination of Elena Kagan to be the next Associate Justice of the United States Supreme Court.

Look at her professional record. Summa cum laude and Phi Beta Kappa from Princeton; a master's degree in philosophy from Oxford University; magna cum laude from Harvard Law School; a supervising editor of the Harvard Law Review; legal clerkships with U.S. Circuit Court Judge Abner Mikva and Supreme Court Justice Thurgood Marshall; two years at the law firm of Williams and Connolly; a professor of constitutional and administrative law at the University of Chicago; a special counsel to the Senate Judiciary Committee for the nomination of Justice Ruth Bader Ginsburg; an associate White House counsel to President Clinton; the deputy director of President Clinton's Domestic Policy Council; a professor at Harvard Law School; the first woman dean of Harvard Law School; the first woman to ever serve as the Solicitor General of the United States.

That is an amazing background. You would think she is 106 instead of a very young woman.

It is easy to see why her name has so often appeared on short lists for the Supreme Court. She is a woman of repeated firsts. If confirmed, she will be the fourth—not the first—woman to sit on the Supreme Court.

Frankly, I have been surprised to hear some of my colleagues question Elena Kagan's credentials for the Court.

Let me start with the argument made by some that her record is somehow inadequate because she lacks prior judicial experience.

It is true that all nine Justices on the current Supreme Court come directly from the U.S. Court of Appeals. But that is a historic anomaly. It has never happened before. In fact, in the history of the Court, approximately one-third of our Justices have come to the bench with no prior experience as a judge.

When the President announced this nominee, Justice Scalia, for one, said he was happy to see that she is not a Federal judge and not a judge at all. Justice Felix Frankfurter went much further, stating in a speech in 1957:

> One is entitled to say, without qualification, that the correlation between prior judicial experience and fitness for the functions of a Supreme Court is zero. The significance of the greatest among the justices who have had such experience, Holmes and Cardozo, derived not from that judicial experience, but from the fact they were Holmes and Cardozo.

In my own view, judicial experience is a useful background, but it is only one of many, and it is a background that is well represented on the Court today. As a matter of fact, it is entirely represented on the Court today.

The point is this: When we examine Elena Kagan's records, we should not allow the characteristics of the current Court to make us shortsighted. In the course of American history, the Senate has confirmed Justices with a broad variety of backgrounds—Justices who were law professors, such as Felix Frankfurter; attorneys in private practice, such as Warren Burger; elected officials, such as John McKinley, Earl Warren, and James Byrnes; and over 10 percent of our Justices have—like Elena Kagan—come directly from the executive branch, with no judicial experience in between. These include Chief Justice William Rehnquist, who was Assistant Attorney General; Justice Byron White, who was Deputy Attorney General; Justice Robert Jackson and Chief Justice Harlan Fiske Stone, who were both the Attorney General of the United States; and Chief Justice John Marshall, who was the Secretary of State.

Again, these are Justices who distinguished themselves on the Court, who came directly from the political experience. In my mind, the President has made a wise choice with this nomination because, in addition to this woman's impressive brain power—and I sat there and listened to her hour after hour keep her calm, show humor, and display an impressive ability to cite cases, and even footnotes of those cases—she brings the valuable attribute of having first-hand working knowledge of all three branches of government. If confirmed, she, Justice Breyer, and Justice Thomas, will be the only Justices to share that distinction.

Take her experience with the Supreme Court itself. As a ''27-year-old pipsqueak,'' as she said before the committee, Elena Kagan had the privilege of working as a law clerk on the Supreme Court to Justice Thurgood Marshall. The job itself is prestigious, and it is impressive that Kagan was selected. The real value, however, was in giving Kagan an inside view of the Court through the eyes of one of our great Justices, the lawyer who argued Brown v. Board of Education, the first African-American Justice on the Supreme Court, and a man who brought to life the Court's most basic promise of ''equal justice under law.'' She had that experience.

As Elena Kagan said at her confirmation hearing, through Justice Marshall, she learned that our courts are ''special as compared with other branches of government. In other words, that it is the courts' role to make sure that even when people have no place else to go, they can come to the courts and the courts will hear their claim fairly. That is a valuable lesson indeed for both a young lawyer and a new Supreme Court Associate Justice.''

Today, Kagan has an equally unique perspective on the Court. As the Solicitor General, she sometimes is referred to as the ''tenth justice,'' because there is no other lawyer who interacts as frequently with the Justices. In her time as Solicitor General, she has filed hundreds of briefs and argued six cases before the Supreme Court itself. If confirmed, she will be one of only five sitting Justices who have appeared on the advocate's side of the Supreme Court bench.

Solicitor General Kagan also brings practical experience with the legislative branch. She worked in the halls of the Senate as a special counsel to the Senate Judiciary Committee for the Ginsburg nomination, and during the Clinton administration, she bore responsibility for advancing President Clinton's domestic policy agenda as the Deputy Director of the Domestic Policy Council. She served, for example, as the administration's chief negotiator for tobacco reform legislation. So she knows the ins and outs of the legislative process.

This position enabled her to experience firsthand the hard work, negotiation, collaboration, and navigation of procedural obstacles that are required to move a difficult bill through Congress.

When the Justices are called upon to interpret a statute, or determine its constitutionality, it is essential that they have some appreciation for the process by which that law came to be and the intent of Congress in writing and shaping that law. Elena Kagan knows the legislative process, and I believe that will serve our Nation well.

Finally, Elena Kagan also brings experience as a participant in the executive branch. As the Solicitor General, she has represented the U.S. Government before the Supreme Court; as an associate White House counsel, she had to advise President Clinton on the scope of Presidential powers and privileges; and as a Deputy Director of the Domestic Policy Council, she supervised the President's policy initiatives not only by advancing legislation in Congress but also in cooperation with Federal agencies.

Already, the debate has begun among legal commentators about whether Kagan's work on the executive branch will skew her rulings in key cases—we heard this earlier this morning—dealing with the scope of the President's powers with respect to indefinite detention, warrantless surveillance, or the use of force outside of a declaration of war.

The lessons of history again provide perspective here. I think of Justice Robert Jackson, a former Attorney General of the United States, who wrote an opinion that now stands as the cornerstone for all analysis—and I mean that—of limits on executive power. We have heard this quoted by virtually every nominee before the Judiciary Committee when a question of executive power is levied.

In the famous Youngstown case, in 1952, the Court was called upon to decide whether the President's authority as Commander in Chief allowed him to seize the Nation's steel mills in order to ensure sufficient wartime production to meet the Defense Department's needs for the Korean war.

In his prior role as the Attorney General of the United States, Robert Jackson had vigorously defended the President's prerogative to take steps necessary to advance the Nation's war effort. But as Justice Jackson, he took a different tack. He agreed with the majority that the President did not have the authority to seize the private steel mills, but in doing so, he set forth a compromise framework, stating that the President's power was greatest when he acted pursuant to an act of Congress, in a zone of ''twilight'' when the Congress has not spoken, and at its lowest ebb, when he acted contrary to the stated will of the Congress.

When a colleague pointed out that Justice Jackson's compromise framework differed from the position he had taken as Attorney General, he replied that a Justice does not ''bind present judicial judgment by earlier partisan advocacy.'' That is a very profound statement from a great Justice, who wrote an opinion that has stood the test of time.

I tell this story to make this point: Elena Kagan's clerkship for Justice Marshall, her work with the Congress in the 1990s, and the positions she takes now as Solicitor General cannot forecast, with any certainty, what results she will reach in cases before the Court. I think Justice Jackson is living proof of that. However, they do provide important assurance that she will appreciate the core principles and perspectives that undergird the work of each and every branch of this government. Like Justice Jackson, this has the potential to make her a very persuasive and impressive Justice.

In sum, I believe Elena Kagan's professional background makes her superbly qualified to sit on the Supreme Court.

An excellent professional background is, of course, a necessary qualification, but a nominee must also show that he or she has the appropriate judicial temperament, has a commitment to follow the law, and brings a judicial philosophy that will not pull the Court outside of the mainstream. And I have confidence in her in each of these areas.

The Senate Judiciary Committee has received over 170,000 pages of documents spanning Kagan's entire career. She testified before us for 18 hours over a space of 3 days. She has answered over 200 additional questions for the record, and scores of letters have been sent to us regarding her qualifications. What repeatedly emerges from all of this is that Elena Kagan is a pragmatist, a problem-solver, and a conciliator.

Her time as dean of Harvard Law School—misinterpreted often—paints a vivid picture. Elena Kagan arrived at Harvard in 1999. She was selected to be dean only 4 years later. She was the first woman ever named so—a significant accomplishment in itself.

What is most important, however, is that during her time at Harvard, she developed a reputation as a steady leader who would bring all sides to the table and work to solve a problem. As described in a letter from 69 former deans supporting her nomination, she had a unique ''willingness to listen to diverse viewpoints and give them all serious consideration. She revealed a strong and consistent aptitude for forging coalitions that achieved smart and sensible solutions, often in the face of seemingly insoluble conflict.'' Quite a statement from 69 deans of law schools.

She brought conservative faculty, such as Bush administration lawyer Jack Goldsmith, to the school and rallied the faculty to come together to support them. Former Solicitor General Charles Fried described her effect this way: ''The place is like it's never been before.'' She ''managed to calm the factionalism, so it's completely disappeared.'' That is according to former Solicitor General Charles Fried. The Boston Globe stated it more simply, saying that she ''thawed Harvard law.''

This same knack for the pragmatic and drive toward consensus echoes throughout her career.

A liberal scholar from the University of Chicago has characterized her academic work this way:

She is much more of a lawyer than a partisan. She is more interested as a scholar in thinking through hard issues than advocating particular ideological or political perspectives.

Former Clinton Chief of Staff John Podesta has written that during the Clinton administration, Kagan ''distinguished herself as deeply loyal to the Constitution and the law'' and said that ''on issues ranging from adoption to religious freedom to tobacco regulation, [she] eschewed ideology in favor of practical solutions.''

Her friends, her admirers, her colleagues repeatedly describe her in those terms: a problem-solver, a conciliator, someone who brings people together even when they have very different views.

What really impresses me, though, is what we have heard from conservatives. Let me note that the very fact we have heard from these conservatives is impressive. In today's political atmosphere, lawyers take a risk when they cross party lines to support Supreme Court nominees. Key people have done so for Kagan.

Former Bush appointee to the Tenth Circuit and current Stanford law professor Michael McConnell sent us an 8-page letter outlining the reasons for his strong support for Kagan's nomination. Elena Kagan, he said, shows ''respect for opposing argument, fairmindedness, and willingness to reach across ideologic divides, independence, and courage to buck the norm.'' ''No one,'' he said, ''can foresee the future, but I would not be surprised to find that Elena Kagan, as a Justice, serves more as a bridge between the factions of the Court than as a reliably progressive vote.''

Senator GRAHAM, my colleague on the committee, has pointed to the words of Miguel Estrada, a deeply conservative lawyer who has known Kagan for 27 years. He describes her as having ''a formidable intellect, an exemplary temperament, and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments.''

Today, we have a divided Court—a Court in which the Justices are repeatedly split five to four on major rulings of the day. These rulings determine what kinds of gun laws legislatures can pass to protect the public safety in our cities, how much money will be spent in Federal elections, what school districts can and cannot do to maintain racial diversity in our schools, what remedy our older and women workers have when their employers discriminate against them, what the appropriate role for religion is in our public life, or how much a company can be required to pay for causing significant harm to our environment. And these Justices are split down the middle on these major questions. They cannot find compromise or agreement. Major questions of the day are adjudicated on a bare majority.

We badly need a Justice who can drive this Court toward consensus, and

I have high hopes Elena Kagan will be just such a Justice.

Her record also gives me confidence that she will follow the law and put aside any personal policy preference when deciding cases on the Court. In the course of her career, whether working on policy or on law, law has always come first. And as Solicitor General, she has proven quite clearly that she can put her personal views aside, filing, for example, a brief that defended the constitutionality of don't ask, don't tell. Although she is known to strongly disagree with that policy, she defended it and stated that the Court should let stand a First Circuit decision that upheld the policy because it properly deferred to the reasoned military judgment of the executive and legislative branches.

Finally, I believe she has set forth an appropriate judicial philosophy. In 3 days of hearings before our committee, she has revealed herself as a person who believes that judges should follow precedent, stare decisis, and exercise restraint in their rulings. She said:

> [N]o judge should look at a case and say, ''Oh, I would have decided it differently; I'm going to decide it differently.'' [A] judge should view prior decisions with a great deal of humility and deference.

She told us:

> The time I spent in the other branches of government remind me that [the role of the Court] must also be a modest one—properly deferential to the decisions of the American people and their elected representatives.

Hers will be a welcome voice on the Court.

I wish to take one last moment, if I may, to address questions about her actions related to military recruiting at Harvard Law School because I believe, to some extent, they have been inaccurately depicted. While each Member will have to draw his or her own conclusions about whether Dean Kagan took the wisest course, I believe it is essential that we get the facts straight.

As dean, Elena Kagan never barred military recruiters from the Harvard Law School campus. For one semester, after the U.S. Court of Appeals for the Third Circuit held that the Solomon amendment was unconstitutional, Kagan reverted to an earlier school policy that had been used for many years before she became dean. That is fact. Under that policy, the military recruited through the Harvard Law School Veterans Association but was excluded from the Office of Career Services. At all times, the military had access to students. In fact, military recruitment levels at Harvard remained steady and even increased at times during Kagan's tenure as dean.

But what is most striking to me in reviewing all of this is that although the judiciary has heard from servicemembers on both sides of this issue, every report we have received from a veteran or servicemember who actually attended Harvard at the time has been in strong support of Kagan's nomination to the Court.

Marine Corps CPT Bob Merrill graduated from Harvard Law School in 2008. He is currently serving in Afghanistan. He writes:

> Kagan's positions never affected the services' ability to recruit at Harvard. Behind the scenes the dean assured that our tiny Harvard Law School Veterans Association never lacked for funds or access to facilities.
>
> She treated the veterans at Harvard like VIPs, and she was a fervent advocate of our veterans association.

First Lieutenant David Tressler graduated from Harvard Law School in 2007 and is currently serving in Afghanistan with the U.S. Army Reserves. He wrote that ''while Dean of Harvard Law School, [Kagan] adequately proved her support for those who had served, were currently serving, and all those who felt called to serve.''

Navy Judge Advocate General Corps LT Zachary Prager graduated in 2006 and wrote that ''Dean Kagan set a standard at Harvard of respect for military servicemembers'' and that without Kagan's ''leadership and evenhandedness as Dean,'' he would not have joined the military.

Like Admiral Mike Mullen, Secretary of Defense Robert Gates, Secretary of the Navy Ray Maybus, retired General Colin Powell, myself, and many others in this Chamber, Kagan has said she personally disagrees with the don't ask, don't tell policy. And she is not alone.

At certain dark moments in our history, institutions of higher education have shown a hostility in this sense, but those contexts should not be confused.

To oppose the exclusionary policy of don't ask, don't tell is not to oppose or show hostility toward the military; it is instead to say that the time has come for all willing and able Americans to be able to serve. Like Elena Kagan, I strongly believe the criteria for military service in our country should be competence, courage, and a willingness to serve, not race, gender, or sexual orientation.

Members should draw their own conclusions about whether Kagan made the right choice as dean in returning to Harvard's old recruiting policy in 2005, but I want to be clear that nothing in her record shows any hostility toward the military or the men and women who serve our country. In fact, servicemen and women who were there at the time have come forward, and the evidence is to the contrary.

In sum, and in conclusion, I believe Elena Kagan will be a fine Justice on the U.S. Supreme Court, and I look forward to the day soon when she takes her seat as the fourth woman in history to serve on that Court. I am very proud to support her nomination.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, Elena Kagan is intelligent, well spoken, personable, and schooled in the law. She is skilled in the art of argument, perhaps to a fault. Ignoring her own advice in the now famous University of Chicago Law Review article, she did not testify meaningfully before the Judiciary Committee, concealing and disguising her views and playing the same game of ''hide the ball'' as some who went before her, albeit with more skill. Probably because she criticized the practice so directly, many expected her to set a different standard.

Others have asked whether Judiciary Committee hearings have been rendered largely free of substance and what, if anything, can be done about it. The former Judiciary Committee chairman, ARLEN SPECTER, who lamented that Ms. Kagan, during her testimony, had not ''answered much of anything,'' went on to say this:

> It would be my hope that we could find some place between voting no and having some sort of substantive answers. But I think we are searching for a way how Senators can succeed in getting substantive answers, as you advocated in the Chicago Law Review, short of voting no.

I confess that, similar to Senator SPECTER, I don't know how we can force nominees to be forthcoming except through our votes.

To be clear, my threshold for supporting a nominee does not require answering how one would vote on issues sure to come before the Court, nor necessarily expressing agreement or disagreement with decisions or Court opinions. It is possible to learn much about a nominee's approach to judging without committing one to a specific position in future cases. What we should expect, however, is candor and a willingness to honestly discuss background and general constitutional principles, approaches to judging and writings and matters within the nominee's background that bear on the nominee's suitability for the bench.

In explaining why I could not vote for now-Justice Sotomayor, I said I thought she was disingenuous with the Judiciary Committee. Obviously, reaching such a conclusion precludes support, notwithstanding other qualifications for the position. Reluctantly, after analysis of her testimony, weighed with her past writings, statements, and actions, I have reached the same conclusion regarding Elena Kagan.

Exhibit A is her insistence on redefining her position on military recruiting on Harvard campus. Her ''separate but equal'' defense and attempt to downplay the steps she took to undermine the legal policy of don't ask, don't tell were, ultimately, unbelievable. It is almost unfathomable, for example, that someone with Ms. Kagan's considerable legal acumen could have, as she asserted, always thought we were acting in compliance with the Solomon amendment.

Ms. Kagan tried to convince the Judiciary Committee that her actions against the military were a justifiable response to a policy she viewed as discriminating against homosexuals. But

as Senator SESSIONS noted, her stand against homosexual discrimination was not universal. She did not speak out, for example, when Harvard accepted $20 million from a member of the Saudi royal family to establish a center for the study of Sharia law, even though under Sharia law ''sexual activity between two persons of the same gender is punishable by death or flogging.'' Her decision to punish the military for a policy adopted by Congress is especially perplexing, given her failure to express concern over or take action against the establishment of a center to promote a legal system linked to the abuse of homosexuals, women, and others.

Exhibit B is her astonishing legal definition of what she meant in her effusive praise for Justice Marshall's vision of the role of the Court, presumably to avoid the obvious conclusion that she agreed with his activist approach to judging. Justice Marshall had an enormous influence on our jurisprudence, starting with his advocacy before—and most especially with—Brown v. Board of Education. But no serious student would argue that he didn't try to push the law as far as he could in furtherance of his philosophy.

Indeed, consider the comments of another former Marshall clerk, liberal law professor Cass Sunstein, who now serves in the Obama administration, who has said this:

A serious commitment to Marshall's vision of constitutional liberty would entail an extraordinary judicial role, one for which courts are quite ill suited.

He has also acknowledged:

Even if the best substantive theory calls for something like Marshall's vision, institutional considerations would argue powerfully against it.

Ms. Kagan's attempt to define Justice Marshall's philosophy as meaning only that he wanted everyone to have equal access to the courts is—there is no other word for it—disingenuous.

Because Ms. Kagan apparently embraces his philosophy but feared public acknowledgment of that would confirm the concern that she would be a results-oriented judge, she fudged. In doing so, she confirmed the suspicion and compounded the problem with deceptive testimony.

Exhibit C is the explanation of several of her bench memos to Justice Marshall, insisting they did not contain her views but were merely a channeling of his. Ms. Kagan offered this explanation of her memo categorizing litigants as ''good guys'' and ''bad guys,'' another memo stating that the government was ''for once on the side of the angels,'' and a memo expressing fear that the Court might ''create some very bad law on abortion and/or prisoners' rights.'' Reading these memos, one gets the sense that Ms. Kagan was not simply channeling her boss but was instead expressing her own personal policy views on matters before the Court and that they had as much to do with who the litigants were as what the issues were.

Ms. Kagan also attempted to recast her praise of Israeli Supreme Court Justice Aharon Barak, who, in the words of the Associated Press, is widely acknowledged as someone who took an activist approach to judging. Well, that is exhibit D. Judge Richard Posner described Judge Barak's history on the Israeli Supreme Court as ''creating a degree of judicial power undreamed of even by our most aggressive Supreme Court justices.''

Under his leadership, the Israeli Supreme Court aggrandized its own power far beyond what even many of those on the left would view as acceptable in America. To cite one example of Justice Barak's judicial philosophy, he wrote a judge's role ''is not restricted to adjudicating disputes in which parties claim that their personal rights have been violated'' but rather ''to bridge the gap between law and society.''

Well, bridging gaps, clearly, and using the law to address societal problems is not the job of the courts. That is a political approach.

Ms. Kagan claimed, during her hearing, that her praise for Justice Barak had nothing to do with his leftwing judicial philosophy. But an examination of her statements tells a different story. In 2002, Ms. Kagan praised Aharon Barak for ''presiding over the development of one of the most principled legal systems in the world.''

In 2006, she again heaped professional praise on Justice Barak, calling him her ''judicial hero.'' Ed Whelan, who is a noted legal commentator, summarized this event well:

Kagan begins by referring to the portraits of four ''great justices'' with whom Harvard Law School has been associated—Brandeis, Holmes, Brennan, and Frankfurter. But, she says, ''the Harvard Law School association of which I'm most proud''—more proud, that is, than of the associations with Brandeis, Holmes, Brennan, or Frankfurter—''is the one we have with President Barak of the Israeli Supreme Court.

And then she continued:

I told President Barak, and I want to repeat in public, that he is my judicial hero. He is the judge or justice in my lifetime whom [sic], I think, best represents and has best advanced the values of democracy and human rights, of the rule of law and of justice.

During her confirmation hearing, Ms. Kagan, under oath, testified that she admired Justice Barak for his role in:

. . . creating an independent judiciary for Israel. . . . not for his particular judicial philosophy, not for any of his particular decisions.

That testimony cannot be squared with her public declaration that Justice Barak ''is the judge or justice in my lifetime whom [sic], I think, best represents and has best advanced the values of democracy and human rights, of the rule of law and of justice.''

Exhibit E is Ms. Kagan's answer to whether she is a legal progressive. Her statements, again, were designed to cloud her views. Vice President BIDEN's Chief of Staff, Ron Klain—who served as chief counsel of the Senate Judiciary Committee, Chief of Staff to Attorney General Reno, and Chief of Staff to Vice President Gore—has known Ms. Kagan as far back as 1993, when they worked together on the Ginsburg hearings. At Ms. Kagan's hearing, Senator SESSIONS pointed out that after Ms. Kagan was nominated, Mr. Klain said:

Elena [Kagan] is clearly a legal progressive. I think Elena is someone who comes from the progressive side of the spectrum. She clerked for Judge Mikva, clerked for Justice Marshall, worked in the Clinton administration, worked in the Obama administration. I don't think there's any mystery of the fact that she is, as I said, of more of the progressive role than not.

Senator SESSIONS then asked Ms. Kagan:

Do you agree with the characterization that you're a legal progressive?

She replied:

I honestly don't know what that label means.

So Senator SESSIONS pressed Ms. Kagan:

I'm asking about his firm statement that you are a legal progressive, which means something. I think he knew what he was talking about. He's a skilled lawyer who's been in the midst of the great debates of this country about law and politics, just as you have. And so I ask you again: Do you think that is a fair characterization of your views? Certainly, you don't think he was attempting to embarrass you or hurt you in that process.

She again dodged with an answer that strains credulity.

I love my good friend, Ron Klain, but I guess I think that people should be allowed to label themselves. And that's—you know, I don't know what that label means and so I guess I'm not going to characterize it one way or the other.

So a nominee to the highest Court in the land and a former dean of one of the Nation's most prestigious law schools insists that she doesn't know what the term ''legal progressive'' means.

But later in the hearing, Senator GRAHAM mentioned that Greg Craig, President Obama's first White House Counsel, had praised Ms. Kagan. Mr. Craig said:

[Elena Kagan] is largely a progressive in the mold of Obama himself.

So Senator GRAHAM asked:

Would you consider them, your political views, progressive?

Then Ms. Kagan acknowledged that, yes, her ''political views are generally progressive.''

It is hard to believe Ms. Kagan knows what a political progressive is but not a legal progressive.

Exhibit F: Her attempt to redefine her views in the letter sent to Judiciary Committee on November 14, 2005, in which she objected to the Graham-Kyl-Cornyn amendment dealing with treatment of enemy detainees. Her characterization of our approach as being similar to the ''fundamentally lawless'' actions of ''dictatorships'' was clearly, I believe, injudicious and revealed the fervor of her position, much like her

characterization of the don't ask, don't tell policy as ''a moral injustice of the first order,'' and it could suggest a viewpoint that she would have a hard time laying aside if similar questions ever came before her as a Supreme Court Justice.

Her attempt to distance herself from the obvious application of her views to places other than Gitmo—obvious because her letter bemoaned the ''serious and disturbing reports of the abuse of prisoners in Guantanamo, Iraq and Afghanistan''—and issues other than conviction and sentencing—even though her letter stated that our amendment ''unfortunately'' would ''prohibit challenges to detention practices, treatment of prisoners, adjudications of their guilt and their punishment''—suggests either that she was uncomfortable defending her position or she wanted to preserve her right to sit on such cases in the future or both. The attempt to obscure positions she had previously stated was, I believe, an attempt to run away from those positions and mislead the committee.

Exhibit G: Ms. Kagan's doublespeak on the question of same-sex marriage. Prior to her confirmation as Solicitor General, when she was not restricted, as judicial nominees are, in her ability to comment on issues that may come before the courts, Senator CORNYN asked Ms. Kagan a direct question about her personal views:

Do you believe that there is a fundamental constitutional right to same-sex marriage?

Her answer then seemed clear. She wrote:

There is no Federal constitutional right to same-sex marriage.

But at the hearing, when I asked Ms. Kagan to confirm her views on this subject, she distorted both Senator CORNYN's question and her answer. She told me Senator CORNYN had asked whether she could ''perform the role of the Solicitor General'' and vigorously defend DOMA, given her opposition to don't ask, don't tell. When I pointed out that Senator CORNYN's question was about a constitutional right to same-sex marriage, not DOMA, Ms. Kagan then asserted that her answer to Senator CORNYN—that ''there is no Federal constitutional right to same-sex marriage''—intended to convey that she ''understood the state of the law and accepted the state of the law.'' Having reinterpreted her previous answer, she then told me that, as a Supreme Court nominee, it would not be ''appropriate'' for her to share her personal views on the subject, since such a case may come before the Court.

It strikes me that Ms. Kagan was, at the time of her nomination to be Solicitor General, trying to create an impression—apparently a false one—that she did not personally believe the Constitution could be read to include a right to same-sex marriage.

That leads to Exhibit H: her involvement, while serving as Solicitor General, in a case concerning the constitutionality of the Defense of Marriage Act, DOMA.

When nominated for the job of Solicitor General, Ms. Kagan emphasized in her opening statement the ''critical responsibilities'' that the Solicitor General owes to Congress, ''most notably the vigorous defense of the statutes of this country against constitutional attack.'' Later, Ms. Kagan reiterated that she could represent the interests of the United States ''with vigor, even when they conflict with my own opinions. I believe deeply that specific roles carry with them specific responsibilities and that the ethical performance of a role demands carrying out these responsibilities as well and completely as possible.''

Ms. Kagan even cited former Solicitor General Ted Olson's defense of the campaign finance laws as an example of the way a Solicitor General should approach the job. She said, ''I know that Ted Olson would not have voted for the McCain-Feingold bill, but he . . . did an extraordinary job of defending that piece of legislation. . . . And that's what a solicitor general does.''

Yet, there is substantial reason to doubt that Ms. Kagan genuinely carried out her obligation to ''vigorously defend'' a Federal statute in district court, the Defense of Marriage Act. In response to questions at her Supreme Court hearing, Ms. Kagan acknowledged that she was involved in two district court cases involving DOMA. Her personal involvement in these cases was itself unusual as she admitted in response to written questions: ''In the normal course, the [Solicitor General's] Office does not participate in district court litigation.''

Her involvement would not have necessarily raised concerns were it not for the position that the government advocated in the cases. In the first case, Smelt v. United States, the Department of Justice filed a brief that, as part of its so-called ''defense'' of the DOMA statute, admitted to the court that ''this Administration does not support DOMA as/matter of policy, believes that it is discriminatory, and supports its repeal.'' How can a lawyer mount a ''vigorous'' defense of a statute while declaring the statute to be discriminatory? But it gets worse. The Justice Department's brief also asked the court to ignore one of the strongest arguments in support of DOMA—namely that traditional marriage serves as a valuable vehicle for encouraging responsible procreation and childbearing. The brief asserted that the government ''does not believe that DOMA is rationally related to any legitimate government interests in procreation and child-rearing.''

It is clear that the Justice Department's brief, which was supposed to be filed in support of the DOMA statute, in fact undercut the law's constitutionality. As one legal scholar and proponent of same-sex marriage said about the Justice Department's argument:

This new position is a gift to the gay-marriage movement, since it was not necessary to support the government's position. It will be cited by litigants in state and federal litigation, and will no doubt make its way into judicial opinions. Indeed, some state court decisions have relied very heavily on procreation and child-rearing rationales to reject SSM [same-sex marriage] claims. The DOJ is helping knock out a leg from under the opposition to gay marriage.

The Smelt case was later dismissed by the district court for other reasons. And that brings us to the second DOMA case in which Ms. Kagan was involved—Gill v. Office of Personnel Management. In Gill, the Justice Department again offered the same half-hearted defense of DOMA and repudiated its strongest legal arguments. This time, however, the district court seized on the Justice Department's rejection of the procreation and childbearing rationales and found that DOMA was unconstitutional. Ed Whelan, the noted legal commentator and a former principal deputy of the Office of Legal Counsel, has explained that the decision in Gill ''would be ridiculous but for DOJ's abandonment of Congress's stated justifications for DOMA. Under proper application of the very deferential 'rational basis' review, for example, it would be enough to recognize that it would have been reasonable for Congress in 1996 to regard traditional marriage as a valuable vehicle for encouraging responsible procreation and childbearing.''

Although Ms. Kagan admitted being involved in both Smelt and Gill, she refused to tell us her role in the deliberations. In response to written questions, Ms. Kagan did admit that her participation in Smelt was ''sufficiently substantial'' that she would recuse herself should the case come before the Supreme Court. But this promise itself was disingenuous because the Smelt case had already been dismissed, so there was no chance that it would come before the Supreme Court. On the other hand, the Gill case may very well make its way to the Supreme Court, but Ms. Kagan did not promise to recuse herself from participating in it, despite her involvement in formulating the Justice Department's flawed defense of DOMA in the case.

We will likely never know what Ms. Kagan's advice was in these cases. What we do know is that Ms. Kagan has a history of ignoring the law when it conflicts with the gay rights agenda. We also know that she took the unusual step of getting involved in these district court cases challenging DOMA. And we know that the Justice Department went out of its way to abandon one of the fundamental rationales for the DOMA statute, which resulted in a court, for the first time ever, ruling that DOMA was unconstitutional. On the basis of these facts, I believe that any reasonable observer would question whether Ms. Kagan kept her promise to us that she would ''vigorously defend'' Federal statute as Solicitor General.

Exhibit I is her dubious explanation of why, in another case that she handled as Solicitor General, she declined

to appeal the Ninth Circuit's adverse ruling in Witt v. Department of the Air Force, a case challenging the constitutionality of the government's don't ask, don't tell statute. At her hearing, Ms. Kagan claimed that allowing the Ninth Circuit decision to stand, and accepting a remand and trial in district court, would provide the Supreme Court with a ''fuller record'' and would help the government ''show what the Ninth Circuit was demanding that the government do'' to defend don't ask, don't tell.

But a review of the Ninth Circuit opinion and the record in the case shows that Ms. Kagan's explanation was disingenuous. The Ninth Circuit itself had already said what the government would need to prove for the Federal law to survive—there was no need to develop a ''fuller record'' or seek further clarification from the courts.

Ms. Kagan's decision to let the case return to the district court ensured that members of the military would be subjected to invasive and humiliating trials in the Witt case and in all other challenges against don't ask, don't tell—trials in which soldiers would be compelled to testify against their comrades, discuss their views of a fellow soldier's sexual practices, and watch as the unit's personnel files become fodder for lawyers trying to condemn what is supposed to be a military-wide policy. The government rightly argued before the trial court that such trials are guaranteed to destroy unit cohesion—the very thing that Congress sought to protect when it passed the don't ask, don't tell statute. And the trial court records show that Kagan knew in advance that the trial process would harm the military's interests. But she decided to thrust the government into exactly the position the military's lawyers most wanted to avoid, perhaps to keep in place, and insulate from Supreme Court review, a Ninth Circuit ruling that places don't ask, don't tell policy in jeopardy.

In addition to my concerns that Ms. Kagan was less than candid with the Judiciary Committee, I am also concerned about her leftist ideology and the potential it will influence her judging. I will discuss three areas of concern.

First, is her defense of the brief filed in Chamber of Commerce v. Candelaria. It takes a clever lawyer to argue that the Court should take this immigration case, but not Lopez-Rodriguez v. Holder on the traditional reasons for granting certiorari. In Candelaria, she asked the Supreme Court to strike down an Arizona law that permits the State to suspend or revoke the business licenses of companies that knowingly employ illegal aliens. She did this even though Federal law expressly authorizes States to enforce immigration laws ''through licensing'' and even though the courts that have considered the issue have determined that States could do precisely what Arizona did. Yet, in Lopez-Rodriguez, another immigration case, she refused to appeal a decision by the Ninth Circuit that permits ordinary deportation hearings to be bogged down by long legal fights over the admissibility of clear evidence that a person is illegally here. Unlike Candelaria, the Ninth Circuit's decision in Lopez-Rodriguez was in conflict with the decisions of other courts—including the Supreme Court—involved a significant constitutional issue. It is difficult not to conclude that Ms. Kagan's actions in these two cases were driven less by the law, and more by political expediency.

My second concern about ideology is that Ms. Kagan has shown she may hold a limited reading of the second amendment, even after the Heller and McDonald cases. When asked whether the right to bear arms was a ''fundamental right,'' Ms. Kagan said, ''I think that that's what the court held in McDonald.'' She also said that the holding was ''[g]ood precedent going forward.'' Of course, there is a record of nominees describing the holding of a case and proclaiming that it is ''good precedent,'' only to vote to overturn or distinguish that precedent once they ascend to the bench. Justice Sotomayor did just that on this issue.

But we need not rely on cynicism to demonstrate that Ms. Kagan may not view the recent second amendment precedents as settling the question of whether gun ownership is a ''fundamental right.''

Generally speaking, when a constitutional right is ''fundamental,'' any government restriction of that right is subject to ''strict scrutiny'' by the courts. But at her hearing, Ms. Kagan left open the possibility that some other, lesser standard of scrutiny should apply to second amendment restrictions. She said that ''going forward the Supreme Court will need to decide what level of constitutional scrutiny to apply to gun regulations.'' This does not sound like a commitment to the principle that the second amendment guarantees a fundamental right. When weighed with her well-documented work in the Clinton administration to advance gun control legislation, I believe there is a justifiable concern that Ms. Kagan would vote to construe Heller and McDonald as narrowly as possible.

Third, I am concerned that Ms. Kagan sees few, if any, limitations on Congress's authority to regulate behavior, or interstate commerce. In a remarkable exchange, Senator Coburn asked Ms. Kagan whether it would be constitutional for Congress to pass a law requiring Americans ''to eat three vegetables and three fruits every day.'' Although Ms. Kagan said that such a law sounded ''dumb,'' she refused to say that such a law would be unconstitutional. In fact, during the course of the exchange, Ms. Kagan repeatedly emphasized that a court analyzing such a statute should ''read the [commerce] clause broadly'' and give ''real deference'' to Congress.

I agree that the commerce clause gives the Congress substantial authority, but it does not give Congress unlimited authority. That Ms. Kagan was unwilling to say a law requiring the consumption of produce is beyond Congress's authority suggests she would vote to uphold statutes that exceed the boundaries of the commerce clause. Stretching the commerce clause gives too much power to Congress.

Finally, it is worth noting that Ms. Kagan came to the Senate with a lack of legal and judicial experience, especially when compared to other recent nominees. Some have reached back 40 years to compare Ms. Kagan's experience to that of Chief Justice Rehnquist, the last nominee without prior judicial experience confirmed to the Supreme Court in 1972. William Rehnquist, however, spent 16 years as a practicing litigator in my home State of Arizona and 2 more years as Assistant Attorney General, Office of Legal Counsel, a position that was later held Justice Scalia 1974–1977 and that, according to the Department of Justice, ''typically deal[s] with legal issues of particular complexity'' and ''provides authoritative legal advice to the President and all the executive branch agencies.'' In contrast, Ms. Kagan's law practice is confined to two years in private practice shortly after law school and 1 year as the Solicitor General.

Her limited experience is not by itself disqualifying, but it did increase the importance of her hearing. Had she answered questions in an honest and straightforward manner, we might have a better basis to know what kind of judge she would be. But instead, Ms. Kagan either dodged questions or gave what were clearly disingenuous answers intended to mask her views. She also failed to make the case that her political ideology would not influence her judging. For all of the reasons I have discussed, I cannot support her nomination.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Mr. President, I certainly could not improve upon the statements and arguments that have been made by my good friend from Arizona. I come from a little different perspective. There are six things I think any one of which would seriously make us consider voting against her.

I want to say this, first, though. Back when she was first nominated I was the first one to say I was opposed to her. The main reason was these things came up, most of them, when she was up to be confirmed for Solicitor General. At that time I objected to her being in that position.

I have a policy—I think it is good; people in Oklahoma know it—and that is, if you oppose someone's confirmation for a position and then they come back later for a higher position, it is automatic because the bar should be higher.

Anyway, today I want to reemphasize a couple of things that were mentioned

by my friend from Arizona. One objection to the Kagan nomination is that she undeniably lacks the experience.

I think Senator KYL said it very well. People say there have been others in history that didn't have any judicial experience, but in those cases, they averaged 21 years of practicing law. They had that experience. This would be the first time in history we have someone with less than 2 years' experience and no judicial experience. That would be reason enough, but that is not my major objection.

My major objection is her disdain for the U.S. military. While dean at Harvard, Kagan banned the military during a time of war from recruiting on campus due to her objection over the don't ask, don't tell policy. That was the policy put together during the Clinton administration while she was in the administration. She did not object to it at that time, but she objects to it now.

There has been much made by her supporters about her role in this incident, but the truth is that in November of 2004, after the Third Circuit Court of Appeals struck down the Solomon amendment—I was there when the Solomon amendment was passed in the House—Kagan affirmatively disallowed the military from recruiting at the school's office of career services. Subsequently, she joined 40 other schools in filing an amicus brief with the Supreme Court in the case opposing the Solomon amendment which was then overwhelmingly opposed and reversed by the Supreme Court unanimously. She was taking advantage of that opportunity when she didn't allow recruiters at the university. We have seen this happen around the country, not only Harvard but in California. This is something that is definitely in opposition to the law that is still in place, referred to as the Solomon amendment.

Equally alarming to these actions is her misrepresentation of the facts before the Judiciary Committee. I wasn't aware of this, certainly not back when she was up for Solicitor General. She testified that military recruiters had ''full and good access'' to Harvard's campus. Military recruiters clearly did not have full and good access, as they had to work through the school's veterans group as opposed to being allowed to go through the office of career services, a part of the university.

Internal Pentagon documents reveal that under her deanship ''The Army was stonewalled at Harvard.'' Furthermore, Kagan told the committee that in banning recruiters she ''always thought we were acting in compliance'' with Federal law. Yet in her own e-mail to Harvard students and faculty, she wrote that she had ''hope'' that the government ''would choose not to enforce'' the law.

I am alarmed that Kagan would not only ban military recruiters on campus in a time of war but that she would do it to advance her own liberal and social agenda, then mislead the committee with her statements.

During her tenure as dean of Harvard, Kagan sent a letter with three other law school deans to the Senate in 2005 opposing legislation that sought to prevent terrorists convicted in military tribunals from appealing their convictions in Federal courts. She compared this legislation to the ''fundamentally flawless'' actions of a ''dictatorship'' that has ''passed laws stripping courts of power to review executive detention or punishment of prisoners.'' That is not what I said. That is what Ms. Kagan said.

We have the best judicial system in the world. Equating our laws relating to the war on terror to that of a dictatorship would be laughable, were it not so pervasive in liberal academia.

Kagan has a history of misrepresenting facts to push her liberal agenda, including her efforts while working in the Clinton administration to change statements of two medical associations to withhold the truth about partial-birth abortion. This is interesting. Both groups had a firm position, and she influenced a change in that position. During the debate over the Partial Birth Abortion Ban Act, Kagan wrote a memo to President Clinton in December 1996 objecting to the release of the American College of Obstetricians and Gynecologists—ACOG—proposed statement that partial-birth abortion is never medically necessary. This is what their position was. They came out and said that it was never necessary.

''The release of the statement would, of course, be a disaster.'' Those are her words, talking at that time to the Clinton administration. We have evidence from Kagan's handwritten notes that she advocated a change in the statement to reflect that partial-birth abortion may be medically necessary. One month later, ACOG released a statement with language nearly identical to Kagan's language that such abortions may be medically necessary to save the life and preserve the health of the mother. In addition to seeking to change ACOG's position, Kagan also sought to alter the American Medical Association position on partial-birth abortion. She once again tried to alter the facts and encourage AMA to change its medical policy on partial-birth abortion.

What is perhaps more concerning about Kagan's efforts to manipulate the medical policy of ACOG and AMA is that these medical policy statements were then used, sometimes successfully, in Federal courts to invalidate State laws and the Partial Birth Abortion Ban Act. She manipulated medical facts to advance a barbaric practice and push a political agenda.

We are talking about two highly respected medical associations that said partial-birth abortion was not something that was necessary, changing their positions. Then that was later used in court cases. Moreover, Kagan criticized the Supreme Court decision of Rust v. Sullivan which upheld the Department of Health and Human Services regulations prohibiting title X family planning funds from being directed toward programs where abortion is a method of family planning.

Additionally, while clerking for Justice Marshall, she authored a memo arguing that all religious organizations should be off limits from receiving Federal funds for programs authorized by the Adolescent Family Life Act such as pregnancy testing, prenatal/postnatal care, adoption counseling, and childcare, because these programs are so close to the central concerns of religion.

I also seriously question Kagan's willingness to honor and defend the second amendment, getting into an area that is probably more sensitive to a lot of my friends, including my son and members of the family, who are active and strong believers in second amendment rights. While clerking for Justice Marshall, Kagan wrote a memo about a case challenging Washington, DC's strict gun control laws. In only four sentences she was dismissive of the case, writing that she was ''not sympathetic'' to an individual-rights view of the second amendment. As everyone knows, the Supreme Court has since upheld the individual right to keep and bear arms. Kagan also used her position with the Clinton administration to advocate various anti-second amendment initiatives. Documents from the Clinton library illustrate that she supported background checks for secondary market gun purchases as well as municipal liability suits against gun manufacturers.

She helped develop an executive order banning the importation of certain types of semiautomatic weapons that were not covered by the 1994 assaults weapons ban. She also sought to permit law enforcement to retain Brady background checks information on lawful gun sales.

Finally, in an internal document regarding the Volunteer Protection Act, she described the NRA as ''a bad guy organization.''

She might get by with that in this Chamber, but she wouldn't get by with it in Oklahoma. We read the Constitution. We know what it says. She has no respect for the second amendment.

I am also gravely concerned, based on Kagan's writings and statements, that she would be a judicial activist who would seek to legislate from the bench. In her 1998 masters thesis at Oxford she wrote:

> As participants in American life, judges will have opinions, prejudices, and values. Perhaps more important, judges will have goals. And because this is so, judges will often try to mold and steer the law in order to promote certain ethical values and achieve social ends. Such activity is not necessarily wrong or invalid.

She is stating, not just from today but going all the way back to her Oxford days, that judicial activism is appropriate. Rather than affirm the role

of judges as the faithful interpreters of the law, Kagan voiced her support for judges who seek to serve as legislators, who develop their own empathy standards and apply the law in a matter they personally see fit. Her self-acknowledged judicial hero, Aharon Barak, perfectly fits this mold. In her testimony before the committee, she even affirmed that she would consider foreign law when she decides cases. She said:

I guess I'm in favor of good ideas from wherever they come.

We are talking about referring to other countries that have a different judicial system and saying maybe they are right and maybe we are wrong. I simply cannot support a nominee who looks to other judicial systems or judicial philosophies or evolving standards of decency rather than the text of the Constitution to interpret law.

I have thoroughly reviewed the record of Elena Kagan and have come to the firm conclusion that she lacks the qualification and experience to be a Supreme Court Justice.

I have named six things. Any one of these six should be disqualifying. One is, she wants to consider foreign judiciaries. Two, she has no judicial or trial experience. Third, she is a judicial activist. Four, she is extreme in her philosophy on abortion and anti-second amendment views, and she is anti-military.

I think of all the things I have mentioned, probably the part that concerns me most is her position that if we are trying someone in a military trial, maybe a terrorist or an activist, that they would be given the right to appeal to our court system and inherit all the benefits any citizen of the United States has.

I can only say what I said several months ago when she was first nominated. In my opinion, as 1 of 100 Senators, if she is not qualified to be Solicitor General, she is certainly not qualified for the higher job of Justice of the U.S. Supreme Court.

HYDRAULIC FRACTURING

I also wish to discuss one of the problems that is going to come up tomorrow, and that is with the Democratic and Republican energy bills. I am very concerned about a process that has been successful in extracting oil and primarily gas out of tight formations, known as hydraulic fracturing. Hydraulic fracturing started in Oklahoma in 1949. We have used hydraulic fracturing to get at these tight formations for 60 years, and there has never been one case of any kind of contamination of water.

There are people who want to do away with our ability to run this machine called America. They don't want oil, gas, coal, or nuclear. That kind of gives an idea of what might be behind this.

Some say: No, we are not against hydraulic fracturing. This bill merely says we want the Federal Government to know what chemicals are used.

This is already being done on a State-by-State basis. Things aren't the same in Oklahoma as they are in New York. In Oklahoma, we have very strict rules. They know exactly what chemicals are used. By the way, 99 percent of what is used on these formations is water and sand.

I am looking forward to talking in more detail with my good friend Senator CASEY. He is kind of the author of this portion of the bill. Yet his State of Pennsylvania has huge opportunities for natural gas. I think we need to talk about that. We have enough natural gas that if we would take away all the inhibitions we have and keep hydraulic fracturing as a process to be used, we could run the country for 100 years. I think it is our job to make sure we protect that.

RECESS

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

Thereupon, at 12:29 p.m., the Senate recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

NOMINATION OF ELENA KAGAN TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Continued

The PRESIDING OFFICER. Under the previous order, the time until 8:15 p.m. will be divided in alternating 1-hour blocks, with the majority controlling the first block.

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I join my colleagues today in congratulating Chairman LEAHY and Senator SESSIONS for conducting fair and impartial hearings for Solicitor General Kagan. I am here today to support General Kagan's nomination to the Supreme Court. Her confirmation will be a milestone that we can all be proud of. For the first time in history, three women will be serving on the Supreme Court at one time.

General Kagan came before the Judiciary Committee with an impressive resume that had all the trappings of an accomplished lawyer worthy of appointment to the Supreme Court. During her hearings, she proved herself to be very well qualified for the job.

She impressed us with her sharp and keen mind, her intellect, and comprehensive knowledge of the Constitution and the law. She pledged to consider each case with an open mind and to impartially uphold the rule of law. She appeared mindful of the need for judicial modesty and fidelity to precedent, but not when it stands in the way of ending injustice or guaranteeing our fundamental rights.

At times during the hearings, Solicitor General Kagan seemed to be somewhat more candid than previous nominees. She disavowed a purely originalist interpretation of the Constitution, recognizing that such a limited approach will not always solve our 21st-century problems. I was pleased she unequivocally expressed her support for opening the Supreme Court to cameras. So I believe with General Kagan's confirmation, the American people will be one step closer to seeing for themselves the Supreme Court debate our most pressing legal and constitutional issues.

But despite the strength of her qualifications, like so many nominees before her, General Kagan often retreated to the generalities and platitudes she once criticized. I am pleased she rejected the analogy that Supreme Court Justices are like umpires, simply calling balls and strikes. Instead, she acknowledges that each Justice's legal judgment determines the outcome of close cases. But at times her answers gave us too little insight into what informs her unique legal judgment and how it will impact those close cases.

As I have said before, the confirmation process demands more than that. This was the public's only opportunity to hear from General Kagan. In my opinion, she made small inroads, but we still have a long way to go in meeting the high standard to which we should hold Supreme Court nominees during their confirmation hearings.

In sum, I am voting for General Kagan because she is unquestionably well qualified, has a record of being a principled, consensus-building lawyer, and because I believe her judicial philosophy is within the mainstream of our country's legal thought. I am confident she will make a superb Supreme Court Justice and is a worthy nominee to carry on Justice Stevens' long legacy of exemplary public service to our Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, above the entrance of the U.S. Supreme Court are four words, and four words only: ''Equal Justice Under Law.''

I rise today to support the nomination of Solicitor General Elena Kagan to be an Associate Justice of the U.S. Supreme Court. But I also rise today to put General Kagan's nomination in the context of the history of the Supreme Court and how that Court has affected the lives, the jobs, and the safety of working Americans.

I want to ask if working Americans are actually getting equal justice under law in the highest Court of our land. And I do not want to talk about the Court's impact on working Americans in terms of stare decisis or deference to the political branches or judicial modesty. I want to talk about this in terms of the real things that are happening to real people—real working people—right here in the United States.

In 2003, a 54-year-old man named Jack Gross was working for an insurance company in Iowa. A few years earlier, his company had chosen him to rewrite all of their policies in 1 year. And

he did it. In fact, he was one of the company's top employees. His 13 years of performance reviews placed him in the top 3 to 5 percent of the company.

But when his company merged with another company, Jack Gross got demoted. In fact, so did all of the other Iowa employees who were 50 or older. So Mr. Gross sued for age discrimination under a Federal law called the Age Discrimination in Employment Act. He went to trial before a jury of his peers, and he won.

The Roberts Court overturned that verdict. They said the Age Discrimination in Employment Act did not ban all kinds of age discrimination, only age discrimination where age was the single determinative reason for a firing or a demotion.

The funny thing is that before the Roberts Court decided this, no one had made that argument—not Gross, not the company, not Congress, no one. The Court just pulled it out of thin air in favor of the company.

Is that equal justice under law?

In 1979, Lilly Ledbetter went to work at a Goodyear tire plant in Gadsden, AL. She was also very good at her job. She even earned the company's top performance award. Being one of just a few women at the plant, she endured harassment that her male colleagues never faced.

But one day, after 19 years on the job, she found a note in her locker which told her she was making much less than her male coworkers. So she went to court and tried to get Goodyear to pay her the same thing they had paid the men who had her same job. She went to trial before a jury of her peers, and she won. The jury awarded Ms. Ledbetter $3 million.

But the Roberts Court struck down the award. Why? Because Lilly Ledbetter had not gone to court within 180 days of her first discriminatory paycheck decades earlier, even though she had no way of knowing what her male coworkers were making back then, even though the company continued to discriminate against her for decades after that, even though the Congress did not write the law that way.

Is that equal justice under law?

In February 1989, a man named Joe Banta was preparing for the herring fishing season in his hometown of Cordova, AK. For three generations, the Banta family had made their living fishing herring—as the Presiding Officer well knows this story—and digging for clams in Prince William Sound.

All of that ended on March 24, 1989, when the Exxon Valdez—the oil tanker—crashed into a reef and spilled hundreds of thousands of barrels of crude oil into the sound in the Presiding Officer's home State.

Shortly before leaving port, the captain of the Valdez had downed not one, not two, but five double Vodka shots. There was proof that Exxon knew full well about his alcohol problem. To this day we can find oil from the Exxon Valdez in the waters of Prince William Sound. To this day the herring in Prince William Sound have not come back. To this day generations of fishermen such as Joe Banta are out of work.

With the help of a Minnesota attorney, Brian O'Neill, the fishermen of Prince William Sound took Exxon to court. They took Exxon before a jury of their peers, and they won. The jury awarded them $5 billion. That is a fraction of Exxon's $45 billion in profit in 2008. But the Roberts Court slashed the verdict to one-tenth of its original size. Five million dollars is, of course, a lot of money, but it had to be divided among 32,000 people.

Here is the other thing: There was not a rule that called for this. There is no statute or precedent that said the Court had to cap the fishermen's damages. So the Roberts Court just made one up. They made up a cap for what the fishermen could recover—after the fishermen sued and got a verdict from a jury of their peers.

When the Court needed to justify that cap, it said jury verdicts were too unpredictable for companies and that even a ''bad man'' deserves reasonably predictable jury verdicts. This is the standard that will soon be applied to the fishermen of the gulf coast.

Is this equal justice under law?

Jack Gross, Lilly Ledbetter, and Joe Banta are not alone.

Since 2005, the Roberts Court has also struck down a century-old precedent that protected small business owners from price fixing. It has made it harder for investors to sue the firms that knowingly participated in a scheme to defraud them. In fact, it has made it harder for everyone to get their day in court, especially individual employees and investors.

It has removed half of the Nation's largest known polluters from coverage under the Clean Water Act. It has found that corporations—corporations—have the same free speech rights in our elections as human beings.

When the Roberts Court chooses between corporate America and working Americans, it goes with corporate America almost every time, even when the citizens of this country, sitting in a duly appointed jury, have decided it the other way.

That is not right. It is not equal justice under the law.

Today we consider the nomination of Solicitor General Elena Kagan to a Court that has made those words an empty promise to most working Americans. It is fitting that General Kagan has been nominated for Justice Stevens' seat because the last three Justices to occupy this seat—Justice Stevens, Justice Douglas, and Justice Brandeis—were all deeply skeptical of corporate power. All three Justices rejected the idea that the Constitution cannot tell the difference between corporations and human beings.

Justice Louis Brandeis argued throughout his career that the massive wealth held by corporations was dangerous to democracy; that corporate interests could wield far too much influence, not because of the strength of their arguments but because of the size of their bank accounts. In fact, he wrote a book about this. It is called ''Other People's Money—and How Bankers Use It.'' In that book, Brandeis catalogued example after example of how Wall Street bankers took advantage of their position to enrich themselves at the expense of the American people. Does this sound familiar? And it was in this book that he famously stated that ''sunlight is said to be the best of disinfectants''—that you have to train an unwavering spotlight on the schemes and machinations of corporate America.

After he joined the Supreme Court, Justice Brandeis wrote in a dissent in a 1933 case that our Nation's Founders understood the ''insidious menace inherent in large aggregations of capital, particularly when held by corporations,'' and that this ''difference in power between corporations and natural persons is ample basis''—ample basis—for treating them differently under the law.

Justice William Douglas joined the Supreme Court upon Justice Brandeis's retirement. Before joining the Court, Justice Douglas was Chairman of the SEC, where he crusaded for investor protections and led investigations into unethical corporations. While Chairman of the SEC, in an address to the Fordham University Alumni Association, Douglas warned that ''one aspect of modern life which has gone far to stifle men is the rapid growth of the tremendous corporation'' and that in these conglomerates, ''service to human beings becomes subordinate to profits.''

In a 1949 case, Justice Douglas wrote that if Americans ''want corporations to be treated as humans are treated, if they want to grant corporations this large degree of emancipation from state regulation, they should say so. [. . .] We should not do it for them through the guise of interpretation.'' Justice Douglas understood that corporations are not people, don't have the same rights as people, and that our laws are critical in keeping their power in check.

Justice Stevens continued this tradition. In Ledbetter, in Gross, in Exxon, in Stoneridge, in Rapanos, and in Citizens United, Justice Stevens fought the empowerment of big business at the expense of working Americans. In fact, in most of these cases, Justice Stevens led the dissent. He is the Justice who said in no uncertain terms that ''corporations are not a part of 'We, the People,' by whom and for whom our Constitution was established.''

I have said it before—General Kagan has big shoes to fill. But after months of learning more about General Kagan and a week of confirmation hearings, I think it is safe to say there is no question she can do it.

Some have criticized General Kagan because she lacks experience as a

judge, even though 40 out of the 111 Justices in the Supreme Court's history had not been judges before they served on the High Court and even though Justice Scalia said only this January in a speech in Jackson, MS, that the Court needs Justices who haven't been judges.

It seems to me that Senators have been going to absurd lengths to discount General Kagan's qualifications. We even had a Senator in the hearings who acknowledged that, yes, there has been a long history of Justices who have never served previously as judges but that those Justices averaged more than 20 years of private practice experience, whereas General Kagan only worked for 2 years in a law firm. To me, this has a tortured ring of someone arguing that every southpaw Cy Young winner in the American League since the advent of the designated hitter has had a lower ERA in away games on AstroTurf than any right-hander.

To people making these kinds of arguments, I wish to say this: You only have one life. I think that in her 50 years, General Kagan has amassed an incredible record of service and accomplishment. She has been a clerk for a Justice of the U.S. Supreme Court; special counsel to the Senate Judiciary Committee; a top adviser to the 42nd President of the United States; the first woman dean of Harvard Law School; and the first woman to be Solicitor General in the history of the United States. So is she qualified for the job? Of course. Of course she is. But General Kagan has done more than show she is qualified for the job; she has also shown she understands it. She has shown she understands the obligation of the Supreme Court to the American people and to the Congress that represents them.

For years, conservatives have warned that we should beware of activist judges who overreach their powers, that we should beware of judges who legislate from the bench. Now that the Roberts Court is in power, suddenly these same conservatives are saying there is really no such thing as judicial activism, it is all in the eye of the beholder, and that an activist judge is just a judge who issues decisions you don't like. But General Kagan hasn't taken the bait. General Kagan said there is such a thing as activism. She said it herself: An activist judge is a judge who doesn't defer to the policy decisions of the political branches, who doesn't respect precedent, and who doesn't decide cases narrowly, avoiding constitutional questions when possible. And when she said that, I think most people sitting in the committee room at her confirmation hearing liked that definition.

When you apply that definition to the Roberts Court—to the cases upon cases where the Roberts Court has limited the rights of workers or pensioners or investors or small business owners or voters—you find there is no question, no question whatsoever that this is an activist Court. It is a Court that has replaced Congress's policy judgments with its own perspective, with its own prejudices, a Court that has legislated from the bench.

But, as I said, in her confirmation hearings, General Kagan didn't just define activism, she didn't just acknowledge its existence, she also said clearly and repeatedly that she would avoid it. If she is confirmed and if we have a Justice Kagan, as I am certain we will, she will continue a long tradition of protecting and serving the American people. She will serve them with equal justice under law.

I urge all of my colleagues to support her nomination.

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

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to thank the Senator from Minnesota. I certainly concur with his conclusion. We serve on the Judiciary Committee together. We both heard the testimony of Elena Kagan as well as had a chance to ask her questions and listen to her responses to other Senators. She is an extraordinarily talented woman who could bring to the Supreme Court a wealth of experience. I couldn't agree with the Senator from Minnesota more that the fact that she has not worn a judicial robe before does not in any way disqualify her. She has an exemplary resume.

I thank the Senator for noting the most important element here is that many of the arguments that have been used against judicial nominees in the past have evaporated on the other side of the aisle because the Roberts Court is in the midst of an activist phase—something they promised would never happen, and it has happened, but it has happened to the satisfaction of one part of the political spectrum, where there are fewer critics as a result.

I thank the Senator from Minnesota for his eloquent remarks in relation to Elena Kagan.

CREDIT CARD REFORM

Mr. President, this morning I took a look at the Wall Street Journal Web site, and there was an article entitled ''The New Credit Card Tricks.'' I thought to myself, I hope my wife doesn't get a chance to see this because ever since last year when we reformed credit cards in America, I come home on the weekends to Springfield, IL, and my wife hands me a new envelope she has opened.

Guess what they are doing, Mr. Senator.

In that envelope will be the latest changes in our credit cards from these companies. I have to say we pay off our credit cards. We do our best and almost always pay them off on a monthly basis. We have a pretty good credit rating—maybe not the best but a pretty good one. Yet we have been receiving notices for the last year from these credit card companies about changes and to read the contract. I wear these glasses, but I need a magnifying glass to read the contract, and I am a lawyer. Trying to understand what they are doing to me is very hard. But then in bold print you will see an interest rate number that has just gone up or a charge that has just gone up.

My wife said to me: What is this all about? I thought you reformed credit cards.

This morning's Wall Street Journal, in an article entitled ''The New Credit Card Tricks,'' tells the story about what has been happening since 2009 when we decided to reform credit cards. Well, as one man said, whose name is Victor Stango and who is an associate economist with the Federal Reserve Bank of Chicago—he has been analyzing the Credit Card Reform Act, and he said it is a race between regulators writing ever more complex laws and credit card companies setting up evermore complex fees.

Just to give an idea of what we are talking about, the article says:

> So the banks are getting aggressive. According to a July 22 report from Pew Charitable Trust, a nonpartisan research group, the industry's median annual fee on bank credit cards jumped 18 percent to $59 between July of 2009 and March of this year, 2010.

Credit unions, which are often viewed as the hometown, smalltown mom-and-pop, closest to the people, your best friends when it comes to banking—listen to this:

At credit unions, annual fees soared 67 percent in that same period to $25. During the same period, the median cash-advance and balance-transfer fees jumped by 33 percent.

So it isn't just a matter of raising fees; it turns out they are raising them at a gallop, at a fast rate, trying to get ahead of the credit card reform bill.

They have also dreamed up a dozen different ways to beat the law. Give us a year, they said, so we can change our books and get everything ready for the new credit card reform. They spent their year with their lawyers and accountants dreaming up new ways to avoid the law. We should have known it. We shouldn't have given them all this time.

They have dreamed up something called professional cards. These are like corporate cards but carry the same terms as consumer cards and they aren't covered under the new law. They are reinventing the credit card with a new name and a higher fee and a higher interest rate, and they skirt around the laws we passed.

We said in the law—incidentally, we stipulate that late-payment fees shouldn't be triggered on a Sunday or a holiday because you couldn't put anything in the mail. Well, here is a man, whom they talk about in this article, by the name of Alan Condon of Woodstock, GA. He ended up facing one of these penalty fees, and he noticed that the day it was triggered was a Sunday. He has read the new Credit CARD Act. That is not supposed to happen. You can imagine what it took for Mr.

Condon to challenge the Discover Card, which eventually, after all of his protests, waived the late fee they charged him. How many people have that kind of determination to stick with it, as he did?

They have new cards such as a rebate card which, if you don't read it carefully, sounds like a great deal on a credit card and ends up taking money away from you.

I could go on and on.

Mr. President, I ask unanimous consent that this article be printed in its entirety in the RECORD.

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

[From the WSJ.com, Aug. 3, 2010]

(By Jessica Silver-Greenberg)

Whomever President Barack Obama taps to head the new Bureau of Consumer Financial Protection could find it difficult to keep ahead of the credit-card industry.

The Credit Card Accountability Responsibility and Disclosure Act of 2009, known as the Card Act, was intended to reshape the contours of consumer finance. Among other things, it forces card issuers to give customers more notice about interest-rate increases and restricts certain controversial billing practices such as inactivity fees.

Yet some of the biggest card issuers in the U.S., including Citigroup Inc., J.P Morgan Chase & Co. and Discover Financial Services, are already rolling out a slew of fees designed to recapture some of their lost income, in part by skirting the new rules. Some banks may even be violating the law outright, say consumer advocates.

''Card companies are figuring out how to replace old fees with new ones,'' says Victor Stango, an associate economist with the Federal Reserve Bank of Chicago and a professor at the University of California, Davis, who has been analyzing how the Card Act will affect consumer banking. ''It's a race between regulators writing ever-more-complex laws and credit-card companies setting up ever-more-complex fees.''

The banks have a big gap to fill. The Card Act is expected to wipe out about $390 million a year in fee revenue, according to David Robertson, the publisher of industry newsletter Nilson Report. On July 16, during its second-quarter earnings call with analysts, Bank of America Corp. Chief Financial Officer Charles Noski warned that the Card Act and other regulatory changes would prompt the bank, the nation's largest in assets, to write off up to $10 billion in the third quarter.

''If you have every major issuer saying that we are losing our shirt, then that speaks volumes,'' Mr. Robertson says. ''Proportionately, these fees should be understood as almost inconsequential compared to the losses.''

So the banks are getting aggressive. According to a July 22 report from Pew Charitable Trusts, a nonpartisan research group, the industry's median annual fee on bank credit cards jumped 18% to $59 between July 2009 and March 2010. At credit unions, annual fees soared 67% to $25. During the same period, the median cash-advance and balance-transfer fees jumped by 33%.

All of these increases are perfectly legal, of course. Banks and other issuers would have a difficult time extending credit to consumers, even at high interest rates, if they couldn't augment those revenues with fee income. ''We're coming out of a deep recession that issuers are still working through,'' says Peter Garuccio, a spokesman for the American Bankers Association.

But some banks may be going too far. In a July 7 letter to the Office of the Comptroller of the Currency, which regulates many of the biggest U.S. banks, a coalition of consumer groups including the National Consumer Law Center, the Consumer Federation of America and Consumer Action flagged several ''potential violations of the Credit Card Act.''

Other banks are ramping up their marketing of so-called professional cards. These are like corporate cards but can carry the same terms as consumer cards—and aren't covered under the new law. In the first quarter of this year, issuers sent out 47 million professional-card offers to U.S. households, up from 13.2 million in the corresponding period last year, according to research firm Synovate.

''This can be a very easy way around the Card Act,'' says Josh Frank, a senior researcher at the Center for Responsible Lending, a consumer group.

The upshot: Borrowers must be more vigilant than ever—even before they make their first charge on a new credit card.

SADDLED WITH LATE FEES

Alan Condon of Woodstock, Ga., says he carefully reviews his card statements each month, and even read the Card Act—all 33 pages—after it was passed in May 2009.

Among other things, the Card Act stipulates that late-payment fees shouldn't be triggered on a Sunday or holiday, when there is no mail delivery.

The rule ''is clearly meant to offer cardholders some semblance of relief so that they don't get saddled with late fees for making a reasonable payment on the next business day,'' says Chi Chi Wu, a consumer credit lawyer at the National Consumer Law Center.

Mr. Condon says he was shocked when he opened his credit-card statement dated June 18 and saw that Discover had charged him $39 for a late payment—and had upped his interest rate on future purchases from 17% to 24.99%. He says the company considered him late because he paid on June 14, instead of June 13, a Sunday.

''I just got mad,'' says the 56-year-old computer-software developer, who says he had never before been late on a Discover payment.

''We were in compliance with the Card Act,'' says Discover spokesman Matthew Towson. ''The law states that if a creditor does not receive or accept payments on weekends or holidays, then the date is extended. But we accept payments seven days a week.''

Nevertheless, Discover reviewed Mr. Condon's account at The Wall Street Journal's request and decided to waive the late fee and reduce Mr. Condon's interest rate to its earlier level.

The Card Act also stipulates that issuers can't jack up rates on existing balances unless a cardholder is at least 60 days late. But there is a creative maneuver around that: the so-called rebate card.

Citibank rolled out rebate-card offers to some of its customers last fall, offering to refund up to 70% of finance charges when customers pay on time. The problem: Rebate offers aren't governed by the Card Act, and an issuer can revoke them suddenly and hit cardholders with high charges.

The net result is the same as raising rates—and because it is perfectly legal, customers have little recourse. ''Rebates on finance payments may seem like a good deal, but you could end up with a very high interest rate suddenly,'' says Mr. Frank, of the Center for Responsible Lending.

''The rebate offer is clear, transparent, and we believe fully within the spirit of the Card Act,'' says Citigroup spokesman Samuel Wang.

Shortening the billing cycle is another new tactic some banks may be using. The Card Act requires companies to provide a window of at least 21 days from when a statement is mailed and when payment is due.

Yet the National Consumer Law Center and Consumer Action say they have received complaints from borrowers who allege that their billing cycles have been shortened to fewer than 21 days.

''Since the passage of the act, we've heard from numerous borrowers alleging that they are shortchanged on billing cycle time,'' says Joe Ridout, a consumer-services manager at Consumer Action.

INACTIVITY FEES RETURN

As expected, issuers also are raising basic fees in the wake of the Card Act, in some cases significantly. Many credit-card companies, for example, are increasing their balance-transfer charges sharply. ''We are seeing an increase across the board in fees because card companies are sensitive about their ability to price for risk,'' says Mr. Robertson of the Nilson Report.

Last June, for example, J.P. Morgan's Chase unit alerted customers that its maximum balance-transfer fee was rising to 5% from 2% on a wide range of its cards.

''In a higher-loss environment, it's important that we are prudent with our balance-transfer offers,'' says Stephanie Jacobson, a spokeswoman for the bank. She adds that ''We often do have lower rates in a competitive marketplace.''

Companies are raising their minimum finance charges, too. Before the Card Act, the average minimum monthly finance charge was about 50 cents, according to Nick Bourke, director of the Safe Credit Card Project at Pew. Now, he says, those fees can reach $1.50.

That difference might not seem like a lot, but it adds up. Borrowers pay $430 million a year in minimum-finance charges alone, according to the Center for Responsible Lending.

The Card Act's provisions are being implemented in stages, with the last phase taking effect on Aug. 22. After that, issuers will no longer be able to charge ''inactivity fees,'' or extra charges for people who don't spend a certain amount each year.

So companies are dressing them up in other ways.

Citigroup, for example, has started charging some of its customers an annual fee, which can be waived if a customer's card activity exceeds $2,400 a year.

Tristan Denyer of San Francisco says he was surprised when he got a notice that Citigroup was instituting a $60 annual fee on his card. Mr. Denyer, 37, a senior Web designer, says he rarely carried a balance on his card, and refused to rack up the $2,400 in charges necessary to erase the fee.

''I figured this was just a tactic to get me to spend more and give them more money,'' Mr. Denyer says. He says he decided to close his account.

Citigroup's Mr. Wang acknowledges that Card Act rules forbid the waiving of annual fees based on ''a customer's annual spending on the card.'' He adds, however, that ''the rules will not prohibit cash-back rewards or similar incentives that encourage account usage.''

Another potential trap: low-credit-limit cards, which are popular among college students.

The Card Act says a card's total annual fees can't exceed 25% of a borrower's credit line. But some issuers may be evading the fee restrictions by charging an upfront processing fee that doesn't fall under the 25% cap.

First Premier Bank, headquartered in Sioux Falls, S.D., offers several low-credit-

limit cards. Its Centennial card comes with a $300 limit and a $95 upfront processing fee.

Melinda Robinson of Lorena, Texas, learned firsthand how rapidly fees could eat into her credit limit. After receiving a card with a $250 credit limit from First Premier, she says, she was immediately charged $170 in combined fees. When she tried to use the card for the first time, she exceeded her credit limit, triggering more fees.

''When they first send you the card, they automatically charge you fees that eat up half of it,'' says Ms. Robinson.

First Premier Bank's president and chief executive, Miles Beacom, says the $95 processing fee doesn't violate the Card Act because it is assessed before the account is opened. He adds that the fee offsets the risk associated with offering these cards to ''high-risk individuals.''

Foreign-transaction fees are on the march as well. The average fee for foreign transactions has jumped to 3% of the transaction from roughly 2% in 2008, according to Ben Woolsey, director of marketing and consumer research at Creditcards.com.

Some card holders are finding they don't even need to leave their living room to get hit with a foreign-transaction fee. Ruth Ann Sando, a small-business owner in Washington, says she has been burned repeatedly on her Visa card issued by Pentagon Federal Credit Union, the third-largest credit union in the U.S.

Ms. Sando used to do a lot of business with AbeBooks, an online retailer. But she found that she was getting hit with foreign-transaction fees even though her purchases were in dollars. That is because while the seller and shipper were based in the U.S., Abe, headquartered in Canada, provides the forum for book sellers and collects a portion of the proceeds from all sales.

So late last year, Ms. Sando says, she decided to stop buying from the site altogether. ''Not buying books is the only way I can protest the fee,'' she says.

''The fee is legal, but all these fees circumvent the [Card Act's] goal of clear and straightforward pricing,'' Mr. Woolsey says.

Pentagon Federal Credit Union says some of its cards carry a foreign-transaction fee of 2% of the U.S. dollar amount of the transaction.

FIGHTING BACK

While the credit-card landscape may seem littered with landmines, there are ways to guard against some of the worst pitfalls. The first and simplest: Make your card payments on time.

Second, say consumer advocates, people should dispute fees directly with the issuer when they believe something is amiss.

''Cardholders would be surprised at how much they can raise hell and get a change,'' says Mr. Condon, who says he immediately contacted Discover after the late charge appeared on his statement.

They might have to make repeated calls, however.

''While the Credit Card Act did make great strides in protecting consumers, it in no way closed all avenues for cardholders to get hit with fees,'' says Ms. Wu, from the National Consumer Law Center. ''It's a first step.''

Mr. DURBIN. Mr. President, I say to those who will be critical of the remarks I am about to make, this is not from some French Socialist journal; this is not from some left-leaning magazine; this is a news story in the Wall Street Journal this morning which is talking about what the credit card companies are doing.

So the obvious question one would ask if you live in Illinois or any other place, for that matter, and which we should ask ourselves is, Are we powerless to stop this? Are we powerless to stop these banks, credit unions, and credit card companies from basically ignoring reform in the law, from finding ways to skirt the law and charge even more?

Well, the answer is we are not. I will tell you why. Because last week President Obama signed into law the strongest consumer financial protections in the history of the United States. The bill, which was authored by Senator CHRIS DODD, chairman of the Senate Banking Committee, and Congressman BARNEY FRANK, his counterpart in the House, the Wall Street Reform and Consumer Protection Act included many provisions that will help consumers immediately—especially regarding mortgages and credit cards. Make no mistake, as this article tells us, the big banks on Wall Street are working overtime already to dream up ways to avoid this new law as well. The law will never keep up with their lawyers and accountants. They will always find a way around it.

That is why the bill included something we have never had before in the United States: a Bureau of Consumer Financial Protection.

This bureau has one responsibility: to make consumer financial markets work for American families, not just for the banks. The bureau will ensure that sellers of mortgages, credit cards, private student loans, pay-day lenders, and other types of financial products must compete for customers based on the quality of their products, rather than the number of tricks and traps they can hide in the fine print they stick behind your monthly statement.

Here is the thing. This agency is only going to be as effective as the people who run it and work for it. That is even more true for a brandnew agency such as this one. The person who is chosen as the first leader will set the tone for the regulators for years to come, even decades.

It is critical that the Bureau of Consumer Financial Protection be put in place with a director who is aggressive, intelligent, and understands the challenge they will face; a director who is fair, one who believes in the power of the marketplace but understands that markets work better if everybody participating in those markets benefits; a director who will listen to what bankers are saying but can see through them when they try to slant lending markets too far in their favor; a director who thinks, first and foremost, about how American families can thrive in today's complicated economy.

Fortunately, there is a person who can fill that job effectively. Her name is Elizabeth Warren.

Professor Elizabeth Warren first proposed the creation of an independent financial regulator to look out for consumers 3 years ago, in 2007. In 2008, she helped me draft a bill based on her idea. We called it the Consumer Credit Safety Commission back then.

In the spring of last year, she worked to change the bill, and we renamed it the Financial Product Safety Commission.

Last summer, when the Obama administration released its plan for reforming Wall Street, our idea was rechristened as the Consumer Financial Protection Agency.

It is now officially called the Bureau of Consumer Financial Protection, and it is now the law of the land. Whatever the name, Professor Elizabeth Warren of Harvard Law School, more than any person in this country, was the driving force behind the creation of this agency.

Years ago, Professor Warren made a name for herself when she wrote a book called ''The Two-Income Trap,'' in which she described how hard it is for working families to get by in today's economy. She taught a popular course at Harvard on bankruptcy and has written extensively on how difficult it is for many families to start over when their lives take a turn for the worse.

She has most recently last served as a watchdog, a chairwoman of the congressional oversight panel for the Troubled Asset Relief Program, otherwise known as TARP. She has taken a look at the money—the taxpayer dollars—given to these banks to make sure we weren't cheated and to blow the whistle on banks that didn't do the right thing.

She has done that and done it extremely well. For the past 3 years, she has advocated tirelessly for the creation of this agency. The purpose of this agency is to empower every single one of us, as consumers, to get the right information and not be tricked or deceived, so we can do the right thing for ourselves and our families and our small businesses.

Throughout her work, a common theme has emerged: Government should work for the American people and not the other way around. Elizabeth Warren is the right person to head this new agency.

Much has been written—some of it critical—on the prospect of Professor Warren being nominated as Director of this new consumer bureau. Wall Street banks anonymously argue to the media—and even to Senators—that she would restrict access to credit. Nonsense. The only types of credit she would restrict are predatory loans. That is just a smokescreen for saying the banks are going to face their responsibilities and perhaps not take all the profit they want at the expense of consumers who are deceived.

Professor Warren has said publicly—and I believe her—that she doesn't begrudge banks making profits; they are in business. She would prefer—as I and I think most Americans would—that banks make money by providing American families with good products, good credit cards, good mortgages, and good student loans.

The banks also argue she doesn't understand their business well enough to

regulate it. They are afraid of her. They know how smart she is and that she would not be teaching at Harvard Law School successfully and leading so many efforts forward for this country if she didn't have the skill and intelligence it takes.

Professor Warren will bring to the bureau passion and compassion, a big-picture vision and nuts-and-bolts knowledge. She is the right person for the most important job in the country.

I say to my wife and to anybody who read the Wall Street Journal this morning, with the right person at this new Consumer Financial Protection Bureau, help is on the way. We need to put into place someone who will blow the whistle on those who break the law, abuse the law, and engage in practices that deceive Americans and American families. We need somebody at that agency who empowers us, as consumers, to make the right decisions for our families. Elizabeth Warren, professor of Harvard Law School, is the right person.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to speak in support of the nomination of our Solicitor General, Elena Kagan, as Associate Justice of the Supreme Court of the United States.

The power the Constitution gives the Senate to advise and consent to Presidential nominations is a very important one but never more significant than when we are called upon to respond to a President's nomination of a Justice to the U.S. Supreme Court because this nomination is for a lifetime to the Court, from which there is no appeal. It is the final arbiter of justice in our system of justice, in our system of government. So these are important moments, when we are called upon to respond to a President's nomination to the Supreme Court.

I remember once, early on, after I came to the Senate, during a controversial nomination to the Supreme Court, and our late and truly great colleague, Robert C. Byrd of West Virginia, said something I will never forget. He said that, normally, when we consider whether to advise and consent to a President's nomination to a Federal position, we give, understandably, the benefit of the doubt to the nominee, the person whom the President has nominated; when it comes to the Supreme Court—Senator Byrd said and counseled—the benefit of the doubt should go to the Supreme Court because of the lifetime tenure of Justices of the Supreme Court and their beyond-appeal role in our system of government.

I have that in mind by way of saying, beyond any doubt, I feel certain Elena Kagan, Solicitor General, will serve the cause of justice and our Nation very well as an Associate Justice of the U.S. Supreme Court.

Those either in the galleries or watching the debate on C–SPAN may wonder, occasionally, when they hear us refer to the nominee as ''general''—General Kagan. It reminds me of when I was privileged to be elected attorney general of Connecticut. I went to an orientation for new attorneys general and I walked in and somebody said, ''Hello, General.'' I turned around, thinking somebody was behind me. It was the first time I had been addressed that way. Solicitors General are referred to as ''general'' as well.

So establishing the standard as I have, I would say General Elena Kagan possesses impressive academic and professional qualifications, with her broad range of experiences as a clerk for a Supreme Court Justice, a lawyer in private practice, a legal and policy adviser to President Clinton, a law professor at the University of Chicago, and then at Harvard, where she ultimately became dean, and most recently as Solicitor General of the United States, which will enable her to serve our Nation and the cause of justice well if—and I hope when—she is confirmed as an Associate Justice of the Supreme Court.

General Kagan showed, on the day the President nominated her, that she understands the importance and unique importance of the Supreme Court. She said:

> The Court is an extraordinary institution in the work it does and in the work it can do for the American people by advancing the tenets of our Constitution, by upholding the rule of law, and by enabling all Americans, regardless of their background or their beliefs, to get a fair hearing and an equal chance at justice.

General Kagan then continued by complimenting retiring Justice John Paul Stevens, whose seat she will fill if confirmed to this position, for the ''distinguished and exemplary role'' Justice Stevens has played on the Supreme Court for the last 35 years.

I wish to say that, in my opinion, the most significant thing about Justice Stevens' service has been his independence of mind, his single-minded focus and commitment to the cause of justice because this is the branch of our government that must be beyond politics and even rigid ideology.

The Founders, in all their genius, when they put together the form of the American Government, coming from England as so many of them did, worried about the autocratic power of the King, wanted to create a democracy and yet wanted to make sure there were checks and balances. The Supreme Court was set up as one of the three branches of our government that was not accountable to the people; its accountability was solely to the Constitution. I think Justice Stevens, whether you agreed with every decision he wrote or not—and I agreed with some but not others—always demonstrated an ability to transcend politics and ideology and put the requirements of justice and the law, as he saw them, above all else.

I am confident General Kagan, as a Supreme Court Justice, will follow Justice Stevens' example. I predict today that, in the years ahead, if and when confirmed, Justice Kagan will surprise many people, including Senators who on this vote will vote for her and those who will vote against her. She will not be predictable. That is one of the best things I think we can say about a Supreme Court nominee. She will be judicial and independent-minded. She will serve the Constitution and the national interest, not any party or people or rigid ideology.

I must say I have been encouraged in this view by the way in which General Kagan has carried out her duties as Solicitor General of the United States. She has consistently demonstrated her commitment to upholding the Constitution, as well as her understanding of and respect for the appropriate roles of Congress, the executive branch, and the courts. She has not shied away from difficult cases or taking difficult positions when she has come to the conclusion that those positions were demanded by the Nation's needs and by the law's requirements.

I wish to cite one powerful example, to me, which I discussed with her when I met her on her rounds in the Senate; that is, her case before the U.S. Court of Appeals for the District of Columbia, in the case of Al Maqaleh v. Gates. It was a Federal district court judgment, where the court ruled it had jurisdiction to consider the habeas petitions of prisoners of war being held by the U.S. military at Bagram Air Force Base in Afghanistan. In other words, the court said that if we captured an enemy terrorist or soldier in Afghanistan and put them in the U.S. prison facility or detention facility at Bagram Air Force Base in Afghanistan, that individual could file a habeas petition before the Supreme Court of the United States in Washington to have his or her detention reviewed by our highest Court. To me it is an unbelievable decision and a harmful decision.

The Solicitor General typically represents our government only in cases before the U.S. Supreme Court. I asked General Kagan why she got involved in this case. She told me that she felt so strongly about how harmful the District Court decision would be to our Nation's ability to succeed in the wars against radical Islamist extremism we are involved in now that she made this case the exception in which she felt it appropriate and necessary for her as Solicitor General to argue on behalf of the United States in the Court of Appeals, not just in the U.S. Supreme Court.

I could not agree more with General Kagan's assessment of the importance of the case and wrongness of the District Court decision. I agree with her assessment of the merits of the case. I appreciate that she chose to get involved. And I was extremely pleased when the DC Court of Appeals agreed with the position argued by General Kagan and reversed the decision of the District Court. That, I think, tells us a

lot about the independence of mind and commitment to the higher national interests of General Elena Kagan.

In reviewing the respective backgrounds of Justice Stevens and General Kagan as his proposed replacement, I was pleased to see some similarities in their careers. I suppose it is true of many nominated to the Supreme Court. They both have impeccable academic credentials. They both clerked for Supreme Court Justices at the beginning of their legal careers. They both then served in private practice, followed by times in academia and then the government.

The important point I am making and what I believe would be a similarity between these two great Americans is that General Kagan, like the jurist she will be replacing, will be viewed at the end of her career as a Justice who put partisanship, politics, and ideology aside and put justice first.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator has consumed 10 minutes.

Mr. LIEBERMAN. I, therefore, say in conclusion that I support Elena Kagan. I urge my colleagues to give her a strong vote of confirmation to be our next Associate Justice of the Supreme Court.

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I have also come to support the nomination of Elena Kagan. She has an impressive background. I was very pleased with her nomination by the President for a lifetime term on the Supreme Court.

I had the opportunity to meet with her in my office, and I found her engaging and interesting, with a lively sense of humor. I found her to be a very interesting person. I had the opportunity to interview and talk with a number of folks who have been nominated to the Supreme Court. She stands out to me.

She has a very impressive background: bachelor's degree in history from Princeton; master of philosophy from Oxford; a law degree from Harvard. She has done a lot of things—associate White House counsel for President Clinton. She was a professor at Harvard Law School and then dean of the Harvard Law School. She was confirmed by the Senate as Solicitor General on March 19 of last year. I voted for that confirmation. I think she will make an excellent Justice of the Supreme Court.

I want to say that some of the criticism of Elena Kagan has been that she does not have judicial experience. In other words, she has not been a judge. That is true, in fact. Forty of the 111 Supreme Court Justices, including Justices John Marshall, Louis Brandeis, Felix Frankfurter, and the previous Supreme Court Chief Justice William Rehnquist, had no judicial experience either. In many ways, that was considered a significant asset.

My colleagues who now criticize Elena Kagan for not having judicial experience extolled the virtue of that very thing when the Senate was considering the nomination of William Rehnquist who similarly had no judicial experience.

I find it a significant asset for Elena Kagan. She brings different kinds of experiences to the Federal bench, and I think she will make an exceptional Supreme Court Justice.

I might say, every Solicitor General, the position Elena Kagan now occupies, since 1985, including Kenneth Starr and Ted Olson, have said that Kagan ''would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law . . . We support the nomination of Elena Kagan . . . and believe that, if confirmed, she will serve on the Court with distinction.'' That is from every former Solicitor General going back to the mid-1980s. That is, in my judgment, some support.

The determination of who sits on the Supreme Court in this Nation is one of the most important decisions the Senate makes. It is a judgment by the President, first of all, to send a nomination to the Senate, and then the advise-and-consent responsibility of the Senate is to make a judgment about that nomination.

The decisions the Court makes have a profound impact on the lives of the American people, have an impact on the questions of what kind of freedoms exist in this country. We have at this moment one of the most conservative courts we have had in a long time in this country, perhaps in this country's history the most conservative court.

A recent study by Richard Posner, who sits on the Seventh Court of Appeals, and William Landes, University of Chicago law professors, ranked all 43 Supreme Court Justices who have served since 1937 on their ideology and their decisions. Their conclusion was that four of the five most conservative Justices since Franklin Roosevelt sit on this Supreme Court right now.

I do not think we ought to be thinking of this in terms of conservative versus liberal. I only use that category because so many of my colleagues said it is very important to have a conservative Justice. What I want on the Supreme Court is a Justice who will use common sense in interpreting the Constitution and do so without an understanding that they are on one team or another.

Frankly, it is disappointing not just to me but most Americans to see that the Supreme Court has become a court of nine Justices who break into teams: Our side, your side; five on one side, four on the other. That is not what we would expect of the Supreme Court.

My hope would be that the Supreme Court would take a look at issues not as conservatives or liberals, but as Supreme Court Justices who have studied the law and who would make a commonsense judgment about what the Constitution of this country means.

So often I find that the Supreme Court stands logic on its head. The recent decision in Citizens United is an unbelievable decision to me: that corporations should be treated as individuals for the purpose of campaign financing without any precedent or plain text basis. They overturned a statute by Congress because they said corporations are people.

Oh, really? Most of us understand corporations are artificial people created by the State for the purpose of allowing an entity to be created, to sue and be sued, contract and be contracted with. But no one ever suggested corporations represent a real person. If so, I assume one of these days we will have corporations running for office, perhaps a corporate candidate for the Senate. We can have General Motors running against IBM. Get your money together because it is going to be expensive. Which desk in the Senate chamber will belong to which corporation?

If corporations are, in fact, real people, as the Supreme Court has ruled, then it will not be long before we have that kind of political race in our country. It is an absurd decision.

The 5-to-4 decision in the Court in Ledbetter v. Goodyear is another shocking example of standing common sense and a commonsense reading of the Constitution on its head. Lilly Ledbetter worked 19 years at Goodyear and had consistently gotten sterling, very high performance evaluations by her supervisors. Once she learned she had been paid much less than other workers who happened to be male—she learned this after 19 years, by the way. For 19 years, she worked hard, got paid, and then discovered all of those years she had been paid much less than the male counterparts doing exactly the same job.

She finally sued, and the Federal courts said: You are right; Goodyear, you have to make back payments. The appeals court then overturned it, and the Supreme Court ruled that this woman had to have taken action within 180 days of the discrimination beginning.

The fact is, she could not have done that in the first 180 days. She did not have the foggiest idea they were mistreating her, saying: If you are a man, you get this salary, and if you are a woman, you get this salary for doing the same thing, working side by side. She did not discover they were mistreating her for 19 years.

The Supreme Court did not care about that. They just said that if she did not pick it up in 180 days, sorry, out of luck, tough luck. It stands logic on its head once again.

The fact is, the Supreme Court has a profound impact in terms of the way they interpret the Constitution of the

United States. What I have seen recently and certainly in the case of Citizens United—and I believe it is the case in Ledbetter v. Goodyear—the Supreme Court too often these days divides into teams. By the way, the team that seems to be winning is the team on the side of the powerful, the team on the side of the big interests, the team on the side of the corporate interests. That ought not be the way the Supreme Court operates.

I came to support the Kagan nomination because I think she is someone with a facile, interesting mind who is going to bring a new spark to the debate among Justices about what this Constitution means. I do not know if she is a liberal or a conservative. I don't care very much. What I care is that we put some people on the Supreme Court we believe have the capability to make good decisions—decisions that will make life in this country better, that will reflect accurately the interpretation of the U.S. Constitution.

I hope very much when the dust settles and the vote is taken that we will have a very strong vote in support of Elena Kagan to become the next Supreme Court Justice. I think her background, her skill, her capability will make her an outstanding Supreme Court Justice. I will be proud to vote for her nomination when we have that vote this week.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, Solicitor General Elena Kagan has been nominated to fill the upcoming Supreme court vacancy left by the retirement of Justice John Paul Stevens.

I know of few, if any, responsibilities of the Senate that are more important than the confirmation process providing, in the terms of the Constitution, ''Advice and Consent'' to the nomination of an individual to serve for life on the U.S. Supreme Court.

There are two constitutional responsibilities that are invoked every time a nominee is chosen. One is by the President of the United States. It is his prerogative to choose whomsoever he wishes. But that is not the end of it. The second constitutional duty that is invoked anytime a vacancy occurs and a nomination is made is that of the Senate to provide, again in the terms of the Constitution, ''Advice and Consent'' on the nomination. That is what we are engaged in doing now—in deciding whether that advice and consent should be, yes, she shall serve, she shall be confirmed or, no, she should not be confirmed.

We know judges are different. In the words of the high school civics class, we are called the three branches of government, and all three serve different functions. But the role of the judge is entirely different from the role of a Senator or the role of the President because they are nominated and appointed to serve for life and protected from having to run for office and seek election. They are given a limited but very important role in our government; that is, to render impartial justice, to make decisions based on the law, not based on perhaps their own political or ideological preference or a political agenda.

I think it is very important that this process be fair and dignified, and I commend not just the chairman of the Judiciary Committee, Senator LEAHY, but the ranking member, Senator SESSIONS of Alabama, who is in the Chamber, for making sure this nominee got the kind of confirmation hearing in the Judiciary Committee that, frankly, she deserves and that every nominee deserves whether or not they are confirmed. But at the same time, we need to make sure in addition to a dignified and fair process that it is thorough and it is careful and it is comprehensive.

It is vital, in my view, to recall the core principles that should guide the Senate in carrying out its constitutional duty because I think today there is more of a sense than there has been at any other time in my adult life that the Federal Government simply does not recognize any constraints imposed upon its authority under the Constitution. Frankly, I think there is a widespread feeling across the country that the Federal Government—the National Government—believes it is, in effect, the only government in our country anymore and that the States and local governments are just the servants of the National Government.

But that isn't, of course, how our Framers of the Constitution conceived of this unique form of government known as federalism, where the Federal Government, under our Constitution, is a government of delegated—or sometimes it is called enumerated—powers, and all rights—or all power—not given to the Federal Government are reserved, under the terms of the tenth amendment of the Constitution, to the people and to the States.

I am afraid that Washington, DC, and particularly this Congress at this particular time, seem to have that turned around. Unfortunately, I worry that a Supreme Court Justice who does not recognize the limited nature of the authority given to the Federal Government, and who isn't willing to enforce it, is not qualified to serve on the U.S. Supreme Court.

As the Federalist Papers remind us in Federalist 78:

> The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.

That is a little archaic—that kind of language, of course, going back a couple of centuries—but, basically, it means the people who are responsible for making policy are those who are elected and who have to stand before the people and ask for their vote; namely, the Members of Congress or the Chief Executive, the President, and not judges who are completely insulated from any political accountability for their decisions.

The only reason the Constitution gives that sort of lifetime tenure and protection from the voters is because under the Constitution judges are not supposed to be making policy but merely enforcing the law that is made by the Congress and the President. It is very important that the power to make new laws belongs to the people—we the people—and not to unelected judges.

When the Supreme Court presumes to create new rights, the Justices take away the power of the people to govern themselves through their elected representatives. It is completely turning democracy on its head—this idea of saying judges ought to be making policy even though unelected and serving with lifetime tenure and substituting their view for the views of the people and their elected representatives. That is not the way our democracy is supposed to work.

Some have disagreed over the years and embraced this concept of judicial activism. According to those who subscribe to this view, the Constitution is somehow not a written document that we can read and understand what is in it, but it has become a ''living document,'' which has changed over time, even though the words on the paper remain the same. Unfortunately, this notion of a living document often is an excuse for judges to reach a desired outcome or a result in a lawsuit. This activist view takes the power to make and change the law away from we the people and gives that power to unelected judges who are insulated from any kind of accountability for their decisions, and it lets the Supreme Court decide what rights we have and what rights we don't have, which is the opposite of what the Framers thought they were doing when they wrote our constitution and when the States ratified it.

The question raised by every Supreme Court nomination is whether the nominee believes in this activist vision for judges or whether, in contrast, they believe in a traditional role for judges. The question is, Will the nominee enforce a written constitution and laws passed by Congress or will they presume to be able to invent new rights according to their subjective view of the law? Will the nominee enforce a written constitution or will he or she see that it is their job to change the Constitution to match their policy preferences when they do not like the outcome?

To be confirmed, I believe a nominee must establish that he or she should embrace the role of a traditional vision of a judge. I believe that is absolutely critical because someone who presumes to say: After I get confirmed, I am going to call cases the way I see them; and if I don't like the way the Constitution calls for those cases to be decided, or the way Congress has written

the law, I am going to substitute my opinion for that and I am going to twist the law to reach a particular result—in my view, a judge who presumes to be a lawmaker by twisting the law to accomplish a particular result, in effect, becomes a lawbreaker. A judge who presumes to be a lawmaker, I believe, is a lawbreaker.

Elena Kagan, our nominee, is obviously enormously bright. She has excellent academic credentials and has had an accomplished career. Her testimony before the committee, however, did not persuade me that she agrees with this traditional role for a judge. In fact, her testimony about judicial philosophy is open to multiple interpretations and was intentionally vague. In her own responses following the hearing, for example, Solicitor General Kagan indicated that she would decide cases based on not the written Constitution, not the laws passed by Congress, but based on her ''constitutional values.'' But she acknowledged that her constitutional values can point in different directions at different times and claimed that she would exercise prudence and judgment in resolving the tension between them.

Well, that all sounds pretty fine and well, but what that means is she would not agree that her decisions should be confined to the written Constitution that has been ratified by we the people and the laws passed by the elected representatives of the American people, for which we are electorally accountable every election. She presumes, it seems to me, by her vague and subjective language, to suggest that her constitutional values—which point in different directions depending on the case—and the fact that she says she would exercise prudence and judgment in resolving tensions is somehow a substitute for taking an oath to uphold the Constitution and laws of the United States. That is simply unacceptable.

In voting on a Supreme Court nominee, I think we need more certainty than the simple assurance that a nominee would exercise their judgment. Of course, we expect for the nominee to exercise judgment, but that is not sufficient. We need a Justice who will follow the law, someone who will follow and enforce the Constitution of the United States. You know what. If we don't like the Constitution as written, and we think it needs to be amended, well, under article V of the Constitution there is a process to do that. And you know what. If we don't like the law Congress makes, well, Congress, of course, is free to change it. But if we the people still don't like the way Congress writes the law, and they refuse to respond to the will of the people, we have a right to replace Members of Congress. That is the way a democracy is run, not by a judge dictating to us what he or she thinks is good for us.

In voting on a nominee, I think we need more assurance from the nominee than she will simply exercise her judgment and she will exercise prudence in resolving tensions in the constitutional values.

Solicitor General Kagan also testified the Constitution is written in general terms that enable the courts to change the law in response to ''new conditions and new circumstances''—changes that she testified occur ''all the time.''

She says that because the Constitution is written in general terms, the courts are empowered to change the law in response to new conditions and new circumstances—changes that she testified ''occur all the time.''

Well, I have an alternative suggestion. Rather than ceding to an unelected Supreme Court or a Federal judiciary, why isn't it that we the people have the right to petition Congress to change the law? That is the way democracies are supposed to work. It is the job of a judge to enforce that law, and if we don't like the way the Constitution is written, well, we have passed 27 amendments during the course of our history amending the Constitution. But that reserves the right to we the people and does not cede that authority to any unelected, lifetime-tenured judge.

I was also troubled by a couple of other specific areas and her interpretation of the law—one that has to do with the power of the Federal Government. I mentioned that a moment ago. Under the commerce clause of the Constitution, the Supreme Court has previously basically given the Federal Government almost limitless powers.

We have seen that at play in the debate over the individual mandate in the health insurance bill that was recently passed, with an unprecedented reach of Federal power into your living rooms, where we are sitting on our couches, and which says: You know what. The Federal Government demands that you purchase a government-approved health insurance policy. If you don't, we are going to penalize you.

That power is unprecedented. That is why it is being litigated now.

But Solicitor General Kagan did not seem to recognize that the Federal Government's powers are one of enumerated powers, delegated by the States and by the people, and all rights not delegated were reserved to the people and to the States.

I was also troubled by her testimony with regard to the second amendment—the right to keep and bear arms. She did say the recent decisions in Heller and McDonald are ''settled law,'' but I worry that her interpretation of settled law means until there are five new Justices who take a look at that settled law and just decide to change it.

Unfortunately, we saw the same sleight of hand with Justice Sotomayor's testimony regarding the second amendment. Last year, she testified that Heller was settled law. But last month, she joined in a dissenting opinion in McDonald urging it be overturned, saying she did not believe the second amendment conferred a fundamental individual right to keep and bear arms. I think the second amendment, and all of the amendments of the Constitution, in the entire Constitution, are too important to leave to such an empty promise.

Madam President, I see my friend and colleague from Utah here to speak. Let me just say that the last thing I wanted to address—and I will plan on coming back, assuming we have enough time to talk about it—is, frankly, the stigma that Ms. Kagan and the folks at Harvard imposed on our men and women of the military by banning them from the Career Services Office at Harvard Law School and, in effect, stigmatizing them and causing people to disrespect them, even though they were merely applying the law that Congress passed and over which they had no control.

I am very troubled by that, and I will come back to talk about that more as time permits. But for these reasons I have given, and others I will expand upon later, I oppose the nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I compliment the distinguished Senator from Texas. There is hardly anybody in this body who can equal the expertise and experience he has, not only as an attorney general in his State but also as a justice on the Texas Supreme Court. With that experience, he is someone we should all listen to. I thank the distinguished Senator for his comments.

I rise today to discuss the appointment of Elena Kagan to be Associate Justice of the U.S. Supreme Court. The Senate's role of advice and consent is a check on the President's power to appoint—not a substitute for it. At the same time, the Senate's role must be more than an empty formality or a mere rubberstamp.

I have examined Ms. Kagan's record, I participated in her entire hearing before the Judiciary Committee, and I have listened to supporters and opponents both in Utah and across the country.

I can say this: I lectured at Harvard when she was dean at Harvard. I appreciated the way I was treated while I was there. It was clear she probably did not agree with some of the things I was saying, but she was courteous and decent. I like her personally. But if I apply the standard I have consistently used for judicial nominees, that standard leads me to conclude that I just cannot support her appointment.

Qualifications for judicial service include both legal experience, which summarizes the past, and judicial philosophy, which describes the future. Two categories of legal experience stand out among the 111 men and women who have served on the U.S. Supreme Court. Two-thirds of them, including every current Justice and the

Justice Ms. Kagan has been nominated to replace, had previously been a judge. The 39 previous Justices who lacked judicial experience had an average of 21 years of legal practice. In other words, Supreme Court Justices have had experience behind the bench as a judge, before the bench as a lawyer, or both.

Ms. Kagan has neither. She was a junior associate in a large law firm for only 2 years. She has never tried a case, never argued before any appellate court before becoming Solicitor General just last year. I am sure the reason they made her Solicitor General was to give her some experience so they could do what they have now done and nominate her to the Supreme Court. Although Harvard law students must contribute at least 40 hours of law-related pro bono service as a condition of graduation, Harvard's former Dean Kagan appears to have done none at all.

Ms. Kagan's experience is, instead, academic and political. One of my Democratic colleagues said here on the floor that Ms. Kagan's best qualifications for the Supreme Court are her experience making policy and her ability to build consensus. I, for one, believe that the line between the political and the judicial is already too blurred. While the political or policy mindset focuses on achieving desirable results, judges must focus on following the right process.

Without any real experience or grounding in the actual practice of law, Ms. Kagan's experience makes me more, not less, skeptical of her suitability for the Supreme Court. It puts even more emphasis on her judicial philosophy, which is the second and more important qualification for judicial service.

As I said at the confirmation hearing for Justice Ruth Bader Ginsburg in 1993, there must be clear and convincing evidence that a nominee understands the proper role of the judiciary in our system of government. What is the proper role of judges in our system of government? One of my predecessors as Senator from Utah, George Sutherland, served on the Supreme Court for 16 years. He distinguished between interpreting the Constitution and amending it in the guise of interpretation. Confusing the two, he wrote, converts ''what was intended as inescapable and enduring mandates into mere moral reflections.'' These are fundamentally different judicial philosophies that identify inherently different relationships between the judge and the law.

The central confirmation question before us today is what kind of a Justice Ms. Kagan would be. The answer begins with the President who nominated Ms. Kagan. When he was a Senator, President Obama said judges decide cases based on their deepest values, their core concerns, and what is in their heart. As a Presidential candidate, he said he would appoint judges who have empathy for certain groups. As President, he has nominated judges who believe they may find the Constitution's meaning in such things as social practices, evolving norms, practical consequences, and even foreign law. President Obama has clearly taken sides in the judicial philosophy debate.

Ms. Kagan has identified a general and a specific source of evidence for us to examine. She told the Judiciary Committee generally that ''you can look to my whole life for indications of what kind of judge or justice I would be.'' And she told one of my Judiciary Committee colleagues specifically that we can learn a lot about her ''by seeing how I did when I worked at the White House.''

In graduate school, Ms. Kagan wrote that the Supreme Court may overturn previous decisions because, as she put it, ''new times and circumstances demand a different interpretation of the Constitution.'' She wrote that judges may ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' Ms. Kagan was describing a judicial philosophy guided by moral reflections rather than by enduring mandates.

When asked about this thesis at her hearing, Ms. Kagan said, ''Let us just throw that piece of work in the trash, why don't we?'' I cannot do that. While every piece of a nominee's record must be viewed in its proper context, I cannot simply ignore whatever may raise questions or doubts about Ms. Kagan's judicial philosophy. It was Ms. Kagan, after all, who told us to examine her whole life for evidence of the kind of Justice she would be. This obviously includes writings such as her Oxford graduate thesis.

Writing as a law professor several years later, Ms. Kagan agreed that in most cases that come before the Supreme Court, the Justice's own experience and values are the most important elements in the decision. If that is too results-oriented, Ms. Kagan wrote, so be it. Well, to be candid about it, it is indeed too results-oriented and echoes the same activist approach Ms Kagan embraced in her graduate thesis.

While Ms. Kagan has not herself been a judge, she has singled out for particular praise judges who share this activist judicial philosophy. In a tribute she wrote for her mentor, Justice Thurgood Marshall, for example, she described his belief that the Supreme Court today has a mission to ''safeguard the interests of people who had no other champion.'' Ms. Kagan did more than simply describe Justice Marshall's judicial philosophy but wrote: ''And however much some recent Justices have sniped at that vision, it remains a thing of glory.''

Justice Marshall was a pioneering leader in the civil rights movement. He blazed trails, he empowered generations, he led crusades. But he was also an activist Supreme Court Justice. He proudly took the activist side in the judicial philosophy debate. Some on the other side have suggested that honestly identifying Justice Marshall's judicial philosophy for what it is somehow disparages Justice Marshall himself. I assume that this ridiculous and offensive notion is their way of changing the subject because they cannot defend an activist, politicized role for judges.

In 2006, when she was dean of the Harvard Law School, Ms. Kagan praised as her judicial hero Aharon Barak, who served for many years on the Supreme Court of Israel. Aharon Barak has been described by U.S. circuit judge Richard Posner, one of the leading lights on the judiciary in this country, as an aggressively interventionist judge who has ''created a degree of judicial power undreamt of by our most aggressive Supreme Court Justices'' and for whom ''the judiciary is a law unto itself.'' Ms. Kagan did not simply describe Justice Barak's judicial philosophy or praise him as a person; she called him ''the judge or justice in my lifetime whom I think best represents and has best advanced the values of democracy and human rights, of the rule of law, and of justice.''

My friends on the other side of the aisle try to spin away Ms. Kagan's praise of Justice Barak by noting that Justice Antonin Scalia once warmly introduced him. But while Justice Scalia said he had ''respect for the man,'' he made clear that he and Justice Barak had ''fundamental philosophical, legal and constitutional disagreements.'' Ms. Kagan, in contrast, said that Justice Barak was her judicial hero and represented the rule of law better than any other judge. It appears that the very first time she distanced herself from his judicial philosophy was at her confirmation hearing.

When she was dean, Ms. Kagan had opportunities to choose between her personal views and the law. Federal law, known as the Solomon Amendment, requires that military recruiters have equal access to students as other employers. Harvard protested the don't ask, don't tell law regarding military service by homosexuals by allowing military recruiters access not through its Office of Career Services but through the Harvard Law School Veterans Association, a private group with no office, no staff, and no budget. The Defense Department told Harvard in 2002 that this policy did not comply with the Solomon Amendment.

Ms. Kagan, who had very publicly denounced the military service law, joined a lawsuit challenging the Solomon Amendment. Within 24 hours of the decision of the U.S. Court of Appeals for the Third Circuit enjoining it, she again banned military recruiters from the career office even though the ruling did not apply to Harvard, which is in the First Circuit. In other words, she reinstated a policy that she knew violated Federal law and even kept that policy in place when the Third Circuit stayed its own injunction. Ms. Kagan could have opposed the law in various ways but chose to do so in a

way that undermined the military and defied Federal law. Her personal views drove her legal views.

Ms. Kagan also told us to examine her service in the Clinton administration, a period during which she has said she acted as a policy adviser rather than as a lawyer. She was, for example, a key player behind the Clinton administration's extreme abortion policy, including its defense of the barbaric practice of partial-birth abortion. In a 1996 legislative strategy memo, she labeled as a disaster a proposed statement by a key medical group that there exists no circumstances in which partial-birth abortion is the only option for doctors to take. That was the organization representing the obstetricians and gynecologists. She drafted and persuaded that group to adopt language with a much different political spin. At her hearing, Ms. Kagan offered the implausible claim that she was merely trying to ensure that the medical group accurately expressed its own medical opinion. In other words, the disaster she identified was a PR disaster for the medical group, not a political disaster for the Clinton administration. That is too hard to believe, especially in light of evidence that Ms. Kagan also sought to persuade the American Medical Association to change its similar conclusion that partial-birth abortion is not medically necessary. Political objectives appear to have trumped medical science.

Let's understand what partial-birth abortion is, this barbaric practice. It is where they turn the child around, even a child capable of living on its own outside the womb, until its head is coming first. Then they ram scissors or some other sharp instrument into the back of the skull, suck out the brains, then pull the baby out and say it is not a human being. I don't know anybody who should not consider that tremendously offensive and barbaric.

In May 1997, after President Clinton had vetoed the Partial Birth Abortion Ban Act, Ms. Kagan wrote a memo recommending that he support a sham ban offered by Democratic Senators. Everybody here knew it was a sham. She argued that this step might attract votes from Senators who otherwise would vote to override President Clinton's veto. Since the substitutes would not pass—she knew they would not—partial-birth abortion would remain legal. Whether you are for or against abortion, most people find that practice barbaric.

Significantly, however, Ms. Kagan noted that the Office of Legal Counsel had concluded that these substitute bans were unconstitutional under the Supreme Court's Roe v. Wade decision. There is no indication that she disagreed with this conclusion. The point is that Ms. Kagan urged a purely political position on abortion that was at odds with what the Clinton administration then believed the Constitution required. That is something that really bothered me and I do not think she was forthcoming about it at the hearing. It especially bothered me because it looked once again like politics trumped the law.

Ms. Kagan's hearing did nothing to temper the activist picture that emerges from her record. She chose an approach to answering questions that was far different from what she once argued was necessary for the Senate properly to evaluate nominees and educate the public. I asked three times, for example, if she had written the 1996 memo I discussed a minute ago. Mind you, the memo has her name on it and includes a page of her own handwritten notes. After three tries, Ms. Kagan would say only that it was in her handwriting which I suppose leaves open the possibility that it was forged. It was certainly her prerogative not to give Senators anything meaningful during her hearing, but it leaves the rest of her record as the basis for determining what kind of Justice she would be.

Other Senators will discuss in more depth additional troubling issues raised by her record. These certainly include positions she has taken and arguments she has made that signal a sweeping, unprecedented view of Federal Government power. At the hearing, for example, I questioned her about the troubling position she took before the Supreme Court in the Citizens United v. FEC case. She argued that the first amendment allows the Federal Government to determine who may say what, when, and in what manner about political candidates. She argued that the government may ban certain print or electronic books, movies, and pamphlets that mention candidates close to an election. Political speech is the speech perhaps most protected by the Constitution. Yet she argued that the government may silence unions, for-profit corporations, nonprofit groups and even tiny mom-and-pop businesses, if they organize legally as a corporation. Thankfully the Supreme Court sided with freedom of speech.

As if that breathtaking degree of Federal power were not bad enough, Ms. Kagan also worked in the Clinton administration to weaken and limit other individual rights such as the second amendment right to keep and bear arms. In her hearing, Ms. Kagan refused to acknowledge any real limits on the Federal Government's power, which the Supreme Court has already expanded far beyond anything America's Founders intended, to regulate everything imaginable in the name of interstate commerce.

I will summarize. Ms. Kagan's academic and primarily political experience make critical the need for clear and convincing evidence that she is committed to the proper role of judges in our system of government. The critical confirmation question is the kind of Justice Ms. Kagan would be. Will the Constitution control her, or does she believe she may control the Constitution? Looking where she directed me to look, I believe the evidence shows she embraces an essentially activist view of judicial power.

This is a grave decision and it is about more than simply one person. The liberty we enjoy in America requires that the people govern themselves and that, in turn, depends upon the kind of Justices who sit on the highest Court in the land.

George Washington said in his Farewell Address:

> The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.

Judges who bend the Constitution to their own values, who use the Constitution to pursue their own vision for society, take this right away from the people and undermine liberty itself.

As my colleagues can see, I am very worried about this nomination. I never voted against a Supreme Court nominee before when I voted against now Justice Sonia Sotomayor but I think I have been proven right in a number of instances. Let me mention one. She basically said that the Heller case on the right to keep and bear arms was settled law. Yet within a year or so, she voted that the right to keep and bear arms is not a fundamental right.

I hope that soon-to-be Justice Kagan proves me wrong. I hope that she will use her legal mind and the abilities she has to uphold rather than tear down the Constitution. I hope she will do what the Founding Fathers expected all Justices on the Court to do. But like Justice Sotomayor, I think the evidence about her judicial philosophy shows that I am right.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise to speak on the nomination of Solicitor General Elena Kagan to be an Associate Justice of the U.S. Supreme Court. I will not support General Kagan's nomination. I did not come to this decision lightly. As I said last August during the debate on Justice Sotomayor, the role of the Senate in the nomination of a Supreme Court Justice is to give its advice and consent on the President's nomination, with the Senate to judge whether an individual is qualified based on a number of factors. Among these factors are the nominee's education, legal experience, prior judicial experience, written record, judicial temperament, commitment to the rule of law, and overall contributions to the law. Based on my review of Elena Kagan's record and using these factors, I have determined General Kagan at this time does not meet the criteria for membership on our Nation's highest Court.

The President deserves deference in his nominations and, of course, Presidential elections have a direct impact on the makeup of our judiciary; that is to say, elections do have consequences.

But Senate confirmation should not be a simple mechanical affirmation of the President's selection, especially when the nominee will enjoy a lifetime appointment. A Senator is duty bound to conscientiously review the qualifications of the President's nominee and make an independent assessment of the nominee's qualifications.

General Kagan is well educated, intelligent, bright, and engaging, and advanced quite rapidly in her career of teaching and law school administration. But one must ask, is that enough? I believe it is not. I believe a judicial nominee must have substantial experience in the law, especially when the nominee is seeking a lifetime appointment to the highest Court in the land.

After reviewing her background, I believe General Kagan does not have that relevant experience. General Kagan is the first nominee to the Supreme Court with no prior judicial experience since 1971, almost 40 years ago. While I do not believe a lack of judicial experience should bar one from serving on the Supreme Court, I note that reviewing prior judicial service is obviously the easiest way to assess a nominee's fitness for the Court. This lack of judicial experience does not prevent her nomination, but in my opinion it does shift the burden to the nominee to demonstrate her relevant experience.

For example, when the Senate considered Justice Sotomayor's nomination, there were over 1,000 prior opinions one could review to decide if she was ready for the job. With General Kagan, there are none. When I asked her to name opinions she worked on with Justice Marshall with which she disagreed, she stated she could not remember any individual opinion she worked on, much less whether she disagreed with Justice Marshall on any of them. She could not remember.

During our meeting, General Kagan noted her service as Solicitor General, another job I did not think she was qualified to hold, and said it was relevant because she was the Solicitor General. I agree it is relevant, but her time as Solicitor General has been too short. Since President Kennedy's Solicitor General, Archibald Cox, only one confirmed Solicitor General has served for a shorter period of time than General Kagan.

General Kagan argued her first case before the Supreme Court less than a year ago, and now we are going to confirm her as a member of that Court?

If we base her qualifications on her earlier legal experience, her experience is particularly limited. General Kagan worked for 2 years as a practicing attorney. Justices Rehnquist and Powell, the last two Supreme Court nominees without prior judicial experience, each spent many years in the active practice of law. Justice Rehnquist practiced in Arizona for over 16 years. Justice Powell was a partner in a major Virginia law firm for over 25 years and in practice for 38 years. General Kagan has 2 years of experience in private practice and 1 as Solicitor General.

I also think it is worth noting that the independent Congressional Research Service has found that, on average, the 39 Justices who lacked prior judicial experience had over 20 years of experience in the practice of law. General Kagan's experience pales in comparison.

During Justice Sotomayor's confirmation, I spoke about how President Obama's standard for selecting judicial nominees based on what was in their heart flew in the face of meritocracy—flew in the face of meritocracy. We, as a nation, aspire to hire people for jobs based on their skill, not on where they are from or who they know. Justice Sotomayor, in addition to her 17 years of total service on the trial and appellate benches, was in private practice for 8 years and was a district attorney for 4 years. Justice Sotomayor's experience as a lawyer and a judge, her judicial temperament, and the fact that her opinions were within the judicial mainstream gave me confidence that she had the relevant experience to sit on the Supreme Court.

Because there is such a limited record with General Kagan and because she has gone out of her way, quite frankly, not to answer questions, I have no idea what she will do on the bench and whether she will be able to suppress her own values to apply the law. The fact is, we really do not know much about her views.

Frankly, I have been surprised by some of my colleagues who attempt to compare her to the famous Justice Brandeis, another Justice with no prior judicial experience. Justice Brandeis practiced the law for almost 30 years before his nomination, much of his practice being pro bono in his later years. Furthermore, Justice Brandeis is widely regarded as one of the great legal minds of not just his time but of American history, having developed numerous areas of modern law from scratch. Yet, again, General Kagan pales in comparison.

In my meeting with General Kagan, I asked her about how little writing she had published, and she responded that she had more academic writing than other members of the Supreme Court. This is factually incorrect and misleading. First, this is incorrect. Justice Scalia is widely published with numerous articles and books. Justice Ginsburg went so far as to learn Swedish to coauthor a book on Swedish judicial procedure. And Justice Breyer was one of the most foremost authorities on administrative law, with many books and articles to his name before joining the Court. Second, it is misleading because each Justice publishes hundreds of pages a year in the form of opinions, greatly eclipsing General Kagan's academic production.

There are over 800 Federal judges, many of whom clearly have the experience, intelligence, and legal skill to serve on our Supreme Court. Additionally, if one believes, which I do not, that the Federal judiciary is somehow out of touch with our society, thousands, if not tens of thousands, of State court judges are out there with lengthy judicial records, many ready to serve on the Supreme Court. I think back to Justice Sandra Day O'Connor, who was on the supreme court of the State of Arizona for 8 years before she became a member of the Supreme Court.

As an aside, only a former law professor would think that the dean of a law school is somehow more in touch with everyday people than a judge. Every day, a judge is presented with the facts of everyday life and must apply them to the law. A dean at a law school, surrounded by professors earning hundreds of thousands of dollars a year and donors worth millions and students soon to enter into a professional career, never gets to see everyday life and is never faced with the factory worker, the farmer, or any other hardworking blue-collar Americans. How is a law school dean more in touch—more in touch—with everyday people?

Some of my colleagues would like to have had a less liberal person nominated by the President. My position is, the President will surely nominate a liberal. The most important question is, Is that liberal nominee qualified to be a member of the Supreme Court? I would argue that General Kagan has been nominated based on her friendships and personal attachments with President Obama and others at the White House, not based on objective qualities that would indicate she is qualified to be a member of the U.S. Supreme Court.

In closing, lack of judicial experience should not be an absolute bar to serving on the Supreme Court. However, Solicitor General Kagan not only lacks judicial experience but has limited experience as a practicing attorney with only the last year as Solicitor General and 2 years as a junior associate making up her entire practice.

Additionally, General Kagan has had an extremely limited written record—I mean limited written record—which should make all of us unsure as to what sort of Justice General Kagan will be.

For these reasons, I cannot in good conscience support the nomination of General Kagan to be a member of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Mr. President, a number of comments have been made about Ms. Elena Kagan's actions at Harvard in barring the military from utilizing or having access to the Career Services Office and asking the veterans

group—that was not able, as they said—to somehow fill that role.

I will take a few minutes, as we have a few minutes left, to deal with one of the arguments I have heard my colleagues repeat; that, well, she did not reduce recruiting, therefore, no harm, no foul. I do not agree. There was a foul and there was a harm. But even if there had not been a harm, there was a foul.

It was very wrong to blame the U.S. military for the don't ask, don't tell policy, and very, very, very wrong to blame some young officer who was there to recruit people to serve in the JAG Corps of the U.S. military, perhaps having just returned from combat duty in Iraq or Afghanistan, and to be told: You can't come in the front door of the building. You can't use the recruiting services because we don't like your policy.

But it was not the military's policy; it was the Congress's policy. It was President Clinton's policy. He signed the bill. I do not believe that Ms. Kagan complained to President Clinton when she was on his staff for 5 years and he signed the bill. Was there any protest to him? No. Her protest was lodged, and the discrimination was directed against the men and women in uniform who defend our country, who had nothing to do with the policy.

That is a fact, and I do not think it is a matter that should be lightly dismissed. ''Oh, the recruiting didn't go down,'' they say. Well, let's just talk about that. They said she merely reinstated Harvard Law's pre-2002 policy, which forced the military to work through this veterans association, and recruiting did not suffer. But that is not true.

Harvard's pre-2002 policy—before she became dean—had obstructed military recruiting. As an internal memorandum authored by the recruiting chief of the Air Force JAG Corps in 2002 states—this is what the chief of recruiting for the Air Force JAG said:

> Career Services Offices are the epicenter for all employer hiring activities at a law school. . . . Without the support of the Career Services Office, we are relegated to wandering the halls in hopes that someone will stop and talk to us. . . . [D]enying access to the Career Services Office is tantamount to chaining and locking the front door of the law school—as it has the same impact on our recruiting efforts.

The military's ''after action reports'' from pre-2002 recruiting efforts organized through the veterans association on campus show mixed results, but recruiting clearly improved after her predecessor, Dean Clark, granted the military equal access through the Career Services Office. This is what the Air Force said:

> Since Harvard's policy change, the Air Force has . . . had very positive responses from a number of students. . . . [I]n the 16 months since Harvard's change in policy, we have attracted at least four Harvard students, when in the prior twelve years, we recruited a total of only nine.

That is while the discrimination was in effect.

The statistics reveal that our recruiting efforts have greatly improved since the change in policy by Harvard to comply with the Solomon Amendment. We only assessed 2 Harvard Law students in the 1990s.

This is not accurate, what we have been hearing. Then she reversed that policy and went back to the policy of discrimination. The reports show it obstructed their recruiting efforts. The chief of recruiting for the Air Force JAG Corps was repeatedly blocked from participating in Harvard's spring 2005 recruiting season, after Ms. Kagan changed the policy, saying this:

> Harvard is playing games and won't give us an OCI [On-Campus Interviewing] date; their official window for employer registration has closed. Their recruiting manager told me today that she's still ''waiting to hear'' whether they'll allow us.

The chief of Air Force JAG recruiting also recounted a conversation with Harvard's dean of career services after the close of the recruiting season, when you are supposed to be recruiting—they missed the whole season—this is what he says, talking about the dean.

The PRESIDING OFFICER. The 1-hour time of the minority has expired.

Mr. SESSIONS. Mr. President, I don't see anyone here—I ask unanimous consent to speak for 1 additional minute.

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

Mr. SESSIONS. The dean of career services told the Air Force JAG:

> He stated that the faculty had still not decided whether to allow us to participate in on-campus interviews. . . . I asked him if I could at least post a job posting via their office and he said no.

The Army was blunt in their afteraction report:

> The Army was stonewalled at Harvard. Phone calls and e-mails went unanswered and the standard response was—''We're waiting to hear from our higher authority.''

That certainly would appear to be Dean Kagan, who had reversed the policy, personally.

This is what the veterans group said when Dean Kagan reversed the policy and said: We want you to help take care of the military. We are not going to let them in our office. They are not worthy to be in our office. This is what they wrote and sent an e-mail to all the students:

> Given our tiny membership, meager budget, and lack of office space, we possess neither the time nor the resources to routinely schedule campus rooms or advertise extensively for outside organizations as is the norm for most recruiting events. . . . [Our effort] falls short of duplicating the excellent assistance provided by the HLS Office of Career Services.

To claim that 2005 had increased recruiting is inaccurate. The 2005 class at Harvard would have been recruited during the time the military enjoyed full access of the career services office before she reversed the policy, not in the spring of 2005, a mere 3 months before graduation. They were counting the graduates, not people who signed up. The recruiting has not been shown to increase after this effort.

Finally, I would note: What was the purpose of all this? Why did they have this policy? It was to harm and hamper the U.S. military in their effort to recruit on campus. Apparently, it was effective in reducing their ability. They had a direct intent to punish the military for a policy the military did not establish but Congress and President Clinton established and it was wrong then and it is wrong now.

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

Mr. SESSIONS. I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I am so honored to come to the floor with a number of women Senators to discuss the President's nomination of Solicitor General Elena Kagan to be the Associate Justice on the U.S. Supreme Court.

As is the Presiding Officer, I am a member of the Senate Judiciary Committee, and we both had the opportunity to question Elena Kagan and to listen to her brilliant and insightful responses. Everyone heard her, and no matter how anyone is voting on this nomination—although it is hard for me to understand how they could oppose her—I think there was very much consensus on this idea that she knew what she was doing, that she has done every job that she has had very well, that she has confronted very difficult situations, and that she has always been a leader and someone who can bring consensus. She consistently demonstrated the quality that some of us had already seen in her records; that is, of pragmatism and reasonableness and a consensus builder.

So I will save my remarks until later because I have been joined by the Senator from New York, Mrs. GILLIBRAND, who is from Elena Kagan's home State. While she may have worked in Massachusetts for quite a while, she actually came from New York. It is an honor to have Senator GILLIBRAND, who is also an attorney, joining us today.

I yield for Senator GILLIBRAND.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I thank the Senator from Minnesota for her leadership, for her guidance, for her distinguished career, and for her service on the Judiciary Committee. It is so meaningful to all of us to have her ability to review these candidates in such depth.

I am so proud to stand in support of Solicitor General Kagan's nomination to the U.S. Supreme Court. With his decision, President Obama has chosen an individual of the highest caliber, a women with an enormous history of achievement, a history of service and, perhaps most importantly, a history of bridge building.

Elena Kagan is widely regarded as one of the Nation's leading legal scholars. She is a stalwart defender of the Constitution, and through her sharp intellect, steadfast integrity, sensible

judgment, and extraordinary work ethic, Elena Kagan has made it clear she is eminently qualified to serve as a U.S. Supreme Court Justice.

Dean of Harvard Law School, magna cum laude from Harvard Law, editor of the Harvard Law Review, and summa cum laude from Princeton, these are just some of the many accolades she obtained during her vast and distinguished career.

Throughout the course of this nomination process, it has been made abundantly clear that Solicitor General Elena Kagan has a profound and exceptional understanding of the Constitution and our system of law. Unfortunately, it appears that some of my colleagues are determined to criticize Elena Kagan regardless of these facts. They can no longer find partisan or ideological fodder by which to create a straw man of opposition, so they are now questioning her intellect, her clarity of mind, and her temperament. It is deeply concerning to me that my colleagues would dismiss the judgment of every Solicitor General of the past 25 years and dismiss the views of law professors from all across the United States and even sitting Supreme Court Justices who have suggested that Elena Kagan is eminently qualified to sit on the Court.

These distinguished legal experts from across the country and across the ideological spectrum say Elena Kagan is not only an intellectual giant, but she is as qualified to serve on the Nation's highest Court as any of her other predecessors. Every Solicitor General over the last quarter century—Democrats and Republicans—wrote a letter of support for her nomination as Solicitor General, noting her brilliant intellect, her candor, and the ''high regard in which she is held by persons of a wide variety of political and social views.''

The support of Miguel Estrada, Ken Starr, and Ted Olson, along with the support of some of my Republican colleagues such as Senator LINDSEY GRAHAM, all speak to her ability to build bridges and to find common ground. These are the traits we need in a Justice when so many decisions right now are narrowly being decided at the 5-to-4 margin.

An attorney with over two decades of experience working in all three branches of the Federal Government, Kagan's breadth of experience will bring diversity to a Court consisting entirely of former judges. Many of the Justices on both sides of the aisle are quite fond of Elena Kagan from her time as Solicitor General and have commented on how her distinct professional background is a welcome contribution to the Court.

Based on her record of achievement, it is clear Elena Kagan possesses the temperament that will distinguish her as a consensus builder on a deeply divided Court.

Narrow 5-to-4 decisions by a conservative majority have become the hallmark of the Roberts Court. These decisions have often been overreaching in scope and have repeatedly ignored settled law and congressional intent. For example, in the Citizens United case, the Court not only disregarded the extensive record compiled by Congress but abandoned established precedent. Solicitor General Kagan's unique ability to build coalitions will be very helpful in bridging this very serious divide.

Since the announcement of her nomination, I know more than a few of my colleagues have struggled to find a viable reason to object to her nomination. The bottom line remains that there has yet to be a credible reason to oppose this outstanding confirmation.

I look forward to enthusiastically casting my vote in support of General Kagan's nomination and confirmation to the Supreme Court of the United States. I urge my colleagues to join me and support her nomination as well.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New York for that enthusiastic endorsement. I like how she took on some of these criticisms that have been lodged against Solicitor General Kagan. I also understand that at least one of my colleagues who spoke out in opposition has stated that, in his words: ''I believe she does not have the gifts and qualities of mind or temperament that one must have to be a Justice.'' Well, anyone who sat through those hearings or watched them on TV, as Senator GILLIBRAND has pointed out, would have to disagree. Anyone would have seen an incredibly smart, intellectually engaged person who answered Senators' questions astutely and whose energy never seemed to flag. Neither did her sense of humor, I will add. She had immediate recall about every single case or constitutional doctrine that she was asked about, and to say she doesn't have the gift or quality of mind is simply ridiculous.

This is a woman who is a trailblazer: the first woman dean of Harvard Law School, first woman Solicitor General. To say she does not have the gifts or the qualities of mind to be a Justice is nothing short of ridiculous.

I next will yield for someone who knows something about having a good temperament and a good quality of mind, the Senator from New Hampshire, who is also a trailblazer in her own right: the first woman to serve as both a Governor and a Senator, Mrs. JEANNE SHAHEEN of New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Thank you very much, to my colleague, Senator KLOBUCHAR, and a special thanks for bringing us together this afternoon to speak on this important nomination.

I am very pleased to once again be able to come to the floor and speak in support of the confirmation of Elena Kagan to be the next Justice of the U.S. Supreme Court. I am happy to join Senators KLOBUCHAR, GILLIBRAND, MIKULSKI, and HAGAN to support this excellent candidate for the High Court.

The members of the Senate Judiciary Committee did a thorough job in vetting Ms. Kagan, and I thank them all for their hard work. I think the hearings they held on her nomination revealed three things; first, that Elena Kagan is a person of good character; second, that she is someone who understands and respects the rule of law and the role of courts in our democracy; third, that she is indeed qualified to be a Supreme Court Justice. I believe the President chose wisely when he nominated her.

Back in June, after the nomination, I spoke about Ms. Kagan's impressive list of professional accomplishments, so I am not going to repeat them this afternoon. It is clear Elena Kagan has thrived in a number of settings and that she will bring a diverse set of experiences and abilities to the Court. In her rise to the top of the legal profession, Ms. Kagan gained practical experience that forced her to evaluate the impact of laws on people. She also has a track record of building bridges across the ideological spectrum, something I saw firsthand when I was the director of the Institute of Politics at the Kennedy School at Harvard and she was dean of the Harvard Law School. She had that reputation on campus as someone who could work with everyone. These are critical skills for a Justice, and I am glad we have a Supreme Court nominee before us who has a variety of real-world experiences and has not been isolated only within the judicial system.

Perhaps most impressively, in her latest role as Solicitor General, Ms. Kagan has served as the representative of the American people before the Supreme Court. She has represented us forcefully in complex cases, including ones that dealt with major issues, such as our ability to conduct the war on terror and the amount of influence that big businesses should have in our elections. As is the case for every attorney who regularly appears in court, she won some and she lost some.

But above all, Ms. Kagan has shown she is capable of analyzing the law at the level required by the Nation's highest Court. She has the talent and the intellect to join the Court as a Justice. I think that is something on which most of us can agree. Unfortunately, the politics that have come to surround judicial confirmations in modern times mean that Ms. Kagan's qualifications to serve on the Court are just one piece of this debate. I wish this weren't the case.

These proceedings should force us to take a hard look at the role our Founders intended for the Senate in the confirmation process. When we provide advice and consent on judicial nominations, Senators are not supposed to be substituting their individual political judgments for those of the President.

We are collectively supposed to be checking that a nominee is qualified, that a nominee falls somewhere in the mainstream of legal philosophy, and that a nominee respects the rule of law and understands that judges are not meant to be politicians.

A few weeks ago, Senator LINDSEY GRAHAM, as my colleague from New York, Senator GILLIBRAND, alluded to earlier, gave a powerful reminder of this when he spoke at the Judiciary Committee's final hearing on Ms. Kagan. I appreciated especially his reference to Alexander Hamilton's words in Federalist Paper No. 76: The Senate should have a ''special and strong reason for the denial of confirmation.'' We should remain focused on that standard, keep politics to a minimum, and really strive to conduct an evenhanded review of nominees.

Prior to joining the Senate, I had the privilege of serving as Governor of the State of New Hampshire. New Hampshire is one of those States where judges are not elected but appointed by the Governor. Once appointed, they can serve until age 70. So having been in the position of appointing judges, I fully understand that making lifetime appointments to our courts is a very solemn responsibility.

Knowing that, I believe the President has made an excellent selection. In Elena Kagan, we have been presented with a nominee who is a loyal American, an upstanding individual, and a supremely talented lawyer. Lawyers are, by definition, legal advocates for others. It is to be expected that, as a lawyer, Elena Kagan may have advocated certain positions with which we may not agree. That, however, does not disqualify her from being a judge. It almost goes without saying that her record presents no ''special and strong reason'' to vote against confirmation. These facts have been recognized by conservatives both in this body and outside of it who are willing to drop political rhetoric and speak candidly. This includes Senator GRAHAM as well as my own senior Senator from New Hampshire, JUDD GREGG. I hope more of my colleagues from across the aisle will follow their lead.

I intend to proudly cast my vote in favor of Elena Kagan's confirmation, and I am confident that, as a Justice, she will serve this country with honor and distinction.

I yield back to my colleague from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New Hampshire, my neighbor in the Chamber. I thank her for her fine remarks.

I was listening when she talked about Senator GRAHAM's comments. I truly believe that was a moment of leadership, where basically he said he had spent a lot of time in the last 2 years trying to elect a different person for President, but President Obama won and he respected his nominee and that his job was to look to see if that person was qualified to be on the Supreme Court. Despite political differences—and he didn't agree with everything she said—he said his job was to see if she was qualified. He said at the hearing, which I will never forget, that he was proud to be supporting her.

I imagine the Senator from New Hampshire has had similar experiences in her State with having to grapple with those kinds of things when appointing judges.

Mrs. SHAHEEN. That is correct. Like the Senator from Minnesota, I am certainly pleased to see people who have been willing to come out and take a leadership position and say: Even though we understand the nominee may not be one who is supported by all of the Members of our party, we still believe she is qualified, and we will support her.

Ms. KLOBUCHAR. One thing about Elena Kagan: When you look at her series of jobs, you realize she has been in the arena as a manager, a teacher, an adviser, a consensus builder, and a lawyer. In every job, she has worked very hard and has done very well.

Her work on the front lines tells me she has the practical experience in thinking about the impact of the law and policies on ordinary people, and I think sometimes that is missing in some of these decisions. There is a case I dwell on involving prosecutions and what kind of evidence can come before the court when you are dealing with some of the DNA tests, and I disagree with the recent Court decision that actually wasn't decided on ideological grounds but I believe was decided in an impractical way. I believe Solicitor General Kagan will bring that kind of practicality to the Court. When you are involved in considering the nitty-gritty details of different policies, when you are actually in the game as a decisionmaker, as she has been, you have to figure out when to compromise and when to hold firm. You have to know what the consequences of your recommendations will be.

As a law school dean, Elena Kagan was widely credited with bringing together a faculty that was rife with division. Whether she was helping recruit talented professors from across the political spectrum or later, when she was working with Senators from both parties on tobacco legislation, she forged coalitions and found resolution between seemingly intractable parties.

It strikes me that it takes a pretty extraordinary person who, after working in the Clinton administration, still gets a standing ovation from the conservative Federalist Society; who inspires a group of 600 law students, who can be a bit cynical, to show up for a rally wearing ''I love Elena'' T-shirts; someone who earned the respect of the law professors she worked with, regardless of their ideology, a group that I would say, as I said in the hearing, can be somewhat fearless in the face of supervision.

In sum, she has had a lot of practical experience reaching out to people who hold very different beliefs, and that is increasingly important on a very divided Supreme Court. I believe that is why, when you look at the past, all the previous Solicitor Generals from the past 25 years, under Democratic and Republican administrations, support Elena Kagan's confirmation. This practical experience is also why she has the support of the National District Attorneys Association, which I used to belong to in my previous job. They actually wrote about her, saying that the National District Attorneys Association believes Solicitor General Kagan's diverse and impressive life experiences will be a welcome addition to the Court in fashioning theory that will work in practice.

One of the things that I think show the practicality of her and how she responded to our questions is when I asked her about the metaphor Chief Justice Roberts made famous at his confirmation hearing. I asked what she thought about the idea that judges were like umpires who just need to ''call balls and strikes'' and whether that was a useful metaphor. She gave an interesting and insightful response. She said the metaphor is useful in some respects but maybe not in others. It is useful because judges have to be fair and neutral like umpires and judges have to be aware that they have a powerful but limited role—that they can't legislate from the bench, they aren't elected officials. But she also said the metaphor has its limits if it suggests that judging is some kind of ''robotic enterprise,'' if it makes people think judging is an easy, automatic kind of thing because issues are always clear-cut. That isn't right, and it definitely isn't right at Supreme Court level.

Cases that come before the Supreme Court, I say, are by their very nature not clear-cut or they would not have ended up there. What is necessary is good judgment. We have to look for nominees who are going to bring that kind of good judgment to the Court.

I see I have been joined by the Senator from North Carolina, Mrs. HAGAN, which rhymes with the name of our nominee, Solicitor General Kagan. We are pleased to be joined by Senator HAGAN.

We have now had four women Senators here today in support of Solicitor General Kagan's nomination. We are also well aware that if she is confirmed, we will have three women on the Supreme Court when the Court goes into session in the fall—something that has never happened in the history of the United States.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I am here today to speak in support of Solicitor General Elena Kagan's nomination to be an Associate Justice of the Supreme Court of the United States. Solicitor General Kagan's background

demonstrates that she is an extremely well-qualified nominee and has a brilliant legal mind. She has the utmost respect for precedent and believes in fidelity to the law. I believe she will make our Nation proud as a Justice on the Supreme Court.

I have always said I do not believe there should be any one litmus test for judicial nominees. We have to look at a nominee's record in its entirety. Solicitor General Kagan's record is nothing short of remarkable. With over 20 years of legal experience and government service, she has distinguished herself throughout her career with the highest integrity and sound judgment.

In the 220-year history of the Supreme Court, 111 Justices have served on the bench. Yet only three have been women. It took almost two centuries—close to 200 years—before the first woman, Justice Sandra Day O'Connor, was confirmed to the Supreme Court.

Solicitor General Kagan's professional achievements are clear. Let me highlight a few of her triumphs that hold historical significance as well as personal significance for me and many women across America. She was the first woman to serve as dean of Harvard Law School. She was the first woman to be appointed as U.S. Solicitor General. When confirmed, she will become, as Senator KLOBUCHAR just said, the fourth woman to serve as an Associate Justice on the U.S. Supreme Court. For the first time in history, the Supreme Court will have three women serving at the same time. Women in America can take pride in Solicitor General Kagan's achievements, learn from them, and set their goals just as high.

Elena Kagan has a compelling personal story. She was born into a family of Russian-Jewish immigrants. Her mother was a public school teacher, and her father was a tenants' lawyer. She inherited a strong work ethic and a focus on education. She graduated summa cum laude from Princeton University and received a master's degree in philosophy from Oxford University's Worcester College and a law degree from Harvard Law School, where she was supervising editor of the Harvard Law Review.

She went on to clerk for Judge Abner Mikva on the U.S. Court of Appeals for the District of Columbia and then for Justice Thurgood Marshall on the Supreme Court. She also became active in her community, demonstrating her strong desire to serve others.

In the years following her time as a clerk, Solicitor General Kagan practiced law and began her long career in academia as a professor of law and later as a dean. In addition, she worked under two Presidents—first under President Clinton as an Associate Counsel and as a Deputy Assistant for Domestic Policy and now under President Obama as Solicitor General of the United States.

Her confirmation hearings were a testament to her overwhelming qualifications to serve on the Supreme Court. I believe members of the Judiciary Committee saw in Solicitor General Kagan the same qualities President Obama saw: fairness of mind, supreme intellect, and an unsurpassed devotion to the law and to our system of government.

Some opponents have sought to stir up controversy by quoting Solicitor General Kagan out of context, trying to suggest she will not be impartial. However, she has made it clear that her background does not influence her interpretation of the law.

If Senators are not persuaded by her statements to the Judiciary Committee, then they should be by her remarkable, impartial, 24-year legal career.

As Solicitor General Elena Kagan has said:

> I think a judge should try, to the greatest extent possible, to separate constitutional interpretation from his or her own values and beliefs. In order to accomplish this result, the judge should look to constitutional text, history, structure, and precedent.

With respect to the military, let me say I am proud to represent the most military-friendly State in the Nation, and I have the fullest confidence in Solicitor General Kagan's respect and admiration for our men and women in uniform.

She has said that she respects and, indeed, reveres the military. Her father was a veteran. One of the great privileges of her time at Harvard Law School was dealing with the wonderful students there who had served in the military and students who wanted to go into the military. She always tried to make sure she conveyed her honor for the military, and she always tried to make sure the military had excellent access to their students.

Veterans at Harvard Law wrote:

> Kagan has created an environment that is highly supportive of students who have served in the military . . . and under her leadership, Harvard Law School has gone out of its way to highlight our military service.

Solicitor General Kagan's sensible attitude toward following the law and her ability to objectively evaluate all angles of the Constitution has resulted in high ratings and endorsements by numerous organizations. The American Bar Association unanimously found Solicitor General Kagan to be well qualified, which is the highest rating the ABA gives to judicial nominees.

Solicitor General Kagan has an impressive list of law organization endorsements and supporters, including the National Association of Women Judges, the Women's Bar Association of the District of Columbia, the National Minority Law Group, the Constitutional Accountability Center, the Hispanic National Bar Association, the Leadership Conference on Civil and Human Rights, and the National Association for the Advancement of Colored People.

Solicitor General Kagan has also been endorsed by a group of law school deans, who stated:

> Her knowledge of law and skills in legal analysis are first rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law; with a deep understanding of both doctrine and policy . . . Elena Kagan has, over the course of her career, consistently exhibited patience, a willingness to listen, and an ability to lead, alongside enormous intelligence.

Former Solicitors General recently wrote a letter, including North Carolinian Walter Dellinger. In it they said:

> Elena Kagan would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law . . . The Constitution gives the President broad leeway in fulfilling the enormously important responsibility of determining who to nominate for a seat on the Supreme Court of the United States. In that spirit, we support the nomination of Elena Kagan to be Associate Justice and believe that, if confirmed, she will serve on the Court with the distinction.

I thank and congratulate the members of the Judiciary Committee for holding an extraordinarily civil and open Supreme Court nomination process. I commend President Obama for selecting an extremely well-qualified nominee who will serve this country with distinction. Based on my conversations with the nominee, her statements at her confirmation hearings, and my review of her record, I intend to support her confirmation when it is voted on, hopefully later this week. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from North Carolina for her comments. I like how she pointed out how Solicitor General Kagan has received support from so many people on both sides of the aisle, and then also Solicitor General Kagan's support for the military.

I remember one of the most touching points of the hearing—that long and laborious hearing—was when Elena Kagan spoke about reading a letter from a student who had been at her law school in which, after she was nominated, he actually wrote a letter to the newspaper. He served in Iraq, and he wrote a letter about how fair she was to him and her strong support for him as a soldier. She said it was the only moment during the whole leadup to the hearing, with all those things that happen, that she said she shed some tears. I will never forget that moment in the hearing.

As we consider this nomination, I want to reflect on how far we have come.

I see I have been joined by the dean of the women Senators, Senator MIKULSKI from Maryland.

When Sandra Day O'Connor graduated from law school more than 50 years ago, as the Senator from Maryland knows, the only offer she got back then after she graduated high up in her class from Stanford Law School, the only offer she got at a law firm was as a secretary. Justice Ginsburg faced similar obstacles. When she entered

Harvard, she was only one of nine women in a class of more than 500. One professor actually asked her to justify taking that place in that law school class from a man.

I know we learned during the hearing that Solicitor General Kagan is well aware of the strides women have made. In a 2005 speech, quoting Justice Ginsburg, she described a student resolution at the University of Pennsylvania Law School. This resolution would have introduced a 25-cent per week penalty on all students without mustaches.

The women who came before Elena Kagan to be considered by the Judiciary Committee helped blaze that trail for Elena Kagan—people such as Justice Ginsburg, Sandra Day O'Connor, and Sonia Sotomayor. Although Elena Kagan's record stands on her own, she is also, to borrow a line from Isaac Newton, ''standing on the shoulders of giants.''

All the women Senators I know—both Democratic and Republican—always feel they are standing on the shoulders of giants, maybe somewhat short giants, when they see the dean of the women Senators, Senator MIKULSKI from Maryland, who has entered the Senate Chamber.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank the Senator from Minnesota for her kind words but also her leadership in terms of a leadership roll on the Judiciary Committee in the usual due diligent way she went about looking at Ms. Kagan's record, becoming an advocate for her and now urging us on the floor to speak on her behalf.

Also on behalf of myself and the people of Maryland, we extend our condolences to her on the passing of her mother. It is a tribute to Senator KLOBUCHAR that she is here today doing her duty. But from what I have heard about her mother, that is exactly where she would want her to be and exactly with those of us who are speaking today.

I come today in strong support of Elena Kagan. I am of the generation when a woman on the Court was going to be viewed as a novelty. I remember very well when Ronald Reagan nominated Sandra Day O'Connor and the world and the United States of America was abuzz: Wow, a woman is going to go on the Court. She went to the Court, and I think history, legal scholars, and the American people think she did a great job.

Then came Ginsburg, Sotomayor, and now Kagan. We are at the point now where women are being taken seriously—they are being put forth for high positions in government—and are no longer viewed as a novelty. We never wanted to be novelties. We want to do the job we are either elected to do or we are being recommended to do.

I can tell my colleagues that Elena Kagan brings that right stuff of the women who are currently on the Court, and Sandra Day O'Connor. She wants to be known and respected for what she will bring to the Court.

For us women, the reason we are advocating for her is not about gender but about the legal agenda before this Supreme Court. We want to have a Justice on that Court who is extremely qualified but brings a strong commitment to civil rights, to equal justice—someone who brings not only legal scholarship but an independent voice.

Ms. Kagan is extremely qualified in these areas. Her record demonstrates an understanding of how the Court affects the lives of ordinary Americans. She clerked for Justice Thurgood Marshall, another distinguished Marylander, someone who served on the Court, a trailblazer in civil rights and a trailblazer on the Court.

Much was made during the Judiciary Committee hearings about her clerking for Marshall and somehow or another that was not a good thing. I thought it was a fantastic thing for us in Maryland who revere Thurgood Marshall for his brilliance, his tell-it-like-it-is legal style, who brought scholarship and yet street corner savvy out from some of the meanest streets in Baltimore to the Court. We thought it was great. We think Justice Thurgood Marshall was a great member of the Supreme Court. And they think it is great Kagan mentored and learned under him.

During her tenure as dean of Harvard Law School, she, again, not only developed the best faculty but made sure there were legal clinics to help the poor, the left out, the marginalized, but she also wanted to make sure that Harvard was to ensure a more diverse student body.

In the face of this current Court that increasingly is on the side of big corporations rather than with the little guy or the little gal, we need a Justice such as Kagan who will understand what is going on in our communities.

I take my advise-and-consent responsibilities very seriously. It is one of the most important jobs we have as Senators, and it is one I approach with thorough deliberation.

I look at three criteria for the Supreme Court: absolute integrity, judicial competence and temperament, and a commitment to core constitutional principles. I want someone who is committed to the whole Constitution, the entire Constitution, the basic body of the Constitution and every single one of its amendments. There is a whole crowd in the Senate who only seems to like the second amendment. I like all of them, and I am particularly devoted to the first one and the 14th one.

Every day, the Supreme Court will make decisions that transcend generations. But today we have a Court that has an increasing willingness to favor corporate interests over the voice of people at the community level.

We also have a Court that seems to be increasingly out of touch with the American people. We want to be able to reassure that we have a member of the Court who understands this.

During this current Court's deliberations, I was appalled by the famous Lilly Ledbetter case, the wonderful woman who worked at Goodyear for 19 years and was a victim of pay discrimination. She sued Goodyear, and the case made it all the way to the Supreme Court. In appeal after appeal, she won. But, oh, the big guys with the big guns and the big bucks kept appealing, but she persisted. And then before the Court she was turned down. It was so appalling that Justice Ginsburg from the bench asked Congress to take action. We did. But we should not be the Congress to overturn Supreme Court decisions because they trample on the rights of people, because they trampled on the rights of a woman to get equal pay for equal work, trampled on the rights of a woman not to face retaliation in sexual harassment and humiliation when she tried to speak up for herself on the floor of the factory or on the courtroom floor.

I believe we need someone on the bench who understands the needs of the people but, most of all, understands the laws of the United States of America and loves this Constitution—the entire Constitution of the United States of America.

I am here today because of the Constitution. The first amendment enabled me to speak up and organize and be able to make it here. There was another amendment of the Constitution that enabled the direct election of the Senate. There is this whole other crowd out there in the community that wants to overturn that. I am here because the American people insisted in a constitutional amendment that women have the right to vote. Another constitutional amendment took it away from the State legislature and put it in the hands of the American people.

I love the Constitution. I love every single amendment of the Constitution. And I want somebody on the Supreme Court who feels the way I do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from Maryland for her fine words. She is someone who knew the Court before there were any women on that Court. She has seen many changes. I thank her for her work.

To break the glass ceiling, we have now been joined by one of our male colleagues, after hearing from five female colleagues. But we are going to let him speak. We have been joined by the senior Senator from the State of New Mexico. We are honored to have Senator BINGAMAN here to speak about Solicitor General Kagan.

Mr. BINGAMAN. Mr. President, I yield myself 5 minutes off the Democratic time.

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

Mr. BINGAMAN. Mr. President, let me first just commend all my colleagues for their eloquent statements

in support of Solicitor General Elena Kagan's nomination, and I join them in that support of her nomination to be an Associate Justice of the U.S. Supreme Court.

I strongly believe Solicitor General Kagan has the skill set, the intellect, and the experience necessary to be an exceptional Justice. She has a diverse legal background, with a distinguished career in government and academia, and she has served as our Nation's top lawyer before the Court. After reviewing her record, as Senator KLOBUCHAR pointed out, I believe Senator HAGAN also—and others have pointed out in their comments as well—the American Bar Association unanimously voted that she was ''well qualified'' to serve on the Court, which is the highest ranking the American Bar Association bestows.

I have also met with Ms. Kagan and closely followed her confirmation hearings before the Senate Judiciary Committee. She clearly demonstrated that she has the right temperament for this position and that her legal views are well within the mainstream of judicial thought in this country. Ms. Kagan also affirmed her commitment to interpret the law with fidelity and demonstrated that she understands how the decisions of this High Court have a very real impact on the lives and liberties of Americans.

Ms. Kagan's wide range of experience will serve the country well. She has served as a faculty member at the University of Chicago Law School, as a former dean of the Harvard Law School, as a clerk to former Justice Thurgood Marshall, as a White House aide to former President Bill Clinton, and in her current position as Solicitor General of the United States. In her current position as Solicitor General, she has filed approximately 100 briefs and argued six cases before the Supreme Court. Ms. Kagan has demonstrated sound judgment and has exhibited great skill in the cases she has handled before the Supreme Court.

She has been lauded by individuals across the political spectrum for her ability to build consensus and for her respect for those with differing views. For example, she has received support from eight former Solicitors General from both parties, including Kenneth Starr and Ted Olsen. At Harvard she worked to hire a faculty representing diverse political views, including conservative faculty members in order to ensure that students received a broad perspective on the issues they were studying.

While Ms. Kagan has a great deal of legal experience, much has been said about her lack of judicial experience. Although she has not served as a judge, Ms. Kagan is widely respected in the legal community. She will bring needed diversity to the bench with respect to her legal background. It is important to note that about 40 of the 111 previous Supreme Court Justices who have served did not have judicial experience prior to serving on the Supreme Court, including, I would point out, former Chief Justice William Rehnquist.

I strongly believe Ms. Kagan has the qualifications necessary to be an excellent Justice of the Supreme Court. I urge my colleagues to support her nomination.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, we have now been joined by the Senator from Delaware, and we are pleased to have him here as well as we continue our discussion about the fine qualities of Solicitor General Kagan for the job of Justice of the Supreme Court.

Senator CARPER.

Mr. CARPER. I thank the Senator, and I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. Madam President, I rise today in support of Solicitor General Elena Kagan's confirmation to the U.S. Supreme Court. I am confident that in the years to come, she will make proud the President who has nominated her as well as those of us who vote to confirm her.

I would like to begin today, if I may, first by explaining why I am supporting the nomination, and after I have done that I will outline why I believe a number of our Republican colleagues shouldn't just consider supporting that nomination but should support her nomination along with the rest of us.

This is my fourth opportunity to vote on a nomination to the Supreme Court. As do each of my colleagues, I take seriously our constitutional obligation to provide advice and consent to determine whether a President's judicial nominees truly merit a lifetime appointment. I realize a number of considerations are weighed not just by me but by each of us who serve here when making a decision that is as important as this one is for our Nation.

Before coming to the Senate, I was privileged to have served as Governor of Delaware, and in that role I nominated, over the course of 8 years, dozens, maybe scores, of men and women to serve as judges in our State courts. The qualities I sought then in judicial nominees included unimpeachable integrity, a keen intellect, a thorough understanding of the law, sound judicial temperament, a willingness to listen and to consider both sides of an argument, and a strong work ethic. These qualities are also the ones that guide me today as I decide how to vote on the judicial nominees that come before us in the Senate, whether that President is Barack Obama or George W. Bush.

In applying each of these standards to Elena Kagan, it has become clear to me while examining her record that she meets or exceeds all of them. First, if you will, just consider with me—I know others have touched on this, but I will do it again—her life and experience.

As others have reminded us, she graduated summa cum laude from Princeton University. She received a scholarship to pursue her graduate studies at Oxford University, and after that she earned her law degree magna cum laude from Harvard Law School.

Following law school, she clerked for DC Circuit Court and then for U.S. Supreme Court Justice Thurgood Marshall. Starting in 1989, Ms. Kagan spent 2 years in private practice before taking on a position as professor of law at the University of Chicago. Then in 1995, she went to work in the White House and she rose there to the position of Deputy Assistant to the President for Domestic Policy. In 2001, with the change in administrations, Ms. Kagan returned to the study of law as a professor first, and then as Dean of the Harvard Law School. I believe she is the first woman to achieve that.

More recently, in 2009, Elena Kagan was confirmed by the Senate, with the support of seven or eight of our Republican colleagues, to serve as the first female Solicitor General of the United States.

Ms. Kagan is widely recognized as one of our Nation's leading legal minds and has been hailed as a preeminent scholar of administrative law. The American Bar Association has bestowed upon her their highest rating of ''well qualified'' in assessing her record and in evaluating her judicial temperament.

I realize some have criticized Elena Kagan for not having previously served on the bench. I take a different view. As a nominee from outside the judicial monastery, I believe Ms. Kagan's background and experience will actually bring a valuable perspective and a breath of fresh air to the Supreme Court. As my colleagues consider her nomination, I hope they take into account the fact that in our Nation's history—listen to this—more than one-third of our Supreme Court Justices have had no prior experience on the bench, either in Federal Government or outside of Federal Government.

Others have objected to Ms. Kagan's nomination on the grounds that while serving as the dean of the Harvard Law School, she allegedly limited military recruiters access to students. This charge of my opponents on Ms. Kagan's nomination was one I took very seriously as I considered her nomination to serve on our highest Court.

As some of my colleagues know, I attended Ohio State University as a Navy ROTC midshipman and went on to serve 5 years as a naval flight officer during a hot war in Southeast Asia and for another 18 years as a ready reservist until the end of the Cold War. I deeply appreciate all that the military has done for me, and I believe our military recruiters should be allowed to have access to college campuses and to the students there.

Having examined this issue in some detail, I can say with confidence that I believe Elena Kagan honors and reveres the men and women who serve our country in its Armed Forces, as do I. The fact is, military recruiters did continue to have access to students throughout her tenure, and in some years recruitment actually rose rather than diminished.

Last month, I had the privilege of meeting personally with Elena Kagan, as a lot of my colleagues have as well. We spoke about many matters. We spoke about her life, her work, her views of the law. It was a revealing conversation for me and actually quite an encouraging one in no small part because I walked away feeling that Elena Kagan is not just uncommonly bright and a scholar of the law. Perhaps just as important, she has the potential to become, over time, the kind of consensus-builder that the Supreme Court needs at this time in our Nation's history.

Given the plethora of closely decided 5-to-4 decisions emanating from the Supreme Court in recent years, it is clear, at least to me, that they could use another Justice there who has the experience and the ability to help them find common ground and work toward sound, reasonable, commonsense solutions and opinions. Come to think of it, we could use a few more people like that here in the legislative branch of our government and on both sides of the aisle.

Fortunately, among her colleagues and in the legal community, Elena Kagan is known as a consensus builder. Even those who may have a different judicial philosophy than Ms. Kagan nonetheless respect her judgment and her abilities.

One of them is Michael McConnell. He is a constitutional law scholar who was nominated by President George W. Bush to serve as a U.S. circuit court judge on the Tenth Circuit. He had this to say about her:

> Publicly and privately, in her scholarly work and in her arguments on behalf of the United States, Elena Kagan has demonstrated a fidelity to legal principle even when it means crossing her political and ideological allies. I urge you to confirm Elena Kagan to be an Associate Justice of the Supreme Court.

We thank Mr. McConnell for that advice.

It is clear to me, and I believe to many others on both sides of the aisle, that if confirmed, a ''Justice Kagan'' would base her approach to deciding cases solely on the law and our constitution, and not on any ideological agenda or on the politics of a case.

Let me close, if I may, by expressing my appreciation to the handful of Republican Senators who have announced publicly in recent days that they intend to support Ms. Kagan's nomination. I am sure it was not an easy decision. I do believe, however, it is the right decision for our country, and I hope those men and women will be joined by a number of other Republican Senators when the final vote is taken later this week.

Many of us remember when, in 1986, President Reagan nominated William Rehnquist to serve as Chief Justice of the United States, and his subsequent confirmation by the Senate with the support of 16 Democratic Senators. However, not many recall that in 1971, when William Rehnquist was nominated to serve as an Associate Justice on the Court, he had no prior experience on the bench. Even so, in 1971, some 29 Democratic Senators joined their Republican colleagues in supporting his confirmation. As you know, Justice Rehnquist went on to have a long and distinguished career on the Supreme Court.

The fact that Chief Justice Rehnquist's nomination was supported by a large number of Democratic Senators not just once but twice is an important testament to the strength of our democratic process and our ability to work across party lines. I hope we can make a similar statement later this week with the confirmation of Ms. Kagan to the Supreme Court with the support of Senators from both sides of the aisle, including the Senator sitting across this Chamber today from the State of South Carolina who I think sets, in this instance, a particularly good example for us all.

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I think this concludes our very broad discussion about all of the fine qualifications of Elena Kagan for this job and, again, refuting the words of one of our colleagues—unfortunate words—in which he said, I believe, that she doesn't have the gifts and the qualities of mind and the temperament one must have to be a Justice.

Look at the words of so many people across this country, along so many different ideological lines—69 law school deans who wrote about her knowledge of the law and skills in legal analysis as being ''first-rate.'' They say:

> Her writings in constitutional law and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy.

Listen at what the National Association of Women Judges has said:

> We recognize the essential qualifications that a justice of our highest court must have: superior intellectual capacity as well as an intimate knowledge and a deep understanding of constitutional law. It cannot be seriously disputed that General Kagan brings these qualifications with her in abundance.

From the Women's Bar Association:

> Solicitor General Kagan's intellect and legal acumen have been recognized by those across the political spectrum.

Of course, I already read into the RECORD the words of the National District Attorneys Association.

So many people have written in support of Solicitor General Kagan. But I would say that no words meant more to me than the words of our colleague, Senator GRAHAM, who is here across the aisle. He had the courage to stand up and explain why he made the decision to support her nomination.

He made very clear that he didn't agree with every position she had ever taken or would agree with every decision that she would ever make. But he talked about our role as Members of the Senate to not be political arbiters in terms of who the judge should be but to have the role of oversight and to figure out what the qualifications are and does this person meet the qualifications and does the person have the judgment to make decisions in very difficult cases. And, as Senator GRAHAM so eloquently stated that day during the hearing, Solicitor General Kagan—

The PRESIDING OFFICER. The time controlled by the majority has expired.

Ms. KLOBUCHAR. Makes the grade.

With that, I yield to my colleague from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Madam President, I appreciate the kind comments of the Senator from Minnesota. I have enjoyed working with her on the committee and hope to be able to work with her on a lot of different topics, including confirming judges.

My view of Elena Kagan is quite simple. I found her to be a good, decent person; well qualified in terms of her legal background to sit on the Court. The people who know her the best, who worked with her, have nothing but good things to say about her. She is not someone a Republican President would have picked—she is definitely in the liberal camp when it comes to judging—but I think within the mainstream of the left wing of the Court.

The Court has two wings to it. A lot of decisions are—not a lot, some decisions are 5–4. But you know who the conservatives on the Court are and you know who the liberals are. The one thing they have in common is that they are highly qualified, great Americans who happen to view the law a bit differently in terms of philosophy. But they have brought honor to the Court.

Justice Ginsburg is definitely in the left wing of the Court. Justice Scalia is definitely in the right wing of the Court. From what I have been told, they have a deep personal friendship; that Justices Scalia and Ginsburg have become fast friends and admire each other even though they often cancel out each other's vote and they have some real good give and take in their opinions. In that regard I think they represent the best in judging and the best in our democracy, and that is two different philosophies competing on the battlefield of ideas but understanding that neither one of them is the enemy. They have a lot of respect for each other.

What brought me to the conclusion to vote for Solicitor General Kagan? I

believe the advise and consent clause of the Constitution had a very distinct purpose. Under our Constitution, article 2, it allows the President of the United States to appoint Supreme Court Justices and judges to the Federal bench in general. That is an authority and a privilege given to him by the Constitution. You have to earn that by getting elected President.

After having watched Senator MCCAIN literally about kill himself to try to be President, I have a lot of admiration for those who will seek that office. It is very difficult to go through the process of getting nominated and winning the office. I daresay that Senator MCCAIN would indicate it is one of the highlights of his life to be nominated by his party and to go out and fight for the vote of the American people.

Senator Obama was a Member of this body before being elected President. I can only imagine what he went through, going through the primary process, beating some very qualified, high-profile Democrats to get the nomination of his party. When it was all said and done, after about $1 billion and a lot of sweat and probably sleepless nights, he was elected by the people of the United States to be our President. I want to honor elections.

My job, as I see it—and I am just speaking for me—each Senator has to determine what they believe the advise and consent clause requires. From my point of view I will tell you what I think my job is in this process. No. 1, it is not to be a rubberstamp. Why would you even have the Senate involved if the President could pick whomever he or she chose? So there is a collaboration that goes on here. There is a check and balance in the Constitution where we have to advise and consent. So I do not expect myself or any other Senator to feel once the election is over, you have to vote for whomever they pick. You do not. There may be a time when I vote ''no'' to a President Obama nominee.

But my view of things is sort of defined by the Federalist Paper No. 76, Alexander Hamilton, who was one of our great minds of this country's history. He said, ''The Senate should have special and strong reasons for denial of confirmation.''

I think his comment to us is that, yes, you can say no, but you need to have a special and strong reason because the Constitution confers upon the President the right to pick. What would those strong and special reasons be? Whatever you want it to be. That is the fact of politics. Those strong and special reasons can literally be whatever you want it to be as a Senator. But here is what Alexander Hamilton had in mind as to strong and special reasons. He continued:

> To what purpose, then, require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation.

I think that powerful and silent operation is meant to be a firm but not overly political check and balance; not a continuation of the campaign. Because the campaign is a loud experience. It is 50 plus 1, rah-rah-rah, build yourself up, tear your opponent down. So when Alexander Hamilton indicated to the Senate his view of the advise and consent clause, that it would be powerful, though in general a silent operation, I think he is telling us: The campaign is over. Now is the time to govern. So when this nominee comes your way from the person the Constitution confers the ability to pick and choose, you should have in mind a powerful but silent operation.

''It would be an excellent check upon a spirit of favoritism. . . .'' I think that is pretty self-evident, that one of the things we do not want to have with our judiciary is it becomes an award or prize for somebody who helped in the campaign, picking somebody who is close to you personally, related to you, so that the job of Federal judge becomes sort of political patronage. The Senate could be a good check and balance for that. I think that is one of the reasons we are involved in the process, to make sure that once the election is over, the President himself does not continue the campaign. The campaign is over and we have a silent operation in terms of how we deliver our advice and consent. So he is telling the President through the Senate that once the campaign is over, you should not pick someone who will help you politically or return a favor; you should pick someone who will be a good judge.

It ''would tend greatly to prevent the appointment of unfit characters from State prejudice.'' That is another view that Alexander Hamilton had, as to how the Senate should use its advise and consent duties, to make sure that unfit characters do not go on the Court. I can imagine that has probably been used in the past.

''From family connection,'' that one is obviously self-evident. You don't want to pick someone from your family unless there is a good reason to do so. ''[F]rom personal attachment or from a view to popularity.''

When I add up all these things, I am looking at the necessity of their concurrence with a: ''powerful, though, in general, silent operation. It would be an excellent check upon the spirit of favoritism . . . to prevent the appointment of unfit characters . . . from family connection, from personal attachment, or from a view to popularity.''

In other words, we are trying to make sure the President, he or she, picks a good, qualified judge, not some unfit character, some person tied to him or her personally, not someone who would be a popular choice but would be a lousy judge.

When I apply that standard to Elena Kagan, I cannot find anything about her that makes her an unfit character to me. Frankly, what I know about her from listening to her for a couple of days and having people tell me about her is I think she is a very fine person with stellar character.

The letter that moved me the most about Elena Kagan the person, I wish to share with the Senate and read, if I may. This comes from Miguel Estrada. For those of you who may not remember, Miguel Estrada was chosen by President Bush to be on the court of appeals. For a variety of reasons—there is no use retrying the past—he never got a vote by the Senate. He never got out of committee. All I can say from my point of view is, it was one of the great mistakes. I am sure there have been times when Republicans have done the same thing or something like it to a well-qualified Democratic selection. But I happened to be here when Miguel Estrada was chosen by President Bush. So he had a very unpleasant experience when it came to getting confirmed as a judge. But here is what he wrote about Elena Kagan, a Republican conservative lawyer chosen by President Bush to be on the court of appeals, writing for Elena Kagan:

> I write in support of Elena Kagan's confirmation as an Associate Justice of the Supreme Court of the United States. I have known Elena for 27 years. We met as first year law students at Harvard, where we were assigned seats next to each other for our classes. We were later colleagues as editors of the Law Review and as law clerks to different Supreme Court Justices; and we have been friends since.
>
> Elena possesses a formidable intellect, an exemplary temperament, and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments. Elena would also bring to the Court a wealth of experience at the highest level of our Government and of academia, including teaching at the University of Chicago, serving as the Dean of the Harvard Law School and experience at the White House and as the current Solicitor General of the United States. If such a person, who has demonstrated great intellect, high accomplishments and an upright life, is not easily confirmable, I fear we will have reached a point where no capable person will readily accept a nomination for judicial service.
>
> I appreciate that considerations of this type are frequently extolled but rarely honored by one side or the other when the opposing party holds the White House. I was dismayed to watch the confirmation hearings for then-Judge Alito, at the time one of our most distinguished appellate judges, and find that they range from the—

Well, I am not going to read it all.

> . . . one could readily identify the members of the current Senate majority, including several who serve on the Judiciary Committee [and their partisan views].
>
> Lest my endorsement of Elena's nomination erode the support she would see from her own party, I should make it clear that I believe her views on the subjects that are relevant to her pending nomination—including the scope of judicial role, interpretive approaches to the procedure and substantive law, and the balance of powers among the various institutions of government—are as firmly center-left as my own are center-right. If Elena is confirmed, I would expect her rulings to fall well within the mainstream of current legal thought, although on

the side of what is popularly conceived as ''progressive.'' This should come as a surprise to exactly no one: One of the prerogatives of the President under our Constitution is to nominate high federal officers, including judges, who share his (or her) governing philosophies. As has often been said, though rarely by Senators whose party did not control the White House at the time, elections have consequences.

Elena Kagan is an impeccably qualified nominee. Like Louis Brandeis, Felix Frankfurter, Robert Jackson, Byron White, Lewis Powell and William Rehnquist—none of whom arrived at the Court with prior judicial service—she could become one of our great Justices. I strongly urge you to confirm her nomination without delay.

I think that says a lot of Elena Kagan. I think it says a lot about Miguel Estrada. She wrote a letter basically—I asked her to—to tell me what she thought about Miguel Estrada. I will read that in a minute. But at the end of the day, those of us in the Senate have to understand that every branch of government includes human beings and there is a rule that stood the test of time. I didn't make this one up. It was somebody far wiser than I am, somebody far more gifted than I ever hope to be, somebody I put a lot of trust in.

It is called the Golden Rule. ''Do unto others as you would have them do unto you.'' That is probably one of the most powerful statements ever made. It is divine in its orientation, and it is probably something that would serve us all well if we thought about it at moments such as this.

I am going to vote for Elena Kagan because I believe constitutionally she meets the test the Framers envisioned for someone to serve on the Court. I don't think the Framers ever envisioned LINDSEY GRAHAM from South Carolina voting no because President Obama picked someone who is clearly different than I would have chosen. Because if that were the case, the campaign never ended. It would undercut the President's ability to pick someone of like philosophy. My job is to make sure the person he chose is qualified, of fit character, not chosen for favoritism or close connection but chosen based on merit.

I have no problem with Elena Kagan as a person. I have no problem with her academic background. I have no problem with her experience as a lawyer. Even though she has worked for Justices whom I would not have ruled like, even though she has taken up political causes I oppose, that is part of democracy.

Her time as Solicitor General, where she represents the United States before the Supreme Court, was reassuring to me. She has had frontline experience in the war on terror. She has argued before the Supreme Court that terrorist suspects should be viewed under the law of war. She supports the idea that someone who joins al-Qaida has not committed a crime. They have taken up arms against the United States, and they can be held indefinitely without trial if, under proper procedures, they have been found to be part of the enemy force. She understands detainees held at Bagram Airfield in Afghanistan should not be subject to judicial review in the United States because they are prisoners of war in an active theater of combat. If she gets on the Court—and I am certain she will—she will be able to bring to the Court some frontline, real-world experience in the war on terror. She has had an opportunity to represent the United States before the Supreme Court, arguing that this Nation is at war, and the people who attacked us on 9/11 and who continue to join al-Qaida are not some common criminals but people subject to the law of armed conflict. Her testimony when she was confirmed as Solicitor General was reassuring to me that she understood that very important concept.

How she rules, I don't know. I expect she will be more similar to Justice Stevens in the way she decides cases. The person she is replacing is one of the giants of the Court from the progressive side. I expect she will follow his lead most of the time. I do believe she is an independent-minded person. When it comes to war on terror issues, she will be a valuable member of the Court and may provide a perspective other judges would not possess. That is my hope.

I don't vote for her expecting her to do anything other than what she thinks is right, ruling with the Court most of the time in a way a Republican nominee would not have ruled. It gets back to my point of a minute ago. If I can't vote for her, then how can I ask someone on the other side to vote for that conservative lawyer, maybe judge, who has lived their life on the conservative side of the aisle, fighting for conservative causes, fighting for the prolife movement, standing for the conservative causes I believe in, a strong advocate of a second amendment right for every American? That day will come. I hope sooner. But one day that day will come. What I hope we can do from this experience is remember that when that day does come, the Constitution has not changed at all. The only thing changed was the American people chose a conservative Republican President. I ask my colleagues to honor that choice, when that conservative President, whoever he or she may be, picks someone whom my colleagues on the other side would not have chosen. But that has been the way it has been for a couple hundred years now.

Justice Ginsburg, the ACLU general counsel, got 96 votes. Justice Scalia got 96 or 97 votes. Senator Thurmond, my predecessor, voted for Justice Ginsburg. There is no way on God's green Earth Strom Thurmond would have voted for Justice Ginsburg if he believed his job was to pick the nominee. There is no way many of my colleagues on the other side would have ever voted for Justice Scalia if they thought it was their job or they had the ability to make a selection in line with their philosophy. No one could have been more polar opposite than Ginsburg and Scalia. But not that long ago, in the 1990s, this body, without a whole lot of fussing and fighting, was able to put on the Court two people who could not be more different but chose to be good friends.

The history of confirming nominees to the Supreme Court is being lost. Madam President, 73 of the 123 Justices who served on the Supreme Court were confirmed without even having a rollcall vote. Something is going on. It is on the left, and it is on the right. I hope this body will understand one thing: The judiciary is the most fragile branch of government. They can't go on cable TV and argue with us as to why they are qualified. They cannot send out mailings advocating their positions. They have no army. All they have is the force of the Constitution, the respect of the other branches and, hopefully, the support of the American people.

Having gone to Iraq and Afghanistan many times, the one thing I can tell my colleagues that is missing in most countries that are having difficult times is the rule of law. What is it? To me, the rule of law is a simple but powerful concept. If you ever find yourself in a courtroom or before a magistrate or a judge, you will be judged based not on what tribe you came from. You will be judged based on what you did, not who you are.

The one thing we don't want to lose in this country is an independent judiciary. We are putting the men and women who are willing to serve in these jobs sometimes through hell. Judge Alito was poorly treated. I am very proud of what Senator SESSIONS was able to do as ranking member. We had a good, spirited contest with Sotomayor and Kagan. I thought the minority performed their role in an admirable fashion. I appreciate what Senator LEAHY did working with Senator SESSIONS. I thought these two hearings were conducted in the best traditions of the Senate.

The votes will be in soon. She is going to get a handful of votes on our side. I have chosen to be one of those handful. From a conservative point of view, there are 100 things one can find at fault in terms of philosophy and judicial viewpoint with Elena Kagan. I have chosen not to go down that road. I have chosen to go down a different path, a path that was cleared and marked for me long before I got here, a path that has a very strong lineage, a path that I believe leads back to the Constitution, where the advice and consent clause is used in a way not to extend the election that is now over but as a reasonable, powerful but silent check on a President who chose a judge for all the wrong reasons. Choosing a liberal lawyer from a President who campaigned and governs from the left is not a wrong reason. Choosing a conservative lawyer or judge once you campaign for the job running right of center, in my view, is not the wrong

reason. The wrong reason would be if the person you chose was not worthy of the job, did not have the background or the moral character to administer justice. I cannot find fault with Elena Kagan using that standard.

I will vote for her. I will say to anybody in South Carolina and throughout the country who is listening: She is not someone I would have chosen, but it is not my job to choose. It is President's Obama's job. He earned that right. I have no problem with Elena Kagan as a person. I think she will do a good job, consistent with her judicial philosophy. I hope and pray that the body over time will get back to the way we used to do business. If we don't watch it, we are going to wake one day, and we will politicize the judiciary to the point that good men and women, such as Sam Alito, Justice Roberts, and Elena Kagan, will not want to come before this body and be a judge. If that ever happened, it would be a great loss to this country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Madam President, there has been some suggestion in the course of the discussion of Elena Kagan's nomination that her decision to bar the military from access to Harvard's recruiting office was a principled one and had no impact on the lives of Harvard law students in the military. I think that is not a fair way to describe it. Her decision relegated the military to second-class status at Harvard Law School. Military recruiters were, as she indicated in one statement, ''alienating'' to some students and were not welcome, and students who made public their interest in the military service otherwise might be ostracized in that climate. But she wanted the student veterans to quietly help the classmates who might be interested in military service to overcome the obstacles there.

Well, let me just say it this way: Ms. Kagan protested against don't ask, don't tell in reality by obstructing the mission of the junior military officers who had at that point in their career been assigned the duty of recruitment at law schools around the country, recruiting JAG officers for the military. But these junior officers had no control whatsoever over this law. We often refer to it as a military policy, but it is not a policy, it is law passed by the Congress of the United States.

So her effort to make a political point at the expense of the U.S. military and in defiance of clear Federal law passed by this Congress calls into question, really, her willingness to be governed by that law because she was punishing the military, really demeaning them, not allowing them equal access like any other law firm, presumably, in America and demeaning them in that fashion. So I really think this issue is not a little one. It is a very big one. It says something very significant about her ability and her objectivity. So for that reason, I think it calls into question her ability to serve on the bench as an objective person in justice.

I see the majority leader. He just appears out of the blue. I know he is busy, so I will yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I want my friend from Alabama to know that when I see him on the floor, I do not run to the floor. It just happens to work out a lot of times. So I appreciate his yielding.

I am going to send a cloture motion to the desk dealing with the Kagan nomination. I want the ranking member to understand that I have spoken to the Republican leader.

Could I have the attention of the Senator from Alabama? I want the Senator from Alabama to hear this. I am filing a cloture motion on the Kagan nomination. I have spoken to the Republican leader. This is in no way to cut off debate. We have had 20 Senators who have spoken today. I want Senators to have the ability to speak in whatever means they feel appropriate, but I just do not want a renegade Senator to stop us from being able to complete this nomination.

Mr. SESSIONS. If the Senator will yield?

Mr. REID. I will just say this: If it comes time for the cloture vote and more time is needed, everyone over here will be happy to make sure people have ample time. We will postpone the cloture vote as long as necessary to make sure people will have the opportunity to speak.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I will just say to the leader, I am a bit hurt. I do not think this is a necessary step, that the leader has indicated we will move forward in maybe 3 days and finish this debate. And to file a cloture motion—if it in any way suggests there is a deliberate attempt on this side to block an up-or-down vote, I will just say I have tried to make clear that I have a high standard before I would attempt to block an up-or-down vote, and I have not suggested and I think very few on this side have suggested—a vote at the time that is right should go forward. I would expect that it would.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I stated on the floor earlier today that I think the conduct of the chairman and ranking member on this nomination has been exemplary. I said that already. But if my friend from Alabama would listen just for a minute, I have so many things I am trying to work through procedurally so we can leave here at a reasonable time this week. I just do not want someone who gets mad because I have done something they do not like saying: I am not going to let you have a vote on this judge until I get what I want.

I want to make sure everyone who wants to has the opportunity to speak on Kagan. No one on the Republican side has even suggested a filibuster. OK. And I understand that. But this is to make sure one Senator in this body—not on the nomination of Kagan but on anything—they get their dander up a little bit, and he or she can cause the whole Senate to come to a standstill.

So I repeat, if there is more time needed, there will be ample time. When the time for voting comes up, I will give whatever time is necessary. What I have been trying to get—and I am sure it is too early to have done that—is a time certain to vote on Elena Kagan. But I think my friends on the other side of the aisle have told me it is too early to do that. But I say to my friend, there is no direction to prevent anyone from speaking on this nomination for however long they want.

Mr. SESSIONS. Well, I just do not want somebody to come back and say in the future that we had to file cloture to get a vote on this nomination, and you filibustered this nomination. I feel pretty strongly about that and am a bit uneasy that the leader has felt he needed to do this.

I thank the Chair.

Mr. REID. I will just repeat what I said before. Any one Senator, as we have learned—those of us who have served in the Senate and those who have not been around here a long time—any one Senator can really throw things into a turmoil, on your side or on my side. And the purpose of this is to make sure we finish the Kagan nomination before we leave.

Mr. MCCONNELL. Will the majority leader yield for an observation?

Mr. REID. I am happy to.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. We had this conversation earlier today on the telephone. I think filing a cloture motion is completely unnecessary and—

Mr. REID. Let me just interrupt my friend. If my two friends feel this way—my concern is that we get locked into the 30-hour time. But I guess I could still do it on Thursday. So I know everyone——

Mr. MCCONNELL. I cannot imagine what incentive anyone would have to create the scenario under which the majority leader is concerned with.

Mr. REID. The Republican leader and I know the many things we are trying to complete in the next few days. And because I do not do something, as I have had happen before—that somebody on either side of the aisle gets disturbed because of something I did or did not do—they say: I am not going to let you have a vote on Kagan now. That could be on my side or on your side.

So here is what I will do: I have not filed this motion yet. Based on the statement of my friend from Alabama and my friend the Republican leader, I will just hold this in abeyance. I just know what is coming tomorrow. If we get stuck in a 30-hour time period, realistically, it would take consent to even allow the debate to go forward on Kagan. I would certainly not stand in the way of that. And during the time of the 30 hours pending, as I understand the rules, I cannot file another cloture motion.

But recognizing that everyone wants to operate in the best way, what I would do is ask my two friends here, the ranking member of the Judiciary Committee and my friend the Republican leader—would the Republican leader consider allowing, if we get stuck in some procedural thing tomorrow, which is Wednesday—we have to complete this by Friday, I would think—would my friend consider a unanimous consent request to allow me to file tomorrow? Because if we are postcloture with 30 hours, I cannot file cloture tomorrow.

Mr. MCCONNELL. Yes. I would say to my friend the majority leader, I would be willing to consider that. The point I am trying to make here and the Senator from Alabama has tried to make is we are unaware of anybody on our side who does not expect a vote on Kagan on Thursday. As you and I have discussed on and off the floor, the thought was that we would have the Kagan vote. That would be the last vote prior to the August recess. That is the scenario under which we have been operating, and I am perplexed as to why my friend the majority leader feels this is a step he needs to take.

Mr. REID. The only thing I cannot do is guarantee that will be the last vote. There may be something else that comes up. But I will do my best to cooperate, as I know you will. So I will see if this is necessary some other time.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Madam President, I appreciate the majority leader withholding. We can continue to discuss this, even tonight if he would like, the two of us, privately.

Mr. REID. We will wait until the vote takes place tomorrow and find out what, if anything, we need to do.

Mr. MCCONNELL. Fair enough.

Mr. REID. I am not filing the motion at this time, and I appreciate very much the sincerity of my friend from Alabama, as usual, and, of course, my friend from Kentucky. He and I have worked together on a lot of things over the years, and I appreciate him being so candid today.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, this is the second time since I have become a U.S. Senator that I have been asked to provide the President advice and consent on a Supreme Court nominee. Last year, almost to the day, I spoke on the Senate floor on the nomination of Judge Sonia Sotomayor to be on the Supreme Court. So I come to the floor today to speak on the nomination of Solicitor General Elena Kagan.

During the debate in the Senate on Judge Sotomayor's nomination, I laid out the three criteria I use in evaluating an individual to fulfill the responsibilities of filling a vacancy on the Supreme Court. First, of course, we want to select the best candidate. Second, the Justice must be impartial and allow the facts and the Constitution to speak. And, third, a Justice has a responsibility to apply the law, not to write the law. Those are the criteria I have used in evaluating Elena Kagan's nomination.

I met with Solicitor General Kagan following her appearance before the Senate Judiciary Committee. She is personable and she is bright. Her career as an attorney has been exceptional. Although she has limited trial experience, she does understand the important role the judiciary plays in America. It is the second criteria that causes me concern: Solicitor General Kagan's ability to remain impartial. In particular, her actions and judgment as dean of the Harvard Law School as it related to military recruitment is, to me, a serious problem.

Military recruitment on college campuses is protected by what is commonly referred to as the Solomon Amendment. The Solomon Amendment is legislation that Congress passed in the mid-1990s. The Solomon Amendment directs that institutions of higher learning shall not be eligible for Federal funding if they refuse to follow Federal law. Funding shall be denied—denied—if it is determined that the school, as a policy or a practice, either prohibits or, in effect, prevents ROTC access to campus or military recruiting on campus.

In the late 1970s, Harvard Law School adopted a policy that barred organizations that discriminated against any group from recruiting on campuses. The ban applied to military recruiters. Other universities adopted similar policies. But following the passage of the Solomon Amendment, many institutions, including Harvard, adjusted their policies.

Ms. Kagan became dean of Harvard Law School in the year 2003. In 2003, America was fighting two wars. American men and women were voluntarily joining the military to serve and to defend our country. At a time when military recruiters were being allowed on campuses across the country, Dean Kagan was looking for ways to make it difficult for military recruiters to do their job at Harvard Law School. She wrote at the time:

> I abhor the military's discriminatory recruitment policy. . . . This is a profound wrong—a moral injustice of the first order.

Well, eventually, a legal challenge to the Solomon Amendment was initiated. On two occasions, Dean Kagan signed court briefs opposing the Solomon Amendment. In 2004, when a lower court rejected the Solomon Amendment, Dean Kagan immediately denied military recruiters the same access afforded to other recruiters on campus. She took this action even though the court making the ruling did not have jurisdiction over Harvard Law School. Harvard Law School is located in the First Circuit. The court that made the ruling was the Third Circuit.

The Pentagon notified Harvard that the restrictions on military recruiters violated the law. In 2006, the U.S. Supreme Court ruled on the challenge to the Solomon Amendment. The U.S. Supreme Court rejected the lawsuit as well as the arguments that were put forth in the brief signed by Dean Kagan, and it did so unanimously. All of the Justices on the Supreme Court, both conservative and liberal—all of them—agreed the Solomon Amendment did not violate the rights of law schools. The law was unanimously upheld, and that is an extremely rare occurrence from a Court usually divided.

For America's judicial system to work, judges must always remain impartial. I do believe that as dean of one of America's most prestigious law schools, Solicitor General Kagan allowed her personal biases to interfere with her judgment. Solicitor General Kagan had very strong opinions about military policies, including President Clinton's don't ask, don't tell policy. Like every American, she is entitled to her personal beliefs and the right to express those views. As the dean of Harvard Law School, she is also responsible to know the law and to not disregard it.

So, then, how can one explain the actions of Elena Kagan while dean of the Harvard Law School? No. 1, she didn't know the law; No. 2, she didn't understand the law; or No. 3, she simply chose to ignore the law because of her strongly held personal beliefs.

Many Americans may be able to get away with these explanations. Such explanations don't work for an individual seeking to become a Justice on the U.S. Supreme Court.

Elena Kagan has been nominated for a lifetime appointment to the Supreme Court. If confirmed, she will be entrusted to make decisions that will impact America for a long time. The decisions she will be asked to make on this Court must be based on the law not influenced by personal experiences or personal convictions.

In the case involving the Solomon Amendment, Dean Kagan failed to meet that standard. I believe Dean Kagan knew the law. I have no doubt she understood the law and wanted to find ways to get around the law.

I will not be supporting Solicitor General Kagan's nomination to the Supreme Court. I believe she allowed her personal beliefs to guide her. As a private citizen, that may be acceptable.

As a member of the U.S. Supreme Court, it is not.

Thank you, Mr. President. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I wish to add my support to the many voices calling for the confirmation of Solicitor General Elena Kagan to the position of Associate Justice of the Supreme Court.

At a time when the discussion of our legal system is so often dominated by ideological labels, Elena Kagan would bring years of practical, pragmatic experience to our highest Court. She is extraordinarily well qualified and will bring a valuable new perspective to the Court.

The highlights of Solicitor General Kagan's career are well known. Most recently, in 2009, she was the first woman to be nominated by a President and confirmed by the Senate to serve as Solicitor General of the United States. In this position in which she represents the interests of the U.S. Government before the Supreme Court, she has received numerous accolades from a broad range of observers. For example, Professor Michael McConnell, director of the Constitutional Law Center at Stanford Law School and former circuit court judge nominated by George W. Bush, in urging her confirmation said the following:

> Publicly and privately, in her scholarly work and in her arguments on behalf of the United States, Elena Kagan has demonstrated a fidelity to legal principle even when it means crossing her political and ideological allies.

Miguel Estrada, Assistant Solicitor General in the George H.W. Bush administration, said Solicitor General Kagan:

> . . . possesses a formidable intellect, an exemplary temperament and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments . . . If [she] is confirmed, I would expect her rulings to fall well within the mainstream of current legal thought. . . .

Ten former Solicitors General, representing both parties, have praised her ''breadth of experience and a history of great accomplishment in the law'' and said further that her ''most recent experience as Solicitor General will serve her well as she wrestles with the difficult questions that come before the Court.''

Among those former Solicitors General were Kenneth Starr and Drew S. Days.

In 2003, Elena Kagan was named dean of the Harvard Law School, the first woman to hold that title. Throughout her distinguished career, she has shown a remarkable knack for reaching out to people across the ideological spectrum. As Harvard Law School's dean, she broadened the school's diversity of legal points of view, strengthened the academic program, and improved quality of life for students and faculty alike.

Elena Kagan will bring a different perspective to the Court, and we should welcome that. Justice Antonin Scalia put it this way:

> Currently, there is nobody on the Court who has not served as a judge—indeed, as a Federal judge—all nine of us. I am happy to see that this latest nominee is not a Federal judge—and not a judge at all.

Elena Kagan's sense of fairness, problem-solving ability, and balance is illustrated by one of the episodes in her career that some have inaccurately criticized her for. During her time as dean of Harvard Law School, that school, similar to many around the country, had a policy to not use the campus to promote discriminatory activities, such as don't ask, don't tell.

Some have sought to portray Elena Kagan's actions throughout this episode as antimilitary. I find nothing in her words or actions that constitutes hostility to the military. Quite the opposite. But don't take my word for it. Take the words of former students of hers—for instance, one who when he received his promotion to captain in the Massachusetts National Guard asked Elena Kagan to pin on his captain's bars at his promotion ceremony—hardly an honor for a soldier to bestow on someone who is antimilitary.

CPT Robert Merrill, who wrote an op-ed in the Washington Post, put it this way:

> She treated the veterans at Harvard like VIPs, and she was a fervent advocate of our veterans association. She was decidedly against ''don't ask, don't tell,'' but that never affected her treatment of those who had served.

Listen to 1LT David Tressler, who wrote:

> During the brief period when recruiters were not given access to students officially through the law school's Office of Career Services, they still had access to students on campus through other means . . . Kagan's positions on the issue were not antimilitary and did not discriminate against members or potential recruiters of the military. . . . She always expressed her support for those who serve in the military and encouraged students to consider military service.

Finally, you can take the word of veterans who attended Harvard Law School who said that ''Elena Kagan has created an environment that is highly supportive of students who have served in the military.''

Elena Kagan is smart, she is experienced, she is learned, and she is fair. She has the support of a host of organizations, a broad cross-section of organizations, including the National District Attorneys Association, as well as a broad range of prominent scholars. She will make an excellent Justice of the Supreme Court. I hope she is overwhelmingly confirmed.

Mrs. MURRAY. Mr. President, I am proud to support the nomination of Solicitor General Elena Kagan as the next Associate Justice of the U.S. Supreme Court. The Senate has few responsibilities more important than our constitutional obligation to advise and consent on the President's Supreme Court nominees. Supreme Court Justices are appointed for life, and the decisions they make affect the lives and livelihoods of every single family across the country. From the laws governing the role of corporations and special interests in our electoral process, to the rights of women over their own reproductive health—we have seen clearly over the years the impact of this Nation's highest court.

So I am very glad that President Obama nominated Elena Kagan to fill this critical position. I met with Solicitor General Kagan and talked to her about how she envisioned her role on the Court. I asked her about her judicial philosophy, and what she felt the Court's role was in protecting ordinary Americans. I followed her testimony before the Senate Judiciary Committee. I was extremely impressed with what she had to say. Elena Kagan has proven herself to be someone who understands the importance of a fair and independent approach to rendering justice. She is committed to making sure the voices of families across the country are represented in the chambers of the Supreme Court. And she possesses an evenhanded view of our justice system that gives me every assurance that any individual or group from Washington State could stand before her and receive fair treatment.

Solicitor General Kagan also has a strong legal background and is without a doubt a highly qualified choice for the Supreme Court. Following her graduation from Harvard Law School she served as a law clerk for Judge Abner Mikva on the U.S Court of Appeals, before moving on to clerk for Supreme Court Justice Thurgood Marshall. After spending some time in private practice, Elena Kagan went back into public service to work for President Clinton on the Domestic Policy Council. She then went back to Harvard Law School to teach and ultimately became the first woman to serve as dean of the school, where she cemented her reputation as a fair-minded leader who reaches out to all sides and builds consensus. When President Obama was elected he called Elena Kagan back into public service to serve as Solicitor General. In this new role as the so-called 10th Justice, she argued before the Court on a broad range of issues, including a vigorous defense of the government's right to limit the influence of corporations and special interests in the electoral process.

When I hear some of my colleagues on the other side of the aisle say that Elena Kagan lacks the experience to sit on the Supreme Court because she has never been a judge, I find that a little

hard to believe. Forty-one Justices have served on the Nation's highest court without having any prior judicial experience. Democrats and Republicans alike have expressed the notion that prior judicial experience is not a prerequisite for serving on the Supreme Court. In fact, for most of the Court's history there was a diversity of career experiences represented on the bench. Most recently, Chief Justice Rehnquist, who never served as a judge before he was nominated to the highest court. Neither did Justice Powell or Justice White. Nor did Justices Black, Warren, Jackson, or Marshall. So I find it interesting that the standard was changed with this nomination.

Elena Kagan is clearly qualified, and she is going to make an outstanding Supreme Court Justice. Her nomination is also another step forward toward making sure that we have a Supreme Court that is reflective of the country whose laws it safeguards. We are now on the verge of having the most women to serve together on the court at any one time. While we still have work to do to achieve a court that is truly representative of the full diversity of American experiences, I am proud that we are taking this strong step forward toward that goal.

After meeting with Solicitor General Kagan, hearing her testimony, and examining her record, I am confident that she has the judgment and impartiality to serve our Nation honorably on the Supreme Court. She is thoughtful and fairminded in her approach to some of the most pressing legal issues we face as a nation. She understands the struggles working families face and the role of the Supreme Court in protecting them. And she is committed to protecting the rights and liberties of all Americans.

I am proud to represent families from my home State of Washington and I am proud to join with my Democratic and Republican colleagues to cast my vote to confirm Elena Kagan as the next Associate Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. WHITEHOUSE. 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. WHITEHOUSE. Mr. President, I have come to the floor to speak for a few moments about the Kagan nomination, and I believe we have about 20 minutes of time on our side. If somebody wishes to come and speak, I would gladly yield the floor, since I have had the chance to speak on her nomination as a member of the Judiciary Committee. But in the absence of somebody who has not had that chance, I wanted to go ahead and say a few words because I have been listening off and on throughout the day to the debate that has taken place on the Senate floor regarding her nomination and I have heard over and over concerns expressed—particularly from the other side of the aisle—about this terrible spectre of judicial activism, the judicial activism that looms over the Court and looms over the Kagan nomination.

I know it is a familiar tune from the other side. I think most of them could sing it in their sleep, frankly. But if you actually look at where the activism is coming from, the surprising conclusion that I think objective people would have no choice but to reach is that it is the rightwing of the Supreme Court—the rightwing; the Roberts wing of the Court—that is in fact engaged in all of the activism.

I think to a certain extent activism is a term of general criticism and that it applies to decisions you don't like. So if it is a decision that goes a way you don't like, it is an activist decision. If it is a decision that goes your way, no matter how much it changes the law, then that is not activism because I agree with it. So I think the discussion about activism is a little bit flavored by the question of point of view.

Trying to set that point of view question aside, I thought a bit about what might the objective indicators of an activist Court—or in our case an activist bare majority on the Court—look like. What would the telltales be that you had an activist Court doing its thing? Well, I think there are a few, and they seem to be ones that are actually pretty germane to this activist bloc on the Supreme Court.

For instance, if you were an activist Court, or an activist bloc on the Court, you would issue a lot of 5-to-4 decisions, and you would issue 5-to-4 decisions in major cases. The reason you would do that is because the Court is constantly presented with the choice to reach far with a bare majority or dial its aspirations back and achieve a broader consensus on the Court. So every decision presents, to one degree or another, this choice. When you see recurring 5-to-4 decisions, you see a majority of five that would appear to want to go to a particular place, even if they can't bring the other four judges with them, and who have deliberately chosen not to write a narrower decision, a more modest decision, a more conservative—small ''c''—decision that could have attracted six or seven or eight, or even perhaps all nine members of the Court.

That is a flag that would fly over an activist Court—a penchant for 5-to-4 decisions. Sure enough, the Roberts Court is notorious for 5-to-4 decisions, particularly in major cases, and particularly in cases that change the law—that change the interpretation of the Constitution. So there is one flag, and they seem to be flying that warning flag right now.

If you were an activist Court, you would probably tend to break the informal rules of appellate decisionmaking. Because the rules might constrain you from getting where you want to go, and they would be a nuisance because you had a purpose—you had a place you wanted to get with your decision, and so that the rules would be less of a hindrance for you, because you would want to get beyond them, you would set them aside.

One of the dangers of the Supreme Court is that it is the court of final appeal. They have only their own self-restraint that prevents them from going anywhere. They stand above the checks and balances of our government in that respect. So these rules the Court tends to impose on itself to keep itself within proper bounds are important rules.

One of them is that appellate courts do not engage in factfinding. It is not their province. Factfinding is done by juries and it is done by trial judges. Those facts are established at the trial court level. Once you get up above that and into the appellate courts you should be looking just at questions of law. The courts should not be engaging in factfinding at those upper levels, certainly not at the Supreme Court level. The exception to that principle is where the fact is so obvious that the Court can take what they call judicial notice of it. The Court can take judicial notice that San Francisco is west of Denver. It is an indisputable fact. It is no big deal. But other than that, factfinding is discouraged. So another little telltale would be is where the Court is running over those principles that are principles of self-restraint.

Sure enough, you see the Roberts Court doing just that. Indeed, in one of its biggest leaps in which it knocked out enormous amounts of precedent, in which it knocked out enormous amounts of legislative practice and made a huge doctrinal shift, was the case of Citizens United. In that case, the Court made a finding of fact. It made a finding of fact that was critical to getting where it wanted to go in that decision. The finding of fact was the following—the finding of fact was that corporate money, the independent expenditure of corporate money in elections, cannot contribute to the corruption of those elections. Corporate money, independently spent in an American election, cannot possibly tend to corrupt that election.

It is an interesting finding of fact because I think, as anybody who has been through a contested election would understand, it is a finding of fact that is in fact wrong. It is untrue. Yet they made it as a finding of fact. It is also a finding of fact that ran contrary to the vast legislative record that had been built up in Congress on this question when it had come up in previous matters before the Court. But because of the peculiar manner in which they got to this question in Citizens United—it was not a question presented by the parties; they added the question themselves, the Court did, and asked the parties to brief it in, so there had not been a record on this.

They put themselves in a position where they could ignore the previous record of fact and then they created their own finding of fact notwithstanding that findings of fact are not something an appellate court is supposed to do, and in doing so they found a fact that was in fact not true. It is a false claim to assert that. It is not a fact.

When you look at that, another flag goes up. That is the kind of thing an activist Court would be doing. They would be trespassing over the self-imposed rules of judicial restraint when necessary to get to the point they wish to achieve. Again, it was 5–4, so you have a ''two-fer'' on that decision.

If you are an activist Court, you would probably want to keep doing what you are doing so you would start advancing theories that allowed you to look at the precedents of the Court, the history of its decisions, and selectively knock down precedent you did not like. Nothing could give a Court more power and more room for activism than to be free of the constraint of precedent, of the previous decisions of the Court.

The only way you can get yourself free of precedent—because it is there. The previous courts made those decisions. It is in the records. You go to the United States Supreme Court Reporter and you can look them up. So what you have to do is you have to knock it down if you do not like it. In order to do that, if that was your intention, you would want to come up with a theory that allowed you to do that. Sure enough, in Citizens United, in his concurring opinion, the Chief Justice of the United States did that. He came up with a theory that says if a precedent is hotly contested, then over time it clearly will be deemed not as valid as other precedent and ultimately it can be replaced with precedent that is not hotly contested.

Who gets to decide on the Supreme Court whether a precedent is hotly contested? Obviously, the Justices themselves. So you can create a self-fulfilling prophecy in which Chief Justice Roberts and his bloc of four other conservative voters who make up the group of five that is always steering the Court to the right, can hotly contest any precedent they please. They can hotly contest it, and hotly contest it, until they undermine it more and more and finally they knock it down. Despite all the things they said about respect for precedent and judicial modesty when they went through their hearings before the Senate, what they have actually done is create an analytical tool, a device for selectively undermining precedent they do not like, hotly contesting it, disabling it, and taking it out. They can reshape the precedent of the Court to their liking using this doctrine.

There is another flag that goes up. Why would you create a doctrine such as that, that allows you to selectively disrespect, hotly contest, and knock out the precedent of the Courts past if you did not have an intention to try to shift the precedent to support a particular direction? If you are an activist Court, you would give Congress very little deference. And this is a Court that gives Congress very little deference. Jeffrey Toobin, who writes on the Supreme Court frequently, in an article entitled ''No More Mr. Nice Guy, The Supreme Court's Stealth Hard-Liner,'' an article about Chief Justice Roberts, back in May of a year ago—so this is a little bit dated, May 25, 2009—said that:

In every major case since he became the Nation's seventeenth Chief Justice, Roberts has sided with the prosecution over the defendant, the State over the condemned, the executive branch over legislative, and the corporate defendant over the individual plaintiff. Even more than Justice Scalia has embodied judicial conservatism during a generation of service on the Supreme Court, Roberts has served the interests, and reflected the values, of the contemporary Republican Party.

''Served the interests and reflected the values of the contemporary Republican Party''—by, in every major case, siding with the executive branch over the legislative.

That is just one piece of it. The other is the disrespect for laws that have been passed by Congress and their intent. Lilly Ledbetter is the perfect case. Congress wanted to protect women from discrimination in the workplace, on what they are paid. Rather than read the statute to protect Lilly Ledbetter's right to a judgment, they came down with a finding that for so long as the company was successfully able to prevent her from finding out that she had been discriminated against, they were able to get away with it. That is not a finding this body ever would have accepted. But it was what the Court came down with. And it gave Congress no deference—again, a tradition in these Roberts Court decisions. Why would you want to defer to Congress if you have a point of view that you want to bring to the Court? You wouldn't want Congress's point of view involved, you would want your point of view, and therefore deferring to Congress would not be part of your goal.

So the lack of deference, a striking pattern in the Roberts Court, is again consistent with what you would expect from an activist Court. Most of all, if you were an activist Court, a pattern would begin to emerge to those decisions as the Court issued them, particularly those 5–4 decisions. On the Roberts Court, one pattern is striking, the clear pattern of corporate victories at the Roberts Court. It reaches across many fields—across arbitration, antitrust, employment discrimination, campaign finance, legal pleading standards, and many others. Over and over on this current Supreme Court, the Roberts bloc guiding it has consistently, repeatedly rewritten our law in the favor of corporations versus ordinary Americans. That is one of the reasons why Jeffrey Toobin, in his article, was able to say:

In every major case since he became the nation's seventeenth Chief Justice, Roberts has sided with the corporate defendant over the individual plaintiff.

Again, that was only effective May 25 of 2009, so it is a dated statistic. But certainly as of May 25 that was the record when corporations came before this Court.

A recent article—not May 25 of 2009; this one is July 24, 2010—was written by Adam Liptak. The headline was ''Court Under Roberts Has Become Most Conservative in Decades.'' It was published in the New York Times. Here are some of the findings:

In the 5 years [of the Roberts Court], the court not only moved to the right but also became the most conservative one in living memory, based on analysis of four sets of political science data.

The ideological direction of the court's activism has undergone a marked change toward conservative results.

Another quote from the article.

The first term of the Roberts court was a sharp jolt to the right.

Another quote from the article.

[F]ive years of data are now available, and they point almost uniformly in one direction: to the right.

That was another quote from the article.

A more human reaction was of Justice Sandra Day O'Connor:

''Gosh,'' Justice Sandra Day O'Connor said in the law school forum in January a few days after the Supreme Court undid one of her major achievements by reversing a decision on campaign spending limits. ''I step away for a couple of years and there's no telling what's going to happen.''

That was the reaction of Sandra Day O'Connor, a Republican appointee.

They turn things very quickly when they have the chance.

In 2000, the Court struck down a Nebraska law banning an abortion procedure by vote of 5 to 4, with Justice O'Connor in the majority—

making it a 5-to-4 striking down of that statute.

Seven years later, the court upheld a similar federal law, the Partial-Birth Abortion Act, by the same vote. ''The key to the case was not in the difference in wording between the Federal law and the Nebraska act,'' Erwin Chemerinsky wrote in 2007 in The Green Bag, a law journal.'' It was Justice Alito having replaced Justice O'Connor.

A new person on the Court, almost identical set of facts, complete reversion of decision, 5–4 to 5–4.

Similarly, in 2003, Justice O'Connor wrote the majority opinion in a 5–4 opinion to allow public universities to take account of race in university admissions decisions. A month before her retirement in 2006, a similar decision came up, and because that decision was there on the books, that opinion, the Court refused to hear a case challenging the use of race to achieve integration in public schools.

Almost as soon as she left, the article says, the Court reversed course. A 2007 decision limited the use of race for such a purpose, also on a 5–4 vote. So I suppose you could add another flag to

the list of signs of an activist Court and that would be that they change very recent decisions as soon as the majority changes so they control the votes, the way we might here in the legislature. It is very appropriate in the Senate when the majority shifts.

I see the distinguished ranking member of the Finance Committee. If he were to be the chairman of the Finance Committee, I am sure the focus of the Finance Committee would change from that under Democratic leadership, and that is part of majority control, but it is not supposed to be that way on the Supreme Court. The Supreme Court is supposed to be not dealing with partisan questions, not going for a simple majority, but answering to the Constitution.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate resume legislation session and proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each; that upon the conclusion of the so-called wrap-up period, the Senate then resume executive session and continue the debate on the Kagan nomination as provided for under a previous order and in the specified hour blocks; that upon the conclusion of the debate previously specified in the hour blocks, the Senate then resume legislative session.

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

LEGISLATIVE SESSION

MORNING BUSINESS

UNANIMOUS-CONSENT AGREEMENT—H.R. 1586

Mr. WHITEHOUSE. I ask unanimous consent that on Wednesday, August 4, after any remarks of the leaders, the Senate resume consideration of the House message to accompany H.R. 1586, with an hour of debate prior to a vote on the motion to invoke cloture on the motion to concur in the House amendment to the Senate amendment to H.R. 1586, with amendment No. 4575, with the time equally divided and controlled between the leaders or their designees, with Senator MURRAY designated to control the time of the majority leader; that upon the use or yielding back of the time, the Senate proceed to vote on the motion to invoke cloture on the motion to concur.

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

HONORING OUR ARMED FORCES

PETTY OFFICER SECOND CLASS JUSTIN MCNELEY

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of PO2 Justin McNeley. Petty Officer McNeley, a member of Assault Craft Unit One, ACU–1, based in San Diego, died from wounds sustained during a firefight that occurred on July 23, 2010. Petty Officer McNeley was serving in support of Operation Enduring Freedom in Logar Province, Afghanistan. He was 30 years old.

A native of Wheat Ridge, CO, Petty Officer McNeley enlisted in the Navy in 2001, following in his father's footsteps. Although his initial term of service had already finished, Petty Officer McNeley decided to stay in the Navy and continue to serve his country.

During over 9 years of service, Petty Officer McNeley distinguished himself through his courage, dedication to duty, and willingness to take on any challenge—no matter how dangerous. Commanders recognized his extraordinary bravery and talent. They described him with the words ''hard-working'' and ''dedicated,'' and noted that he regularly volunteered for hazardous duty.

Petty Officer McNeley worked on the front lines of battle, serving in the most dangerous areas of Afghanistan. He is remembered by those who knew him as a consummate professional with an unending commitment to excellence. His family remembers him as a dedicated father, who loved to serve his country. Friends and neighbors remember him as a motorcycle enthusiast with undeniable charisma. He even traded pen pal letters with students from an elementary school in Arizona, where he used to live.

Mark Twain once said, ''The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.'' Petty Officer McNeley's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Afghanistan. And though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Petty Officer McNeley will forever be remembered as one of our country's bravest.

To Petty Officer McNeley's entire family, I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Justin's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

PRESIDENT CALVIN COOLIDGE MUSEUM AND EDUCATION CENTER

Mr. LEAHY. Mr. President, I take this opportunity to call the Senate's attention to the imminent opening of the new President Calvin Coolidge Museum and Education Center, a wonderful year-round tribute to President Coolidge, located in the graceful and historic setting of the President's home town of Plymouth Notch, VT. The center's formal opening and dedication ceremony will take place next weekend, on August 7.

Calvin Coolidge, our 30th President, remains the only President born, sworn into office and buried in the State of Vermont. President Coolidge was originally elected to the Vice Presidency in 1920, winning that election alongside Warren G. Harding.

Three years into President Harding's first term, then-Vice President Coolidge received an unexpected messenger one evening while he was vacationing at his family's home in Plymouth Notch. The messenger informed him of President Harding's sudden and untimely death. It was at 2:47 the next morning that Calvin Coolidge was sworn in as President, in the parlor of his family home, alongside his wife Grace Coolidge, a capable and respected First Lady and a leading Vermonter in her own right. The oath of office was administered by President Coolidge's father, a State notary public official, by the light of a kerosene lamp. The new President left for Washington the next morning to assume the burdens of his new office.

President Coolidge was always known as a man of few words—the inspiration for his famous nickname, Silent Cal. Stoic in the New England tradition, President Coolidge also was an eloquent speaker who felt an obligation to communicate often with the American people to explain his policies.

Today, the Calvin Coolidge Memorial Foundation is dedicated to preserving the Nation's memory of Calvin Coolidge. Founded in 1960, the foundation is now celebrating its 50th year. By working closely with the Vermont Division for Historic Preservation, the Coolidge Foundation collects and preserves artifacts and resources related to the President. Many of the buildings within the village have become State-owned historical properties, and Plymouth Notch has been named the best-preserved Presidential site in the Nation. The development of the new museum and education center—solid and useful in the Yankee tradition—will expand the accessibility of these archives to the public, while providing a venue for students to learn about their country's history.

We Vermonters take pride in our history and heritage, and we feel the obligations of stewardship in these things. The Calvin Coolidge Memorial Foundation is faithfully tending to the preservation and dissemination of this part of Vermont's legacy and our country's history. It is my pleasure to congratulate the Calvin Coolidge Memorial Foundation, in partnership with the State of Vermont, on the occasion of the commemoration and dedication of the President Calvin Coolidge Museum and Education Center.

RECOGNIZING MIKOLE BEDE

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Mikole

Bede for her hard work as an intern in my Sheridan office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Mikole is a native of Wyoming and graduated from Sheridan High School. She currently attends the University of Wyoming, where she is majoring in history and minoring in American politics and German. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I thank Mikole for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.

RECOGNIZING LESLIE BRAZIL

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Leslie Brazil for her hard work as an intern in my Casper office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Leslie is a native of Wyoming and graduated from Kelly Walsh High School. She currently attends the University of Wyoming, where she is majoring in sociology and criminal justice and minoring in Russian. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I thank Leslie for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.

RECOGNIZING ANDREW CRAWFORD

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Andrew Crawford for his hard work as an intern in my Indian Affairs Committee office in Washington, DC. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Andrew graduated from McLean High School. He currently attends Wake Forest University, where he is majoring in history and minoring in environmental studies and political science. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the last several months.

I thank Andrew for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.

RECOGNIZING JASON DESPAIN

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Jason Despain for his hard work as an intern in my Washington, DC, office. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Jason is a native of Wyoming and graduated from Kelly Walsh High School. He currently attends Brigham Young University, where he is majoring in economics. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the last several months.

I thank Jason for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.

RECOGNIZING EMILY ELLIOTT

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Emily Elliott for her hard work as an intern in my Washington, DC, office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Emily is a native of Wyoming and graduated from Natrona County High School. She currently attends Saint Michael's College, where she is majoring in political science and minoring in global studies. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I thank Emily for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.

RECOGNIZING CAMERON LEACH

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Cameron Leach for his hard work as an intern in my Rock Springs office. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Cameron graduated from Richland High School. He attended Western Wyoming Community College for his associate's degree in science and will attend the University of Wyoming to receive his bachelor's degree. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the last several months.

I thank Cameron for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.

RECOGNIZING KELSEY MONTGOMERY

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Kelsey Montgomery for her hard work as an intern in my Washington, DC, office. I recognize her efforts and contributions to my office as well as to the State of Wyoming.

Kelsey is a native of Wyoming and graduated from Cheyenne Central High School. She currently attends Grinnell College, where she is majoring in political science. Throughout her internship, she has demonstrated a strong work ethic which has made her an invaluable asset to our office. The quality of her work is reflected in her great efforts over the last several months.

I thank Kelsey for the dedication she has shown while working for me and my staff. It was a pleasure to have her as part of our team. I know she will have continued success with all of her future endeavors. I wish her all my best on her next journey.

RECOGNIZING SAMUEL (S.J.) TILDEN

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Samuel (S.J.) Tilden for his hard work as an intern in my Indian Affairs Committee office in Washington, DC. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Samuel is a native of Wyoming and graduated from St. George's School. He currently attends George Washington University, where he is majoring in international studies and politics and minoring in francophone studies. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the last several months.

I thank Samuel for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.

RECOGNIZING CHARLES WESTERMAN

Mr. BARRASSO. Mr. President, I would like to take the opportunity to

express my appreciation to Charles Westerman for his hard work as an intern in my Cheyenne office. I recognize his efforts and contributions to my office as well as to the State of Wyoming.

Charles is a native of Wyoming and graduated from Wheatland High School. He currently attends Washington State University, where he is majoring in journalism and minoring in humanities. Throughout his internship, he has demonstrated a strong work ethic which has made him an invaluable asset to our office. The quality of his work is reflected in his great efforts over the last several months.

I thank Charles for the dedication he has shown while working for me and my staff. It was a pleasure to have him as part of our team. I know he will have continued success with all of his future endeavors. I wish him all my best on his next journey.

FREMONT COUNTY, WYOMING

Mr. BARRASSO. Mr. President, a good measure of the strength of a community is how they come together in a crisis. From June 4 to June 18, 2010, Fremont County, WY, experienced a 100-year flood. The spring runoff from the snowpack in the Wind River Mountains was heavier than usual, causing the Big Wind, Little Wind and Popo Agie Rivers to reach flood stages. Just when the citizens didn't think it could get worse, a cold front passed through, with rain and hail in lower elevations, and three to 6 feet of snow in the mountains. Lander, Riverton, Hudson, and the Wind River Indian Reservation were all threatened.

As the flood waters rose, the Fremont County commissioners led by Chairman Doug Thompson and Vice Chairman Pat Hickerson along with the Joint Tribal Councils chaired by Ivan Posey and Harvey Spoonhunter came together to request a disaster designation from Wyoming's Governor Dave Freudenthal.

As the 32 square miles of Fremont County were threatened by flood, the citizens rolled up their sleeves and worked together to protect life, livestock, and property. Under the steady guidance of incident commander, Craig Haslam, along with Joe Moore from Wyoming Homeland Security, 52 local, county, State and Federal agencies coordinated flood mitigation efforts. According to Fremont County resident Bill Sniffin, it was the biggest disaster effort of its type in Wyoming's history.

It was inspiring to see Wyoming's National Guard working side-by-side with the Fremont County folks. The 400 soldiers, under the command of General Edward Wright and Colonel Luke Reiner, bagged sand, transported folks from houses, and were at the ready for whatever the community needed. Christian Venhuizen, at the Wyoming National Guard Public Affairs, served as information officer keeping the public and media informed throughout the entire flood.

Kathi Metzler, director of Fremont County Emergency Management, and her assistant Vonda Huish opened a temporary office so they could manage the logistics that is part and parcel with coordinating so many different agencies. It was comforting having Kathi and Vonda close by to orchestrate the flurry of activity.

We can only estimate the number of hours volunteers devoted to keeping the flood waters at bay. Some estimate 35,000 hours, others say it might be up to 50,000 hours. Almost a half million sandbags were filled. Folks donated their pickups and trailers to haul property and livestock to higher ground. This is quite an investment for a county with only 36,000 people.

While the help of the government agencies was so important, neighbors helping neighbors kept damage to a minimum. Jim Buline and his son Robert, Lee Hansen and his son Jace, Travis Becker and his son Lars are a few of the many neighbors and friends who helped Charlie and Linda Griffin save their home on their historic ranch. Students from Wyoming Catholic College devoted all their time to help anyone in need. Jeri Trebelock and her staff from the Popo Agie Conservation District organized and worked with volunteers for bank stabilization to protect the Hunhke and Guschewsky homes as well as a mobile home park. In addition, all the Popo Estates landowners came together helping each other with sandbagging to protect their homes. These are just a few examples of the community spirit demonstrated by the folks in Fremont County.

On Thursday, August 5, 2010, folks from Fremont County will gather at Mr. D's Grocery Store for a ''We Survived the Flood of 2010'' party. I ask my colleagues to join me in congratulating the citizens of Fremont County and the 52 local, State, and Federal agencies for a job well done.

ADDITIONAL STATEMENTS

REMEMBERING JOE REBER

• Mr. BAUCUS. Mr. President, today I pay tribute to a great Montanan who led a remarkable life. Joe Reber was deeply involved in public service and the communities he called home in Montana; he passed away on July 23 at the age of 91. Joe lived life to the fullest and I feel lucky to have had him as a dear friend for so long.

Joe was born in Butte in 1919. He grew up in a working class family and is a great symbol of the Montana spirit of hard work and overcoming adversity. His first job as a youngster was selling newspapers on the street in Butte to help support his family. Although Joe never finished high school or went to college, he was a successful businessman and community leader whose experiences gave him many stories to tell over his 91 colorful years.

Joe served his country honorably during World War II. He volunteered in the Merchant Marine and the Coast Guard, serving as a staff officer in the Pacific theater.

Despite his humble upbringing in the Mining City, Joe became a successful entrepreneur. He started his own plumbing company in Helena, which he later expanded into electrical and general construction. He then went on to form the Reber Realty and Development Company and the Capitol Wholesale Plumbing Supply Company, among other businesses he owned. Even with all this success Joe never forgot his working class roots, growing up the son of a miner in Butte.

Joe was very active in public service on a local and national level. He served as treasurer for the Montana Democratic Party, was a State senator, was chairman of the Montana Board of Natural Resources, served on the State Board of Investments, and was a delegate to a United Nations World Food Program conference. One of his proudest accomplishments was passing legislation in the State legislature that created a vocational education program. Joe recognized the importance of education and knew how vital the program would be for economic development and to provide meaningful opportunities for young people across Montana.

Over the years Joe got to know and befriend some very important folks. He hosted John F. Kennedy at his Helena home during the 1960 Presidential campaign. He also accompanied Ted Kennedy at the Eastern Montana Fair in Miles City in 1960 where Ted took his famous ride on a bronc. He met many other Presidents, dignitaries, and celebrities along the way. These and many other stories are recounted in Joe's autobiography, ''The Paperboy,'' which he published in 2007.

Joe shared his experiences with his wife of 37 years, Rosalyn, who passed away in May. Today I send my heartfelt condolences to Joe's children—Joe, Bobbie, Dianna, Bryant, and Susie—and the entire Reber family for their loss. They can truly be proud of the life their father lived and take comfort in knowing that he helped so many others along the way.

I have always enjoyed visiting with Joe over the years and working with him on issues important to Montana. I will miss his friendship as will folks all across Big Sky country.•

TRIBUTE TO DR. ROBERT A. CARTLIDGE

• Mr. BURRIS. Mr. President, every so often, in the pantheon of scientific achievement, there comes an individual with both the intellect and the drive to further the course of scientific thought, an individual of extraordinary abilities, a truly original mind, which not only contributes to the work of modern science, but steps to the forefront and blazes a trail for others to follow.

I wish to recognize and honor the contributions of one such person, one of the select fine minds who possesses the drive, determination, and the extraordinary ability to continually explore and challenge the limits of scientific knowledge.

Today I am proud to recognize the important work and achievements of Dr. Robert A. Cartlidge.

Dr. Cartlidge is a leader in the fields of biology, biochemistry, and genetics. He is a brilliant scholar, laboratory researcher, and educator.

But most important, he has dedicated himself to the advancement and education of others in his field, and he continues to pave the way for future innovators in biological science to carry the torch even further.

Dr. Cartlidge was educated at one of the most prestigious and well-respected institutions in the world, the University of Cambridge. Following his undergraduate work, which was marked by academic achievement, he was invited by the university's academic administration to receive an honorary master's degree in Natural Sciences, joining ranks with some of the greatest minds in science.

Robert Cartlidge was then singled out by the Wellcome Trust, a global charity dedicated to supporting the brightest minds in biomedical research and the medical humanities, to receive a significant and nationally recognized academic award in Scotland: the prestigious Wellcome Trust PhD Programme.

From there, he embarked on a career dedicated to cancer research to focus on unlocking the complexities of this deadly and indiscriminate disease.

Dr. Cartlidge's innovative findings have been published in leading international scientific and academic journals and have been the basis for scientists who have come after him, learning from his publications, building upon his work, and advancing the causes of science ever further.

The scientific research tools Dr. Cartlidge has created have since been developed into commercial products, and his novel cell system continues to find use in laboratories and universities across the United States and Canada.

By themselves, any of these accomplishments would be worthy of recognition. But Dr. Cartlidge, for all of his extraordinary ability, was not content merely to shut himself in the laboratory and seek advances on his own. Instead, he devoted himself to education and collaboration, working with students and institutions all over the world to broaden his field of his expertise.

Across the reaches of three continents, he has taught, judged, lectured, assessed performance, or designed courses for innumerable fellow scientists, peers, educators, and medical students.

And in so doing, Dr. Cartlidge has broadened America's scientific influence, encouraged ingenuity across the globe, and reaffirmed the innovative spirit that will lead our country to a prosperous future.

Dr. Cartlidge seized upon the opportunity to join his natural intellect with a world-class education and quickly distinguished himself as a singular figure in modern science.

His is an extraordinary ability, the likes of which are rarely seen in this or any other field. We are all grateful that he has dedicated himself to such a selfless career in this, most dynamic and innovative of nations.

I commend Dr. Cartlidge for his extraordinary contributions to science. I celebrate his role in expanding scientific knowledge across the globe. And I thank him for his selfless commitment to the education of other professionals in his field, both in the United States and across the world.●

FAITH, SOUTH DAKOTA

● Mr. THUNE. Mr. President, today I recognize Faith, SD. Founded in 1910, Faith will celebrate its 100th anniversary this year.

Located in Meade County, Faith possesses the strong sense of community that makes South Dakota an outstanding place to live and work. The president of the Milwaukee Railroad named the city at the proposed end of the line after his daughter Faith. Faith has continued to be a strong reflection of South Dakota's greatest values and traditions. The community of Faith has much to be proud of and I am confident that Faith's success will continue well into the future.

Faith will commemorate the centennial anniversary of its founding with celebrations held from August 10 through August 15, featuring events such as a wagon train, parade, rodeo, and an all-school reunion. I would like to offer my congratulations to the citizens of Faith on this milestone anniversary and wish them continued prosperity in the years to come.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As 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.)

MESSAGE FROM THE HOUSE

At 2:40 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

IH.R. 3534. An act to provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 5730. An act to rescind earmarks for certain surface transportation projects; to the Committee on Environment and Public Works.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 5901. An act to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investment in United States real property interests, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 3534. An act to provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

The following joint resolution was read the first time:

S.J. Res. 38. Joint resolution proposing a balanced budget amendment to the Constitution of the United States.

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–6909. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Monterey, CA'' ((RIN2120–AA66)(Docket No. FAA–2009–1030)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6910. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Paynesville, MN'' ((RIN2120–AA66)(Docket No. FAA–2010–0399)) received in the Office of the President of the Senate

on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6911. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Syracuse, KS'' ((RIN2120–AA66)(Docket No. FAA–2010–0400)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6912. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Kemmerer, WV'' ((RIN2120–AA66)(Docket No. FAA–2009–1190)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6913. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Bozeman, MT'' ((RIN2120–AA66)(Docket No. FAA–2009–1220)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6914. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Mount Airy, NC'' ((RIN2120–AA66)(Docket No. FAA–2010–0070)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6915. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Clemson, SC and Establishment of Class E Airspace: Pickens, SC'' ((RIN2120–AA66)(Docket No. FAA–2010–00752) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6916. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D Airspace; Goldsboro, NC'' ((RIN2120–AA66)(Docket No. FAA–2010–0095)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6917. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D and E Airspace; Everett, WA'' ((RIN2120–AA66)(Docket No. FAA–2009–1105)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6918. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Class D and E Airspace; Panama City, FL'' ((RIN2120–AA66)(Docket No. FAA–2010–0001)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6919. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Monterey, CA'' ((RIN2120–AA66)(Docket No. FAA–2010–0633)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6920. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures (20); Amdt. No. 3383'' (RIN2120–AA65) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6921. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures (86); Amdt. No. 3382'' (RIN2120–AA65) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6922. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safe, Efficient Use and Preservation of the Navigable Airspace'' (RIN2120–AH31) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6923. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; San Marcos, TX'' ((RIN2120–AA66)(Docket No. FAA–2010–0406)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6924. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of VOR Federal Airways V–82, V–175, V–191, and V–430 in the Vicinity of Bemidji, MN'' ((RIN2120–AA66)(Docket No. FAA–2010–0241)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6925. A communication from the Attorney-Advisor, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Certification of Enforcement of the Heavy Vehicle Use Tax'' (RIN2125–AF32) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6926. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Area R3404; Crane, IN'' ((RIN2120–AA66)(FAA Docket No. 2007–28632)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6927. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''IFR Altitudes; Miscellaneous Amendments (97); Amendment No. 488'' (RIN2120–AA63) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6928. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Thielert Aircraft Engines GmbH Model TAE 125–01 Reciprocating Engines'' ((RIN2120–AA64)(Docket No. FAA–2010–0308)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6929. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; McCauley Propeller Systems Model 4HFR34C653/L106FA Propellers'' ((RIN2120–AA64)(Docket No. FAA–2007–29176)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6930. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200 and –300 Airplanes and Model A340–200, –300, –500, and –600 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–0790)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6931. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 757 Airplanes, Model 767 Airplanes, and Model 777–200 and –300 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0274)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6932. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0229)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6933. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0383)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6934. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0174)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6935. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, and A340–200, –300, –500, and –600 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–0003)) received in the Office of the

President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6936. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Piper Aircraft, Inc. PA–28, PA–32, PA–34, and PA–44 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–1015)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6937. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0733)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6938. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0173)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6939. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Zaklad Szybowcowy 'Jezow' Henryk Mynarski Model PW–6U Sailplanes'' ((RIN2120–AA64)(Docket No. FAA–2010–0729)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6940. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter France (ECF) Model EC255LP Helicopters'' ((RIN2120–AA64)(Docket No. FAA–2010–0721)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6941. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; The Boeing Company Model 767–200, –300, and –300F Series Airplanes Powered by General Electric or Pratt and Whitney Engines'' ((RIN2120–AA64)(Docket No. FAA–2010–0671)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6942. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Aircraft Industries a.s. Model L23 Super Blanik Gliders'' ((RIN2120–AA64)(Docket No. FAA–2010–0457)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Commerce, Science, and Transportation.

EC–6943. A communication from the Program Manager, 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 2011'' (RIN0938–AP89) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Finance.

EC–6944. A communication from the Program Manager, 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 the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2011 Rates; Effective Date of Provider Agreements and Supplier Approvals; and Hospital Conditions of Participation for Rehabilitation and Respiratory Care'' (RIN0938–AP80 and RIN0938–AQ03) received in the Office of the President of the Senate on August 2, 2010; to the Committee on Finance.

EC–6945. 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 ''Qualified Zone Academy Bonds; Obligations of States and Political Subdivisions'' ((RIN1545–BC61)(TD 9495)) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Finance.

EC–6946. 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 ''Xilinx, Inc. v. Commissioner, 598 F. 3d 1191 (9th Cir, 2010), aff'g 125 T.C. 37 (2005)'' (AOD 2010–33) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Finance.

EC–6947. A communication from the Program Manager, Office of Consumer Information and Insurance Oversight, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Pre-Existing Condition Insurance Plan Program'' (RIN0991–AB71) received in the Office of the President of the Senate on July 30, 2010; to the Committee on Health, Education, Labor, and Pensions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HARKIN, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 2781. A bill to change references in Federal law to mental retardation to references to an intellectual disability, and to change references to a mentally retarded individual to references to an individual with an intellectual disability (Rept. No. 111–244).

By Mr. DORGAN, from the Committee on Indian Affairs, without amendment:

S. 1448. A bill to amend the Act of August 9, 1955, to authorize the Coquille Indian Tribe, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw, the Klamath Tribes, and the Burns Paiute Tribe to obtain 99-year lease authority for trust land (Rept. No. 111–245).

By Mr. DORGAN, from the Committee on Indian Affairs, with amendments:

S. 2906. A bill to amend the Act of August 9, 1955, to modify a provision relating to leases involving certain Indian tribes (Rept. No. 111–246).

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 3304. A bill to increase the access of persons with disabilities to modern communications, and for other purposes.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. KERRY for the Committee on Foreign Relations.

*Robert M. Orr, of Florida, to be United States Director of the Asian Development Bank, with the rank of Ambassador.

*Richard M. Lobo, of Florida, to be Director of the International Broadcasting Bureau, Broadcasting Board of Governors.

*Mimi E. Alemayehou, of the District of Columbia, to be Executive Vice President of the Overseas Private Investment Corporation.

*Mark Feierstein, of Virginia, to be an Assistant Administrator of the United States Agency for International Development.

*Nisha Desai Biswal, of the District of Columbia, to be an Assistant Administrator of the United States Agency for International Development.

*Rose M. Likins, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister—Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Peru.

Nominee: Rose M. Likins

Post: Lima, Peru

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: James M. Likins and Kelly Ault, none; Kevin M. Likins, none.

4. Parents: Eugene A. McCartney, deceased; Merlyn Houghland, deceased.

5. Grandparents: Hoover and Henrietta Houghland, deceased; Robert and Marie McCartney, deceased.

6. Brothers and Spouses: Sean M. and Bonnie McCartney: $2300.00, 2008, John McCain; Terence E. and Julia McCartney: $75, 2005, NRA; $50, 2005, RNC; $2000, 2005, Hillary Clinton; $500, 2008, RNC.

7. Sisters and Spouses: Kathleen and George Deshazor, none; Patricia Fretz, none.

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*Luis E. Arreaga-Rodas, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iceland.

Nominee: Luis E. Arreaga-Rodas.

Post: U.S. Ambassador to Iceland.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: None.

4. Parents: None.

5. Grandparents: None.

6. Brothers and Spouses: None.

7. Sisters and Spouses: None.

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*Phillip Carter III, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cote d'Ivoire.

Nominee: Phillip Carter III.

Post: Cote d' Ivoire.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $250, 5/7/08, Barack Obama; $250, 10/8/08, Barack Obama.

2. Spouse: Amanda J. Carter: None.

3. Children and Spouses: Justin M. Carter, None; Andrew N. Carter, None.

4. Parents: Phillip Carter Jr., Deceased; Hortencia Carter, None.

5. Grandparents: Phillip Carter Sr., Deceased; Frances Carter, Deceased; Ramon P. Cano, Deceased; Rafaela Cano, Deceased.

6. Brothers and Spouses: David R. Carter, None; Nicole Carter, None.

7. Sisters and Spouses: Melissa A. Carter, None.

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*Gerald M. Feierstein, of Pennsylvania, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Yemen.

Nominee: Gerald M. Feierstein.

Post: U.S. Embassy Sana'a Yemen.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $100, 06/2006, James Webb.

2. Spouse: $100, 06/2008, Barack Obama; $100, 08/2008, Barack Obama.

3. Children and Spouses: Adam J. Feierstein, none; Anne E. Feierstein, none; and Sara P. Feierstein, none.

4. Parents: Lester H. Feierstein, deceased; Rose T. Feierstein, $50, 2006, Democratic National Committee; $50, 2007, Democratic National Committee; $50, 2008, Democratic National Committee; $50, 2008, Hillary Clinton; $50, 2008, Al Franken; $50, 2008, Al Franken; $50, 2009, Democratic National Committee.

5. Grandparents: Adam S. Feierstein, deceased; Sarah Feierstein, deceased; Abraham Thaler, deceased; Rebekah Thaler, deceased.

6. Brothers and Spouses: not applicable.

7. Sisters and Spouses: Robert & Cicely McCracken, $50, 2008, Barack Obama.

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*Peter Michael McKinley, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Colombia.

Nominee: Peter Michael McKinley

Post: Colombia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: Peter Michael McKinley, None.

2. Spouse: Fatima McKinley, None.

3. Children: Claire, Peter, Sarah, None.

4. Parents: Peter M. McKinley, $100–$150, 2004, RNC Committee; Enriqueta McKinley (d.2001), $50–$100, 2008, RNC Committee.

5. Grandparents: (all deceased before 1990).

6. Brothers and Spouses: Brian Matthew McKinley, None. Rocio McKinley (spouse) None.

7. Sisters and Spouses: Margaret McKinley Clarke, $75–$100, 2006, DNC Committee; Hyde Clarke (spouse), $50–$100, 2008, DNC Committee.

*Helen Patricia Reed-Rowe, of Maryland, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Palau.

Nominee: Helen Patricia Reed-Rowe.

Post: Republic of Palau.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $75.00, 03/03/8, Obama 4 America; $50.00, 08/01/89, Obama 4 America; $10.00, 12/28/09, DNC BarackObama.com.

2. Spouse: N/A.

3. Children and Spouses: Nikkia T Rowe: $10.00, 2008, Obama 4 America; Kevin A. Rowe: $0.

4. Parents: John W. Reed Sr., and Gladys R. are both deceased.

5. Grandparents: Jasper Reed, Wilton Penn and Helen Reed Penn are all deceased; Milton and Lizzie Laws are both deceased.

6. Brothers and Spouses: John W. Reed, Jr. is deceased; Alvin and Louise Reed: $0.

7. Sisters and Spouses: N/A.

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*Patrick S. Moon, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Bosnia and Herzegovina.

Nominee: Patrick S. Moon.

Post: Sarajevo.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Marisa Moon (age 21, unmarried)—None; Natalie Moon (age 4)—None; Anya—Moon None.

4. Parents: Milton R. Moon (Deceased); Margaret J. Moon (Deceased).

5. Grandparents: Arthur Pearson (Deceased); Lacy Pearson (Deceased); Robert Moon (Deceased); Minnie Moon (Deceased).

6. Brothers and Spouses: Raymond E. Moon—None; Rassa Moon, spouse—None.

7. Sisters and Spouses: None.

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*Christopher W. Murray, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of the Congo.

Nominee: Christopher W. Murray.

Post: Ambassador Designate U.S. Embassy Brazzaville.

(The following is a list of all members of immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $250.00, 03/02/2008, Obama for America; *To the best of my recollection, $100.00, 08/2008*, Obama for America.

2. Spouse: none.

3. Children and Spouses: David Murray (Son), $25.00, 08/02/2008, Obama for America.

4. Parents: David G. Murray (Father), $250.00, 10/08/2008, Obama for America; $500.00, 01/04/2008, Obama for America; Judith Sayles (Step-Mother), $270.00, 08/28/2008, Friends of Hillary Clinton; $500.00, 02/07/2008, Hillary Clinton—President; $500.00, 02/21/2008, Hillary Clinton—President; $500.00, 02/29/2008, Hillary Clinton—President; $229.00, 03/07/2008, Hillary Clinton—President; $270.00, 03/07/2008, Hillary Clinton—President; $500.00, 09/08/2007, Hillary Clinton—President; Lee M. Murray (Mother), $50.00, 02/08/2008, Obama for President; $50.00, 04/10/2008, Obama for President; $50.00, 07/03/2008, Obama for President; $100.00, 09/23/2008, Obama for President.

5. Brothers and Spouses: James A. Murray (Brother), $100.00, 08/12/2008, Obama for America.

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*Mark Charles Storella, of Maryland, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zambia.

Nominee: Mark C. Storella.

Post: Ambassador to the Republic of Zambia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: Anne Marie Huvos—None.

3. Children: Zachary H. Storella and Theo H. Storella—None.

4. Parents: John A. Storella (Father)—None. Marianne V. Storella (Mother)—None, deceased.

5. Grandparents: Alfonse Storella, Tomasina Storella, Calogero Amico and Gaspara Amico—None, deceased.

6. Elder Brother: John R. Storella, $100, 2010, Brown, Scott (MA Senate Campaign); $25, 2009, Harmer, David (CA Congress Race); $250, 05/26/2008, Wiviott, Don (NM Congressional Race); $250, 05/21/2008, ACTBLUE (For Wiviott Campaign); $900, 03/31/2008, California 2009 GOP Delegation; $1,000, 01/30/2008, McCain, John S. (President); $500, 09/05/2007, McCain, John S. (President); $50, 2007, Republican Senate Committee.

Sister-in-law: Lisa Aliferis, $500, 03/30/2008, Clinton, Hillary (President); $100, 08/2008, Woods, Anthony (CA Congress).

7. Sister: Janet M. Storella, $2,500, 04/17/2009, Van Hollen, Christopher (MD Congress), $2,300, 05/10/2008, Van Hollen, Christopher (MD Congress); $1,000, 05/10/2008, Democratic Cong. Campaign Comm.; $500, 02/1/2005, American College of Radiology Assn PAC.

Brother-in-law: Andrew Karron, $500, 09/18/2009, ACTBLUE (Owens NY Cong. Campaign); $300, 09/16/2009, Arnold and Porter LLP PAC; $500, 09/1/2009, Owens, William (NY Congress); $300, 06/12/2009, Arnold and Porter LLP PAC; $300, 04/27/2009, Arnold and Porter LLP PAC; $300, 01/16/2009, Arnold and Porter LLP PAC; $300, 09/19/2008, Arnold and Porter LLP PAC; $2,300, 08/31/2008, Obama, Barack (President); $300, 06/12/2008, Arnold and Porter LLP PAC; $1,000, 05/10/2008, Democratic Congressional Camp.; $2,300, 05/10/2008, Van Hollen, Christopher (MD Congress); $900, 04/10/2008, Arnold and Porter LLP PAC; $350, 01/16/2008, Arnold and Porter LLP PAC; $350, 09/27/2008, Arnold and Porter LLP PAC; $350, 01/19/2007, Arnold and Porter LLP PAC; $350, 04/04/2007, Arnold and Porter LLP PAC; $2,300, 03/05/2007, Obama, Barack (President); $1,000, 06/02/2006, Forward Together PAC; $500, 06/27/2006, Cardin, Benjamin (MD Senate); $500, 2009 or 2010, Bennet, Michael (CO Senate); $500 (est.), 2007, 2008, Democratic National Comm. and 2009.

8. Younger Brother: James D. Storella—None.

*J. Thomas Dougherty, of Wyoming, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

Nominee: John Thomas Dougherty.

Post: Ouagadougou, Burkina Faso.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Peter Dougherty: None; Celeste Dougherty: None.

4. Parents: J.T. Dougherty (Deceased): None; Mary Ann Dougherty: None.

5. Grandparents: Anton & Celestina Grosso (Deceased): None; Frank & Lily Dougherty (Deceased): None.

6. Brothers and Spouses: None.

7. Sisters and Spouses: Leslie Dougherty Hutchinson: 30.00 USD, 10/02/2009, Democratic Nat'l Committee; Atman Hutchinson: 30.00 USD, 10/02/2009, Democratic Nat'l Committee; Sandra Dougherty Lamberton: None; William J. Lamberton III: None; Robin Dougherty Tivy: None; Stephen V. Tivy: None.

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*Eric D. Benjaminson, of Oregon, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Gabonese Republic, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Sao Tome and Principe.

Nominee: Eric D. Benjaminson.

Post: Gabon/Sao Tome.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions and amount:

1. Self $0.

2. Spouse $0.

3. Children and Spouses: $0.

4. Parents: $0.

5. Grandparents: $0.

6. Brothers and Spouses: $0.

7. Sisters and Spouses: $0.

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*Maura Connelly, of New Jersey, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Lebanon.

Nominee: Maura Connelly.

Post: U.S. Ambassador, Lebanon.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: 0.

2. Spouse: N/A.

3. Children and Spouses: N/A.

4. Parents: Raymond Connelly: 0; Catherine Connelly (deceased).

5. Grandparents: John Connelly (deceased); Edna Walsh Connelly (deceased); Thomas McCann (deceased); Mary McCafferty McCann (deceased).

6. Brothers and Spouses: N/A.

7. Sisters and Spouses Names: Megan Connelly Accardi: $50, 2/9/06, Democratic National Committee; $20, 6/19/06, Kennedy for Senate; $15, 3/26/07, John Edwards for President; $6.10, 6/1/07, John Edwards for President; $50, 8/6/07, Democratic National Committee; $25, 8/29/08, Obama for America; Joseph Accardi (Megan's spouse): 0; Meave Connelly: 0; Kevin Kelly (Meave's spouse): 0.

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*Daniel Bennett Smith, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece.

Nominee: Daniel Bennett Smith.

Post: Athens, Greece.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.

2. Spouse: $15, 2007, VA Democratic Party.

3. Children and Spouses: Andrew B. Smith: None. Erik G. Smith: None. Troy D. Smith: None.

4. Parents: Daniel M. Smith (Father)—Deceased; Carolyn A. Smith (Mother): $50, 2008, Barack Obama for President; $50, 2008, John Edwards for President.

5. Grandparents: Benjamin Brown—Deceased; Caroline Brown—Deceased; Daniel M. Smith—Deceased; Alma Smith—Deceased.

6. Brothers and Spouses: Gregory Smith, $150, 2009, Move on.Org PAC; $35, 2009, Act Blue (Betsy Markey for Congress); $50, 2009, Hillary Clinton Committee; $25, 2009, Al Franken Committee; $150, 2009, Human Rights Campaign; $300, 2008, Obama for America; $100, 2008, Obama On Line Backup; $200, 2008, Hillary Clinton for President; $150, 2008, Al Franken for Senate; $300, 2008, Democratic Senatorial Campaign Committee; $275, 2008, Democratic Congressional Campaign Committee; $100, 2008, Friends of Mary Landrieu; $125, 2008, Move On.Org; $310, 2008, Democracy Engine; $200, 2008, Move On Pac Bundling; $150, 2008, Human Rights Campaign Web; $500, 2006, Democratic Congressional Campaign; $500, 2006, Democratic Senatorial Campaign; $200, 2006, CA Democratic Party; $100, 2006, Jerry McNerney For Congress.

7. Sisters and Spouses: Stephanie Smith-Hult: None.

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*James Frederick Entwistle, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of the Congo.

Nominee: James F. Entwistle.

Post: Kinshasa.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: none.

2. Spouse: Pamela G. Schmoll: none.

3. Children and Spouses: Jennifer B.S. Entwistle (Daughter): None; Jeffrey W.S. Entwistle (Son): None.

4. Parents: Barbara G. Entwistle (Mother): none; Oliver H. Entwistle, Jr. (Father)—deceased.

5. Grandparents: Geraldine Gaskill—deceased; Loren B. Gaskill—deceased; Emily G. Entwistle—deceased; Oliver H. Entwistle—deceased.

6. Brothers and Spouses: Steven D. Entwistle: none; Sharon B. Entwistle: none.

7. Sisters and Spouses: N/A.

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*Laurence D. Wohlers, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

Nominee: Laurence D. Wohlers.

Post: Bangui.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: none.

2. Spouse: Ann: none.

3. Children and Spouses: Christopher, none; Marion, none; Sophie, none.

4. Parents: Lester—deceased, none; Barbara, none.

5. Grandparents: (deceased for many years).

6. Brothers and Spouses: Paul Wohlers, none; Mary Jo Wohlers, none; Douglas Wohlers, none; Kazuko Wohlers, none.

7. Sisters and Spouses: none.

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*Judith R. Fergin, of Washington, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Timor-Leste.

Nominee: Judith Ryan Fergin.

Post: Dili, Timor Leste.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $300.00, May 2004, American Foreign Service Assoc. (AFSA) PAC; $200.00, April 2005, AFSA PAC; $200.00, Oct 2005, AFSA PAC; $200.00, Aug 2006, AFSA PAC; $100.00, Nov 2006, AFSA Legislative Action Fund; $200.00, April 2007, AFSA PAC; $200.00, Oct 2007, AFSA Legislative Action Fund; $200.00, June 2008, AFSA PAC; $200.00, Oct 2008, AFSA Legislative Action Fund.

2. Spouse: Gregory G. Fergin: $150.00, May 1995, AFSA Legislative Action; $150.00, Dec 1995, AFSA Legislative Action; $150.00, Dec 1996, AFSA Legislative Action; $150.00, Nov 1998, AFSA Legislative Action; $150.00, Sep 2000, AFSA Legislative Action; $150.00, May 2001, AFSA Legislative Action; $200.00, Dec 2001, AFSA Legislative Action; $200.00, Dec 2002, AFSA Legislative Action; $250.00, Dec 2003, AFSA PAC; $250.00, Dec 2004, AFSA Legislative Action; $200.00, Apr 2005, AFSA PAC; $200.00, Dec 2005, AFSA Legislative Action; $150.00, Dec 2006, AFSA PAC; $150.00, Dec 2006, AFSA Legislative Action; $100.00, Dec 2007, AFSA PAC; $150.00, Dec 2007, AFSA Legislative Action.

3. Children and Spouses: William L. Fergin: none. Amalia C. Fergin: none.

4. Parents: Harwood E. Ryan, Jr., deceased; Dorothy S. Ryan: none.

5. Grandparents: Harwood E. Ryan, Sr.: deceased; Ethel J. Ryan: deceased; Irvin A. Sims: deceased; Dorothy H. Sims: deceased.

6. Brothers and Spouses: n/a.

7. Sister and Spouse: Anne R. Wood: none; Robert E. Wood: $25.00, July 2008, Republican Nat'l Committee (RNC); $25.00, Sept 2008, RNC; $50.00, 2008, Harry Taylor for Congress (defeated) (Democrat, NC).

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*Michael S. Owen, of Virginia, a Career Member of the Senior Foreign Service, Class

of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Sierra Leone.

Nominee: Michael S. Owen.

Post: Freetown.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $150, 10/2008, DSCC.
2. Spouse: None.
3. Children and Spouses: None.
4. Parents: None.
5. Grandparents: None.
6. Brothers and Spouses: None.
7. Sisters and Spouses: None.

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*Robert Porter Jackson, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Cameroon.

Nominee: Robert Porter Jackson.

Post: Ambassador to Cameroon.

The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Contributions, amount, date, and donee:

1. Self: None.
2. Spouse: None.
3. Children and Spouses: N/A.
4. Parents: Francis Marion Jackson, Jr.: Deceased. Barbara Buchanan Jackson: None.
5. Grandparents: Arthur Perry Buchanan: Deceased. A. Vaughn Porter Buchanan: Deceased.
6. Brothers and Spouses:

Francis M. Jackson Ill, Brother: $2,300, 09/09/2008, To Thomas H. Allen (D) for Senate; $2,000, 11/04/2008, To Barack ''Obama for America''; $200, 7/25/2009, To Democratic National Committee.

Ellen M. R. Jackson, Sister-in-law: $2,300, 09/09/2008, To Thomas H. Allen (D) for Senate; $2,000, 11/04/2008, To Barack ''Obama for America''.

7. Sisters and Spouses:

Nancy Vaughan: Jackson Gronbeck, Deceased.

David Gronbeck, Brother-in-law: None.

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*James Franklin Jeffrey, of Virginia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iraq.

Nominee: James Franklin Jeffrey.

Post: Baghdad.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.
2. Spouse: None.
3. Children and Spouses: Julia S. Jeffrey, none; Jahn F. Jeffrey, none.
4. Parents: Herbert F. Jeffrey, deceased; Helen G. Jeffrey, deceased.
5. Grandparents: Herbert Jeffrey, deceased; Grace Jeffrey, deceased; Margaret O'Neill, deceased; Joseph O'Neill, deceased.
6. Brothers and Spouses: Edward Jeffrey, none; Linda Jeffrey, none.

*Alejandro Daniel Wolff, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

Nominee: Alejandro Wolff.

Post: Chile.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, donee:

1. Self: none.
2. Spouse: Alexandra Wolff, none.
3. Children and Spouses: Philip Wolff, none; Michael Wolff, none.
4. Parents: Gerard and Toni Wolff, none.
5. Grandparents: N/A.
6. Brothers and Spouses: Richard and Susan Wolff, none;; Claudio and Sarah Wolff, none.
7. Sisters and Spouses: N/A.

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*Scot Alan Marciel, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Indonesia.

Nominee: Scot Alan Marciel.

Post: Jakarta.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, donee:

1. Self: $50, 2008, Obama.
2. Spouse: none.
3. Children and Spouses: Lauren Marciel, none; Natalie Marciel, none.
4. Parents: Ronald Marciel, none; Grace Marciel (stepmom), none.
5. Grandparents: Steven Marciel, deceased; Louise Lundy, deceased.
6. Brothers and Spouses: Michael Marciel, none; Deborah Marciel, none.
7. Sisters and Spouses: Rhonda Donhowe, none.

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*Terence Patrick McCulley, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

Nominee: Terence P. McCulley.

Post: Nigeria.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: none.
2. Spouse: none.
3. Children and Spouses: Sean P. McCulley (17): none. Liam T. McCulley (13): none.
4. Parents: William M. McCulley (deceased, 2007): none; Doris J. McCulley: none.
5. Grandparents: Roy Millage (deceased, 1961): none; Grace Millage Smith (deceased 1997): none; Elzie McCulley (deceased 1985): none; Jessie McCulley (deceased 1990): none.
6. Brothers and Spouses: Larry A. McCulley: none; Karen McCulley (sister-in-law): none; Stephen W. McCulley: none; Christine McCulley (sister-in-law): none.
7. Sisters and Spouses: None.

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*Pamela E. Bridgewater Awkard, of Virginia, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Jamaica.

Nominee: Pamela E. Bridgewater Awkard.

Post: Jamaica.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: $300, 2008, Barack H. Obama.
2. Spouse: Alfred Russell Awkard: $350, 2004, Anne Northup.
3. Children and Spouses: n/a.
4. Parents: Mary H. Bridgewater (deceased): $100, 2008, Barack H. Obama; Joseph N. Bridgewater (Deceased): none.
5. Grandparents: Blanche A. Hester (deceased): none; B.H. Hester (deceased): none; Ethel Bridgewater (deceased): none.
6. Brothers and Spouses: none.
7. Sisters and Spouses: none.

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*Michele Thoren Bond, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

Nominee: Michele Thoren Bond.

Post: Lesotho.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: 0.
2. Spouse: Clifford G. Bond: 0.
3. Children: Robert C. Bond, Elisabeth W. Bond, Lillian C. Bond, Matthew M. Bond: 0.
4. Parents (Deceased): 0.
5. Grandparents (Deceased): 0.
6. Brothers and Spouses: Peter and Lisa Thoren: $2,400, 2010, Gillibrand for Senate; $250, 2010, Blumenthal for Connecticut; $250, 2009, Evan Bayh Committee; $1,000, 2008, Lyondell Chemical Co. PAC; $2,500, 2007, All America PAC (Evan Bayh); $2,500, 2006, All America PAC (Evan Bayh). Stephen and Kristiina Thoren: 0.

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*Paul W. Jones, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Malaysia.

Nominee: Paul Wayne Jones.

Post: Malaysia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: none.
2. Spouse: Catherine C.G. Jones: none.
3. Children and Spouses: Aleksandra Jones: none. Hale Jones: none.
4. Parents: Evelyn Jones: none. John Jones, deceased.
5. Grandparents: Paul Jones, deceased. Gladys Jones, deceased. John Hale-White, deceased. Hetty Hale-White, deceased.
6. Brothers and Spouses: none.
7. Sisters and Spouses: Catherine Johnsen: none. Sigurd Johnsen: none. Margaret Jones: none.

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*Phyllis Marie Powers, of Virginia, a Career Member of the Senior Foreign Service,

Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Panama.

Nominee: Phyllis Marie Powers.

Post: Panama.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: No contributions.
2. Spouse: None.
3. Children and Spouses: None.
4. Parents: Deceased.
5. Grandparents: Deceased.
6. Brothers and Spouses: None.
7. Sisters and Spouses: Pamela and Donald Curley, $200, August 2008, Brett Green, Campaign for District Judge in Wilkesboro, NC; Patricia and Charles Miller, No contributions.

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*Francis Joseph Ricciardone, Jr., of Massachusetts, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Turkey.

Nominee: Francis Joseph Ricciardone, Jr.,

Post: Ankara.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, amount, date, and donee:

1. Self: None.
2. Spouse: None.
3. Children and Spouses: Francesca Mara Ricciardone and Micah White: None. Chiara Teresa Ricciardone: None.
4. Parents: Francis J. Ricciardone, Sr.: $100, 2008, Republican National Committee. (Mother deceased).
5. Grandparents: Deceased.
6. Brothers and Spouses: Michael and Elizabeth Ricciardone: None. James and Lisa Ricciardone: None. David and Beverly Ricciardone: None.
7. Sisters and Spouses: Theresa Ricciardone and Peter Thayer: None. Marguerite Ricciardone and David R. Stone: $100, 2/2010, Ellen Gibbs (D), Selectman, Wellesley, MA.

Mr. KERRY. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Foreign Service nominations beginning with Karen S. Sliter and ending with Elia P. Vanechanos, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2010.

*Foreign Service nominations beginning with James K. Chambers and ending with Cameron Munter, which nominations were received by the Senate and appeared in the Congressional Record on June 28, 2010.

*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 Mr. BENNET:

S. 3690. A bill to provide for additional quality control of drugs; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WEBB:

S. 3691. A bill to establish rules to assist consumers to compare airfares and other costs applicable to tickets for air transportation, to amend the Internal Revenue Code of 1986 to provide that fees charged for carry-on and checked baggage on passenger aircraft are subject to the excise tax imposed on transportation of persons by air, and for other purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself and Mr. CRAPO):

S. 3692. A bill to amend the Internal Revenue Code of 1986 to permanently extend the deductibility of mortgage insurance premiums; to the Committee on Finance.

By Mr. GRASSLEY:

S. 3693. A bill to provide funding for the settlement of lawsuits against the Federal Government for discrimination against Black Farmers; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. CANTWELL (for herself, Ms. COLLINS, and Mr. SANDERS):

S. 3694. A bill to prohibit the conducting of invasive research on great apes, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MENENDEZ (for himself, Mrs. GILLIBRAND, and Mr. LAUTENBERG):

S. 3695. A bill to fight criminal gangs; to the Committee on Finance.

By Mr. CASEY:

S. 3696. A bill to amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DEMINT:

S.J. Res. 38. A joint resolution proposing a balanced budget amendment to the Constitution of the United States; read the first time.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. NELSON of Nebraska (for himself and Mr. INHOFE):

S. Res. 605. A resolution designating September 13, 2010, as ''National Celiac Disease Awareness Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 571

At the request of Mr. MENENDEZ, the name of the Senator from North Carolina (Mrs. HAGAN) was added as a cosponsor of S. 571, a bill to strengthen the Nation's research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, and study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes.

S. 987

At the request of Mr. DURBIN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 987, a bill to protect girls in developing countries through the prevention of child marriage, and for other purposes.

S. 1183

At the request of Mr. DURBIN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1183, a bill to authorize the Secretary of Agriculture to provide assistance to the Government of Haiti to end within 5 years the deforestation in Haiti and restore within 30 years the extent of tropical forest cover in existence in Haiti in 1990, and for other purposes.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from West Virginia (Mr. GOODWIN) was added as a cosponsor of S. 1553, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1703

At the request of Mr. DORGAN, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 1703, a bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.

S. 3036

At the request of Mr. BAYH, the name of the Senator from New Hampshire (Mrs. SHAHEEN) was added as a cosponsor of S. 3036, a bill to establish the Office of the National Alzheimer's Project.

S. 3211

At the request of Mrs. SHAHEEN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3211, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certain certified diabetes educators as certified providers for purposes of outpatient diabetes self-management training services under part B of the Medicare Program.

S. 3381

At the request of Mr. BAUCUS, the name of the Senator from Wyoming (Mr. BARRASSO) was added as a cosponsor of S. 3381, a bill to amend the Clean Air Act to modify certain definitions of the term ''renewable biomass'', and for other purposes.

S. 3397

At the request of Ms. KLOBUCHAR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3397, a bill to amend the Controlled

Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes.

S. 3402

At the request of Mr. LEMIEUX, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 3402, a bill to encourage residential use of renewable energy systems by minimizing upfront costs and providing immediate utility cost savings to consumers through leasing of such systems to homeowners, and for other purposes.

S. 3447

At the request of Mr. AKAKA, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3447, a bill to amend title 38, United States Code, to improve educational assistance for veterans who served in the Armed Forces after September 11, 2001, and for other purposes.

S. 3466

At the request of Mr. LEAHY, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 3466, a bill to require restitution for victims of criminal violations of the Federal Water Pollution Control Act, and for other purposes.

S. 3486

At the request of Mr. BROWN of Ohio, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3486, a bill to amend title 38, United States Code, to repeal the prohibition on collective bargaining with respect to matters and questions regarding compensation of employees of the Department of Veterans Affairs other than rates of basic pay, and for other purposes.

S. 3510

At the request of Mr. CONRAD, the names of the Senator from North Carolina (Mrs. HAGAN) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of S. 3510, a bill to amend the Internal Revenue Code of 1986 to permanently extend the 15-year recovery period for qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

S. 3517

At the request of Mr. AKAKA, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3517, a bill to amend title 38, United States Code, to improve the processing of claims for disability compensation filed with the Department of Veterans Affairs, and for other purposes.

S. 3572

At the request of Mrs. LINCOLN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 3572, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 225th anniversary of the establishment of the Nation's first law enforcement agency, the United States Marshals Service.

S. 3578

At the request of Mr. JOHANNS, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Tennessee (Mr. ALEXANDER) were added as cosponsors of S. 3578, a bill to repeal the expansion of information reporting requirements for payments of $600 or more to corporations, and for other purposes.

S. 3581

At the request of Mr. LUGAR, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 3581, a bill to implement certain defense trade treaties.

S. 3585

At the request of Mr. UDALL of Colorado, the name of the Senator from New Mexico (Mr. UDALL) was added as a cosponsor of S. 3585, a bill to amend title 10, United States Code, to reform Department of Defense energy policy, and for other purposes.

S. 3622

At the request of Mr. JOHANNS, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 3622, a bill to require the Administrator of the Environmental Protection Agency to finalize a proposed rule to amend the spill prevention, control, and countermeasure rule to tailor and streamline the requirements for the dairy industry, and for other purposes.

S. 3624

At the request of Mr. DEMINT, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 3624, a bill to encourage continued investment and innovation in communications networks by establishing a new, competition analysis-based regulatory framework for the Federal Communications Commission.

S. 3643

At the request of Mr. JOHANNS, his name was added as a cosponsor of S. 3643, a bill to amend the Outer Continental Shelf Lands Act to reform the management of energy and mineral resources on the Outer Continental Shelf, to improve oil spill compensation, to terminate the moratorium on deepwater drilling, and for other purposes.

S. 3645

At the request of Mrs. MURRAY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 3645, a bill to direct the Secretary of Education to establish and administer an awards program recognizing excellence exhibited by public school system employees providing services to students in pre-kindergarten through higher education.

S. 3653

At the request of Mr. CORNYN, the names of the Senator from Oklahoma (Mr. INHOFE), the Senator from Wyoming (Mr. BARRASSO) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 3653, a bill to remove unelected, unaccountable bureaucrats from seniors' personal health decisions by repealing the Independent Payment Advisory Board.

S. 3654

At the request of Mr. LEAHY, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 3654, a bill to amend title 11 of the United States Code to include firearms in the types of property allowable under the alternative provision for exempting property from the estate.

S. 3667

At the request of Mr. KERRY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3667, a bill to amend part A of title IV of the Social Security Act to exclude child care from the determination of the 5-year limit on assistance under the temporary assistance to needy families program, and for other purposes.

S. RES. 519

At the request of Mr. DEMINT, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. Res. 519, a resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that the primary safeguards for the legal rights of children in the United States are the Constitutions of the United States and the several States, and that, because the use of international treaties to govern policy in the United States on families and children is contrary to principles of self-government and federalism, and that, because the United Nations Convention on the Rights of the Child undermines traditional principles of law in the United States regarding parents and children, the President should not transmit the Convention to the Senate for its advice and consent.

AMENDMENT NO. 4531

At the request of Mr. JOHANNS, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of amendment No. 4531 intended to be proposed to H.R. 5297, an act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. CANTWELL (for herself, Ms. COLLINS, and Mr. SANDERS):

S. 3694. A bill to prohibit the conducting of invasive research on great apes, and for other purposes; to the Committee on Environment and Public Works.

Ms. CANTWELL. Mr. President, I rise today to introduce legislation to end the use of Great Apes in invasive research and urge my Senate colleagues to support the Great Ape Protection Act.

The Great Ape Protection Act would prohibit invasive research on all Great Apes, including chimpanzees—the only Great Ape used in invasive research today. The bill would require the retirement of 500 federally-owned chimpanzees to appropriate sanctuaries.

Today about 1,000 chimpanzees—half of them federally owned—languish at great taxpayer expense in 6 research laboratories across the nation.

These chimpanzees are being held or used for invasive biomedical research, research that may cause death, bodily injury, pain, distress, fear, and trauma. Invasive research practices include techniques such as injecting a chimpanzee with a drug that would be detrimental to its health, infecting a chimp with a disease, cutting a chimp or removing body parts, and isolation or social deprivation.

The vast majority of these animals—between 80 and 90 percent—aren't actually being used in research, but instead are warehoused, simply wasting away in these facilities. For example, approximately half of the government-owned chimpanzees have been held for the past 9 years in a facility in New Mexico where no research is being conducted.

Some chimpanzees have been in labs for more than 50 years, confined in steel cages for most of their lives and enduring sometimes painful and distressing experimental procedures.

The fact that the vast majority of federally-owned chimpanzees are not being used in active research, but instead are warehoused in labs at the taxpayer expense, underlines the futility of their continued confinement.

Chimpanzees are poor research models for human illness, and they have been of limited use in the study of human disease. Despite how similar they are to us, significant differences in their immunology and disease progression make them ineffective models for human diseases like HIV, cancer and heart disease research.

For example, research published in the Journal of Medical Primatology in 2009 on Hepatitis C indicates that use of chimpanzees has produced poor results. And the National Center for Research Resources under the National Institutes of Health has prohibited breeding of government-owned and supported chimpanzees for research.

Significant genetic and physiological differences between nonhuman Great Apes and humans also make chimpanzees a poor research model for human diseases. We have spent millions of dollars over several decades on chimpanzee-based HIV and Hepatitis C research with no resulting vaccines for those diseases. Chimpanzees largely failed as a model for HIV because the virus does not cause illness in chimpanzees as it does to humans.

These are very social, highly intelligent animals—with the ability, for example, to learn American Sign Language. Their intelligence and ability to experience emotions so similar to humans underscore how chimpanzees suffer intensely under laboratory conditions.

Their psychological suffering in laboratories produces human-like symptoms of stress, depression and post-traumatic stress disorder after decades of living in isolation in small cages.

Given their social nature and capacity for suffering and boredom due to lack of stimulation, the 500 privately-owned chimpanzees and 500 federally-owned chimpanzees being held in research laboratories would be significantly better off in sanctuaries. And by doing so we would save more than $170 million taxpayer dollars throughout the chimpanzees' lifetimes. This is because the cost of caring for a chimpanzee in a sanctuary is a fraction of the cost of their housing and maintenance in a laboratory. And many in the scientific community believe this money could be allocated to more effective research.

In my home State of Washington, I am proud that we have Chimpanzee Sanctuary Northwest. Chimpanzee-Sanctuary Northwest provides sustainable sanctuary for seven chimpanzees retired in 2008 from decades in research facilities.

The United States is currently behind the rest of the world in outlawing this sad practice.

Australia, Austria, Belgium, Japan, the Netherlands, New Zealand, Sweden, and the United Kingdom have all banned or severely limited experiments on Great Apes. And several other countries and the European Union are considering similar bans as well.

We are the only country—besides Gabon in West Africa—that is still holding or using chimpanzees for invasive research. It's past time for the United States to catch up with the rest of the world by ending this antiquated use of this endangered species.

We are lagging behind in action, but the desire to end invasive research on Great Apes has been present for more than a decade. In 1997, the National Research Council concluded that there should be a moratorium on further chimpanzee breeding. And the National Institutes of Health, NIH, has already announced an end to funding for the breeding of federally-owned and supported chimpanzees for research, but this should be codified.

Government needs to take action to make invasive research on chimpanzees illegal.

That is why today I am introducing the Bipartisan Great Ape Protection Act, along with my colleagues Senators SUSAN COLLINS of Maine and BERNIE SANDERS of Vermont.

The Great Ape Protection Act is a common-sense policy reform to protect our closest living relatives in the animal kingdom from physical and psychological harm, and to help reduce government spending and our federal deficit.

Specifically, this bill will phase out the use of chimpanzees in invasive research over a three-year period, require permanent retirement to suitable sanctuaries for the 500 federally-owned chimpanzees currently being warehoused in research laboratories, and codifies the current administrative ban on breeding of Government-owned and supported chimpanzees.

We have been delaying this action for too long. It is time to get this done and end this type of harmful research and end this wasteful Government spending.

By Mr. CASEY:

S. 3696. A bill to amend the Fair Labor Standards Act with regard to certain exemptions under that Act for direct care workers and to improve the systems for the collection and reporting of data relating to the direct care workforce, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CASEY. Mr. President, today I am introducing the Direct Care Workforce Empowerment Act.

Next year the baby boom generation will start turning 65 and by 2030, all 78 million will have reached that age. We must ensure this generation that fought in our wars, worked in our factories, taught our children and who gave us life and love are cared for. This will require an investment in the health care workforce that was begun under health care reform and must continue into the coming decades.

It is the direct care worker that provides most of this care to our loved ones. Unfortunately, they are often not given the respect they deserve for the work they do. Direct care workers help more than 250,000 Pennsylvanians and their families every day. This is also one of the fastest growing professions, according to the Bureau of Labor Statistics. It is now our responsibility to make sure these jobs, while often personally rewarding, provide opportunity for advancement and economic stability for the workers.

This bill will do three key things.

The bill will ensure that home care workers receive the Federal minimum wage and overtime protections of the Fair Labor Standards Act; improve Federal and State data collection and oversight with respect to the direct care workforce; and establish a grant program to help states improve direct care worker recruitment, retention, and training.

I hope my colleagues join me in supporting this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 605—DESIGNATING SEPTEMBER 13, 2010, AS ''NATIONAL CELIAC DISEASE AWARENESS DAY''

Mr. NELSON of Nebraska (for himself and Mr. INHOFE) submitted the following resolution; which was considered and agreed to:

S. RES. 605

Whereas celiac disease affects approximately 1 in every 130 people in the United States, for a total of 3,000,000 people;

Whereas the majority of people with celiac disease have yet to be diagnosed;

Whereas celiac disease is a chronic inflammatory disorder that is classified as both an autoimmune condition and a genetic condition;

Whereas celiac disease causes damage to the lining of the small intestine, which results in overall malnutrition;

Whereas when a person with celiac disease consumes foods that contain certain protein fractions, that person suffers a cell-mediated immune response that damages the villi of the small intestine, interfering with the absorption of nutrients in food and the effectiveness of medications;

Whereas such problematic protein fractions are found in wheat, barley, rye, and oats, which are used to produce many foods, medications, and vitamins;

Whereas because celiac disease is a genetic disease, there is an increased incidence of celiac disease in families with a known history of celiac disease;

Whereas celiac disease is underdiagnosed because the symptoms can be attributed to other conditions and are easily overlooked by doctors and patients;

Whereas as recently as 2000, the average person with celiac disease waited 11 years for a correct diagnosis;

Whereas 1/2 of all people with celiac disease do not show symptoms of the disease;

Whereas celiac disease is diagnosed by tests that measure the blood for abnormally high levels of the antibodies of immunoglobulin A, anti-tissue transglutaminase, and IgA anti-endomysium antibodies;

Whereas celiac disease can be treated only by implementing a diet free of wheat, barley, rye, and oats, often called a ''gluten-free diet'';

Whereas a delay in the diagnosis of celiac disease can result in damage to the small intestine, which leads to an increased risk for malnutrition, anemia, lymphoma, adenocarcinoma, osteoporosis, miscarriage, congenital malformation, short stature, and disorders of skin and other organs;

Whereas celiac disease is linked to many autoimmune disorders, including thyroid disease, systemic lupus erythematosus, type 1 diabetes, liver disease, collagen vascular disease, rheumatoid arthritis, and Sjogren's syndrome;

Whereas the connection between celiac disease and diet was first established by Dr. Samuel Gee, who wrote, ''if the patient can be cured at all, it must be by means of diet'';

Whereas Dr. Samuel Gee was born on September 13, 1839; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of celiac disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 13, 2010, as ''National Celiac Disease Awareness Day'';

(2) recognizes that all people of the United States should become more informed and aware of celiac disease;

(3) calls upon the people of the United States to observe National Celiac Disease Awareness Day with appropriate ceremonies and activities; and

(4) respectfully requests the Secretary of the Senate to transmit a copy of this resolution to the Celiac Sprue Association, the American Celiac Society, and the Celiac Disease Foundation.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4582. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 4583. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 3663, to promote clean energy jobs and oil company accountability, and for other purposes; which was ordered to lie on the table.

SA 4584. Mr. REED submitted an amendment intended to be proposed to amendment SA 4575 proposed by Mr. REID (for Mrs. MURRAY (for herself , Mr. HARKIN, Mr. REID, and Mr. SCHUMER)) to the bill H.R. 1586, to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes; which was ordered to lie on the table.

SA 4585. Mr. REED submitted an amendment intended to be proposed to amendment SA 4575 proposed by Mr. REID (for Mrs. MURRAY (for herself , Mr. HARKIN, Mr. REID, and Mr. SCHUMER)) to the bill H.R. 1586, supra; which was ordered to lie on the table.

SA 4586. Mr. HARKIN (for himself, Mr. LUGAR, Mr. BURRIS, Mr. JOHNSON, Ms. KLOBUCHAR, and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill S. 3663, to promote clean energy jobs and oil company accountability, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4582. Mr. KYL (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill H.R. 5875, making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 3, line 13, strike ''$30,000,000'' and all that follows through line 16 and insert ''$50,000,000 to remain available until September 30, 2012, for law enforcement activities targeted at reducing the threat of violence along the Southwest Border of the United States, of which $20,000,000 shall be made available for fiscal year 2011 for 150 additional law enforcement specialists for work at the Law Enforcement Support Center (LESC), administered by U.S. Immigration and Customs Enforcement.''.

SA 4583. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 3663, to promote clean energy jobs and oil company accountability, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. _____. POINT OF ORDER AGAINST CLIMATE CHANGE LEGISLATION.

(a) POINT OF ORDER.—Subject to subsection (b), it shall not be in order in the Senate to consider any conference report or other legislation that originates in the House of Representatives as a message, bill, amendment, or motion, or any Senate bill or related conference report to which the House of Representatives added a provision, that addresses climate change through the inclusion of a cap-and-trade program if the Senate has not considered and approved a bill addressing climate change that included such a cap-and-trade program.

(b) WAIVER AND APPEAL.—

(1) WAIVER.—Subsection (a) may be waived or suspended in the Senate only by an affirmative vote of 3/5 of the Members, duly chosen and sworn.

(2) APPEAL.—An affirmative vote of 3/5 of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under subsection (a).

SA 4584. Mr. REED submitted an amendment intended to be proposed to amendment SA 4575 proposed by Mr. REID (for Mrs. MURRAY (for herself, Mr. HARKIN, Mr. REID, and Mr. SCHUMER)) to the bill H.R. 1586, to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE V—ECONOMIC DEVELOPMENT ASSISTANCE

SEC. 501. ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS.

In chapter 2 of title I of the Act entitled ''An Act making supplemental appropriations for the fiscal year ending September 30, 2010, and for other purposes'', strike the matter under the heading ''ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS'' under the heading ''ECONOMIC DEVELOPMENT ADMINISTRATION'' under the heading ''DEPARTMENT OF COMMERCE'' and insert the following:

''Pursuant to section 703 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3233), for an additional amount for ''`Economic Development Assistance Programs''', for necessary expenses relating to disaster relief, long-term recovery, and restoration of infrastructure in areas affected by flooding for which the President declared a major disaster during the period beginning on March 29, 2010, and ending on May 7, 2010, which included individual assistance for an entire State or not fewer than 45 counties within a State under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.), $49,000,000, to remain available until expended: *Provided*, That not more than 50 percent of the amount provided under this heading shall be allocated to any State.''.

SA 4585. Mr. REED submitted an amendment intended to be proposed to amendment SA 4575 proposed by Mr. REID (for Mrs. MURRAY (for herself, Mr. HARKIN, Mr. REID, and Mr. SCHUMER)) to the bill H.R. 1586, to modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provide for modernization of the air traffic control system, reauthorize the Federal Aviation Administration, and for other purposes; which was ordered to lie on the table; as follows:

On page 39, after line 21, insert the following:

Subtitle C—Community Development Funds

SEC. 221. COMMUNITY DEVELOPMENT FUNDS.

Chapter 11 of title I of the Supplemental Appropriations Act, 2010, is amended by striking the heading ''Community Development Fund'' and all the matter that follows through the ninth proviso under such heading and inserting the following:

''COMMUNITY DEVELOPMENT FUND

''For an additional amount for the 'Community Development Fund', for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by flooding for which the President declared a major disaster between March 29, 2010, and May 7, 2010, which included Individual Assistance for an entire State or not fewer than 45 counties within a State under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, $100,000,000, to remain available until expended, for activities authorized under title I of the Housing and Community Development Act of 1974 (Public Law 93–383): *Provided*, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary: *Provided further*, That prior to the obligation of funds a grantee shall submit a plan to the Secretary detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure: *Provided further*, That funds provided under this heading may be used by a State or locality as a matching requirement, share, or contribution for any other Federal program: *Provided further*, That such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers: *Provided further*, That funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a State or subdivision thereof under the Community Development Fund: *Provided further*, That a State or subdivision thereof may use up to 5 percent of its allocation for administrative costs: *Provided further*, That in administering the funds under this heading, the Secretary of Housing and Urban Development may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a request by a State or subdivision thereof explaining why such waiver is required to facilitate the use of such funds or guarantees, if the Secretary finds that such waiver would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974: *Provided further*, That the Secretary shall publish in the Federal Register any waiver of any statute or regulation that the Secretary administers pursuant to title I of the Housing and Community Development Act of 1974 no later than 5 days before the effective date of such waiver: *Provided further*, That the Secretary shall obligate to a State or subdivision thereof not less than 50 percent of the funding provided under this heading within 90 days after the enactment of this Act: *Provided further*, That not more than 50 percent of the funding provided under this heading shall be allocated to any State (including units of general local government).''.

SA 4586. Mr. HARKIN (for himself, Mr. LUGAR, Mr. BURRIS, Mr. JOHNSON, Ms. KLOBUCHAR, and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill S. 3663, to promote clean energy jobs and oil company accountability, and for other purposes; which was ordered to lie on the table; as follows:

At the end of division B, add the following:

TITLE XXII—BIOFUELS MARKET EXPANSION

SEC. 2201. ENSURING THE AVAILABILITY OF DUAL FUELED AUTOMOBILES AND LIGHT DUTY TRUCKS.

(a) IN GENERAL.—Chapter 329 of title 49, United States Code, is amended by inserting after section 32902 the following:

''§ 32902A. Requirement to manufacture dual fueled automobiles and light duty trucks

''(a) IN GENERAL.—For each model year listed in the following table, each manufacturer shall ensure that the percentage of automobiles and light duty trucks manufactured by the manufacturer for sale in the United States that are dual fueled automobiles and light duty trucks is not less than the percentage set forth for that model year in the following table:

''Model Year	Percentage
Model years 2013 and 2014 ..	50 percent
Model year 2015 and each subsequent model year. ..	90 percent

''(b) EXCEPTION.—Subsection (a) shall not apply to automobiles or light duty trucks that operate only on electricity.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 329 of title 49, United States Code, is amended by inserting after the item relating to section 32902 the following:

''32902A. Requirement to manufacture dual fueled automobiles and light duty trucks.''.

(c) RULEMAKING.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall prescribe regulations to carry out the amendments made by this Act.

SEC. 2202. BLENDER PUMP PROMOTION.

(a) BLENDER PUMP GRANT PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) BLENDER PUMP.—The term ''blender pump'' means an automotive fuel dispensing pump capable of dispensing at least 3 different blends of gasoline and ethanol, as selected by the pump operator, including blends ranging from 0 percent ethanol to 85 percent denatured ethanol, as determined by the Secretary.

(B) E–85 FUEL.—The term ''E–85 fuel'' means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(C) ETHANOL FUEL BLEND.—The term ''ethanol fuel blend'' means a blend of gasoline and ethanol, with a minimum of 0 percent and maximum of 85 percent of the content of which is denatured ethanol.

(D) MAJOR FUEL DISTRIBUTOR.—

(i) IN GENERAL.—The term ''major fuel distributor'' means any person that owns a refinery or directly markets the output of a refinery.

(ii) EXCLUSION.—The term ''major fuel distributor'' does not include any person that owns or directly markets through less than 50 retail fueling stations.

(E) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) GRANTS.—The Secretary shall make grants under this subsection to eligible facilities (as determined by the Secretary) to pay the Federal share of—

(A) installing blender pump fuel infrastructure, including infrastructure necessary for the direct retail sale of ethanol fuel blends (including E–85 fuel), including blender pumps and storage tanks; and

(B) providing subgrants to direct retailers of ethanol fuel blends (including E–85 fuel) for the purpose of installing fuel infrastructure for the direct retail sale of ethanol fuel blends (including E–85 fuel), including blender pumps and storage tanks.

(3) LIMITATION.—A major fuel distributor shall not be eligible for a grant or subgrant under this subsection.

(4) FEDERAL SHARE.—The Federal share of the cost of a project carried out under this subsection shall be 50 percent of the total cost of the project.

(5) REVERSION.—If an eligible facility or retailer that receives a grant or subgrant under this subsection does not offer ethanol fuel blends for sale for at least 2 years during the 4-year period beginning on the date of installation of the blender pump, the eligible facility or retailer shall be required to repay to the Secretary an amount determined to be appropriate by the Secretary, but not more than the amount of the grant provided to the eligible facility or retailer under this subsection.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection, to remain available until expended—

(A) $50,000,000 for fiscal year 2011;

(B) $100,000,000 for fiscal year 2012;

(C) $200,000,000 for fiscal year 2013;

(D) $300,000,000 for fiscal year 2014; and

(E) $350,000,000 for fiscal year 2015.

(b) INSTALLATION OF BLENDER PUMPS BY MAJOR FUEL DISTRIBUTORS AT OWNED STATIONS AND BRANDED STATIONS.—Section 211(o) of the Clean Air Act (42 U.S.C. 7545(o)) is amended by adding at the end the following:

''(13) INSTALLATION OF BLENDER PUMPS BY MAJOR FUEL DISTRIBUTORS AT OWNED STATIONS AND BRANDED STATIONS.—

''(A) DEFINITIONS.—In this paragraph:

''(i) E–85 FUEL.—The term 'E–85 fuel' means a blend of gasoline approximately 85 percent of the content of which is ethanol.

''(ii) ETHANOL FUEL BLEND.—The term 'ethanol fuel blend' means a blend of gasoline and ethanol, with a minimum of 0 percent and maximum of 85 percent of the content of which is denatured ethanol.

''(iii) MAJOR FUEL DISTRIBUTOR.—

''(I) IN GENERAL.—The term 'major fuel distributor' means any person that owns a refinery or directly markets the output of a refinery.

''(II) EXCLUSION.—The term 'major fuel distributor' does not include any person that owns or directly markets through less than 50 retail fueling stations.

''(iv) SECRETARY.—The term 'Secretary' means the Secretary of Energy, acting in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Agriculture.

''(B) REGULATIONS.—The Secretary shall promulgate regulations to ensure that each major fuel distributor that sells or introduces gasoline into commerce in the United States through majority-owned stations or branded stations installs or otherwise makes available 1 or more blender pumps that dispense E–85 fuel and ethanol fuel blends (including any other equipment necessary, such as tanks, to ensure that the pumps function properly) for a period of not less than 5 years at not less than the applicable percentage of the majority-owned stations and the branded stations of the major fuel distributor specified in subparagraph (C).

''(C) APPLICABLE PERCENTAGE.—For the purpose of subparagraph (B), the applicable percentage of the majority-owned stations and the branded stations shall be determined in accordance with the following table:

"Applicable percentage of majority-owned stations and branded stations	
Calendar year:	Percent:
2013	10
2015	20
2017	35
2019 and each calendar year thereafter	50.

''(D) GEOGRAPHIC DISTRIBUTION.—

''(i) IN GENERAL.—Subject to clause (ii), in promulgating regulations under subparagraph (B), the Secretary shall ensure that each major fuel distributor described in that subparagraph installs or otherwise makes available 1 or more blender pumps that dispense E–85 fuel and ethanol fuel blends at not less than a minimum percentage (specified in the regulations) of the majority-owned stations and the branded stations of the major fuel distributors in each State.

''(ii) REQUIREMENT.—In specifying the minimum percentage under clause (i), the Secretary shall ensure that each major fuel distributor installs or otherwise makes available 1 or more blender pumps described in that clause in each State in which the major fuel distributor operates.

''(E) FINANCIAL RESPONSIBILITY.—In promulgating regulations under subparagraph (B), the Secretary shall ensure that each major fuel distributor described in that subparagraph assumes full financial responsibility for the costs of installing or otherwise making available the blender pumps described in that subparagraph and any other equipment necessary (including tanks) to ensure that the pumps function properly.

''(F) PRODUCTION CREDITS FOR EXCEEDING BLENDER PUMPS INSTALLATION REQUIREMENT.—

''(i) EARNING AND PERIOD FOR APPLYING CREDITS.—If the percentage of the majority-owned stations and the branded stations of a major fuel distributor at which the major fuel distributor installs blender pumps in a particular calendar year exceeds the percentage required under subparagraph (C), the major fuel distributor shall earn credits under this paragraph, which may be applied to any of the 3 consecutive calendar years immediately after the calendar year for which the credits are earned.

''(ii) TRADING CREDITS.—Subject to clause (iii), a major fuel distributor that has earned credits under clause (i) may sell the credits to another major fuel distributor to enable the purchaser to meet the requirement under subparagraph (C).

''(iii) EXCEPTION.—A major fuel distributor may not use credits purchased under clause (ii) to fulfill the geographic distribution requirement in subparagraph (D).''.

SEC. 2203. LOAN GUARANTEES FOR PROJECTS TO CONSTRUCT RENEWABLE FUEL PIPELINES.

(a) DEFINITIONS.—Section 1701 of the Energy Policy Act of 2005 (42 U.S.C. 16511) is amended by adding at the end the following:

''(6) RENEWABLE FUEL.—The term 'renewable fuel' has the meaning given the term in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)), except that the term includes ethanol and biodiesel.

''(7) RENEWABLE FUEL PIPELINE.—The term 'renewable fuel pipeline' means a pipeline for transporting renewable fuel.''.

(b) AMOUNT.—Section 1702(c) of the Energy Policy Act of 2005 (42 U.S.C. 16512(c)) is amended—

(1) by striking ''(c) AMOUNT.—'' and inserting the following:

''(c) AMOUNT.—

''(1) IN GENERAL.—Unless''; and

(2) by adding at the end the following:

''(2) RENEWABLE FUEL PIPELINES.—A guarantee for a project described in section 1703(b)(11) shall be in an amount equal to 80 percent of the project cost of the renewable fuel pipeline that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.''.

(c) RENEWABLE FUEL PIPELINE ELIGIBILITY.—Section 1703(b) of the Energy Policy Act of 2005 (42 U.S.C. 16513(b)) is amended by adding at the end the following:

''(11) Renewable fuel pipelines.''.

(d) RAPID DEPLOYMENT OF RENEWABLE FUEL PIPELINES.—Section 1705(a) of the Energy Policy Act of 2005 (42 U.S.C. 16516(a)) is amended by adding at the end the following:

''(4) Installation of sufficient infrastructure to allow for the cost-effective deployment of clean energy technologies appropriate to each region of the United States, including the deployment of renewable fuel pipelines through loan guarantees in an amount equal to 80 percent of the cost.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on August 3, 2010, at 9:30 a.m.

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

COMMITTEE ON ARMED SERVICES

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on August 3, 2010, at 2:30 p.m.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mrs. FEINSTEIN. 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 3, 2010, at 10 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on August 3, 2010, at 2:15 p.m.

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

SELECT COMMITTEE ON INTELLIGENCE

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on August 3, 2010, at 2:30 p.m.

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

SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts, be authorized to meet during the session of the Senate on August 3, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Protecting the Public Interest: Understanding the Threat of Agency Capture.''

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

SUBCOMMITTEE ON CHILDREN'S HEALTH

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Subcommittee on Children's Health of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on August 3, 2010, at 10 a.m. in room 406 of the Dirksen Office Building.

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

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Federal Management, Government Information, Federal Services, and International Security be authorized to meet during the session of the Senate on August 3, 2010, at 2:30 p.m. to conduct a hearing entitled ''Transforming Government Through Innovative Tools and Technology.''

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

PRIVILEGES OF THE FLOOR

Mr. CARDIN. Mr. President, I ask unanimous consent that Amy diRusso, an APSA legislative fellow in my office from the CIA, be accorded floor privileges during the debate on Elena Kagan to be a Justice of the Supreme Court of the United States.

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

Mr. FRANKEN. Mr. President, I ask unanimous consent that Doug Wilson and Romy Ganschow, two fellows in my office, be granted floor privileges for the duration of the debate on General Kagan's nomination.

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

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that Rachel Fleischer, Marcus Lucero, and Megan Fenton of Senator BINGAMAN's office be given the privilege of the floor for this day, August 3, 2010.

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

Mr. VOINOVICH. Mr. President, I ask unanimous consent that three law clerks with Senator CORNYN's staff—Amanda DeVuono, Suzanne Brangan, and Walker Hanson—be granted the privileges of the floor for the remainder of this week.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Jessica Waters and Aaron Smith of my Finance Committee staff and Carolyn Coda and Thomas Ryan of my Judiciary Committee staff be granted the privileges of the floor during the 111th Congress.

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

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Elizabeth Bina:									
Switzerland	Franc		2,647.00						2,647.70
United States	Dollar				1,129.00				1,129.00
Total			2,647.00		1,129.00				3,776.70

SENATOR BLANCHE L. LINCOLN,
Chairman, Committee on Agriculture, Nutrition and Forestry, July 26, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM APR. 1, TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Alycia Farrell:									
Germany	Euro		1,044.00						1,044.00
Poland	Zloty		147.00						147.00
Israel	Shekel		1,744.00		200.00				1,944.00
United States	Dollar				9,988.49				9,988.49
Dennis Balkham:									
Israel	Shekel		1,744.00		200.00				1,944.00
United States	Dollar				7,193.00				7,193.00
Senator Thad Cochran:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Kay Webber:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Senator Byron Dorgan:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Brian Moran:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Senator Judd Gregg:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Paul Grove:									
Hungary	Forint		262.00						262.00
Russia	Ruble		483.00		207.00				690.00
Germany	Euro		168.00						168.00
Norway	Krone		470.00						470.00
Michele Wymer:									
Zimbabwe	Dollar		317.00						317.00
South Africa	Rand		1,415.00						1,415.00
Lesotho	Maloti		179.00						179.00
United States	Dollar				10,954.50				10,954.50
Janet Stormes:									
Zimbabwe	Dollar		317.00						317.00
South Africa	Rand		1,415.00						1,415.00
Lesotho	Maloti		179.00						179.00
United States	Dollar				10,954.50		35.00		10,989.50
Senator Mary Landrieu:									
Haiti	Dollar				100.00				100.00
Tim Rieser:									
Haiti	Dollar		257.21		794.80		45.00		1,097.01
Senator George Voinovich:									
Italy	Euro		224.00						224.00
Cote d'Ivoire	Franc		161.00						161.00
Ethiopia	Birr		153.00						153.00
Kuwait	Dinar		159.00						159.00
Joseph Lai:									
Italy	Euro		224.00						224.00
Cote d'Ivoire	Franc		161.00						161.00
Ethiopia	Birr		153.00						153.00
Kuwait	Dinar		159.00						159.00
Ellen Beares:									
Ireland	Euro		866.00						866.00
Brussels	Euro		700.00						700.00
Czech Republic	Koruna		939.42						939.42
United States	Dollar				8,201.10				8,201.10
Senator Judd Gregg:									
United Kingdom	Pound		417.00						417.00
Kate Kaufer:									
Mexico	Peso		190.00						190.00
Colombia	Peso		1,080.00						1,080.00
United States	Dollar				3,227.68		85.00		3,312.68
Total			22,642.63		53,056.07		165.00		75,863.70

SENATOR DANIEL K. INOUYE,
Chairman, Committee on Appropriations, July 23, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.O. 95–384—22 U.S.C. 1756(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Daniel A. Lerner:									
United States	Dollar				4,018.09				4,018.09
Israel	New Shekel		1,443.00						1,443.00
Roosevelt Barfield:									
United States	Dollar				7,253.30				7,253.30
Germany	Euro		768.00				502.10		1,270.10
Djibouti	Franc		174.00				393.00		567.00
Ethiopia	Birr		153.00				278.18		431.18
Kenya	Shilling		160.71						160.71
Nathan Davern:									
United States	Dollar				7,253.30				7,253.30
Germany	Euro		768.00				502.10		1,270.10
Djibouti	Franc		174.00				393.00		
Ethiopia	Birr		153.00				278.18		431.18
Kenya	Shilling		160.71						160.71
Senator Jack Reed:									
United States	Dollar				3,592.10				3,592.10
Pakistan	Dollar		8.00						8.00
Afghanistan	Dollar		13.00						13.00
Carolyn Chuhta:									
United States	Dollar				3,592.10				3,592.10
Pakistan	Dollar		8.00						8.00
Afghanistan	Dollar		5.00						5.00
Senator Roland W. Burris:									
United States	Dollar				7,253.30				7,253.30
Germany	Euro		568.00				502.10		1,070.10
Djibouti	Franc		174.00				393.00		567.00
Ethiopia	Birr		78.00				278.18		356.18
Kenya	Shilling		60.71						60.71
Adam J. Barker:									
United States	Dollar				2,313.70				2,313.70
Honduras	Dollar		176.00						176.00
Senator Kay R. Hagan									
United States	Dollar				3,592.10				3,592.10
Pakistan	Dollar		8.00						8.00
Afghanistan	Dollar		8.00						8.00
Roger Pena:									
United States	Dollar				3,592.10				3,592.10
Pakistan	Dollar		8.00						8.00
Afghanistan	Dollar		5.00						5.00
Senator Susan M. Collins:									
Qatar	Riyal		328.00						328.00
Austria	Euro		211.00						211.00
France	Euro		228.00						228.00
United Kingdom	Pound		194.00						194.00
Netherlands	Euro		212.00						212.00
Robert L. Strayer II:									
Qatar	Riyal		328.00						328.00
Austria	Euro		211.00						211.00
France	Euro		228.00						228.00
United Kingdom	Pound		194.00						194.00
Netherlands	Euro		212.00						212.00
Michael V. Kostiw:									
United States	Dollar				4,817.69				4,817.69
Israel	New Shekel		1,443.00						1,443.00
Germany	Euro		2,242.00						2,242.00
Michael J. Kuiken:									
United States	Dollar				2,208.00				2,208.00
Honduras	Limpira		556.00						556.00
Senator Lindsey Graham:									
Qatar	Dollar		328.00						328.00
Dana W. White:									
United States	Dollar				6,705.80				6,705.80
Belgium	Euro		468.87						468.87
Senator James M. Inhofe:									
Cote d'Ivoire	Franc		25.00						25.00
Ethiopia	Birr		94.28						94.28
Kuwait	Dinar		7.75						7.75
Italy	Euro		163.96						163.96
Anthony Lazarski:									
Cote d'Ivoire	Franc		82.05						82.05
Ethiopia	Birr		102.30						102.30
Kuwait	Dinar		61.35						61.35
Italy	Euro		123.01		100.68				223.69
Mark Powers:									
Cote d'Ivoire	Franc		28.00						28.00
Ethiopia	Birr		97.28						97.28
Kuwait	Dinar		11.75						11.75
Italy	Euro		162.28						162.28
Ryan Thompson:									
Cote d'Ivoire	Franc		62.01						62.01
Ethiopia	Birr		106.28						106.28
Kuwait	Dinar		7.75						7.75
Italy	Euro		147.28						147.28
William G.P. Monahan:									
Belgium	Euro		260.00						260.00
United States	Dollar				6,705.80				6,705.80
Senator Kay R. Hagan:									
China	Dollar		509.00						509.00
Michael Harney:									
China	Dollar		250.00						250.00
Senator Mark Udall:									
China	Dollar		128.73				188.85		317.58
Michael Sozan:									
China	Dollar		183.05						183.05
Christian D. Brose:									
Syria	Dollar		723.00						723.00
Turkey	Dollar		665.00						665.00
Total			16,459.11		62,998.06		3,708.69		83,165.86

SENATOR CARL LEVIN,
Chairman, Committee on Armed Services, July 15, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Christopher J.Dodd:									
Brazil	Real		340.00						340.00
Argentina	Peso		510.00						510.00
Chile	Peso		174.00						174.00
United States	Dollar				8,808.20				8,808.20
Ryan C. Drajewicz:									
Brazil	Real		320.00						320.00
Argentina	Peso		490.00						490.00
Chile	Peso		154.00						154.00
United States	Dollar				10,366.20				10,366.20
Joshua Blumenfeld:									
Brazil	Real		290.00						290.00
Argentina	Peso		510.00						510.00
Chile	Peso		124.00						124.00
United States	Dollar				9,498.51				9,498.51
Senator Christopher J. Dodd:									
Colombia	Peso		362.00						362.00
Ecuador	Dollar		179.00						179.00
Peru	Soles		493.00						493.00
United States	Dollar				511.70				511.70
Joshua Blumenfeld:									
Colombia	Peso		292.00						292.00
Ecuador	Dollar		179.00						179.00
Peru	Soles		403.00						403.00
United States	Dollar				511.70				511.70
Senator Mark Warner:									
Colombia	Peso		362.00						362.00
Ecuador	Dollar		179.00						179.00
Peru	Soles		493.00						493.00
United States	Dollar				511.70				511.70
Mark Brunner:									
Colombia	Peso		362.00						362.00
Ecuador	Dollar		179.00						179.00
Peru	Soles		493.00						493.00
United States	Dollar				511.70				511.70
Total			6,888.00		30,719.71				37,607.71

SENATOR CHRISTOPHER J. DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs,
July 14, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Udall:									
United States	Dollar				11,199.10				11,199.10
United Arab Emirates	Dirham		536.00						536.00
Afghanistan	Afghani		78.00						78.00
Pakistan	Rupee		950.10						950.10
Michael Collins:									
United States	Dollar				11,199.10				11,199.10
United Arab Emirates	Dirham		536.00						536.00
Afghanistan	Afghani		78.00						78.00
Pakistan	Rupee		950.10						950.10
Bob King:									
United States	Dollar				3,069.40				3,069.40
Morocco	Dirham		1,210.00						1,210.00
Total			4,338.20		25,467.60				29,805.80

SENATOR JOHN D. ROCKEFELLER IV,
Chairman, Committee on Commerce, Science and Transportation,
July 28, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jeff Bingaman:									
United States	Dollar				12,327.00				12,327.00
China	Yuan		1,737.79						1,737.79
Robert M. Simon:									
United States	Dollar				12,327.00				12,327.00
China	Yuan		1,819.05						1,819.05
Tara Billingsley:									
United States	Dollar				11,143.70				11,143.70
China	Yuan		1,824.79						1,824.79
Derek Dorn:									
United States	Dollar				11,257.00				11,257.00
China	Yuan		1,840.79						1,840.79
Allen Stayman:									
United States	Dollar				4,998.23				4,998.23
United States	Dollar		223.66						223.66
Micronesia	Dollar		579.84						579.84
Marshall Islands	Dollar				2,187.24				2,187.24
Marshall Islands	Dollar		517.84						517.84
Isaac Edwards:									
United States	Dollar				4,998.23				4,998.23

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar		223.66						223.66
Micronesia	Dollar				10.00				10.00
Micronesia	Dollar		544.18						544.18
Marshall Islands	Dollar				2,198.24				2,198.24
Marshall Islands	Dollar		458.96						458.96
Total			9,770.56		61,446.64		0.00		71,217.20

SENATOR JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, June 10, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lauri Hettinger:									
United States	Dollar				8,236.10				8,236.10
Ireland	Euro		766.00						766.00
Belgium	Euro		513.50		13.85				527.35
Czech Republic	Crown		1,223.80		325.42				1,549.22
Total			2,503.30		8,575.37				11,078.67

SENATOR BARBARA BOXER,
Chairman, Committee on Environment and Public Works, July 23, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus:									
United Arab Emirates	Dirham		252.03						252.03
Pakistan	Rupee		268.68						268.68
United States	Dollar				9,637.10				9,637.10
Chelsea Thomas:									
United Arab Emirates	Dirham		313.86						313.86
Pakistan	Rupee		283.92						283.92
United States	Dollar				9,637.10				9,637.10
Andrew Person:									
United Arab Emirates	Dirham		279.03						279.03
Pakistan	Rupee		275.06						275.06
United States	Dollar				9,672.10				9,672.10
*Delegation Expenses:									
Pakistan	Rupee						1,368.02		1,368.02
William Dauster:									
Israel	New Shekel		1,758.20						1,758.20
United States	Dollar				4,040.69				4,040.69
Rory Murphy:									
Israel	New Shekel		1,501.58						1,501.58
United States	Dollar				4,040.69				4,040.69
*Delegation Expenses:									
Israel	New Shekel						288.40		288.40
Amber Cottle:									
Vietnam	Dong		991.44						991.44
Singapore	Dollar		776.07						776.07
United States	Dollar				12,871.90				12,871.90
Michael Smart:									
Vietnam	Dong		890.62						890.62
Singapore	Dollar		772.08						772.08
United States	Dollar				12,844.90				12,844.90
Chelsea Thomas:									
Vietnam	Dong		996.17						996.17
Singapore	Dollar		813.50						813.50
United States	Dollar				12,156.90				12,156.90
Jeffrey Phan:									
Vietnam	Dong		798.20						798.20
Singapore	Dollar		718.77						718.77
United States	Dollar				12,140.20				12,140.20
Nick Christiansen:									
Vietnam	Dong		963.83						963.83
Singapore	Dollar		790.47						790.47
United States	Dollar				14,414.90				14,414.90
Jayme White:									
Vietnam	Dong		870.80						870.80
Singapore	Dollar		829.63						829.63
United States	Dollar				12,871.90				12,871.90
Peter Kaldes:									
Vietnam	Dong		862.67						862.67
Singapore	Dollar		802.19						802.19
United States	Dollar				6,292.90				6,292.90
Jack M. Campbell:									
Vietnam	Dong		941.52						941.52
Singapore	Dollar		887.39						887.39
United States	Dollar				14,414.90				14,414.90
Amy Overton:									
Vietnam	Dong		846.41						846.41
Singapore	Dollar		770.92						770.92
United States	Dollar				12,871.90				12,871.90
Christopher Campbell:									
Vietnam	Dong		921.01						921.01

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Singapore	Dollar		902.42						902.42
United States	Dollar			12,871.90					12,871.90
William Castle:									
Vietnam	Dong		776.46						776.46
Singapore	Dollar		741.80						741.80
United States	Dollar				12,871.90				12,871.90
James Catella:									
Vietnam	Dong		926.52						926.52
Singapore	Dollar		713.71						713.71
United States	Dollar				5,180.90				5,180.90
Staci Lancaster:									
Vietnam	Dong		836.47						836.47
Singapore	Dollar		717.53						717.53
United States	Dollar				12,871.90				12,871.90
Michael Seyfert:									
Vietnam	Dong		890.62						890.62
Singapore	Dollar		493.25						493.25
United States	Dollar				12,844.90				12,844.90
David Kavanaugh:									
Vietnam	Dong		774.38						774.38
Singapore	Dollar		1,060.58						1,060.58
United States	Dollar				14,414.90				14,414.90
Travis Jordan:									
Vietnam	Dong		970.00						970.00
United States	Dollar				12,475.90				12,475.90
Andrew Siracuse:									
Vietnam	Dong		913.85						913.85
Singapore	Dollar		755.40						755.40
United States	Dollar				14,414.90				14,414.90
Ayesha Khanna:									
Vietnam	Dong		972.38						972.38
Japan	Yen		655.89						655.89
United States	Dollar				10,854.40				10,854.40
*Delegation Expenses:									
Vietnam	Dong				2,164.57				2,164.57
*Delegation Expenses:									
Singapore	Dollar				1,009.09				1,009.09
Deidra Henry-Spires:									
Belgium	Euro		167.41						167.41
United States	Dollar				1,040.70				1,040.70
Senator Debbie Stabenow:									
China	Renminbi		54.83						54.83
United States	Dollar				2,282.90				2,282.90
Peter Kaldes:									
China	Renminbi		254.83						254.83
United States	Dollar				2,282.90				2,282.90
Total			34,754.38		265,489.84		1,656.42		301,900.64

SENATOR MAX BAUCUS,
Chairman, Committee on Finance, July 29, 2010.

*Delegation expenses include interpretation, transportation, security, embassy overtime and official functions, as well as other official expenses in accordance with the responsibilities of the host country.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bob Corker:									
Lebanon	Pound		10.00						10.00
Syria	Pound		20.00						20.00
Greece	Euro		10.00						10.00
United States	Dollar				9,949.20				9,949.20
Senator John Kerry:									
Syria	Pound		72.00						72.00
Italy	Euro		211.00						211.00
Israel	Shekel		249.98						249.98
United States	Dollar				4,196.72				4,196.72
Senator Jim Webb:									
Korea	Won		390.00						390.00
Thailand	Baht		586.00						586.00
United States	Dollar				16,774.00				16,774.00
Fulton Armstrong:									
Nicaragua	Cordoba		214.00						214.00
Honduras	Lempira		325.00						325.00
United States	Dollar				2,356.70				2,356.70
Haiti	Dollar		326.00						326.00
United States	Dollar				794.80				794.80
Jason Bruder:									
Turkey	Lira		1,489.00						1,489.00
Israel	Shekel		362.00						362.00
United States	Dollar				6,337.09				6,337.09
Perry Cammack:									
Israel	Shekel		314.00						314.00
United States	Dollar				4,196.72				4,196.72
Steve Feldstein:									
Haiti	Dollar		280.00						280.00
United States	Dollar				794.80				794.80
Pakistan	Rupee		833.00						833.00
United States	Dollar				10,339.60				10,339.60
Douglas Frantz:									
United Arab Emirates	Dirham		535.00						535.00
Afghanistan	Afghani		66.00						66.00
Pakistan	Rupee		183.00						183.00
United States	Dollar				9,740.40				9,740.40
Frank Jannuzi:									
Philippines	Peso		1,722.00						1,722.00
Singapore	Dollar		410.00						410.00
United States	Dollar				10,981.90				10,981.90

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Garrett Johnson:									
Dominican Republic	Dollar		600.00						600.00
United States	Dollar				1,372.28				1,372.28
Andrew Keller:									
Uganda	Shilling		1,838.27						1,838.27
United States	Dollar				3,863.80				3,863.80
Robin Lerner:									
Burma	Kyat		155.00						155.00
Bangladesh	Daka		150.00						150.00
United States	Dollar				13,035.50				13,035.50
Frank Lowenstein:									
Syria	Pound		179.00						179.00
Italy	Euro		183.00						183.00
Israel	Shekel		314.00						314.00
United States	Dollar				4,196.72				4,196.72
Michael Mattler:									
Uganda	Shilling		1,914.36						1,914.36
United States	Dollar				8,652.10				8,652.10
Marta McLellan-Ross:									
Korea	Won		210.00						210.00
Thailand	Baht		346.00						346.00
United States	Dollar				16,774.00				16,774.00
Carl Meacham:									
Mexico	Peso		1,050.00						1,050.00
United States	Dollar				2,402.17				2,402.17
Dominican Republic	Peso		600.00						600.00
United States	Dollar				1,372.28				1,372.28
Stacie Oliver:									
Lebanon	Pound		50.00						50.00
Syria	Pound		150.00						150.00
Greece	Euro		77.00						77.00
United States	Dollar				10,397.80				10,397.80
Nilmini Rubin:									
Tanzania	Shilling		1,125.00						1,125.00
United States	Dollar				12,521.90				12,521.90
Dorothy Shea:									
Syria	Pound		257.00						257.00
Saudi Arabia	Riyal		308.00						308.00
United States	Dollar				8,637.40				8,637.40
Shannon Smith:									
Tanzania	Shilling		529.00						529.00
United States	Dollar				13,065.60				13,065.60
Joel Starr:									
Côte d'Ivoire	Franc		44.01						44.01
Ethiopia	Birr		94.28						94.28
Kuwait	Dinar		7.75						7.75
Italy	Euro		94.04						94.04
Fatema Sumar:									
Pakistan	Rupee		833.00						833.00
United States	Dollar				10,339.60				10,339.60
Atman Trivedi:									
Philippines	Peso		1,722.00						1,722.00
Singapore	Dollar		410.00						410.00
United States	Dollar				11,658.90				11,658.90
Laura Winthrop:									
United Arab Emirates	Dirham		572.00						572.00
Afghanistan	Afghani		28.00						28.00
Pakistan	Rupee		120.00						120.00
United States	Dollar				11,674.40				11,674.40
Haiti	Dollar		300.00						300.00
United States	Dollar				794.80				794.80
Total			22,868.69		207,221.18				230,089.87

SENATOR JOHN F. KERRY,
Chairman, Committee on Foreign Relations, July 23, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Harkin:									
Republic of Haiti	Gourde				12.57				12.57
Rosemary Gutierrez:									
Republic of Haiti	Gourde				12.57				12.57
Total					25.14				25.14

SENATOR TOM HARKIN,
Chairman, Committee on Health, Education, Labor, and Pensions,
June 3, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS, AMENDED, FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Wendy R. Anderson:									
United States	Dollar				2,228.85				2,228.85
Netherlands	Euro		629.34						629.34
Germany	Euro		826.10		5,210.00				6,036.10

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS, AMENDED, FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Saudi Arabia	Riyal		105.00						105.00
Yemen	Riyal		650.00						650.00
Bradford D. Belzak:									
United States	Dollar				4,047.40				4,047.40
Netherlands	Euro		620.14						620.14
Germany	Euro		821.50		5,210.00				6,031.50
Saudi Arabia	Riyal		129.00						129.00
Yemen	Riyal		648.00						648.00
Thomas A. Bishop:									
United States	Dollar				3,992.80				3,992.80
Netherlands	Euro		570.41						570.41
Germany	Euro		708.50		5,210.00				5,918.50
Saudi Arabia	Riyal		130.50						130.50
Yemen	Riyal		213.00						213.00
Seamus A. Hughes:									
United States	Dollar				2,228.85				2,228.85
Netherlands	Euro		698.00						698.00
Germany	Euro		938.00		5,210.00				6,148.00
Saudi Arabia	Riyal		459.00						459.00
Yemen	Riyal		726.00						726.00
Tara L. Shaw:									
United States	Dollar				3,992.80				3,992.80
Netherlands	Euro		575.53						575.53
Germany	Euro		770.21						770.21
Saudi Arabia	Riyal		129.79						129.79
Yemen	Riyal		216.06						216.06
Margaret E. Daum:									
Afghanistan	Afghani		28.00						28.00
Pakistan	Rupee		222.10						222.10
India	Rupee		144.40		3,043.90				3,188.30
Belgium	Euro		103.97						103.97
Kuwait	Dinar		413.41						413.41
Angela L. Youngen:									
United States	Dollar				8,398.80				8,398.80
Slovenia	Euro		190.00						190.00
Croatia	Kuna		61.00						61.00
Bosnia-Herzegovina	Convertible Mark		96.00						96.00
Serbia	Dinar		216.00						216.00
Senator Susan M. Collins:									
United States	Dollar				10,691.00				10,691.00
Switzerland	Franc		334.00						334.00
Benjamin Billings::									
United States	Dollar				4,928.30				4,928.30
Japan	Yen		1,628.00		140.73				1,768.73
*Delegation Expenses:									
Kuwait	Dinar						2,113.02		2,113.02
Pakistan	Rupee						2,015.84		2,015.84
Total			14,000.96		64,533.43		4,128.86		82,663.25

SENATOR JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
May 14, 2010.

*Delegation expenses include payments and reimbursements to the Department of State and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res 179 agreed to May 25, 1977.

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Lisa Powell:									
United States	Dollar				4,573.25				4,573.25
New Zealand	Dollar		33.96						33.96
Samoa	Tala		663.48						663.48
Sean Stiff:									
United States	Dollar				4,552.99				4,552.99
New Zealand	Dollar		16.20						16.20
Samoa	Tala		579.02		70.10				649.12
Jessica Nagasako:									
United States	Dollar				4,573.25				4,573.25
New Zealand	Dollar		34.17						34.17
Samoa	Tala		622.71						622.71
Benjamin Billings:									
United States	Dollar				4,573.25				4,573.25
Samoa	Tala		688.00						688.00
David Andrew Olson:									
United States	Dollar				4,538.15				4,538.15
Samoa	Tala		898.00						898.00
Ryan Tully:									
United States	Dollar				8,214.00				8,214.00
United Arab Emirates	Dirham		56.37						56.37
Pakistan	Rupee		37.31		2,498.67				2,535.98
Senator John Ensign:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		39.88						39.88
Pakistan	Rupee		27.31		2,498.67				2,525.98
Senator Thomas R. Carper:									
United States	Dollar				8,214.10				8,214.10
Afghanistan	Afghani		7.00						7.00
Pakistan	Rupee				2,498.67				2,498.67
Wendy R. Anderson:									
United States	Dollar				8,214.10				8,214.10
United Arab Emirates	Dirham		103.00						103.00
Afghanistan	Afghani		7.00						7.00
Pakistan	Rupee		120.00		2,498.67				2,618.67
Seamus Hughes:									
United States	Dollar				4,463.59				4,463.59
Denmark	Kronin		210.00						210.00

CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Germany	Euro		957.99						957.99
London	Pound		922.00						922.00
Israel	Shekel		361.99						361.99
Bradford D. Belzak:									
United States	Dollar				4,463.59				4,463.59
Denmark	Kronin		210.00						210.00
Germany	Euro		958.00						958.00
United Kingdom	Pound		922.00						922.00
Israel	Shekel		300.00						300.00
Vance Serchuk:									
United States	Dollar				5,987.40				5,987.40
Singapore	Dollar		1,195.00						1,195.00
Total			7,580.39		83,036.65				90,617.04

SENATOR JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
July 28, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON SMALL BUSINESSES AND ENTREPRENEURSHIP FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Donald Cravins:									
United States	Dollar				8,434.90				8,434.90
Switzerland	Euro		820.03						820.03
France	Euro		1,863.00		133.34				1,996.34
Brian van Hook:									
United States	Dollar				8,335.90				8,335.90
Switzerland	Euro		820.02						820.02
France	Euro		1,863.00		133.33				1,996.33
John High:									
United States	Dollar				8,434.90				8,434.90
Switzerland	Euro		820.03						820.03
France	Euro		1,863.00		133.33				1,996.33
Wallace Hsueh:									
United States	Dollar				8,434.90				8,434.90
Switzerland	Euro		820.02						820.02
France	Euro		1,863.00		133.34				1,996.34
Matthew Walker:									
United States	Dollar				8,434.90				8,434.90
Switzerland	Euro		820.02						820.02
France	Euro		1,863.00		133.33				1,996.33
Meredith West:									
United States	Dollar				8,434.90				8,434.90
Switzerland	Euro		820.02						820.02
France	Euro		1,863.00		133.33				1,996.33
*Delegation Expenses:									
United States	Dollar						657.00		657.00
Switzerland	Euro						5,847.77		5,847.77
France	Euro						3,000.00		3,000.00
Total			16,098.14		51,310.40		9,504.77		76,913.31

SENATOR MARY L. LANDRIEU,
Chairman, Committee on Small Business and Entrepreneurship,
July 22, 2010.

*Delegation expenses include payments and reimbursements to the Department of State and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, S. Res. 179 agreed to May 25, 1977.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Louis Tucker			2,238.00						2,238.00
	Dollar				11,533.40				11,533.40
David Koger			2,238.00						2,238.00
	Dollar				11,452.40				11,452.40
Senator Christopher S. Bond			1,116.00						1,116.00
	Dollar				12,022.00		433.37		12,455.37
Richard Girven			1,086.00						1,086.00
	Dollar				7,776.50				7,776.50
Michael DuBois			1,116.00						1,116.00
	Dollar				10,823.50				10,823.50
Andrew Grotto			961.00						961.00
	Dollar				8,162.70				8,162.70
Eric Chapman			957.00						957.00
	Dollar				8,162.70				8,162.70
John Maguire			917.00						917.00
	Dollar				8,127.70				8,127.70
Andrew Kerr			1,325.40						1,325.40
	Dollar				12,231.60				12,231.60
Michael Buchwald			1,055.51						1,055.51
	Dollar				12,321.00				12,321.00
James Smythers			1,332.40						1,332.40
	Dollar				12,231.60				12,231.60
Clete Johnson			835.00						835.00
	Dollar				9,637.10				9,637.10
Randall Bookout			2,121.00						2,121.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
	Dollar				11,945.30				11,945.30
John Dickas			1,435.00						1,435.00
	Dollar				11,945.30				11,945.30
Jacqueline Russell			1,096.00						1,096.00
	Dollar				9,318.50				9,318.50
Jennifer Wagner			1,096.00						1,096.00
	Dollar				9,318.50				9,318.50
Kathleen Rice			1,096.00						1,096.00
	Dollar				9,318.50				9,318.50
James Smythers			1,171.00						1,171.00
	Dollar				9,318.50				9,318.50
Senator Dianne Feinstein			2,573.76						2,573.76
	Dollar				10,196.18		5,714.03		15,910.21
Michael Buchwald			1,875.60						1,875.60
	Dollar				10,674.80				10,674.80
Matthew Nelson			2,077.76						2,077.76
	Dollar				11,282.00				11,282.00
Total			29,719.43		217,799.78		6,147.40		253,666.61

SENATOR DIANNE FEINSTEIN,
Chairman, Committee on Intelligence, July 28, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE—AMENDED FIRST QUARTER REPORT FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Hon. Carolyn B. Maloney:									
United States	Dollar				3,788.10				3,788.10
Total					3,788.10				3,788.10

HON. CAROLYN B. MALONEY,
Chairman, Joint Economic Committee, May 3, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL-EXECUTIVE COMMITTEE ON CHINA FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Abigail Story:									
Hong Kong	Dollar		1,160.00				2,300.00		3,460.00
United States	Dollar				1,270.00				1,270.00
Anka Lee:									
Hong Kong	Dollar		1,746.00				2,368.30		4,114.30
United States	Dollar				1,268.20				1,268.20
Sharon Mann:									
Hong Kong	Dollar		1,746.00				2,547.00		4,293.00
United States	Dollar				1,268.20				1,268.20
Charlotte Old. Bowman:									
China	Yuan		1,812.00						1,812.00
United States	Dollar				2,707.30				2,707.30
Douglas Grob:									
China	Yuan		3,094.00						3,094.00
United States	Dollar				3,964.70				3,964.70
Kara Abramson:									
China	Yuan		3,094.00						3,094.00
United States	Dollar				3,964.70				3,964.70
Total			12,652.00		14,443.10		7,215.00		34,310.10

SENATOR BYRON L. DORGAN,
Chairman, Congressional-Executive Committee on China, July 27, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Winsome Packer:									
Austria	Euro		31,299.99						31,299.99
United States	Dollar				5,459.20				5,459.20
Erika Schlager:									
Spain	Euro		657.00						657.00
Slovak Republic	Euro		216.00						216.00
Hungary	Forint		133.00						133.00
Czech Republic	Koruna		680.00						680.00
United States	Dollar				6,179.60				6,179.60
Austria	Euro		892.00						892.00
United States	Dollar				1,246.00				1,246.00
Shelly Han:									
Turkmenistan	Manat		300.00						300.00
United States	Dollar				8,945.30				8,945.30
Janice Helwig:									
Austria	Euro		483.00						483.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				5,459.60				5,459.60
Turkmenistan	Manat		2,064.00						2,064.00
United States	Dollar				8,887.90				8,887.90
Kyle Parker:									
Poland	Zloty		798.97						798.97
United States	Dollar				8,038.20				8,038.20
Josh Shapiro:									
Czech Republic	Koruna		1,248.00						1,248.00
United States	Dollar				3,034.70				3,034.70
Cynthia Efird:									
Sweden	Krona		1,322.77						1,322.77
United States	Dollar				1,118.80				1,118.80
Austria	Euro		1,938.10						1,938.10
United States	Dollar				1,246.00				1,246.00
Orest Deychakiwsky:									
Denmark	Krone		647.00						647.00
United States	Dollar				4,023.20				4,023.20
Fred Turner:									
Kazakhstan	Tenge		459.00						459.00
United States	Dollar				8,607.00				8,607.00
Alex Johnson:									
Kazakhstan	Tenge		459.00						459.00
Republic of Korea	Won		510.00						510.00
United States	Dollar				9,509.40				9,509.40
Total			44,107.83		71,754.90				115,862.72

SENATOR BENJAMIN L. CARDIN,
Chairman, Commission on Security and Cooperation in Europe, July 22, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), FOR THE REPUBLICAN LEADER FOR TRAVEL FROM APR. 1 TO JUNE 30, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Tom Hawkins:									
Turkey	Dollar		546.00						546.00
Syria	Pound		138.00						138.00
Total			684.00						684.00

SENATOR MITCH McCONNELL,
Republican Leader, June 30, 2010.

SECURE AND RESPONSIBLE DRUG DISPOSAL ACT OF 2010

Mr. WHITEHOUSE. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 495, S. 3397.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3397) to amend the Controlled Substances Act to provide for take-back disposal of controlled substances in certain instances, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, as follows:

[Omit the part in boldface brackets and insert the part printed in italic.]

S. 3397

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 ''Secure and Responsible Drug Disposal Act of 2010''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The nonmedical use of prescription drugs is a growing problem in the United States, particularly among teenagers.

(2) According to the Department of Justice's 2009 National Prescription Drug Threat Assessment—

(A) the number of deaths and treatment admissions for controlled prescription drugs (CPDs) has increased significantly in recent years;

(B) unintentional overdose deaths involving prescription opioids, for example, increased 114 percent from 2001 to 2005, and the number of treatment admissions for prescription opioids increased 74 percent from 2002 to 2006; and

(C) violent crime and property crime associated with abuse and diversion of CPDs has increased in all regions of the United States over the past 5 years.

(3) According to the Office of National Drug Control Policy's 2008 Report ''Prescription for Danger'', prescription drug abuse is especially on the rise for teens—

(A) one-third of all new abusers of prescription drugs in 2006 were 12- to 17-year-olds;

(B) teens abuse prescription drugs more than any illicit drug except marijuana—more than cocaine, heroin, and methamphetamine combined; and

(C) responsible adults are in a unique position to reduce teen access to prescription drugs because the drugs often are found in the home.

(4)(A) Many State and local law enforcement agencies have established drug disposal programs (often called ''take-back'' programs) to facilitate the collection and destruction of unused, unwanted, or expired medications. These programs help get outdated or unused medications off household shelves and out of the reach of children and teenagers.

(B) However, take-back programs often cannot dispose of the most dangerous pharmaceutical drugs—controlled substance medications—because Federal law does not permit take-back programs to accept controlled substances unless they get specific permission from the Drug Enforcement Administration and arrange for full-time law enforcement officers to receive the controlled substances directly from the member of the public who seeks to dispose of them.

(C) Individuals seeking to reduce the amount of unwanted controlled substances in their household consequently have few disposal options beyond discarding or flushing the substances, which may not be appropriate means of disposing of the substances.

(D) Long-term care facilities face a distinct set of obstacles to the safe disposal of controlled substances due to the increased volume of controlled substances they handle.

(5) This Act gives the Attorney General authority to promulgate new regulations, within the framework of the Controlled Substances Act, that will allow patients to deliver unused pharmaceutical controlled substances to appropriate entities for disposal in a safe and effective manner consistent with effective controls against diversion.

(6) The goal of this Act is to encourage the Attorney General to set controlled substance diversion prevention parameters that will allow public and private entities to develop a variety of methods of collection and disposal of controlled substances in a secure and responsible manner.

SEC. 3. DELIVERY OF CONTROLLED SUBSTANCES BY ULTIMATE USERS FOR DISPOSAL.

(a) REGULATORY AUTHORITY.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended by adding at the end the following:

''(g)(1) An ultimate user who has lawfully obtained a controlled substance in accordance with this title may, without being registered, deliver the controlled substance to another person for the purpose of disposal of the controlled substance if—

''(A) the person receiving the controlled substance is authorized under this title to engage in such activity; and

''(B) the disposal takes place in accordance with regulations issued by the Attorney General to prevent diversion of controlled substances.

''(2) In developing regulations under this subsection, the Attorney General shall take into consideration the public health and safety, as well as the ease and cost of program implementation and participation by various communities. Such regulations may not require any entity to establish or operate a delivery or disposal program.

''[(2)]*(3)* The Attorney General may, by regulation, authorize long-term care facilities, as defined by the Attorney General by regulation, to dispose of controlled substances on behalf of ultimate users *who reside, or have resided, at such long-term care facilities* in a manner that the Attorney General determines will provide effective controls against diversion and be consistent with the public health and safety.

''(4) If a person dies while lawfully in possession of a controlled substance for personal use, any person lawfully entitled to dispose of the decedent's property may deliver the controlled substance to another person for the purpose of disposal under the same conditions as provided in paragraph (1) for an ultimate user.''.

(b) CONFORMING AMENDMENT.—Section 308(b) of the Controlled Substances Act (21 U.S.C. 828(b)) is amended—

(1) by striking the period at the end of paragraph (2) and inserting ''; or''; and

(2) by adding at the end the following:

''(3) the delivery of such a substance for the purpose of disposal by an ultimate user or long-term care facility acting in accordance with section 302(g) of this title.''.

SEC. 4. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure that the guidelines and policy statements provide an appropriate penalty increase of up to 2 offense levels above the sentence otherwise applicable in Part D of the Guidelines Manual if a person is convicted of a drug offense resulting from the authorization of that person to receive scheduled substances from an ultimate user or long-term care facility as set forth in the amendments made by section 3.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the committee-reported amendments 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 any statements related to the bill be printed in the RECORD.

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

The Committee amendments were agreed to.

The bill (S. 3397), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

NATIONAL OVARIAN CANCER AWARENESS MONTH

Mr. WHITEHOUSE. I ask unanimous consent the Health, Education, Labor and Pensions Committee be discharged from further consideration of S. Res. 555, 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 assistant legislative clerk read as follows:

A resolution (S. Res. 555) supporting the goals and ideals of National Ovarian Cancer Awareness Month.

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. 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 related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 555) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 555

Whereas ovarian cancer is the deadliest of all gynecologic cancers;

Whereas ovarian cancer is the 5th leading cause of cancer deaths among women in the United States;

Whereas more than 22,000 women will be diagnosed with ovarian cancer this year, and more than 15,000 will die from it;

Whereas these deaths are those of our mothers, sisters, daughters, family members, and community leaders;

Whereas the mortality rate for ovarian cancer has not significantly decreased since the ''War on Cancer'' was declared, nearly 40 years ago;

Whereas all women are at risk for ovarian cancer, and 90 percent of women diagnosed with ovarian cancer do not have a family history that puts them at higher risk;

Whereas the Pap test is sensitive and specific to the early detection of cervical cancer, but not to ovarian cancer;

Whereas there is currently no reliable early detection test for ovarian cancer;

Whereas many people are unaware that the symptoms of ovarian cancer often include bloating, pelvic or abdominal pain, difficulty eating or feeling full quickly, urinary symptoms, and several other symptoms that are easily confused with other diseases;

Whereas in June 2007, the first national consensus statement on ovarian cancer symptoms was developed to provide consistency in describing symptoms to make it easier for women to learn and remember them;

Whereas, due to the lack of a reliable early detection test, 75 percent of cases of ovarian cancer are detected at an advanced stage, making the overall 5-year survival rate only 45 percent;

Whereas there are factors that are known to reduce the risk for ovarian cancer and that play an important role in the prevention of the disease;

Whereas awareness of the symptoms of ovarian cancer by women and health care providers can lead to a quicker diagnosis;

Whereas, each year during the month of September, the Ovarian Cancer National Alliance and its partner members holds a number of events to increase public awareness of ovarian cancer; and

Whereas September 2010 should be designated as ''National Ovarian Cancer Awareness Month'' to increase the awareness of the public regarding the cancer: Now, therefore, be it

Resolved, That the Senate supports the goals and ideals of National Ovarian Cancer Awareness Month.

NATIONAL ESTUARIES DAY

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res 596, 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 assistant legislative clerk read as follows:

A resolution (S. Res 596) to designate September 25, 2010, as ''National Estuaries Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. 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. 596) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 596

Whereas the estuary regions of the United States comprise a significant share of the national economy, with 43 percent of the population, 40 percent of the employment, and 49 percent of the economic output of the United States located in the estuary regions of the United States;

Whereas coasts and estuaries contribute more than $800,000,000,000 annually in trade and commerce to the United States economy;

Whereas more than 43 percent of all adults in the United States visit a sea coast or estuary at least once a year to participate in some form of recreation, generating $8,000,000,000 to $12,000,000,000 in revenue annually;

Whereas more than 28,000,000 jobs in the United States are supported by commercial and recreational fishing, boating, tourism, and other coastal industries that rely on healthy estuaries;

Whereas estuaries provide vital habitat for countless species of fish and wildlife, including many that are listed as threatened or endangered;

Whereas estuaries provide critical ecosystem services that protect human health and public safety, including water filtration, flood control, shoreline stabilization and erosion prevention, and the protection of coastal communities during extreme weather events;

Whereas 55,000,000 acres of estuarine habitat have been destroyed during the 100 years preceding the date of agreement to this resolution;

Whereas bays once filled with fish and oysters have become dead zones filled with excess nutrients, chemical wastes, harmful algae, and marine debris;

Whereas sea level rise is accelerating the degradation of estuaries by—

(1) submerging low-lying land;

(2) eroding beaches;

(3) converting wetland to open water;

(4) exacerbating coastal flooding; and

(5) increasing the salinity of estuaries and freshwater aquifers;

Whereas the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) declares that it is the national policy to preserve, protect, develop, and if possible, to restore or enhance, the resources of the coastal zone of the United States, including estuaries, for current and future generations;

Whereas scientific study leads to better understanding of the benefits of estuaries to human and ecological communities;

Whereas Federal, State, local, and tribal governments, national and community organizations, and individuals work together to effectively manage the estuaries of the United States;

Whereas estuary restoration efforts restore natural infrastructure in local communities in a cost effective manner, helping to create jobs and reestablish the natural functions of estuaries that yield countless benefits; and

Whereas September 25, 2010, has been designated as ''National Estuaries Day'' to increase awareness among all people of the United States, including Federal, State and local government officials, about the importance of healthy estuaries and the need to protect and restore estuaries: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 25, 2010, as ''National Estuaries Day'';

(2) supports the goals and ideals of National Estuaries Day;

(3) acknowledges the importance of estuaries to the economic well-being and productivity of the United States;

(4) recognizes that persistent threats undermine the health of the estuaries of the United States;

(5) applauds the work of national and community organizations and public partners that promote public awareness, understanding, protection, and restoration of estuaries;

(6) reaffirms the support of the Senate for estuaries, including the scientific study, preservation, protection, and restoration of estuaries; and

(7) expresses the intent of the Senate to continue working to understand, protect, and restore the estuaries of the United States.

NATIONAL CELIAC DISEASE AWARENESS DAY

Mr. WHITEHOUSE. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 605 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 605) designating September 13, 2010, as ''National Celiac Disease Awareness Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. WHITEHOUSE. 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 related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 605) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 605

Whereas celiac disease affects approximately 1 in every 130 people in the United States, for a total of 3,000,000 people;

Whereas the majority of people with celiac disease have yet to be diagnosed;

Whereas celiac disease is a chronic inflammatory disorder that is classified as both an autoimmune condition and a genetic condition;

Whereas celiac disease causes damage to the lining of the small intestine, which results in overall malnutrition;

Whereas when a person with celiac disease consumes foods that contain certain protein fractions, that person suffers a cell-mediated immune response that damages the villi of the small intestine, interfering with the absorption of nutrients in food and the effectiveness of medications;

Whereas such problematic protein fractions are found in wheat, barley, rye, and oats, which are used to produce many foods, medications, and vitamins;

Whereas because celiac disease is a genetic disease, there is an increased incidence of celiac disease in families with a known history of celiac disease;

Whereas celiac disease is underdiagnosed because the symptoms can be attributed to other conditions and are easily overlooked by doctors and patients;

Whereas as recently as 2000, the average person with celiacdisease waited 11 years for a correct diagnosis;

Whereas 1/2 of all people with celiac disease do not show symptoms of the disease;

Whereas celiac disease is diagnosed by tests that measure the blood for abnormally high levels of the antibodies of immunoglobulin A, anti-tissue transglutaminase, and IgA anti-endomysium antibodies;

Whereas celiac disease can be treated only by implementing a diet free of wheat, barley, rye, and oats, often called a ''gluten-free diet'';

Whereas a delay in the diagnosis of celiac disease can result in damage to the small intestine, which leads to an increased risk for malnutrition, anemia, lymphoma, adenocarcinoma, osteoporosis, miscarriage, congenital malformation, short stature, and disorders of skin and other organs;

Whereas celiac disease is linked to many autoimmune disorders, including thyroid disease, systemic lupus erythematosus, type 1 diabetes, liver disease, collagen vascular disease, rheumatoid arthritis, and Sjogren's syndrome;

Whereas the connection between celiac disease and diet was first established by Dr. Samuel Gee, who wrote, ''if the patient can be cured at all, it must be by means of diet'';

Whereas Dr. Samuel Gee was born on September 13, 1839; and

Whereas the Senate is an institution that can raise awareness in the general public and the medical community of celiac disease: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 13, 2010, as ''National Celiac Disease Awareness Day'';

(2) recognizes that all people of the United States should become more informed and aware of celiac disease;

(3) calls upon the people of the United States to observe National Celiac Disease Awareness Day with appropriate ceremonies and activities; and

(4) respectfully requests the Secretary of the Senate to transmit a copy of this resolution to the Celiac Sprue Association, the American Celiac Society, and the Celiac Disease Foundation.

MEASURE READ THE FIRST TIME—H.R. 3534

Mr. WHITEHOUSE. I understand that H.R. 3534 has been received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3534) to provide greater efficiencies, transparency, returns, and accountability in the administration of Federal mineral and energy resources by consolidating administration of various Federal energy minerals management and leasing programs into one entity to be known as the Office of Federal Energy and Minerals Leasing of the Department of the Interior, and for other purposes.

Mr. WHITEHOUSE. I ask now for its second reading, and I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

ORDERS FOR WEDNESDAY, AUGUST 4, 2010

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, August 4; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of the House message to accompany H.R. 1586, as provided under the previous order.

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

PROGRAM

Mr. WHITEHOUSE. Tomorrow, there will be 1 hour for debate prior to a cloture vote on the motion to concur with an amendment with respect to H.R. 1586. The amendment to the motion relates to FMAP and teacher funding. Senators should expect the vote to occur around 10:40 a.m.

ORDER FOR ADJOURNMENT

Mr. WHITEHOUSE. Finally, I ask unanimous consent that following the remarks of Senators GRASSLEY and LEMIEUX, the Senate adjourn under the previous order. I thank the distinguished Senator from Iowa for his courtesy in allowing us to go through the closing script in this fashion.

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

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN 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 executive session to hear the Kagan nomination.

The Senator from Iowa.

Mr. GRASSLEY. I thank the Senator from Rhode Island. He is always very courteous to me.

Mr. President, I rise to take a few minutes to discuss the reasons why I am voting against Elena Kagan to be Associate Justice. An appointment to the Supreme Court is one of the most important positions an individual can hold under our Constitution. It is a lifetime position on the highest Court of the land. I take very seriously my constitutional role of advice and consent. The Senate's job is not only to provide advice and consent by confirming nominees who are intelligent and accomplished. Our job is to confirm nominees who will be fair and impartial judges, individuals who truly understand the proper role of a Justice in our system of government. Our job, then, is to confirm nominees who will faithfully interpret the law and the Constitution without personal bias or prejudice.

When the Senate makes its determination, we must carefully assess the nominee's legal experiences, record of impartiality, and commitment to the Constitution and rule of law. We need to assess whether the nominee will be able to exercise what we call judicial restraint. We have to determine if the nominee can resist the siren call to overstep his or her bounds and encroach upon the duties of the legislative and executive branches. Fundamental to the U.S. Constitution are the concepts of these checks and balances and the principle of separation of powers. The preservation of our individual freedoms actually depends on restricting the role of policymaking to legislatures rather than allowing unelected judges with lifetime appointments to craft law and social policy from the judicial bench. The Constitution constrains the judiciary as much as it constrains the legislative branch and the executive branch under the President.

When President Obama spoke about the criteria by which he would select his judicial nominees, he placed a very high premium on a judge's ability to have, in his words, ''empathy when deciding the hard cases.'' This empathy standard glorifies the use of a judge's heart and broader vision of what America should be in the judicial process. He said that individuals he would nominate to the Federal judiciary would have ''a keen understanding of how the law affects the daily lives of American people.'' So when President Obama nominated Elena Kagan to the Supreme Court, we have to assume he believed she met his ''empathy'' standard.

This empathy standard is a radical departure from our American tradition of blind, impartial justice. That is because empathy necessarily connotes a standard of partiality. A judge's impartiality is absolutely critical to his or her duty as an officer of an independent judiciary, so much so that it is actually mentioned three times in the oath of office that judges take.

Empathetic judges who choose to embrace their personal biases cannot uphold their sworn oath under our Constitution. Rather, judges must reject that standard and decide cases before them as the Constitution and the law requires, even if it compels a result that is at odds with their own political or ideological beliefs.

Justice is not an automatic or a mechanical process. Yet it should not be a process that permits inconsistent outcomes determined by a judge's personal predilections rather than from the Constitution and the law. An empathy standard set by the President that encourages a judge to pick winners and losers based on that judge's personal or political beliefs is contrary to the American tradition of justice.

That is why we should be very cautious in deferring to President Obama's choices for the judicial branch. He set that standard; we did not. We should carefully evaluate these nominees' ability to be faithful to the Constitution. Nominees should not pledge allegiance to the goals of a particular political party or outside interest groups that hope to implement their political and social agendas from the bench rather than getting it done through the legislative branch.

When she was nominated to the Supreme Court, meaning Ms. Elena Kagan, Vice President BIDEN's Chief of Staff, Ron Klain, assured the leftwing groups that they had nothing to worry about in Elena Kagan because she is, in his words, ''clearly a legal progressive.'' So it is pretty safe to say that President Obama was true to his promise to pick an individual who likely would rule in accordance with these groups' wishes. A Justice should not be a member of someone's team working to achieve a preferred policy result on the Supreme Court. The only team a Justice of the Supreme Court should be on is the team of the Constitution and the law.

I have said on prior occasions that I do not believe judicial experience is an absolute prerequisite for serving as a judge. There have been dozens of people, maybe close to 40, who have been appointed to the Supreme Court who have not had that experience. Solicitor General Kagan, however, has no judicial experience and has very limited experience as a practicing attorney.

Unlike with a judge or even a practicing lawyer, we do not have any concrete examples of her judicial method in action. Thus, the Senate's job of advice and consent is much more difficult. We do not have any clear substantive evidence to demonstrate Solicitor General Kagan's ability to transition from a legal academic and political operative to a fair and impartial jurist.

Solicitor General Kagan's record and her Judiciary Committee testimony failed to persuade me that she would be capable of making this crucial transformation. Her experience has primarily been in politics and academia. As has been pointed out, working in politics does not disqualify an individual from being a Justice. However, what does disqualify an individual is an inability to put politics aside in order to rule based upon the Constitution and the law. In my opinion, General Kagan did not demonstrate that she could do that during her committee testimony. Moreover, throughout her hearings, she refused to provide us with details on her views on constitutional issues.

It was very unfortunate we were unable to elicit forthcoming answers to many of our questions in an attempt to assess her ability to wear the judicial robe. She was not forthright in discussing her views on basic principles of constitutional law, her opinions of important Supreme Court cases or personal beliefs on a number of legal issues. This was extremely disappointing.

Candid answers to our questions were essential for us as Senators to be able to ascertain whether she possesses the proper judicial philosophy for the Supreme Court. In fact, her unwillingness to directly answer questions about her judicial philosophy indicated a political approach throughout the hearing. I was left with no evidence that General Kagan would not advance her own political ideas if she is confirmed to the Federal bench.

General Kagan's refusal to engage in meaningful discussion with us was particularly disappointing because of her position in a 1995 Law Review Article entitled ''Confirmation Messes, Old and New.'' In that article she wrote—and she was then Chicago Law Professor Kagan—that it was imperative that the Senate ask about, and the Supreme Court nominees discuss, their judicial philosophy and substantive views on issues of constitutional law. Specifically, then-Professor Kagan wrote:

> When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.

That is in Professor Kagan's own words.

Bottom line, General Kagan did not live up to her own standard. She was nonresponsive to many of our questions. She backed away from prior positions and statements. She refused to discuss the judicial philosophy of sitting judges.

When asked about her opinions on constitutional issues or Supreme Court

decisions, she either declined to answer or engaged in an overview of the status of the law rather than a discussion of her own personal views. Because of her shallow record on the issues, this approach to the hearing was extremely troubling.

At her confirmation hearing, General Kagan told us to ''look to [her] whole life for indications of what kind of judge or Justice [she] would be.'' Well, General Kagan's record has not been a model of impartiality, as we looked at her record and her life just as she asked us to. There is no question that throughout her career she has shown a strong commitment to far-left ideological beliefs. Solicitor General Kagan's upbringing steeped her in deeply held liberal principles that at one point she stated she had ''retained . . . fairly intact to this date.'' Her jobs have generally never required her to put aside her political beliefs, and she has never seen fit to do so. Her first instinct and the instincts she has relied upon throughout her career are her liberal, progressive political instincts put to work for liberal, progressive political goals. I have no evidence that if Solicitor General Kagan were confirmed to the Supreme Court she would change her political ways or check her political instincts or goals at the courthouse door.

In fact, General Kagan gained her legal expertise by working in politics. She started out by working on Congresswoman Liz Holtzman's Senate campaign, hoping for, in her words, a ''more leftist left.'' She also worked as a volunteer in Michael Dukakis's Presidential run. The Dukakis campaign wisely put her to work at a task that is political to the core—opposition research. There she found a place where she was encouraged to use her political savvy and make decisions based upon her liberal, progressive ideology.

Moreover, while clerking for Justice Marshall, General Kagan's liberal personal convictions—rather than the Constitution and the law—seemed to be her ultimate guide when analyzing cases. General Kagan consistently relied on her political instincts when advising Justice Marshall, channeling and ultimately completely embracing his philosophy of ''do[ing] what you think is right and let[ting] the law catch up.'' Her Marshall memos clearly indicate a liberal and outcome-based approach to her legal analysis.

In several of her memos, it is apparent she had a difficult time separating her deeply held liberal views and political beliefs from the law. For example, in one case she advised Justice Marshall to deny certiorari because the Court might make ''some very bad law on abortion.'' In another case, she was ''not sympathetic'' that an individual's constitutional right to keep and bear arms had been violated. In essence, her judicial philosophy was a very political one.

During her tenure at the White House, Solicitor General Kagan worked on a number of highly controversial issues, such as abortion, gun rights, campaign finance reform, and the Whitewater and Paula Jones scandals. She herself described her work for President Clinton as being primarily political in nature.

In a 2007 speech, she said:

> During most of the time I spent at the White House, I did not serve as an attorney, I was instead a policy adviser. . . . It was part of my job not to give legal advice, but to choose when and how to ask for it.

Her documents from the Clinton Library prove just that. She forcefully promoted far-left positions and offered analyses and recommendations that were far more political than legal in nature. For example, during the Clinton administration, General Kagan was instrumental in leading the fight to keep partial-birth abortion on the books. Documents show that she boldly inserted her own political beliefs in the place of science. Specifically, she redrafted language for a nonpartisan medical group to override scientific findings against partial-birth abortion in favor of her own extreme views. Despite the lack of scientific studies showing that partial-birth abortion was never necessary and her own knowledge that ''there aren't many [cases] where use of the partial-birth abortion is the least risky, let alone the 'necessary,' approach,'' Solicitor General Kagan had no problem intervening with the American College of Obstetricians and Gynecologists to change their own policy statement.

After her intervention, this doctor group's statement no longer accurately reflected the medically supported position of the obstetricians and gynecologists. Rather, the group's statement now said that partial-birth abortions should be available if the procedure might affect the mother's physical, emotional or psychological well-being. The reality is that General Kagan's change was not a mere clarification. It was, in fact, a complete reversal of the medical community's original statement.

Other documents show that Solicitor General Kagan also lobbied the American Medical Association to change a statement it had issued on partial-birth abortion. These documents demonstrated her ''willingness to manipulate medical science to fit the Democratic Party's political agenda on a hot button issue of abortion.''

During her hearing, General Kagan refused to admit she participated in the decisionmaking process of what language the gynecologists would use in their statement on partial-birth abortion. The documents present a very different picture. Although she stated that there was ''no way she could have intervened with the ACOG,'' she did exactly that. Instead of responding to a legitimate inquiry in an open and honest manner, she deflected the question and gave, at best, nonresponsive answers.

In addition, Solicitor General Kagan worked on a number of initiatives to undermine second amendment rights. She was front and center of the Clinton administration's anti-second amendment agenda. She collaborated closely with Jose Cerda on the administration's plan to ban guns by ''taking the law and bending it as far as we can to capture a whole new class of guns.'' After the Supreme Court in Printz v. U.S. found parts of the Brady antigun law to be unconstitutional, she endeavored to find legislative and executive branch responses to deny citizens' second amendment rights.

Even in academia, Solicitor General Kagan took steps and positions that were based on her strongly held personal beliefs rather than an even-handed reading of the law. As dean of Harvard Law School, she actively defied Federal law by banning military recruiters from campus while the Nation was at war. Prior to her appointment as dean, the Department of Defense had made clear to Harvard that the school's previous recruitment policy was not in compliance with the Solomon Amendment, so Harvard did what Harvard should have done: changed its policy to abide by the Federal law. But when the Third Circuit, which does not include Massachusetts, ruled on the issue, then-Dean Kagan immediately reinstituted the policy barring the military from the Harvard campus. She took this position because she personally believed the military's longstanding policy of don't ask, don't tell, in her words, was ''a profound wrong—a moral injustice of the first order.'' She claimed her policy was equal treatment. However, the Air Force believed the policy was playing games with its ability to recruit. The Army believed the policy resulted in it being stonewalled. Then-Dean Kagan was entitled to her opinion, but—no different than anybody else in this country—she was not free to ignore the law. The Solomon Amendment required that military recruiters be allowed equal access to the university as any other recruiter.

The bottom line is that then-Dean Kagan refused to follow the law and instead interpreted that law in accordance with her personal beliefs. The Supreme Court unanimously rejected her legal position on the Solomon Amendment and upheld our military.

I am concerned that Solicitor General Kagan will continue to use her personal politics and ideology to drive her legal philosophy if she is confirmed to the Supreme Court, particularly since her record shows she has worked to bend the law to fit her political wishes.

Further, I am concerned with the praise Solicitor General Kagan has lavished on liberal jurors who promote activist philosophies such as those of Israeli Judge Aharon Barak. Judge Barak is a major proponent of judicial activism who believes judges should ''bridge the gap between law and society.'' He also went on to say that we

ought to use international law to advance a social and political agenda on the bench.

At a Harvard law event attended by then-Dean Kagan, Judge Barak noted with approval cases in which ''a judge carries out his role properly by ignoring the prevalent social consensus and becoming a flag bearer of new social consensus.'' When I asked General Kagan if she endorsed such an activist judicial philosophy, she replied that Judge Barak's philosophy was something ''so different from any that we would use or want to use in the United States.'' But that contradicts her previous statement about Judge Barak that he is a ''great, great judge'' who ''presided over the development of one of the most principled legal systems in the world.'' I am not able to ascertain if Solicitor General Kagan agrees with Judge Barak or if she rebukes his positions, so I am left to believe she endorses the judicial method of what she calls her ''judicial hero'' and his views on judicial restraint or lack thereof. I cannot support a Supreme Court nominee whose judicial philosophy endorses judicial activism as opposed to judicial restraint.

With respect to the second amendment, General Kagan testified that the Heller and McDonald cases were binding precedent for the lower courts and due all the respect of precedent. However, I worry that, if confirmed, her deeply engrained personal belief will cause her to overturn this precedent because she does not personally agree with those decisions or the constitutional right to bear arms. At the hearing, Solicitor General Kagan was unwilling to discuss her personal views on the second amendment or whether she believes the right to bear arms is what it is today—a fundamental right. When I asked her about her thoughts on the issue, she simply replied that she ''had never thought about it before.'' I also asked her whether she believed self-defense was at the core of the second amendment. She could only respond: ''I have never had the occasion to look into the history of the matter.'' As a former constitutional law professor both at Chicago and Harvard, Solicitor General Kagan's response ought to be troubling to anybody who heard it.

A key theme in the U.S. Constitution reflects the important mandate of the Declaration of Independence. It is the recognition that the ultimate authority of a legitimate government depends on the consent of a free people, the ''consent of the governed.'' As Thomas Jefferson wrote:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men deriving their just powers from the consent of the governed.

As former Attorney General Edwin Meese explains:

> That all men are created equal means that they are equally endowed with unalienable rights. . . . Fundamental rights exist by nature, prior to government and conventional laws. It is because these individual rights are left unsecured that governments are instituted among men.

So I am concerned that Elena Kagan refused to agree with my comments about the Declaration of Independence—that there are such things as inalienable rights and if government does not give, government cannot take away.

Similarly, Senator COBURN asked General Kagan if she agreed with William Blackstone's assessment about the right to bear arms and use those arms in self-defense. She replied:

> I don't have a view on what are natural rights, independent of the Constitution.

If you don't have a view about rights that existed before the Constitution was ever written, do you have the knowledge to be a Supreme Court Justice?

So this is concerning to me because, as one commentator stated:

> A legal scholar with no take on such a fundamental constitutional topic [of which individual rights qualify as natural or inalien in character] seems at best disingenuous and at worst, frightening. How can one effectively analyze and apply the Constitution without a firm grip on what basic freedoms underlie our founding documents and national social compact? How can one effectively understand the original intent of the Framers without any opinion on the essential place of certain liberties within the American legal framework?

Bottom line: The fact that General Kagan refused to answer our questions about her personal opinions on the right to bear arms leads me to conclude that she does not believe people have a natural right of self-preservation, unrelated to the Constitution.

I am concerned about Solicitor General Kagan's views on our constitutional right to bear arms not only because of her anti-second amendment work during the Clinton administration but also in light of her memo in the Sandidge case when she clerked for Justice Marshall. In her memo, she summarily dismissed the petitioner's contention that the District of Columbia's firearm statute violated his second amendment right to keep and bear arms. Instead of providing a serious basis for her recommendation to deny the certiorari, her entire legal analysis of this fundamental right consisted of one sentence: ''I am not sympathetic.''

A further basis for my concerns about whether she will protect or undermine the second amendment if she is confirmed is the decision of the Office of Solicitor General under her leadership not to even submit a brief in the second amendment McDonald case. Solicitor General Kagan's record clearly shows she is a supporter of restrictive gun laws and has worked on numerous initiatives to undercut second amendment fundamental rights. So, not surprisingly, as Solicitor General, she could not find a compelling Federal interest for the United States to submit a brief in a case that dealt with fundamental rights and the second amendment of the Constitution. This was a case that everyone knew would have far-reaching effects. It is apparent that political calculations and personal beliefs played a role in Solicitor General Kagan's decision not to file a brief in this landmark case to ensure that constitutional rights of American citizens were protected before the Supreme Court.

With respect to the Constitution's commerce clause, Solicitor General Kagan was asked whether she believed there are any limits to the power of the Federal Government over the individual rights of American citizens.

Unfortunately, her response didn't assure me that, if confirmed, she would ensure that any law Congress creates does not infringe on the constitutional rights of our citizens. Specifically, Senator COBURN asked her whether she believed a law requiring individuals to eat three vegetables and three fruits a day violated the commerce clause. Though pressed on this and other lines of questioning on the commerce clause, she was unwilling to comment on what would represent appropriate limits on Federal power under the Constitution—and probably the commerce clause has been used more than any specific power of Congress for greater control of the Federal Government over State and local governments or over the economy and probably depriving individual rights in the process.

I am not sure Solicitor General Kagan understands that ours—meaning our government—is a limited government and that the restraints on the Federal Government's power are provided by the Constitution and the concept of federalism upon which our Nation is founded. The powers of the Federal Government are explicitly enumerated in article I, section 8 of the Constitution. Further, the 10th amendment provides that the powers not expressly given to the Federal Government in the Constitution are reserved to the States.

The Founding Fathers envisioned that our government would be constitutionally limited in protecting the fundamental rights of life, liberty, and property and that the laws and policies created by the government would be subject to the limits established by the Constitution. As James Madison wrote in Federalist No. 45, ''The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State government are numerous and indefinite.''

I am not convinced the Solicitor General appreciates that there are express limits the Constitution places on the ability of Congress to pass laws. I am not persuaded by her nonanswers to our commerce clause questions that she won't be a rubberstamp for unconstitutional laws that threaten an individual's personal freedoms.

With respect to the institution of marriage, I am concerned with Solicitor General Kagan's ability to disregard her own personal beliefs in order to defend the Defense of Marriage Act. Under her supervision, the United States filed a brief stating that ''the Administration does not support DOMA as a matter of policy, believes that it is discriminatory, and supports its repeal.'' At the hearing, she refused to say whether this was an appropriate statement to make considering that it is the duty of the Solicitor General to vigorously defend the laws of the United States. How are we to believe she will uphold a law as a Supreme Court Justice when she disagrees with that law? When she was tasked as the government's lawyer to vigorously defend the law, clearly she put her personal politics and beliefs first. It is obvious that supporting the repeal of a law is not vigorously defending that law.

There are other occasions where General Kagan's personal beliefs rather than the law appear to have guided her decisions as Solicitor General. For example, with respect to her handling of the lawsuits attempting to overturn the don't ask, don't tell policy, she didn't file an appeal in the Witt v. Department of the Air Force case to uphold the constitutionality of the law, even though there was a split in the circuit courts on this issue. I have already discussed Solicitor General Kagan's actions at Harvard Law and how she thwarted our military's recruitment efforts because of her deeply held views against the don't ask, don't tell policy. I cannot imagine that her personal opinions on this matter did not play a role in decisionmaking at the Solicitor General's Office with respect to the Witt case.

I am also concerned about Solicitor General Kagan's views on property rights. The fifth amendment states that the government ''shall not take private property rights for public use without just compensation.'' In 2004, the Supreme Court took an expansive view of the words ''public use'' in Kelo v. City of New London, allowing the government to take private property so that it could be transferred to another person promoting economic development. At the hearing, Solicitor General Kagan refused to comment on whether she believed the Court had correctly interpreted the text of the Constitution in the Kelo case. She also did not elaborate on any limits to the government's ability to take private property. I am concerned that she does not agree that the ruling in Kelo undermines citizens' property rights contained in the Constitution.

Solicitor General Kagan's view of the role of international law is disturbing. At the hearing, she stated that a Justice could look to international law to find ''good ideas'' when interpreting the U.S. Constitution and our laws. However, when I pressed her on which countries a Justice should look to in order to find those ''good ideas,'' she refused to answer.

I am unaware of how international law can help us better understand our great Constitution. That is because international law should not be used to interpret our Constitution. When we begin to look to international law to interpret our own Constitution, we are at a point then where the meaning of the U.S. Constitution is no longer determined by the consent of the governed.

The importance Solicitor General Kagan places on international law is made abundantly clear by her actions as dean of Harvard, when she implemented a curriculum mandating that all first-year law students take international law. She said that the first year of law school is the ''foundation of legal education,'' forming lawyers' ''sense of what the law is, its scopes, its limits, and its possibilities.'' Yet, U.S. constitutional law, the class that teaches the founding document of our legal system—a class that almost every other law school in the country believes first-year students should have—is not a mandatory first-year course at Harvard Law.

I don't disagree that it is helpful for students to understand international law, but I question why it should be a first-year requirement and thus mandatory to graduate—especially when U.S. constitutional law is not required to graduate from Harvard Law School at all—yes, hard to believe; a student can graduate from Harvard Law without having to take a single constitutional law class.

When General Kagan was asked about this, she answered:

> Constitutional law should primarily be kept in the upper years, where students can deal with it in a much more sophisticated and in-depth way.

This may seem reasonable, but it does not address why a student is never required to take a constitutional law class to graduate. Because, as dean, she never saw the need to make constitutional law a requirement to graduate, then I am led to believe Solicitor General Kagan believes international law is more important than U.S. constitutional law. This is remarkable—or maybe I should say it is shocking—considering that the Constitution of the United States is our most fundamental law.

I am deeply concerned then that if confirmed to the Supreme Court, General Kagan will put her own strongly held personal views above that of the Constitution and the law.

Throughout her life, Solicitor General Kagan's background has allowed her to work without having to check her political and ideological views. Her experiences throughout her life have allowed her to indulge, reinforce, and ultimately submit her deeply ingrained liberal beliefs. In my opinion, her record strongly suggests she will not be able to act in an unbiased manner as a Justice.

Her answers and evasions to our questions at the Judiciary Committee hearing also raise serious concern about her ability to set aside her personal political goals when interpreting the Constitution. I am convinced that once confirmed to the Court, her ''finely tuned political antenna'' and her ''political heart'' will drive her judicial method, rather than judicial restraint.

At the hearing, General Kagan tried to distance herself from her Oxford thesis, where she embraced judicial activism. In that thesis, she wrote that ''it is not necessarily wrong or invalid'' for judges to try to ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' Our great American tradition and the U.S. Constitution soundly reject the notion of judges overstepping their constitutional role by implementing their personal, political, and social goals from the bench. I am not convinced that, if confirmed, General Kagan will actually be able to resist the temptation to do that. That is because I believe her judicial philosophy is really nothing more than a political philosophy. This being the case, I am not at all convinced she will be able to apply the law impartially and not be a rubberstamp for the President or the leftwing interest groups' political and social agenda.

Solicitor General Kagan acknowledged that it is ''difficult to take off the advocate's hat and put on the judge's hat.'' Yet she could not show us that she had the ability to make the transition from an academic and political operative to what we believe ought to be a fair and impartial jurist. Her testimony did not disprove her far-left record or demonstrate she would not let her political views dominate her approach to the law. I am not persuaded Solicitor General Kagan will be able to overcome that difficulty and transition into an unbiased judge, so I will vote no on her confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

MEASURE READ THE FIRST TIME—S.J. RES. 38

Mr. LEMIEUX. Mr. President, as in legislative session, I understand there is a joint resolution at the desk. I ask for its first reading.

The PRESIDING OFFICER. Without objection, the clerk will state the title of the joint resolution for the first time.

The assistant legislative clerk read as follows:

> A joint resolution (S.J. Res. 38) proposing a balanced budget amendment to the Constitution of the United States.

Mr. LEMIEUX. Mr. President, I ask for a second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

Mr. LEMIEUX. Mr. President, I rise to speak on the President's nomination

of Elena Kagan to serve as an Associate Justice on the U.S. Supreme Court.

First, I congratulate my colleague from Iowa for his tremendous remarks this evening, as he went through the reasons he will not be supporting Elena Kagan. I congratulate him on such a reasoned and persuasive oration this evening.

Ms. Kagan has been nominated to fill the seat of Justice Stevens. I had the opportunity, in 2004, to appear before the Court in the position as deputy attorney general of Florida. During that time, because Chief Justice Rehnquist was ill, Justice Stevens presided.

I think before I go into an evaluation of Solicitor General Kagan, it is important to note what a historic figure Justice Stevens is to the American bench and the bar.

Even before he began his 35 years of service on the Supreme Court, he built a stellar reputation as a member of the bar as a lawyer and a careful jurist. He graduated from Northwestern School of Law. He served as a clerk to Supreme Court Justice Wiley Rutledge. Then he spent nearly 20 years, from 1949 to 1969, as a practitioner of law and one of the country's foremost experts on antitrust law. He taught courses at the University of Chicago, he served on a Department of Justice commission, and he authored various papers on antitrust issues.

It was in 1970 that President Nixon appointed Justice Stevens to the U.S. Court of Appeals for the Seventh Circuit. After 5 years of service there, he was elevated to the Supreme Court.

His service to this country should be remembered, and he gets our thanks. On behalf of a grateful nation, I send my gratitude to him for his unique and important service to this country.

In evaluating a nominee to the U.S. Supreme Court, we in the Senate exercise a solemn obligation. It is a rare time in our constitutional democracy when the three branches come together in one proceeding. One of those is the unfortunate proceeding of impeachment. Thankfully, that is not why we are here. But the other is this proceeding—a proceeding when the President submits for consideration a judicial nominee who is then evaluated by this body under the advice and consent clause of article II, section 2, clause 2 of the U.S. Constitution.

That clause reads, in part:

[The President] shall have Power, by and with Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States. . . .

While we do have that advice-and-consent role on a normal occasion for those other officers, for judges of the lower courts, for ministers and the like, it is a rare occurrence when this body has the honor and opportunity to evaluate a Supreme Court nominee. Because it is a rare occurrence and because this is a lifetime appointment to the head of one of the branches of our coequal government, we have a solemn responsibility to do our job and understand what our job is.

In preparing for this responsibility of providing advice and consent and in being a lawyer who wanted to do a good job and be lawyerly about this work, I took the opportunity to try to study up on what our opportunity and responsibility is in this confirmation of a Supreme Court Justice.

What do these terms ''advice and consent'' mean and what is our responsibility and how do we undergo that responsibility to fulfill our constitutional obligation? Certainly, in order to fulfill it, we must understand it.

What does advice and consent mean? Advice certainly means to provide information, counseling, and to give some feedback to the President of the United States as to a nominee. It seems to be more of the role of a counselor than anything else. But of the two words, it is not the most weighty.

The most weighty of the two is consent. In fact, the advice-and-consent function is not found within the enumerated legislative powers. Article I of the Constitution holds those responsibilities. Advice and consent is found in article II, which enumerates the powers of the executive branch, of the President. Advice and consent is shown as a limitation on the President's power. The President cannot just put whomever he or she wishes on a court. He can only do so with the advice and consent of this body. In fact, our Founders did not place this responsibility in both the House and the Senate. They solely put that responsibility among the Members of this body. ''Consent'' being the operative and, in my mind, meaningful term because without our consent, the nominee is not confirmed.

Our responsibility is not trivial, and we are certainly not here to be a mere rubberstamp on the President's nomination. It is our obligation to thoroughly evaluate and provide that consent because, but for our consent, the nominee will not be seated.

How do we execute that responsibility? What does it mean to provide consent and how should we do it?

Certainly, we have to look at the nominee and the applicant. We have to see that the person will be a person of integrity, that they are thoughtful, that they have experience, and that they will uphold the obligations of a Supreme Court Justice.

Last May, when I started my work of trying to evaluate how I would fulfill my constitutional obligation and started to do some reading of prior confirmation proceedings, the writings of Senators who have come before me, I came upon what I believe is a four-part criteria to evaluate a nominee to the Nation's highest Court.

It should be stressed how important a position this is. There are only nine Justices who sit atop the judicial branch, and they are appointed for life. There is no other portion of government where this is true, to be head of a coequal branch for life—Justice Stevens serving 35 years on the U.S. Supreme Court.

What criteria should we use? I propose the following: One, a nominee should present a robust body of work. Why? Because there needs to be something for us to evaluate. We need to have the ability, in providing our consent function, to look at a body of work so we can properly execute our responsibility.

This does not mean, nor do I believe, that it is required for a nominee to the U.S. Supreme Court that they have been a judge. In fact, our Constitution provides no requirements for a judge to serve on the U.S. Supreme Court. This is unlike what we see in the Congress. There are specific requirements of how old you have to be to be in the House, to be in the Senate, how many years you must be a resident of this country. The same requirements apply to the President. There are no requirements for a judge as it is stated in the Constitution, for a Justice of the Supreme Court.

In evaluating that there are no requirements, we certainly need to know what the Justice stands for and how the Justice will fulfill his or her obligations on the Court. Without a body of work, that is very difficult to evaluate. While there is no requirement that one be even, in fact, a lawyer, although every person who has been confirmed has been a lawyer, and there is no requirement that you be a judge, if you are not a judge, you do not have a robust body of work for us to evaluate. That makes it more difficult on our part to make a decision of whether we should give our consent and, I suggest, it provides an additional burden to the nominee to be forthcoming when answering questions. Since we do not have a body of work to evaluate, since we cannot look at prior decisions that a judge has handed down, to know how a judge ruled in the past and, therefore, glean how the judge will rule in the future, that nominee must be forthcoming so we can hear how he or she will do his or her job as a Justice.

Second, the nominee must demonstrate an unfailing fidelity to the text of the Constitution and proper restraint against the temptation to expand judicial power. Why do we find this important? I will talk about this more in a minute. It is because we have a separation of powers and checks and balances that were imbued in our Constitution by our Founders. They intended for our government to be counterbalanced by each branch—the legislative, the judicial, and the executive.

It is the beauty of the Constitution that no branch will exert too much authority because it will be checked by the other, each branch having checks on the other. Furthermore, sometimes forgotten, is that the Federal Government is part of a federalist society. We

are a Republic, and the Federal Government is only one piece of the governmental structure. The rest are the governments of the States and the powers and rights which are left to the people under our Constitution. Our Founders sought checks and balances between the Federal Government and the State governments and the people as well.

A nominee must understand that the judiciary cannot expand its role beyond the confines our Founders intended. In fact, we know our Founders intended for the judiciary not to serve as a legislative branch because in article II, the legislative power is vested solely in the Congress.

For a judge or Justice to take on a legislative role, to not have a firm adherence to the law as written, violates the separation of powers, violates the rights and responsibilities of the Congress.

Third, the nominee must make determinations about the meaning of Federal law and the Constitution and apply the law as written, again, because of that separation of powers.

Fourth, the nominee must understand the Court's role in stopping unconstitutional intrusions by the elected branches. Our Founders knew each branch of government would seek to expand the scope of its power. That is the beauty of the checks and balances system—to keep each body in check. They did not want a strong executive. They worried about the tyranny of the executive. But they also worried about the tyranny of the legislative. Nor did they hope the judiciary would become too strong.

Alexander Hamilton wrote in Federalist No. 78 that ''it is the courts that will serve as the bulwarks of limiting Constitution against legislative encroachment.''

Our Founders designed this intricate system of checks and balances to keep all the governmental bodies and institutions in check, to not expand to the detriment of another body, to not expand to the detriments of our rights and the rights of the States.

In evaluating Solicitor General Kagan—and I note also in comparing her to Justice Stevens—I find she does not have the experience that gives us the opportunity to evaluate her work, to determine what kind of judge or Justice she would be.

In preparing for this decision, I went back and I read a book that was written by one of our predecessors, Senator Paul Simon. It was a book he published in 1992. The book is called ''Advice and Consent.'' The book concerns the confirmation hearings of Justice Bork and Justice Thomas.

Interestingly, in this book—and it is a very fine book and I commend anyone who is interested in this topic to read it—there is a foreward in the book by Laurence Tribe, the famous constitutional scholar, at the time the Tyler Scholar of Constitutional Law at Harvard University, with whom I believe Solicitor General Kagan served when she was the dean of Harvard Law School.

In this foreward, I think that Professor Tribe provides a very cogent and focused analysis of the problem we experience in the modern confirmation setting where nominees fail to provide sufficient answers to questions.

Why this is so troubling with Solicitor General Kagan is because we do not have the body of work to evaluate. It has been the course, in the past 20 years, that it seems all the nominees to the Supreme Court give these sort of vapid answers. That is not my phrase. That is, in fact, her phrase. We will talk about that in a moment—vapid answers that come from questions from the Senators on the Judiciary Committee, failing to articulate what your position is on a particular point of law, all the more concerned when we have no record to evaluate.

Here is what Professor Tribe said:

> The Court and the Nation cannot afford any more ''stealth'' nominees who steadfastly decline to answer substantive questions the Senate might pose on the oft-invoked ground that the matter might come before the Court during their possible tenure. This easy refrain does not provide a valid excuse for stonewalling, no matter how frequently it is repeated . . .
>
> On the contrary, the adversary system works best when all concerned, and not just those who nominated the judge, know what there is to be known about the judge's starting predispositions on a pending issue. And let's stop pretending that such predispositions do not exist. It hardly fosters fairness to claim that a mind is completely neutral when in fact a lifetime of experiences has unavoidably inclined it one way or another and to other, and to equate an open mind with a blank one insults the intelligence of all concerned.

He goes on to say:

> A nominee whose record is too pale to read with the naked eye or whose views are shrouded in fog too dense for anything but the klieg lights of national television to pierce is probably ill-suited for a lifetime seat on the Supreme Court in any event.

Let me repeat:

> A nominee whose record is too pale to read with the naked eye or whose views are shrouded in fog too dense . . . is probably ill-suited for a lifetime seat on the Supreme Court.

Mr. President, unfortunately, that describes Solicitor General Kagan. She is an extremely bright and articulate woman. She has a tremendous academic background. I commend her for her public service—of serving in a Presidential administration. I commend her for serving as dean of a law school. That too is public service. But our job is to evaluate these nominees, and we cannot evaluate them if they have no record of how they would rule or how they have ruled, and they provide no sufficient information when they come before the Judiciary Committee of this body. Without that information, how can we faithfully provide our consent?

There is a notion in the law of consent needing to be informed. In fact, it can't really be consent in the law if it is not informed. Yet Solicitor General Kagan, without a judicial record and a failure to directly and clearly answer questions, as Professor Tribe writes, fails to give us the information to allow us to give consent in an informed way.

We need to look no further than her own words when she wrote, in a spring 1995 Law Review article. It was a comment on a book that was talking about the confirmation mess, and then-Professor Kagan, also bemoaning the state of confirmation hearings, said:

> When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.

She described the process before the Judiciary Committee as becoming vapid, and, unfortunately, even though she should know more than anyone else—because those were her words, the charade that she condemned in her article in the 1990s—she engaged in the same charade when she appeared before the Judiciary Committee.

''A nominee whose record is too pale to read with the naked eye or whose views are too shrouded in fog . . . is probably ill-suited for a lifetime appointment,'' said Professor Tribe.

Ms. Kagan also has very little practical experience. Unlike Justice Stevens, who practiced law for 20 years, Ms. Kagan practiced law for 2. Never having served before as a judge, we don't know her record. She said that the confirmation proceedings in the past had an ''air of vacuity and farce,'' a ''vapid and hollow charade.'' Instead of following her own admonishment, she participated in that charade. She engaged in the same vapid exercise that she condemned.

The burden was on Ms. Kagan to demonstrate how she would rule as a judge. With no record for us to evaluate, she could not engage in the same charade that she had previously condemned and leave us with nothing to know as to how she would act in a lifetime appointment—an appointment, if Justice Stevens' record is any sort of indication of how long a ''Justice Kagan'' might serve, for 35 years.

I have an obligation, Mr. President, under article 2, section 2 to provide advice and consent, and I cannot do so where the nominee cannot or does not provide a record that my colleagues and I can evaluate. We are left without a solid basis upon which to judge how she would judge.

During the Judiciary Committee proceedings, she said she would give binding precedent all the respect of binding precedent. That is meaningless. It gives us no indication of how she might make her decisions, how she might rule.

So I am left with these serious concerns. I am left with the serious concerns about her commitment to uphold the constitutional principle of a limited government, the fundamental protections of the second amendment, and

placing law ahead of her personal and political views.

I spoke before about one of these criteria being the fidelity to the Constitution and the principle of a limited Federal Government. ''Thomas Jefferson warned us that our written constitution can help secure liberty only if it is not made a blank paper by construction.''

Ms. Kagan testified that her whole life provided indications of what kind of judge or Justice she would be. And in that statement I agree.

As mentioned earlier, before law school, when she was writing a thesis at Oxford, she stated that ''new times and circumstances demand a different interpretation of the Constitution,'' and that judges may ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' That is not what the Founders intended for a Justice of the Supreme Court.

In that same thesis, she wrote:

> The judge's own experience and values become the most important element in the decision. If that is too results oriented, so be it.

Mr. President, that is a violation of the constitutional requirement that all power legislative be vested in this Congress.

I was concerned about the colloquy that she had with Senator COBURN. In fact, it was something I discussed with her in person prior to her testimony before the Judiciary Committee. This colloquy was about the commerce clause and whether or not it was limited. Remember that our Founders intended for the Federal Government to be limited in its powers. That is why there are enumerated powers in article 1. They are not plenary; they are limited by their number.

Senator COBURN asked her about sponsoring a bill, about requiring Americans to eat their fruits and vegetables, and it got a response from Solicitor General Kagan that it ''sounds like a dumb law.'' But Senator COBURN asked whether or not it would be constitutional and she failed to provide an answer.

Senator COBURN then put the meat on the bones and asked:

> What if I said that eating three fruits and three vegetables would cut health care costs by 20 percent? Now we're into commerce. And since the government says that 65 percent of all the health care costs [are because of health care], why isn't that constitutional?

No real meaningful answer to give clarity of how Solicitor General Kagan as Justice Kagan would rule.

Mr. President, the Federal Government has expanded its powers beyond what our Framers intended—far beyond what our Framers intended. James Madison, in Federalist 45, said:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

But that is not how our constitution is modernly interpreted. We are away from what our Founders intended. We are away from the clear meaning of the words of the Constitution. And Solicitor General Kagan doesn't tell us that the commerce clause has a limit, in her view. And it is through the commerce clause that this Congress and Congresses in the past have sought to enter and to invade every portion of life in this country—things in which our Founders never intended the Federal Government to be involved.

It appears Ms. Kagan has this same view of an expansive Federal Government—a Federal Government that makes States its dependents and apparatuses thereto, a Federal Government that has no limits, a Federal Government that can invade every portion of our lives, a Federal Government that is too vast, too expensive and beyond what our Founders intended.

I am also concerned about Solicitor General Kagan's views on the right to bear arms enumerated in the second amendment. I think she has too little regard for some of our Constitution's most fundamental protections. As a law clerk, she was dismissive of the second amendment, saying she was not sympathetic to the amendment.

During the Clinton administration, she developed numerous anti-second amendment initiatives. In her confirmation process for Solicitor General, she declined to comment on second amendment rights.

There was a discussion earlier of my friend and colleague from Iowa talking about natural rights. I think it is important for us to remember the setting upon which our Framers brought this constitution to bear. There were the Articles of Confederation—a loose arrangement between the States where there was no central government. The Founders took it upon themselves to seek to enact a stronger Federal system but a system that, as the 9th amendment, the 10th amendment and other provisions of the Constitution show, leaves rights to the States and to people; that enumerates specific powers of the Federal Government.

Remember, initially, there were not even the first 10 amendments. Remember, there was a confirmation battle as to whether the States individually would ratify the Constitution. There were anti-Federalists who thought the constitution had gone too far and given too much authority to the Federal Government, and our Founders Hamilton, Madison and Jay, in writing the Federalist Papers, had to make the case of some form of central government. But they gave the assurances that most of the obligations to govern would be left to the people and the States. Ms. Kagan doesn't have that view, it appears.

Finally, I am concerned about the way that then-Dean Kagan treated the military as the dean of Harvard Law School. I think it is outrageous that the U.S. military was not allowed to recruit on campus while she was the dean of the law school. And this idea that the military could go through another part of the school—the Veterans Association but not the Career Services Office—is outrageous. The Veterans Association had no funding, no office. It was not set up to allow law students to interview with the military.

Some have called this the same as ''separate but equal.'' It was not even equal. It is outrageous. It is outrageous beyond the fact that Harvard received Federal dollars. It is outrageous that a premier institution such as Harvard University, one of our first institutions of higher learning, known throughout the world as being an exceptional school, would not allow the military the benefit of its students to serve by being interviewed on campus, in a regular on-campus process in which every law firm or other agency of government is allowed to participate. And that is a decision that she presided over. That is an error of judgment.

But I also believe that it was an error of law. In 1996, Congress passed the Solomon Amendment allowing the Secretary of Defense to deny Federal grants to institutions of higher education if they prohibited ROTC or military recruitment on campus. Under the Harvard Law School antidiscrimination policy, the military was banned from utilizing its services, and it was concluded that, therefore, those Federal funds would be suspended.

Ms. Kagan refused to abide by that Solomon Amendment when she was the dean. In 2002, Harvard was informed by the Department of Defense its practice of letting military recruiters contact students through the Harvard Law School Veterans Association, but not the Office of Career Services, violated the Federal law. In response, Dean Kagan filed a brief challenging the constitutionality of the Solomon Amendment, which is her right—not a good decision but her right.

The Court of Appeals for the Third Circuit enjoined the law. And Ms. Kagan reinstated Harvard's, in my view, discriminatory policy.

Now, you might say: Well, the court ruled; therefore, it was appropriate for her, if she so chose, to go back to the previous policy because that had been enjoined. However, Massachusetts is not in the Third Circuit, it is in the First. An appellate decision in the Third Circuit is not binding on the First Circuit. If Dean Kagan wanted to go to court again and seek to have it applied, that would have been one thing. What she did instead is unilaterally follow a decision that had no effect upon her and, in my view, violates the law.

Again, I think Solicitor General Kagan is an extremely intelligent person, an articulate person. I think that she has a commendable career of public service. But she has failed to meet the burden that is required of someone with no judicial record. She has failed to inform us of how she would judge as a member of the U.S. Supreme Court.

With no record to read, there is heightened scrutiny on the nominee, and we did not have the opportunity to have full and forthcoming answers from Ms. Kagan. Instead, what we had was the same vapid and vacuous answers that she condemned in her law review article in the mid-1990s, the same type of charade Lawrence Tribe said makes somebody ill-suited for a lifetime appointment, with such a thin record.

If perhaps she would have been more forthcoming, I would have been able to come to a different conclusion. But when you take the lack of her record, her inability to provide clear responses to questions to give us indication of how she would rule, and the concerns about the second amendment, about how she treated the military at Harvard, and her views about the activism of the Court—in light of all those reasons, I will be voting no on Ms. Kagan's confirmation.

I yield the floor.

ADJOURNMENT UNTIL 9:30 TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 8:42 p.m., adjourned until Wednesday, August 4, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF THE TREASURY

TIMOTHY CHARLES SCHEVE, OF PENNSYLVANIA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2010, VICE NANCY KILLEFER, TERM EXPIRED.

TIMOTHY CHARLES SCHEVE, OF PENNSYLVANIA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2015. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. CHRISTOPHER J. BENCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JAMES M. KOWALSKI

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. ARTHUR W. HINAMAN

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. BENJAMIN F. ADAMS III

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be major general

BRIGADIER GENERAL DOUGLAS P. ANSON
BRIGADIER GENERAL ROBERT G. CATALANOTTI
BRIGADIER GENERAL GREGORY E. COUCH
BRIGADIER GENERAL DAVID S. ELMO
BRIGADIER GENERAL JEFFERY E. PHILLIPS
BRIGADIER GENERAL ROBERT P. STALL
BRIGADIER GENERAL WILLIAM D. WAFF

To be brigadier general

COLONEL DANIEL R. AMMERMAN
COLONEL EDWARD G. BURLEY
COLONEL JODY J. DANIELS
COLONEL WILLIAM F. DUFFY
COLONEL PATRICK J. REINERT
COLONEL DOUGLAS R. SATTERFIELD
COLONEL JOHN H. TURNER III
COLONEL HUGH C. VANROOSEN II
COLONEL RICKY L. WADDELL

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS ASSISTANT COMMANDANT OF THE MARINE CORPS, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 5044 AND 601:

To be general

LT. GEN. JOSEPH F. DUNFORD, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. THOMAS D. WALDHAUSER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT B. NELLER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be lieutenant colonel

ROBERT H. KEWLEY, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be lieutenant colonel

WILEY C. THOMPSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

RAYMOND C. NELSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

BERNARD B. BANKS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

DAVID A. WALLACE

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

MELISSA R. COVOLESKY
TIMOTHY D. LITKA
JOHN H. STEPHENSON II

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JONATHAN J. MCCOLUMN

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DANIEL E. BANKS

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

LATANYA A. POPE

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

NED W. ROBERTS, JR.

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

JOHN W. PAUL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ERIC S. ALFORD
PAUL J. CISAR
MICHAEL K. HANIFAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

GEORGE W. MELELEU
AARON L. POLSTON

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DEAN P. SUANICO
DAVID A. THOMPSON

To be major

ELIZABETH R. OATES

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

BRIAN F. LANE

To be major

PATRICK J. CONTINO
KIMBERLY D. KUMER

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DUSTIN C. FRAZIER

To be major

ROGER E. JONES
COURTNEY T. TRIPP

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DONALD P. BANDY

To be major

KEITH J. WILSON

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

STANLEY GREEN
DAVID K. HOWE

To be major

CHRISTOPHER T. BIAIS
JEFFREY P. CHAMBERLAIN
LEVIE J. CONWAY
LAURA JEFFERIES
STEPHEN A. MARSH
CRAIG F. MITCHELL
AMANDA K. PARKHURST
JON B. TIPTON

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

TIMOTHY J. RINGO

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

WILLIAM A. BROWN, JR.
LESLIE H. TRIPPE
PAUL J. WISNIEWSKI

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

JAIME E. RODRIGUEZ

To be lieutenant commander

KIM P. EUBANKS
ROY FOO
VINCENT M. PERONTI