United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, TUESDAY, AUGUST 4, 2009 No. 120

House of Representatives

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

Senate

TUESDAY, AUGUST 4, 2009

The Senate met at 10 a.m. and was called to order by the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois.

PRAYER

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

Let us pray.

Eternal God, we are grateful for Your mercies renewed every morning and for Your faithfulness every night. As the dew refreshes the Earth morning by morning, let Your spirit restore the faith and energy of our lawmakers. Give them the discernment to understand the challenges of our times and the wisdom to devise ways to meet them. Lord, keep them open and alert to Your providential leading, as You guide them to a destination that will bring glory to Your Name. May the collective talents of our Senators be mobilized in the awesome task of building a better Nation and world. Make their hands ready to lift burdens and their hearts eager to respond in service to humanity.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROLAND W. BURRIS led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 4, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ROLAND W. BURRIS, a Senator from the State of Illinois, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BURRIS thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, we will resume consideration of the Agriculture appropriations bill, with the time until 10:30 equally divided and controlled between the two managers or their designees. At 10:30, the Senate will proceed to a series of two rollcall votes in relation to the pending McCain amendments. Following the votes, the Senate will recess until 2:15 p.m. to allow for the weekly caucus luncheons. The time will be expanded a little bit today because the Democrats are going to the White House for the caucus today, rather than here in the Mansfield Room. As a reminder to all Senators, the filing deadline for second-degree amendments is 10:15 this morning. We have every belief we can complete the Agriculture appropriations bill today. I hope so because as soon as we finish that we are going to move to the nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States.

MEASURE PLACED ON THE CALENDAR—H.R. 3435

Mr. REID. Mr. President, H.R. 3435 is at the desk. It is my understanding it is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 3435) making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.

Mr. REID. I ask unanimous consent that any further proceedings in this matter not proceed. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

SOTOMAYOR NOMINATION

Mr. REID. Mr. President, a long 10 weeks ago, President Obama made history when he nominated the Nation's first Hispanic to be a Justice of the U.S. Supreme Court, and only the third woman. This week, the Senate will make history when we confirm her.

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

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Judge Sonia Sotomayor is an American of tremendous qualifications. Both her academic record and her career experience are second to none. She graduated summa cum laude from Princeton University and went on to do as well at Yale, where she was a member of the Law Review. She has served as a prosecuting attorney, a lawyer in private practice; she was on the trial bench and an appellate judge. After she is confirmed, she will be the only Justice in the current Supreme Court with experience as a trial judge—experience that I believe will be valuable to her colleagues.

One of the objections people have had about the makeup of the Court is that people come with basically no experience in the courtroom other than the appellate judges who sit in back rooms and listen to arguments once in a while and not in a courtroom listening to cases being presented, sustaining and overruling objections, and listening to arguments to the jury. They simply have not had that experience. She has. She has developed a 17-year record as a moderate, mainstream judge.

When the judge testified before the Senate Judiciary Committee for 4 grueling days, she respectfully and thoroughly answered questions from both sides of the aisle—Democrats and Republicans. This week, the Senate will debate her nomination. It will be a fair debate. It will be a full debate.

I appreciate the statements from my colleagues on the other side of the aisle who have said they will vote to confirm her to the Supreme Court.

Many Senators have very thoughtfully said they regret how politicized the process of confirming judges has become in recent years. An unsung hero in the battle for the judiciary is LAMAR ALEXANDER, the Senator from Tennessee. Senator ALEXANDER has been Governor of the State of Tennessee. He was in the Cabinet as Secretary of Education. During the very difficult nuclear option, when there was a knockdown, drag-out fight that I felt would have ruined the basic makeup of the Senate and what the Senate stood for, it was he who quietly and in the background came up with the idea of the Gang of 14. Basically, he said to me and to others: Why don't we have an equal number of Democrats and Republicans sit down and try to work this out. He took none of the limelight. He stepped back, and the process he suggested went forward.

He has decided to vote for Sonia Sotomayor. Most of his colleagues are not going to do that. I am sure if you ask LAMAR ALEXANDER why he decided to do that, of course, the qualifications are fine, but I think one reason he wants to do it is he believes in having temperate suggestions on both sides of the aisle to make a better Senate.

So I am very fond of LAMAR ALEXANDER. I appreciate his ability to bring sides together, and I appreciate his standing up in this instance for this judge, because the process of confirming judges has become in recent years very politicized. Whose fault is it? It is probably the fault of both sides. It is something that just got out of hand. Hopefully, we can bring it back to where it has been in the past.

I have tried during the time I have been the majority leader to allow full and firm debate. There have been limited instances out of necessity where we haven't had full opportunities to amend pieces of legislation. That is the way it used to be when I came here, and that is the way I hope it is going to be in the future.

In light of the battle we have had in the past over the so-called nuclear option, I appreciate the sentiments of a number of Senators. LINDSEY GRAHAM is an example. LINDSEY GRAHAM has had editorials all over the country written on his behalf. Columns have been written in major newspapers in Nevada complimenting the Senator from South Carolina for the statements he made regarding this judicial problem we have now.

I am disappointed that not more of my colleagues on the other side of the aisle are likely to vote for this outstanding nominee, particularly in light of her record and qualifications, but maybe in the future things will get better. I am, however, grateful for the respect my colleagues have shown her throughout this process, even those who have said they are not going to vote for her.

I look forward to voting to confirm Judge Sotomayor as soon as we can so that she can continue her commendable service to our country.

RECOGNITION OF THE MINORITY LEADER

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

SOTOMAYOR NOMINATION

Mr. MCCONNELL. Mr. President, the Senate will soon begin debate on the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. Before that debate begins, I wish to make a few observations.

First, I thank the chairman and the ranking member of the Judiciary Committee, along with their respective staffs, for conducting what can only be described as a dignified and respectful hearing. I know it was gratifying to them, as it was to me, to hear Judge Sotomayor say that every single Senator who had promised to give her the opportunity to explain her views had kept that promise. It was equally gratifying to hear Senators DURBIN and SCHUMER describe the hearings as respectful and fair.

As I have often said, our goal in the Senate should be to disagree without being disagreeable. I think we hit the mark during the hearings on Judge Sotomayor, and the Judiciary Committee should be commended for it. As we begin final consideration, our goal should be the same: Those who support the nomination will make their case, those who oppose it will make theirs, and then we will vote, fulfilling our constitutional responsibility with the seriousness and the deliberation the American people expect.

Over several weeks, I have outlined my concerns about the nominee in some detail. Once the hearing was over, I said that those concerns had only multiplied. But the primary reason I will not support this nomination, as I have already said, is because I cannot support the so-called empathy standard upon which Judge Sotomayor was selected and to which she, herself, has subscribed in her writings and rulings.

As I have said, the empathy standard is a very fine quality. And I have no doubt that Senator Obama, now President Obama, had very good intentions when he made the case for a so-called empathy standard as a Senator, a candidate, and now as President. But when it comes to judging—when it comes to judging—empathy is only good if you are lucky enough to be the person or group for whom the judge in question has empathy. In those cases, it is the judge, not the law, which determines the outcome. That is a dangerous road to go down if you believe, as I do, in a nation not of men but of laws.

Judge Sotomayor has impressed all of us with her life story, but if empathy is the new standard, then the burden is on nominees such as she who are chosen on that basis to demonstrate a firm commitment to equal justice under the law. On the contrary, Judge Sotomayor has openly doubted the ability of judges to adhere to this core principle, and she has even doubted the wisdom of them doing so.

In her writings and in her speeches, Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. Let me say that again. Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. She has said her experiences will affect the facts she chooses to see as a judge. Her experiences will affect the facts she chooses to see as a judge. She has argued that in deciding cases judges should bring their sympathies and prejudices to bear. She has dismissed judicial impartiality as an ''aspiration'' that cannot be met even in most cases. She has even questioned whether a judge trying to be as fair as possible in applying the law does a disservice both to the law and to society. These statements suggest not just a sense that impartiality is not possible but that it is not even worth the effort.

Nothing could be more important in evaluating a judicial nominee than where they stand on the question of equal justice. As I have said, Americans expect one thing when they walk into a courtroom—whether it is traffic court or the Supreme Court—and that is equal treatment under the law.

Americans have accepted serious ideological differences in Supreme Court nominees over the years. But one thing they will never, ever tolerate is a belief that some groups are more deserving of a fair shake than others. Nothing could be more offensive to the American sensibility than that.

Judge Sotomayor is certainly a fine person with an impressive story and a distinguished background. But a judge must be able to check his or her personal or political agenda at the courtroom door and do justice evenhandedly, as the judicial oath requires. This is the most fundamental test. It is a test that Judge Sotomayor does not pass.

I yield the floor.

RESERVATION OF LEADER TIME

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2997, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2997) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Kohl/Brownback amendment No. 1908, in the nature of a substitute.

Kohl (for Murray/Baucus) amendment No. 2225 (to amendment No. 1908), to allow State and local governments to participate in the conservation reserve program.

Kohl (for Nelson (FL) amendment No. 2226 (to amendment No. 1908), to prohibit funds made available under this act from being used to enforce a travel or conference policy that prohibits an event from being held in a location based on a perception that the location is a resort or vacation destination.

McCain amendment No. 1912 (to amendment No. 1908), to strike a provision relating to certain watershed and flood prevention operations.

McCain amendment No. 2030 (to amendment No. 1908), to prohibit funding for an earmark.

Johanns/Nelson (NE) amendment No. 2241 (to amendment No. 1908), to provide funding for the tuberculosis program of the Animal and Plant Health Inspection Service.

Brownback (for Barrasso) amendment No. 2240 (to amendment 1908), to require the Secretary of Agriculture to conduct a State-by-State analysis of the impacts on agricultural producers of the American Clean Energy and Security Act of 2009 (H.R. 2452, as passed by the House of Representatives on June 26, 2009).

Coburn amendment No. 2243 (to amendment No. 1908), to eliminate double-dipped stimulus funds for the Rural Business-Cooperative Service account.

Coburn amendment No. 2244 (to amendment No. 1908), to support the proposal of the President to eliminate funding in the bill for digital conversion efforts of the Department of Agriculture that are duplicative of existing Federal efforts.

Coburn amendment No. 2245 (to amendment No. 1908), to strike a provision providing $3,000,000 for specialty cheeses in Vermont and Wisconsin.

Coburn amendment No. 2248 (to amendment No. 1908), to prohibit no-bid contracts and grants.

Coburn amendment No. 2246 (to amendment No. 2226), to provide additional transparency and accountability for spending on conferences and meetings of the Department of Agriculture.

Kohl amendment No. 2288 (to amendment No. 2248), to provide requirements regarding the authority of the Secretary of Agriculture and the Commissioner of Food and Drugs to enter into certain contracts.

Sanders amendment No. 2276 (to amendment No. 1908), to modify the amount made available for the Farm Service Agency.

Sanders amendment No. 2271 (to amendment No. 1908), to provide funds for the school community garden pilot program, with an offset.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided and controlled between the managers and the Senator from Arizona, Mr. MCCAIN, or their designees.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum and ask that the time be divided equally on both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, what are the proceedings under the unanimous consent agreement?

The ACTING PRESIDENT pro tempore. The time until 10:30 is equally divided.

Mr. MCCAIN. Following that, there would be a vote on two amendments; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the second rollcall vote be vitiated and replaced by a voice vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1912

Mr. MCCAIN. Mr. President, this vote will be on amendment No. 1912. The amendment eliminates, as recommended by the President of the United States, the USDA Watershed and Flood Prevention Operations Program, also known as the Small Watershed Program.

This program is the perfect example of how reckless earmarking can devastate a well-intentioned government program. Like the previous four Presidents' budgets, this administration has proposed to terminate this account—four previous Presidents—because ''Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.''

According to the Congressional Research Service, the Small Watershed Program was 97 percent earmarked in fiscal year 2009, which severely marginalized the ability of the U.S. Department of Agriculture to evaluate and prioritize projects.

A 2003 Office of Management and Budget study showed this program has a lower economic return than any other Federal flood prevention program, including those in the Army Corps of Engineers and the Federal Emergency Management Agency.

The onslaught of earmarks over the years has most certainly contributed to the current backlog of about 300 unfunded authorized small watershed projects, totaling $1.2 billion.

As was originally intended, the Small Watershed Program may be a worthwhile program, but by inundating it with so-called ''congressionally designated projects,'' the program is challenged to function properly to the point where four previous Presidents have recommended its termination. Nevertheless, the Appropriations Committee hasn't given up on plundering it just yet. The bill provides $24.3 million for this program, including $16.5 million in earmarks for various unauthorized projects.

I urge my colleagues to support the President's recommendation. Again, I will quote from the President's recommendation—the President of the United States:

> The administration proposes to terminate the Watershed and Flood Prevention Operations Program. The Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.

So it goes on and on. Every analysis is that it has a lower economic return than any other program. Four Presidents have sought to eliminate it. We will probably lose this vote. But if there is ever a graphic example that once a program is established and once you fund it, it acquires a constituency and a powerful special interest and that funding continues on and on—we are proving, and we will continue to prove as we go through the appropriations bills, that there is no program that, once it exists, is going to be eliminated by this body, and that the appropriators continue to defy not only the President of the United States but logic and good sense as we amass deficits of monumental proportions which are mortgaging our children's and grandchildren's futures.

We cannot even stop a program the President wants terminated, that has no value, that the Office of Management and Budget and any objective observer will say deserves termination. It

is only $24.3 million, but the appropriators will join and jawbone others, and we will lose this vote, the same way we lost a vote yesterday that, again, had been recommended for termination by the President of the United States.

I didn't come up with this. It wasn't my idea to terminate it, although I certainly do think we should. It was the idea of the President of the United States. It is also every objective observer's idea. We will prove that not only will we not eliminate that program, but we send the message to the country that this program—even though the President wants it terminated, even though it has a clear record of total inefficiency—we will continue to maintain.

Sooner or later, there will be more tea parties and more protests, and the American people are going to rise up and say: Stop it.

I yield the floor.

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

Mr. KOHL. Mr. President, this program provides for cooperation between the Federal Government, State government agencies, and local organizations to prevent erosion, floodwater and sediment damages, and to further the conservation and proper utilization of lands in authorized watersheds.

This program helps communities prepare detailed watershed work plans for flood prevention projects in cooperation with soil conservation districts and other local sponsoring organizations.

Annual natural resource benefits include 90 million tons of soil saved from erosion; 47,000 miles of streams and stream corridors enhanced or protected; more than 1.8 million acre-feet of water conserved; nearly 280,000 acres of wetlands created, enhanced or restored; and over 9 million acres of upland wildlife habitat created, enhanced, or restored.

This is a very important program. I urge Senators to oppose this amendment.

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

Mr. BROWNBACK. Mr. President, I have a lot of sympathy for the comments made by the Senator from Arizona. I think he has accurate points. My colleague from Wisconsin makes points, as well, about the program overall.

My point in rising is to say that the system is very difficult to change and to get things pulled out. That is why we have to change the system. What I have put forward for years is a proposal to take a BRAC-type process—the military base closing process—and have it looked at and make a recommendation to the Congress and then one vote on the entire package. That is a way we found to eliminate military bases.

When a program like this is started, or others, there are people who say: Wait a minute. This works for my district even if it doesn't work for somebody else. This is a high-priority project, even if it is not for somebody else. That system is such that it is built to spend, not built to cull, where you can cull things out and say this one doesn't look good, but this does, in trying to get it through a body of 100 people. We are trying to get an Agriculture appropriations bill through that we have not been able to get done in 3 years. We haven't had floor time for an Agriculture appropriations bill. We are trying to move this forward.

I think the Senator has some excellent points. We need to pass this sort of BRAC process for the rest of government so we actually do go at a culling process that everybody has faith in, which has worked before on military bases and we now can apply to the rest of government. That is a system where we can eliminate things, which we need to do in a number of areas. It is not going to happen on a one-shot-by-one-shot basis because some people say: This is a program that really works for my area. Then we get hung up on the floor with lengthy battles, and then we are never able to get the bill through.

I urge my colleagues—and I hope some on the majority side will look at this CARFA bill, we call it, to see about putting that in place so we can get at these in a systematic way that everybody is agreeable to.

I yield the floor.

Mr. KOHL. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 1912.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 27, nays 70, as follows:

[Rollcall Vote No. 257 Leg.]

YEAS—27

Barrasso	DeMint	Martinez
Bayh	Enzi	McCain
Bunning	Feingold	McCaskill
Burr	Graham	McConnell
Carper	Grassley	Menendez
Coburn	Gregg	Risch
Corker	Johanns	Sessions
Cornyn	Kaufman	Thune
Crapo	Kyl	Webb

NAYS—70

Akaka	Cantwell	Franken
Alexander	Cardin	Gillibrand
Baucus	Casey	Hagan
Begich	Chambliss	Harkin
Bennet	Cochran	Hatch
Bennett	Collins	Hutchison
Bingaman	Conrad	Inhofe
Bond	Dodd	Inouye
Boxer	Dorgan	Isakson
Brown	Durbin	Johnson
Brownback	Ensign	Kerry
Burris	Feinstein	Klobuchar
Kohl	Nelson (FL)	Stabenow
Landrieu	Pryor	Tester
Lautenberg	Reed	Udall (CO)
Leahy	Reid	Udall (NM)
Levin	Roberts	Vitter
Lieberman	Rockefeller	Voinovich
Lincoln	Sanders	Warner
Lugar	Schumer	Whitehouse
Merkley	Shaheen	Wicker
Murkowski	Shelby	Wyden
Murray	Snowe	
Nelson (NE)	Specter	

NOT VOTING—3

Byrd	Kennedy	Mikulski

The amendment (No. 1912) was rejected.

Mr. KOHL. Mr. President, I move to reconsider the vote.

Mr. BROWNBACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

AMENDMENT NO. 2030

Mr. GRASSLEY. Mr. President, I want to speak in opposition to the amendment of the Senator from Arizona to strike funding for Iowa State University's Rural Vitality Center.

According to the Small Business Administration, Iowa historically has ranked near the bottom nationally in business startups. Small businesses with less than five employees account for 86 percent of Iowa businesses, yet these enterprises increasingly are bypassed by existing entrepreneurial assistance and capital networks, particularly in nonmetro areas. The Iowa Rural Vitality Project is Iowa State University's response to help foster innovation and economic vitality in rural Iowa.

The Vitality Center engages with academic institutions, community leaders, and economic development agencies to leverage resources. The center provides statewide leadership by building community capacity for assisting and supporting entrepreneurs and community foundations.

During the past year, the Vitality Center has led an effort to organize a statewide microloan foundation and complementary community microenterprise development initiatives. The program targets low- and moderate-income people and underserved rural areas. The microloan program helps fund businesses that don't quite meet the commercial lenders' requirements for credit, which is even more important during these tight lending times. This initiative is creating two to three new business startups per month that would not otherwise exist.

According to Iowa State University, the funding approved for fiscal year 2010 will be used to encourage the development of 20 community-based entrepreneurial development systems, allow for expanded philanthropic capacity in 10 community foundation projects, and research new strategies for enhancing rural vitality for rural and underserved communities. Their program, with this funding, will help continue their creation of jobs across the State.

The Feds aren't the only ones supporting this center. They have received grants from private sources and the State legislature for their efforts. It also receives a $1 for $1 match from each community demonstration project for approximately 10 projects, and approximately a $2 non-Federal to $1 Federal match from Iowa State University on the center operations budget.

I urge my colleagues to oppose the amendment to strike the funding for this center.

AMENDMENT NO. 2030

Mr. KOHL. Mr. President, all time is yielded back on McCain amendment No. 2030.

The ACTING PRESIDENT pro tempore. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 2030) was rejected.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that Senator BROWN be recognized for a period of approximately 8 minutes, followed by Senator SANDERS, to speak until 11:15 a.m., until our recess occurs.

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

The Senator from Ohio.

HEALTH CARE REFORM

Mr. BROWN. Mr. President, I rise again, as I have every day for the last week or so, to share some letters from Ohioans—from people in Painesville, Findlay, Lima, Springfield, Zanesville, and all over my State—which speak to people and their health care situations.

We hear discussion in this Chamber of market exclusivity and the gateway and the exchanges and all these kinds of Washington terms that people don't necessarily understand, but we don't talk often enough about how this health care system today is damaging the country. We don't think often enough about the situations people find themselves in.

We are not just enacting health care reform. If we do nothing, if we continue down this road, it means that small businesses, that are so overwhelmed with health care costs, are going to go out of business; that more small businesses are going to have to eliminate their insurance programs; and larger businesses—our biggest companies in the country—are having trouble competing internationally because of health care costs. People are paying huge costs out of pocket for their copays or deductibles, and so they cannot afford health care insurance. This means many people have deferred care, which is no care.

At the same time, we see the Nation's insurance companies all too often using preexisting conditions to deny care; using lifetime caps to deny care. This system is broken. Many parts of the system work, and the point of this bill is to protect what works and to fix what is broken in our health care system.

For 4 or 5 minutes, I wish to share some letters I have received from people around my State of Ohio about the situations they are facing with their health care. This is Debra, from Adams County. Adams County is three counties east of Cincinnati on the Ohio River.

Debra writes:

> In October 2003, I discovered I had breast cancer. Luckily we found it early and I was treated with a lumpectomy and radiation treatments. I'm doing fine now. But I had to fight with the insurance companies to pay for the radiation treatments. I had 32 radiation sessions and they were over $800 per treatment. To 2002 I paid $218 per month for health insurance. Over the next 3 years my premiums were increased to $550 per month. Today, the insurance company increased premiums to $719 per month.
>
> We are not poor but we are not rich, but $719 per month for insurance is half of what I receive in a month. I cannot afford to pay that amount. No insurance company wants to take me because of my preexisting breast cancer condition. I don't know what I am going to do. If I cancel the insurance and then I come down with cancer again or another serious illness, we will lose everything we worked so hard for all our lives.
>
> I paid for my own insurance since 1985 and have never asked for help, but I can't do this. Please can you help me?

Think about this. This is a woman who was paying $200 per month for health insurance. She paid for health insurance for almost 25 years. Then she gets sick. Then she had to fight with her insurance to get them to even pay for the treatment. Then they more than tripled the cost of her health insurance.

That is not what health insurance should do. That is not what a functioning good health care system should do. That is why we need this health care reform, to help people such as Debra in Adams County.

Barbara from Delaware County, an increasingly suburban but somewhat rural county straight north of Columbus, central Ohio. Barbara writes:

> I had excellent insurance when employed for many years. Then I was laid off when I turned 63. I went without insurance and tried to find a health insurance policy which I could afford. I was very happy to turn 65 and have Medicare.
>
> After having worked for 30 years, I am very grateful for both Social Security and for Medicare. At the age of 68, I don't mind paying into the system since I am glad to be part of a system that helps all of us who are in our advanced years. The security of knowing that I would be covered if something unforeseen would occur keeps my stress level down.

Barbara lost her job at 63, lost her insurance, fortunately had no catastrophic illness or disease happen between 63 and 65 until she got on Medicare. But when I hear this kind of assessment—when I hear her talk about Social Security and Medicare and how it has been for her—and then last night on this Senate floor I heard one of my colleagues on the other side of the aisle talk about how government cannot do anything right, we don't want government involved in health care, this is all a conspiracy of big government intrusion into our lives—think about Social Security; think about Medicare.

We know government has run Social Security and Medicare pretty darn well. Medicare has an administrative cost of well under 5 percent. Private insurance has administrative costs of 15, 20, 25, sometimes 30 percent. We know this health care system—this is not going to be a single-payer system. People will have choices between the public option and individual insurance plans. That is the way we are going to rebuild this health care system. If you are in health care that you appreciate and you are satisfied with, you can keep it. We are going to put some consumer protections on it to make it better.

Barbara speaks so articulately about why Medicare and Social Security work.

The last couple of letters I will read—this is from Cynthia, from Mercer County, on the Indiana border in western Ohio.

> My son had a cyst removed in February that cost $8,000 and I had hernia surgery in May that cost $12,000. My insurance company picked up some of the cost but I only make $31,000 a year. We can't even afford my property taxes. My son also has a learning disability and will likely not go to college this fall; therefore, my insurance company sees fit to drop him from coverage in October when he turns 19. Americans who work hard should be at least granted excellent affordable health care without breaking the bank. Let's get the best care possible, not just a Band-Aid.

Cynthia's son, when he turns 19, gets dropped off the insurance plan. Our legislation says if you choose to, you can stay on your parents' insurance plan until you turn 26. So it gets people through those tough years of school, looking for a job, maybe into the military, coming out of the military—all the things that happen in young lives. Our bill protects people up to age 26.

Today, under the status quo, Cynthia is not protected. Cynthia's son is not protected. Cynthia cannot afford these huge costs, these huge premiums, these huge copays and deductibles. That is why we need a change.

The last letter I will read is from Mike from Ross County. The county seat of Ross County is Chillicothe, a couple of counties south of Columbus. Mike writes:

> I am a self-employed small businessman. I am unable to obtain insurance for my wife and one of my two daughters. I live that risk every day, praying that my wife and daughter do not need major medical care. This is America, we can and must do better than that.

One of the things we did in this bill was put together special provisions for small business people so if you are self-employed, if you run a small business, you can get insurance at a more reasonable cost. We know big insurance companies charge small business much more per person than they charge larger businesses. This will allow small

business to go with other small businesses in what we call the exchange, and they will get much better rates because the insurance costs and the costs of illness and treatment will be spread over hundreds of thousands of people instead of only 5 or 6 or 10 people in one of these health care plans in a small business.

This also has tax credits, additional tax credits for small businesses. We are going to see a lot of help in this legislation for small business.

I will close again saying our health care bill that was voted out of the Health, Education, Labor, and Pensions Committee protects what works in our health care system and fixes what is broken. If you are happy with your health care insurance, you can keep it. If you are happy with your employer plan, you can keep it. We will build some consumer protections around it.

If you are not happy, you are dissatisfied, or you don't have insurance, you will get insurance under this bill.

I yield the floor.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from Vermont is recognized.

AMENDMENT NO. 2276

Mr. SANDERS. Madam President, I thank the Senator and applaud his strong efforts in fighting for health care for all Americans. I want to take a few minutes right now to touch on an issue that in fact has not gotten a lot of discussion here in Congress and that is that family-based dairy agriculture is on the verge of collapse. This is not a regional issue, this is a national issue. From the east coast to the west coast, what we are seeing is prices plummeting for dairy farmers way below the cost of production. If Congress does not act, all over America rural communities are going to be suffering economically. People are going to be losing their jobs. The American people increasingly will not be able to obtain fresh locally produced food.

As we talk about stimulus, as we talk about trying to revive this economy, let's remember rural America and let's remember the dairy farmers throughout this country who are producing an important part of the food we consume. At this moment, dairy farmers across the country are suffering from the lowest milk prices in four decades. Let me repeat that. Dairy farmers across the country are suffering from the lowest milk prices in four decades.

In the last year, the price farmers receive for their milk has plummeted 41 percent, to $11.30 per hundredweight. To understand how low $11.30 per hundredweight is, you must understand it takes $17 or $18 to produce a hundredweight of milk. In other words, for every cow that is milked, the farmer is losing a substantial amount of money.

As a result of these low prices, many family farms have gone out of business and, if we do not act immediately, you are going to see many more, from one end of this country to the other, close up. I can tell you in the State of Vermont there was a lot of publicity surrounding a farm in the southern part of our State that had been in one family since the Revolutionary War—since the Revolutionary War. But because of these horrendously low milk prices, that farm has gone up for sale.

This is not just an issue for dairy farmers. This is not just an issue for rural communities. This is an issue for every American who wants to gain access to good quality, locally produced food.

All over this country people are saying no, I don't want my food coming in from China, I don't want my food coming in from places all over the world. I want to see the quality food that is produced in my area, in my State, in my region. If we do not act to protect family-based dairy agriculture, we are going to increasingly lose that opportunity.

Let me underline this. I know the people familiar with dairy always say these are great regional fights, the Northeast is fighting the Midwest is fighting the Southeast is fighting the west coast, and every region has its own set of priorities.

This is not a regional issue, this is a national issue. Let me talk a little bit about what is happening, briefly, in various regions around the country. California Farmers Union President Joaquin Contente spoke about the situation in his State of California. He testified:

> In my lifelong history as a dairy farmer, I have never seen prices this far below our cost for this long and I have never seen so many dairy producers so desperate for relief. In my county alone—

This is in California, not Vermont.

> In my county alone, 25 dairies have either filed or are in the process of filing for bankruptcy and many more are closer to bankruptcy each day.

Joaquin Contente, California Farmers Union president.

Let me talk about Texas, the Southwest. The executive director of the Texas Association of Dairymen spoke about the situation in his State of Texas. He said:

> This is the worst situation I have seen since 1970. Some say it is the worst since the depression.

That is the State of Texas. Let me talk about the Midwest, Wisconsin. A Stanley, WI dairy farmer stated:

> In my area, farmers are burning up their equity accumulated over their lifetimes. One farmer in my area had to cash out his wife's IRA just to get crops planted this spring. My parish priest in my small town has had to counsel one or more dairy farmers a week to prevent their suicides. And we know of reports across the country of farm suicides that have already occurred.

These are just a few examples from California and Texas. I can go on and on about what is going on in California and the Northeast.

Last week, after Congress's strong urging, Secretary Vilsack announced that the government would spend $243 million to raise price supports for dairy farmers, and we very much appreciate the Secretary and the Obama administration's quick response to our needs. That support is important. It is likely to raise milk price supports by about $1.25 per hundredweight, but that is nowhere near enough of what we need when in fact cost of production is $17 or $18 per hundredweight.

This afternoon I will be offering legislation cosponsored by you, Senator GILLIBRAND, cosponsored by Senator SCHUMER, Senator TOM UDALL, Senator SPECTER, and Senator JEANNE SHAHEEN, among others. This amendment will go a long way to help farmers over the short-term crisis.

Long term, obviously we need to do some fundamental rethinking about dairy agriculture, how you bring long-term stability to the dairy industry and end that volatility that has been rampant in that industry for so many years. There are so many ideas out there about how we bring long-term stability for dairy farmers in this country. This is short-term relief to make sure farmers all over this country do not go out of business. What this amendment would do is provide the Secretary of Agriculture with $350 million in additional funding for milk price supports. That would, again, bring the price up about another $1.50 per hundredweight. This short-term help could mean the difference between economic viability or financial disaster for dairy farmers from one end of this country to the other.

Once again, all of us are focused on how we get out of this deep recession. All of us are focused on how we create decent-paying jobs. I urge my colleagues, do not forget about rural America. Rural America, whether it is Vermont, Wisconsin, California, Colorado—rural America is hurting. They need help as well.

Later on this afternoon I will be bringing forth this very important amendment to provide some economic support for rural America and hope to have the support of all my colleagues.

THE CALENDAR

Mr. SANDERS. Madam President, I ask unanimous consent the Senate proceed to the immediate consideration of the following postal naming bills en bloc: Calendar Nos. 133 through 144: S. 748, S. 1211, S. 1314, H.R. 774, H.R. 987, H.R. 1271, H.R. 1397, H.R. 2090, H.R. 2162, H.R. 2325, H.R. 2422, and H.R. 2470.

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

Mr. SANDERS. I ask unanimous consent the bills be read a third time and passed en bloc, the motions to reconsider be laid on the table en bloc, and any statements be printed in the RECORD.

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

CESAR E. CHAVEZ POST OFFICE

The bill (S. 748) to redesignate the facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, as the ''Cesar E. Chavez Post Office,'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 748

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

SECTION 1. CESAR E. CHAVEZ POST OFFICE.

(a) REDESIGNATION.—The facility of the United States Postal Service located at 2777 Logan Avenue in San Diego, California, and known as the Southeastern Post Office, shall be known and designated as the ''Cesar E. Chavez Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Cesar E. Chavez Post Office''.

JACK F. KEMP POST OFFICE BUILDING

The bill (S. 1211) to designate the facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, as the ''Jack F. Kemp Post Office Building,'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1211

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

SECTION 1. JACK F. KEMP POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 60 School Street, Orchard Park, New York, shall be known and designated as the ''Jack F. Kemp Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Jack F. Kemp Post Office Building''.

DR. MARTIN LUTHER KING, JR. POST OFFICE

The bill (S. 1314) to designate the facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, as the ''Dr. Martin Luther King, Jr. Post Office,'' was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1314

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

SECTION 1. DR. MARTIN LUTHER KING, JR. POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 630 Northeast Killingsworth Avenue in Portland, Oregon, shall be known and designated as the ''Dr. Martin Luther King, Jr. Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Dr. Martin Luther King, Jr. Post Office''.

LIEUTENANT COMMANDER ROY H. BOEHM POST OFFICE BUILDING

The bill (H.R. 2470) to designate the facility of the United States Postal Service located at 19190 Cochran Boulevard FRNT in Port Charlotte, Florida, as the ''Lieutenant Commander Roy H. Boehm Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

KILE G. WEST POST OFFICE BUILDING

The bill (H.R. 2422) to designate the facility of the United States Postal Service located at 2300 Scenic Drive in Georgetown, Texas, as the ''Kile G. West Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

LAREDO VETERANS POST OFFICE

The bill (H.R. 2325) to designate the facility of the United States Postal Service located at 1300 Matamoros Street in Laredo, Texas, as the ''Laredo Veterans Post Office,'' was considered, ordered to a third reading, read the third time, and passed.

GERALDINE FERRARO POST OFFICE BUILDING

The bill (H.R. 774) to designate the facility of the United States Postal Service located at 46–02 21st Street in Long Island City, New York, as the ''Geraldine Ferraro Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

JOHN SCOTT CHALLIS, JR. POST OFFICE

The bill (H.R. 987) to designate the facility of the United States Postal Service located at 601 8th Street in Freedom, Pennsylvania, as the ''John Scott Challis, Jr. Post Office,'' was considered, ordered to a third reading, read the third time, and passed.

ELIJAH PAT LARKINS POST OFFICE BUILDING

The bill (H.R. 1271) to designate the facility of the United States Postal Service located at 2351 West Atlantic Boulevard in Pompano Beach, Florida, as the ''Elijah Pat Larkins Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

CAROLINE O'DAY POST OFFICE BUILDING

The bill (H.R. 1397) to designate the facility of the United States Postal Service located at 41 Purdy Avenue in Rye, New York, as the ''Caroline O'Day Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

FREDERIC REMINGTON POST OFFICE BUILDING

The bill (H.R. 2090) to designate the facility of the United States Postal Service located at 431 State Street in Ogdensburg, New York, as the ''Frederic Remington Post Office Building,'' was considered, ordered to a third reading, read the third time, and passed.

HERBERT A LITTLETON POSTAL STATION

The bill (H.R. 2162) to designate the facility of the United States Postal Service located at 123 11th Avenue South in Nampa, Idaho, as the ''Herbert A Littleton Postal Station,'' was considered, ordered to a third reading, read the third time, and passed.

Mr. SANDERS. I yield to the chairman, Senator KOHL.

Mr. KOHL. 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.

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

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

Mrs. MCCASKILL. I rise for a minute to concur with the comments of my colleague from Vermont, Senator SANDERS.

I have spent some time on the phone over the last few weeks with dairy producers in Missouri. What is happening is heartbreaking. And in this economic downturn, it is hard to look everywhere we can be looking. One day, the car sector is grabbing our attention; another day, we are talking about what is going on in terms of utility costs for our constituents; another day, we are back talking about whether people can even afford health care. There are so many places we are trying to look and do what is necessary to get us through this rough patch.

Unfortunately, the independent producers do not have a whole lot of lobbyists out there. A lot of the big, multinational agricultural corporations have plenty of help. But the families I know, the families I have talked to, who are trying to continue to produce dairy products for this Nation in the family way and in the independent way, are really on the ropes.

I ask unanimous consent that I be added as a cosponsor to Senator SANDERS' amendment and that we remember

it is not just our car manufactures that are in trouble right now. In almost every sector of our economy, we have trouble, and we cannot neglect one area of our economy in an effort to help another area of our economy.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KOHL. 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. KOHL. Madam President, I ask that it be in order to make a point of order en bloc on several pending amendments.

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

AMENDMENTS NOS. 2225, 2226, 2246 2248, AND 2288

Mr. KOHL. Madam President, I make a point of order that the following amendments are not germane postcloture: amendments Nos. 2225, 2226, 2246, 2248, and 2288.

The PRESIDING OFFICER. The point of order is well taken. The amendments fall.

Mr. KOHL. I ask unanimous consent that at 2:15 p.m., the Senate resume consideration of the Coburn amendment No. 2244; that Senator HARKIN be recognized to speak for up to 15 minutes, to be followed by Senator COBURN for as much time as he consumes; that following Senator COBURN's remarks, the Senate then proceed to vote in relation to the Coburn amendment No. 2244, with no amendment in order to the amendment prior to the vote; further, that upon disposition of amendment No. 2244, the Senate then resume the following amendments, with 2 minutes of debate prior to each vote: amendments Nos. 2245, 2243; that no amendments be in order to either amendment prior to a vote; and that no amendments be in order to any of the amendments listed here.

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

Mr. KOHL. I yield the floor.

RECESS

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

Thereupon, the Senate, at 11:22 a.m., recessed until 2:15 p.m. and reassembled when called to order by the Acting President pro tempore.

AGRUCULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

AMENDMENT NO. 2244

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of amendment No. 2244 offered by the Senator from Oklahoma, Mr. COBURN.

Mr. COBURN. I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, the Senate Agriculture appropriations bill contains $4.9 million to help public television stations meet the Federal mandate to provide over-the-air digital signals to rural areas, similar to last year's funding level. Rural public television stations throughout the country are at extreme disadvantage when faced with the task of converting their stations and vast network of translators from analog to digital transmission. Why? Because they are spread over a larger geographic area—private and some of the network stations—and they have a much smaller population base to draw upon when funding system improvements than their urban counterparts. Urban stations have a bigger population base.

To date, most rural stations have focused their resources on converting transmitters to meet the Federal mandate. The funding provided in this Agriculture appropriations bill will be critical to helping stations transmit their signals far enough to reach people in rural areas far from the transmitters. Generally, stations have these transmitters send a signal out over the airwaves, but in a large number of cases they need translators. They take the transmitter signal at a certain point and then they boost the power so they can send it further out. That was also true under the old analog system. Obviously, the analog translators would not work for digital, so we need digital translators. In most cases, for technical reasons, the digital translators cover less of an area, particularly in places that are hilly or mountainous, so additional translators are needed.

At present, we have millions of people living in rural America who simply cannot get the over-the-air digital signal. These funds are allocated on a peer-review process within the Rural Utilities Service of the Department of Agriculture. For example, in my State of Iowa, a large number of people in the Dubuque area are not receiving the Iowa public TV digital over-the-air signal now because of the lack of a digital translator which gets its signal from a Cedar Rapids-Waterloo transmitter. I understand also that the Oklahoma public television system received considerable funding through this program a few years ago. But many other State systems have very real needs that have not been met. Few public TV stations are able to acquire the needed funds to do this. In the current 2009 round, public TV stations requested about three times the available needed funding we have in the USDA program. While it is true that both the Department of Commerce and the Corporation for Public Television do provide equipment for public TV stations, it is also true that these funds are both inadequate to fully meet all the needs they are intended for, and they have not been providing significant funds for translators.

The Corporation for Public Broadcasting provides about $36 million for public TV and radio stations for equipment. They have provided digital equipment, shifting analog libraries to digital, and power equipment. But they have not focused on digital translators. It is not their mission to focus on the special needs of rural areas such as the Rural Utilities Service must do. Even if they do in the future provide some funding for translators, the total we now need is going to be far more than the funds that will be available in the coming fiscal year. Even if they did have the funds, they asked for three times the amount of funding that we have in this bill to build these translators. The Department of Commerce also has a program which provides equipment, again not focused on translators. They provide equipment such as network operations equipment that allows stations to take signals from a national broadcast and send them out over their transmitters. They provide emergency funding when there is a local equipment failure but, again, they have a very limited amount of money for translators.

Again, there is a considerable need for additional funds for digital TV to reach rural America. The lack of a single translator can mean that 100,000 households are not able to get over-the-air digital signals. These funds are badly needed. I thank my friend from Oklahoma for letting me go first because I have to chair a hearing at 2:30. I wished to make these comments because I have real-time experience with these translators in my State in Dubuque. But there are other places in rural Iowa that are on the fringes of where the transmitters are, and they have to have these translators to get the signal out.

Again, one could say: Well, they charge the people. But there are not that many people. They deserve to have public television also. That is what this money was for, the $4.9 million, to help them get these translators. It is not only Iowa, any State that has a lot of rural area, especially if it is hilly or mountainous, needs translators. I am not an expert in this area whatsoever, but I know they cost money. I do know the need is there. All I can say is, they had asked for three times more than what we have in this bill. So if there are some other funds in Commerce or in the Corporation for Public Broadcasting, I rather doubt they will be able to anywhere meet the need that is out there, and they will be

back again next year asking for more money to get these translators built, as we switch from the analog to digital.

I, respectfully, request that the Senate oppose the Coburn amendment.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I am constantly amazed. We have three separate programs, of which this administration says we don't need one penny from the Department of Agriculture for this. That is what they say. They say we have plenty of money in CPB to do everything that is needed with the translator stations this year. We are 92 percent complete on everything that has been translated. This is similar to every government program. They never die. Not only do we have the Department of Commerce that is going to have additional funding this year for that very same thing, we have the Corporation for Public Broadcasting. The fact is, they want it to go through the Agriculture Department because there is more control. We can direct it. We can have more control.

We are in a crisis. We will have close to a $2 trillion deficit this year. Here we have $4.9 million that the administration says isn't needed. They want to get rid of it. They are right. What do we do? Every time we come to approach a program, we decide we can't eliminate it. Every family in America today is eliminating a lot of programs for themselves.

This appropriations bill is an atrocity. I will go through it so everybody can see what it is. In fiscal 2009, the grand total for this was $128 billion. It is now $123 billion. Do you know why it is there? They got $20 billion from mandatory in the stimulus and another $6 billion in the stimulus. So this isn't a decrease. It is outrageous the amount of money we are spending. We will go through it line by line.

Agriculture programs in 2009, discretionary were $6.85 billion. They are $7.22 billion. That is a 6-percent increase. The mandatory spending was $18 billion. It is now $22 billion. That is a 21-percent increase. Plus they got $1 billion in the stimulus. So if you add that to the $30 billion, we actually have $31 billion compared to $24 billion this year. Think about what kind of increase that is. Title II conservation programs was $969 million in 2009. We gave $340 million, which hasn't been spent yet; it will be spent this year. Yet we increase it another 4.5 percent to $1.015 billion.

Rural development, they got $3 billion this year. In this bill they get 2.7. That is an 11-percent increase. That doesn't count the $4.36 billion that was given in the stimulus. Domestic food programs went from $76 million to $86 million. We need that now, no complaint there. We have a lot of people requiring our help right now, but they also got $20 billion which hasn't been spent yet in the stimulus. So we have gone from $76 million to $106 million, a 45-percent increase. Foreign assistance, we spent $1.5 billion on foreign assistance in agricultural programs in 2009. This is at $2 billion, a 33-percent increase. Plus they got $700 million in the stimulus that has not been spent. So add that together and you have $2.1 billion versus 1.5.

It is ridiculous the amount of money that is in this appropriations bill. All these ought to be trimmed back based on what the stimulus was doing rather than growing them at four times the rate of inflation. We are growing government in this bill four times the rate of inflation. We are going to have a $2 trillion deficit and we are proud of this bill? This bill is a stinker.

FDA Commodities Futures Trading, $2.1 billion to $2.527 billion, a 20-percent increase in one year. Let's talk about some of the separate programs. Agricultural research got increased $200 million. By the time you add in what we did in the stimulus, it goes from $1.18 to $1.23 billion. That is where most of the earmarks are stolen from, agricultural research, and most of that money isn't applied to research. It gets directed through an earmark. National Institute of Food and Agriculture Research went from 1.22 billion to 1.3, an $80 million increase, a 6.76-percent increase; Economic research, up $3 million, just a 4-percent increase; Statistical service, up 7 percent; Animal health inspection, up 4 percent; Agricultural marketing services, up 5 percent; Grain inspection packers, up about 4 percent; Food safety, where we should be increasing funding because of the problems we have had, is up only 2 percent. Where we have the problems, we are not increasing the appropriations. We are actually barely keeping even with inflation. But on food safety, we don't increase it. Farm service salaries, they increase $90 million, a 6.5-percent increase, plus we gave $50 million in the stimulus; Farm service agency loans, if you add in the stimulus, which has not been spent, we get to $195 million from $147 million. That is a 33.3-percent increase.

Federal crop insurance: Up $1 billion, from $6.5 billion to $7.5 billion. That is a 12-percent increase.

Conservation programs. Mr. President, $340 million NRCS was given in the stimulus. It has not been spent yet. And $962 million is what we had last year. Mr. President, $1.015 billion, plus the $340 million, and what you get is a 33-percent increase.

Conservation operations: No money in the stimulus. We go from $853 million to $949 million. That is an 8-percent increase.

Watershed and flood prevention is flat. It is flat. We have all these water conservation dams that are falling apart. Kind of like in our highway bill, we fix the earmarks, but we do not take care of the bridges. That is what we are doing on the watershed.

RC&D, the President terminated it. Finally we got one that is going under.

Rural development: Salaries up 8 percent.

Rural housing: Counting the $330 million we did in the stimulus that has not been spent, you have a $430 million increase—$130 million increase over it, about a 7-percent increase.

You can keep going. I will not continue to bore my colleagues. But the fact is, overall in this bill, we have a tremendous increase in spending when you consider what we did in the stimulus—not a decrease—taking into account for that.

Now back to this amendment. All this amendment does is cut $4.9 million—$4.9 million—out of a $124 billion bill. The reason this amendment is offered is because the administration is doing the right thing. They are eliminating a program that is not needed now. We can say anything we want, but we have three agencies doing the same thing, and what the administration recognized, to their credit, is we do not need three agencies doing the same thing. What we need is one agency accountable. We are 92 percent complete, and let them be responsible for finishing it and save the American taxpayer some money.

That is what the Obama administration wanted to do with this elimination. But, no, it comes right back. Each of the three programs that presently do this work—the USDA, the Commerce Department's PTFP, and the Corporation for Public Broadcasting—is a part of their respective agency's budget. Unless we eliminate it, we are going to spend that money, and it will not be well spent, it will not be wisely spent, it will not be efficiently spent. It will just be spent, and they will ask for more next year. Even when we are at 97 percent or 98 percent complete, we will see the same request to come. The logic was because they asked for three times as much; therefore, $4.9 million ought to be OK. Well, $4.9 million is not OK when we need zero out of the Department of Agriculture to begin with.

One of the things the Obama administration wants to do is to streamline this process, not have three agencies going through this. They want to consolidate the current three-pronged effort into one efficient program that is already in existence. And nobody denies that CPB has done a pretty good job with the public television stations and the translator stations through their money.

The USDA received $14 million in 2004, $10 million in 2005, $5 million in each of the years 2006 through 2008. PTFP—which is the Department of Commerce—has gone all the way from 1998, when they got $12.5 million—and every year, all the way up—to 2002, when they got $36 million; and then they went back down to $15 million in 2007. They did not get any money in 2008 because they did not need it.

The Corporation for Public Broadcasting, however, has gotten, on average, over $35 million a year, and they

got $29 million last year. Plus we spent $650 million in the stimulus on this program. It has not all been spent. So we are lining up. We have plenty of money in the stimulus package, and then we are going to ask for another $4.9 million.

This is exactly the reason the American people are disgusted with Congress. This is a bill that is out of its bounds in terms of its spending. It has not recognized what is in the stimulus that has not been spent. So what we are doing is we are actually going to increase the debt through this bill that is going to be spent.

To put that in personal terms, what does that mean? A $2 trillion deficit is $6,000 for every man, woman, and child in this country. That is what we are going to do this year: We are going to spend $6,000 per man, woman, and child more than we take in for every man, woman, and child in this country. And do you know what. We are on course to do exactly the same thing next year with this kind of appropriations bill. There is no check with reality in the Senate as far as when it comes to spending money, and I refuse to apologize for looking out for the next two generations when we do not have the courage to say no to anybody. What we say is: Yes, I will get this bill for you so you can look good at home.

Well, who is looking out for the 2- and 3- and 4- and 5-year-olds in this country who, when they were born, took on almost $500,000 worth of unfunded liabilities? Our debt is going to double in the next 5 years. It is going to triple in the next 10 years. There is no effort in this bill to make that less burdensome on those children.

With that, I yield the floor on this amendment.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2248

Mr. COBURN. Mr. President, I want to talk about an amendment I offered that has been ruled nongermane by the Parliamentarian. I flatly disagree with that ruling, and I want the American people to understand what we have ruled nongermane.

We offered an amendment that said grants and contracts under this bill should be competitively bid. Think about that. When we go out to spend money—with the six or seven exemptions in the contracting clause, and the fact that maybe for some things only one person can apply to it, which have been accepted in that—we said for American taxpayers to get value, we ought to ask and mandate that competitive bidding take place on grants and contracts in this bill.

Not one of these has ever passed the Senate, and I want to tell you why. It is because we do not want things to be competitively bid. We do not want your dollars to be spent wisely, efficiently, and effectively because when we do that we take away our political power to say somebody is going to get a contract or somebody is going to get a grant.

So this amendment, which was offered, specifically excluded earmarks because the complaint last week, when I offered the same amendment on the previous bill, was that if they are authorized—and remember, an earmark goes to a specific person, a specific company, those well connected in Washington—I specifically eliminated earmarks from this amendment so we would not have the excuse to say we do not want things competitively bid. But what we were going to find, had this amendment gone to a vote, is that it would have been voted down, too, because the problem is not in America, the problem is right here.

We view political power and incumbency more precious than we view the economic realities and sustenance of this country and the true freedom of the people in this country. We diminish that because we think our positions ought to be enhanced, and we ought to secure our next election by making sure we are the dolers of everything good, and that we can actually connect those who give big campaign contributions to great rewards from the Congress when it comes to appropriations bills. What this amendment would do is require that the contract be competitively bid according to the law. We actually have a law that says contracts have to be competitively bid, except Congress routinely excuses that on appropriations bills.

Just so the American people get this, we don't competitively bid contracts on these appropriations bills. We don't competitively bid the grants. We don't mandate that they are competitively bid, although some grants are competition-based but not based on dollars, based on performance. So Congress wins and the American people lose. Every time one of these bills goes through here without competitive bidding, our children are the real losers.

The President of the United States has said it is his policy that anything over $25,000 the government buys in this country ought to be competitively bid. Yet routinely it is his supporters who vote against that. President Obama means it, but we can't get it through here. We have $350 billion a year of documented waste, fraud, and duplication in the discretionary budget, plus Medicare fraud every year. There has been no attempt to accept amendments to eliminate that, to lessen that.

The fact is, we are on idle pilot to grow this government 8 percent this year in spite of the $787 billion stimulus. If you are sitting at home thinking about that, not very many people have 8 percent more income this year. So one of two things is going to happen in the next 18 months in this country. Here is what is going to happen. Either we are going to default on our debt because people are going to quit loaning us money or the average middle-income taxpayer is going to see a tax hike because, if we take all the income of the top 5 percent of people in this country, we cut our deficit only in half. If we take all the income—I am talking about a 100-percent tax rate of the top 5 percent earners in this country—we will cut our deficit in half.

So if you are a middle-class American, no matter whether you think some people should pay more than they do—5 percent pays 80 percent of the taxes in this country—you can bet that in the next 18 months, you are going to see a middle-class tax increase go through this body. The reason it is going to go through is because we will not apply any common sense to the appropriations bills.

Most American families are cutting back on their spending; some because they have lost their jobs, others because they are worried and they are fearful. What is the Federal Government doing? I am not talking about the stimulus bill. We are actually increasing spending. We are not making the hard choices about what is a priority and what is not; what is a necessity and what is not. We are not eliminating anything. We are building up everything, just like the last amendment we talked about. There is absolutely zero need for that program in the Department of Agriculture, but next year we will have the same debate again.

I have an amendment on cheeses. I am not going to do it because there is no reason to waste the Senate's time. But we created a demonstration project back in the early 1990s with Wisconsin and Vermont and we have been funding it ever since. They have this outstanding large specialty cheese production in Wisconsin and Vermont. They don't need any money, but we are going to send them more money this year because we did last year. The fact is, the specialty cheeses they make cost two and three times what regular cheese costs and they are luxury items, but we are going to fund that not because they need it, not because they are not competitive, not because they haven't grown their industry, but because we have funded it before.

Now ask yourself, if you read the Constitution, where is it in the Constitution that we are supposed to give two States millions and millions of dollars for an agricultural program that should be funded by the State if they want to do it or funded by the individuals who actually produce the cheese and are making good money. But we are going to continue to do it.

So I am not going to offer that amendment. I am not going to waste the time of the Senate on it. But there is a real question of why we are in the

trouble we are in as a nation today. It is because we ignore what the Constitution tells us to do. We ignore what our oath tells us to do, what we swear to do, which is uphold the Constitution. And within that is the enumerated powers, as well as the 10th amendment. The 10th amendment says whatever is not specifically spelled out—specific—and if you read what Jefferson and Madison had to say about what that meant, you will find that all of those responsibilities are left to the States and to the people. That is what they said.

We have this ''cash for clunkers'' going on right now, and the Senate is going to vote for an increase in that program. But the reason we are having to do that is because we can't manage it. We have proven—the Department of Transportation—they don't even know how many applications they have from people. They don't even know if they have over the number. What they know is they have approved $760 million of the money so far, but that doesn't count all of the applications that have come in from the dealers. Here we are incentivizing the purchase of cars, taking money from our grandkids, and Americans are smart enough to know if they can get 4,500 bucks back from the Federal Government, they will take advantage of that. So we have created this wonderful increase in demand for automobiles. But why not an increase in demand for boats or how about RVs or how about refrigerators? They are more efficient. Why not give somebody a $500 credit on their refrigerator? Why are we limiting this to the automobile industry that we now as taxpayers have the responsibility of bailing out of debt?

The fact is, we are clueless. We are not plugged in to what the average American family is going through in terms of a budget. We will not apply that same standard to their money up here, and their kids, our kids, and our grandkids are the ones who are going to suffer.

So ask yourself a question: Why would the Senate not allow an amendment on competitively bidding the contracts and grants in this bill? Hundreds of millions of dollars that we are going to pay much too much for, an area where we could save a tremendous amount of money, and if it is grant programs that truly do a great job, we could get more of that great job done if we got it done more efficiently. It is pretty disturbing that we are so far off course with what we are doing and, more importantly, how we are doing it.

With that, I yield the floor and note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2246

Mr. COBURN. Mr. President, I wish to speak on the pending amendment No. 2246, which caps the amount of money the U.S. Department of Agriculture spends on conferences and requires transparency on the purpose and cost of the conference sponsored or attended by the U.S. Department of Agriculture.

This is a report I issued a year ago on the $90 million in conference costs the U.S. Department of Agriculture has spent. It is a pretty detailed report. You can go to my Web site and get it. But it tells about the lack of attention to any sort of fiscal discipline.

By the way, the Department of Agriculture is the worst practitioner of all of the agencies of the Federal Government on conferences, in terms of wasteful conferences, in terms of the number of people going to conferences—by far the worst. In 2001, USDA spent $6 million on conferences. Within 5 years, that went to $19 million. They tripled.

All this amendment says is, in 2010—9 years later—they can't spend more than double what they spent in 2001. That allows conferences to grow 11 percent a year. Twelve million dollars for conferences is a lot of money. That is less than the amount they spent this last year. It is less than any amount they have spent since 2001, but it is still double what they have spent in 2001.

This amendment also requires an itemized list of expenses and expenditures by the Department on the conference, who the primary sponsor of the conference is, the location of the conference, a justification of the location, including the cost efficiency of the location, the total number of individuals whose travel to the conference was paid for by the Department, and an explanation of how the agency advanced the mission by attending the conference.

It is about transparency. I have seen it quoted before, and I believe it is true: The greatest pleasure in the world is to spend somebody else's money. What our agencies are doing in many instances is not being frugal with the tax dollars we give them. The Department of Agriculture is a great example of that, when they are running close to $20 million a year—not this last year but still above $12 million—on conferences, and when we have the technology now to eliminate half the conferences.

I don't have any problem with travel. I don't have any problem with them going to conferences that are legitimate. But I do have a problem with a 3½-times increase in the amount of conferences they attend, especially given our economic situation today.

So this is fairly straightforward. We should put a cap on it. We should limit it. It is my hope my colleagues will do that.

With that, I yield the floor and note an absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Ms. STABENOW. Mr. President, I understand we are in the process of putting together a series of votes, but while we have a moment, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

THE CARS PROGRAM

Ms. STABENOW. First, I thank our leaders on this important Agriculture bill—the chairman, whom I appreciate so much for all of his hard work; he has a great bill in front of us, along with the ranking member from Kansas.

I wish to speak about legislation the ranking member, Senator BROWNBACK, and I have been working on now for some time. The first piece of it has proven to be extremely effective, despite the naysayers. It has come back even more successful than we thought it would. I thank Senator BROWNBACK for working with me. Making sure this is fully paid for within the recovery package is important to Senator BROWNBACK, and this achieves that. I thank him for partnering with me and understanding the significance of what we have been working to do.

The CARS Program has truly been an incredible success. In only a week, it has proven to be an excellent way to stimulate the economy. Dealers haven't seen this level of customer excitement in years. I can tell you, as someone who grew up on a car lot—my dad and grandfather had an Oldsmobile dealership when I was growing up. This is important to small towns as well as big cities across the country.

We are not only helping to save the over 160,000 dealership jobs across the country, but it is making our air cleaner and reducing oil consumption. So far, we have seen a 61-percent increase in vehicle fuel economy, which I think is surprising, as we hoped for an increase and we hoped people would turn in vehicles with lower mileage and get a higher mileage vehicle. In fact, we have seen even greater results than we thought we would. They are trading in vehicles averaging 15.8 miles per gallon, and the new vehicles average 25.4 miles per gallon. So this is extremely significant.

What is even more important is that is $700 to $1,000 a year in lower gas prices for the average family. At this time, when money is so tight, when people are concerned about saving every penny, this is a good deal for consumers, a good deal for the environment, for the economy, small businesses, as well as, certainly, everyone involved in the auto industry.

It is also significant that 83 percent of the trade-ins are trucks and 60 percent of the new vehicles are small cars. So we are seeing people move away from their clunker truck into a more energy-efficient car. That is good news for the environment and for fuel economy for the average family as well.

This has been a great program, with over 250,000 cars sold. Dealers are packed and sales are booming. At a GM dealership in Ferndale, MI, foot traffic was up 60 percent just last week, according to the general manager.

It is not just dealerships being helped, as I indicated. Steel and aluminum producers have announced that they expect a benefit from the program, as more cars are made to meet demand generated by the program. Scrap recyclers, which supply the steel industry, which have also been hurting lately, are also seeing a pickup in business. The boost to these industries isn't just immediate either. Analysts predict that the benefits will have a lasting impact. So we are talking broadly about manufacturing materials, as well as the small businesses in the communities involved.

Getting people into showrooms and excited again is having a psychological impact on consumers and businesses as well. This is happening all over the country.

The Houston Chronicle reports that more than 70 percent of the clunkers being traded in are SUVs, and 84 percent of the new vehicles are small, fuel-efficient cars.

The Brownsville Herald in Texas quotes Don Johnson, the owner of The Real Don Johnson Chrysler-Jeep-Hyundai, who said:

> This is a good deal for the people. It's a good deal for us because we will sell more cars, but it's a good deal for people.

The Daily Record in Dunn, NC, reports strong interest and increased traffic in dealerships. Dan Lowe, from John Hiester Chrysler Jeep Dodge in Lillington, NC, said his dealership is getting 25 to 30 calls a day about the CARS Program. He told the newspaper:

> We are excited about anything that gets cars off the lot.

This is certainly doing that.

A Pennsylvania car dealer, Bill Rosado, told the Wall Street Journal:

> I can't believe I'm saying this: I need more Chrysler inventory.

Then he said:

> My goodness, I've got to rehearse that line a couple times.

This program has been extremely successful in a very short amount of time.

The House, because of its success, as we all know, has acted to add additional dollars by moving from one program in the recovery package into this program. I thank them very much for doing that and for the leadership of my partner in the House, BETTY SUTTON, and the delegation from Michigan, who worked so hard, and also those from Ohio, Indiana, and others as well.

In the Senate, we have had great bipartisan support. Again, I thank my bipartisan cosponsor, Senator BROWNBACK, and I thank Senator VOINOVICH as well. We have been partnering on something that makes sense. This is taking some stimulus dollars and putting them directly into a stimulus that is visible; it is working, it is putting money into the economy, and it is saving people money on gas. It is something I believe is important to continue.

I will close by also thanking our leader, Senator REID, who has once again been extremely supportive of bringing this forward so we have an opportunity to vote. I am hopeful we will see a strong, bipartisan vote on this important stimulus.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 2243 WITHDRAWN

Mr. COBURN. Mr. President, I ask unanimous consent to withdraw amendment No. 2243.

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

Mr. COBURN. Mr. President, I note that the Senator from Michigan noted everyone who won. Let me tell you who did not win and that is our kids and grandkids. Americans are not stupid. If you give them 4,500 bucks, they are going to find any old car they have that is running and they have held for a long time. All our farmers are going to the barns. That is why you are getting pickups. They haven't been driving the pickups for years. But they are cranking them up to make them run and trading them in so they can get 4,500 bucks.

The people who lose are our kids. It is $3 billion we are talking about to go to help people buy cars. But where are we going to get the $3 billion? We are going to steal it from our children. What other part of the economy should we not be incentivizing? How about the appliance makers? How about the television makers?

I also ask unanimous consent—actually, I have discussed this with the chairman. Rather than ask for a recorded vote, we will have a voice vote on amendment No. 2245.

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

AMENDMENT NO. 2244

Mr. COBURN. I also note that we will have a vote on the amendment in terms of eliminating $4.9 million for a duplicative program in the Department of Agriculture.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? At this moment, there is not a sufficient second.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWNBACK. 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. BROWNBACK. Mr. President, I inform my colleagues, we are trying to get to a final conclusion on this bill. It is an important bill, but also a number of Members want to speak on the Sotomayor nomination to the Supreme Court. The attempt is to get this bill moving forward. I think we are close to a final UC to get to passage of this bill.

I wish to comment before we move into that sequence about the importance of the agriculture industry. It is a key issue in my State, and it is a key issue in Wisconsin, the State of the leader of this subcommittee. It is an industry that has done better than a number of others have been doing during this recessionary time period. It is one that is a good performer for us on exports. We have one of the best exporting models, as far as business in agriculture, in this country. Because it is very competitive, it has a lot of capital intensity to it, a lot of intellectual brain power put behind it, both at the public and private level.

It is one of those models in which we compete and do well globally. We are also aggressive in our trade policy to push for free trade, but if other countries are going to subsidize, we will back up our guys and say: If you subsidize your agricultural industry, then we are going to do it to fight you back on it. We don't take any guff around the world. We want a free-trade world, but if you are going to attack us, we are going to respond. If you have missiles, we have missiles, and we are going to do it. That model has worked well to create a very competitive, very growth-oriented, very export-oriented business that is globally competitive, high technology, and one I think that is moving well into the future.

We have a lot of things going on in agriculture, and a number of them are funded in this bill. We want to see the industry expand in the energy business. A lot of us are very supportive of ethanol. Some are saying: I am for it, but I want the next generation of ethanol. We are funding that, as far as getting into cellulosic ethanol.

We are looking at other types of fuels. One that is interesting for some people is on algae production into a diesel type of fuel. We are doing something on wind because wind is what generally blows across the Plains in your State, Mr. President, my State and a number of others and harvesting that in such a way that we can get it to other markets—the electric markets—and add a cost-competitive rate so it is not one that drives it up.

All of this does take a lot of effort. I want to acknowledge that some colleagues on my side are saying: I am not satisfied with this bill; I don't like some of the items in this bill. I say to them: I agree. There are provisions in this bill I don't like. But it is part of us getting a process to move an Agriculture appropriations bill through, something we have not been able to get

through on the floor for over 3 years in a stand-alone type of bill, on a very important industry that is globally competitive, that has been a good one for us in this recessionary time period we are in.

I note we have a lot of problems with this bill, but I also say I think we have a lot we are doing right with it and looking forward into the future of what we can do to be very supportive.

I note a couple of things that are going on that are important for us as a country in agriculture on which we can get some crosscurrents.

Norman Borlaug, an agronomist from Texas A&M, is known as the father of the green revolution that brought a lot of the new technology to feed the world. This has been over a career. He won the Nobel Peace Prize in 1970 for his contributions to the green revolution.

I mention him because he is a key person in looking to the future of how the world is fed and fed at a good level. He notes it is important for us to do things in an environmentally sensitive and environmentally sound way but that we also need to fund high-yield, disease-resistant wheat varieties. We need to be able to use plant genetics that are in some places around the world. Some are saying: We don't like your alterations on plant genetics. We need to be able to do this. To feed a hungry world, we are going to have to use agricultural pesticides, insecticides, and fertilizer, and that gets into crosscurrents. They say: I want all the agricultural production, but I don't want these inputs brought into it. We don't have a model for that to work yet.

It is important we support organic food markets and organic food production, but we cannot go that way fully. It is the sort of thing we cannot feed a hungry world on on a cost-competitive basis, a globally competitive industry, if you say we are going to pull out all these tools that have made the green revolution work.

I think it is also important that we fund into the next generation of genetics and technology in this area. I was interested in one of my travels across Kansas. Last year, we had a time where some of my corn farmers could not plant for a couple days, and it was not because it was wet. It was because the satellite went down. Their global positioning system on their corn planter would not work, so they could not plant their corn because the satellite was down. I am going: Well, that is an interesting excuse. I haven't heard that one before. But it wasn't an excuse. It was a fact of life. To plant these crops and do the best job—and they apply just the right amount of fertilizer to that soil and that crop in that specific location will take—it takes a global positioning satellite that has had the data read into it and fed back. That is how high tech the industry is.

I don't want us to move away from that level of technology and input; otherwise, I think we are going to lose our edge.

We also have some developments in the environmental field that I think are interesting. We have people in Kansas and other places around the country who are working on things such as green concrete. You ask: What would that be? It is concrete that has soy oil brought into it to help it be an environmentally sound, renewable type of process. They already are making the foam matting in the seat in your car out of soybeans. So when you sit in a new Mustang—in particular, I know that car for sure—the foam rubber is made out of soybeans. I guess if you get caught in a Colorado blizzard and don't have anything to eat for a week or two, you can eat the seat.

I don't think it is edible.

But my point is, that, again, is an investment in the technology we are putting in this Agriculture appropriations bill to make new things that will work.

This bill is an increase in funding. I don't like that because I think we should not be doing those sorts of funding increases. A major portion of that is the WIC Program. When we get into a recession, we get more and more people needing food. They are not able to pay for it themselves, and the government steps up. That is the problem when we have a recession—government costs go up, government receipts go down, and you get caught in this trap.

One of the reasons why I think a program such as Cash for Clunkers is interesting is because it stimulates the economy, not the government. It gets that economy rolling, which is 80 percent of us balancing the budget. It is getting the economy moving. We have to restrain our spending and do a better job of that.

I think we also need to be a lot more targeting of our programs. Programs such as the WIC Program and this Agriculture appropriations bill are a consequence of a bad economy. I don't like it, but I think the key for us is to be an economic stimulus and not a government stimulus.

On the whole, while I think we have problems with this bill, I like the overall trend of what we are doing in the agricultural industry. I like what the chairman has focused on in this bill.

On top of these items, I note for my colleagues, we put a special effort on the food aid program and getting the food aid program updated. To me, the needs of those who are in very difficult circumstances in refugee camps and different places around the world—we spend too much on transportation and administration on food aid. Nearly 60 percent goes into those two. That number has to come down. But we need to get more food on the target because, in many cases, we are what stands between that person and starvation and death. It is the food aid, the generous food aid of the American people, that flows through this appropriations bill that does that.

The Food and Drug Administration is also in this bill, and that is part of the increase. The development and the increasing need for different types of drugs are addressed in this bill as well.

We have to get more innovative on FDA. I would like to see us in the neglected disease categories find more truncated procedures that approve drugs that have narrower, smaller marketplaces. That is in this bill.

While I believe there are a number of things negative about this bill, I think the chairman has put together an overall good bill. I am glad we are getting to the point where we can move this one on through, conference it, and bring it back separately, as well so we can recognize this very important industry. It is important in my State and it is important in the States of all the Members, and we should do this separately instead of rolling it together in some sort of omnibus bill like we too often have done.

I believe we are getting close to getting to a final UC. That would be my hope so we can move this bill forward.

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. SANDERS. 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. SANDERS. Mr. President, I will take a few minutes while we are waiting until procedures get lined up to say a few words about an amendment I am offering which is going to come up for a vote fairly soon. This is an amendment which addresses the crisis in dairy all over this country. It is an amendment that is supported by Senator SNOWE, Senator UDALL of New Mexico, Senator SCHUMER, Senator BENNET of Colorado, Senator SPECTER, Senator MCCASKILL, Senator GILLIBRAND, Senator KLOBUCHAR, Senator SHAHEEN, and Senator CASEY. As you will note, these are people from all over the country. What we are not talking about here is a regional issue, we are talking about a national issue.

I want to pick up on a point for a moment that Senator MCCASKILL made earlier this morning. I think it is important. All of us know that today our country is in a major economic crisis, the deepest recession since the Great Depression. But sometimes what media does, and maybe what we do here in Congress, is focus on that crisis in the areas where there is, if you like, concentrated misery, such as Detroit, which has undergone terrible problems, thousands of people on a given day have lost their jobs, and sometimes, in the midst of the economic crisis facing our country, we forget what is happening in rural areas, in small towns all over this country. Sometimes when farms go out of business, farms that have been owned by a family for generations, when rural communities go into, literally, an economic depression, we don't pay quite as much attention

to that. It is not on the front pages of the New York Times. The fact is, right now rural America is in the midst of a very serious economic crisis. Unemployment is extremely high.

One of the particular areas where we are seeing not just a deep recession but, in fact, a depression is within the dairy industry. In the last year, if you can believe it, the price dairy farmers—many of them small, family-based dairy farmers—have received for their milk has plummeted by 41 percent. In the last year, it has gone down by 41 percent. The reality of what that means is that farmers today, for every gallon of milk they are producing, are losing money. It is not that they are making a little bit, they are losing money. What we are seeing, not just in the Northeast, not just in the Midwest, not just in the Southeast, not just in the West, but all over this country, are family farmers going out of business, plunging their rural economies and their communities into depression-type economics.

Let me quote, if I might, from people from different parts of the country.

A Minnesota dairy farmer writes:

> This situation is unlike any experienced in the past and the width and depth cannot continue to be ignored. It has not discriminated based on herd size or geographic location. Dairy farmers of all sizes and across all regions of the country are enduring an unprecedented disaster.

That is from Minnesota.

The President of the California Farmers Union—when we talk about dairy, sometimes California is in another world from the rest of the country because their herds are much larger.

By the way, I should say the National Farmers Union is supporting this amendment, and 11 agricultural commissioners and secretaries from States are supporting this amendment as well, as is the DFA, the Dairy Farmers of America, which is the largest dairy farm cooperative in America.

This is what the fellow who is the head of the California Farmer's Union says. His name is Joaquin Contente. He testified:

> [I]n my lifetime history as a dairy farmer, I have never seen our prices remain this far below our costs this long and I have never seen so many dairy producers so desperate for relief. In my county alone 25 dairies have either filed or are in the process of filing for bankruptcy and many more are closer to bankruptcy each day.

From Texas, the executive director of the Texas Association of Dairymen said:

> This is the worst situation I have seen since 1970. Some say it is the worst since the Depression.

From Wisconsin, a dairy farmer states:

> In my area farmers are burning up the equity accumulated over their lifetimes. One farmer in my area had to cash out his wife's IRA just to get his crops planted this spring. My parish priest in my small town has had to counsel one or more dairy farmers a week to prevent their suicides.

Those are just a few examples from Wisconsin, California, and Texas. Trust me, I could tell you many similar stories from the State of Vermont.

Once again, as we attempt to revitalize our economy, let's not forget about rural America. Let's not forget about dairy farmers. Let's support this legislation which will provide $350 million to increase dairy support prices. I look forward to the support of my colleagues.

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

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

AMENDMENT NO. 2284 TO AMENDMENT NO. 1908

Mr. KOHL. I ask unanimous consent that the pending amendment be set aside and the Senate now consider amendment No. 2284.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL], for Mr. DODD, proposes an amendment numbered 2284 to amendment No. 1908.

The amendment is as follows:

(Purpose: To require the Secretary of Agriculture to fund certain projects in communities and municipal districts in Connecticut, Massachusetts, and Rhode Island)

On page 85, between lines 16 and 17, insert the following:

SEC. 7____. Notwithstanding any other provision of law and until the receipt of the decennial census in the year 2010, the Secretary of Agriculture may fund community facility and water and waste disposal projects of communities and municipal districts and areas in Connecticut, Massachusetts, and Rhode Island that filed applications for the projects with the appropriate rural development field office of the Department of Agriculture prior to August 1, 2009, and were determined by the field office to be eligible for funding.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2284) was agreed to.

Mr. KOHL. Mr. President, I move to reconsider the vote and move to lay that motion on the table.

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

AMENDMENTS NOS. 2241; 2280; 2271, AS MODIFIED; 2282, AS MODIFIED; 2249, AS MODIFIED; AND 2266, AS MODIFIED

Mr. KOHL. Mr. President, I now ask unanimous consent that the Senate consider the following amendments en bloc: Nos. 2241 and 2280; that amendments Nos. 2271, 2282, 2249, and 2266 be modified with the changes at the desk; that the aforementioned amendments, as modified, if modified, be agreed to en bloc; and that the motions to reconsider be laid upon the table en bloc.

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

The amendment (No. 2241) was agreed to.

The amendments were agreed to, as follows:

AMENDMENT NO. 2280

At the appropriate place insert the following:

Whereas sudden loss in late 2008 of export-market based demand equivalent to about three percent of domestic milk production has thrown the U.S. dairy industry into a critical supply-demand imbalance; and

Whereas an abrupt decline in U.S. exports was fueled by the onset of the global economic crisis combined with resurgence of milk supplies in Oceania; and

Whereas the U.S. average all-milk price reported by the National Agriculture Statistics Service from January through May of 2009, has averaged $4.80 per hundredweight below the cost of production; and

Whereas approximately $3.9 billion in dairy producer equity has been lost since January; and

Whereas anecdotal evidence suggests that U.S. dairy producers are losing upwards of $100 per cow per month; and

Whereas the Food, Conservation, and Energy Act of 2008 extended the counter-cyclical Milk Income Loss Contract (MILC) support program and instituted a 'feed cost adjuster' to augment that support; and

Whereas the Secretary of Agriculture in March transferred approximately 200 million pounds of nonfat dry milk to USDA's food and Nutrition Service in a move designed to remove inventory from the market and support low-income families; and

Whereas the Secretary on March 22nd reactivated USDA's Dairy Export Incentive Program (DEIP) to help U.S. producers meet prevailing world prices and develop international markets; and

Whereas the Secretary announced on July 31, 2009 a temporary increase in the amount paid for dairy products through the Dairy Product Price Support Program (DPPSP), an adjustment that is projected to increase dairy farmers' revenue by $243 million; and

Whereas U.S. dairy producers face unprecedented challenges that threaten the stability of the industry, the nation's milk production infrastructure, and thousands of rural communities;

Now therefore be it resolved, That it is the sense of the Senate that the Secretary of Agriculture and the President's Office of Management and Budget should continue to closely monitor the U.S. dairy sector and use all available discretionary authority to ensure its long-term health and sustainability.

AMENDMENT NO. 2271, AS MODIFIED

(Purpose: To provide funds for the school community garden pilot program, with an offset)

On page 52, lines 22 and (23), strike ''$16,799,584,000, to remain available through September 30, 2011,'' and insert ''$16,801,584,000, to remain available through September 30, 2011, of which $2,000,000 may be used to carry out the school community garden pilot program established under section 18(g)(3) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(g)(3)) and shall be derived by transfer of the amount made available under the heading 'ANIMAL AND PLANT HEALTH INSPECTION SERVICE' of title I for 'SALARIES AND EXPENSES' ''.

AMENDMENT NO. 2282, AS MODIFIED

(Purpose: To seek recommendations from the Commissioner of Food and Drug regarding the need to establish labeling standards for personal care products for which organic content claims are made)

On page 85, between lines 16 and 17, insert the following:

SEC. 7____. (a) The Commissioner of Food and Drugs, in consultation with the Secretary of Agriculture, may conduct a study on the labeling of personal care products regulated by the Food and Drug Administration for which organic content claims are made. Any such study shall include—

(1) a survey of personal care products for which the word ''organic'' appears on the label; and

(2) a determination, based on statistical sampling of the products identified under paragraph (1), of the accuracy of such claims.

(b) If the Commissioner of Food and Drugs conducts a study described in subsection (a), such Commissioner shall—

(1) not later than 270 days after the date of enactment of this Act, submit to the Committees on Agriculture, Nutrition, and Forestry, Appropriations, and Health, Education, Labor, and Pensions in the Senate and the Committees on Agriculture, Appropriations, and Energy and Commerce in the House of Representatives a report on the findings of the study under subsection (a); and

(2) provide such Committees with any recommendations on the need to establish labeling standards for personal care products for which organic content claims are made, including whether the Food and Drug Administration should have pre-market approval authority for personal care product labeling.

AMENDMENT NO. 2249, AS MODIFIED

(Purpose: To express the sense of the Senate relating to the provision of disaster assistance)

On page 85, between lines 16 and 17, insert the following:

SEC. 7____. (a) The Senate finds that—

(1) agriculture is a national security concern;

(2) the United States suffers from periodic disasters which affects the food and fiber supply of the United States;

(3) the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8701 et seq.) established 5 permanent disaster programs to deliver timely and immediate assistance to agricultural producers recovering from losses;

(4) as of the date of enactment of this Act, of those 5 disaster programs—

(A) none are available, finalized, and implemented to deliver urgently needed assistance for 2009 producer losses; and

(B) only 1 is being implemented for 2008 losses;

(5) According to the Drought Monitor the State of Texas is suffering from extreme and exceptional drought conditions, the highest level of severity.

(6) the Secretary of Agriculture has previously authorized various forms of disaster assistance by providing funding under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), and through the Commodity Credit Corporation.

(b) It is the sense of the Senate that the Secretary of Agriculture should use all of the discretionary authority available to the Secretary to make available immediate relief and assistance for agricultural producers suffering losses as a result of the 2009 droughts.

AMENDMENT NO. 2266, AS MODIFIED

On page 61, line 23, after the colon, insert the following:

''*Provided further*, That the Commissioner, through the Center for Food Safety and Applied Nutrition, may conduct a study and, not later than one year after the date of enactment of this Act, submit a report to Congress on the psychological, physiological, and neurological similarities between addiction to certain types of food and addiction to classic drugs of abuse;''

AMENDMENT NO. 2249

Mrs. HUTCHISON. Mr. President, I rise today to talk about a sense-of-the-Senate resolution that I am offering. This sense-of-the-Senate resolution seeks to address drought aid that producers in my home State of Texas desperately need.

Texas is in the throes of one of the worst droughts in 50 years. We are seeing the hottest, driest summer on record over a large portion of the State, but especially in central and south Texas. Lack of rainfall and sustained record triple-digit temperatures for weeks have scorched crops and rangeland throughout parts of Texas causing drought losses to reach $3.6 billion. The Texas AgriLife Extension Service predicts this total could rise above $4.1 billion in producer losses if sufficient rainfall isn't received to revive crops and forage.

In the Food, Conservation, and Energy Act of 2008, also known as the farm bill, which I supported, Congress established five permanent disaster programs to deliver timely and immediate assistance to producers recovering from losses. The logic behind establishing the permanent disaster program was to ensure producers who have eligible losses receive timely assistance. I agreed with the inclusion of this provision and I supported it. For too many years, producers had to wait months and even years to receive assistance from USDA. The problem today is USDA has not finalized any of the five disaster programs included in the farm bill. While the Department is working to finalize these programs, farmers and ranchers in Texas are seeing their crops, and livestock heards, diminish due to the excessive heat and drought.

My sense of the Senate simply urges the Secretary of USDA to use any of his discretionary authority to provide immediate assistance for producers who are sustaining losses as a result of this extraordinary drought. The Secretary has authority to provide quick assistance and he has used these authorities in past extraordinary circumstances. Our farmers and ranchers need immediate assistance; they cannot continue to wait for bureaucratic reg. writing. Please join me in encouraging the Secretary to use the tools at his disposal to provide any available assistance as quickly as possible.

AMENDMENT NO. 2240

Mr. KOHL. I will make a point of order that amendment No. 2240 is not germane postcloture.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

Mr. KOHL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

Mr. REID. Mr. President, I now ask unanimous consent that after Senator COBURN moves to commit the bill with instructions, that there be 10 minutes of debate equally divided and controlled between Senators KOHL and COBURN or their designees; that upon the use of that time, the motion be set aside and the Senate then resume consideration of the Sanders amendment, No. 2276; that then Senator BROWNBACK or his designee be recognized to raise a budget point of order against the amendment; that after the point of order is raised, then the motion to waive the relevant point of order be considered made; that the Senate then proceed to vote in relation to the Coburn motion to commit; that upon disposition of that motion, the Senate then proceed to vote on the motion to waive the relevant Budget Act point of order; that if the motion to waive is successful, then the amendment be agreed to and the motion to reconsider be laid upon the table; that no further amendments or motions be in order; that upon disposition of all pending amendments, the substitute amendment, as amended, if amended, be agreed to, the bill then be read a third time, and the Senate proceed to vote on passage of the bill; that upon passage, the Senate insist on its amendment, request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees on the part of the Senate, with the subcommittee plus Senator INOUYE appointed as conferees; further, that if a budget point of order is raised against the substitute amendment, then it be in order for another substitute amendment to be offered minus the offending provisions but including any amendments which have been agreed to, and that no further amendments be in order; that the substitute amendment, as amended, if amended, be agreed to, and the remaining provisions beyond adoption of the original substitute amendment remaining in effect.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. I further ask unanimous consent that in the sequence of votes as described above, there be 2 minutes of debate prior to each vote equally divided and controlled in the usual form, and that after the first vote in the sequence, the remaining votes be limited to 10 minutes each.

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

Mr. REID. I ask unanimous consent that the vote sequence be as follows: Coburn, No. 2244; Coburn, No. 2245; Coburn motion to commit; Sanders motion to waive the Budget Act point of order.

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

Mr. REID. With the Republican leader here on the floor now, I ask unanimous consent that upon disposition of H.R. 2997, the Senate proceed to executive session to consider Calendar No. 309, the nomination of Sonia Sotomayor to be Associate Justice of the Supreme Court, and that the first hour of debate be under the control of the chair and ranking member of the committee, Senators LEAHY and SESSIONS, to be followed by 2 hours of debate, with the time equally divided and controlled between the majority and the Republicans.

Mr. President, before I ask whether my friend will accept this, I just want to lay out to the body, I am glad we are going to this. Everyone should understand we have other things to do before we leave here. We are going to do them before we have a final vote on this Supreme Court nominee. We have to work something out on travel promotion, and we have to work something out on the so-called cash for clunkers. The other matters we are going to put over until a subsequent time, but we will at least have some preconceived idea of what we are going to do when we get back.

I want everyone to be alerted that this is not the end of the work session before us.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object, and I will not be objecting, I just want to make a point for all of our colleagues. The very important debate on the Supreme Court nominee will commence in a while. It is important for people not to wait until the end. We need to get people on over to make their speeches. I know there are a number of Members on the Republican side of the aisle who do intend to speak to the nomination. I encourage them to begin that sometime soon.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I appreciate the statement of my friend. Everything relating to this nomination has been very civil, fair. Senator LEAHY, the chairman of the committee, and the ranking member, Senator SESSIONS, have done an outstanding job of setting an example of how the debate should be handled here on the floor.

There are strong feelings regarding this nomination. That is the way it should be. I was told last night that there are as many as 28 Republicans who wish to speak on this matter. Of course, a lot of Democrats will also want to speak.

I want to lay out, as my friend, the Republican leader, did, we are going to be working into the evenings. People should not wait around here until tomorrow saying, I will put it off until tomorrow, or maybe I will wait until Thursday. There may not be a Thursday. We need to get these speeches done. They are all important. They are important for the record this body makes.

I would hope people would work with the floor staff to set up a way to proceed. What we are going to do is if at all possible, have a Democrat speak, a Republican speak, go back and forth. If there is not one of the other party here, we are not going to wait around until a Republican or Democrat shows up. If there is someone here ready to speak, that person will be recognized and the person who was supposed to be here can wait until some subsequent time.

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

The time will now be equally divided on the Coburn amendment No. 2244.

Who yields time?

MOTION TO COMMIT

Mr. COBURN. I have a motion to commit at the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] moves to commit the bill H.R. 2997 to the Committee on Appropriations of the Senate with instructions to report the same back to the Senate making the following changes:

(1) Amend the amounts appropriated in the bill so as to report back a bill with an aggregate discretionary level of appropriations for fiscal year 2010 at an amount that is 2 percent greater than the $20,662,300,000 enacted for fiscal year 2009, excluding funds made available for any discretionary or mandatory direct food assistance program, as is appropriate given—

(A) the minimal growth of the budgets of families of the United States due to the fiscal challenges of the United States; and

(B) the $2,000,000,000,000 deficit and $11,500,000,000,000 debt of the United States.

Mr. COBURN. Mr. President, the reason for this motion to commit is what we see on the discretionary side of this budget—not the food stamps, not the food support, not the areas in this budget that actually help people get through the tough times—a 15-percent increase in discretionary spending.

We are going to have near a $2 trillion deficit this year. We spent $20 billion last year. But then we spent another $6 billion in the stimulus which still has not been spent. So if you were to add the stimulus to it, you would see a 50-percent increase in the Agriculture discretionary budget. That is entirely too much money.

All this motion to commit says is, bring it back to us with a realistic expectation of what families are having to do. Again, I would caution my colleagues, this has nothing to do with food. We do not eliminate or lessen those mandatory requirements.

But in the operation of the USDA and the Department of Agriculture, let's have the government live within the same parameters that the rest of us are living within now which is—actually we are going to have a negative rate of inflation this year and incomes that are not going to grow significantly.

What we are asking for is still a rate higher than inflation but some fiscal responsibility that says we should live within our means. So when we spent $20 billion last year, through the end of this month, then we gave another $6 billion with the stimulus, and now we come forward with a budget that says we are going to spend $23 billion, a full 15-percent, 14-some-percent increase in the discretionary programs at the Department of Agriculture.

I find it obscene. I find it irresponsible. I find it almost elite that we will not relate to what the rest of the American people are going through, and we have bill after bill after bill, and in a time when our country is on its back and our budget deficits have never been so high, we are going to increase discretionary spending at a rate we have not seen in 10 years in this country. There is no call for it. There is no excuse for it. There is no defending it.

I would note that, in fact, on every amendment I have stood up on, other than the one Senator HARKIN defended, we have not had anyone defend this bill. Let's hear a defense of the 15-percent increase for this bill in discretionary spending. The idea is, let's not defend it, let's just not answer the charge.

But the fact is, we are growing the discretionary portion of the Federal Department of Agriculture by 15 percent this year. It ought not to be.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KOHL. Mr. President, as I stated at the outset of this bill, it does reflect an increase in spending over the previous year. But let's be clear, 90 percent of the discretionary increase is for WIC, food and drug safety, humanitarian food assistance, and rural rental housing. These four items are among the most important things that government does.

To put it a little more in context, the largest overall increases in this bill are not in discretionary programs at all. The largest single increase in the bill is for nutrition programs such as the Supplemental Nutrition Assistance Program. That program, and programs combined with other programs, are together funded at $9.1 billion higher than last year. These are mandatory programs that reflect the state of our economy and serve as a very basic human safety net.

Other mandatory increases involve farm support and crop insurance programs and funding $3.4 billion higher than last year. These programs operate as they are authorized, and this spending is what is required to pay farmers and ranchers the benefits they are entitled to receive under the law.

The Senator is correct that the spending in this bill is higher than last year. But much of that increase is attributable to mandatory programs that

do not change through an appropriations bill. With regard to overall spending, Congress has spoken on that question through the budget resolution and the allocations that are made to each subcommittee for discretionary spending. This bill is about how we apportion that discretionary spending to best serve the American people and the people throughout the world. This bill has a proper priority.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. COBURN. The honorable chairman noted that most of the increase in spending is in mandatory. This motion to commit does not say anything about mandatory. This is about discretionary. This is about the things we get to decide on. This is about the discretionary side of this bill, not the mandatory side. So we are not confused. This is not about those substantive items that are mandated through the farm bill. This is about what we have discretion to control, and we have indiscretion with this bill because we are going to allow it to grow by 15 percent.

I yield the floor and yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I ask unanimous consent that both sides yield back their time and I ask for the yeas and nays.

Mr. KOHL. No objection.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The Senator from Pennsylvania.

Mr. SPECTER. I ask unanimous consent to speak for up to 5 minutes in support of the Sanders amendment.

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

AMENDMENT NO. 2276

Mr. SPECTER. Mr. President, the dairy farmers in Pennsylvania and the Nation are receiving record low prices for their products, prices that we have not seen since the late 1970s.

From January through June of this year, the price received by farmers was 37 percent below that of a year earlier. Feed costs, by comparison, have fallen by 11 percent. In this year, the U.S. Department of Agriculture expects the all-milk price to average between $11.85 per hundredweight and $12.15 per hundredweight, down from $18.29 last year, and 18 to 20 percent below the 10-year average.

Exports, which have driven much of the recent growth in the dairy industry, have fallen from 11 percent of production last year. According to the Pennsylvania Department of Agriculture, these losses are translated into losses as high as $1,000 per cow per year, so that a farmer milking 100 cows will lose as much as $100,000 this year.

This amendment provides the U.S. Department of Agriculture with $350 million in additional funds to enable it to increase the level at which the government buys surplus dairy products off the market.

This funding would allow the Secretary to raise the support price on three different types of dairy products. That is a brief statistical summary of the problems which the dairy farmers are facing, not only in the my State, Pennsylvania, but across the country.

I recently convened a session in my office to hear in some detail the plight of the dairy farmers. I have traveled the State. Before August is finished, I will have visited all of Pennsylvania's 67 counties, which is a practice I make, covering virtually every county every year.

I have seen firsthand the desperate plight of the farmers of our State. We had been considering a number of amendments to this bill, but they have been ruled not germane. For those who may be watching this program—this session; it is really a program, but it is a session of the Senate—that means technically we could not offer other legislation.

But I compliment the distinguished Senator from Vermont who has structured this amendment in a way which will enable the Department of Agriculture to meet this pressing problem.

Recently about a dozen Senators met with the Secretary of Agriculture, and the conclusion was that the Department of Agriculture, the Obama administration, wanted to help farmers by raising price supports, but they lacked the money to do so. So this amendment, if adopted—and I urge my colleagues to adopt it—and there is pretty widespread concern about milk prices covering virtually every section of the United States. I urge my colleagues to adopt this amendment to give some very much needed relief to the dairy farmers.

I yield the floor.

AMENDMENT NO. 2285

Mr. KOHL. Mr. President, notwithstanding the previous order, I ask unanimous consent that amendment No. 2285 be considered and agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 2285) was agreed to, as follows:

(Purpose: To express the sense of the Senate regarding the livestock indemnity program)

At the appropriate place, insert the following:

SEC. 7____. (a) The Senate finds that—

(1) with livestock producers facing losses from harsh weather in 2008 and continuing to face disasters in 2009, Congress wanted to assist livestock producers in recovering losses more quickly and efficiently than previous ad hoc disaster assistance programs;

(2) on June 18, 2008, Congress established the livestock indemnity program under section 531(c) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)) and section 901(c) of the Trade Act of 1974 (19 U.S.C. 2497(c)) as a permanent disaster assistance program to provide livestock producers with payments of 75 percent of the fair market value for livestock losses as a result of adverse weather such as floods, blizzards, and extreme heat;

(3) on July 13, 2009, the Secretary of Agriculture promulgated rules for the livestock indemnity program that separated non adult beef animals into weight ranges of ''less than 400 pounds'' and ''400 pounds and more''; and

(4) the ''400 pounds and more'' range would fall well short of covering 75 percent market value payment for livestock in these higher ranges that are close to market weight.

(b) It is the sense of the Senate that the Secretary of Agriculture—

(1) should strive to establish a methodology to calculate more specific payments to offset the cost of loss for each animal as was intended by Congress for calendar years 2008 through 2011; and

(2) should work with groups representing affected livestock producers to come up with this more precise methodology.

AMENDMENT NO. 2280, AS MODIFIED

Mr. KOHL. I ask unanimous consent that the previously agreed-to amendment No. 2280 be modified with the changes at the desk.

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

The amendment, as modified, was agreed to, as follows:

At the appropriate place, insert the following:

Findings:

Sudden loss in late 2008 of export-market based demand equivalent to about three percent of domestic milk production has thrown the U.S. dairy industry into a critical supply-demand imbalance; and

An abrupt decline in U.S. exports was fueled by the onset of the global economic crisis combined with resurgence of milk supplies in Oceania; and

The U.S. average all-milk price reported by the National Agriculture Statistics Service from January through May of 2009, has averaged $4.80 per hundredweight below the cost of production; and

Approximately $3.9 billion in dairy producer equity has been lost since January; and

Anecdotal evidence suggests that U.S. dairy producers are losing upwards of $100 per cow per month; and

The Food, Conservation, and Energy Act of 2008 extended the counter-cyclical Milk Income Loss Contract (MILC) support program and instituted a 'feed cost adjuster' to augment that support; and

The Secretary of Agriculture in March transferred approximately 200 million pounds of nonfat dry milk to USDA's food and Nutrition Service in a move designed to remove inventory from the market and support low-income families; and

The Secretary on March 22nd reactivated USDA's Dairy Export Incentive Program (DEIP) to help U.S. producers meet prevailing world prices and develop international markets; and

The Secretary announced on July 31, 2009 a temporary increase in the amount paid for dairy products through the Dairy Product Price Support Program (DPPSP), an adjustment that is projected to increase dairy farmers' revenue by $243 million; and

U.S. dairy producers face unprecedented challenges that threaten the stability of the industry, the nation's milk production infrastructure, and thousands of rural communities;

The Senate states that the Secretary of Agriculture and the President's Office of Management and Budget should continue to

closely monitor the U.S. dairy sector and use all available discretionary authority to ensure its long-term health and sustainability.

VOTE ON AMENDMENT NO. 2244

The PRESIDING OFFICER. The question is on agreeing to the Coburn amendment No. 2244.

The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

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

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—37

Alexander	Ensign	Lugar
Barrasso	Enzi	Martinez
Bayh	Feingold	McCain
Bennett	Graham	McCaskill
Bunning	Grassley	McConnell
Burr	Gregg	Risch
Carper	Hatch	Sessions
Chambliss	Hutchison	Thune
Coburn	Inhofe	Udall (CO)
Corker	Isakson	Vitter
Cornyn	Johanns	Wicker
Crapo	Kyl	
DeMint	Lieberman	

NAYS—60

Akaka	Franken	Nelson (FL)
Baucus	Gillibrand	Pryor
Begich	Hagan	Reed
Bennet	Harkin	Reid
Bingaman	Inouye	Roberts
Bond	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown	Kerry	Schumer
Brownback	Klobuchar	Shaheen
Burris	Kohl	Shelby
Cantwell	Landrieu	Snowe
Cardin	Lautenberg	Specter
Casey	Leahy	Stabenow
Cochran	Levin	Tester
Collins	Lincoln	Udall (NM)
Conrad	Menendez	Voinovich
Dodd	Merkley	Warner
Dorgan	Murkowski	Webb
Durbin	Murray	Whitehouse
Feinstein	Nelson (NE)	Wyden

NOT VOTING—3

Byrd	Kennedy	Mikulski

The amendment (No. 2244) was rejected.

VOTE ON AMENDMENT NO. 2245

The PRESIDING OFFICER. The question occurs on Coburn amendment No. 2245.

Mr. LEAHY. Mr. President, I yield back the time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment.

The amendment (No. 2245) was rejected.

Mr. REID. Mr. President, I move to reconsider the vote.

Mr. BEGICH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOTION TO COMMIT

The PRESIDING OFFICER. There is 2 minutes, equally divided, on the motion by the Senator from Oklahoma.

The Senator from Oklahoma.

Mr. COBURN. Mr. President, this is a motion to commit.

The discretionary portion of this appropriations bill grows 15 times faster than the rate of inflation. This is a motion that says it ought to come back to us growing two times the rate of inflation.

There is no excuse for us to pass this kind of spending in this type of climate. I would ask for the support of this motion.

The PRESIDING OFFICER. Who yields time in opposition?

Mr. KOHL. Mr. President, I oppose the motion to commit.

The PRESIDING OFFICER. Is all time yielded back? All time is yielded back.

Mr. COBURN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

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

The result was announced—yeas 32, nays 65, as follows:

[Rollcall Vote No. 259 Leg.]

YEAS—32

Barrasso	Enzi	Martinez
Bayh	Graham	McCain
Bunning	Grassley	McCaskill
Burr	Gregg	McConnell
Chambliss	Hatch	Risch
Coburn	Hutchison	Sessions
Corker	Inhofe	Snowe
Cornyn	Isakson	Thune
Crapo	Johanns	Vitter
DeMint	Kyl	Wicker
Ensign	Lugar	

NAYS—65

Akaka	Feingold	Nelson (NE)
Alexander	Feinstein	Nelson (FL)
Baucus	Franken	Pryor
Begich	Gillibrand	Reed
Bennet	Hagan	Reid
Bennett	Harkin	Roberts
Bingaman	Inouye	Rockefeller
Bond	Johnson	Sanders
Boxer	Kaufman	Schumer
Brown	Kerry	Shaheen
Brownback	Klobuchar	Shelby
Burris	Kohl	Specter
Cantwell	Landrieu	Stabenow
Cardin	Lautenberg	Tester
Carper	Leahy	Udall (CO)
Casey	Levin	Udall (NM)
Cochran	Lieberman	Voinovich
Collins	Lincoln	Warner
Conrad	Menendez	Webb
Dodd	Merkley	Whitehouse
Dorgan	Murkowski	Wyden
Durbin	Murray	

NOT VOTING—3

Byrd	Kennedy	Mikulski

The motion was rejected.

Mr. FEINGOLD. Mr. President, I move to reconsider the vote.

Mrs. MCCASKILL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

AMENDMENT NO. 2276

Mr. BROWNBACK. Mr. President, parliamentary inquiry: What is the next item of business?

The PRESIDING OFFICER. Amendment No. 2276.

Mr. BROWNBACK. Mr. President, with the Sanders amendment being the issue now, I will raise to my colleagues a point of order.

I understand the difficulty the dairy industry is in. We have dairy industry in Kansas, and it is an important business. Certainly, prices are difficult and they are having trouble.

However, the Sanders amendment would provide the Farm Service Agency with an additional $350 million. Unfortunately, even if we could agree that additional funding was necessary, the amendment was put in such a way that it cannot work; it is not drafted appropriately. There is no mechanism to move the funding from the FSA salaries and expenses account to the Dairy Product Price Support Program.

For these reasons, regrettably, I cannot support the amendment. The pending amendment, No. 2276, offered by the Senator from Vermont, increases spending by $350 million. This additional spending would cause the underlying bill to exceed the subcommittee's section 302(b) allocation.

Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Congressional Budget Act.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable sections of this act for purposes of the pending amendment.

This amendment is supported by a number of Senators, not just from the east coast or Midwest or Southwest or the West but from all over the country—among others, Senators SNOWE, UDALL of New Mexico, SCHUMER, BENNETT, COLLINS, FRANKEN, CASEY, UDALL of Colorado, SPECTER, MCCASKILL, GILLIBRAND, KLOBUCHAR, and SHAHEEN.

We are united from every section of the country to make the point that when we talk about the deep recession we are facing, this is a recession that is impacting rural America very severely, and we cannot forget about rural America.

Right now, at this moment, dairy farmers across the country are suffering from the lowest milk prices in four decades. In the last year, the price farmers received for milk has plummeted 41 percent. I ask for support on the amendment.

Mr. BROWNBACK. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

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

The yeas and nays resulted—yeas 60, nays 37, as follows:

[Rollcall Vote No. 260 Leg.]

YEAS—60

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Grassley	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Bond	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Casey	Lautenberg	Stabenow
Collins	Leahy	Tester
Conrad	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Warner
Durbin	McCaskill	Webb
Feingold	Menendez	Whitehouse
Feinstein	Merkley	Wyden

NAYS—37

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Carper	Hutchison	Shelby
Chambliss	Inhofe	Thune
Coburn	Isakson	Vitter
Cochran	Johanns	Voinovich
Corker	Kyl	Wicker
Cornyn	Lugar	
Crapo	Martinez	

NOT VOTING—3

Byrd	Kennedy	Mikulski

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 37. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. The point of order is rendered moot.

The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The amendment (No. 2276) was agreed to.

NATIONAL ANIMAL DISEASE CENTER FUNDING

Mr. HARKIN. Mr. President, I thank the chairman and ranking member of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Subcommittee, along with the chairman and ranking member of the Appropriations Committee, for agreeing to work with me to secure in this bill an additional $3.4 million per year in conference, above the baseline funding level, for research addressing emerging animal disease threats at the National Animal Disease Center, NADC, in Ames, IA. NADC is a world class research facility that provides vital research to identify emerging animal diseases and develop effective methods to prevent and treat emerging threats to animal agriculture, our food supply and human health.

Over the past few years we have seen the emergence of a number of threats to the livestock industry in the United States such as the avian influenza and H1N1 virus. Not only do these diseases pose a threat to animal health, but they also represent a threat to human health. Work at NADC is vitally important to protecting animal and human health and improving the lives of millions of people worldwide.

Additional resources provided in this bill for ongoing research at NADC on emerging animal disease are vital to the livestock industry. In the early days of the H1N1 outbreak misinformation cost pork producers in the United States an estimated $7.2 million a day, even though H1N1 was never found in pigs in the United States. Developing additional capacity for vaccine discovery and rapid detection of emerging animal disease is important in protecting human health and animal agriculture.

I thank you again for working to provide this needed, continuing, research funding for emerging animal disease at NADC.

Mr. KOHL. Mr. President, I thank my friend from Iowa for his comments. The impacts of emerging animal diseases are felt in many far-ranging sectors of the economy and human health. The impact of threats to the health of livestock can have a devastating impact on producers. Misleading information about an emerging disease can also spread across the country rapidly. This underscores the importance of rapid detection and diagnosis of emerging animal diseases.

I am pleased to work with you to include in the final version of the fiscal year 2010 agriculture spending bill $3.4 million in additional resources, above the baseline, to continue NADC's role as one of the preeminent research institutions on emerging animal diseases. This is intended to be additional funding that will be part of the base funding for NADC in future years.

Mr. BROWNBACK. Mr. President, I would like to also thank the Senator from Iowa for his comments. I agree with Chairman KOHL and Senator HARKIN on this need and will work hard towards accomplishing this goal in conference. The recent H1N1 scare also illustrates the dangers of zoonotic diseases to the human and animal populations. If we know how to stop these diseases soon after they are diagnosed, we can help stop the spread of the disease in animals, and possibly the transmission to humans. The reverse is also true; the H1N1 scare also taught us that humans can also pass diseases to the animals. The more knowledge that can be discovered about emerging animal diseases, the more likely it is that we can address them before they become a significant problem. Ongoing funding provided for the NADC will be vitally important in protecting human and animal health.

Emerging animal diseases, like the H1N1 virus, can have a devastating impact on animal agriculture in the form of reduced exports and slaughter of infected herds and flocks. Additional ongoing resources provided in this bill will make sure the livestock industry is in a safe and secure place.

Mr. INOUYE. Mr. President, I would like to echo my colleagues' comments. A recent Agriculture Research Service report indicated, ''Because swine are also susceptible to infection with avian and human influenza viruses, genetic re-assortment between these viruses and/or swine influenza viruses can occur.'' The potential for swine to develop novel viruses that can impact human health highlights the importance of the additional ongoing resources in this bill for the NADC. It is my intention to support the subcommittee's efforts as enunciated to provide the specific resources noted above in fiscal year 2010 and over the long term.

Mr. COCHRAN. Mr. President, I agree with my colleagues regarding the additional funding provided for NADC. Providing additional resources in this bill for ongoing research at NADC on emerging animal diseases will help protect animal and human health.

COMMODITY SUPPLEMENTAL FOOD PROGRAM

Ms. STABENOW. Mr. President, I would like to engage Senator KOHL in a colloquy concerning funding for the Commodity Supplemental Food Program.

It is my understanding that this bill provides the budget request and will meet current demand according to USDA. I know that the House-passed measure includes additional funding to add caseload and bring new States into this critically important program. I strongly support the level of funding provided in the House-passed measure and expanding the program into the six States USDA has approved: Arkansas, Oklahoma, Delaware, Utah, New Jersey, and Georgia.

I hope that as this bill goes to conference we can work together to reconcile those differences.

Mr. KOHL. I can assure Senator STABENOW that we will do all that we can to continue to improve this important program.

Ms. STABENOW. I appreciate Chairman KOHL's assurance. This program is critically important to thousands of seniors in Michigan and nationwide who cannot afford to buy the foods they need to meet their special dietary needs.

EMERALD ASH BORER

Mr. KOHL. I would like to enter into a colloquy with my colleague from New York.

Mrs. GILLIBRAND. I thank the Chairman for entering into a colloquy with me and for his hard work on this bill. I wanted to quickly discuss the need to add New York to the list of States threatened by the emerald ash borer—an invasive insect that has destroyed over 50 million ash trees in the U.S. to date.

Originally found in Michigan, the emerald ash borer has been steadily

making its way eastward and is now threatening to decimate the 900 million ash trees across New York State. This invasive species threatens a billion dollar timber industry that supplies furniture makers, hardware stores, and the wood for Louisville Slugger baseball bats.

The emerald ash borer larvae burrow through trees, preventing them from receiving essential nutrients and water, eventually causing the tree to die. Thousands of traps have been set in Cattaraugus and Chautauqua Counties, but more funding will be needed to stop the spread and ensure that New York's forests are not forever altered.

The current committee report lists 12 States which are affected by this invasive pest. I would ask that New York be added to that list during conference.

Mr. KOHL. I would like to thank my colleague for bringing this to my attention and I will certainly address this issue during conference.

Mrs. GILLIBRAND. I thank the Chairman for his help and leadership.

FOOD AND AGRICULTURE POLICY INSTITUTE

Mr. BROWNBACK. Mr. President, I would like to raise an issue that has been brought to my attention by the Senator from Georgia, Mr. ISAKSON. The Senator was mistakenly credited with having requested funding for the Food and Agriculture Policy Research Institute in Senate Report 111–39. I want to assure him that this will be corrected during the conference negotiations on the Agriculture appropriations bill.

Mr. KOHL. I thank Senator BROWNBACK for raising this issue. I, too, want Senator ISAKSON to know that this will be corrected during conference.

SOUTHERN PLAINS RANGE RESEARCH STATION

Mr. INHOFE. Mr. President, as a neighboring agriculture State, it is a pleasure to work with the Senator from Kansas, in fact both Senators from Kansas, on numerous issues that provide for important research, relief, and aid to our States. I ask that language be included in the conference report indicating the urgent need for additional scientific personnel at the Southern Plains Range Research Station in Woodward, OK, near our joint borders, through the Agricultural Research Service in order to establish a Center for Warm-Season Grasses Research at the station in fiscal year 2010.

The Southern Plains Range Research Station is a research unit of the USDA's Agricultural Research Service. It has a mission to conduct research that addresses the challenges and opportunities associated with managing America's rangelands through innovative production practices and improved plant germplasm. The current research program at the station includes a team of three scientists: a ruminant nutritionist for range-livestock production research, a research agronomist for germplasm evaluation, and a geneticist for breeding improved plants. The goal of establishing and developing a Center for Warm Season Grasses Research would be improved plant materials management alternatives for rangelands and pastures in the southern plains. This center would provide a focused effort in native and introduced warm-season grass research to address issues with biofuels and feedstock production which is a critical issue to farmers and ranchers throughout the country. Additional personnel are needed to accomplish this mission. The addition of these two essential scientists will assist the Southern Plains Range Research Station in working towards its goal of establishing itself as the Center for Warm-Season Grasses Research in the south central United States.

Mr. BROWNBACK. I appreciate working with the Senator from Oklahoma on various agriculture issues, and can address this issue in the conference report.

OFFICE OF ADVOCACY AND OUTREACH

Mr. FEINGOLD. I rise to discuss a new and relatively small office within USDA that will help ensure the Department adequately addresses the needs of all farmers and ranchers. For too long, USDA has not had adequate focus on policy, programs, and outreach for small farms, beginning farmers and ranchers, and minority farmers and ranchers. A provision in the Food, Conservation and Energy Act of 2008, the farm bill, which was partially based on a proposal I made with Senator HARKIN is intended to reverse that situation by creating the Office of Advocacy and Outreach. The farm bill provision places the new office within executive operations at the Department to ensure that it has overarching coordination functions across all of the mission areas of USDA and that the director of the office is not within any of the under or assistant secretariats so he or she can have a higher profile and be better able to analyze and improve access to the functions and activities of USDA across the entire Department. The office will have two divisions—the socially disadvantaged farmers and ranchers group and the small and beginning farmers and ranchers group.

The socially disadvantaged farmers group includes a new Advisory Committee on Minority Farmers established under section 14009 of the farm bill, and a new farmworker coordinator established in section 14013 of the farm bill. The existing functions of the current Office of Outreach and Diversity that serve socially disadvantaged producers and minority serving institutions are also transferred to the Office of Advocacy and Outreach.

The small and beginning farmers and ranchers group is given responsibility for continuing and building upon the functions for the existing Office of Small Farms Coordination, the existing Small Farms and Beginning Farmer and Rancher Council, and the existing Advisory Committee for Beginning Farmers and Ranchers, plus a consultative role on the administration of the Beginning Farmer and Ranchers Development Program administered by CSREES.

The new office builds upon the recommendations made to Congress by the Government Accountability Office. The new office will establish departmental goals and objectives, measure outcomes, and provide input into programmatic and policy directions and decisions. The office will also improve outreach and assistance to these farm communities in order to help make the goals and objectives a reality.

It is very important this new office receive an appropriation so it can begin its important and historic mission. It is my understanding the administration's request for $3 million is provided for in the House bill. I would ask Chairman KOHL if it is his intent to try to find a way to secure funding for the new office during conference.

Mr. KOHL. I thank my colleague from Wisconsin. He has been a leader in this effort and I always appreciate his input and counsel. The Department has under consideration a number of reorganization options that affect a range of departmental functions. My hope is that between now and the time conference negotiations are complete we can have a little more clarity on all these proposals and find a way to make progress in the areas my colleague outlines. Our very able Secretary of Agriculture is trying to make the pieces fit together and I will do likewise during conference negotiations.

Mr. FEINGOLD. I am also concerned with information coming from the Department of a possible plan to move the Office out of Executive Operations and to place it elsewhere. This is very troubling. Congress was very clear about where the office was to be situated and I believe it is the responsibility of USDA to follow the law in this regard. I would like to ask the Senator from Iowa, the chairman of the Committee on Agriculture, Nutrition and Forestry, if he agrees with my assessment.

Mr. HARKIN. I thank my friend from Wisconsin for his hard work to ensure beginning farmers and minority farmers have adequate representation within USDA programs. The Senator is correct. The 2008 farm bill contains statutory language that establishes the Office of Advocacy and Outreach within the executive operations of the Department of Agriculture's organizational structure.

I would also like to stress the vital importance of USDA moving forward to establish this office as quickly as possible. It has now been more than a year since the farm bill was enacted into law and it is time for USDA to move forward in establishing the office so that it can begin to carry out its mission of ensuring that the needs of small and beginning farmers, as well as socially disadvantaged farmers, are effectively addressed by the Department of Agriculture throughout its various programs and activities.

Mr. FEINGOLD. I thank the Senator for that assurance.

Let me make one final point. As I mentioned, the law creates two divisions within the OA&O. Both areas are extremely important. It is my firm belief that any funding provided for this office should be equally divided between the two divisions, after accounting for the funds to establish the overall Director of the office.

Mr. DURBIN. Mr. President, this important program, administered by the Natural Resource Conservation Service within USDA, provides for cooperation between the Federal Government, State government agencies, and local organizations to prevent erosion, floodwater, and sediment damages. The program also promotes the conservation and proper utilization of land in authorized watersheds. WFPO helps communities prepare detailed watershed work plans for flood prevention projects in cooperation with soil conservation districts and other local sponsoring organizations.

As a result of this program, over 11,000 flood protection and water conservation structures have been built across the United States. Each year, these structures provide over $292 million of flood damage prevention to agricultural land and over $399 million of flood damage is prevented to roads, bridges, homes and other structures.

There are other benefits as well—these projects protect and restore natural resources. Annually, 90 million tons of soil are saved from erosion. Forty-seven thousand miles of streams and stream corridors are enhanced and protected. More than 1.8 million acre-feet of water are conserved. Nearly 280 thousand acres of wetlands are created, enhanced or restored. Over 9 million acres of upland wildlife habitat is created, enhanced or restored.

In Illinois, DuPage County has been working to rebuild the watershed around various branches of the DuPage River. The county wishes to reduce the incidence of flooding and damage to homes, businesses, and wildlife habitat. This program will allow for enhanced flood protection of the Meacham Grove reservoir and provide vital flood control for homes and businesses downstream.

This effort is supported by a number of communities in DuPage County including the Roselle, Bloomingdale, Itasca, Wood Dale and Addison. Operation of the reservoir will be optimized by allowing storm water to enter the reservoir at a lower elevation. This will provide storm water storage for smaller, more frequent rainfall events. It will also improve the water quality of surrounding communities by allowing pollutants and sediment to settle out in the reservoir instead of being transported downstream.

This program has been very successful in Illinois, and I know many of my colleagues have similar stories from their States. I do not believe we should wait for a flood before we identify a problem. Federal investment in these types of projects can help reduce the Federal investment necessary in the event of a flood disaster. Watershed projects prevent flooding and the damage floods cause to public facilities, roads, bridges, homes, and businesses. They conserve water, improve water quality, reduce soil erosion, and create wildlife habitats. We should reduce the vulnerability of our population to flood damage and improve our stewardship of the natural and beneficial functions of our floodprone areas. I oppose the amendment by my colleague from Arizona, and ask that others do the same.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, first, I compliment the managers of this bill, Senator KOHL and Senator BROWNBACK. They have done a remarkably good job. We completed this major appropriations bill in a couple of days. One day was pretty short. They have done very good work.

We are going to vote on final passage, and then we are going to go to the debate on the Supreme Court nominee. Senator MCCONNELL and I said earlier today we have a lot of Senators who wish to speak on this nomination. We don't want anyone to feel they do not have time to speak. But we are going to go in this order: We will have a Democrat and Republican. The cloakrooms have to be notified that you want to come and speak. If people wait until Wednesday night or Thursday to speak, there may not be an opportunity to speak on this nomination.

We know we have at least 28 Republicans who wish to speak and there is probably a like number of Democrats who wish to speak on this nomination who have not already spoken. We hope Senators will indicate to staff how much time they need, and then when they tell Senators they need to be available at a certain time, I hope all Senators will try to do that.

If there is not a Democrat available when it is the Democrats' turn, then we will move to another Republican, and vice versa.

The debate in the committee has been outstanding. I think Senator LEAHY and Senator SESSIONS have done a very good job on an issue that people feel very strongly about on both sides. There is no reason the debate that is going to be on the Senate floor should not be as dignified as it was in the Judiciary Committee.

We are going to move to the nomination as soon as we finish final passage. This will be the last vote of the night. We will try to work out a program so we can finish this week. We have a little bit of work to do. I think there has been an agreement between Senator MCCONNELL and me on what needs to get done. We have a few problems explaining what our desire is to some of the Senators. We will do that as quickly as we can.

Mr. LEAHY. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I see my friend, the distinguished Senator from Alabama, on the floor. We have also discussed this. Senator SESSIONS and I will open the debate, as the leader has said. I suggest everybody on this side check with the staff to set up a list.

Again, I urge people to come at the time they said. I agree with the leader, if they do not, we go to the next person and finish it up. I hope it will not be the case we will be in long quorum calls and then everybody says let's talk. I think the leaders have set a fair schedule, and we should go forward.

The PRESIDING OFFICER. The substitute amendment, as amended, is agreed to.

The amendment (No. 1908), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

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

The bill was read the third time.

Mr. KOHL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

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

The result was announced—yeas 80, nays 17, as follows:

[Rollcall Vote No. 261 Leg.]

YEAS—80

Akaka	Gillibrand	Nelson (NE)
Alexander	Grassley	Nelson (FL)
Baucus	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Hatch	Reid
Bennett	Hutchison	Risch
Bingaman	Inouye	Roberts
Bond	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown	Kaufman	Schumer
Brownback	Kerry	Shaheen
Burris	Klobuchar	Shelby
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Cochran	Levin	Thune
Collins	Lieberman	Udall (CO)
Conrad	Lincoln	Udall (NM)
Cornyn	Lugar	Vitter
Crapo	Martinez	Voinovich
Dodd	McCaskill	Warner
Dorgan	McConnell	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wicker
Feinstein	Murkowski	Wyden
Franken	Murray	

NAYS—17

Barrasso	Burr	Corker
Bayh	Chambliss	DeMint
Bunning	Coburn	Ensign

Enzi	Inhofe	McCain
Graham	Isakson	Sessions
Gregg	Kyl	

NOT VOTING—3

Byrd	Kennedy	Mikulski

The bill (H.R. 2997), as amended, was passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

Mr. BROWNBACK. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I want to take a minute to thank Senator BROWNBACK, with whom I have worked extremely well on this bill. He has made great contributions to the bill, and he has a wonderful staff—Fitz Elder, Stacy McBride, and Katie Toskey—who also made great contributions. On my side, Galen Fountain, Jessica Frederick, Dianne Nellor, and Bob Ross made great contributions.

We are all very proud of the product, we are pleased with the vote, and we are happy it is over.

Mr. BROWNBACK. Mr. President, I, too, want to take a moment to thank my colleague Senator KOHL who has worked on this for some period of time. I thought this was one of the smoothest appropriations bill we have had flow through the floor. I congratulate our colleague and particularly his work and that of the staff to make this happen: Galen Fountain, Jessica Frederick on his staff, Bob Ross, Dianne Nellor; on mine, Fitz Elder, Stacy McBride, Katie Toskey, and then Riley Scott and Melanie Benning were also key on it.

There is an item about which I have some consternation at the end where we broke the 302(b) allocation. My hope is in conference we can get that worked back down because clearly we have a huge budget crisis on our hands and we have to hit these numbers. I know it was an important issue to the chairman on dairy funding and that is an important issue; particularly if you are from Wisconsin, that is an important issue. It is my hope we can work that down.

I do think it shows a lot of support and strength when you have a major bipartisan vote on this bill at the end. My hope is that is the way we will operate in the body, in a bipartisan way so we can move things through for the good of the country.

We are in the minority, obviously, but there is no reason we cannot work these issues together as much as we possibly can. Senator KOHL was excellent to work with. I appreciate that chance to do it.

I look forward to us getting this through on a stand-alone basis, not rolled together in an omnibus package if at all possible. I think it is an important package, one we should be able to do that with. I think we have the ability to get that done.

I yield the floor.

Mr. KOHL. Mr. President, I thank Senator BROWNBACK for his kind words. I would also like to not end the proceedings without mentioning an individual on my staff, Phil Karting, who did a tremendous job and was an important part of the product that was finally put forth.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment and requests a conference with the House, and the Chair appoints the follow conferees.

The PRESIDING OFFICER appointed Mr. KOHL, Mr. HARKIN, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. JOHNSON, Mr. NELSON of Nebraska, Mr. REED, Mr. PRYOR, Mr. SPECTER, Mr. INOUYE, Mr. BROWNBACK, Mr. BENNETT of Utah, Mr. COCHRAN, Mr. BOND, Mr. MCCONNELL, Ms. COLLINS, and Mr. SHELBY conferees on the part of the Senate.

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

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

EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination which the clerk will report.

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

The PRESIDING OFFICER. Under the previous order, the first hour will be under the control of the chair and the ranking member of the committee.

Mr. LEAHY. I thank the distinguished Presiding Officer, also himself a member of the Judiciary Committee. He sat through and participated in all of the hearings on Judge Sotomayor.

When the Judiciary Committee began the confirmation hearing on the nomination of Judge Sotomayor to the Supreme Court, in my opening statement I recounted an insight from Dr. Martin Luther King, Jr. I did this because it is often quoted by President Obama, the man who nominated her. The quote is:

> Let us realize the arc of the moral universe is long, but it bends towards justice.

Each generation of Americans has sought that arc toward justice. Indeed, that national purpose is inherent in our Constitution. In the Constitution's preamble, the Founders set forth to establish justice as one of the principal reasons that ''We the people of the United States'' joined together to ''ordain and establish'' the Constitution. This is intertwined in the American journey with another purpose for the Constitution that President Obama often speaks about. We all admit it is the unfinished goal of forming ''a more perfect Union.'' Our Union is not yet perfected, but we are making progress with each generation.

That journey began with improvements upon the foundation of our Constitution through the Bill of Rights and then it continued with the Civil War amendments, the 19th amendment's expansion of the right to vote for women, the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the 26th amendment's extension of the vote to young people. These actions have marked progress along the path of inclusion. They recognize the great diversity that is the strength of our Nation.

Judge Sotomayor's journey to this nomination is truly an American story. She was raised by a working mother in the Bronx after her father died when she was a child. She rose to win top honors as part of one of the first classes of women to graduate from Princeton. She excelled at Yale law school. She was one of the few women in the Manhattan District Attorney's Office in the mid-1970s. She became a Federal trial judge and then the first Latina judge on a Federal appeals court when she was confirmed to the second circuit over a decade ago.

I might note on a personal basis, I am a member of the bar of the second circuit, as well as the Federal District Court of Vermont. That is the circuit I belong to as a member of the Vermont bar. I know how excited we were in the second circuit when she became a judge.

She is now poised to become the first Latina Justice and actually only the third woman to serve on the U.S. Supreme Court. She has broken barriers along the way. She has become a role model to many. Her life journey is a reminder to all of the continuing vitality of the American dream.

Judge Sotomayor's selection for the Supreme Court also represents another step toward the establishment of justice. I have spoken over the last several years about urging Presidents—I have done this with Presidents of both political parties—to nominate somebody from outside the judicial monastery to the Supreme Court. I believe that experience, perspective, an understanding of how the world works and how people live—how real people live and the effect decisions will have on the lives of people—these have to be very important qualifications.

One need look no further than the Lilly Ledbetter and the Diana Levine cases to understand the impact each Supreme Court appointment has on the lives and freedoms of countless Americans.

In the Ledbetter case, five Justices on the Supreme Court struck a severe

blow to the rights of working families across our country. In effect, they said we can pay women less than men for the exact same work. Congress acted to protect women and others against discrimination in the workplace more than 40 years ago, yet we still struggle to ensure that all Americans, women and men, receive equal pay for equal work. It took a new Congress and a new President to strike down the immunity the Supreme Court had given to employers who discriminate against their workers and successfully hide their wrongdoing.

The Supreme Court had allowed them to do that. We changed that again. I remember the pride I had when I stood beside President Obama when he signed his first piece of legislation into law, the Lilly Ledbetter law, which says something that every one of us should know instinctively in our heart and soul: that women should be paid the same as men for the same kind of work.

But for all the talk about ''judicial modesty'' and ''judicial restraint'' with the nominees of a Republican President at their confirmation hearings, we have seen a Supreme Court these last 4 years that has been anything but modest and restrained.

I understand decrying judicial activism when judges have simply substituted their judgment for that of elected officials. That is what we have seen these last few years from the conservative members of the Supreme Court.

When evaluating Judge Sotomayor's nomination, I believe Senators should consider what kind of Justice she will be. Will she be in the mold of these activists who have gutted legislation designed to protect Americans from discrimination in their jobs and in voting, laws meant to protect the access of Americans to health care and education, and laws meant to protect the privacy of all Americans from an overreaching government? I think not and I hope not.

The reason I think not and hope not is I have been looking at what kind of judge she has been for the last 17 years and that is not the kind of judge she has been for 17 years. Keep in mind, this is a nominee who has had more experience on the Federal court than any nominee to the Supreme Court in decades. What we see is she has applied the law to the facts of the cases she has considered. She has done that while understanding the impact of her decisions on those before the court.

Those who struggle to pin the label of judicial activist on Judge Sotomayor are met by her very solid record of judging based on the law. She is a restrained, experienced, and thoughtful judge who has shown no bias in her rulings.

The charge of some Senate Republican leaders that they fear she will show bias is refuted over and over again in her record of 17 years. In fact, her record as a judge is one of rendering decisions impartially and neutrally. No one has pointed to decisions that evidence bias. No one has shown any pattern of her inserting her own personal preferences into her judicial decisions. No one can because that does not exist. That is not who she is nor is it the type of judge she has been.

As her record demonstrates and her testimony before the Judiciary Committee reinforced, she is a restrained and fair and impartial judge who applies the law to the facts to decide cases—the kind of judge that any one of us who practiced law would want to appear before, whether we were plaintiff or defendant, government or respondent, rich or poor. Ironically, the few decisions for which she has been criticized are cases in which she did not reach out to change the law or to defy judicial precedent; in other words, cases in which she refused to ''make law'' from the bench.

In her 17 years on the bench there is not one example, let alone a pattern, of her ruling based on bias or prejudice or sympathy. She has been true to her oath. She has faithfully and impartially performed her duties under the Constitution.

As a prosecutor—a distinguished prosecutor—and then as a judge, she has administered justice without favoring one group of persons over another. In fact, she testified directly to this point. She said:

> I have now served as an appellate judge for over a decade, deciding a wide range of constitutional, statutory and other legal questions. Throughout my 17 years on the bench, I have witnessed the human consequences of my decisions. Those decisions have not been made to serve the interest of any one litigant, but always to serve the larger interests of impartial justice.

About 12 years ago in a case called City of Boerne v. Florida, the Supreme Court struck down the Religious Freedom Restoration Act, a law that Congress had passed to protect religious freedom. Since then, an activist conservative group of Justices has issued a number of rulings that further restricted the power of Congress under section 5 of the 14th amendment.

They have limited other important Federal statutes such as the Violence Against Women Act, and they have done this by using a test created out of whole cloth, without any root in either history or in the text of our Constitution. Scholars across the political spectrum have criticized the Supreme Court's rulings in this line of cases, including Judge Michael McConnell and Judge John Noonan, Jr., both Republican appointees to the Federal bench.

Let's have some history. Hundreds of thousands of Americans lost their lives fighting a civil war to end the enslavement of millions of Americans. After the war, we transformed our founding charter, the Constitution, into one that embraced equal rights and human dignity through the reconstruction amendments by not only abolishing slavery but also by guaranteeing equal protection of the law for all Americans and prohibiting the infringement of the right to vote on the basis of race.

But these reconstruction amendments to our Constitution are not self-implementing. Both the 14th and 15th amendments to the Constitution contain sections giving Congress the power to enforce the amendments. Congress acts to secure Americans' voting rights when it passes statutes like the Voting Rights Act pursuant to its authority to implement the 14th and 15th amendment's guarantees of equality. Congress acts to ensure the basis for our democratic system of government when we provide for implementation of this principle.

In contrast to the resistance that met the initial enactment of the Voting Rights Act of 1965—something that brought about enormous debate in this country—3 years ago, Republicans and Democrats in the Senate and House of Representatives came together to reauthorize key expiring provisions of the Voting Rights Act. This overwhelmingly bipartisan effort sought to preserve the rights of all Americans to equal access to the democratic process.

I stood with President George W. Bush when he proudly signed that restoration. But earlier this year, I attended the oral argument in a case challenging the constitutionality of the reenacted Voting Rights Act.

It appeared from the questions posed by the conservative Justices that they were ready to apply the troubling line of rulings in which they have second guessed Congress in order to strike down a key provision of the Voting Rights Act, one of this country's most important civil rights laws. Lacking a fifth vote for such a seismic shift, the constitutional ruling was avoided. But I remain concerned that the Supreme Court nonetheless remains poised to overturn other decisions made by Congress in which we decide how best to protect the rights and well-being of all American people.

I believe Judge Sotomayor will be a Justice who will continue to do what she has done as a judge for the last 17 years. I believe she will show appropriate deference to Congress when it passes laws to protect the freedoms of Americans.

I also believe she will have an understanding of the real world impact of the Supreme Court's decisions, which will be a welcome addition. When she was designated by the President, Judge Sotomayor said:

> The wealth of experiences, personal and professional, have helped me appreciate the variety of perspectives that present themselves in every case that I hear. It has helped me to understand, respect and respond to the concerns and arguments of all litigants who appear before me, as well as the views of my colleagues on the bench. I strive never to forget the real-world consequences of my decisions on individuals, businesses, and government.

Well, it took a Supreme Court that understood the real world to see that

the seemingly fair-sounding doctrine of ''separate but equal'' was in reality a straitjacket of inequality and it was offensive to the Constitution.

We had ''separate but equal.'' For years in this country, we had segregation. We had segregation in our schools. It was a blight on the idea of a colorblind Constitution. And all Americans have come to respect the Supreme Court's unanimous rejection of racial discrimination and inequality in Brown v. Board of Education. That was a case about the real-world impact of a legal doctrine.

But just 2 years ago, in the Seattle school desegregation case, we saw a narrowly divided Supreme Court undercut the heart of the landmark Brown v. Board decision, a decision that was unanimous. The Seattle school district valued racial diversity and was voluntarily trying to maintain diversity in its schools. By a five-to-four vote, the conservative activists on the Court said that program was prohibited. That decision broke with more than half a century of equal protection jurisprudence, and I believe it set back the long struggle for equality in this country.

Justice Stevens wrote that the Chief Justice's opinion twisted Brown v. Board in a ''cruelly ironic'' way.

I think most Americans understand that there is a crucial difference between a community that does its best to ensure that schools include children of all races and one that prevents children of some races from attending certain schools. I mean, real-world experience tells us that. Those of us who are parents, grandparents, we know this.

Justice Breyer's dissent criticized the Chief Justice's opinion as applying an ''overly theoretical approach to case law, an approach that emphasizes rigid distinctions . . . in a way that serves to mask the radical nature of today's decision. Law is not an exercise in mathematical logic.''

Actually, I might say, if it were, we could just have computers on our Supreme Court.

Chief Justice Warren, a Justice who came to the Supreme Court with real-world experience as a State attorney general and Governor, recognized the power of a unanimous decision in Brown v. Board.

The Roberts Court, in its narrow desegregation decision 2 years ago, ignored the real-world experience of millions of Americans and chose to depart from the most hallowed precedents of the Supreme Court.

I am hopeful and confident that when she serves as a Justice on the Supreme Court of the United States, Sonia Sotomayor, a woman from the South Bronx who has overcome so much, will be mindful of the real-world experiences of Americans.

Those critics who devalue her judicial record and choose to misconstrue a few lines from speeches, ignore the aspiration behind those speeches. In fact, Judge Sotomayor begins the part of the speech so quoted by critics with the words ''I would hope.'' She would ''hope'' that she and other Latina judges would be ''wise'' in their decision-making and that their experiences would help inform them and help provide that wisdom. I hope so, too. Just as I hope that Justices Thomas' early life leads him to, as he testified in his confirmation hearing, ''stand in the shoes of other people.'' And I hope that Justice Alito's immigrant heritage, as he too discussed in his confirmation hearing, helps him understand the plight of the powerless in our society.

Judge Sotomayor also said in her speeches that she embraced the goal that: ''[J]udges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law.'' I am going to be saying more about this as we go along, but I would note that her critics missed that Judge Sotomayor was pointing out a path to greater fairness and fidelity to the law by acknowledging that despite the aspirations of impartiality she shares with other judges, judges are human. Her critics seem to ignore her modesty in claiming not to be perfect. I would like to know which one of the 100 U.S. Senators could claim to be perfect. There are some who could; I am not one of them.

By acknowledging that judges come to the bench with experiences and personal viewpoints, they can be on guard against those views influencing judicial outcomes. By striving for a more diverse bench drawn from judges with a wider set of backgrounds and experiences, we can better ensure that the decisions of the Court will be freer of limited viewpoints or narrow biases.

All Supreme Court nominees have talked about the value they will bring to the bench from their backgrounds and experiences. That diversity of experience is a strength, not a weakness, in achieving an impartial judiciary. A more diverse bench with a better understanding of the real world impact of decisions can help avoid the pitfalls of the Supreme Court's decisions these last years.

Let me point to just one example because judges—just as Senators bring their experience to this body—judges do, too.

Judge Sotomayor sat on a three-judge panel that heard a case involving strip searches of adolescent girls in a juvenile detention center. The parents of two female children challenged Connecticut's blanket strip search policy for all those admitted to juvenile detention centers as a violation of the fourth amendment's prohibition against unreasonable searches. Two of the male judges on the Second Circuit upheld the strip searches of the young girl.

In dissent, Judge Sotomayor cited controlling circuit precedent describing what is involved in the strip searches of these girls who had never been charged with a crime—keep in mind that they had never been charged with a crime—and without any basis for individual suspicion. She said that courts ''should be especially wary of strip searches of children, since youth is a time and condition of life when a person may be most susceptible to influence and to psychological damage.'' She also emphasized that since many of these girls had been victims of abuse and neglect, they may be more vulnerable mentally and emotionally than other youths their age.

The Supreme Court recently decided a similar case, the Redding case. They found that school officials violated the fourth amendment rights of a young girl by conducting an intrusive strip search of her underclothes while looking for the equivalent of a pain reliever many of us have in our medicine cabinet. During oral arguments in that case, one of the male Justices compared the search to simply changing for gym classes. Several of the other Justices answered with laughter—not the reaction I would have if that was my adolescent daughter. And Justice Ginsburg, the lone female Justice on the Supreme Court, described the search as humiliating to young girls. She spoke out. She did not join in that laughter.

Ultimately, the Supreme Court decided that case by a vote of 8 to 1. Justice Souter, the Justice whom Judge Sotomayor is nominated to replace, wrote the opinion for the Court. Of course, that position mirrored that of Judge Sotomayor. I suspect that it was Justice Ginsburg's understanding of the intrusiveness of the strip search of the young girl that ultimately prevailed. Can we say our life experience bears no weight in what we do?

Among the very first purposes of the Constitution is ''to establish justice.'' It is a purpose that has animated the improvements we have made over generations to our Constitution. It is a purpose engraved in the words over the entrance of the Supreme Court. These words are in Vermont marble, and they say, ''Equal Justice Under Law.'' All the dozens and dozens of times I have walked into the Supreme Court, up those steps straight out across from this Chamber, I have always paused to read those words, ''Equal Justice Under Law.'' Is that not what we should stand for?

I hope and believe Judge Sotomayor understands the critical importance of both fairness and justice. A decade ago, she gave another speech in which she spoke about the meaning of justice. She said, ''Almost every person in our society is moved by that one word. It is a word embodied with a spirit that rings in the hearts of people. It is an elegant and beautiful word that moves people to believe that the law is something special.''

I believe Judge Sotomayor will live up to those words when she is confirmed, as she will be confirmed to the U.S. Supreme Court. The senior Senator from Vermont will vote for that confirmation.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Alabama is recognized.

Mr. SESSIONS. I appreciate the opportunity to speak. Before I do, I want to say that we had some disagreements as we went along about how to conduct the hearings. But Chairman LEAHY made a commitment that we would have a fair hearing, that every Senator would have an opportunity to question the witnesses and have the time to follow up, and he complied with that. I think we had a good hearing.

Judge Sotomayor was voted out of the committee, and I appreciate her kind words to me and to our colleagues on how she felt she was treated. I think the hearings were fair and effectively discussed the important issues raised by this nomination.

Our confirmation process began with the President indicating that empathy was a standard that he believes should be applied to selecting judges. There is some disagreement about that. I am one of those who do not believe that is a legal standard. It is a kind of standard that is closer to a political standard, and we need to be careful that politics do not infect the judiciary.

I certainly do not profess to be able to say with certainty how Judge Sotomayor will perform if confirmed to the Supreme Court.

History shows that Justices, once confirmed, often surprise. I have previously expressed my evaluation and decision in this matter. I will just say I hope I am wrong. But I have concluded that the nominee has a fully formed judicial philosophy, one that is held by quite a few other lawyers and judges, but it is a philosophy contrary to the classical underpinnings of the American legal system, a system that has blessed us so much. Edmond Burke, in his famous speech ''On Conciliation with the Colonies,'' urged the King to avoid war, noting that the Colonies were simply asserting the rights to which they had become accustomed. He observed that almost as many copies of Blackstone's Commentaries on the Laws were being sold in America as in England.

From the beginning, Americans have honored law because, I suspect, it was the arena in which the poor individual citizen could and often did prevail against the powerful. Even before the Revolution, judges, juries, and English law decided cases. It was a people's power controlled by law that would prevail even over the political wishes of the powerful. Laws, Burke noted, were to be created by the people through their elected representatives, not judges. Law in the new Republic was not an abstract. It was concrete. The laws meant what they said. If by some loophole even an evil act was not covered by criminal law, the prisoner was to go free.

Importantly, our system rested upon a near universally held belief that law and order were necessary for freedom and progress to occur. It further rested on the firm belief that there was such a thing as objective truth and that if a real effort was put forth, truth could be ascertained. For most, this was an easy concept, since a belief in God, the ultimate truth, was widespread. Thus, the legal system was arranged to best discover truth. Rules of evidence, cross-examination, and the adversarial system were parts of the design to discover truth. Many nations have tried to replicate it without success. It is a national treasure, our legal system.

I believe our Federal courts are the greatest dispensers of justice the world has ever known. For 15 years, I practiced full time as a Federal attorney before Federal judges. I saw the system operate. I have seen State and local judges, Republicans and Democrats, serve faithfully day after day, adhering to the ideal of objectivity, fairness, and law. But many intellectuals in recent decades look upon such an approach as anti-intellectual. They conclude such thinking that judges actually do in an ideal way, they find this is hopelessly naive. They think it is unrealistic. The brilliant jurist and intellectual Jerome Frank, quoted favorably by Judge Sotomayor in a law review article, said as much in the early part of the last century.

Since then, many theorists have gone even further, moral relativists, postmodernists, deconstructionists, critical legal studies adherents, they all come from the same pond. They don't believe—some don't—that there is an ascertainable truth. They believe these ideals actually confuse thinking and mislead. They believe it is results that count.

I don't agree. The American people don't agree. Ideals are important. High standards can be reached. Not every time, I am sure, but most times. If the ideal is not ardently sought, it will be reached less and less. The American people are not cynics who settle for less than the ideal of impartiality and equal justice for the poor and the rich under the Constitution and the laws of this country. Each judge operates under the Constitution and laws of this country. They expect, rightly, that every judge will be fully committed to the heritage of law and the judicial oath they take to follow it.

That is why I have expressed the view since this process has begun, that we are at a fork in the road, perhaps. Will we continue to adhere to the classical ideal of American jurisprudence, or will we follow results-oriented judging, where judges cease to be committed to the law and equal justice because they know it is not possible. Do they believe words are just words? Do they believe the Constitution can be made to say what one wants it to say? In this world, the Constitution cannot bind a judge to what the judge considers an unwise result. Instead, we should see the Constitution as a flexible, living document. Under this view, judges are not just umpires. Judges are more powerful. Judges can make the Constitution and law say what they would prefer it to say. Judges can ensure that the right team wins. Judges can make policy. That is the seductive siren call of judicial activism, and judicial activism is an impropriety that can be embraced by conservatives as well as liberals.

Our former chairman, Senator HATCH, has often said: Activism is a tendency in a judge to allow their personal and political views and values to override the law and the facts of a case to achieve a result they think is desirable. That is what is not acceptable in our system.

That is why, at the most fundamental level, many have a problem with this nominee. It seems clear from her writings and speeches that she is a devotee of the new philosophy of judging. Her speeches, over the years, are quite clear on this matter, although her hearing testimony backtracked from it in a somewhat confusing manner.

Regrettably, I was not able to support her nomination in committee, nor will I support her nomination before the full Senate. I would like to discuss in greater detail a few of the reasons that lead me to that conclusion. There are more things that will be discussed later as we go along, but let me say a few things now.

Even before the nomination of Judge Sotomayor, I made clear what my criteria would be for assessing a Supreme Court nominee: impartiality, commitment to the rule of law, integrity, legal experience, and judicial temperament. Judge Sotomayor possesses the well-rounded resume I like to see in a Supreme Court Justice. She has a wonderful personal story. She was a prosecutor. She was a private practitioner. She was a trial judge, and she was an appellate judge. Those are good experiences for a judge on the Supreme Court. However, her speeches and cases she has decided are troubling because they reflect the lack of a proper sense of the clearly stated constitutional rights that are guaranteed to American citizens. Her testimony was her opportunity to convince us she would be the type of Justice we could vote for. Instead her answers lacked clarity, the consistency and courage of conviction one looks for in a nominee to the Supreme Court.

In many instances, she raised more questions through her testimony than she answered. Judge Sotomayor's expressed judicial philosophy rejects openly the ideal of impartial and objective justice. Instead, her philosophy embraces and accepts the impact that background, personal experience, gender, sympathies, and prejudices—these are her words—have on judging. A fair and plain reading of these speeches—read in context—calls into question Judge Sotomayor's commitment to impartiality and objectivity. When given an opportunity to explain this philosophy, as was reflected in speech after

speech, year after year, Judge Sotomayor dodged and deflected. In many cases, her answers could not be squared with the facts.

It has been suggested we should disregard those speeches. It has been suggested they are just words, that they are merely meant to inspire. In short, it has been suggested the words of the speeches simply do not matter. But words do matter. Words are important. They must have meaning or the result is chaos. No one should know this more than a judge. Her speeches and academic writings were not offhand comments delivered without the aid of notes. They were carefully crafted to dispute the notion that impartiality is realistic, or even possible. These were not the musings of a second-year law student. They were all delivered after she was a Federal judge. They were delivered to a number of different audiences, a number of different forums, including a bar association.

In her speeches and academic articles, Judge Sotomayor describes other approaches to judging and her approach to the law. She describes the factors judges should consider when reaching decisions. She describes her fully formed judicial philosophy. She challenges the mainstream concept of judging.

Make no mistake, judicial philosophy matters. It guides judges. It tells them what to consider. Importantly, it tells them what not to consider. Judicial philosophy is quite different from a judge's personal, political, moral or social views that a judge is to set aside when they decide a case. That is what blindfolded justice means. When a judge puts on that robe, they are, in effect, saying to everyone in that courtroom that their personal biases and prejudices and so forth will not impact the fairness of the ruling they are called upon to make.

Judges in trial and appellate courts, of course, are constrained by precedent. Even if a trial or appellate judge harbors a radical approach to the law, the threat of reversal restricts that judge's ability to employ that philosophy. But on the Supreme Court, however, these restrictions are removed. On the Supreme Court, there is no additional review. On the Supreme Court, a judicial philosophy that is fully formed is permitted to reach full bloom. As a liberal law dean recently said in the Los Angeles Times: ''There's a huge difference between being a court of appeals judge who is bound by precedent and a Supreme Court justice who can rewrite those precedents.''

That is why judicial philosophy matters. Frankly, after reviewing her consistent speeches in preparation for the confirmation hearing, I expected Judge Sotomayor to defend her views. I expected her to defend her statement that ''[t]he law that lawyers practice and judges declare is not a definitive, capital 'L' law that many would like to think exists.''

I expected her to defend the notion that the court of appeals is where ''policy is made.'' I expected her to defend her statements in favor of using foreign law to interpret American statutes and her statement that there is ''no objective stance, but only a series of perspectives.''

However, during her testimony, many of Judge Sotomayor's answers were inconsistent with her record and others were evasive and not adequate. On several occasions, Judge Sotomayor appeared to run away from the philosophy she had so publicly articulated. Other answers, I concluded, were not plausible.

It has been repeatedly suggested that Judge Sotomayor's words and speeches are being taken out of context. I have read the speeches in their entirety. Her words are not taken out of context. In fact, when one reads her speeches in their entirety, in context, the impact is more troubling, not less.

For example, Judge Sotomayor said, on repeated occasions, that she ''willingly accept[s] that . . . judge[s] must not deny the differences resulting from experience and heritage but attempt . . . continuously to judge when those opinions, sympathies and prejudices are appropriate.''

When I asked whether there was ''any circumstance in which a judge should allow prejudices to impact decision-making,'' she replied: ''Never their prejudices.''

This is quite the opposite of what her speeches said. In the hearing, she said her speeches discussed ''the very important goal of the justice system . . . to ensure that the personal biases and prejudices of a judge do not influence the outcome of a case.'' Well said. But that is not what her speeches said—in context or line by line. She was not urging that judges guard against their prejudices, as their oath calls on them to do. She was accepting that a judge's prejudices may influence their decisions.

Similarly, Judge Sotomayor repeatedly stated she accepts that who she is will ''affect the facts I choose to see'' as a judge—the facts she chooses to see as a judge. She accepts this. When I asked her about this statement, she said: ''It's not a question of choosing to see some facts or another, Senator. I didn't intend to suggest that.''

But that is what she said repeatedly. She accepts the fact that who she is will ''affect the facts I choose to see'' as a judge. The context of her speech states a clear philosophy. Judge Sotomayor was contrasting her own views with that of Judge Cedarbaum and Justice O'Connor, two women judges of prominence. Of course, Justice O'Connor was a former member of the Supreme Court. The context was her view that ''[i]n short . . . the aspiration''—I am quoting her—''the aspiration to impartiality . . . is just that, an aspiration.'' Such a statement evidences a lack of the kind of firm commitment to fairness and to the judicial oath of impartiality that is expected, in my opinion.

We have heard again and again that our concerns are based on three words: The ''wise Latina woman.'' That is not the case. We are talking about a judicial philosophy, as reflected in speech after speech, year after year. That is what is causing the problem here.

Senator COBURN, at the hearing, made a point that I think is worthy of emphasizing: that her refusal to effectively defend her own speeches and statements was almost as troubling as the philosophy contained within those speeches.

As the Washington Post, in endorsing her, on July 19, in their editorial, said:

> Judge Sotomayor's attempts to explain away and distance herself from [the ''wise Latina'' statement] were unconvincing and at times uncomfortably close to disingenuous, especially when she argued that her reason for raising questions about gender or race was to warn against injecting personal biases into the judicial process. Her repeated and lengthy speeches on the matter do not support that interpretation.

In Judge Sotomayor's opening statement, she said that her philosophy is ''fidelity to the law.'' But her record demonstrates that, if true, her view is far different than mine. For example, she has advocated for the use of foreign law by American judges. Once again, we are left with statements made at the hearing, though, that were in direct conflict with statements made before she was nominated.

As Judge Sotomayor noted in her April 2009 speech—April of this year—before the Puerto Rico American Civil Liberties Union, the current debate regarding the use of foreign law in the courts, she noted, pits two distinct views against one another. On one side sit Justices Scalia and Thomas, who believe that foreign law should not be used in interpreting the U.S. Constitution. That is correct, in my view. On the other side is Justice Ginsburg, who believes that courts should be more aggressive in their use of foreign law.

In this speech in April, Judge Sotomayor clearly indicated who she thinks has the better view of the issue, stating that she ''share[s] more the ideas of Justice Ginsburg . . . in believing, that unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world.''

Moreover, Judge Sotomayor talked approvingly about two recent Supreme Court cases in which Justices did look to foreign law precisely to interpret our Constitution. That is a very clear position. I think it is incorrect, but it is a clear one. Others adhere to it.

When she came before the Judiciary Committee, however, Judge Sotomayor articulated a very different view of foreign law, stating:

> Foreign law cannot be used as a holding or a precedent or to bind or to influence the outcome of a legal decision interpreting the Constitution or American law that doesn't direct you to that law.

Well, that is quite a different position from the theme and statements in her April speech.

So I agree with my colleagues who lamented Judge Sotomayor's tendency to avoid answering questions, with one colleague noting her ''extreme caution'' in answering. I do not think many would dispute that she was less forthcoming than Judges Alito and Roberts, our latest confirmations to the Court just a few years ago.

In addition to her stated judicial philosophy, I am also quite concerned regarding how Judge Sotomayor has approached the most important constitutional cases that have come to her court. Most of the cases a court of appeals judge considers are routine, fact dominated, and do not offer novel questions or require substantial legal discussion. Still, a few important cases that present new and critical issues do periodically come before the courts of appeals. These cases can give insight into how the nominee will handle the many such cases that regularly come before the Supreme Court.

Within the last 3 years, Judge Sotomayor has heard three monumentally important cases at the circuit level: the constitutional right to be free of racial discrimination, the right to keep and bear arms, and the fifth amendment right to keep one's own property.

In all three of these cases, Judge Sotomayor joined or authored very brief opinions—very brief opinions, oddly brief opinions—that avoided the kind of careful analysis we would expect of an appellate judge. In all three cases, individuals went to court with the plain text of the Constitution on their side. In each case, Judge Sotomayor reached conclusions that denied individual Americans their rights that they were asserting against governmental power.

When confronted with an appeal based on fundamental notions of equal protection of the laws, Judge Sotomayor, to be charitable, took a pass. By now we are familiar with the basic facts of the New Haven firefighters, the Ricci case. Eighteen firefighters brought suit against the city of New Haven after the city threw out the results of a promotional exam. It was thrown out because not enough of certain minorities did well enough on the exam. Judge Sotomayor's decision in the case is troubling. Her curious one-paragraph summary order, and the Supreme Court's subsequent reversal, are the starting points. But there is more. And there is a reason that so much attention has been focused on this case.

Her initial attempted disposal of the case by summary order was, quite simply, unacceptable and an embarrassment. A summary order is, by circuit rule, only for cases in which there is no legal principle worthy of discussion. In the end, every Supreme Court Justice concluded she applied the wrong legal standard in granting a judgment against the firefighters and for the city before a trial occurred, and a majority of the Supreme Court found that the firefighters' case was so strong that they were entitled to a verdict for their side on the evidence that already existed without a trial.

The Supreme Court understood the importance of this case—why we care about it as Americans. As they said of Judge Sotomayor's logic:

> Allowing employers to violate the disparate-impact liability would encourage race-based action at the slightest hint of disparate impact. . . .That would amount to a de facto quota system. . . .

That is the Supreme Court language.

I was struck by something one firefighter, Lieutenant Vargas, said to us—that his testimony before the Senate was the first opportunity he had to tell his story because the district court threw out the case before he even had a trial. On appeal, Judge Sotomayor initially dismissed the case by summary order, meaning that a hard copy of her order was never even delivered to the other judges on the court. Had one of her colleagues, Judge Cabranes, apparently, independently, not heard about the case and sought a full review—a rehearing en banc is what he sought through the whole Second Circuit—it is likely the Supreme Court would never have even known the case existed or considered the case. It is also likely Lieutenant Vargas would never have had the opportunity to tell his story, to explain to his children his profound hope that, as a result of his efforts, they would be judged on their merit and not on their race or their ethnicity.

In response to my questions, Judge Sotomayor also claimed that her Ricci decision was controlled by ''established'' Supreme Court precedent, saying ''a variety of different judges on the appellate court were looking at the case in light of established Supreme Court and Second Circuit precedent.'' But the Supreme Court did not see it that way. The Supreme Court noted that ''few, if any, precedents in the Court of Appeals'' discuss this issue.

As noted commentator Stuart Taylor has recently confirmed, even if Judge Sotomayor had believed her panel was bound by Second Circuit precedent, review and rehearing by the whole Second Circuit would have provided the opportunity to review those previous cases afresh and to overrule them if they were unsound. But Judge Sotomayor cast the deciding vote against rehearing this case by the full circuit. She defended her ruling and defended whatever authority existed at the time in the Second Circuit.

The case is also troubling to me because Judge Sotomayor had pledged to me during her confirmation, in 1997, that she would follow the Supreme Court's decision in Adarand—a well-known case—and subject any preference for one race over another race to the Court's established standard of strict judicial scrutiny. When I asked her about this promise she had made, I, once again, found her answer to be dismaying. She stated that the cases I asked about, the seminal equal protection cases—Adarand and so forth—''were not what was at issue in this decision.'' She was talking about the Ricci case.

But that is not right. There were two very clear claims made by the firefighters in this case—one based on a statutory right and one based on the equal protection clause of the Constitution.

One need only look at——

The PRESIDING OFFICER. The Chair wants to advise the Senator that his initial 30 minutes has been used, and so the Senator would be moving into the next period of debate.

Mr. SESSIONS. Madam President, I ask unanimous consent to have 5 additional minutes.

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

Mr. SESSIONS. Madam President, we will discuss some of the other cases in more detail later. But one need only look at the papers filed in the district court and the court of appeals to see that the Adarand issue and the constitutional question were central issues in this case. Look at Judge Cabranes' decision, where one of the first cases he cites is Adarand. One does not expect this type of mistake or a lack of accuracy from a Supreme Court nominee in a case of this importance, when she understands she will have to discuss before the Judiciary Committee.

Judge Sotomayor repeatedly stated, including in her opening statement, that litigants deserve explanations; that she looks into the facts, delves into the record, and explains to litigants why she rules for or against them. I have read the one-paragraph Ricci opinion. Judge Sotomayor did not afford the firefighters the respect they deserved.

I have also considered very carefully Judge Sotomayor's views regarding the Second Amendment, and I am troubled by her record and not reassured by the answers she gave during the hearing.

In sum, she effectively held that the Second Amendment—the right to keep and bear arms—does not bind the States, and that means any city or any State in America, if her opinion is upheld, can ban all guns in those jurisdictions. If her opinion is not reversed, that is what will happen in America. I would note the Supreme Court, in ruling on the Heller case, held clearly for the first time that the Second Amendment is an individual right that applied to the District of Columbia, which effectively banned firearms in the District of Columbia. They said that was not constitutional, that the citizens of the District of Columbia have a constitutional right to keep and bear arms and it cannot not be eliminated.

So if the Sotomayor opinion is upheld, I can only say the Second Amendment might be viable in the District of Columbia but not in the other

cities and States throughout the country.

With regard to the takings case, one of the most significant takings cases in recent years, she ruled against a private landowner who had his property taken. He intended to build one kind of pharmacy on it. A developer who was working with the city utilized the powers of the city to attempt to extort money from that individual so he could build another private drugstore on that lot. When the owner refused, the city condemned the man's property, gave it to the developer, who then built his own kind of drugstore there. I believe this is in violation of the constitutional protection that private property can only be taken for public use.

So words have meaning. The Constitution and laws of the United States have meaning. People come to courts to assert their rights under the Constitution and laws. In these three cases I have mentioned, the litigants did not have their rights properly listened to nor protected, in my opinion. Is it because she would have preferred different results from the promotional exam for firefighters? Is it because she did not believe in the rights protected by the Second Amendment as set forth in the Constitution? Is it because she favors redevelopment?

We are left to wonder because the cases were certainly not decided based on the plain language of the Constitution, and she did not openly and thoroughly in any one of these cases engage in a serious discussion of issues raised. Each was just a page or two or three.

One of the most important tools of a judge is words. The meaning of words is obviously where the power of our Constitution and laws is found. When a judge feels empowered to redefine the meaning of words in our Constitution, they feel empowered to amend our Constitution. If they don't like the death penalty, maybe they will call it unconstitutional. If they don't like the right to keep and bear arms, maybe they will say the Second Amendment doesn't apply to States and cities.

In a recent speech before this nomination, Professor Allen C. Guelzo, a two-time winner of the Lincoln Prize, wisely noted that a constitutional system resides on a bedrock of shared assumptions. While it may seem to be a collection of laws and statutes, the most important thing is that ''those laws and statutes depend first on a reverence for words, for reason, and for orderliness.''

He adds that ''reverence must grow . . . from the confidence that words, reasons . . . really do protect'' the rights of citizens.

Citizens must know their rights, when clearly stated in the Constitution, will be steadfastly protected by the courts. It is here that I have significant qualms. The ease by which the nominee reconciled or attempted to reconcile fundamentally different statements in speeches at our hearing evidences a lack of respect for the meaning of words. Her explanation of controversial decisions lacked clarity, a very serious shortfall indeed for a Supreme Court Justice.

So I came to this process with an open mind regarding Judge Sotomayor. She has many wonderful qualities, and I truly mean that. And I like her. She was ever graceful in her testimony. But certain aspects of her record troubled me—whether, for example, she has the kind of deep commitment to the ideal of objectivity and impartiality that I believe necessary. I had hoped those concerns would be addressed effectively. Unfortunately, many of the answers did little to ease my concerns but, instead, reinforced them and led to more unanswered questions. Regrettably, I cannot support her nomination to a lifetime appointment to the U.S. Supreme Court.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, it should be no surprise that my views are not those of the distinguished ranking member of our Judiciary Committee but somewhat different. I have served on this committee for over 16 years now. I have sat through the confirmation hearings of four Supreme Court Justices. I am very proud to say I believe the President made an excellent choice, and I enthusiastically support this nominee.

Judge Sotomayor is a warm and intelligent woman. More importantly, though, she is a solid, tested, and mainstream Federal judge. Her personal story is one of hard work. She has risen above all kinds of obstacles, and she has perseverance. She is a role model for women in the law, and I cannot help but feel a sense of enormous pride in her achievements, her nomination, and, hopefully, before the end of the week, her confirmation to be a Supreme Court Justice.

As I said at the confirmation hearings, a Supreme Court Justice should possess at least five qualities.

One, broad and relevant experience. So how does she stand? You can't find a nominee with better experience than Judge Sotomayor.

She has 29½ years of relevant legal experience, and she has seen the law from all sides.

For 4½ years she was a prosecutor in New York City. She prosecuted murders, robberies, and child pornography cases as an assistant district attorney. She worked with law enforcement officers and victims of crime, and she sent criminals to jail.

We heard from the distinguished New York City District Attorney, Mr. Morgenthau, who said he looked for bright young people, and he found her and he heard her story and she had been to Princeton. She graduated summa cum laude. She went to Yale Law School. She was editor of the Law Review.

She came to his attention, and he went to recruit her as a prosecutor in New York City. For 8 years after that, she practiced business law as a litigator in a private firm. She worked on complex civil cases involving real estate law, banking law, contracts, and intellectual property law.

Then, she was appointed by George Herbert Walker Bush—as we might fondly say ''Bush 41''—as a U.S. district court judge for 6 years. She heard roughly 450 cases in the district court up close and personal, where litigants come before the judge and the judge gains a sense of what the Federal court means to an individual.

I think that is important to know on the Supreme Court. She saw there firsthand the impact of the law on people before her.

Then she was appointed by President Clinton. For 11 years she has been a Federal appellate court judge on the Second Circuit Court of Appeals. She has been on the panel for more than 3,000 Federal appeals, and she has authored opinions in more than 600 cases. These 11 years were rigorous and appropriate training ground for the Supreme Court.

Judge Sotomayor will be the only sitting Justice with experience on both the Federal trial and appellate courts, and she has more Federal judicial experience than any Supreme Court nominee in the last 100 years. That is a substantial qualification.

Secondly, a Supreme Court Justice should have deep knowledge of the law and the Constitution. I believe her broad experience gives her firsthand knowledge of virtually every area of the law.

As a prosecutor she tried criminal cases—homicides, assaults, pornography cases—those crimes that destroy lives.

As a business lawyer, she examined contracts, represented clients in complex civil litigation, and tried intellectual property disputes.

As a district court judge she presided over criminal and civil jury trials; she sentenced defendants; she resolved complicated business disputes; and she reached decisions in discrimination and civil tort cases where people had been unfairly treated, injured, or harmed.

Finally, as an appellate judge, she has grappled with the difficult and critical questions that arise when people disagree about what our Constitution and our Federal statutes mean today. So she certainly has ample experience.

Third, a Supreme Court Justice should have impeccable judicial temperament and integrity. Anyone who watched Judge Sotomayor at her confirmation hearings has seen her temperament and demeanor firsthand. She is warm, she is patient, and she is extremely intelligent. She sat at that table with a broken ankle up on a box hour after hour and day after day in a hot room listening to members of the Judiciary Committee pepper her with questions. Not at any time did she lose her presence, lose her cool, or show anger. She showed determination and

patience and perseverance. I think that means a great deal.

At times, the hearings became quite heated, but she would remain calm even in the face of provocative questioning.

So I am not surprised the American Bar Association and the New York City Bar Association gave her their highest rating.

As one of her Republican-appointed colleagues on the Second Circuit said: ''Sonia Sotomayor is a well-loved colleague on our court. Everybody from every point of view knows she is fair and decent in all her dealings. The fact is, she is truly a superior human being.''

What greater compliment could there be for a prospective Supreme Court nominee?

After spending time with her during our one-on-one meeting and participating in her confirmation hearings, I agree. She is a walking, talking example of the very best America can produce. She has overcome adversity. Here is a woman—a child—the product of a poor Puerto Rican family living in a housing project in New York. She is 8 years old, she finds herself with juvenile diabetes. She is 9 years old, her father dies. She goes to school. She struggles with the language. She overcomes it. She graduates from high school. She goes to Princeton. She succeeds in every way, shape, and form, as I said, summa cum laude, and then on to Yale and a member of the Yale Law Review. She overcame adversity and she kept going.

She has given back to her country and her community, and she is now on track to become the first Latina Justice of the U.S. Supreme Court and only the third woman ever appointed to that Court.

I not only will vote for her, I will do so with great pride.

Finally, a Supreme Court Justice should exhibit mainstream legal reasoning and a firm commitment to the law. I have heard people say that they don't believe she will follow the law.

I sat in the room during those 4 days of hearings. There was never an instance that I saw where she moved away from legal precedent and the law.

I have said before, and I say today, I am somewhat concerned about the current Supreme Court. As I see it, conservative activists have succeeded in moving our Court to the right of mainstream American thought.

In just the last 2 years, this has been abundantly clear. The Justices have disregarded precedent at an alarming rate, and they have rewritten the law in ways that make clear that they are not just ''calling balls and strikes.''

In 2007, the Court held that a school district cannot consider race when it assigns students to schools—even to ensure any amount of racial diversity. This is Parents Involved in Community Schools v. Seattle School District, 551 U.S. 701, 2007.

It held that women who were paid less than men had to sue within 180 days—even when they had no way of knowing they were paid less, or they lost their right to back pay. This is Lily Ledbetter v. Goodyear Tire & Rubber Co. Inc., 550 U.S. 618, 2007. The occupant of the chair is new to the Senate. One of the first things we did was pass the Lily Ledbetter law to overcome that Supreme Court decision.

The Court held for the first time since 1911 that manufacturers could fix minimum prices for their products. This is Leegin Creative Leather Products Inc. v. PSKS, Inc., 551 U.S. 877, 2007.

It held that the Endangered Species Act did not apply to certain Federal actions—even though the Court, in 1978, said the Act had ''no exception.'' This is National Association of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 2007.

And it held that Congress could pass a law restricting access to OB/GYN services for women without including an exception for when a woman's health is at risk. This is Gonzales v. Carhart, 550 U.S. 124, 2007.

That last decision was not only dangerous to a woman's health, it is also contrary to the Court's opinions in Roe, in 1973; in Ashcroft, in 1983; in Casey and Thornburgh, both in 1992; in Carhart I in 2000; and in Ayotte, in 2006. So this Court of conservative activists cast aside precedent and ''super-precedent'' to do essentially what they believe—not to follow the precedent, which was simply thrust aside.

The Supreme Court's shift to the right and discarding of precedent is not just an ivory tower issue either. These decisions have real-life impact.

Last week, USA Today reported that older white men, 55 years or older, are losing jobs at the highest rate since the Great Depression. This is Dennis Cauchon, In this Recession, Older White Males See Jobs Fade, USA Today, July 30, 2009.

This is troubling. We have a law—the Age Discrimination in Employment Act—that is supposed to protect workers from being laid off because of their age. But 2 months ago, the Supreme Court changed the burden of proof under that law, making it harder for older workers to get protection when they are fired, demoted, or not given a job because of their age. This is Jack Gross v. FBL Financial Services, Inc., 129 S. Ct. 2343, 2009.

Let me be clear, in my view, after 16 years on this committee: The Justices on the Supreme Court are not umpires; they do not just call balls and strikes. And they are not computers. It matters who sits on our Supreme Court, and it matters whether they will respect precedent and follow the law.

Judge Sotomayor is a nominee with a 17-year record of following the law. She has faithfully applied the law to the facts in case after case.

We have a research service called the Congressional Research Service. It is a neutral, respected adjunct to what we do in the Senate and the House. It carries out significant research. They took a look at her record, examined it, and this is what they said:

> Her decisions do not fall along any ideological spectrum. The most consistent characteristic of her approach as an appellate judge has been an adherence to the doctrine of stare decisis—the upholding of past judicial precedents.

When her record is objectively researched by the number one objective research service we have, she has been found to abide by court precedent. They have essentially said she is not an activist, she follows legal precedent. When her confirmation hearing ended, even one Senator who is now voting against Judge Sotomayor said this:

> I actually agree that your judicial record strikes me as pretty much in the mainstream of judicial decisionmaking.

This is Senator JOHN CORNYN, Confirmation Hearings for Judge Sonia Sotomayor, July 16, 2009.

Judge Sotomayor's mainstream record, her respect for precedent, and her commitment to the law have earned her the support of groups that cut across party lines.

She has been endorsed by law enforcement groups, such as the International Association of Chiefs of Police; civil rights groups, such as the Leadership Conference for Civil Rights; business groups, such as the U.S. Chamber of Commerce—yes, they have endorsed her; former officials from both parties, including conservative lawyer Kenneth Starr; and legal groups, such as the American Bar Association.

This is a nominee with a solid record, with more Federal judicial experience than any nominee in a century, and with widespread support.

There are those who oppose her because of a line from a speech she made—one line in 29½ years of legal experience.

Second, there are those who oppose her because of one case. It is the Ricci case—the New Haven case involving firefighters. But Judge Sotomayor was squarely in the mainstream in that case. She followed established precedent. That is what the district court said in an almost 50-page opinion. This is Ricci v. DeStefano, 2006 U.S. Dist. LEXIS 73277, D. Conn. 2006, unpublished opinion. Her second circuit panel unanimously agreed. This is Ricci v. DeStefano, 530 F.3d 87, 2d Cir. 2007.

At about the same time, in the U.S. District Court in Tennessee, a judge held that in a nearly identical situation, the Memphis Police Department could replace a promotional exam that it feared was discriminatory.

Last year, a three-judge circuit court panel on the Sixth Circuit—including one judge appointed by President George W. Bush—agreed. This is Oakley v. City of Memphis, No. 07–6274, 6th Cir. 2008, unpublished opinion. So there was agreement on the courts.

It is true that five Justices, in a 5-to-4 opinion on the Supreme Court, disagreed, and their decision is now the

law of the land. This is Ricci v. DeStefano, 129 S. Ct. 2658, 2009. I was a mayor for 9 years of a difficult city going through a number of affirmative action cases. I can tell you that this ruling has placed cities in what Justice Souter called a ''damned if you do, damned if you don't situation.''

I agree with that. If a city has to prove that it would lose in court before replacing a civil service exam it believes is discriminatory, this jeopardizes virtually any exam they might choose.

Finally, and most important, there is the third point of opposition, and that is the National Rifle Association. The NRA actively opposes Judge Sotomayor. They say they are scoring her confirmation vote. They will tell their members that any Senator who votes to confirm Judge Sotomayor has voted against the NRA's priorities. So let's look at that for a minute.

The NRA says Judge Sotomayor erred in the case of United States v. Sanchez-Villar, a 2004 case. In this case, an illegal immigrant named Jose Sanchez-Villar was caught dealing crack cocaine and carrying a gun in New York City. This is United States v. Sanchez-Villar, 99 Fed. Appx. 256, 2d Cir. 2004.

Those are the facts of the case. A jury convicted. On appeal, the defendant argued, among other things, that to prohibit him from carrying a gun in New York City violated the second amendment.

Judge Sotomayor and her colleagues unanimously rejected his argument and upheld the conviction. The NRA is apparently upset that Judge Sotomayor and her colleagues did not agree with Mr. Sanchez-Villar's second amendment argument.

But in 2004, when this case was decided, the law had been clear for 65 years. The Supreme Court had said in 1939 that the second amendment only related to militia service and judges all across our country had followed that decision for decades. This is United States v. Miller, 307 U.S. 174, 1939.

Would the NRA have preferred that Judge Sotomayor rule against 65 years of settled law and hold that an undocumented drug dealer had a constitutional right to carry a gun in New York City? Do you want that, Mr. President? Do I want that in my State? The answer is absolutely no.

The NRA also says Senators should oppose Judge Sotomayor's nomination because of another case, Maloney v. Cuomo. This is Maloney v. Cuomo, 554 F.3d 56, 2d Cir., 2009. There, Judge Sotomayor and her colleagues unanimously upheld a New York law banning a particular Japanese martial arts weapon called nunchakus.

The unanimous decision said the second amendment limits only the Federal Government, not the States. Why would Judge Sotomayor and her colleagues say that? Because it was binding Supreme Court law. Look at the decisions:

In 1876, the Supreme Court held that the second amendment only applies to the Federal Government. That was United States v. Cruikshank, 92 U.S. 542 (1876). It said it again in 1886, in Presser v. Illinois, 116 U.S. 252, 1886, and again, in 1984, in Miller v. Texas, 153 U.S. 535, 1984.

The fourth circuit followed that law and said in 1995 that the second amendment only applies to the Federal Government. That case was Love v. Pepersack, 47 F.3d 522, 1995. The Sixth Circuit agreed in 1998, in People's Rights Organization v. City of Columbus, 152 F.3d 522, 1998. Judge Sotomayor's own court, the second circuit, agreed in 2005, in Bach v. Pataki, 408 F.3d 75, 2005.

Then last year, Justice Scalia wrote in footnote 23 of the famous Heller opinion:

> [Our] decisions in Presser v. Illinois and Miller v. Texas reaffirmed that the Second Amendment only applies to the Federal Government.

That case was District of Columbia v. Heller, 128 S.Ct. 2783, 2008. Justice Scalia is not exactly a liberal Supreme Court Justice, and that is his view:

> Presser v. Illinois and Miller v. Texas reaffirm that the second amendment only applies to the Federal Government.

Finally, just 2 months ago, three Republican appointees on the Seventh Circuit agreed that the second amendment only applies to the Federal Government. They said anyone who doubts this need only read Justice Scalia's opinion. And that case was the National Rifle Association v. City of Chicago, 567 F.3d 856, 2009.

So once again Judge Sotomayor's decision was squarely in agreement with court after court after court.

Some of my colleagues have said that the Ninth Circuit disagreed. It is true that three of its judges did. But last week, the full Ninth Circuit voted to review these three judges' decision and to rehear it as a full court en banc. And that case is Nordyke v. King, No. 07–15763, En Banc Order, Ninth Circuit, July 29, 2009.

The NRA tried its case before the Seventh Circuit and lost. They lost in front of three Republican-appointed judges.

Let me summarize. Judge Sonia Sotomayor has 29½ years of relevant legal experience. She has a 17-year record of following the law. She has experience, temperament, and knowledge. She will be, in my view, a fine Supreme Court Justice.

Supreme Court Justices do not merely call balls and strikes; they make decisions that determine whether acts of Congress will stand or fall. They decide how far the law will go to protect the safety and rights of all of us. They have the power to limit or expand civil rights protections. They have great leeway to interpret the laws protecting or limiting a woman's right to choose. And they can expand or limit child pornography laws and campaign finance laws and so many more.

I believe Judge Sotomayor is an exceptional person who brings a rich background as a prosecutor, a business lawyer, a trial judge, and appellate court judge. And her 17-year record of judicial temperance shows she will faithfully apply the law. I cannot tell you how proud I will be to vote to confirm her as an Associate Justice on the Supreme Court. I sincerely hope that a dominant majority of my colleagues will do the same.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, I rise in proud support of the confirmation of Judge Sonia Sotomayor. We are not only about to cast a vote this week that will make history, but we are about to stand witness in some small way to the coming age of America.

The great Founders of this democracy built a nation on an idea and an ideal. They devised the unique experiment in a new form of government built on tolerance, equal rights, justice, and a constitution that protected us from the mighty sword of tyranny. They forged a community from shared values, common principles, yet preserved the freedom of every citizen to pursue happiness and reach for the stars no matter their position, no matter their circumstance at birth.

It was a revolutionary notion that in America one is not bound by his or her social or economic status; that if we work hard, reach further, aim higher, everything—anything—is possible.

Unlike other nations united by common history, common language, and common culture, America prides itself on its motto: E pluribus unum—out of many, one. In our blind rush to one side of the political spectrum or the other, we too often forget those words. We too often forget that we are united in our differences in a vast melting pot forged from common values and an ideal of freedom that is the envy of the world.

Today, as we prepare to confirm Judge Sotomayor, the full realization of that ideal is closer than it has ever been. I know it, I feel it, for I have lived it. I stand here, someone who himself came from humble beginnings, raised in a tenement building in a neighborhood in Union City, NJ, a son of immigrants, first in my family to go to college, and now in a nation of 300 million people, 1 of 100 Members of the U.S. Senate.

I never dreamed growing up that one day I would have the distinct honor to come to the floor of the Senate to rise in favor of the confirmation of an eminently qualified Hispanic woman who grew up in the Bronx across the river from the old tenement I lived at in Union City. I never dreamed that as a U.S. Senator of Hispanic heritage, I would have the privilege of standing in the well of this Chamber to cast a historic vote for the first Hispanic woman on the highest Court in the land. So for

me personally, my vote for Judge Sonia Sotomayor will be a proud moment, one I will always remember as a highlight of my time in the Senate.

When Judge Sotomayor takes her seat on the U.S. Supreme Court, America will have come of age. We will need only to look at the portrait of the Justices of the new Supreme Court to see how far we have come as a nation, who we really are as a people, what we stand for, and what our Founders intended us to be. It will be a striking portrait—one of strength, diversity, spirit, and wisdom, the portrait of a nation united by common concerns, yet still too often divided by deeply held individual beliefs.

There are those in this Chamber who, because of those deeply held beliefs, will vote for Judge Sotomayor and those who will not, each for their own reasons, each in part because of who they are, where they grew up, how their perspective has been uniquely shaped by their individual circumstances and experiences. Their vote will be based on their own logic, their own reasoning, how they interpret the facts and the testimony before them. Each of us will analyze and debate those facts from our own perspective. We will hold to our own intellectual positions. We will disagree. Some will find fault with Judge Sotomayor's choice of words. Some will interpret her statements and rulings differently than she may have clearly intended. Some will question her temperament, her judgment, the details of her decisions. But in this debate and, ultimately, in the final analysis, none of us can deny the role our experience will play in our decision. None of us can deny our backgrounds, our upbringing, the seminal events that shaped our life. We cannot deny who we are. All we can ask of ourselves—of any of us—is that wisdom, intelligence, reason, and logic will always prevail in the decisions we make.

Those who would say a U.S. Senator or a Justice of the U.S. Supreme Court does not carry something with them from their experience are simply out of touch with reality. But let us remember that who we are is not a measure of how we judge; it is merely the prism through which we analyze the facts. The real test is how we think and what we do.

Let's be clear. Given the facts, given the evidence before us, Sonia Sotomayor is one of the most qualified and exceptionally experienced nominees to come before the Senate. I am proud to stand in favor of her confirmation, not because of where she came from, not because we share a proud ethnicity, but because of Judge Sotomayor's experience and vast knowledge of the law. I am proud to stand in favor of her nomination not because she is a Hispanic woman but because of her commitment to the rule of law and her respect for the Constitution; not because of the depth of her theoretical knowledge and respect for precedent but because of her practical experience fighting crime; not because of one statement she may have made years ago outside the courtroom but because of a career-long, proven record of dedication to equal justice under law. Nothing—I repeat nothing—should be more important to any nominee than a dedication to those simple words chiseled above the entrance to the Supreme Court: ''Equal Justice Under Law.''

These are the reasons I am proud to stand in support of her confirmation, and these are the reasons I believe Judge Sotomayor should be unanimously confirmed by the Senate. But I know that will not be the case. I know there will be few on the other side of the aisle who will cast their vote in support of her. I know some of my colleagues have suggested that Judge Sotomayor may not have the judicial temperament necessary to serve on the Supreme Court. To those Senators who get up and say that, I say watch the hearings again. Watch them closely. Listen to what was asked, watch her responses, take note of the depth, the dignity, and clarity of her answers. Be aware of the deference she showed every Senator on the committee, her tone, the tenor of her responses, her rebuttals, and then tell me she does not have the proper judicial temperament.

I think most Americans who watched her, who listened to her, would respectfully disagree. Most Americans do not care about one specific statement out of hundreds of statements. They care about the person. They care about the experience. They care about honor and decency and dignity and fairness. They care about who she is and what she has accomplished in her long judicial career. Put simply, they care about the record, and the record is clear. It shows she has a deep and abiding respect for the Constitution. It shows that the leaders of prominent legal and law enforcement organizations who know her best, those who have actually seen her work, say she is an exemplary, fair, and highly qualified judge. It shows a crime fighter who as a prosecutor put the ''Tarzan murderer'' behind bars. It shows a judge who has upheld the convictions of drug dealers, sexual predators, and other violent criminals. And it highlights a deep and abiding respect for the liberties and protections granted by the Constitution, including the first amendment rights of those with whom she strongly disagrees.

Judge Sotomayor's credentials are impeccable. Set aside for a moment the fact that she graduated at the top of her class at Princeton. Set aside her tenure as editor of the Yale Law Review, her work for Robert Morgenthau in the Manhattan District Attorney's Office, her successful prosecution of child abusers, murderers, and white-collar criminals. Set aside her courtroom experience and practical hands-on knowledge of all sides of the legal system. Even set aside her appointment by George H.W. Bush to the U.S. District Court in New York and her appointment by Bill Clinton to the U.S. Court of Appeals and the fact that she was confirmed by both a Democratic majority Senate and a Republican majority Senate, which alone tells this Senator, if she was qualified then, she must be qualified now. Set all that aside, and you are still left with someone who would bring more judicial experience to the Supreme Court than any Justice in the last 70 years, more Federal judicial experience than anyone nominated to the Court in the last century. Her record clearly shows that someone so experienced, so skilled, so committed, so focused on the details of the law can be an impartial arbiter who follows the law and still has a deep and profound understanding of the effect her decisions will have on the day-to-day lives of everyday people.

With all due respect to my colleagues who plan to vote against this nominee, what speaks volumes about Judge Sotomayor's temperament, what speaks volumes about her experience, what speaks volumes about her record is that the worst—the very worst—her opponents can accuse her of is an accident of geography that gave her the unique ability to see the world from the street view, from the cheap seats. I know that view very well. I grew up in it. I can tell you that certainly it gives you a unique perspective on life. it engenders compassion. It engenders pathos. It focuses a clear lens on the lives of those whose struggles are more profound than ours, and whose problems run far deeper. Yes, I know that view well, and it remains with me today, and it will remain with me all of my life.

I daresay there may be no greater vantage point from which to view the world—to see the whole picture—than a tenement in Union City or a housing project in the Bronx. Thomas Jefferson, in his first inaugural address said:

> I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground.

Judge Sonia Sotomayor surely commands a full, wide expansive view of the whole ground. It is a strength, not a weakness. It is who she is, not what she will do or how she will judge. It is the long view, and it gives her an edge where she may see what others cannot. And that is a gift that will benefit this Nation as a whole.

I ask my colleagues to take the long view and see what this nomination means in the course of this Nation's glorious history. For me, the ideal, the idea of America, the deep and abiding wisdom of our Founders, will have come of age when Judge Sonia Sotomayor raises her right hand, places her hand on the Bible, and takes the solemn oath of office. With it, the portrait of the Justices of the U.S. Supreme Court will more clearly reflect who we are as a nation, what we have become, and what we stand for as a

fair, just, and hopeful people. Let that be our charge. Let that be our legacy. Let someone who is committed to the Constitution, to the rule of law, to precedent—and who has exhibited that over a lifetime of work—be our next Supreme Court Justice.

I am proud and honored to support the confirmation of Judge Sonia Sotomayor as the next Justice of the U.S. Supreme Court.

And finally, numerous civil rights, Latino, and law enforcement organizations join me in supporting Judge Sotomayor's nomination. I ask unanimous consent to have printed in the RECORD letters of support from the following organizations: Mexican American Legal Defense and Education Fund, the National Hispanic Leadership Agenda, the National Puerto Rican Coalition, the National Fraternal Order of Police, the National Organization of Black Law Enforcement Executives, Federal Hispanic Law Enforcement Officers Association, the United States Hispanic Chamber of Commerce, the Arizona Hispanic Chamber of Commerce, and the Fort Worth Hispanic Chamber of Commerce, to name a few.

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

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
Los Angeles, CA, July 7, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. JEFF SESSIONS,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I write to express our support for the confirmation of Judge Sonia Sotomayor to the United States Supreme Court. Judge Sotomayor is an outstanding choice to replace retiring Justice David Souter. She has an impeccable record of accomplishment that is worthy of serving on the highest court in the nation. She possesses all of the credentials and experience that make her highly qualified to sit on the Supreme Court. Significantly, she is one of the most qualified candidates to be considered for Associate Justice in recent history.

The American Bar Association has unanimously rated Judge Sotomayor ''well qualified'' for the Court, its highest rating. She has broad and bipartisan support. She has been endorsed by eight national law enforcement groups. She has the support of Former President Herbert Walker Bush and former Supreme Court Justice Sandra Day O'Connor.

Judge Sotomayor has extensive experience as a trial attorney having worked in both the public and private sectors. She was an Assistant District Attorney in New York for five years where she tried dozens of criminal cases including murders, robberies, police misconduct, and fraud. Former New York District Attorney Robert Morgenthau described her as a ''fearless and effective prosecutor.'' She was a corporate litigator in private practice for eight years as a partner at the law firm of Pavia & Harcourt where she handled cases in real estate, employment, banking, contracts, and intellectual property law.

She has served as a federal judge for 17 years. She was the youngest judge appointed to the federal bench in the Southern District of New York where she served for six years and heard over 450 cases. She has been on the U.S. Court of Appeals for the Second Circuit—one of the most demanding circuits in the country—for 11 years. As a federal appellate judge she has participated in over 3000 panel decisions and authored approximately 400 published decisions. She has handled complex legal and constitutional matters. Her decisions are faithful to both legal doctrines and factual details.

If confirmed, Judge Sotomayor would bring more federal judicial experience to the Supreme Court than any justice in 100 years and more overall judicial experience than anyone confirmed to the Court in the past 70 years. She also would be the only Justice with experience as a trial judge.

Judge Sotomayor's educational accomplishments demonstrate her strong work ethic and clarity of focus starting from a young age. She graduated summa cum laude from Princeton University and is a graduate of Yale Law School where she was an Editor on the Law Review, a distinction reserved for only the top law students.

Judge Sotomayor has a demonstrated commitment to the community. She has been a lecturer at Columbia Law School and an adjunct professor at NYU Law School. She served on the board of the Development School for Youth whose mission is to develop work skills for inner city young people. She has served on the Boards of Directors of the New York Mortgage Agency, the New York City Campaign Finance Board and the Puerto Rican Legal Defense and Education Fund.

The Latino community shares in the pride of the nation at President Obama's nomination of this exceptional jurist. The diversity she will add to the Court is a strength that will enhance respect and dignity for the judicial system. MALDEF respectfully requests the opportunity to testify in support of Judge Sotomayor's confirmation.

Judge Sotomayor is an individual of exceptional talent, experience and commitment to justice. We urge her swift confirmation.

Very truly yours,

HENRY L. SOLANO,
Interim President & General Counsel.

JUNE 9, 2009.

Hon. PATRICK LEAHY,
Chairman, U.S. Senate, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Hispanic Leadership Agenda (NHLA), comprised of thirty-one of the leading national and regional Hispanic civil rights and public policy organizations, representing a diverse Latino community and millions of members nationwide, would like to request a meeting regarding the nomination of Judge Sonia Sotomayor to become the next United States Supreme Court Justice. As community advocates with a vested interest in serving the public good, members of our coalition would like to meet with you and discuss Judge Sotomayor's nomination. NHLA represents a vast array of constituencies that include veterans, academics, legal experts, labor activists, federal employees, elected officials, medical professionals and members of the media, among many other community leaders who unequivocally support the nomination of Judge Sotomayor based on the merits of her judicial record and overall experience.

The NHLA mission and objectives call for providing a clearinghouse of information to the Hispanic community; providing a unified voice on relevant issues; and providing a much needed voice on legislative issues that have direct implications for our members nationwide. The composition of NHLA includes groups with Mexican, Puerto Rican, Dominican, and Cuban leadership, as well as the membership of countless other Hispanic and Latin-American interests. The common issues of education, civil rights, immigration, economic empowerment, health, and government accountability transcend ethnic origin and racial identity, as evidenced by the breadth of these different groups. The Hispanic community is larger and more diverse than ever, numbering close to 50 million persons and making up over 16% of the combined population of the United States, Puerto Rico, and the United States territories.

We look forward to your response as we would like to schedule meetings for the week of June 15th–19th, Should you have any questions, please contact Alma Morales Riojas, Secretary/Treasurer of the National Hispanic Leadership Agenda and President and CEO of MANA, A National Latina Organization or James Albino, Director, Hispanic Federation.

Sincerely,

DR. GABRIELA D. LEMUS,
Chair, Board of Directors, National Hispanic Leadership Agenda.

NATIONAL PUERTO RICAN COALITION, INC.,
Washington, DC, July 13, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U. S. Senate, Russell Senate Office Building, Washington, DC.

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

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: On behalf of the National Puerto Rican Coalition Inc. (NPRC), representing the interests of over 8 million U.S. citizens in the states and Puerto Rico, I would like to express our full and enthusiastic support for the confirmation of the Honorable Judge Sonia Sotomayor to the United States Supreme Court. Her personal and professional experiences make her uniquely sensitive and qualified to address the concerns of all Americans in our nation's highest court.

Judge Sotomayor's personal story of growing up as a daughter of Puerto Rican parents in a Bronx housing project, and eventually going on to study in Princeton and Yale, is an authentic reflection of the power for motivated and talented people in our society to overcome hardship and achieve success. This experience allows her a profound sensitivity to the challenging conditions of life which are the reality for a significant portion of the U.S. population and will provide her with a unique perspective on how to justly and equally apply our nation's laws.

In her professional life Judge Sotomayor's legal career has included not only criminal prosecution and commercial litigation, but also academia and appointment to the federal bench. For the past ten years, her intellect, integrity, and consensus-building have made her a highly respected jurist on the Second Circuit. This followed a distinguished career as a federal trial judge, during which Judge Sotomayor's pragmatism and resolve brought the national baseball strike to an end that satisfied all parties. She then taught for over nine years at the New York University School of Law and at Columbia Law School and has been a mentor to hundreds of attorneys and students as well as a member of the Puerto Rican and the Hispanic National Bar Associations. This wealth of experience has impressed upon her both the law's potential, as well as its limits. Since her nomination was announced she has

received endorsements and praise from across the country.

As the Senate holds confirmation hearings, NPRC will be watching carefully to ensure that the Senate treats Judge Sotomayor fairly. Our organization firmly believes that Judge Sotomayor is the best choice for our country's next Supreme Court Justice. Therefore, NPRC will include her confirmation vote as part of our NPRC Community Accountability Rating. I hope and trust that you and your colleagues will enthusiastically support her nomination.

Sincerely,

RAFAEL FANTAUZZI,
President & CEO.

NATIONAL FRATERNAL ORDER OF POLICE,
Washington, DC, June 9, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. JEFFERSON B. SESSIONS III,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR SESSIONS: I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of Judge Sonia M. Sotomayor to join the Supreme Court of the United States.

Following her graduation from Yale Law School, Judge Sotomayor joined the District Attorney's office in Manhattan, where she tried dozens, of cases during her tenure, including winning a conviction of the ''Tarzan murderer''. She worked closely with rank-and-file law enforcement officers during her time as a prosecutor, and, was described by the legendary Manhattan District Attorney Robert Morgenthau as a ''fearless and effective prosecutor.''

After spending some time in private practice, Judge Sotomayor returned to public service and was nominated by President George H. W. Bush for a seat on the U.S. District Court for the Southern District of New York. The Committee on the Judiciary unanimously approved her nomination, and she was confirmed in the Senate by unanimous consent. Upon confirmation, Judge Sotomayor became the youngest sitting judge in the Southern District of New York.

Her first high profile case involved a labor issue—Silverman v. Major League Baseball Player Relations Committee, Inc. By issuing an injunction preventing the owners from imposing a new collective bargaining agreement, it can be argued that Judge Sotomayor helped save baseball, and certainly baseball fans, from a long, drawn out labor dispute.

In 1998, she was named to the U.S. Court of Appeals for the Second Circuit, one of the most demanding circuits in the country, by President William J. Clinton. As an appellate judge, she has participated in over 3000 panel decisions and authored roughly 400 opinions, handling difficult issues of constitutional law, complex procedural matters, and lawsuits involving complicated business organizations. Over the course of her career, she has demonstrated herself to be a sharp and fact-driven jurist, analyzing each case on its merits and weighing the facts before rendering any decision.

While her ruling in Ricci v. Destefano has been getting most of the media attention, we would like to bring another case to your attention, Pappas v. The City of New York, et al. New York City Police Officer Thomas Pappas was fired for distributing through the U.S. mail racially offensive material from his home. While the Second Circuit upheld the termination of Officer Pappas, Judge Sotomayor dissented noting that his First Amendment rights took precedence because he did not occupy a high-level supervisory, confidential or policymaking role within the department.

In other cases which came before her, both civil and criminal, Judge Sotomayor has often sided with law enforcement officers acting in good faith by upholding convictions on appeal. It is clear that she weighs the facts in evidence and makes her rulings based on the merits of the case. She is a model jurist—tough, fair-minded, and mindful of the constitutionally protections afforded to all U.S. citizens.

I believe that the President has made an excellent choice in naming Judge Sonia S. Sotomayor to the Supreme Court of the United States and, on behalf of the more than 327,000 members of the Fraternal Order of Police, I am proud to endorse her nomination. If I can be of any additional support on this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington, D.C. office.

Sincerely,

CHUCK CANTERBURY,
National President.

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES,
Alexandria, VA, June 8, 2009.

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

Hon. JEFF SESSIONS,
U.S. Senate,
Washington, DC.

DEAR SENATORS LEAHY AND SESSIONS: The National Organization of Black Law Enforcement Executives (NOBLE), an organization of approximately 3,000 primarily African American law enforcement CEOs and command level officials writes to express its support for President Barack Obama's nomination of U.S. District Court Judge Sonia Sotomayor as Associate Justice of the U.S. Supreme Court.

It is critically important to NOBLE, that a Supreme Court justice exercises the ability to interpret the Constitution in a manner that respects the fundamental rights of all people, and that is fair. Judge Sotomayor has credible service; her transition from local prosecutor, to U.S. District Court judge, to U.S. Appeals Court jurist has afforded her the opportunity to experience the breadth of criminal, civil and administrative law issues. The critical issues involving the dialectical contradictions of inequities and fairness across the spectrum of employment, education, housing, the status of juvenile offenders and the enforcement of law are of deep concern to us and are issues that we believe she will be sensitive to.

Furthermore, as the cases before the Court become more challenging, and with science and technology related issues advancing at such a rapid pace, we believe that Judge Sotomayor is imminently qualified to look at our 200-year-old Constitution in a manner that is relevant to today's world. It is interesting to note a recent White House Press Office statistic, ''If confirmed, Sotomayor would bring more federal judicial experience to the Supreme Court than any justice in 100 years, and more overall judicial experience than anyone confirmed for the Court in the past 70 years''.

Law enforcement is a profession that is constantly evolving and we believe that there is a seat among the top of that criminal justice system for this great American. We trust that the Senate will look at her character and act quickly on her confirmation.

Respectfully,

JOSEPH A. MCMILLAN,
National President.

FEDERAL HISPANIC LAW ENFORCEMENT OFFICERS ASSOCIATION,
Tampa, FL, July 16, 2009.

Hon. PATRICK LEAHY,
Chairman,

Hon. JEFF SESSIONS,
Ranking Member,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS LEAHY AND SESSIONS, The Federal Hispanic Law Enforcement Officers Association (FHLEOA) is pleased to join the myriad of other law enforcement groups and associations throughout our nation in support of the president's nomination of Judge Sonia Sotomayor to serve as associate justice of the United States Supreme Court.

Judge Sotomayor's personal story, educational achievements, prosecutorial history, and overall common sense approach and commitment to the law and law enforcement are indeed impressive. But more impressive is the fact that if confirmed, she will bring more federal judicial experience to our highest court than any justice in the last hundred years.

Her record as a public servant is simply outstanding, and her court rulings are indicative of a clear understanding of the law. We believe our nation will be well served with Judge Sotomayor as an Associate Justice of the Supreme Court.

FHLEOA is proud to endorse the nomination of Judge Sotomayor to the U.S. Supreme Court and we look forward to her quick confirmation by the Senate.

Respectfully,

SANDALIO GONZALEZ,
National President.

UNITED STATES HISPANIC CHAMBER OF COMMERCE,
Washington, DC, June 23, 2009.

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

DEAR SENATOR LEAHY: On behalf of the United States Hispanic Chamber of Commerce (USHCC)—the national representative for almost 3 million Hispanic-owned businesses—and the undersigned organizations, we write to express our support for the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States. In her seventeen years of service to date as a federal trial and appellate judge, and throughout the course of her entire career, Judge Sotomayor has strongly distinguished herself through her outstanding intellectual credentials and her deep respect for the rule of law, establishing herself beyond question as fully qualified and ready to serve on the U.S. Supreme. Court.

Judge Sotomayor will be an impartial, thoughtful, and highly-respected addition to the Court. Her unique personal background is compelling, and will be both a tremendous asset while serving on the Court and a historic inspiration to others. Her legal career further demonstrates her qualifications to serve in this position. After graduating from Yale Law School, where she served as an editor for the Yale Law Journal, Judge Sotomayor spent five years as a criminal prosecutor in Manhattan. She then spent eight years as a corporate litigator with the firm of Pavia and Harcourt, where she gained expertise in a wide range of civil law areas such as contracts and intellectual property. In 1992, on the bipartisan recommendation of her home-state Senators, President George H.W. Bush appointed her District Judge for the Southern District of New York. In recognition of her outstanding record as a trial judge, President Bill Clinton elevated her to the U.S. Court of Appeals in 1998.

During her long tenure on the federal judiciary, Judge Sotomayor has participated in thousands of cases, and has authored approximately 400 opinions at the appellate

level. She has demonstrated a thorough understanding of a wide range of highly complicated legal issues, and has a strong reputation for deciding cases based upon the careful application of the facts to the law. Her record and her inspiring personal story indicate that she understands the judiciary's role in protecting the rights of all Americans, in ensuring equal justice, and respecting our Constitutional values—all within the confines of the law. Moreover, her well-reasoned and pragmatic approach to cases will allow litigants to feel, regardless of the outcome, that they were given a fair day in court.

Given her stellar record and her reputation for fairness, Judge Sotomayor has garnered broad support across partisan and ideological lines, earning glowing praise from colleagues who know her best in the judiciary, law enforcement community, academia, and the legal profession. Her Second Circuit colleague (and also her former law professor) Judge Guido Calabresi describes her as ''a marvelous, powerful, profoundly decent person. Very popular on the court because she listens, convinces and can be convinced—always by good legal argument. She's changed my mind, not an insignificant number of times.'' Judge Calabresi also discredited concerns about Judge Sotomayor's bench manner, explaining that he compared ''the substance and tone of her questions with those of his male colleagues and his own questions. And I must say I found no difference at all.'' Judge Sotomayor's colleague Judge Roger Miner, speaking of her ideology, argued that ''I don't think I'd go as far as to classify her in one camp or another. I think she just deserves the classification of outstanding judge.'' And New York District Attorney Robert Morgenthau, her first employer out of law school, hailed her for possessing ''the wisdom, intelligence, collegiality, and good character needed to fill the position for which she has been nominated.''

We urge you not to be swayed by the efforts of a small number of ideological extremists to tarnish Judge Sotomayor's outstanding reputation as a jurist. These efforts have included blatant mischaracterizations of a handful of her rulings, as well as efforts to smear her as a racist based largely on one line in a speech that critics have taken out of context from the rest of her remarks. The simple fact is that after serving seventeen years on the federal judiciary to date, she has not exhibited any credible evidence whatsoever of having an ideological agenda, and certainly not a racist one. We hope that your committee will strongly reject the efforts at character assassination that have taken place since her nomination.

In short, Judge Sotomayor has an incredibly compelling personal story and a deep respect for the Constitution and the rule of law. Her long and rich experiences as a prosecutor, litigator, and judge match or even exceed those of any of the Justices currently sitting on the Court. Furthermore, she is fair-minded and ethical, and delivers thoughtful rulings in cases based upon their merits. For these reasons, the undersigned organizations strongly urge you to swiftly confirm Judge Sotomayor to the Supreme Court.

Sincerely,

USHCC

ARIZONA HISPANIC
CHAMBER OF COMMERCE,
June 29, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SESSIONS: As the new President and CEO of the Arizona Hispanic Chamber of Commerce, I write to express our organization's support for the confirmation of Judge Sonia Sotomayor as Associate Justice of the Supreme Court of the United States. In her seventeen years of service to date as a federal trial and appellate judge, and throughout the course of her entire career, Judge Sotomayor has strongly distinguished herself through her outstanding intellectual credentials and her deep respect for the rule of law, establishing herself beyond question as fully qualified and ready to serve on the Supreme Court.

Judge Sotomayor will be an impartial, thoughtful, and highly-respected addition to the Supreme Court. Her unique personal background is compelling, and will be both a tremendous asset to her on the Court and a historic inspiration to others. Her legal career further demonstrates her qualifications to serve on our nation's highest court.

During her long tenure on the federal judiciary, Judge Sotomayor has participated in thousands of cases, and has authored approximately 400 opinions at the appellate level. She has demonstrated a thorough understanding of a wide range of highly complicated legal issues, and has a strong reputation for deciding cases based upon the careful application of the facts of cases to the law.

Judge Sotomayor has garnered broad support across partisan and ideological lines, earning glowing praise from colleagues in the judiciary, law enforcement community, academia, and legal profession who know her best.

I urge you not to be swayed by the efforts of a small number of detractors who only wish to tarnish Judge Sotomayor's outstanding reputation as a jurist. These efforts have included blatant mischaracterizations of a handful of her rulings, as well as efforts to smear her as a racist based largely on one line in a speech that critics have taken out of context from the rest of her remarks. We hope that your committee will strongly reject the efforts at character assassination that have taken place since her nomination.

In short, Judge Sotomayor has an incredibly compelling personal story and a deep respect for the Constitution and the rule of law. Her long and rich experiences as a prosecutor, litigator and judge match or even exceed those of any of the Justices currently sitting on the Court. Furthermore, she is fair-minded and ethical, and delivers thoughtful rulings in cases based upon their merits. For these reasons, I strongly urge you to vote to confirm Judge Sotomayor.

Respecfully,

ARMANDO A. CONTRERAS,
President and CEO,
Arizona Hispanic Chamber of Commerce.

FORT WORTH HISPANIC
CHAMBER OF COMMERCE,
17 July 2009.

Hon. PATRICK J. LEAHY,
Senator of the United States of America, Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Subject: Judge Sonia Sotomayor confirmation recommendation.

DEAR SENATOR LEAHY: The Fort Worth Hispanic Chamber of Commerce's Board of Directors and membership are writing on behalf of Judge Sonia Sotomayor's confirmation as the next United States Supreme Court Justice. We recommend your committee's most favorable and highest recommendation possible to the Senate in favor of her confirmation.

The Fort Worth Hispanic Chamber of Commerce, including experienced federal and state court attorneys, have reviewed Judge Sotomayor's education, experience and her opinions as a jurist; it is our consensus she is eminently qualified, talented and possesses the desire to be an excellent Supreme Court justice. It is clear from an early age she has been driven to excel; a 1976 Princeton University summa cum laude graduate and a graduate of the Yale University School of Law. While at Yale Law School, she was selected to serve as an editor of the Yale Law Journal. Her legal experience includes serving as a New York County Assistant District Attorney, and partner with the law firm of Pavia & Harcourt focusing on intellectual property, international litigation and complex export trading cases. Judge Sotomayor has distinguished herself as a U.S. District Court Judge for the Southern District of New York and now as judge with the United States Court of Appeals for the Second Circuit.

Her proven record on a variety of topics, issues and legal reasoning make her an excellent nomination. It is our firm belief Judge Sotomayor will apply and interpret the legal precedents under the law and will uphold the law with equal justice. We highly endorse Judge Sotomayor's confirmation and urge your vote of approval at your earliest convenience,

Sincerely,

ROSA NAVEJAR,
President/CEO.

Mr. MENENDEZ. Mr. President, with that, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I am honored to join my distinguished colleague from New Jersey here today on the Senate floor to speak in support of the confirmation of Judge Sonia Sotomayor as the next Associate Justice of the U.S. Supreme Court.

I had the privilege to sit on the Judiciary Committee for her confirmation hearing, and I join all of my committee colleagues on both sides of the aisle who have complimented Chairman LEAHY for a very well-run hearing. I was proud to vote for Judge Sotomayor in the Judiciary Committee, and I will be proud to vote for her confirmation here on the Senate floor.

Judge Sotomayor's remarkable education and professional qualifications, her commitment to public service, her uncontroversial 17-year record on the Federal bench—longer than any nominee in 100 years—her responsiveness and patient judicial temperament at the hearing, all confirm to me her pledge that she will respect the role of Congress as representatives of the American people; that she will decide cases based on the law and the facts before her; that she will not prejudge any case but listen to every party that comes before her; and that she will respect precedent and limit herself to the issues that the Court must decide; in short, that she will use the broad discretion of a Supreme Court Justice wisely.

I applaud those of my colleagues who have acknowledged that Judge Sotomayor falls well within the mainstream of the American legal profession. At the same time, it is disappointing that so few Republican colleagues have been willing to recognize her clear qualifications for our highest Court. The nearly unanimous party-line opposition offered by Republicans in committee and here on the floor raises serious concerns whether some of my colleagues would ever be willing to vote for anyone outside of the Federalist Society. To my Republican colleagues in opposition, I ask: What Democratic nominee would you vote for, if not Judge Sotomayor, with her vast experience, her commitment to the rule of law, proven indisputably over 17 years, her remarkable credentials, and her extraordinary moving American life story?

Unfortunately, Judge Sotomayor seems to be walking proof that conservative political orthodoxy is now their confirmation test, masked as concerns about judicial activism. Many of my Republican colleagues unfairly ignore her long record to base criticisms on strained interpretations of a few routine and appropriate circuit court opinions and a few remarks taken out of context. Those criticisms feel, quite frankly, like the criticisms of someone who is determined to find fault with a nominee.

Take, for example, the New Haven firefighters case. The per curiam opinion in Ricci was based on controlling second circuit and Supreme Court precedent. The sixth circuit took the same approach in a similar case arising in Memphis. The role of a circuit court is to follow existing precedence of the Supreme Court and the circuit court. That is what the Ricci per curiam did. The Supreme Court may have reversed, but it did so 5 to 4 on the basis of an entirely new test it created. It is absurd to call Judge Sotomayor an activist for following existing precedent. If you want a judicially conservative opinion, the Ricci per curiam is just that.

The decision in Maloney was also properly conservative in a judicial sense. It approaches with caution a newly minted and narrowly enacted constitutional right whose extension to the States would upset generations of practice and experience by sovereign States regulating guns within their borders. A seventh circuit panel, with two very prominent conservative judges on it, correctly did exactly the same thing. A ninth circuit panel reached a different conclusion, and then that decision was vacated by the circuit to reconsider that case en banc.

Rather than engaging in a serious inquiry of Judge Sotomayor's fitness for the Supreme Court, many of my colleagues have made this nomination into a referendum on whether the newly minted right to bear arms should be incorporated against the States for the first time in our Nation's history. This is doubly unfair. First, Judge Sotomayor could not answer questions at her hearing that would suggest how she would rule in later cases. That is inappropriate. Second, it is inappropriate to try to force on a judge a particular political view as the price of admission to her judicial office.

Criticisms of a few stray lines in Judge Sotomayor's various speeches are equally perplexing. Judge Sotomayor's long and noncontroversial 17-year judicial record should allay any concerns about those remarks, but so should the context of those speeches themselves. The ''wise Latina'' comment we have heard so much about came in a speech that argued how important it is for judges to guard against bias and to be aware of their own prejudices. Is it not better and truer to admit that we all have prejudices we must manage than to pretend that White males form some sort of ideal cultural baseline that has no biases?

Senator SPECTER said it well at the committee vote. ''There is nothing wrong with a little ethnic pride and a desire to encourage her law student audience.'' Maybe we should try to put ourselves in their shoes. Perhaps, with a little empathy ourselves, it might be easier to understand how a profession and a judiciary dominated by White males might look to those young law students, and how important a little encouragement to them might be that their experiences might give them something valuable to contribute; that they are not the exception; that they are welcome and fully a part of our society, and that they bring something valuable not only to the profession but, one day, perhaps, even to the judiciary.

In sum, my Republican colleagues' criticisms of Judge Sotomayor appear to be grounded in conservative political idealogy rather than legitimate concern that Judge Sotomayor is not fit to serve on the Supreme Court, grounded in a desire for more of the rightwing Justices who in recent years have filled out a conservative wing on the Supreme Court. That wing has marched the Court deliberately to the right in the last few years, completely discrediting the Republican claim that judges are mere ''umpires.''

Jeffrey Toobin is a well-respected legal commentator, particularly focusing on the Supreme Court. He has recently reported:

> In every major case since he became the Nation's 17th Chief Justice, Roberts has sided with the prosecution over the defendant, the State over the condemned, the executive branch over the legislative, and the corporate defendant over the individual plaintiff. And is it a coincidence that this pattern has served the interests and reflected the values of the contemporary Republican Party?

Some coincidence. Some umpire.

The phrase ''liberal judicial activism'' is now conservative speak for any outcome the far right dislikes. They did not use it when the conservative block of the Court announced, by the barest of a 5-to-4 margin, an individual right to bear arms that had gone unnoticed by the Supreme Court for the first 220 years of its history. If that is not an activist decision, the term has no meaning. It is just activism that conforms with a deliberate Republican strategy of many years duration to pack onto America's courts proven conservative judges who will deliver the political goods they seek.

Setting aside all this politics, we should also never forget, never overlook the historic role that judges play in protecting the less powerful among us. We should always appreciate how a real-world understanding of the real-life impact of judicial decisions is a proper and necessary part of the process of judging.

Judge Sotomayor's wide experience, I hope, will bring her a sense of the difficult circumstances faced by the less powerful among us—the woman on the phone, shunted around the bank from voice mail to voice mail for hours as she tries to find someone to help her avoid foreclosure for her home; the family struggling to get by in the neighborhood where the police only come with raid jackets on; the couple up late at night at the kitchen table after the kids are in bed sweating out how to make ends meet that month; or the man who believes a little differently or looks a little different or thinks things should be different. If Justice Sotomayor's wide experience gives her empathy for those people so that she gives them a full and fair hearing and seeks to understand the real-world impact of her decisions on them, she will be doing nothing wrong—nothing wrong by the measure of history, nothing wrong by the measure of justice.

Experience, judgment, wise use of discretion, and a willingness to stand against oppression have always been the historic hallmarks of a great judge.

As to experience, Justice Oliver Wendell Holmes famously explained:

> The life of the law has not been logic: it has been experience. The felt necessities of the time the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

As to judgment, Justice John Paul Stevens has observed:

> [T]he work of federal judges from the days of John Marshall to the present, like the work of the English common-law judges, sometimes requires the exercise of judgment—a faculty that inevitably calls into play notions of justice, fairness, and concern about the future impact of a decision.

As to discretion, Justice Benjamin Cardozo wrote:

> The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant, roaming at

will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to ''the primordial necessity of order in the social life.'' Wide enough in all conscience is the field of discretion that remains.

And, as Alexander Hamilton explained in the Federalist Papers, courts were designed to be our guardians against ''those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people . . . and which . . . have a tendency . . . to occasion . . . serious oppressions of the minor party in the community.'' Those oppressions tend to fall on the poor and voiceless. But as Hamilton noted, ''[c]onsiderate men, of every description ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be tomorrow the victim of a spirit of injustice, by which he may be a gainer to-day.'' We should not discard the wisdom of centuries.

Experience, judgment, discretion, and protection from oppression—the standard for judges of Hamilton, Holmes, Cardozo, and Stevens. History stands with them. And thoughtful people will note that empathy is a common thread through each of these characteristics.

Why might empathy matter? When might it make a difference? Take, for example, the history of the Colfax massacre.

Go back to Sunday, April 13, 1873 when a gang of White men murdered more than 60 Black freedmen in Colfax, LA. Some were burned in a courthouse where they had taken refuge; others were shot as they fled the burning courthouse; others were taken prisoner and then executed. U.S. Attorney James Roswell Beckwith determined to prosecute white citizens involved in the Colfax Massacre—not a popular call in those days. The case was tried before a U.S. District Judge William B. Woods, who determined that rule of law should prevail in his district. Predictably, polite White society was outraged. It took notable human empathy in that place and time to see the massacre of the Black freedmen as a crime, and to contemplate trying White men for the murder of Black men. The case was brought as one of the first applications of the Federal Enforcement Act, implementing the Constitution's new 14th amendment, so there was wide room for judicial discretion in that uncharted area of law—no ''balls and strikes'' here. District Judge Woods assured a fair trial, but he also was prepared to honor Congress's desire that outrages upon the Black community should be punished as crime. He had sufficient empathy with the widows and children of the slain freedmen to take seriously their need for vindication, and he had sufficient courage to face the scorn and anger of the White community.

Another judge was involved, U.S. Supreme Court Justice Joseph P. Bradley, who under the procedural rules of the time ''rode circuit'' for Louisiana, and could sit in on trials. And sit in he did. He had no sympathy for the former slaves, and little regard for Congress's intent to punish the abuse of freedmen. Disagreeing from the trial court bench with Judge Woods, Justice Bradley found repeated technical faults with the indictments, took a restricted view of the authorities of the 14th amendment, dismissed the charges, and released the defendants to flee, on low bail, pending an appeal.

The U.S. Supreme Court upheld its colleague Bradley's opinions, thereby gutting the 14th amendment and the Enforcement Act for a generation, and a wave of murder and violence by Klansmen and White League members, emboldened by de facto immunity from prosecution, swept the South. Reconstruction was vitiated in those weeks. Justice, for the murder of a Black man by a White, departed the South for nearly a century.

History and the law ultimately proved district Judge Woods correct, but how much turned on the character of two judges: one who had the empathy to see Black men as victims of crime, and the courage to outrage White opinion by allowing the trial of White community leaders, before a mixed jury no less; the other a judge who valued the status quo, and recoiled from any shock to proper White opinion and authority; indeed, who was the reflection of that proper opinion.

That is what we mean by empathy, and while the divisions in our society are less today, there are still people who feel voiceless, whose voices a judge must be attuned to hear; there are still Americans who come to court bearing disadvantages that have nothing to do with the merits of their case. Empathy to look through those disadvantages to see the real merits of the case, even when it is unpopular or offends the power structure is the hallmark of a great judge. The words of Hamilton, Holmes, Stevens, and Cardozo I have quoted display it as history; the contrasting approaches of the two judges after the Colfax massacre display it as justice.

My Republican colleagues' misunderstanding of judicial history has led to a missed opportunity for bipartisan support of a highly qualified and moderate judge who falls well within the mainstream of American legal thought. We could be celebrating the first Latina justice of the Supreme Court as a great American achievement. Instead we are having to defend basic principles of American history from assault from the right. I hope that, as the future looks back on this day, it will be the historic nature of this nomination that will be remembered, not the strange and strained efforts to impose right-wing political orthodoxy on the courts that defend our constitutional rights.

I look forward to Judge Sotomayor's service as an excellent Supreme Court Justice. I will vote proudly for her confirmation.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter of support of Justice Sotomayor from New York City's mayor, Michael Bloomberg.

I also ask to have printed in the RECORD a letter of support for Judge Sotomayor from former FBI Director Louis Freeh.

I yield the floor.

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

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, NY. July 7, 2009.

Hon. PATRICK J. LEAHY,
Chairman, Judiciary Committee, U.S. Senate
Washington, DC.
Hon. JEFF SESSIONS,
Ranking Member, Judiciary Committee,
U.S. Senate,
Washington, DC.

DEAR CHAIRMAN LEAHY AND SENATOR SESSIONS: As Mayor of the largest city in the country and the place where Judge Sonia Sotomayor has spent her career, I strongly support President Barack Obama's nomination of Judge Sotomayor to serve as an Associate Justice of the United States Supreme Court.

One of my responsibilities as Mayor is to appoint judges to New York's Family and Criminal Courts, which gives me the opportunity to assess the qualifications of many judicial candidates. Over the past seven and half years, I have interviewed candidates for more than 40 judicial seats and have, like you, developed a strong sense of the qualities that will strengthen our justice system. Based on this experience, I have great confidence that Judge Sotomayor's rulings demonstrate her knowledge of the law, objectivity, fairness, and impartiality, which are essential qualities for any judge. Just as important, she possesses the character, temperament, intelligence, integrity, and independence to serve on the nation's highest court, and her well-respected record of interpreting the law and applying it to today's world is perhaps the best indication of her exceptional ability as a judge.

Judge Sotomayor's impressive 30-year career has given her experience in nearly all areas of the law. As an Assistant District Attorney in Manhattan, she earned a reputation as an effective prosecutor. As a Judge in the Southern District of New York, she established a record that amply supported her appointment to the Second Circuit And in her current role as a Judge in the U.S. Court of Appeals for the Second Circuit, she is admired for her knowledge and understanding of legal doctrine, having taken part in over 3,000 panel decisions and authored close to 400 opinions. In each role, she has served the public with integrity and diligence.

Judge Sonia Sotomayor is an outstanding choice for the United States Supreme Court, and I stand firmly behind her candidacy.

Sincerely,

MICHAEL R. BLOOMBERG,
Mayor.

FREEH SPORKIN & SULLIVAN, LLP,
July 9, 2009.

Hon. PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, Washington, DC.

Hon. JEFF SESSIONS,
Ranking Member, U.S. Senate Judiciary Committee, Washington, DC.

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

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

A few weeks of ''New Judges School'' sponsored by the Administrative Office of the Courts does not in any meaningful way begin to prepare a new District Judge for the unrelenting rigor of conferences, motions, hearings, applications, trials and other miscellaneous duties—including appeals from the Bankruptcy Court—which instantly construct what often appears to be an overwhelming schedule for a new judge. To make matters more challenging, when I was a new judge the Court followed the tradition of allowing the active judges to select a fixed number of their pending cases for reassignment to the new arrival.

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

As I spent a lot of time reading her opinions, observing her in the courtroom conducting the busy, daily docket of a trial judge, and discussing her cases and complex legal issues, I was greatly impressed with how quickly she mastered and employed the critical skills of her new position.

To me, there is no better measure by which to evaluate a judge than the standards of the former Chief Judge of the U.S. District Court of Minnesota and nationally renowned American jurist, Edward J. Devitt. A former Member of Congress and World War II Navy hero, Judge Devitt was appointed to the federal bench by President Eisenhower and became one of the country's leading trial judges and teacher of judges. A standard Jury Instruction textbook (Devitt and Blackmun) as well as the profession's most coveted award recognizing outstanding judges, the Devitt Award, bears his name.

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

Teaching hundreds of new American judges over several decades, Judge Devitt liked to use a ''nutshell version'' for emphasis and because he always got right to the heart of things. So he offered three rules:

I. ''Judging takes more than mere intelligence;

2. Always take the bench prepared. Listen well to all sides, stay open as you are listening and recognize any pre-conceptions that you may bring to the matter. Then, make a decision and never look back;

3. Call them as you see them.''

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

A great part of Judge Devitt's legacy is his famous ''Ten Commandments to Guide the New Federal Judge,'' which he gave me, and which I passed on to Judge Sotomayor:

1. ''Be Kind;
2. Be Patient;
3. Be Dignified;
4. Don't Take Yourself Too Seriously;
5. Remember That a Lazy Judge Is a Poor One;
6. Don't Be Dismayed When Reversed;
7. Remember There Are No Unimportant Cases;
8. Don't Impose Long Sentences;
9. Don't Forget Your Common Sense; and
10. Pray For Divine Guidance.''

In my brief role as Judge Sotomayor's ''second seat'' on the Southern District trial bench, I probably spent more time with her in those first months than any other member of our great Court. And I was delighted to observe and conclude that she exhibited all the desired characteristics that Judge Devitt prescribed for his ''students.''

Since 1992 I have followed Judge Sotomayor's career on the bench both as a trial judge and later as a member of our Second Circuit Court of Appeals. Along with my former colleague judges and lawyers, we have seen her grow and mature into a truly outstanding judge, who embodies all of Judge Devitts's wise counsel and the most prized characteristics of judicial courage, integrity, intelligence and fair adjudication of the Rule of Law.

Judge Sotomayor's early demonstration of judicial restraint, appropriate deference to the other two Branches of government and her fidelity to upholding the rule of law can perhaps best be seen in a 1998 case. Sitting as a District Judge, she carefully heard a minimum wage lawsuit and, in recognition of the limits of judicial power, she relied on the statutory text and precedent to reach her decision: ''The question of whether such a program should be exempted from the minimum wage laws is a policy decision either Congress or the Executive Branch should make.''

Judge Sotomayor will bring great legal as well as judicial experience to the Supreme Court and will serve there with distinction in the fine tradition of Judge Devitt. As the only ''trial judge'' on the current Court, she will import an immense wealth of experience which comes uniquely from judges who preside over cases with witnesses, juries, real time procedural and evidence rulings and the challenging (and unpredictable) dynamics of a trial courtroom. It will also be a very valuable asset for the Court to have a former criminal prosecutor (it has only one now) who was widely respected by judges, defense attorneys and law enforcement officers.

Most importantly, Judge Sotomayor will continue to exemplify the ''Devitt Rules'' we want all our judges to follow, and the courage, integrity and experience required to protect the Rule of Law. The efforts by some to discredit the Judge are far afield from the eminent jurist whom I know, and I hope that no Senator will be misled or motivated by partisan rancor to vote against someone who so fully fits the measure of what we should want in a Supreme Court justice. I hope you will consider her nomination expeditiously so she is confirmed and prepared to participate in the Court's first session on September 9, 2009.

Sincerely,

LOUIS J. FREEH.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I enjoyed my colleague's remarks. I don't agree with him, but he is certainly a great colleague and we appreciate him.

Mr. President, I rise today to explain why I cannot support the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. I do so with regret because the prospect of a woman of Puerto Rican heritage serving on the Supreme Court says a lot about America. Judge Sotomayor has achieved academic and professional success, and I applaud her public service. But in the end, her record creates too many conflicts with fundamental principles about the judiciary in which I deeply believe.

It did not have to be this way. President Obama could have taken a very positive step for our country by choosing a Hispanic nominee whom all Senators could support. President Obama could have done so and I regret that he did not.

I commend the distinguished chairman and ranking member of the Judiciary Committee, Senators LEAHY and SESSIONS, for conducting a fair and thorough confirmation hearing. Judge Sotomayor herself said that the hearing was as gracious and fair as she could have asked for.

I evaluate judicial nominees by focusing on qualifications, which include not only legal experience but, more importantly, judicial philosophy. Judge Sotomayor's approach to judging is more important to me than her resume. I ask unanimous consent to have printed in the RECORD following my remarks an article that I published earlier this year in the Harvard Journal of Law & Public Policy. It is titled ''The Constitution as the Playbook for Judicial Selection'' and explains more fully the principles I will mention here.

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

(See Exhibit 1)

Mr. HATCH. President Obama has described the kind of judge he intends to appoint. As a Senator, he said that judges decide cases based on their ''deepest values . . . core concerns . . . broader perspectives . . . and the depth and breadth of [their] empathy.'' As a presidential candidate, he pledged to

appoint judges who indeed have empathy for certain groups. And as President, he has said that a judge's personal empathy is an essential ingredient in judicial decisions.

This standard is seriously out of sync with mainstream America. By more than 3 to 1 Americans believe that judges should decide cases based on the law as written, rather than on their own sense of fairness or justice. The American people reject President Obama's standard for the kind of judge we need on the Federal bench.

At the Judiciary Committee hearing, Judge Sotomayor said that her judicial philosophy is simply fidelity to the law. While some of my Democratic committee colleagues said that they wanted to avoid slogans, codewords, and euphemistic phrases, they apparently accepted this one at face value. Unfortunately, it begs rather than answers the important questions.

Some Senators on the other side of the aisle try to confine concerns about Judge Sotomayor's record to a single case and a single phrase. That political spin, I will admit, makes for a quotable sound-bite. But even a casual observer of this process knows that this political spin is simply not true.

Ironically, those who would narrowly characterize the case against confirmation want us to confine our examination of Judge Sotomayor's record only to her cases while ignoring her speeches and articles. A partial review, however, cannot provide a complete picture. Appeals court decisions that are bound by Supreme Court precedent are not the same as Supreme Court decisions freed from such constraints. Taking Judge Sotomayor's entire record seriously not only gives us more of the information we need, but also gives her the respect she deserves.

Debates over judicial nominations are debates over judicial power, and America's founders gave us solid guidance about the proper role of judges in our system of government. Judges interpret and apply written law to decide cases. While judges cannot change the words of our laws, they can still control statutes and the Constitution by controlling the meaning of those words. That would result in the rule of judges, not the rule of law. To borrow Judge Sotomayor's phrase, judges would not have fidelity to the law, but fidelity to themselves.

In September 2001, Judge Sotomayor introduced Justice Antonin Scalia when he spoke at Hofstra Law School. She repeated a legend about Justice Oliver Wendell Holmes and Judge Learned Hand. Like Judge Sotomayor, Judge Hand served on both the Southern District of New York and the Second Circuit. As they departed after having lunch, Judge Hand called out: Do justice, sir, do justice. Justice Holmes replied: That is not my job, my job is to apply the law.

Is it a judge's role to do justice or to apply the law? President Obama says that a judge's personal empathy is an essential ingredient for doing justice. At the hearing on Judge Sotomayor's nomination, one of my Democratic colleagues invoked what he called ''America's common law inheritance'' to describe Federal judges with broad discretion to decide cases based on their personal notions of justice or fairness.

That may be the judiciary some of my colleagues would prefer, but it is not the judiciary America's Founders gave us. Federal judges are not common-law judges. They may not decide cases based on subjective feelings they find inside themselves, but only on objective law they find outside themselves. Thankfully, the American people overwhelmingly say today what America's Founders said, that judges must follow the law rather than their personal empathy to decide cases.

The question is which kind of Supreme Court Justice Sonia Sotomayor will be. In one speech that she gave several times over nearly a decade while she was on the bench, she spoke directly about how judges should approach deciding cases. In this speech, she said that factors such as race and gender affect how judges decide cases and, as she put it, ''the facts I choose to see.'' She embraced the notion that there is no objectivity or neutrality in judging, and that impartiality is merely an aspiration which judges probably cannot achieve, and perhaps should not even attempt. She said that judges must decide when their personal sympathies and prejudices are appropriate in deciding cases.

Judge Sotomayor and her advocates have tried unsuccessfully to blunt this speech's more controversial edges. Their claim that she used the speech solely to inspire young lawyers or law students, even if true, is irrelevant because the speech is controversial for its content, not its audience.

My concern only grew after discussing this speech with Judge Sotomayor during the hearing. Rather than adequately defend or disavow these views, she presented a different, and contradictory, picture. I am not the only one who noticed. The Washington Post editorialized that Judge Sotomayor's attempts to explain away or distance herself from past statements ''were unconvincing and at times uncomfortably close to disingenuous, especially when she argued that her reason for raising questions about gender or race was to warn against injecting personal biases into the judicial process. Her repeated and lengthy speeches on the matter do not support that interpretation.''

In another speech just a few months ago, Judge Sotomayor addressed whether judges may use foreign law to interpret and apply American law in deciding cases. The distinguished ranking member of the committee mentioned this as well. She said that foreign law ''will be very important in the discussion of how we think about the unsettled issues in our own legal system.'' She endorsed the idea that judges may, as they interpret American law, consider anything, from any source, that they find persuasive.

Once again, Senators discussed this issue with Judge Sotomayor at her hearing. And once again, she neither defended nor disavowed these controversial statements but presented a different, contradictory picture. In her speech, she hoped that judges would continue to consult what others have said, including foreign law, to ''interpret our law in the best way we can.'' But in the hearing, she said that ''I will not use foreign law, to interpret the Constitution or American statutes.'' In her speech, she said that judges may use ideas from any source that they find persuasive. But in the hearing, she said that foreign law cannot be used to influence a legal decision. These different versions are clearly at odds with each other.

Judge Sotomayor took a different tack in answering post-hearing questions. She said that decisions of foreign courts may not serve as ''binding or controlling precedent'' in deciding cases. The issue, however, is not whether a decision by the Supreme Court of France literally binds the Supreme Court of the United States. Of course it does not. The issue is whether that foreign decision may influence our Supreme Court in determining what our statutes and the Constitution mean. And in her answers to post-hearing questions, Judge Sotomayor once again said that decisions of foreign courts can indeed be ''a source of ideas informing our understanding of our own constitutional rights.''

In these speeches, Judge Sotomayor described how such things as race, gender, life experience, personal sympathies, or prejudices affect judges and their decisions. That is certainly possible. But I waited for her to say that judges have an obligation to eliminate the influence of these factors. I wanted her to say that because these things undermine a judge's impartiality, judges must be vigilant to prevent their influence. That would have given me more solace about what Judge Sotomayor's phrase, fidelity to the law, really means. But she never said it. Instead, she endorsed the notion that judges may look either inside themselves to their empathy, or outside to foreign law, for ideas and notions to guide their decisions.

Turning to her cases, the Supreme Court has disagreed with Judge Sotomayor in nine of the ten cases it has reviewed, three of them in the most recent Supreme Court term alone. That is nine of her ten cases they reviewed. And these were not close decisions, either. The total vote in the cases reversing Judge Sotomayor was a lopsided 52–19.

In one case, Judge Sotomayor had held that the Environmental Protection Agency could not consider cost-benefit analysis when adopting a regulation. The Supreme Court reversed

her, citing its own precedents extending back more than 30 years and holding that the EPA's use of cost-benefit analysis was well within the bounds of its statutory authority.

In another case, Judge Sotomayor had reopened part of a bankruptcy proceeding that had closed more than 20 years ago to resurrect a tort suit. Justice Souter, whom Judge Sotomayor would replace, wrote the opinion for the Supreme Court's 7–2 decision reversing her.

In another case, Judge Sotomayor declared unconstitutional a State law providing for political party election of judges because she felt the law did not give people what she called a ''fair shot.'' The Supreme Court unanimously reversed her, saying that traditional electoral practice ''gives no hint of even the existence, much less the content,'' of the fair-shot standard Judge Sotomayor had invented.

In one case, the Supreme Court affirmed Judge Sotomayor's result but rejected her reasoning because her reading of the relevant statute ''flies in the face of the statutory language.''

And in the one case where the Supreme Court affirmed both Judge Sotomayor's result and reasoning, it did so by the slimmest 5–4 margin. This is a very shaky record on appeal.

The Ricci v. DeStefano case, which has been mentioned quite a lot around here, is one of the cases in which the Supreme Court reversed Judge Sotomayor. The Court reversed her result by a 5–4 vote but unanimously rejected her reasoning. In this case, Judge Sotomayor affirmed the city of New Haven's decision to throw out the results of a fairly designed and administered firefighter promotion exam because too few racial minorities passed it.

This case presents troubling questions of both process and substance. Judge Sotomayor initially used a summary order that did not have to be circulated to the full Second Circuit. That bothered me a great deal, because judges know when they issue a summary order, the rest of the judges are not going to see it. She then converted it to a per curiam opinion that is permissible only when the law is entirely settled. The summary order and the per curiam opinion were each a mere single paragraph and neither appears to be an appropriate vehicle for deciding this challenging case.

On the merits, Title VII of the 1964 Civil Rights Act prohibits two kinds of discrimination. It prohibits disparate treatment, which is intentional, and disparate impact, which may be unintentional. Disparate treatment focuses on the motivation of an employment decision, while disparate impact focuses on its effect. While discrimination cases typically involve one or the other, the Ricci case involved both. In this case, the city claimed it had to engage in disparate treatment of those who passed the promotion exam because it feared a disparate impact lawsuit by those who failed the exam.

I point out that this case involved both disparate treatment and disparate impact because Judge Sotomayor and her advocates claim that her decision was based squarely on settled and longstanding Second Circuit and Supreme Court precedent. We have heard some of that here on the floor tonight. Contrary to her statement to me at the hearing, however, her one-paragraph opinion cited no precedent at all. The only case she cited was the district court opinion in that very case. But the district court actually acknowledged that this case was the opposite of the norm. Rather than those failing an employment test challenging the use of the results, in this case those who passed the test challenged the refusal to use the results. None of the precedents cited by the district court involved this kind of case.

For this reason, six of Judge Sotomayor's Second Circuit colleagues believed that the full circuit should have reviewed her decision, arguing that the case raised important questions of first impression in the Second Circuit and the entire Nation. When it reversed Judge Sotomayor, the Supreme Court similarly observed that there were few, if any, precedents in any court even discussing the issue in this case.

In a column published today in National Journal, the respected legal analyst Stuart Taylor carefully analyzed whether Judge Sotomayor's decision in Ricci was indeed compelled by precedent. We have all read Stuart Taylor over the years. He is one of the most prescient commentators and journalists with regard to the law. He concludes: ''The bottom line is that Circuit precedents did not make Sotomayor rule as she did. Supreme Court precedent favored the firefighters. Sotomayor's ruling was her own.'' I ask unanimous consent that Mr. Taylor's column appear in the RECORD following my remarks.

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

(See Exhibit 2.)

Mr. HATCH. In addition to claiming that her decision in Ricci was grounded in either Second Circuit or Supreme Court precedent, Judge Sotomayor offered at the hearing that the Sixth Circuit had addressed a similar issue in the same way. I can only assume she did so to imply that if the Sixth Circuit independently came to the same conclusion in a parallel case, then it would be difficult to say that Judge Sotomayor's decision in Ricci is controversial.

I would first note that in Oakley v. City of Memphis, the Sixth Circuit actually analyzed the case, applied the law to the facts, and issued a real opinion. I wish Judge Sotomayor had done that in her case. But more importantly, Judge Sotomayor failed to mention that the Sixth Circuit case was issued 3 months after hers and, in fact, relied upon her decision as persuasive authority. That is no evidence that her decision was procedurally or substantively sound.

Neither are her decisions on the Second Amendment right to keep and bear arms. Last year, in District of Columbia v. Heller, the Supreme Court clearly identified the proper analysis for deciding whether the Second Amendment binds States as well as the Federal Government. Several months later, Judge Sotomayor ignored that directive and clung to her previous insistence, following a different analysis the Supreme Court had discarded, that the right to bear arms does not apply to the States. She also held that the right to bear arms is so insignificant that virtually any conceivable reason is sufficient to justify a weapons restriction.

When I asked her about these decisions at the hearing, she refused to acknowledge that the Supreme Court's so-called rational basis test is its most permissive legal standard. Yet this is practically a self-evident truth in the law, one that Judge Sotomayor herself cited and applied just last fall to uphold a weapons restriction in Maloney v. Cuomo.

She likewise gave short shrift to the fundamental right to private property. In Didden v. Village of Port Chester, Judge Sotomayor affirmed dismissal of a property owner's lawsuit after the village condemned his property and gave it to a developer. The Supreme Court, incorrectly in my view, had previously held in Kelo v. City of New London that economic development can constitute the public use for which the Fifth Amendment allows the taking of private property. In Didden, however, the village had only announced a general plan for economic development. No taking of anyone's property had occurred. Mr. Didden sued only after the village actually took his property.

In yet another cursory opinion that for some reason took more than a year to produce, Judge Sotomayor denied Mr. Didden even a chance to argue his case. She said that the 3-year period for filing suit began not when the village actually took his property, but when the village earlier had merely announced its general development plan. In other words, Mr. Didden should have sued over the taking of his property before his property had been taken. But had he done so then, he would certainly have been denied his day in court because his legal rights had not yet been violated. This catch-22 amounts to a case of dismissed if he did, and dismissed if he did not. Once again, Judge Sotomayor gave inadequate protection to a fundamental constitutional right.

In another effort to blunt the impact of such controversial decisions, Judge Sotomayor's supporters attempt to portray her as moderate by observing that on the Second Circuit, she agreed with Republican-appointed colleagues 95 percent of the time. On the one hand, this is one of several misguided attempts to defend her by suggesting that a calculator is all it takes properly to evaluate a judicial record. On

the other hand, however, this claim comes from the same Democratic Senators who voted against Justice Samuel Alito just a few years ago. On the Third Circuit, he had agreed with his Democratic-appointed colleagues 99 percent of the time over a much longer tenure. It shows how specious some of the arguments are.

Let me return to where I began. I believe that Judge Sotomayor is a good person. I respect her achievements and applaud her service to her community, the judiciary, and the country. While appointment of the first Puerto Rican Justice says a lot about America, however, I believe that appointing a Justice with her judicial philosophy says the wrong thing about the power and role of judges in our system of government.

A nominee's approach to judging is more important than her resume, especially on the Supreme Court where Justices operate with the fewest constraints. Judge Sotomayor has expressed particular admiration for Justice Benjamin Cardozo. His book on the judicial process contains a chapter titled ''The Judge as a Legislator'' in which he compares judges to legislators who decide difficult cases on the basis of personal reflections and life considerations. That sounds very much like President Obama's appointment standard and Judge Sotomayor's expressed judicial philosophy. I believe it is inconsistent with the limited role that America's founders prescribed for judges in our system of government.

My colleagues know that I take a generous approach to the confirmation process and I believe some deference to the President of the United States and his choice is appropriate. I have rarely voted against any judicial nominee and took very seriously the question of whether to do so now. To that end, I studied her speeches, articles, and cases. I spoke with experts and advocates from different perspectives. I participated in all three question rounds during the Judiciary Committee hearing.

But in the end, neither general deference to the President nor a specific desire to support a Hispanic nominee could overcome the serious conflicts between Judge Sotomayor's record and the principles about the judiciary and liberty in which I deeply believe.

I was the one who started the Republican Senatorial Hispanic Task Force and ran it for many years, bringing Democrats, Independents, and Republicans together in the best interest of the Hispanic community to try to give them more of a voice. I feel pretty deeply about Hispanic people, as I do all people.

I just want everybody to know that this took a lot of consideration on my part to come to the conclusion I have. I wish President Obama had taken a different course, but this is the decision I have to make in this case. As I say, I like Judge Sotomayor. I particularly like her life story and her wonderful family. I did not want to vote against her but I think I have explained here some of the serious concerns I have.

EXHIBIT 1

THE CONSTITUTION AS THE PLAYBOOK FOR JUDICIAL SELECTION

Orrin G. Hatch*

The Federalist Society plays an indispensable role in educating our fellow citizens about the principles of liberty, a task that is both critical and challenging. It is critical because, as James Madison put it, ''a well-instructed people alone can be permanently a free people.''[1] The ordered liberty we enjoy is neither self-generating nor self-sustaining, but is based on certain principles that require certain conditions. Knowledge and defense of those principles and conditions will be the difference between keeping and losing our liberty.

This educational challenge, however, has perhaps never been more daunting. We live in a culture in which words mean anything to anyone, celebrities substitute for statesmen, and people are no longer well instructed. Forty-two percent of Americans do not know the number of branches in the federal government, and more than sixty percent cannot name all three[2] Four times as many Americans say that a detailed knowledge of the Constitution is absolutely necessary as say they actually have such knowledge.[3] Twenty-one percent of Americans believe the First Amendment protects the right to own a pet.[4]

A few factors contribute to this state of affairs. Most people get their information about the legal system only from television. Unless people sue each other or commit crimes—habits we really should not encourage—they will likely have no firsthand knowledge or experience to draw from. Furthermore, people hold lawyers in low esteem. If you plug the term ''lawyer joke'' into Yahoo, it returns a whopping 25.7 million hits, a number on the rise almost as fast as the national debt. The problem with lawyer jokes is that most lawyers do not think they are funny and most other people do not think they are jokes. This low view of lawyers means people have little motivation to learn more about what lawyers and judges really do.

The media do not help this state of affairs. The Harvard Journal of Law & Public Policy recently published an excellent article by Michigan Supreme Court Justice Stephen Markman,[5] who served as my chief counsel when I chaired the Senate Judiciary Subcommittee on the Constitution in the early 1980s. He describes how the media's penchant for focusing on winners and losers significantly shapes and distorts how people understand what judges actually do, often for the worse.[6]

Nonetheless, the timing of this Essay is auspicious in several respects. First, I write in the wake of two very relevant Federalist Society student symposia, last year's about the people and the courts[7] and this year's about the separation of powers.[8] Second, President Obama has been particularly clear from the time he was a candidate about his intention to appoint judges who will exercise a strikingly political version of judicial power.[9] Third, he has already started acting on that intention by making his first judicial nominations.[10] New Presidents typically make their first judicial nominations in July or even August, yet the Senate Judiciary Committee has already held a hearing on the President's first nominee to the U.S. Court of Appeals, and the President sent two more nominees to the Senate just a few days ago.

Mark Twain popularized the notion that there are three kinds of lies: lies, damned lies, and statistics.[11] I prefer Senator Daniel Patrick Moynihan's comment that you may be entitled to your own opinion, but not your own set of facts.[12] Either way, I will statistically describe two macro and two micro factors of the judicial confirmation process to show its recent transformation before turning to how it should be conducted going forward.

The two macro factors are hearings and confirmations. The Judiciary Committee held hearings for fewer judicial nominees during the 110th Congress than any Congress since before I entered the Senate. This lack of hearings is not the result of the Judiciary Committee's inability to multitask. Instead, it is the result of a political choice, one that has been reversed since the last election. The Judiciary Committee has already held a hearing on President Obama's first appeals court nominee, just two weeks after that nominee arrived in the Senate.[13] Under a Republican President, Judiciary Committee Chairman Patrick Leahy waited an average of 197 days to give an appeals court nominee a hearing.[14] The last election amounted to the political equivalent of Drano, as the confirmation pipes are now wonderfully unobstructed and flowing freely once again.

Some might assume that Republicans demonstrate such strong partisan preference, but they would be wrong. Since I was first elected, Democrats running the Senate have granted hearings to forty-one percent more Democratic than Republican judicial nominees. When Republicans run the Senate, the partisan differential is less than five percent.

Moving from the Judiciary Committee to the Senate floor, the second macro factor is confirmations. In the last eight years, President Bush had the slowest pace of judicial confirmations of any President since Gerald Ford. Last year, the Senate confirmed fewer judicial nominees than in any President's final year since 1968, the end of the Johnson Administration. By comparison, when I chaired the Judiciary Committee during President Clinton's last year in office, the Senate confirmed twice as many appeals court nominees as it did last year.

As with hearings, the picture is not the same when Republicans are in charge. When Democrats run the Senate, they confirm forty-five percent more Democratic than Republican judicial nominees. When Republicans run the Senate, the differential is only nine percent.

At the ground level, the two micro factors in the confirmation process are votes and filibusters. The Senate has traditionally confirmed most unopposed lower court nominees by unanimous consent rather than by time-consuming roll call votes. From 1950 to 2000 the Senate confirmed only 3.2 percent of all district and appeals court nominees by roll call vote. During the Bush presidency, that figure jumped to nearly sixty percent. The percentage of roll calls without a single negative vote nearly tripled. And under President Bush, for the first time in American history, the filibuster was used to defeat majority-supported judicial nominees.[15] With all due respect to Mark Twain, I think these numbers accurately give you at least a taste for the partisan division and conflict that now characterize the judicial confirmation process. It has become, to edit Thomas Hobbes just a bit, quite nasty and brutish.

Turning from what has been to what should be, I believe we can get on a better path by, as Madison emphasized in The Federalist No. 39, ''recurring to principles.''[16] The judicial selection process has changed because ideas about judicial power have changed. My basic thesis is this: Our written Constitution and its separation of powers define both judicial power and judicial selection. They define the judicial philosophy

that is a necessary qualification for judicial service, and they counsel that the Senate defer to the President when he nominates qualified individuals.

Consider a judicial nomination as a hiring process based on a job description. The job description of a judge is to interpret and apply law to decide cases. This job description does not mean whatever a President, political party, or Senate majority wants it to mean. Our written Constitution and its separation of powers set the judicial job description. Interpreting written law must be different than making written law. Because law written in statutes or the Constitution is not simply words, but really the meaning of the words, only those with authority to make law may determine what the words of our laws say and what those words mean. Judges do not have authority to make law, so they do not have authority to choose what the words of our laws say or what they mean. In other words, judges apply the law to decide cases, but they may not make the law they apply. Judges and the law they use to decide cases are two different things. Judging, therefore, is about a process that legitimates results, a process by which the law made by the people and those they elect determines winners and losers.

The Constitution and its separation of powers compel this judicial job description. This kind of judge is consistent with limited government and the ordered liberty it makes possible. Justice Markman's article describes what he calls a ''traditional jurisprudence—one that views the responsibility of the courts to say what the law 'is' rather than what it 'ought' to be.''[17] Such a philosophy of judicial restraint—an understanding of the limited power and role of judges—is a qualification for judicial service. This is the kind of judge a President should nominate.

Our written Constitution and its separation of powers also define how the confirmation stage of the judicial selection process should operate. The Constitution gives the power to nominate and appoint judges to the President, not to the Senate. The best way to understand the Senate's role is that the Senate advises the President whether to appoint his nominees by giving or withholding its consent. I explored this role in more detail in the Utah Law Review a few years ago in the context of showing that the use of the filibuster to defeat majority-supported judicial nominees is inconsistent with the separation of powers.[18] One basis on which the Senate may legitimately withhold its consent to a judicial nominee, however, is that the nominee is not qualified for judicial service. Qualifications include more than information on a nominee's resume. And with all due respect to the American Bar Association, their rating does not a qualification determine. Instead, qualifications for judicial service include whether a nominee's judicial philosophy—his understanding of a judge's power and role—is in sync with our written Constitution and its separation of powers.

Judges, after all, take an oath to support and defend the Constitution of the United States. To be qualified for judicial service, a nominee must believe there is such a thing, that the supreme law of the land is not simply in the eye of the judicial beholder, and that judges need something more than a legal education, a personal opinion, and an imagination to interpret it.

I propose looking to the basic principles of our written Constitution and its separation of powers to guide the judicial selection process. For the President, those principles require nominees with a restrained judicial philosophy. For the Senate, they require deference to a President's qualified nominees. Senators, of course, must decide how to balance qualifications and deference. Our written Constitution and its separation of powers, however, provide normative guidance for the judicial selection process. Presidents and Senators will have to decide, and be accountable for, how they use or reject that guidance.

No matter how philosophically sound this proposal may be—and I believe it is philosophically rock solid—it may nevertheless be politically controversial. We have traveled a long way from Alexander Hamilton describing the judiciary as the weakest and least dangerous branch.[19] We have traveled a long way from the Supreme Court saying in 1795 that the Constitution is ''certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it.''[20] We have traveled a long way from the Senate Judiciary Committee saying in 1872 that giving the Constitution a meaning different from what the people provided when adopting it would be unconstitutional.[21]

For a long time now, we have instead labored under Chief Justice Charles Evans Hughes's notion that the Constitution is whatever judges say it is.[22] It has become fashionable to suppose that the only law judges may not make is law we do not like. Legal commentator Stuart Taylor correctly observes that ''[l]ike a great, ever-spreading blob, judicial power has insinuated itself into every nook and cranny.''[23] One of my predecessors as Senator from Utah who later served on the Supreme Court, George Sutherland, described the transformation in 1937 as it was literally under way. He warned that abandoning the separation of powers by ignoring the distinction between interpreting and amending the Constitution would convert ''what was intended as inescapable and enduring mandates into mere moral reflections.''[24] Less than two decades later, Justice Robert Jackson described what he saw as a widely held belief that the Supreme Court decides cases based on personal impressions rather than impersonal rules of law.[25]

Judicial power and judicial selection are inextricably linked. Sometimes the Senate can appear to produce a lot of activity but take very little action. To some, that means the Senate is the world's greatest deliberative body. To others, it means that it produces a lot of sound and fury signifying nothing. But I hope that the debate over President Obama's judicial nominees will really be a debate over the kind of judge our liberty requires. The debate should be about whether judges should decide cases by using enduring mandates and impersonal rules of law or by using their own moral reflections and personal impressions.

President Obama has already taken sides in this debate. When he was a Senator, he voted against the nomination of John Roberts to be Chief Justice, stating that judges decide cases based on their deepest values, their core concerns, and the content of their hearts.[26] On the campaign trail, he pledged that he would select judges according to their empathy for certain groups such as the poor, African Americans, gays, the disabled, or the elderly.[27] The real debate is about whether judges may decide cases based on empathy at all, not the groups for which they have empathy. It is about whether judges may make law at all, not about what law judges should make. Conservatives as well as liberals often evaluate judges and judicial decisions by their political results rather than by their judicial process. But a principle is just politics unless it applies across the board. Professor Steven Calabresi, one of the Federalist Society's founders, wrote last fall that ''[n]othing less than the very idea of liberty and the rule of law are at stake in this election.''[28] He was right, and they remain at stake in the ongoing selection of federal judges.

Judges have no authority to change the law, regardless of whether they change it in a way I like. I am distinguishing here between judicial philosophy, which relates to process, and political ideology, which relates to results. Senators often reveal their view of judicial power when participating in judicial selection, proving once again that the two are inextricably linked. During the debate over Chief Justice Roberts's nomination, for example, one of my Democratic colleagues wanted to know whether the nominee would stand with families or with special interests. She said the American people were entitled to know how he would decide legal questions even before he had considered them.[29] Another Democratic Senator similarly said that the real question was whose side the nominee would be on when he decided important issues.[30] Would he be on the side of corporate or consumer interests, the side of polluters or Congress when it seeks to regulate them, or the side of labor or management?

In this activist view of judicial power, the desired ends defined by a judge's empathy justify whatever means he uses to decide cases. This activist view of judicial power is at odds with our written Constitution and its separation of powers and, therefore, with ordered liberty itself. The people are not free if they do not govern themselves. The people do not govern themselves if their Constitution does not limit government. The Constitution cannot limit government if judges define the Constitution.

Terry Eastland aptly described the result of judicial activism in a 2006 essay titled The Good Judge: ''The people's text, whether made by majorities or, in the case of the Constitution, supermajorities, would be displaced by the judges' text. The justices became lawmakers.''[31] This quotation highlights one of the many differences between God and federal judges. God, at least, does not think He is a federal judge. And it brings up the question of how many federal judges it takes to screw in a light bulb. Only one, because the judge simply holds the bulb as the entire world revolves around him.

There is perhaps some reason for optimism. One poll found last year that, no matter for whom they voted, nearly three-quarters of Americans said they wanted judges ''who will interpret and apply the law as it is written and not take into account their own viewpoints and experiences.''[32] This debate is indeed the one we should be having, whether judges have the power to make law. When judges apply law they have properly interpreted rather than improperly made, their rulings may have the effect of helping or hurting a particular cause, of advancing or inhibiting a particular agenda. They may, at least by the political science bean counters, be considered liberal or conservative. The point, therefore, is not which side wins in a particular case, but whether the winner is decided by the law or by the judge. When judges interpret law, the law produces the results. Thus, the people can choose to change the law. When judges make law, judges produce the results and the people are left with no recourse at all. That state of affairs is the antithesis of self-government.

Let me close by saying that the effort to defend liberty never ends. Andrew Jackson reminded us as he left office in 1837 that ''eternal vigilance by the people is the price of liberty; and that you must pay the price if you wish to secure the blessing.''[33] The approach I outline actually joins an effort that began long ago and reminds me of a resolution passed by the Senate Republican Conference in 1997:

Be it resolved, that the Republican Conference opposes judicial activism, whereby life-tenured, unaccountable judges exceed their constitutional role of interpreting already enacted, written law, and instead legislate from the bench by imposing their personal preference or views of what is right or just. Such activism threatens the basic democratic values on which our Constitution is founded.[34]

There you have it. Our written Constitution and its separation of powers define both judicial power and judicial selection. They require judicial restraint as a qualification for judicial service and require Senate deference to a President's qualified nominees. The weeks and months ahead will provide opportunities to debate these principles and their application. Nothing less than ordered liberty is at stake. I know the Federalist Society will be right in the thick of that debate.

ENDNOTES

* United States Senator (R-Utah); J.D., University of Pittsburgh School of Law, 1962; B.A., Brigham Young University, 1959. This Essay was delivered as a speech to the Harvard Law School Federalist Society and Harvard Journal of Law & Public Policy at the Union Club in Boston, Massachusetts, on April 4, 2009.

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3. Steve Farkas et al., Knowing it by Heart: Americans Consider the Constitution and its Meaning 16 (2002), available at http://www.publicagenda.;org/files/pdf/knowing_by_heart.pdf.
4. Christopher Lee, Noted with Interest, Wash. Post, Mar. 3, 2006, at A15; see also McCormick Tribune Freedom Museum, Americans' Awareness of First Amendment Freedoms, Forum for Education and Democracy, Mar. 1, 2006, http://www.forumforeducation.org/node/147.
5. Stephen J. Markman, An Interpretivist Judge and the Media, 32 Harv. J.L. & Pub. Pol'Y 149 (2009).
6. Id. at 151-52.
7. Symposium, The People & The Courts, 32 Harv. J.L. & Pub. Pol'y 1 (2009).
8. Symposium, Separation of Powers in American Constitutionalism, 33 Harv. J.L. & Pub. Pol'y (forthcoming 2010).
9. See infra notes 26–27.
10. President Obama has nominated David Hamilton to the U.S. Court of Appeals for the Seventh Circuit, Gerard Lynch to the Second Circuit, and Andre Davis to the Fourth Circuit. Michael A. Fletcher, Obama Names Judge to Appeals Court, Wash. Post, Mar. 18, 2009, at A4; Jerry Markon, Obama Taps 2 for Key Appellate Courts, Wash. Post, Apr. 3, 2009, at A6. Each is currently a U.S. District Judge.
11. Mark Twain, Chapters from My Autobiography–XX, 186 N. Am. Rev. 465, 471 (1907) (quoting Benjamin Disraeli).
12. Timothy J. Penny, Facts Are Facts, Nat'l Rev. Online, Sept. 4, 2003, http://www.nationalreview.com/nrof_comment/comment-penny090403.asp.
13. President Obama nominated David Hamilton to the Seventh Circuit on March 17, 2009. Fletcher, supra note 10. His hearing was on April 1, 2009. U.S. Senate Judiciary Comm., Official Hearing Notice (Apr. 1, 2009), http://judiciary.senate.gov/hearings/hearing.cfm?id=3757.
14. This statistic, like those that follow, was compiled by Senator Hatch's staff from sources including the Congressional Record; Federal Judicial Center, Biographical Directory of Federal Judges, http://www.fjc.gov/public/home.nsf/hisj; The Library of Congress, Legislative Information Service Databases, http://thomas.loc.gov/; and the records of the Senate Judiciary Committee and Senator Hatch's staff. The statistics are on file with Senator Hatch's staff.
15. See Orrin G. Hatch, Judicial Nomination Filibuster Cause and Cure, 2005 Utah L. Rev. 803, 819—23.
16. The Federalist No. 39, at 240 (James Madison) (Clinton Rossiter ed., 1961).
17. Markman, supra note 5, at 149.
18. See Hatch, supra note 15, at 82631.
19. The Federalist No. 78 (Alexander Hamilton).
20. Vanhorne's Lessee v. Dorrance, 2 U.S. 304, 308 (1795).
21. See Raoul Berger, Original Intention in Historical Perspective, 54 Geo. Wash. L. Rev. 296, 297—98 (1986) (citing S. Rep. No. 21, 42d Cong., 2d Sess. 2 (1872)).
22. Charles Evans Hughes, Speech before the Elmira Chamber of Commerce, May 3, 1907, in Addresses and Papers of Charles Evans Hughes 133, 139 (Robert H. Fuller & Gardner Richardson eds., 1908).
23. Stuart Taylor Jr., Imperial Judges Could Pick the President—Again, 36 Nat'l J. 2877, 2877 (2004).
24. West Coast Hotel Co. v. Parrish, 300 U.S. 379, 404 (1937) (Sutherland, J., dissenting).
25. Brown v. Allen, 344 U.S. 443, 535 (1953) (Jackson, J., concurring in the result).
26. 151 Cong. Rec. S10366 (daily ed. Sept. 22, 2005) (statement of Sen. Obama).
27. Posting of Mark Murray to First Read, http://firstread.msnbc.msn.com/archive/2007/07/17/274143.aspx (July 17, 2007, 16:21 EDT) (report by Carrie Dann).
28. Steven G. Calabresi, Obama's ''Redistribution'' Constitution, Wall St. J., Oct. 28, 2008, at A17.
29. 109 Cong. Rec. S10641 (daily ed. Sept. 29, 2005) (statement of Sen. Stabenow).
30. Interview by Matt Lauer with Senator Edward Kennedy, available at http://www.tedkennedy.com/journal/165/senator-kennedy-nbctoday-show-interview.
31. Terry Eastland, The ''Good Judge'': Antonin Scalia's two decades on the Supreme Court, Wkly. Standard, Nov. 13, 2006.
32. Press Release, The Federalist Society, Key Findings from a National Survey of 800 Actual Voters (Nov. 5, 2008), available at http://www.fed-soc.org/publications/pubid.1183/pub_detail.asp.
33. Andrew Jackson, Farewell Address, in 2 The Statesman's Manual: The Addresses and Messages of the Presidents of the United States 947, 957 (Edwin Williams ed., New York, Edward Walker 1846).
34. On file with Author.

EXHIBIT 2

[From the National Journal, Aug. 4, 2009]

(By Stuart Taylor Jr.)

DID PRECEDENT MAKE SOTOMAYOR RULE AGAINST RICCI?

Judge Sonia Sotomayor has not defended her most widely criticized decision—the one rejecting a discrimination lawsuit by 17 white firefighters, and one Hispanic, against the city of New Haven, Conn.—as a just or fair result.

That would have been an uphill battle: Polls in June showed that huge majorities of the public wanted the Supreme Court to reverse Sotomayor's decision.

And as I've explained elsewhere, although the Supreme Court split 5–4 in ruling for the firefighters in Ricci v. DeStefano, all nine justices rejected the specific legal rule applied by Sotomayor's three judge panel. That rule would allow employers to deny promotions after the fact to those who did best on any measure of qualifications—no matter how job-related and racially neutral—on which blacks or Hispanics did badly.

Instead of defending her panel's quota-friendly rule and its harsh impact on the high-scoring firefighters, Sotomayor and her supporters have argued that she essentially had no choice. The rule that her panel applied had been dictated, they say, by three precedents of her own court, the U.S. Court of Appeals for the 2nd Circuit.

Some critics have expressed skepticism about this claim, but the media have shed little light on its plausibility. I seek to shed some below.

Because some of this gets technical, I'll begin with critics' simplest rebuttal to Sotomayor's precedent-made-me-do-it claim:

Even assuming for the sake of argument that the Sotomayor panel's decision was dictated by the three 2nd Circuit precedents, it is undisputed that the full 2nd Circuit could have modified or overruled them if Sotomayor had voted to rehear the case en banc, meaning with all active 2nd Circuit judges participating. Instead, Sotomayor cast a deciding vote in the 7–6 decision not to rehear the case, suggesting she was satisfied with the ruling.

There is also ample reason to doubt that any of the three 2nd Circuit precedents actually required the Sotomayor panel to rule as it did, as some politicized professors have pretended.

Sotomayor fleshed out her vague testimony about the issue in answers to senators' written questions. She quoted her 2nd Circuit colleague Barrington Parker's concurrence, which she and three other judges had joined, in the 7–6 vote not to rehear Ricci. Judge Parker wrote:

There was controlling authority in our decisions—among them, Hayden v. County of Nassau [in 1999] and Bushey v. N.Y. State Civil Serv. Comm'n [in 1984]. These cases clearly establish for the circuit that a public employer, faced with a prima facie case of disparate-impact liability under Title VII, does not violate Title VII or the Equal Protection Clause by taking facially neutral, albeit race-conscious, actions to avoid such liability.

To unpack the legal language: Title VII is the employment discrimination portion of the 1964 Civil Rights Act. Title VII disparate-impact lawsuits are typically brought by blacks or Hispanics who challenge as discriminatory employers' use of objective tests on which those minorities do poorly. New Haven's ostensible reason for denying promotions to the white and Hispanic firefighters who had done well on qualifying exams was fear of being hit with a disparate impact lawsuit by blacks who had done poorly. And any black plaintiffs would indeed have had a prima facie disparate-impact case, which is legalese for proof that blacks had done much worse on the tests than whites.

But Judge Parker gave short shrift to the fact that even when plaintiffs have a prima facie case, an employer such as the city ''could be held liable for disparate-impact discrimination only if the examinations were not job related and consistent with business necessity, or if there existed an equally valid, less-discriminatory alternative,'' as the Supreme Court stressed in Ricci.

In addition, Parker's reading of both Hayden and Bushey is conspicuously overbroad. Their facts (especially Hayden's) were quite different from those of Ricci. And Bushey has been undermined by subsequent Supreme Court precedents and legislation.

That's why Judge Jose Cabranes, in the main dissent from the 2nd Circuit's 7–6 denial of rehearing en banc, began:

''This appeal raises important questions of first impression''—meaning questions not controlled by precedent—''in our circuit and, indeed, in the nation, regarding the application of the Fourteenth Amendment's Equal

Protection Clause and Title VII's prohibition on discriminatory employment practices.''

The question at the core of the case, Cabranes said, was: ''May a municipal employer disregard the results of a qualifying examination, which was carefully constructed to ensure race neutrality, on the ground that the results of the examination yielded too many qualified applicants of one race and not enough of another?''

This and other questions raised by the case, Cabranes continued, were ''indisputably complex and far from well-settled'' and ''not addressed by any precedent of the Supreme Court or our Circuit,'' including Hayden and Bushey.

Ricci differed from Hayden in three critical respects. First, as Cabranes explained, Hayden had approved Nassau County's ''race-conscious design of an employment examination,'' which was achieved mainly by eliminating tests of cognitive skills. Ricci, on the other hand, involved ''race-based treatment of examination results'' (emphasis added) to override local civil service laws under which promotions are virtually automatic for the firefighters with the best scores on job-related oral and written tests.

Second, Hayden stressed that the white plaintiffs ''cannot establish that they were injured or disadvantaged'' by the Nassau County test's race-conscious design. The Ricci plaintiffs were very clearly injured: They were denied promotions that they had done everything possible to earn under New Haven's civil service laws, and thus were ''deprived of the pursuit of happiness on account of race,'' in the words of Washington Post columnist Richard Cohen.

Third, Hayden upheld the Nassau County exam's black-friendly design in part ''to rectify prior discrimination'' by the county against blacks seeking police jobs. Ricci involved no claim of prior discrimination by New Haven against blacks.

Bushey was a lawsuit by whites challenging New York State's race-norming of scores—by substantially raising each minority applicant's score—on a qualifying exam to become a correction captain. The 2nd Circuit's mixed ruling in the case was entitled to little or no weight as a precedent in Ricci for at least four reasons:

While Bushey held that the state could use unspecified ''race-conscious remedies'' to avert a lawsuit by minorities who had done badly on a test, the 2nd Circuit ordered further proceedings to determine whether the race-norming remedy chosen by the state went too far, and violated Title VII by ''trammel[ing] the interests of nonminority candidates.'' In Ricci, the Sotomayor panel gave no weight at all to the interests of nonminority candidates.

In a key provision of the 1991 Civil Rights Act, Congress banned the sort of race-norming that the state had used in Bushey. This provision stated broadly that employers may not ''adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race.'' Indeed, by throwing out (''altering''?) the results of its test, New Haven arguably violated the 1991 provision, as well as others, in Ricci itself.

Bushey noted that the white plaintiffs' initial claims that their constitutional rights had been violated ''are not before us,'' because on appeal they had relied solely on their Title VII claims. In Ricci, ''significant constitutional claims . . . of first impression [were] at the core of this case,'' as Cabranes wrote. The Sotomayor panel completely ignored them.

The high-scoring firefighters' constitutional claims in Ricci were especially strong because landmark Supreme Court decisions in 1989 and 1995 had washed away the foundations of Bushey and another 2nd Circuit decision cited by Sotomayor defenders, Kirkland v. New York State Department of Correctional Services (1980). The 1989 and 1995 decisions held for the first time that (respectively) state and federal favoritism toward blacks is just as suspect under the Constitution as favoritism toward whites. ''Any preference based on racial or ethnic criteria must necessarily receive a most searching examination'' and be struck down unless ''narrowly tailored'' to serve a ''compelling'' governmental interest, according to the 1995 decision, Adarand Constructors v. Pena.

The justices' constitutional rulings seem quite contrary to the 2nd Circuit's approach not only in Bushey but also in Ricci, in which—Cabranes suggested—Sotomayor and her allies ''took the city's justifications at face value,'' ignoring strong evidence that its decision to dump the test scores was driven by racial politics, not legal principle. The result, Cabranes said, was that ''municipal employers could reject the results of an employment examination whenever those results failed to yield a desired racial outcome—i.e. failed to satisfy a racial quota.''

Later, in the Supreme Court's June 29 majority opinion in Ricci, Justice Anthony Kennedy said it was unnecessary to address the firefighters' constitutional claims because their Title VII claims alone were sufficient to win the case. But Kennedy stressed that there were ''few, if any, precedents in the courts of appeals discussing the issue.''

The bottom line is that 2nd Circuit precedents did not make Sotomayor rule as she did. Supreme Court precedent favored the firefighters. Sotomayor's ruling was her own.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me confess that I feel totally inadequate standing here tonight and talking about the subject of the confirmation of Judge Sotomayor. I am not a lawyer. I am amidst these brilliant lawyers. I listened to Senator HATCH and Senator SESSIONS. They have the kind of background where they can really get into this and look constitutionally and legally and evaluate, and I am not in that position.

I would like to speak on this nomination for the following reasons. I want to reaffirm my opposition to her confirmation.

I was the first Member of the Senate on the day she was nominated who announced I would not be supporting her. I recognize, as Senator HATCH said, that she will be confirmed. We know that.

I remember what Senator SCHUMER, the senior Senator from New York, said shortly after she was first nominated. He made the statement that Republicans are going to have to vote for her because they don't want to vote against a woman, vote against a Hispanic. He was right. But I would suggest that after the hearing, that statement is not nearly as true as it was before the hearings because of some of the extreme positions she has taken.

I have to say that from a nonlawyer perspective, I look at it perhaps differently than my colleagues who are learned scholars in the legal profession. A lifetime appointment to the Supreme Court requires not only a respect for the rule of law but also for the separation of powers and an acknowledgment that the Court is not a place where policy is made. The Court is about the application of the law and not where judges get to make the world a place they want it to be. I saw that all throughout the hearings I watched with a great deal of interest.

In May of 2005, Judge Sotomayor asserted that the ''court of appeals is where policy is made.'' She also wrote in a 1996 law review article that ''change—sometimes radical change—can and does occur in a legal system that serves a society whose social policy itself changes.''

The Constitution is absolutely clear: Policy is made in the Halls of Congress, right here—that is what we do for a living—not in the courtroom. Legislators write the laws. Judges interpret them. We understand that. Even those of us who are nonlawyers remembered that all the way through school. Sotomayor is correct that societies change, but the policies that are made to reflect these changes are done through Members of Congress who are elected to represent the will of the people.

Obviously, we are talking about a lifetime appointment. There is no accountability after this point. When judges go beyond interpreting the laws and the Constitution and legislate from the bench, they overstep their jurisdiction and their constitutional duty. Allowing judges who are not directly elected by the people and who serve lifelong terms to rewrite laws from the bench is dangerous to the vitality of a representative democracy. Simply put, judicial activism places too much power in the hands of those who are not directly accountable to the people. That is what we are talking about, a lifetime appointment.

Judge Sotomayor has overcome significant adversity to achieve great success, and I agree with Senator HATCH in his comments that we admire her for her accomplishments under adverse conditions. However, while her experiences as a Latina woman have shaped who she is as a person, they should not be used, as she affirms, to affect her judicial impartiality and significantly influence how she interprets the law and the Constitution.

In 2001, Judge Sotomayor gave a speech at the University of California, Berkeley in which she stated:

> I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

She has on several occasions conveyed the same idea. Between 1994 and 2003, she delivered speeches using similar language at Seton Hall University, the Woman's Bar Association of the State of New York, Yale University, the City University of New York School of Law. It is not a slip of the tongue once; this is a statement that has been reaffirmed and reaffirmed. Quite frankly, that was the reason for

my opposition back in 1998 when she was nominated to be on the circuit court of appeals. The statements she made show a very biased opinion that someone who is not a lawyer sees and thinks should disqualify someone for the appointment.

She further stated in 1994, in a presentation in Puerto Rico, that:

> Justice O'Connor has often been cited as saying that ''a wise old man and a wise old woman reach the same conclusion'' in deciding cases . . . [however] I am also not sure that I agree with that statement . . . I would hope that a wise woman with the richness of her experience would, more often than not, reach a better conclusion.

That is pretty emphatic. There is no other way you can interpret that. She thinks that a woman with her experience can make a better conclusion than a White male. I consider that racist. Sotomayor not only suggests the possibility of judicial impartiality but also that gender and ethnicity should influence a judge's decision.

Furthermore, President Obama said that in choosing the next Supreme Court nominee, he would use an empathy standard. While judges may and should be empathetic people, they must be impartial judges first. If empathy was a guiding standard, with whom should a judge empathize? Should more empathy be shown to one race, one gender, one religion, one lifestyle? True justice does not see race, gender, or creed. We are all equal in the eyes of the law, and the law must be applied equally. That is why she wears a blindfold. It is supposed to be blind justice.

Rather than looking to factors beyond the law, judges must solely examine the facts of the case and the law itself. Their ability to equally apply justice under the law is the standard by which we should select judges. So we have two different standards right now with which I disagree. One is that judges should make policy and, secondly, that gender and ethnicity should influence decisions.

Another belief on which Judge Sotomayor and I fundamentally disagree is that American judges should consider foreign law when deciding cases. This probably concerns me more than any of the rest of them—the fact that we have this obsession in these Halls, in this Senate, that nothing is good unless it somehow comes from the United Nations or is coming from some multinational origin.

In 2007, in the forward to a book—and I read this myself—titled, ''The International Judge,'' Sotomayor wrote:

> [T]he question of how much we have to learn from foreign law and the international community when interpreting our Constitution is not the only one worth posing.

This past spring, Judge Sotomayor gave an alarming speech at the ACLU which addressed this topic. She said:

> [T]o suggest to anyone that you can outlaw the use of foreign or international law is a sentiment that is based on a fundamental misunderstanding, what you would be asking American judges to do is to close their minds to good ideas. . . .

No, Judge Sotomayor, it is sovereignty that we are talking about. Statements like these make it clear that President Obama has nominated a judge to our highest Court who believes our courts should rely on foreign decisions when interpreting our Constitution. And I have to say, whatever happened to sovereignty? This obsession with multinationalism has to come to an end. I believe America will reject this type of thought. Americans do not want the rest of the world interpreting our laws, and neither do I.

Finally, Mr. President, Judge Sotomayor's record on the second amendment is constitutionally outrageous. Maybe it is because I come from Oklahoma, but that is the thing I hear about more than anything else down there, and my own kids, I might add.

I do not believe Judge Sotomayor can be trusted to uphold the individual freedom to keep and bear arms if future second amendment cases come before her. I have received no assurances from her past decisions or public testimony that she will be willing to fairly consider the question of whether the second amendment is a fundamental right and thus restricts State action as it relates to the second amendment. It is incomprehensible to me that our Founding Fathers could have intended the right to keep and bear arms as nonbinding upon the States and instead leave the right to be hollowed out by State and local laws and regulations. History and common sense do not support this.

I have to tell you, this has been more of a concern in my State of Oklahoma than anything else. I cannot confirm a nominee who believes the second amendment is something other than a fundamental right and instead treats it as a second class amendment to the Constitution. I do not know what a second class amendment to the Constitution is. This is not in line with my beliefs and not in line with the beliefs of the majority of Americans—certainly from my State of Oklahoma.

Today, I am persuaded the confirmation hearings served only to highlight many of my concerns. The numerous inconsistencies of her testimony with her record have persuaded not only me but the American people that Judge Sotomayor is not qualified to serve as a Justice on the highest Court, the U.S. Supreme Court. I say that because a recent Zogby Poll—and as several other polls have also consistently confirmed—following the confirmation hearings revealed that only 49 percent of Americans support Judge Sotomayor's confirmation, with an equal number opposing it. This is significant because she played the race card all the way through this thing and was talking about the Hispanic effect. But the same poll showed that among Hispanic voters, only 47 percent say they are in favor of her confirmation.

In other words, there are fewer people in the Hispanic community who are favoring her confirmation than in the non-Hispanic. These numbers are evidence of the fact that Judge Sotomayor has not gained the approval of the American people during her confirmation hearings, and she certainly has not gained mine.

I was the first Member of the Senate to publicly announce my opposition to Judge Sotomayor after her nomination to the Supreme Court on May 26. On that date, I stated I could not confirm her. In addition to all the above, there is another reason. While I do not often agree with Vice President BIDEN, I do agree with his statement that once you oppose a Federal court nominee, you cannot support that nominee for a higher court because the bar is higher. I think that is very significant to point out here because there are several who are still serving today, as I am, who opposed her to the circuit court in 1998. I think Vice President BIDEN is correct. As the standard goes up, once you get to the U.S. Supreme Court, that is the end. So that should be the very highest standard. So it is unconceivable that anyone who would have opposed her in 1998 could turn around and support her now.

I have to say there are a lot of reasons I have pointed out. One is judges making policy. I object to that; I find that offensive. Gender and ethnicity should be a consideration; that is wrong. The international thing, that we have to go to the international community to see that we are doing the right thing in interpreting our Constitution; that is a sovereignty issue. The second amendment, that is a concern.

So even though Judge Sotomayor will be confirmed, it will be without my vote. I would have to say for the sake of my 20 kids and grandkids that I will oppose Judge Sotomayor's nomination to 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 legislative 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, I believe there are a few minutes left on this side of the aisle. I would just like to share a few thoughts. I see Senator BROWN is here and would also like to speak tonight. I think some others may also.

One of the things that has been discussed tonight from my Democratic colleagues is the great American ideal of equal justice under law. Those words are indeed chiseled on the face of the Supreme Court across the street, and it has been invoked as a reason to support this nominee. But I would suggest that at its most fundamental level that is one of the serious objections and concerns we have.

Lawsuits have parties. If you have empathy for one party, if you have a sympathy for one party, if you have a prejudice that favors one party, then that is not equal justice. In her own speeches and statements, Judge Sotomayor has said: I accept the fact that my background, my sympathies, even my prejudices—those are her words—will affect the facts, affect how I decide cases—that her background will ''affect the facts I choose to see.'' These were not just speeches given one time but repeated over a period of a decade.

So it raises real questions about that because the oath that a judge takes is a powerful thing. The oath reflects the ideal of American justice. And the oath says a judge will not be a respecter of persons. The oath says a judge shall do equal justice to the poor and the rich alike. The oath says a judge will be impartial; that they will carry out their duties under the Constitution and under the laws of the United States—not above the laws of the United States. A judge is not above the law. They are not empowered to utilize any of their personal views, politics, morals, or values in the process of their judging to manipulate the law, to carry out an agenda they may believe is the greatest thing for all of America. They are not entitled to do that.

So from her speeches and her approach to the law, there is a great concern to the extent of which I have not seen before in speeches and expressions, in Law Review articles by this nominee that suggests an acceptance of the fact that her background and experiences, opinions, sympathies, and prejudices will affect her rulings.

She goes on to say: I accept the fact that my background will ''affect the facts I choose to see.'' For a lawyer like myself who has practiced a good bit in Federal court, tried quite a few cases, this is a stunning development that a judge is going to tell me: Well, I may not see those facts because of my background, my sympathies, and my prejudices. That is what a judge puts on that robe for. The robe is to symbolize they pull themselves apart from the everyday pressures that are on them, the everyday biases and prejudices; that they will be a neutral, fair, objective umpire and will call the balls and strikes, call the game without taking sides, without trying to achieve a given result. This is the ideal of American justice.

One of our colleagues said he objected because some of us were advocating a strange and strained conservative orthodoxy, that we would not vote for anybody who did not agree with some sort of philosophy like that. What I said at the opening of the hearing was that I would not vote for her, and no Senator should vote for any nominee, whether liberal or conservative, who was not committed—committed—as their oath commits them, to setting aside personal values, opinions, and so forth, and rendering true justice based on the law and the facts, whether they like the law or not.

So I think this is a big deal. They say: Well, you never confirmed a liberal Democrat, SESSIONS. You are a conservative Republican. But I would. And I voted for quite a number of them under President Clinton. I expect I will vote for quite a number under President Obama. I voted for 95 percent of President Clinton's nominees in the time I was in the Senate. It is not their politics. It is not the church they belong to. It is not whether they go to church. It is not what their moral values are. It is when they get on that bench and they decide cases, are they going to follow the law and the facts? That is the question, and that is what we are looking for.

It is sort of surprising to see a nominee express repeatedly over a period of years a contrary view. And to suggest that, well, it may be an aspiration to be unbiased, but it is just a mere aspiration—and to explicitly reject the classical formulation of a judge's role as expressed by Justice O'Connor, when she said: A wise old woman and a wise old man should reach the same conclusion—well, that is what we always have believed in America. Now we have this new theory that, well, you can bring to bear your background, and you might reach a better conclusion because you have different experiences you can bring to bear. That is not our goal in America, in my view.

Our legal system is built on a belief that there is a right answer to even the most difficult cases, and judges ought to give their absolute best effort to find that right answer. It is based on law and the facts and not what their personal views and values are. That is what we are all about. I think it is an important issue. And the activist, whether liberal or conservative, the activist judge allows those values and prejudices and political views and ideology to affect their rulings. It causes them to find some way to achieve a result that furthers an agenda they believe in. That is not justice, that is politics.

When President Obama says he wants a judge who will show empathy, I ask: Whom does he show empathy for? If you show empathy for one party, haven't you had a bias against the other? Who got empathy in the firefighters case? Was that equal justice under law—under law?

The Constitution says no one shall be deprived of equal protection of the laws on account of their race. But the firefighters who passed the test—a test that was never found to be defective, and the Supreme Court found it was not found to be defective—they had that test thrown out because they didn't like the racial results of it. Isn't that discriminating against the people who worked hard and studied and passed the test?

Lieutenant Vargas testified before our committee. I asked him, and he said if everybody had studied as hard as he had, a lot more of them would have passed. It was just a question of the commitment to learn the things necessary to be a leader in a fire department where you send people into life-and-death situations. This is not a little matter. You need to know things.

So I don't want anybody to think that what we are doing is some strange or strained approach to the law. I believe we are asking fundamental questions about law and justice in America and the Supreme Court of the United States. Aren't we entitled to expect that this nominee, such as every other judge who has ever taken the bench in any Federal court in America, should be not mildly committed to the oath but absolutely committed to the oath; committed to not being a respecter of persons; committed to equal justice for the poor and the rich; committed to impartiality; committed to conducting their office under the Constitution and under the laws of the United States and not above it.

I think that is what we need to be looking for. I am afraid this nominee, based on several important cases and a plethora of speeches over a decade, doesn't meet the standard. I wish it weren't so. I thought things would get better at the hearing. I don't think they did. That is my best judgment. So that is why I have concluded I cannot support her nomination.

I thank the Chair and yield the floor.

Mr. BROWN. Mr. President, I am a father of daughters who were raised with the belief that the United States is only as strong as its commitment to combating prejudice and promoting equality under the law. It is something I learned from my own mother. I am also a husband of a woman whose parents' sacrifice allowed her to be the first in her family to go to college, opening a world of possibility grounded in the basic American values of hard work and opportunity for all. It is with them in mind and with appreciation for the confidence Judge Sonia Sotomayor inspires that I am proud to support her to be the next Associate Justice of the U.S. Supreme Court.

Judge Sotomayor has cleared hurdle after hurdle to achieve the promise of the American dream. She has earned the admiration of her peers by demonstrating again and again her respect for the law, her respect for the rule of law, and her dedication to its impartial interpretation. For more than three decades, as we have heard on the floor and we heard in committee, as a district attorney in New York, a civil litigator in private practice, a Federal judge in the Second Court of Appeals, Judge Sotomayor has shown that she is tough and she is fair and she is a thoughtful arbiter of justice. She will be an outstanding Associate Justice of the U.S. Supreme Court.

During her confirmation hearings, Judge Sotomayor responded thoughtfully and thoroughly to a wide range of questions. In fact, she answered more questions in depth than any nominee in

recent history. Combined with first-class legal reasoning and disciplined intellect, Sonia Sotomayor's life experiences will make her a valuable addition to the Court.

She was raised in public housing in the Bronx. At age 9, she lost her father, a factory worker. Raised by her mother, a nurse, she battled childhood diabetes while excelling at every level in school. My best friend also suffered from childhood diabetes. He lived with diabetes for some 40 years. I know how it made him more disciplined, it made him more compassionate, and if I could use the word, it made him more empathetic toward those around him. It made him an all-around better person, it made him a better judge of character, and it made him more fair.

After graduating from our Nation's finest universities, Sonia Sotomayor reached the heights of the legal profession. Each of these experiences exposed her to the array of the American experience.

Current and former Supreme Court Justices from across the ideological spectrum have described how their personal experiences informed their judicial perspective. Judge Sandra Day O'Connor, nominated by President Reagan, once said:

> We're all creatures of our upbringing. We bring whatever we are as people to a job like the Supreme Court. We have our life experiences.

Empathy, perhaps?

Justice Samuel Alito, a conservative nominated by President Bush, said during his confirmation hearings:

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

Empathy, perhaps?

I don't recall when Judge Alito appeared in front of the Judiciary Committee that people questioned his empathy and questioned his ability to do his job because of his background. Similarly, Judge Sotomayor's background and life experiences will impart a new sense of perspective to the Court.

As I hear this discussion of empathy and I hear this accusation of Judge Sotomayor being an activist judge, I think about who has sat on the Supreme Court through much of this Nation's history. Most of the people who sat on the Supreme Court were people of privilege. Most of the people who sat on the Supreme Court were people who were born into privilege. We have seen the Supreme Court, the highest Court in the land, particularly in recent years, side in case after case with the wealthy over the poor. We have seen them side with large corporations over workers. We have seen them side with the elite of our society over others in our society. Maybe they decided that way because the Justices came from privileged backgrounds themselves and that is the way they saw the world around them. I don't hear those discussions on the floor. I didn't hear those discussions in the Senate Judiciary Committee from those who oppose Judge Sotomayor's nomination.

Similar to Presidents Reagan and Bush and every President before, President Obama chose Sonia Sotomayor because he felt her views and her interpretations of our Nation's law reflect the way forward for our Nation. On issues ranging from criminal justice and labor and employment, Judge Sotomayor has an extraordinary record of following, defending, and upholding the rule of law as a Federal prosecutor, as a trial judge, and as an appellate judge. Nearly every major law enforcement organization in this Nation, ranging from the Fraternal Order of Police to the National Sheriff's Association to the National District Attorneys Association, has endorsed her. The American Bar Association awarded its highest ratings when evaluating Judge Sotomayor's judicial temperament and her treatment of all litigants. And the Judiciary Committee has received a letter of support for Judge Sotomayor's nomination from the American Hunters and Shooters Association, an organization that advocates for second amendment rights. The association told us some in the firearm community have leveled a number of charges against Judge Sotomayor that do not pass the truth test. They also wrote:

> Conservatives should applaud Judge Sotomayor as a model of judicial restraint on the Circuit Court, even if that restraint has frustrated gun rights outcomes in the immediate cases.

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

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

AMERICAN HUNTERS
& SHOOTERS ASSOCIATION,
June 29, 2009.

Senator PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: In 1991, President George H.W. Bush appointed Judge Sotomayor to the U.S. District Court for the Southern District of New York. Senator Al D'Amato (R–NY) led the fight for her initial Senate confirmation, which was approved by unanimous consent. Her later nomination to the U.S. Appeals Court (Second Circuit) was made by President Bill Clinton and also moved along by then Senator Al D'Amato. She received strong bi-partisan support with a vote of 67–29.

Some in the firearm community have leveled a number of charges against Judge Sotomayor that do not pass the truth test. In the recent case of Maloney v. Cuomo, a unanimous Second Circuit panel, which included Judge Sotomayor acknowledged that the landmark ruling in District of Columbia v. Heller confers an individual right of citizens to keep and bear arms.

The Maloney court also explained, as the Heller majority had, that earlier Supreme Court precedents had held that the Second Amendment "is a limitation only upon the power of congress and the national government and not upon that of the state." The panel noted that while Heller raises questions about those earlier Supreme Court decisions, the Second Circuit was obligated to follow direct precedent "leaving to the Supreme Court the prerogative of overruling its own decisions." While we are disappointed that the Supreme Court has not yet extended this right to the states, we note that Conservative Judge Frank Easterbrook of the 7th Circuit agreed with Sotomayor's ruling as being consistent with precedent. Judge Sotomayor has established herself as a model jurist in terms of respecting precedent. We suspect that her critics from the leadership of several well-known gun organizations are just as interested in supporting precedent as she is, now that the precedent to be protected is clearly enshrined within the Heller decision.

As the President of the American Hunters and Shooters Association, I am eager to see the Supreme Court take up the incorporation issue of the Second Amendment to the states. As a gun owner in Maryland, it is my fervent hope that the Supreme Court will extend the protections guaranteed by the Second Amendment, as defined in the Heller decision, to the citizens of the United States of America who reside outside the District of Columbia, as it has with the First and Fourth Amendments.

Our own views on gun ownership notwithstanding, it is the role of the President, who was elected by a rather impressive majority, to nominate and the Senate's duty to advise and consent. The Senate would be wise to consent to this nomination.

Conservatives should applaud Judge Sotomayor as a model of judicial restraint on the Circuit Court, even if that restraint has frustrated gun rights outcomes in the immediate cases. As moderate progressives, we hope that the nominee views the settled law in Heller as ripe for an activist expansion by incorporation to the states in harmonizing the different Circuit Court decisions.

On behalf of the American Hunters and Shooters Association, we extend our strong support for the confirmation of Judge Sotomayor to the U.S. Supreme Court. We fervently hope you and your fellow Judiciary Committee members will see fit to support this nomination.

Most respectfully submitted,
RAY SCHOENKE,
President.

Mr. BROWN. Mr. President, Judge Sotomayor is a groundbreaking Supreme Court nominee, who unfortunately is facing gratuitous, groundless mischaracterizations. She is to be commended for her exemplary conduct in the face of critical and vicious personal attacks. Unfortunately, we have seen it all too many times. Judge Sotomayor is a woman and she is Puerto Rican. She is also a beloved daughter, sister, and aunt. She is a highly respected judge, with more relevant experience than any member of the current Supreme Court—than any member of the current Supreme Court.

Louis Brandeis, confirmed in 1916 as the Court's first Jewish nominee, faced massive distortions and mischaracterizations. Justice Thurgood Marshall, confirmed in 1967 as the Court's first African-American Justice, faced extraordinary personal attacks. Both Justice Brandeis and Justice Marshall made lasting legacies on the Court that ensured our Nation's progress to meet the very Democratic ideals enshrined in our Constitution. I would offer that

their background perhaps made them even better Justices.

President Obama was elected in a historic election, where the American people turned pages of history to forge a new path for our Nation. It is a new path shaped by common sense and compassion and belief in the potential of our people and the greatness of our Nation. The Supreme Court is a vital part of this path forward.

Exercising one of his most important powers, President Obama nominated someone who will help ensure that our Supreme Court honors the Constitution and that every American is protected by it.

President Obama said:

> What she will bring to this court is not only the knowledge and experience acquired over the course of a brilliant legal career, but the wisdom accumulated from an inspiring life journey.

I congratulate Judge Sotomayor, her mother Celina, and the rest of the Sotomayor family. I also congratulate Justice David Souter on his well-earned retirement. Justice Souter's probing intellect and brilliant legal mind deserve our Nation's sincere thanks and gratitude.

Commitment to the rule of law is the foundation of our Nation, where democratic values are enshrined in the Constitution that preserves and strengthens our basic freedom. As Senators, one of our most important Constitutional responsibilities is to confirm a Justice of the Supreme Court. I urge my Senate colleagues to join me in confirming Judge Sonia Sotomayor as the next Associate Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

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

FLOODING IN LOUISVILLE

Mr. MCCONNELL. Mr. President, I wish to make a few short observations about a severe storm that hit my hometown and dumped 6 inches of rain in 75 minutes in Louisville just today, causing major flooding and trapping people in their cars and in their neighborhoods. The Louisville Police and Fire and Rescue have been working nonstop since early this morning to assist those in need. I wish to commend them for the courageous and outstanding work they have been performing throughout the day.

Not surprisingly, I have heard from a number of my constituents. I appreciate very much their calls to keep me informed on the latest developments. We are going to continue to monitor the situation back home. In the meantime, our thoughts and prayers go out to everyone in Louisville today.

COMMENDING THE SIMPSON COUNTY HISTORICAL SOCIETY

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to the accomplishments of the Simpson County Historical Society, which is celebrating its 50th anniversary in September, making it one of the oldest continuously operating historical societies in Kentucky.

The society's half century of promoting research and knowledge of history makes it one of south-central Kentucky's treasures. At the society's very first meeting in 1959, 37 individuals met in a private home to discuss the creation of the organization.

For many years the society maintained a small collection at the Goodnight Library until members convinced the county to let them use the old county jail and jailer's house as a headquarters. The facility now serves as the Simpson County Archives and Museum. Their collection contains thousands of items, including books, manuscripts, original documents and papers, pictures, county records, tapes, CDs, microfilm, microfiche, computers, and more.

The research materials, librarians and volunteers at the archives have helped thousands of visitors connect to their past and learn about their genealogy.

The dedicated staff and volunteers at the society have made it very successful. In 2006, Mary Garrett, Nancy Neely, Sarah Richardson, Sarah Smith, Beatrice Snider, Margaret Snider, and Dorothy Steers received the Lifetime Presidential Volunteer Service Awards for over 4,000 hours of volunteer service.

The group not only preserves history, but gives much to the community, for instance by supporting several historical markers in Simpson County and providing grants for schools and groups interested in preserving history. They also offer scholarships for students who want to study history.

Mr. President, I ask my colleagues to join me in honoring, as listed below, the society and their officers for their hard work and dedication to the preservation and research of Kentucky's and Simpson County's history over the past 50 years and for many more years to come:

SIMPSON COUNTY HISTORICAL SOCIETY OFFICERS—2009

President Dr. James Henry Snider, Vice-President Jean Almand, Secretary Jason Herring, Assistant Secretary Bonnye Moody, Treasurer Commie Jo Hall, Librarian Kenny Lynn Scott, Directors Katherine McCutchen, Emily Mayes, Sarah Jernigan, Past President and Business Manager Sarah Jo Cardwell. Gayla Coates, Nancy Thomas, Commie Jo Hall, Morris Hester, Betty Nolan, Elizabeth Wakefield, Allison Cummings, Helen Cardwell, and Stacie Goosetree

SIMPSON COUNTY HISTORICAL SOCIETY VOLUNTEERS

Myrtle Alexander, Kathy Allen (Dinning), David Forrest Almand, Jean Almand, Margaret Beach, Roxanne Boyer, Lucille Brown, Jean Burton, Barry Byrd, Bill Byrd, Helen Cardwell, Ruth Cardwell, Sarah Jo Cardwell, Pattye Caudill, Billy Jeff Cherry, Ruth Cherry, Liz Chisholm, Jim Clark, Gayla Coates, Sue Cooper, Irene Harding Cornett, Joe Craft, Nettie Craft, Mary Crow, Allison Cummings, Elizabeth Dinning, Elizabeth Dunn, Ruth Forshee, Jackie Forshee, Kathy Forshee, Larry Forshee, Mary Garrett, Paul Garrett, Addie Gillespie, Nora Belle Gillespie, Cheryl Goodlad, Stacie Goosetree, Kay Gregath, John Gregory, Commie Jo Hall, Janet Head, Jason Herring, Jimmy Jennett, Tracy Jennett, Dorothy Jent, Earl Jent, Amy Kepley, Ricky Kepley, Donna Laser, Mary Malone, Emily Martin, Emily Mayes, Charles McCutchen, Katherine McCutchen, Hallie McFarland, Mary Rose Meador, Lowrie Mervine, Peggy Mervine, Betty Milliken, Edna Milliken, Thomas N. Moody, Anne Mullikin, Nancy Neely, Tom Scott Neely, Dorothy Newbold, Mary Ogles, Olaine Owen, Mildred Perry, Jo Ann Phillips, Marian Phillips, Ruth Richards, Mozelle Richardson, Sarah Richardson, Wendell Richardson, Mattie Lou Riggins, Janet Roark, Betty Rogers, Lou Ella Rutherford, Edna Earl Scott, Kenny Lynn Scott, Ellen Smith, Henry Price Smith, Sarah Smith, Billy Briggs Snider, Beatrice Snider, James D. Snider, Margaret Snider, Lori Snider, James Henry Snider, D. B. Snider, Pearl Snider, Dorothy Steers, Geraldine ''Jerri'' Stewart, Rowena Sullivan, Robert E. Taylor, Nancy Thomas, Jane Truelove, L. L. Valentine, Dan Ware, Bessie Watwood, Alisha Westmoreland, Michelle Willis, Christine Wilburn, Geraldine Wright, Joan Yorgason.

VOTE EXPLANATION

Mr. LIEBERMAN. Mr. President, I was unable to participate in the rollcall vote on the motion to invoke cloture on the Kohl substitute amendment, No. 1908, to H.R. 2997, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 and on the rollcall vote on amendment No. 1910 introduced by Senator MCCAIN. Both rollcall votes took place yesterday.

Had I been present, I would have voted yea in support of the motion to invoke cloture and yea in support of Senator MCCAIN's amendment. The McCain amendment would have cut $17.5 million set aside for the Rural Utilities Service, High Energy Cost Grant Program—a program that was eliminated in President Obama's fiscal year 2010 budget.

I commend the chairman of the subcommittee, Senator KOHL, and the ranking member, Senator BROWNBACK, for their bipartisan work on this important bill that will fund agriculture priorities, nutrition assistance programs, and food and drug safety measures that are critical for my State of

Connecticut and the rest of the country.

HEALTH CARE REFORM

Mr. DODD. Mr. President, last night I rose to speak on health care reform.

Today, another 14,000 Americans lost their health insurance.

That is 14,000 Americans who had health insurance when I spoke on the floor last night, but tonight each will go to bed fearing that if something happens to them or their family, they could lose everything—their home, their life savings, their economic security, gone.

Tomorrow, it will be another 14,000.

Another 14,000 the day after that.

And another 14,000 every single day until we finally pass real health care reform.

Between now and when we return from recess, half a million Americans will lose their insurance. Some will have preexisting conditions that, under our current system, will prevent them from ever finding coverage again. Some will have medical issues requiring expensive treatments that they will no longer be able to afford. Some will end up in bankruptcy. Some will end up on public assistance. And some will end up in the emergency room with a sick child whose illness could have been prevented with a simple doctor's visit.

The tragedy caused by our broken health care system is ongoing. It is happening right now. And when we come back from recess, I have every hope and expectation that we will be ready to work together to stop it.

I take my Republican colleagues at their word when they say they don't want to stall this effort to death, they simply want bipartisanship.

The Affordable Health Choices Act, passed in the HELP Committee, didn't win bipartisan support, but it is a bipartisan bill. It incorporates 161 Republican amendments, and reflects a spirited and robust debate with participation from all sides—exactly the sort of debate I expect we can have when we come back from recess.

We are not going to agree on every detail, and there will be times when we have to have a simple up-or-down vote and live with the results. But surely we can all agree that the status quo isn't just unacceptable—it is unsustainable. That is why doctors and nurses, insurance companies and drug companies, Democrats and Republicans—all say we need reform.

Well, it is time for us to make that happen.

I believe that our bipartisan approach has yielded a good bill.

If you don't have health insurance, the Affordable Health Choices Act will put it within reach by giving you a range of affordable options to choose from. It forever banishes the term ''preexisting conditions'' from the American vocabulary.

If you have health insurance, the Affordable Health Choices Act will make it less expensive by investing in preventive care to bring down the long-term cost of keeping our citizens well, not to mention eliminating waste and fraud from our system.

And if you like your doctor and your insurance plan, and you are worried about keeping it, the worst thing in the world you could do would be to stand in the way of reform. The Affordable Health Choices Act guarantees that you won't see your insurance be taken away at the moment you need it most or watch as it is priced out of your family's budget.

Whether you have insurance or not, whether you like your health care options or not, whether you are sick or healthy, Democrat or Republican, working-class or a small business owner, reform is for you.

Let us take action on behalf of the 14,000 Americans who will lose insurance tomorrow. Let us take action on behalf of the 45 million uninsured and the 30 million underinsured. Let us take action on behalf of the American people who are looking to us to succeed.

Mr. JOHANNS. Mr. President, I rise today to bring attention to the unique health care challenges faced by the 62 million Americans who live in rural America.

If you took a snapshot of rural America, you would see a population that is older, poorer, and has less access to health care than other places in the country. Because many rural residents are elderly, they need more health care services.

However, rural residents have greater transportation difficulties reaching health care providers and often have to travel long distances to reach a doctor or hospital. Very few public transportation systems are available, and so many folks wait until they are very sick before turning to the health care system. This makes the already challenging job of managing chronic conditions even more difficult. Rural areas report higher rates of chronic conditions, including heart disease and cancer. One contributing factor to these chronic conditions is the higher obesity and smoking rates of children and adults who reside in rural areas.

Compounding the problem, rural residents also tend to be poorer and make on average $7,000 less per year than their urban counterparts. Nearly 24 percent of children who live in rural America are in poverty. Poverty affects the types of foods being offered at the dinner table as the price of fruits and vegetables can often bust a tight food budget.

It can also force people to put off medical care. According to a recent study, rural residents are more likely than their urban counterparts to report having deferred care because of cost. It can be a vicious cycle.

While health coverage is vitally important to these rural residents, the greatest crisis is access to care. We could give health insurance to everyone, but if your county has no doctor or hospital, the best insurance will make little difference. This is a simple concept, but an important one.

In rural America, the cornerstone of the health care delivery system is the critical access hospital. These hospitals, made up of 25 beds or less, provide the most basic access to medical services and serve as a rural safety net for emergency services. Of the 90 hospitals in Nebraska, 65 of them are critical access hospitals. Clearly their importance in rural America cannot be overstated.

However, it is difficult for many rural hospitals to keep their doors open. One reason is that there is less patient volume than in many urban settings. In addition, Medicare payments to rural hospitals and physicians are dramatically less than those to their urban counterparts for equivalent services. This correlates closely with the fact that more than 470 rural hospitals have closed in the past 25 years.

Rural areas also struggle to keep other aspects of their health care infrastructure in place. For example, 20 percent of counties in Nebraska do not have a local pharmacist who can fill prescription medications for their residents. I could go on and on with a similar story on home health services, long term care, durable medical equipment, and other critical health care services.

However, one of the biggest challenges facing rural America is difficulty recruiting and retaining health care professionals. Medical professionals sometimes do not want to set up practice where doctors are few and major metropolitan hospitals require hours of travel. Currently, 50 million Americans who live in rural America face challenges in accessing health care. There are too few providers to meet their basic primary care needs. According to the U.S. Department of Health and Human Services, while a quarter of the population lives in rural areas, only ten percent of physicians practice there. There are over 2,000 health professional shortage areas in rural and frontier areas of all States and U.S. territories compared to 910 in urban areas. Ninety out of 93 Nebraska counties are facing health care profession shortages in one or more areas of practice.

Unless something is done to address this problem, the situation will almost surely become a crisis. This scenario is quickly appearing on the horizon as rural America has a higher percentage of physician generalists who are nearing retirement than urban areas.

Fewer doctors and lack of health care access could decimate rural residents and their rural communities. Young families will not move to a place where they cannot access health care for their children, and older residents will be forced to move to places where they can find care.

This potential rural reality has major implications for the rest of the country and will affect the health and

well being of everyone. For example, rural America produces the food and the fiber that our country needs to survive. Young farmers and their families will not come back to live and work in an area where they cannot receive health services should an accident or sickness occur. The farming profession is already a gamble and not having access to health care is something most people aren't willing to risk. If people are forced to leave rural America due to lack of health care, then a whole new set of challenges will arise that we are not currently prepared to address. Any health care solutions or reforms must account for current rural health care system realities and future challenges.

I have long said that the best solutions originate outside the beltway, the same holds true with health care. Blanket policies crafted from within the DC beltway do not always meet the needs of Nebraskans. In fact, they often add additional burdens onto the current system and compromise the ability to access quality health care.

That is why I encourage my colleagues crafting health care reform legislation to incorporate the solutions offered in the Craig Thomas Rural Hospital and Provider Equity Act. I am a sponsor of this legislation and look forward to a number of its provisions being enacted.

Additionally, I hope any health care reform will offer critical access hospitals flexibility in determining their bed count to account for seasonal and emergency situations which might affect admissions rates. Any comprehensive legislation must address the unique payment issues facing rural hospitals like reimbursing them for lab services provided in nursing homes and rural health clinics, and increasing Medicare payment rates for rural health clinics. Finally, legislation should extend the rural community hospital demonstration project and provide incentives to encourage providers to practice in physician scarcity areas.

The health care delivery system in rural America is already stressed. We cannot afford a big mistake with health care reform, because if we get it wrong, the fragile rural health care delivery system may never recover. Mark my words; if we enact policies that drive providers and facilities out of business, no one is waiting in the wings to take their place. Therefore, I urge caution and thorough debate of all health care reform proposals as unintended consequences must be minimized.

COMMENDING SENATOR NORM COLEMAN

Mr. ENSIGN. Mr. President, I rise today to pay tribute to our former colleague, Norm Coleman.

Norm once said, ''It is easy to criticize, particularly in a political season. But to lead is something altogether different. The leader must live in the real world of the price that might be paid for the goal that has been.''

Norm Coleman is a leader. Norm or, more importantly, his character endured one of the most difficult elections in the history of the Senate, and came out standing taller in the eyes of many. It is not easy to lose. But it is so much harder to maintain your dignity in the face of defeat, which Norm has done.

Having spent most of his life as a Democrat, Norm is what we would call a ''late bloomer.'' I also started out as a Democrat and voted for Jimmy Carter in 1976. In 1996, Norm realized that the path of the Democrat Party was paved for other people, not him. He joined the Republican Party to share in our vision to keep taxes low, reform education, and grow jobs.

Norm more than adhered to this vision while in the Senate; he became a powerful voice on these issues. He also established himself as a fierce advocate for renewable energy. Norm fought for tax incentives that would strengthen the development of renewable energy across our country. He saw renewable energy as the key to greater national security and economic stimulus.

Norm also introduced legislation that would wean our Nation off our dangerous reliance on Middle Eastern oil by placing a greater emphasis on increasing renewable fuel infrastructure and alternative fuel technologies. His legacy will continue to thrive as we move our country closer to energy independence, through innovation, not government handouts.

Norm's leadership did not end at the shores of our Nation. He established himself as a true voice in foreign policy issues by exposing the corruption that was rife throughout the U.N.'s Oil for Food program and becoming a fierce advocate for our servicemen and women.

However, all of this pales in comparison to the legacy that he will leave in Minnesota. Throughout his entire Senate career, he never lost track of the voices of his constituents and the promises he made to them on the campaign trail.

His greatest legacy, perhaps, will be bringing hockey back to Minnesota. Minnesota will enjoy the fruits of his labor for years to come.

I consider Norm a friend and someone whom I respect and admire.

Norm, we will miss you dearly. I wish you much success in the future knowing that great things lie ahead of you.

COMMENDING BILL ANTON

Mr. ENSIGN. Mr. President, today I wish to recognize a brave American, William Anton. As a man of remarkable courage, strength, and conviction, Bill is receiving an extraordinary honor in the U.S. Army Ranger community by being inducted into the Ranger Hall of Fame. Bill will go down in the history books as the first Nevadan to ever receive this recognition.

As the son of an Army officer, Bill found his choice to continue the family tradition quite natural, but fate was needed to further solidify his commitment.

An ROTC scholarship to the University of Nebraska put Bill on the football team, but a football-ending knee injury put Bill right where he was supposed to be, as a fulltime Army cadet. Bill was soon promoted to cadet major general, making him the highest ranking ROTC cadet in the United States with over 20,000 cadets under his command.

According to Bill, life has been a constant pursuit of challenging endeavors saying, ''In everything I've done, I always wanted to challenge myself to see if I could accomplish the most demanding tasks or courses—whether it was in the Army or in my academic pursuits.''

And challenge himself he did. As a defender of our Nation's freedom in the Vietnam war, Bill guided the most decorated combat Ranger unit in Vietnam, Company H, Ranger, 75th Infantry, Airborne. While Vietnam was seen as a controversial war back home, Bill's role to defend freedom was never a doubt in his mind.

Bill joined the Rangers because they are one of the toughest military organizations in our Nation's history, and as a member of the Ranger Hall of Fame, history will remember Bill as one of our greatest warriors. For it was the Rangers that accomplished some of the most demanding and impossible tasks, and as a member of this elite group of soldiers, Bill exemplified their requirements of high intellect, physical strength, stamina, and bravery.

Bill's own words describe him the best: ''My entire career was full of fond memories. I sought demanding assignments to challenge myself. Serving my country as a professional soldier and Officer is the highest form of public service. It is full of selfless duty and devotion to our nation—defense of our people and the supreme document—the Constitution. When we take our oath, it is to the Constitution first, then the President, and then to the other officers appointed over us. This is not lost on any Officer or soldier.''

When asked what Bill would like the world to remember about his fallen comrades, he had this to say: ''The American military fights only when diplomacy fails. We enforce the policies of our great nation. Our fallen comrades do not die in vain. They are remembered by their comrades, families, and most of the citizens of our great nation.''

We all know that Bill Anton is an extraordinary soldier, but now America will know that above all else, he is an American that truly embodies the spirit and freedom of this great Nation.

REMEMBERING JAMES O. ''JIM'' INGRAM

Mr. COCHRAN. Mr. President, this morning I was saddened by the news

that my friend Jim Ingram, who served so well and courageously as commissioner of the Department of Public Safety of Mississippi, had passed away. He lost a long battle with cancer.

Jim was a retired FBI agent who was in charge of the civil rights unit that supervised the investigation and assisted in the prosecution of crimes by Klansmen and others who were charged with violence and murder in our State during the civil rights movement. He was a man of great courage, with a strong sense of purpose, whose warm and friendly personality make him easy to like and respect. The people of my State will long remember and appreciate his valuable contributions to peace and public safety.

I ask unanimous consent that a copy of his obituary, as it appeared in today's Clarion-Ledger, be printed in the RECORD.

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

James O. ''Jim'' Ingram, retired FBI agent and former Commissioner of the Department of Public Safety, passed away at Hospice Ministries in Ridgeland, Mississippi on Sunday, August 2, 2009, after a long battle with cancer.

Visitation will be held at Christ United Methodist Church in Jackson, Mississippi on Wednesday, August 5, 2009, from 5 pm until 7 pm and from 9 am until 10:30 am on Thursday, August 6, 2009. Reverend Vicki Landrum will officiate over the service, which will be held at Christ United Methodist Church on Thursday at 10:30 am. The burial service will follow at Parkway Memorial Cemetery on Highland Colony Parkway in Ridgeland, Mississippi.

Wright and Ferguson Funeral Home is assisting with the arrangements. Born January 22, 1932, in Henryetta, Oklahoma, Jim Ingram was a long time resident of the Jackson Metro area. Jim Ingram joined the FBI in 1953, and was with the FBI for over thirty (30) years in several capacities, such as Deputy Assistant Director in Washington, with duties supervising all FBI criminal investigations. He also was Special Agent in Charge (SAC) of the New York and Chicago FBI offices. Mr. Ingram traveled worldwide for the FBI to places such as France, Canada, Mexico, and most of Central and South America. Some famous FBI cases which he commanded were: The Guyana Jim Jones case where over 1,000 people committed suicide at the request of their leader, Jim Jones, and the investigation into the assassination of Federal Judge John H. Woods in Texas, where a hired assassin killed the federal judge. Drug lords were arrested for this crime.

Jim Ingram was also in charge of the FBI's Mississippi Civil Rights Unit in the 1960's, supervising the investigation and assisting in the successful prosecution of Edgar Ray Killen and other Klansmen who killed the three civil rights workers in the ''Mississippi Burning Case'' in Neshoba County, Philadelphia, Mississippi. Mr. Ingram also supervised the investigation and assisted in the prosecution of James Ford Seale for violent deaths committed in Mississippi. In June 1996, Mr. Ingram represented Mississippi in a meeting at the White House hosted by the President and Vice President on church burnings.

After retiring from the FBI, he served ten (10) years as Senior V.P., Director of Security for Deposit Guaranty National Bank. He served as Commissioner of Public Safety for eight years commanding the Mississippi Highway Patrol, Mississippi Bureau of Narcotics, and six other divisions. He served the State's second longest tenure in this capacity and said ''these were some of the happiest times of my life.'' He was well known throughout the U.S. in law enforcement receiving several awards such as being honored with the Civil Rights Award in September 2006 in Boston, Massachusetts by the International Association of Chiefs of Police for the solution of the ''Mississippi Burning Case'' and was appointed as a Member by the Harvard University Associates in Police Science. Jim was active in the business community having served as President of the Jackson Rotary Club, the largest civic club in Mississippi.

Jim Ingram is survived by his loving wife, Marie, of 58 years; his three sons, Steven W. Ingram and his wife, Brenda, Madison, Mississippi, Stanley T. Ingram and wife, Terri, Edwards, Mississippi, and James M. Ingram and wife, Janice, Madison, Mississippi, and fifteen (15) grandchildren and great grandchildren, all of whom have given him the love of his life.

His three sons, Steve, Stan and Jim, stated their dad enjoyed helping others. They have been amazed over the years of the caliber of people across the U.S. that sought his advice and wisdom. Their dad would tell them ''Kindness is something you cannot give away. It always keeps coming back.''

Before his death, Jim Ingram stated that he could never repay the kindness shown to him, his wife Marie, and family from neighbors, Peter DeBeukelaer and wife, Mireille, Dr. Greg Fiser and wife, Robin, Billy Powell and his wife, Barbara, Rusty Fulton and his wife, Sandy, Bob Lunardini and his wife, Susan, and Federal Judge Neal O'Lack and his wife, Rebecca.

Mr. Ingram gives special thanks to Dr. Cindy Wright and her husband Sam Wright for their kindness and support. Special thanks to the men and women of the FBI across the country and to former SAC Joe Jackson, Col. Mike Berthay and Charlie Saums and the men and women of the Mississippi Highway Patrol who have made his life so enjoyable.

Memorials may be made to Christ United Methodist Church Youth Ministry Program, 6000 Old Canton Road, Jackson, Mississippi 39211, or Hospice Ministries of Ridgeland, 450 Towne Center Boulevard, Ridgeland, Mississippi 39157.

ADDITIONAL STATEMENTS

100TH ANNIVERSARY OF THE TILLAMOOK COUNTY CREAMERY ASSOCIATION

• Mr. WYDEN. Mr. President, today I pay tribute to the 100th anniversary of an Oregon icon the Tillamook County Creamery Association, makers of Tillamook Cheese.

Since 1909, this world-famous, farmer-owned cooperative has been dedicated to producing the highest quality cheeses and other products from local dairies that have thrived in the lush coastal valleys around the community of Tillamook, OR. Tillamook Cheese is not just a commercial enterprise. It is the proud symbol of a way of life that has been passed on for generations.

The members of the Tillamook County Creamery Association have been mainstays of the local and state dairy industries and committed stewards of the environment. They employ more than 600 people at two factories in Oregon and have annual sales of nearly $400 million.

With all due respect to my colleagues from the great State of Wisconsin, Tillamook is cheese. Over the years, the Tillamook County Creamery Association has won hundreds of awards, including six at the 2009 Oregon Dairy Industries products contest and six at the 2008 National Milk Producers Association. It has also been recognized by the Portland Business Journal for the third year in a row as one of Oregon's ''Most Admired Companies.''

For decades, the Tillamook Cheese Factory has been a must-see stop for millions of tourists who travel highway 101. In recent years, the creamery association has expanded to other parts of the State, but its traditions are deeply rooted in the pastures and dairies that make Tillamook County and Tillamook Cheese what it is.•

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

In executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Energy and Natural Resources.

(The nomination received today is printed at the end of the Senate proceedings.)

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 3435. An act making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

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

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–2587. A communication from the Director of the Regulatory Management Division,

Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pasteuria usgae; Temporary Exemption From the Requirement of a Tolerance'' (FRL No. 8429-1) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2588. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Sodium salts of N-alkyl (C8-C18)-beta-iminodipropionic acid; Exemption from the Requirement of a Tolerance'' (FRL No. 8425-5) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2589. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''N-alkyl (C8-C18) Primary Amines and Acetate Salts; Exemption from the Requirements of a Tolerance'' (FRL No. 8428-9) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2590. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Methyl Poly(Oxyethylene)C8-C18 Alkylammonium Chlorides; Exemption from the Requirement of a Tolerance'' (FRL No. 8424-4) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2591. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Alkyl Alcohol Alkoxylate Phosphate and Sulfate Derivatives; Exemption from the Requirement of a Tolerance'' (FRL No. 8424-6) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2592. A communication from the Secretary of Defense, transmitting a report on the approved retirement of Vice Admiral Bruce E. MacDonald, United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

EC–2593. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, a Uniform Resource Locator (URL) for a document entitled ''RCRA 7003 and CERCLA 106(b)(1) civil penalty policies'' received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

EC–2594. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions'' (FRL No. 8937-8) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

EC–2595. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, West Virginia; Control of Emissions from Commercial and Industrial Solid Waste Incinerator Units, Plan Revision'' (FRL No. 8938-6) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

EC–2596. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule'' (FRL No. 8939-7) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

EC–2597. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Emissions of Nitrogen Oxides'' (FRL No. 8939-4) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

EC–2598. A communication from the Federal Register Liaison Officer, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Liquor Dealer Recordkeeping and Registration, and Repeal of Certain Special (Occupational) Taxes'' (RIN1513-AB63) received in the Office of the President of the Senate on June 30, 2009; to the Committee on Finance.

EC–2599. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, a report entitled ''The Year in Trade 2008''; to the Committee on Finance.

EC–2600. A communication from the Acting Deputy Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the Agency's third FY 2009 quarterly report; to the Committee on Foreign Relations.

EC–2601. A communication from the President and Chief Scout Executive, Boy Scouts of America, transmitting, pursuant to law, the organization's 2008 annual report; to the Committee on the Judiciary.

EC–2602. A communication from the Director of the Regulatory Management Division, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, West Virginia; Control of Emissions from Hospital/Medical/Infectious Waste Incinerator Units, Plan Revision'' (FRL No. 8938-8) received in the Office of the President of the Senate on July 29, 2009; to the Committee on Environment and Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 212. A bill to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary, and for other purposes (Rept. No. 111–64).

S. 380. A bill to expand the boundaries of the Thunder Bay National Marine Sanctuary and Underwater Preserve, and for other purposes (Rept. No. 111–65).

By Mr. HARKIN, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 3293. A bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2010, and for other purposes (Rept. No. 111–66).

By Mr. BINGAMAN, from the Committee on Energy and Natural Resources, without amendment:

H.R. 1275. A bill to direct the exchange of certain land in Grand, San Juan, and Uintah Counties, Utah, and for other purposes (Rept. No. 111–67).

H.R. 2938. A bill to extend the deadline for commencement of construction of a hydroelectric project (Rept. No. 111–68).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

*John M. McHugh, of New York, to be Secretary of the Army.

*Joseph W. Westphal, of New York, to be Under Secretary of the Army.

*Juan M. Garcia III, of Texas, to be an Assistant Secretary of the Navy.

*J. Michael Gilmore, of Virginia, to be Director of Operational Test and Evaluation, Department of Defense.

By Mr. BINGAMAN for the Committee on Energy and Natural Resources.

*James J. Markowsky, of Massachusetts, to be an Assistant Secretary of Energy (Fossil Energy).

*Warren F. Miller, Jr., of New Mexico, to be an Assistant Secretary of Energy (Nuclear Energy).

*Warren F. Miller, Jr., of New Mexico, to be Director of the Office of Civilian Radioactive Waste Management, Department of Energy.

*Anthony Marion Babauta, of Virginia, to be an Assistant Secretary of the Interior.

*Jonathan B. Jarvis, of California, to be Director of the National Park Service.

By Mr. KERRY for the Committee on Foreign Relations.

*Ertharin Cousin, of Illinois, for the rank of Ambassador during her tenure of service as U.S. Representative to the United Nations Agencies for Food and Agriculture.

*Kerri-Ann Jones, of Maine, to be Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.

*David Killion, of the District of Columbia, for the rank of Ambassador during his tenure of service as the United States Permanent Representative to the United Nations Educational, Scientific, and Cultural Organization.

*Glyn T. Davies, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Representative of the United States of America to the Vienna Office of the United Nations, with the rank of Ambassador.

*Glyn T. Davies, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Representative of the United States of America to the International Atomic Energy Agency, with the rank of Ambassador.

*Aaron S. Williams, of Virginia, to be Director of the Peace Corps.

*Michael Anthony Battle, Sr., of Georgia, to be Representative of the United States of America to the African Union, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Nominee: Michael Anthony Battle.

Post: Ambassador to the African Union.

(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, 09/13/2007, Barack Obama; $100, 01/28/1008, Barack Obama; $100, 08/25/2008, Barack Obama; $50, 11/03/2009, Barack Obama. I can not recall the details of other on-line contributions.

2. Spouse: Linda Ann Battle: unsure but less than $200 to the Obama Campaign.

3. Son and Spouse: Michael A. Jr. and Shawna Battle: none. Son and Spouse: Martin and Melissa Battle: none. Daughter: Lisa A. Battle: none.

4. Parents: Jesse Battle Sr., Father—deceased; Mary Ann Battle, Mother—deceased.

5. Grandparents: Paternal; Nathan and Mary Battle—deceased; Maternal: William and Mary Lee Evans—deceased.

6. Brothers and Spouses: Jesse Jr. and Denise Battle: did not share amount but contributed to Gerald Ford, Ronald Reagan, William Clinton, and Barack Obama; David and Linda Battle: none; Philip Battle: unable to contact.

7. Sisters and Spouses: Bobbie Jean and Arlington Alexander: none; Bettye and Fred Turner: Bettye was a volunteer Lawyer for the MO. Obama Team; Carol Battle Barnes (Husband John Barnes deceased): no monetary contribution but worked as a Neighborhood volunteer for the Obama Team; Brenda Battle: $500 to the Obama Campaign; Deborah Battle Bland (Husband John Bland deceased): none; Regina and Craige Fowler: none; Patricia and Robert Walker: none.

Martha Larzelere Campbell, of Michigan, 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 Marshall Islands.

Nominee: Martha Larzelere Campbell.

Post: Ambassador.

(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: $25.00, 2008, Virginia Dollars for Democrats.

3. Children and Spouses: None.

4. Parents:–Henry Earle Larzelere—deceased; Annabel Studebaker Larzelere: none.

5. Grandparents: John Henry Larzelere—deceased; Georgia Baldwin Larzelere—deceased; Herbert Arthur Studebaker—deceased; Nora Miller Studebaker—deceased.

6. Brothers and Spouses: John Herbert Larzelere: None; Mary Anne Rhodes Larzelere: $150 yearly '04–08 Emily's List.

7. Sisters and Spouses: Mary Larzelere Dygert: None.

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*John R. Bass, of New York, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Georgia.

Nominee: John R. Bass.

Post: Georgia.

(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: Lisa Hardy-Bass—Deceased No contributions in reporting period prior to death.

3.–Children and Spouses: None.

4. Parents: Father: John R. Bass—Deceased; Mother: Dianne K. Klinger: Tracey Brooks, Via Friends of Tracey Brooks, $250.00, 08/01/2008; $250.00, 08/27/2008; Kirsten Gillibrand, Elizabeth Mrs via Gillibrand for Senate, $200.00, 04/01/09; $50.00, 1/12/08; $100.00, 7/12/08; $175.00, 8/23/08; $125.00, 9/24/08; $100.00, 12/08/07; $100.00, 6/10/06; $100.00, 8/04/06; $200.00, 10/27/06; Democratic Congressional Campaign Committee, $15.00, 2008; Emily's List, $50.00, 2/2/08; $50.00, 1/05/07; $100.00, 7/29/07; $100.00, 3/11/06; Eleanor Roosevelt Legacy Committee, $175.00, 9/6/08; $175.00, 9/09/07; $175.00, 10/16/06; $150.00, Sept. or Oct. 2005. These are the Final Recipients of Joint Fundraising Contributions: Kirsten Elizabeth Gillibrand, Mrs via Gillibrand for Senate, $100.00, 09/23/2008.

5. Grandparents: Deceased.

6. Brothers and Spouses: N/A. Names: none

7.–Sisters and Spouses: Sister: Kristin Bass: Gillibrand, Kirsten Elizabeth Mrs via Gillibrand for Senate, 250.00, 03/27/2007; Johnson, Nancy L. via Johnson for Congress Committee, $250.00, 12/30/2005; Collins, Susan M via Collins for Senator, $500.00, 03/24/2007; National Republican Senatorial Committee, $300.00, 01/31/2005.

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*James B. Foley, 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 Croatia.

Nominee: James B. Foley.

Post: Croatia.

(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–

2. Spouse

3. Children and Spouses Names

4. Parents Names

5. Grandparents Names

6. Brothers and Spouses Names

7. Sisters and Spouses Names

Contributions, amount, date, and donee:

1. Father: $50, 2008, Democratic Senatorial Campaign Committee; $25, 2008, Hillary Clinton for President; $25, 2007, Democratic Senatorial Campaign Committee; $30, 2006, Democratic Senatorial Campaign Committee.

2. Mother: $25, 2008, Democratic Senatorial Campaign Committee.

3. Brother: $1250, 2008, Obama for America; $2300, 2007, Hillary Clinton for President; $2300, 2008, Friends of Hillary—2012 Senate Primary Campaign Fund; $1000, 2004, Democratic National Committee; $5000, 2004, National Republican Congressional Committee.

4. Sister-in-law: $2300, 2007, Hillary Clinton for President; $2300, 2008, Friends of Hillary—2012 Senate Primary Campaign Fund; $2100, 2006, Friends of Hillary; $2100, 2006, Friends of Hillary; $15,000, 2005, Democratic Senatorial Campaign Committee; $250, 2004, John Kerry for President.

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*Kenneth E. Gross, Jr., 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 Tajikistan.

Nominee: Kenneth E. Gross, Jr.

Post: Dushanbe, Tajikistan.

(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: Kenneth E. Gross Jr.

2. Minoo Rasoolzadeh

3. Spouse: Children and Spouses: None.

4. Parents: Not living.

5. Grandparents: Not living.

6. Brothers and Spouses: None.

7. Sister: Marsha G. Martin: None.

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*Teddy Bernard Taylor, of Maryland, 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 Papua New Guinea, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Solomon Islands and Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Vanuatu

Nominee: Teddy Bernard Taylor

Post: Papua New Guinea.

(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, 2008, Obama for Pres.

2. Spouse: $50, 2008, MoveOn.org.

3. Children and Spouses: Tina B. Taylor, none; Ashton C. Taylor, none.

4. Parents: Sara B. Taylor (deceased); Bennie Taylor (deceased).

5. Grandparents: Blanche Taylor (deceased); John Taylor (deceased); Emma Buck (deceased); William Buck, Sr. (deceased).

6. Brothers and Spouses: Terri. R. Taylor, $100, 2008, Obama for Pres; Alycia Dougans-Taylor, none.

7. Sisters and Spouses: N/A.

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*John Victor Roos, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Japan.

Nominee: John Victor Roos.

Post: U.S. Ambassador to Japan.

(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: $1,000, 10/31/07, Iowa Democratic Party; $2,300, 7/14/08, Hillary Clinton For President; $1,500, 2/06/08, Kennedy for Senate 2012; $2,300, 3/31/07, Obama For America; $12,300, 8/25/08, Obama Victory Fund; $1,000, 3/02/08, Gillibrand for Congress; $2,300, 10/20/07, Anna Eshoo for Congress; $1,000, 6/28/05, Whitehouse '06.

2. Spouse: Susan Roos: $1,000, 10/23/08, Brown for Congress, Progressive Patriots PAC; $1,000, 3/31/07, (Sen. Russell Feingold); $500, 10/18/05, Brown for Congress; $333*, 7/17/06, Haden for Congress; $333*, 7/05/06, McNerney for Congress; $333*, 6/30/06, Cranley for Congress, Committee to Bring Back Baron; $333*, 6/30/06, (Rep. Baron Hill); $333*, 6/30/06, Courtney for Congress; $333*, 6/30/06,

Phyllis Busansky for Congress; $333*, 6/30/06, Committee to Elect Chris Murphy; $333*, 6/30/06, Welch for Congress; $333*, 6/30/06, Lucas for Congress; $333*, 6/30/06, Ellsworth for Congress; $333*, 6/30/06, Darcy Burner for Congress; $333*, 6/30/06, Harry Mitchell for Congress; $333*, 6/30/06, Jill Derby for Congress; $333*, 6/30/06, Lois Murphy for Congress; $2,300, 5/24/07, John Kerry for Senate; $4,600, 3/31/07, Obama for America.

*Intermediary Democratic Congressional Campaign Committee.

3. Children and Spouses: Lauren Roos: None; David Roos: None.

4. Parents: Bettye and Jacques Roos: $100, 2004, Kerry for President; $25, 11/1/08, Obama for America; $25, 10/7/08, Obama for America; $25, 9/15/08, Obama for America; $30, 6/30/08, Obama for America; $25, 4/30/08, Obama for America; $50, 3/5/08, Obama for America.

5. Grandparents: N/A

6. Brothers and Spouses: Brad Roos: $100, 8/08, Obama for America.

Michael and Julianne Roos: $25, 4/30/08, Obama for America; $25, 5/10/08, Obama for America; $250, 5/15/08, Obama for America; $25, 7/14/08, Obama for America; $1,000, 10/1/08, Obama for America.

7. Sisters and Spouses: N/A.

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*Judith Gail Garber, 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 Latvia.

Nominee: Judith Gail Garber.

Post: Riga, Latvia.

(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: Paul Randall Wisgerhof: $100.00, 08/11/2008, John S. McCain.

3. Children and Spouses: David Kevin Wisgerhof (stepson): None. Jennifer Wisgerhof (spouse): None. Amy Elaine Archibald: None. Joshua Archibald (spouse): $1,000, 2/10/2008, Glenn Nye; Douglas Tracy Wisgerhof: None. Elizabeth Rachel Wisgerhof: None. Ryan Daniel Wisgerhof: None.

4. Parents: Seymour Garber: None. Evelyn Fay Garber (deceased): None.

5. Grandparents: Bess Farb (deceased): None. Julius Farb (deceased): None. Ethel Garber (deceased): None. Samuel Garber (deceased): None.

6. Brothers and Spouses: Stephen Garber: $200, 3/26/2005, Dianne Feinstein, Feinstein for Senate; $100, 6/4/2005, Hillary Clinton, Friends of Hillary; $150, 9/17/2005, Democratic Congressional Campaign Cmtte; $100, 9/24/2005, Dianne Feinstein, Feinstein for Senate; $100, 3/9/2006, Dianne Feinstein, Feinstein for Senate; $150, 4/15/2006, Democratic Congressional Campaign Cmte; $200, 4/29/2006, Democratic National Committee; $50, 5/6/2006, Lois Murphy for Congress; $50, 5/6/2006, Stabenow for Senate; $250, 6/15/2006, Dianne Feinstein, Feinstein for Senate; $150, 8/26/2006, Democratic National Campaign Committee; $200, 9/9/2006, Democratic Senatorial Campaign committee; $150, 9/25/2006, Democratic Congressional Campaign Committee; $230, 1/31/2007, Democratic Congressional Campaign Committee; $250, 5/7/2008, Democratic National Committee; $230, 9/29/2008, Democratic Congressional Campaign Committee; $250, 9/29/2008, Barack Obama, Obama For America; $100, 4/13/2009, Democratic Senatorial Campaign Committee. Rena Pasick (spouse): $100, 10/9/2008, Barack Obama, Obama For America.

7. Sisters and Spouses: Linda Risha Thompson: None. Earl Thompson (spouse): None.

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*James Knight, of Alabama, 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 Benin.

Nominee: James Knight.

Post: Embassy Cotonou.

(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. $200, Mar 08, Barack Obama; $200, Mar 08, Hillary Clinton; $200, Mar 08, John McCain; $200, Sep 08, Barack Obama; $200, Sep 08, John McCain.

On behalf of Self and Spouse:

2. Spouse: Amelia Bell Knight: (See item 1).

3. Children and Spouses: James Davis Knight, on behalf of self and spouse: $50, Feb 08, John Edwards; $100, Apr 08, Barack Obama; $100, Jul 08, Barack Obama; $50, Apr 06, Dan Fields. James Lee Knight: 0, Norma Knight: 0. Richard Adrian Walker III: 0. Mary Amelia Lowery: 0, Christopher P. Alvarez: 0 (Cohabitant in spouse-like relationship).

4. Parents: Kimo C.V. Courtenay: 0; Perry Nell Jones (mother): Deceased; Roy Arthur Knight (stepfather): Deceased.

5. Grandparents: Perry W. Caraway (maternal grandfather): Deceased; Bessie Mae Caraway (maternal grandmother): Deceased; James Crosby Little (paternal grandfather): Deceased; Marjorie Elder Little (paternal grandmother): Deceased.

6. Brothers and Spouses: None.

7. Sisters and Spouses: Kathryn Marie Harris: 0; Hugh G. Harris: 0.

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*Karen Kornbluh, of New York, to be Representative of the United States of America to the Organization for Economic Cooperation and Development, with the rank of Ambassador.

Nominee: Karen Kornbluh.

Post: OECD.

(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: $1,000, 2/6/04, John Kerry.

2. Spouse: James Halpert: $250, 2/28/2009, DLA Piper PAC; $500, 9/22/08, DSCC; $500, 4/23/08, Bob Goodlatte; $500, 2/21/08, Ed Markey; $250, 4/30/07, Byron Dorgan; $500, 5/17/06, Maria Cantwell; $250, 9/30/06, Deborah Pryce; $1,000, 1/25/06, Orrin Hatch; $250, 6/20/05, Patrick Leahy; $1,500, 7/15/05–12/31/05, DLA Piper PAC; $500, 12/30/05, Longhorn PAC; $500, 6/17/04, Chris Cox.

3. Children and Spouses: Sam Halpert & Daniel Halpert: N/A.

4. Parents: Beatrice Braun: $2,000, 03/24/2004, John Kerry; $250, 10/19/2004, Barbara Boxer; $250, 03/02/2005, Emily's List; $250, 03/06/2006, Emily's List.

David Kornbluh: N/A.

5. Grandparents: Miriam Cogan—deceased; Max Kornbluh—deceased; Gertrude Kornbluh—deceased.

6. Sisters and Spouses: Rebecca Kornbluh: $250, 09/09/2008, Obama for America.

Andre Wakefield: N/A.

Felicia Kornbluh: $300, 08/29/2006, Larry Kissell.

*Bruce J. Oreck, of Colorado, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Finland.

Nominee: Bruce J. Oreck.

Post: Ambassador to the Republic of Finland.

(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, date, amount, and donee:

1. Self: 10/15/08, $5,000, Democratic Congressional Campaign Cmte; 10/14/08, $2,300, Markey, Betsy; 9/30/08, $1,000, Merkley, Jeff; 9/30/08, $443, CO Party Victory Fund; 9/30/08, $1,314, FL Party Victory Fund; 09/30/08, $695, GA Party Victory Fund; 09/30/08, $646, IN Party Victory Fund; 09/30/08, $213, IA Party Victory Fund; 09/30/08, $978, MI Party Victory Fund; 09/30/08, $659, MO Party Victory Fund; 09/30/08, $59, MT Party Victory Fund; 09/30/08, $210, NV Party Victory Fund; 09/30/08, $131, NH Party Victory Fund; 09/30/08, $127, NM Party Victory Fund; 09/30/08, $887, NC Party Victory Fund; 09/30/08, $65, ND Party Victory Fund; 09/30/08, $1,213, OH Party Victory Fund; 09/30/08, $1,166, PA Party Victory Fund; 09/30/08, $737, VA Party victory Fund; 09/30/08, $314, WI Party Victory Fund; 9/15/08, $2,300, Landrieu, Mary L; 7/31/08, $1,000, Clinton, Hillary; 7/23/08, $1,845, Udall, Mark; 6/30/08, $2,300, Polis, Jared; 7/30/07, $2,300, Baucus, Max; 5/29/07, $28,500, Democratic Senatorial Campaign Cmte; 3/31/07, $4,600, Obama, Barack; 3/31/07, $2,300, Obama, Barack; 3/31/07, $2,300, Obama, Barack; 3/31/07, $1,000, Salazar, Ken; 3/21/07, $2,300, Udall, Mark; 12/8/06, $200, Salazar, Ken; 9/28/06, $1,000, Lamm, Peggy; 8/25/06, $200, Salazar, Ken; 8/24/06, $1,500, Paccione, Angie; 7/31/06, $15,000, Democratic Congressional Campaign Cmte; 7/19/06, $500, Fawcett, Jay; 7/13/06, $1,000, Lamm, Peggy; 6/16/06, $200, Salazar, Ken; 3/31/06, $1,000, Cantwell, Maria; 3/4/06, $200, Salazar, Ken; 1/17/06, $2,100, Paccione, Angie; 12/1/05, $200, Salazar, Ken; 11/30/05, $2,100, Udall, Mark; 10/21/05, $200, Salazar, Ken; 9/16/05, $2,100, Lamm, Peggy; 7/28/05, $2,100, Salazar, John.

2. Spouse: Charlotte D. Oreck: 10/9/08, $2,300, Udall, Mark; 6/12/08, $28,500, DNC Services Corp; 11/7/07, $2,500, Democratic Senatorial Campaign Cmte; 3/31/07, $2,300, Obama, Barack; 3/21/07, $2,300, Udall, Mark; 6/26/06, $500, Lamm, Peggy (D); 10/30/05, $2,100, Udall, Mark.

3. Brother and Spouse: Thomas and Toni Oreck: 9/30/08, $2,300, Obama, Barack; 9/29/08, $7,700, DNC Services Corp; 8/31/07, $2,300, Obama, Barack; 9/30/08, $443, CO Party Victory Fund; 9/30/08, $1,314, FL Party Victory Fund; 09/30/08, $695, GA Party Victory Fund; 09/30/08, $646, IN Party Victory Fund; 09/30/08, $213, IA Party Victory Fund; 09/30/08, $978, MI Party Victory Fund; 09/30/08, $659, MO Party Victory Fund; 09/30/08, $59, MT Party Victory Fund; 09/30/08, $210, NV Party Victory Fund; 09/30/08, $131, NH Party Victory Fund; 09/30/08, $127, NM Party Victory Fund; 09/30/08, $887, NC Party Victory Fund; 09/30/08, $65, ND Party Victory Fund; 09/30/08, $1,213, OH Party Victory Fund; 09/30/08, $1,166, PA Party Victory Fund; 09/30/08, $737, VA Party Victory Fund; 09/30/08, $314, WI Party Victory Fund; 9/29/06, $2,100, Carter, Karen R; 9/29/06, $2,100, Carter, Karen R.

4. Brother and Spouse: Steven and Kaaren Oreck: 8/14/08, $500, McCain, John; 6/4/08, $500, McCain, John; 4/1/08, $250, McCain, John; 1/26/08, $250, McCain, John; 1/8/08, $250, McCain, John.

5. Mother: Paula Oreck: 9/30/08, $500, Obama, Barack; 9/4/08, $250, Democratic Senatorial Campaign Cmte; 8/28/08, $250, Clinton, Hillary; 8/3/08, $250, Clinton, Hillary; 7/31/08,

$300, Obama, Barack; 6/29/08, $250, Democratic Congressional Campaign Cmte; 6/24/08, $250, Democratic Senatorial Campaign Cmte; 6/16/08, $250, DNC Services Corp; 4/30/08, $1,000, Clinton, Hillary; 3/20/08, $250, Democratic Senatorial Campaign Cmte; 1/6/08, $250, Edwards, John; 6/28/07, $1,000, Obama, Barack; 6/14/07, $250, Edwards, John; 11/1/06, $250, DNC Services Corp; 10/30/06, $500, Democratic Congressional Campaign Cmte; 10/27/06, $250, DNC Services Corp; 10/20/06, $400, Democratic Congressional Campaign Cmte; 9/1/06, $1,000, Lowey, Nita M.

6. Father: David Oreck: None.

7. Daughter: Rachel Oreck: 6/12/08, $28,500, DNC Services Corp; 3/31/07, $2,300, Obama, Barack.

8. Daughter: Jessica Oreck: 9/5/07, $2,300, Obama, Barack.

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*Jon M. Huntsman, Jr., of Utah, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of China.

Nominee: Jon M. Huntsman, Jr.

Post: United States Ambassador to China.

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: $1000, 2/13/2006, Thomas Campbell; $2000, 6/26/2007, Gordon Smith; $2300, 3/8/2007, John McCain.

2. Spouse: Mary Katharine Huntsman: $1000, 8/25/2008, Jason Chaffetz; $2300, 3/8/2007, John McCain.

3. Children: Mary Anne: $2300, 3/8/2007, John McCain; Abby: $2300, 3/8/2007, John McCain; Elizabeth: $2300, 3/8/2007, John McCain.

4. Parents: Jon M. Huntsman, Sr.: $5000, 3/15/2005, Leadership Circle PAC; $26700, 3/28/2005, Nat Democratic Senatorial; $2000, 3/31/2005, Orrin Hatch-primary election; $2000, 3/31/2005, Orrin Hatch-general election; $26700, 4/6/2005, Nat Republican Senatorial; $3000, 5/11/2005, Nat Republican Congressional; $5000, 02/27/2006, Carl Griffith; $50000, 03/03/2006, Commonwealth PAC-Iowa; $50000, 03/03/2006, Commonwealth PAC-Michigan; $5000, 03/03/2006, Commonwealth PAC-New Hampshire; $3500, 03/03/2006, Commonwealth PAC-South Carolina; $2500, 03/03/2006, Robert Wortham; $2300, 1/30/2007, Mitt Romney; $28500, 1/31/2007, Nat Democratic Senatorial; $28500, 3/9/2007, Nat Republican Senatorial; $2300, 8/28/2007, Max Baucus; $2300, 8/28/2007, Max Baucus; $5000, 11/14/2007, Ralph Becker; $5000, 1/9/2008, Nevada State Democratic; $2300, 2/22/2008, John McCain; $2300, 3/25/2008, Charles Rangel; $2300, 5/6/2008, Elizabeth Dole; $2300, 5/19/2008, Gordon Smith; $2400, 2/4/2009, Harry Reid; $2400, 2/4/2009, Harry Reid; $30400, 2/4/2009, Nat Democratic Senatorial; $30400, 2/5/2009, Nat Republican Senatorial; $3500, 3/13/2009, Henry McMaster. Karen Huntsman: $26700, 3/28/2005, Nat Democratic Senatorial; $2000, 3/31/2005, Orrin Hatch; $2000, 3/31/2005, Orrin Hatch; $26700, 4/6/2005, Nat Republican Senatorial; $8000, 5/11/2005, Nat Republican Congressional; $1000, 10/19/2005, Straight Talk America; $2300, 1/30/2007, Mitt Romney; $28500, 1/31/2007, Nat Democratic Senatorial; $2300, 3/2/2007, John McCain; $28500, 3/9/2007, Nat Republican Senatorial; $2300, 8/28/2007, Max Baucus; $2300, 8/28/2007, Max Baucus; $5000, 1/9/2008, Nevada Democratic Party; $2300, 3/25/2008, Charles B. Rangel; $1300, 4/21/2008, McCain-Palin Fund; $2300, 5/6/2008, Harry Reid; $2300, 5/19/2008, Gordon Smith; $2400, 2/4/2009, Harry Reid; $2400, 2/4/2009, Harry Reid; $30400, 2/4/2009, Nat Democratic Senatorial; $30400, 2/25/2009, Nat Republican Senatorial; $2300, 5/5/2009, Elizabeth Dole.

5. Grandparents: Alonzo Blaine Huntsman—deceased, Kathleen Robison Huntsman—deceased, David B. Haight—deceased, Ruby Haight—deceased.

6. Brothers and Spouses: Peter Huntsman: $2000, 3/31/2006, Orrin Hatch; $2000, 3/31/2005, Orrin Hatch; $9000, 5/11/2005, Nat Republican Congressional; $28500, 1/31/2007, Nat Democratic Senatorial; $2300, 8/28/2007, Max Baucus; $2300, 8/28/2007, Max Baucus; $4600, 1/30/2008, John McCain; $2300, 12/16/2008, John McCain. Brynn Huntsman: $25000, 6/15/2006, Nat Republican Senatorial; $28500, 1/31/2007, Nat Democratic Senatorial; $2300, 8/28/2007, Max Baucus. James Huntsman: $2500, 5/11/2005, Nat Republican Congressional; $2100, 1/17/2006, Thomas Campbell; $25000, 6/15/2007, Nat Republican Senatorial; $2300, 8/31/2007, Max Baucus; $2300, 8/31/2007, Max Baucus; $2300, 2/6/2008, Barack Obama-primary election; $2300, 2/20/2008, Barack Obama-general election; $2300, 2/20/2008, Barack Obama-general election. Marianne Huntsman: $2300, 8/31/2007, Max Baucus; $2300, 8/31/2007, Max Baucus; $2300, 2/20/2008, Barack Obama-general election. David Huntsman: $25000, 6/15/2006, Nat Republican Senatorial; $2000, 10/10/2006, David Buhler; $2300, 1/8/2007, Mitt Romney; $1000, 1/16/2007, Jason Chaffetz; $500, 2/2/2007, David Buhler; $2000, 2/11/2007, David Buhler; $2300, 8/31/2007, Max Baucus; $500, 9/3/2008, Jeff Morrow. Michelle Huntsman: $2300, 3/27/2007, Mitt Romney; $2300, 8/31/2007, Max Baucus. Paul Huntsman: $5000, 3/07/2006, Commonwealth PAC; $2300, 4/28/2008, John McCain. Cheryl Huntsman: none. Mark Huntsman: $25000, 9/28/2006, Nat Republican Senatorial; $2300, 8/31/2007, Max Baucus; $2300, 2/22/2008, John McCain.

Sisters and Spouses: Christena Durham: $2100, 1/8/2007, Mitt Romney; $2300, 11/14/2007, Max Baucus; $2300, 11/14/2007, Max Baucus. Richard Durham: $1000, 11/18/2005, Robert Bennett; $1250, 2/23/2006, EnergySolutions PAC; $1000, 2/28/2006, Mitch McConnell; $1000, 7/10/2006, Robert Bishop; $1000, 9/6/2006, Orrin Hatch; $1250, 12/8/2006, Lindsey Graham; $2100, 1/9/2007, Mitt Romney; $2300, 11/14/2007, Max Baucus; $2300, 11/14/2007, Max Baucus. Jennifer Parkin: $2300, 8/31/2007, Max Baucus. David Parkin: $25000, 5/11/2005, Nat Republican Congressional; $2000, 1/29/2006, Thomas Campbell; $25000, 6/15/2006, Nat Republican Senatorial; $2300, 8/31/2007, Max Baucus. Kathleen Huffman: none.

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*Douglas W. Kmiec, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malta.

Nominee: Douglas W. Kmiec.

Post: Ambassador to the Republic of Malta.

(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: $50, July 2008, Obama '08; $170, Jan. 2009, Obama Inaugural Cmte.

2. Spouse: Carolyn: $170, Jan. 2009, Obama Inaugural Cmte.

3. Children and Spouses: Keenan (son): $250, Jan. 2008, Obama, '08; $250, Sep. 2008, Obama '08.

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*Jonathan S. Addleton, of Georgia, 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 Mongolia.

Nominee: Jonathan Addleton.

Post: Mongolia.

(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, Spring 2008, Senator Jeff Merkley*; $250, Summer 2006, Nancy White, City Council**.

*Senator Merkley (D–Oregon) and I were fellow interns at the Carnegie Endowment for International Peace during 1979–1980, after college and before graduate school.

**In 2006, my sister Nancy White ran for a seat on the Macon, Georgia city council. I made a small financial contribution ($250) to her successful campaign.

2. Spouse: Fiona, none.

3. Children: Catriona (age 14), none; Cameron (age 16), none; and Iain (age 18), $100, Spring, Summer, Fall 2008, President Obama*.

*As a high school senior at Mount de Sales Academy in Macon, Georgia and college freshman at Davidson College in Davidson, North Carolina, our son Iain made many phone calls and house canvassing visits on behalf of Presidential candidate Barack Obama, both during the primaries and the general election that followed; he estimates that he also made small internet contributions totaling around $80–$100 intermittently throughout 2008.

4. Parents: Hubert Franklin Addleton, none; and Bettie Rose Addleton, none.

5. Grandparents: Ben Addleton—deceased; Bessie Addleton—deceased; Melton Simmons—deceased; and Bennie Simmons—deceased.

6. Brothers: David Addleton, none.

7. Sisters: Nancy White, $300, 2006–2008, Local City Council*.

*My sister Nancy White is a member of the Macon, Georgia city council. She reports that ever since she joined in 2006, she has made small contributions to the political campaigns of other city council members running for office. In her estimation, the total contributions over the years do not exceed $300.

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*Matthew Winthrop Barzun, of Kentucky, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Sweden.

Nominee: Matthew Barzun.

Post: Ambassador to Sweden.

(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, donee, date, and amount:

Matthew Barzun: DNC Services Corporation/Democratic National Committee, 2/23/2009, $215.00; Kentucky State Democratic Central Executive Committee, 11/21/2007, $7,500.00; John Kerry for Senate, 2/13/2007, $2,300.00; John Kerry for Senate, 2/13/2007, $200.00; John Kerry for Senate, 2/13/2007, $2,300.00; John Kerry for Senate, 2/13/2007, $200.00; Paul Hodes for Congress, 12/31/2007, $2,000.00; Kentucky forward PAC (Rep. Ben Chandler, D–KY), 6/18/2008, $2,300.00; Yarmuth for Congress, 1/12/2007, $2,100.00; Yarmuth for Congress, 6/30/2007, $200.00; Yarmuth for Congress, 6/30/2007, $2,300.00; Obama for America, 1/16/2007, $2,100.00; Obama for America, 3/14/2007, $2,500.00; Obama for America, 3/14/2007, ($2,300.00); Obama for America, 3/14/2007, $2,300.00; Hillary Clinton for President, 7/14/2008, $2,300.00; Steve Black for Congress Committee, 12/6/2007, $1,000.00; Ben Chandler for Congress, 6/23/2008, $2,300.00; Hoosiers for Hill, 6/23/2008, $2,300.00; Hoosiers for Hill, 6/23/3008, $2,300.00; Kentucky Victory 2007, 11/5/2007, $10,000.00; Democratic Senatorial Campaign Committee, 10/31/2007, $1,500.00; Friends of Jared Polis Committee, 2/13/2008, $500.00;– Friends of Mark Warner, 11/13/2007, $2,300.00; Friends of Mark Warner, 11/2/2007, $2,300.00; Jeanne Shaheen for Senate, 1/7/2008, $2,300.00;

Doug Denneny for Congress, 3/14/2008, $250.00; Andrew Rice for U.S. Senate Inc, 10/24/2008, $250.00; Democratic White House Victory Fund, 5/31/2008, $28,500.00; Committee to Elect David Boswell to Congress, 9/16/2008, $2,300.00; Fischer for U.S. Senate, 1/23/2008, $2,300.00; Fischer for U.S. Senate, 1/23/2008, $2,300.00; Fischer for U.S. Senate, 5/11/2008, $2,300.00; Committee for Change, 7/23/2008, $6,000.00; Campaign for Our Country (formerly Keeping America's Promise) (Sen. John Kerry, D–MA), 3/7/2005, $5,000.00; Ben Chandler for Congress, 2/28/2005, $2,000.00; Friends of Kent Conrad, 8/25/2005, $1,000.00; Yarmuth for Congress, 3/27/2006, $2,100.00; Yarmuth for Congress, 3/30/2006, $2,100.00; Campaign for Our Country (formerly Keeping America's Promise) (Sen. John Kerry, D–MA), 4/7/2006, $5,000.00; Lucas for Congress, 5/14/2006, $1,000.00; Weaver for Congress 2006, 5/4/2006, $1,000.00; Weaver for Congress 2006, 5/31/2006, $2,100.00; Lucas for Congress, 9/15/2006, $1,000.00; Ben Chandler for Congress; 10/10/2006, $1,000.00; McCaskill for Missouri; 9/29/2006, $2,100.00, Democratic Senatorial Campaign Committee; 9/20/2006, $5,000.00, Democratic Senatorial Campaign Committee; 9/15/2006, $12,500.00, Democratic Congressional Campaign Committee; 9/25/2006, $25,000.00, Democratic Congressional Campaign Committee; 11/7/2006, $1,700.00, Actblue Iowa; 12/28/2007, $0.00, Actblue Iowa; 12/28/2007, $750.00.

Brooke B. Barzun: John Kerry For Senate, 2/13/2007, $2,300.00, John Kerry For Senate; 2/13/2007, $2,300.00, John Kerry For Senate; 7/19/2007, ($100.00), John Kerry For Senate; 2/13/2007, $2,300.00, John Kerry For Senate; 2/13/2007, $2,300.00, Yarmuth For Congress; 1/12/2007, $2,100.00, Yarmuth For Congress; 6/16/2008, $2,300.00, Obama For America; 3/14/2007, $2,500.00, Obama For America; 1/16/2007, $2,100.00, Obama For America; 3/14/2007, ($2,300.00), Obama For America; 3/14/2007, $2,300.00, Hiliary Clinton For President; 7/14/2008, $2,300.00, Ben Chandler For Congress; 6/23/2008, $2,300.00, Hoosiers For Hill; 6/23/2008, $2,300.00, Kentucky Victory 2007; 11/5/2007, $10,000.00, Friends Of Mark Warner; 5/19/2008, $2,300.00.—— Democratic White House Victory Fund, 5/31/2008, $28,500.00; Fischer for U.S. Senate, 1/22/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $2,300.00; Committee for Change, 7/23/2008, $20,000.00; Committee for Change, 8/31/2008, $4,500.00; Ben Chandler for Congress, 8/21/2005, $500.00; Ben Chandler for Congress, 10/8/2005, $1,500.00; Yarmuth for Congress, 4/25/2006, $2,100.00; Yarmuth for Congress, 4/25/2006, $2,100.00; Democratic Senatorial Campaign Committee, 9/15/2006, $12,500.00; Kentucky State Democratic Central Executive Committee, 10/31/2006, $10,000.00.

Owsley Brown III, Kentucky State Democratic Central Executive Committee, 12/14/2007, $10,000.00; Nevada State Democratic Party, 9/30/2008, $262.00; Nevada State Democratic Party, 9/30/2008, $262.00; Yarmuth for Congress, 5/20/2008, $2,300.00; Yarmuth for Congress, 10/9/2008, $2,300.00; Obama for America, 3/6/2007, $2,500.00; Obama for America, 3/7/2007, $2,100.00; Obama for America, 3/6/2007, $2,300.00; Obama for America, 3/6/2007, ($2,300.00); Hillary Clinton for President, 3/31/2007, $2,300.00; Minnesota Senate Victory 2008, 10/28/2008, $1,000.00; Obama Victory Fund, 6/30/2008, $28,500.00; Fischer for U.S. Senate, 5/12/2008, $2,300.00; Committee for Change, 9/30/2008, $12,500.00; Friends of Hillary, 7/13/2005, $2,100.00; Friends of Hillary, 7/13/2005, $1,100.00; Yarmuth for Congress, 3/27/2006, $2,100.00; HILLPAC (Sen. Hillary Clinton, D–NY), 3/31/2006, $2,500.00; Yarmuth for Congress, 4/19/2006, $2,100.00; Democratic Senatorial Campaign Committee, 3/21/2006, $2,000.00; HILLPAC (Sen. Hillary Clinton, D–NY), 4/28/2006, $2,500.00; Forward Together PAC (Sen. Mark R. Warner, D–VA), 5/3/2006, $1,000.00; Democratic Congressional Campaign Committee, 6/30/2006, $20,000.00; McCaskill for Missouri, 9/29/2006, $2,100.00; Democratic Senatorial Campaign Committee, 9/20/2006, $25,000.00; Democratic Congressional Campaign Committee, 11/9/2006, $6,000.00.

Christy Brown: Fischer for U.S. Senate, 1/30/2008, $2,300.00; Fischer for U.S. Senate, 1/30/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $4,600.00; Fischer for U.S. Senate, 5/23/2008, $2,300.00; Kentucky State Democratic Central Executive Committee, 7/5/2007, $10,000.00; Emily's List, 1/24/2007, $1,000.00; Friends of Max Baucus, 4/15/2008, $1,000.00; Yarmuth for Congress, 3/16/2007, $2,300.00; Yarmuth for Congress, 6/30/2007, $2,300.00; Obama for America, 3/7/2007, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, ($2,300.00); Obama for America, 3/9/2007, $2,300.00; Hillary Clinton for President, 7/14/2008, $2,300.00; moveon.org Political Action, 3/28/2008, $500.00; Ben Chandler for Congress, 6/23/2008, $2,300.00; Hoosiers for Hill, 6/23/2008, $2,300.00; Powers for Congress, 7/13/2007, $250.00; Kentucky Victory 2007, 11/5/2007, $20,000.00; Martin for Senate Inc, 11/212008, $2,300.00; Democratic White House Victory Fund, 5/31/2008, $28,500.00; Committee to Elect David Boswell to Congress, 920/2008, $2,300.00; Strengthen Our Senate Majority, 5/29/2008, $2,300.00; Committee for Change, 8/28/2008, $5,500.00; Ben Chandler for Congress, 826/2005, $2,100.00; Yarmuth for Congress, 2/17/2006, $2,100.00; Yarmuth for Congress, 2/17/2006, $2,100.00; Democratic Senatorial Campaign Committee, 9/15/2006, $12,500.00; Democratic Congressional Campaign Committee, 925/2006, $25,000.00.

Serita Winthrop: Obama for America, 3/31/2007, $4,600.00; Obama for America, 3/31/2007, ($2,300.00). Obama for America, 3/31/2007, $2,300.00; Hillary Clinton for President, 7/14/2008, $2,300.00; Obama Victory Fund, 9/24/2008, $10,000.00; Gillibrand for Congress, 3/22/2006, $2,000.00; Democratic Senatorial Campaign Committee, 5/16/2006, $250.00.

Roger Barzun: Obama for America, 4/29/2008, $500.00; Obama for America, 11/19/2007, $500.00; Obama for America, 1/31/2008, $250.00; Obama for America, 3/5/2008, $250.00; Obama for America, 3/31/2008, $500.00; Obama for America, 5/28/2008, $300.00; Obama for America, 8/1/2008, $250.00; Obama for America, 8/1/2008, ($250.00); Obama for America, 8/1/2008, $250.00; Obama Victory Fund, 9/29/2008, $250.00; Obama Victory Fund, 10/16/2008, $250.00.

Charles Barzun: Obama for America, 2/21/2007, $4,600.00; Obama for America, 2/21/2007, ($2,300.00); Obama for America, 2/21/2007, $2,300.00; Hillary Clinton for President, 7/14/2008, $500.00; Perriello for Congress, 10/20/2008, $250.00; Committee for Change, 9/18/2008, $1,000.00.

Lucretia Barzun: Obama for America, 2/21/2007, $2,300.00; Obama for America, 9/10/2008, $250.00.

Owsley Brown: Friends of Max Baucus, 4/10/2008, $1,000.00; Yarmuth for Congress, 3/27/2007, $2,300.00; Yarmuth for Congress, 6/30/2007, $2,300.00; Obama for America, 3/7/2007, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, ($2,300.00); Hillary Clinton for President, 7/14/2008, $2,300.00; Brown-Forman Corporation Non-Partisan Committee for Responsible Government, 8/7/2007, $5,000.00; Ben Chandler for Congress, 6/22/2007, $1,000.00; –Ben Chandler for Congress, 6/23/2008, $2,300.00; Friends Of Mark Warner, 5/14/2008, $1,000.00; Friends Of Mark Warner, 10/23/2008, $1,300.00; Martin for Senate Inc., 11/24/2008, $2,300.00; Democratic White House Victory Fund, –6/30/2008, $28,500.00; Committee to Elect David Boswell To Congress, 9/20/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $4,600.00; Fischer for U.S. Senate, 5/23/2008, ($2,300.00); Strengthen Our Senate Majority, 5/29/2008, $2,300.00; Committee for Change, 7/23/2008, $12,000.00; Committee for Change, 10/24/2008, $4,000.00; Yarmuth Victory Fund 2008, 6/16/2008, $5,000.00; Ben Chandler for Congress, 8/25/2005, $2,100.00;– Friends of Kent Conrad, 8/16/2005, $2,000.00; Brown-Forman Corporation Non-Partisan Committee for Responsible Government, 8/8/2005, $5,000.00; Yarmuth for Congress, 2/17/2006, $2,100.00; Yarmuth for Congress, 2/17/2006, $2,100.00; Brown-Forman Corporation Non-Partisan Committee for Responsible Government, 6/21/2006, $5,000.00; Louisville-Jefferson County Democratic Executive Committee, 10/26/2006, $10,000.00; Friends of Sherrod Brown, 9/22/2006, $2,100.00; Nelson 2006, 9/21/2006, $2,100.00; McCaskill for Missouri, 9/15/2006, $2,100.00; Weaver for Congress 2006, 8/7/2006, $1,000.00; Brown-Forman Corporation Non-Partisan Committee for Responsible Government, 10/31/2006, $1,500.00; Democratic Congressional Campaign Committee, 9/25/2006, $25,000.00; Bob Casey for Pennsylvania Committee, 9/18/2006, $2,100.00; Ben Cardin for Senate, 9/22/2006, $2,100.00; Montanans for Tester, 9/25/2006, $2,100.00.

Victoire Honoree Reynal: Yarmuth for Congress, 10/9/2008, $2,300.00; Obama Victory Fund, 7/1/2008, $28,500.00; Fischer for U.S. Senate, 3/27/2008, $2,300.00; Fischer for U.S. Senate, 3/27/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $2,300.00; Yarmuth for Congress, 8/30/2006, $2,100.00; Yarmuth for Congress, 9/29/2006, $2,100.00.

Augusta Brown Holland: Committee to Elect David Boswell to Congress, 9/24/2008, $1,000.00; Kentucky State Democratic Central Executive Committee, 7/15/2007, $10,000.00; Yarmuth for Congress, 1/17/2007, $2,100.00; Yarmuth for Congress, 6/22/2008, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, ($2,300.00); Obama for America, 3/14/2007, $2,300.00; Hillary Clinton for President, 7/14/2008, $2,300.00; Kentucky Victory 2007, 11/7/2007, $10,000.00; Boccieri for Congress, 5/27/2007, $2,300.00; Boccieri for Congress, 5/27/2007, $2,300.00; Democratic White House Victory Fund, 6/18/2008, $28,500.00; Committee to Elect David Boswell to Congress, 9/24/2008, $1,000.00; Fischer for U.S. Senate, 2/7/2008, $2,300.00; Fischer for U.S. Senate, 2/7/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $2,300.00; Committee for Change, 10/24/2008, $5,000.00; Yarmuth for Congress, 6/26/2006, $2,100.00; Democratic Senatorial Campaign Committee, 9/15/2006, $20,000.00; John Gill Holland, Jr.: Yarmuth for Congress, 1/17/2007, $2,100.00; Yarmuth for Congress, 6/22/2008, $2,300.00; Democratic White House Victory Fund, 6/30/2008, $28,500.00; Yarmuth for Congress, 1/17/2007, $2,100.00; Yarmuth for Congress, 6/22/2008, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, $2,300.00; Obama for America, 3/14/2007, ($2,300.00); Obama for America, 3/14/2007, $2,300.00; Democratic White House Victory Fund, 6/30/2008, $28,500.00; Fischer for U.S. Senate, 2/7/2008, $2,300.00; Fischer for U.S. Senate, 2/7/2008, $2,300.00; Fischer for U.S. Senate, 5/12/2008, $2,300.00.

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*William Carlton Eacho, III, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Austria.

Nominee: William Carlton Eacho, III.

Post: Ambassador to Austria.

(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: $1,000.00, 04/14/2009, Forward Together PAC; 1,000.00, 04/14/2009, Whitehouse

for Senate; 28,500.00, 07/29/2008, Obama Victory Fund (DNC); 2,300.00, 07/29/2008, Patrick Murphy for Congress; 35,500.00, 07/14/2008, Committee for Change; 1,000.00, 6/25/2008, Collins for Senator; 1,000.00, 06/11/2008, Ameripac; 2,300.00, 04/17/2008, Andrew Price for US Senate; 2,300.00, 04/16/2008, Patrick Murphy for Congress; 1,500.00, 03/11/2008, Berkowitz For Congress; 500.00, 02/29/2008, Berkowitz For Congress; 4,600.00, 01/31/2008, Chris Van Hollen for Congress; 1,000.00, 01/09/2008, Friends of Jay Rockefeller, Inc.; 1,000.00, 02/04/2008, Democratic Party of Virginia; 500.00, 12/29/2007, NH Democratic Party; 800.00, 10/18/2007, Senator Susan Collins; 2,280.00, 09/21/2007, Citizens for Harkin; 1,000.00, 09/17/2007, Romney for President, Inc.; 4,600.00, 09/14/2007, Friends of Mark Warner; 10,000.00, 09/07/2007, Moving Virginia Forward; 500.00, 07/30/2007, Senator Susan Collins; 2,300.00, 07/21/2007, Tom Davis for Congress; 1,000.00, 05/24/2007, McConnell Senate Committee; 1,000.00, 04/16/2007, Friends of Mary Landrieu; 4,600.00, 03/09/2007, Obama for America; 500.00, 10/18/2006, Whitehouse '06; 1,000.00, 10/13/2006, Harold Ford Jr. for Tennessee; 1,000.00, 10/10/2006, Friends Of Martin O'Malley; 1,000.00, 09/28/2006, Kellam for Congress; 2,100.00, 09/28/2006, Ford for Senate; 2,100.00, 09/01/2006, Webb for Senate; 2,100.00, 06/29/2006, Boswell for Congress; 1,000.00, 06/29/2006, Claire McCaskill Campaign; 1,000.00, 05/24/2006, Tom Davis for Congress; 1,000.00, 05/01/2006, Van Hollen for Congress; 5,000.00, 03/13/2006, Forward Together PAC; 1,000.00, 3/01/2006, Senator Susan Collins; 2,100.00, 02/22/2006, Miller for Senate; 500.00, 02/04/2006, New Hampshire Democratic Party; 1,000.00, 11/16/2005, Tom Davis for Congress; 2,100.00, 10/10/2005, Rales for U.S. Senate; 5,000.00, 09/27/2005, Forward Together PAC; 250.00, 05/31/2005, Gilchrest for Congress.

2. Spouse: Donna Williams Eacho: $500.00, 03/06/2006, David Yassky for Congress; 2,300.00, 01/11/2009, Hillary Clinton Committee; 28,500.00, 07/29/2008, Obama Victory Fund (DNC); 5,000.00, 02/03/2006, Forward Together PAC; 2,100.00, 10/10/2005, Rales for U.S. Senate; 5,000.00, 09/27/2005, Forward Together PAC; 2,300.00, 10/18/2007, Senator Susan Collins; 250.00, 1/4/05, Yassky for NY; 4,600.00, 3/12/07, Obama for America; 4,600.00, 9/14/07, Friends of Mark Warner; 1000.00, 9/14/08, Collins for Senator; 596.47, 10/13/08, Gifts in kind, Committee For Change; 1,000.00, 10/23/08, Patrick Murphy for Congress; 2,300.00, 9/24/08, Hagan Senate Committee Inc.

3. Children and Spouses: Douglas C. Eacho, Obama for America, 10/24/07, $23.00; Obama for America, 2008 (est), $150.00; Gregory W. Eacho, Obama for America, 2008 (est), $25.00; David W. Eacho, None.

4. Parents: William C. Eacho, Jr., Deceased; Nancy R. Eacho, Deceased; Linda A. Eacho (stepmother), None.

5. Grandparents: W. Carlton Eacho, Deceased; Hilda B. Eacho, Deceased; Roland R. Reutlinger, Deceased; Margaret Reutlinger, Deceased.

6. Brothers and Spouses: None.

7. Sisters and Spouses: Peggy E. Fechnay, None; John Scott Fechnay (spouse), Forward Together PAC; 12/07/05, $5,000.00; Md Republican State Central Committee, 11/23/05, $5,000.00; Pamela E. Clark, None; J. Jeffrey Clark (spouse), None.

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*Philip D. Murphy, of New Jersey, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Germany.

Nominee: Philip Dunton Murphy.

Post: Ambassador to the Federal Republic of Germany.

(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: $2,100.00, 03/28/05, Conrad, Kent for Senate; $2,100.00, 03/28/05, Conrad, Kent for Senate; $2,000.00, 03/28/05, Lautenberg, Frank for Senate via 20 Years Committee; $2,000.00, 03/28/05, Lautenberg, Frank for Senate via 20 Years Committee; $1,000.00, 03/28/05, Nelson, Bill for Senate; $5,000.00, 03/28/05, Lautenberg, Senator Frank via New Jersey First PAC; $1,000.00, 06/28/05, Holt, Rush for Congress; $2,100.00, 07/28/05, Mfume, Kweisi for Senate; $2,000.00, 09/14/05, Byrd, Robert for Senate; $2,100.00, 09/30/05, Pallone, Frank for Congress; $1,000.00, 10/28/05, Bingaman, Jeff for Senate; $25,000.00, 12/22/05, Democratic Congressional Campaign Committee (DCCC); $1,100.00, 05/16/06, Holt, Rush for Congress; $900.00, 05/16/06, Holt, Rush for Congress; $26,700.00, 06/12/06, Democratic National Committee (DNC); $1,000.00, 07/18/06, Cranley, John for Congress; $2,100.00, 08/07/06, Brown, Sherrod for Senate; $2,100.00, 08/07/06, Stender, Linda for Congress; $2,100.00, 09/12/06, Ford, Harold for Senate via Tennessee Senate 2006; $1,000.00, 09/18/06, Klein, Ron for Congress; $2,100.00, 09/21/06, Ford, Harold for Senate; $2,100.00, 10/12/06, Menendez, Bob for Senate; $4,700.00, 10/30/06, New Jersey State Democratic Committee;

*The Dates noted in this Table are based on my records of the contributions and may not match the precise dates for the contributions reflected on the Federal Election Commission's Web site. $1,000.00, 10/31/06, Aronsohn, Paul for Congress; $2,100.00, 10/31/06, McCaskill, Claire for Senate; $2,100.00, 10/31/06, Webb, Jim for Senate; $26,700.00, 01/05/07, Democratic National Committee (DNC); $1,800.00, 01/25/07, Democratic National Committee (DNC); $600.00, 03/09/07, Lautenberg, Frank for Senate $2,300.00, 03/09/07, Pallone, Frank for Congress; $10,000.00, 05/18/07, National Jewish Democratic Council (NJDC) (NY); $2,300.00, 06/12/07, Kerry, John for Senate; $1,000.00, 08/06/07, Holt, Rush for Congress; $2,300.00, 08/06/07, Stender, Linda for Congress; $4,600.00, 10/13/07, Warner, Mark for Senate; $2,300.00, 10/22/07, Himes, Jim for Congress; $28,500.00, 01/02/08, Democratic National Committee (DNC); $2,300.00, 02/13/08, Gillibrand, Kirsten for Congress; $2,300.00, 02/14/08, Holt, Rush for Congress; $500.00, 02/15/08, Polis, Jared for Congress; $2,300.00, 04/07/08, Gillibrand, Kirsten for Congress; $1,000.00, 04/07/08, Skelly, Michael for Congress; $2,300.00, 06/13/08, Clinton, Hillary for President; $4,600.00, 06/13/08, Obama, Barack for President; $2,300.00, 06/27/08, Neuhardt, Sharen for Congress; $8,500.00; 08/20/08; Democratic National Committee (DNC) via Committee for Change with allocations including the following: Colorado Democratic Party via Committee for Change (allocation of $376.00, 08/28/08); Michigan Democratic State Central Committee via Committee for Change (allocation of $831.00, 08/28/08); Missouri Democratic State Committee via Committee for Change (allocation of $560.00, 08/28/08); North Carolina Democratic Party via Committee for Change (allocation of $753.00, 08/28/08); Pennsylvania Democratic Party via Committee for Change (allocation of $991.00, 08/28/08); Democratic Party of Virginia via Committee for Change (allocation of $626.00, 09/30/08); Georgia Federal Elections Committee via Committee for Change (allocation of $590.00, 09/30/08); Indiana Democratic Congressional Victory Committee via Committee for Change (allocation of $549.00, 09/30/08); Ohio Democratic Party via Committee for Change (allocation of $1031.00, 08/28/08); $2,300.00, 09/19/08, Franken, Al for Senate; $2,300.00, 09/26/08, Stender, Linda for Congress; $2,300.00, 10/20/08, Martin, Jim for Senate; $500.00, 10/21/08, Merkley, Jeff for Senate; $12,300.00, 11/20/08, Franken, Al for Senate via Recount Fund (Does Not Count Against Federal Limits).

2. Spouse: Tammy S. Murphy: $2,100.00, 12/05/05, Clinton, Hillary for Senate; $2,100.00, 03/28/05, Conrad, Kent for Senate; $2,000.00, 03/28/05, Lautenberg, Frank for Senate via 20 Years Committee; $2,000.00, 03/28/05, Lautenberg, Frank for Senate via 20 Years Committee; $1,000.00, 03/28/05, Lautenberg, Frank for Senate via 20 Years Committee; $5,000.00, 03/28/05, Lautenberg Senator Frank via New Jersey First PAC; $2,100.00, 07/28/05, Mfume, Kweisi for Senate; $2,100.00, 12/05/05, Clinton, Hillary for Senate; $2,100.00, 03/28/05, Conrad, Kent for Senate; $26,700.00, 08/29/06, Democratic National Committee (DNC); $2,500.00, 11/06/06, Republican Majority for Choice; $5,000.00, 11/06/06, Republicans for Environ. Protection; $250.00, 11/06/06, Republicans for Environ. Protection; $28,500.00, 02/01/07, Democratic National Committee (DNC); $600.00, 03/09/07, Lautenberg, Frank for Senate; $2,300.00, 03/11/07, Durbin, Friends of Dick; $2,300.00, 03/11/07, Pallone, Frank for Congress; $5,000.00, 03/11/07, Lautenberg, Frank for Senate via NJ First Committee; $2,300.00, 12/12/07, Stender, Linda for Congress; $28,500.00, 01/02/08, Democratic National Committee (DNC); $2,300.00, 06/13/08, Clinton, Hillary for President; $4,600.00, 06/13/08, Obama, Barack for President; $3,500.00, 08/20/08, Democratic National Committee (DNC) via Committee for Change with allocations including the following: Democratic Party of North Carolina via Committee for Change (allocation of $310.00, 08/21/08); Democratic Party of Ohio via Committee for Change (allocation of $424.00, 08/21/08); Michigan Democratic State Central Committee via Committee for Change (allocation of $342.00, 08/21/08); Missouri Democratic State Committee via Committee for Change (allocation of $230.00, 08/21/08); Pennsylvania Democratic Party via Committee for Change (allocation of $408.00, 08/21/08); Democratic Party of Virginia via Committee for Change (allocation of $257.00, 09/30/08); Georgia Federal Elections Committee via Committee for Change (allocation of $243.00, 09/30/08); Indiana Democratic Congressional Victory Committee via Committee for Change (allocation of $226.00, 09/30/08); $2,300.00, 09/30/08, Johnson, Tim for Senate; $2,300.00, 09/30/08, Murphy, Patrick for Congress; $2,300.00, 09/30/08, Richardson, Bill for President; $2,300.00, 09/30/08, Stender, Linda for Congress; $2,300.00, 09/30/08, Zeitz, Josh for Congress; $2,300.00, 10/19/08, Shaheen, Jeanne for Senate; $2,300.00, 10/20/08, Adler, John for Congress; $2,300.00, 10/20/08, Hagen, Kay for Senate; $2,300.00, 10/20/08, Himes, Jim for Congress; $2,300.00, 10/20/08, Holt, Rush for Congress; $700.00, 10/20/08, Lunsford, Bruce for Senate, $2,300.00; 10/20/08, Martin, Jim for Senate; $2,300.00, 10/20/08, Merkley, Jeff for Senate; $2,400.00, 02/18/09, Pallone, Frank for Congress.

3. Children and Spouses: Joshua Walter Murphy, Son, none; Emmanuelle Medway Murphy, Daughter, none; Charles Dunton Murphy, Son, none; Samuel Snyder Murphy, Son, none.

4. Parents: Walter Francis Murphy, Sr., Father, none; Dorothy Dunton Murphy, Mother, none.

5. Grandparents: Helen Veronica Connors, Maternal Grandmother, none; John Alfred Dunton, Maternal Grandfather, none; Eleanor Murphy, Paternal Grandmother, none; John William Murphy, Paternal Grandfather, none.

6. Brothers and Spouses: Walter Francis Murphy, Jr., Brother, none; Charlene Ryan Murphy, Sister-In-Law, none.

7. Sisters and Spouses: Dorothy Murphy Egan, Sister, none; Brendan Francis Egan, Brother-In-Law, none; Janet Murphy Brown, Sister, none.

By Mr. DODD for Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

*Francis S. Collins, of Maryland, to be Director of the National Institutes of Health.

*James A. Leach, of Iowa, to be Chairperson of the National Endowment for the Humanities for a term of four years.

*Rocco Landesman, of New York, to be Chairperson of the National Endowment for the Arts for a term of four years.

*Raymond M. Jefferson, of Hawaii, to be Assistant Secretary of Labor for Veterans' Employment and Training.

*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. FEINGOLD (for himself, Ms. CANTWELL, Mrs. FEINSTEIN, and Mr. SANDERS):

S. 1570. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1571. A bill to provide for a land exchange involving certain National Forest System land in the Mendocino National Forest in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DEMINT:

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

By Mr. WYDEN:

S. 1573. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the city of Hermiston, Oregon, water recycling and reuse project, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MERKLEY (for himself and Mr. LUGAR):

S. 1574. A bill to establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies; to the Committee on Energy and Natural Resources.

By Mr. UDALL of Colorado (for himself and Mr. BENNET):

S. 1575. A bill to amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. SHAHEEN (for herself, Ms. SNOWE, Ms. COLLINS, Mr. SANDERS, Mr. MERKLEY, Mr. LEAHY, Mr. WYDEN, and Mr. SCHUMER):

S. 1576. A bill to require the Secretary of Agriculture to establish a carbon incentives program to achieve supplemental greenhouse gas emission reductions on private forest land of the United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WARNER:

S. Res. 237. A resolution commending Blue Star Families for supporting military families and increasing awareness of the unique challenges of military life; to the Committee on Armed Services.

By Mr. DEMINT:

S. Res. 238. A resolution to provide for a point of order against any legislation that eliminates or reduces the ability of Americans to keep their health plan or their choice of doctor or that decreases the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care; to the Committee on Rules and Administration.

By Mrs. LINCOLN (for herself, Mr. CRAPO, Mr. CARDIN, Mr. LIEBERMAN, Ms. MURKOWSKI, Mr. SESSIONS, and Mrs. SHAHEEN):

S. Res. 239. A resolution supporting the goals and ideals of ''National Purple Heart Recognition Day''; considered and agreed to.

By Ms. MURKOWSKI (for herself, Mr. JOHNSON, Mr. HATCH, Mr. DORGAN, and Mr. SPECTER):

S. Res. 240. A resolution designating September 9, 2009, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 144

At the request of Mr. KERRY, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 251

At the request of Mrs. HUTCHISON, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 251, a bill to amend the Communications Act of 1934 to permit targeted interference with mobile radio services within prison facilities.

S. 252

At the request of Mr. INHOFE, his name was added as a cosponsor of S. 252, a bill to amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, to improve the provision of health care veterans, and for other purposes.

S. 324

At the request of Mr. MENENDEZ, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 324, a bill to provide for research on, and services for individuals with, postpartum depression and psychosis.

S. 354

At the request of Mr. WEBB, the names of the Senator from Delaware (Mr. KAUFMAN) and the Senator from Minnesota (Mr. FRANKEN) were added as cosponsors of S. 354, a bill to provide that 4 of the 12 weeks of parental leave made available to a Federal employee shall be paid leave, and for other purposes.

S. 424

At the request of Mr. LEAHY, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 424, a bill to amend the Immigration and Nationality Act to eliminate discrimination in the immigration laws by permitting permanent partners of United States citizens and lawful permanent residents to obtain lawful permanent resident status in the same manner as spouses of citizens and lawful permanent residents and to penalize immigration fraud in connection with permanent partnerships.

S. 451

At the request of Ms. COLLINS, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 451, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the establishment of the Girl Scouts of the United States of America.

S. 455

At the request of Mr. ROBERTS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 455, a bill to require the Secretary of the Treasury to mint coins in recognition of 5 United States Army Five-Star Generals, George Marshall, Douglas MacArthur, Dwight Eisenhower, Henry ''Hap'' Arnold, and Omar Bradley, alumni of the United States Army Command and General Staff College, Fort Leavenworth, Kansas, to coincide with the celebration of the 132nd Anniversary of the founding of the United States Army Command and General Staff College.

S. 461

At the request of Mrs. LINCOLN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 461, a bill to amend the Internal Revenue Code of 1986 to extend and modify the railroad track maintenance credit.

S. 566

At the request of Mr. DURBIN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 566, a bill to create a Financial Product Safety Commission, to provide consumers with stronger protections and better information in connection with consumer financial products, and to give providers of consumer financial products more regulatory certainty.

S. 593

At the request of Mrs. FEINSTEIN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 593, a bill to ban the use

of bisphenol A in food containers, and for other purposes.

S. 627

At the request of Mr. KOHL, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 627, a bill to authorize the Secretary of Education to make grants to support early college high schools and other dual enrollment programs.

S. 634

At the request of Mr. HARKIN, the names of the Senator from Minnesota (Mr. FRANKEN) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 634, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 676

At the request of Mr. SCHUMER, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 676, a bill to amend the Internal Revenue Code of 1986 to modify the tax rate for excise tax on investment income of private foundations.

S. 727

At the request of Ms. LANDRIEU, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 727, a bill to amend title 18, United States Code, to prohibit certain conduct relating to the use of horses for human consumption.

S. 801

At the request of Mr. AKAKA, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 801, a bill to amend title 38, United States Code, to waive charges for humanitarian care provided by the Department of Veterans Affairs to family members accompanying veterans severely injured after September 11, 2001, as they receive medical care from the Department and to provide assistance to family caregivers, and for other purposes.

S. 832

At the request of Mr. NELSON of Florida, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 832, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 846

At the request of Mr. DURBIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 846, a bill to award a congressional gold medal to Dr. Muhammad Yunus, in recognition of his contributions to the fight against global poverty.

S. 878

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 878, a bill to amend the Federal Water Pollution Control Act to modify provisions relating to beach monitoring, and for other purposes.

S. 883

At the request of Mr. KERRY, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 883, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the Medal of Honor in 1861, America's highest award for valor in action against an enemy force which can be bestowed upon an individual serving in the Armed Services of the United States, to honor the American military men and women who have been recipients of the Medal of Honor, and to promote awareness of what the Medal of Honor represents and how ordinary Americans, through courage, sacrifice, selfless service and patriotism, can challenge fate and change the course of history.

S. 952

At the request of Ms. SNOWE, the names of the Senator from Alaska (Mr. BEGICH), the Senator from Illinois (Mr. BURRIS), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 952, a bill to develop and promote a comprehensive plan for a national strategy to address harmful algal blooms and hypoxia through baseline research, forecasting and monitoring, and mitigation and control while helping communities detect, control, and mitigate coastal and Great Lakes harmful algal blooms and hypoxia events.

S. 972

At the request of Mrs. HAGAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 972, a bill to amend the Food, Conservation, and Energy Act of 2008 to provide funding for successful claimants following a determination on the merits of Pigford claims related to racial discrimination by the Department of Agriculture.

S. 994

At the request of Ms. KLOBUCHAR, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 994, a bill to amend the Public Health Service Act to increase awareness of the risks of breast cancer in young women and provide support for young women diagnosed with breast cancer.

S. 1034

At the request of Ms. STABENOW, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 1034, a bill to amend titles XIX and XXI of the Social Security Act to ensure payment under Medicaid and the State Children's Health Insurance Program for covered items and services furnished by school-based health clinics.

S. 1158

At the request of Ms. STABENOW, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1158, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 1171

At the request of Mr. PRYOR, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1171, a bill to amend title XVIII of the Social Security Act to restore State authority to waive the 35-mile rule for designating critical access hospitals under the Medicare Program.

S. 1221

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1221, a bill to amend title XVIII of the Social Security Act to ensure more appropriate payment amounts for drugs and biologicals under part B of the Medicare Program by excluding customary prompt pay discounts extended to wholesalers from the manufacturer's average sales price.

S. 1230

At the request of Mr. ISAKSON, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1230, a bill to amend the Internal Revenue Code of 1986 to provide a Federal income tax credit for certain home purchases.

S. 1261

At the request of Mr. AKAKA, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1261, a bill to repeal title II of the REAL ID Act of 2005 and amend title II of the Homeland Security Act of 2002 to better protect the security, confidentiality, and integrity of personally identifiable information collected by States when issuing driver's licenses and identification documents, and for other purposes.

S. 1321

At the request of Mr. UDALL of Colorado, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1321, a bill to amend the Internal Revenue Code of 1986 to provide a credit for property labeled under the Environmental Protection Agency Water Sense program.

S. 1375

At the request of Mr. ROBERTS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1375, a bill to amend the Agricultural Credit Act of 1987 to reauthorize State mediation programs.

S. 1401

At the request of Mr. MARTINEZ, the names of the Senator from Maine (Ms. SNOWE), the Senator from Georgia (Mr. CHAMBLISS) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. 1401, a bill to provide for the award of a gold medal on behalf of Congress to Arnold Palmer in recognition of his service to the Nation in promoting excellence and good sportsmanship in golf.

S. 1482

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1482, a bill to reauthorize the 21st Century Nanotechnology Research and Development Act, and for other purposes.

S. 1492

At the request of Mr. LIEBERMAN, his name was added as a cosponsor of S. 1492, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from Indiana (Mr. BAYH) 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. 1554

At the request of Mr. HARKIN, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 1554, a bill to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to prevent later delinquency and improve the health and well-being of maltreated infants and toddlers through the development of local Court Teams for Maltreated Infants and Toddlers and the creation of a National Court Teams Resource Center to assist such Court Teams, and for other purposes.

S. 1567

At the request of Mr. BROWNBACK, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 1567, a bill to provide for the issuance of a Multinational Species Conservation Funds Semipostal Stamp.

S. CON. RES. 36

At the request of Mrs. LINCOLN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. Con. Res. 36, a concurrent resolution supporting the goals and ideals of ''National Purple Heart Recognition Day''.

AMENDMENT NO. 2238

At the request of Mrs. SHAHEEN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of amendment No. 2238 intended to be proposed to H.R. 2997, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2249

At the request of Mr. CORNYN, his name was added as a cosponsor of amendment No. 2249 proposed to H.R. 2997, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2276

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2276 proposed to H.R. 2997, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

At the request of Ms. KLOBUCHAR, her name was added as a cosponsor of amendment No. 2276 proposed to H.R. 2997, supra.

At the request of Mr. SANDERS, the names of the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from New York (Mr. SCHUMER), the Senator from New York (Mrs. GILLIBRAND), the Senator from New Mexico (Mr. UDALL), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Minnesota (Mr. FRANKEN), the Senator from Maine (Ms. COLLINS), the Senator from Colorado (Mr. UDALL), the Senator from Pennsylvania (Mr. CASEY), the Senator from Missouri (Mrs. MCCASKILL) and the Senator from Colorado (Mr. BENNET) were added as cosponsors of amendment No. 2276 proposed to H.R. 2997, supra.

AMENDMENT NO. 2277

At the request of Mrs. MCCASKILL, her name was added as a cosponsor of amendment No. 2277 intended to be proposed to H.R. 2997, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

AMENDMENT NO. 2285

At the request of Mr. NELSON of Nebraska, the names of the Senator from Kansas (Mr. ROBERTS), the Senator from South Dakota (Mr. THUNE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 2285 proposed to H.R. 2997, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD (for himself, Ms. CANTWELL, Mrs. FEINSTEIN, and Mr. SANDERS).

S. 1570. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and for other purposes; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, today I am reintroducing legislation to eliminate from the Federal tax code the ''Percentage Depletion Allowance'' for hardrock minerals mined on Federal public lands. I want to thank Senators CANTWELL, FEINSTEIN, and SANDERS for joining me in introducing this legislation.

The Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2009 would result in estimated savings of at least $250 million over 5 years, according to the Joint Committee on Taxation. Under this legislation, half of these savings would be returned to the Federal treasury and half would help address the serious contamination at the thousands of abandoned mines throughout the U.S.

Percentage depletion allowances were initiated by the Corporation Excise Act of 1909. That's right, these allowances were initiated 100 years ago. Provisions for a depletion allowance based on the value of the mine were made under a 1912 Treasury Department regulation, but difficulty in applying this accounting principle to mineral production led to the initial codification of the mineral depletion allowance in the Tariff Act of 1913. The Revenue Act of 1926 established percentage depletion much in its present form for oil and gas. The percentage depletion allowance was then extended to metal mines, coal, and other hardrock minerals by the Revenue Act of 1932, and has been adjusted several times since.

Percentage depletion allowances were historically placed in the tax code to reduce the effective tax rates in the mineral and extraction industries far below tax rates on other industries, providing incentives to increase investment, exploration, and output. The problem, however, is that percentage depletion also makes it possible to recover many times the amount of the original investment.

There are two methods of calculating a deduction to allow a firm to recover the costs of its capital investment: cost depletion and percentage depletion. Cost depletion allows for the recovery of the actual capital investment—the costs of discovering, purchasing, and developing a mineral reserve—over the period during which the reserve produces income. Under the cost depletion method, the total deductions cannot exceed the original capital investment.

Under percentage depletion, however, the deduction for recovery of a company's investment is a fixed percentage of ''gross income,'' namely, sales revenue from the sale of the mineral. Under this method, total deductions typically exceed the capital that the company invested. The set rates for percentage depletion are quite significant. Section 613 of the Internal Revenue Code contains depletion allowances for more than 70 metals and minerals, at rates ranging from 10 to 22 percent.

There is no restriction in the tax code to ensure that over time companies do not deduct more than the capital that they have invested. Furthermore, a percentage deduction allowance makes sense only so long as the deducting company actually pays for the investment for which it claims the deduction.

The result is a double subsidy for hardrock mining companies: first they can mine on public lands for free under the General Mining Law of 1872, and then they are allowed to take a deduction for capital investment that they

have not made for the privilege to mine on public lands. My legislation would eliminate the use of the Percentage Depletion Allowance for mining on public lands, while continuing to allow companies to use the reasonable cost depletion method for determining tax deductions.

My bill would also create a new fund, called the Abandoned Mine Reclamation Fund. Half of the revenue raised by the bill, or approximately $125 million dollars, would be deposited into an interest-bearing fund in the Treasury to be used to clean up abandoned hardrock mines in states that are subject to the 1872 Mining Law. Though there is no comprehensive inventory of abandoned mines, estimates put the figure at upwards of 100,000 abandoned mines on public lands.

There are currently no comprehensive Federal or State programs to address the need to clean up old mine sites. Reclaiming these sites requires the enactment of a program with explicit authority to clean up abandoned mine sites and the resources to do it. My legislation is a first step toward providing the needed authority and resources.

In today's budget climate, we are faced with the question of who should bear the costs of exploration, development, and production of natural resources: the taxpayers, or the users and producers of the resource? For more than a century, the mining industry has been paying next to nothing for the privilege of extracting minerals from public lands and then abandoning its mines. Now those mines are adding to the Nation's environmental and financial burdens. We face serious budget choices this fiscal year, and one of those choices is whether to continue the special tax breaks provided to the mining industry.

The measure I am introducing is straightforward. It eliminates the Percentage Depletion Allowance for hardrock minerals mined on public lands while continuing to allow companies to use the reasonable cost depletion method for determining tax deductions.

Though at one time there may have been an appropriate role for a government-driven incentive for enhanced mineral production, the arguments in favor of a more reasonable depletion allowance that is consistent with depreciation rates given to other businesses are overwhelming. This corporate subsidy is simply not justified.

I thank the following organizations for endorsing this legislation: EARTHWORKS, Environmental Working Group, Friends of the Earth, National Wildlife Federation, Pew Environment Group, Taxpayers for Common Sense, Theodore Roosevelt Conservation Partnership, Trout Unlimited, and the Western Organization of Resource Councils.

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 1571. A bill to provide for a land exchange involving certain National Forest System land in the Mendocino National Forest in the State of California, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Deafy Glade Land Exchange Act. This legislation would authorize a land exchange between the U.S. Forest Service and Solano County to help ensure the continued operation of the juvenile correctional facility and add nearly 80 acres of wilderness quality land to the Mendocino National Forest.

Nearly 10 years ago at the suggestion of the Forest Service, Solano County purchased more than 160 acres of wilderness quality land within the Mendocino National Forest—known as Deafy Glade—with the intention of exchanging the land for the Fouts Springs Ranch. This legislation would facilitate that exchange, so that the counties could own the land beneath the facility they operate, and in exchange, the Forest Service would acquire a wilderness quality inholding.

Solano County currently operates a youth correctional facility under a Special Use Permit issued by the Forest Service on the Fouts Springs Ranch, which covers approximately 82 acres within the boundaries of the Mendocino National Forest. Solano County owns the infrastructure but leases the land from the Forest Service.

Solano County has operated the Fouts Springs Youth Facility pursuant to a joint powers agreement with Yolo and Colusa counties since 1959. The program includes counseling and education, with the goal of giving juveniles the skills to successfully reenter their communities.

More than 20 California counties have placed juvenile offenders at Fouts Springs for 6 month, 9 month, or one year periods. The program is viewed as a last resort for youth before being referred to a State prison.

Specifically, the legislation I am offering today would authorize the transfer of Fouts Springs Ranch—approximately 82 acres—from the Forest Service to Solano County; and the transfer of more than 160 acres of the Deafy Glade area in Mendocino National Forest from Solano County to the Forest Service.

The Fouts Spring youth correctional facility is in need of substantial upgrades, including the replacement of the main water line, electrical system improvements, and renovation of one of the dormitories. However, the County has postponed investing in facility upgrades until the land exchange is finalized and ownership of the Fouts Springs Ranch is transferred to the County.

Given the substantial investment already made by Solano County and the importance of the youth rehabilitation services provided by Fouts Springs, I believe the time has come to finalize this land exchange.

This legislation would not only help ensure the continued operation of the Fouts Spring youth correctional facility but it would also add nearly 80 acres of wilderness quality land to the Mendocino National Forest.

I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1571

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 ''Deafy Glade Land Exchange Act''.

SEC. 2. LAND EXCHANGE, MENDOCINO NATIONAL FOREST, CALIFORNIA.

(a) DEFINITIONS.—In this section:

(1) COUNTY.—The term ''County'' means Solano County, California.

(2) FEDERAL LAND.—The term ''Federal land'' means the parcel of approximately 82 acres of land (including any improvements to the land) that is—

(A) in the Forest;

(B) known as the ''Fouts Springs Ranch''; and

(C) depicted on the map.

(3) FOREST.—The term ''Forest'' means the Mendocino National Forest in the State of California.

(4) MAP.—The term ''map'' means the map entitled ''Fouts Springs-Deafy Glade Federal and Non-Federal Lands'' and dated July 17, 2008.

(5) NON-FEDERAL LAND.—The term ''non-Federal land'' means the 4 parcels of land comprising approximately 160 acres, as depicted on the map.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(b) LAND EXCHANGE REQUIRED.—If the County conveys to the Secretary all right, title, and interest of the County in and to the non-Federal land, the Secretary shall convey to the County all right, title, and interest of the United States in and to the Federal land.

(c) MAP.—

(1) AVAILABILITY.—The map shall be on file and available for public inspection in the Office of the Chief of the Forest Service.

(2) CORRECTIONS.—With the agreement of the County, the Secretary may make technical corrections to the map and legal descriptions of the land to be exchanged under this section.

(d) APPLICABLE LAW.—Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) shall apply to the land exchange under this section.

(e) SURVEY; ADMINISTRATIVE COSTS.—

(1) IN GENERAL.—The exact acreage and legal description of the land to be exchanged under subsection (b) shall be determined by a survey satisfactory to the Secretary.

(2) COSTS.—The costs of the survey and any administrative costs relating to the land exchange shall be paid by the County.

(f) CONDITION ON USE OF CONVEYED LAND.—As a condition of the conveyance of the Federal land to the County under subsection (b), the County shall agree to continue to use the Federal land for purposes consistent with the purposes described in the special use authorization for the Fouts Springs Ranch in effect as of the date of enactment of this Act.

(g) EASEMENT AUTHORITY.—The Secretary may grant an easement to provide continued access to, and maintenance and use of, the facilities covered by the special use authorization referred to in subsection (f) as necessary for the continued operation of the Fouts Springs Ranch.

(h) MANAGEMENT OF ACQUIRED LAND.—The non-Federal land acquired by the Secretary under subsection (b) shall be—

(1) added to, and administered as part of, the Forest; and

(2) managed in accordance with—

(A) the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 480 et seq.); and

(B) the laws (including regulations) applicable to the National Forest System.

(i) ADDITIONAL TERMS AND CONDITIONS.—The land exchange under subsection (b) shall be subject to any additional terms and conditions that the Secretary and the County may agree on.

By Mr. WYDEN:

S. 1573. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the city of Hermiston, Oregon, water recycling and reuse project, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. WYDEN. Mr. President, today I am introducing legislation to provide more clean water for the City of Hermiston, for irrigators in the area and for the Umatilla River. It is good for farmers, fish and in-stream flows.

My legislation amends the Reclamation Wastewater and Groundwater Study and Facilities Act—P.L. 102–575—to authorize the City of Hermiston, OR, to participate in what is known as the Title XVI water reclamation program. This long-standing U.S. Bureau of Reclamation program encourages the reclamation and use of municipal, industrial and agricultural waste water. In this case, the City of Hermiston will treat municipal waste water and deliver it to a local irrigation district—the West Extension Irrigation District—for agricultural use. My bill is a companion bill to legislation already introduced for this same purpose in the House of Representatives by Representative GREG WALDEN, H.R. 2714. As with other Title XVI projects, this legislation would authorize the Bureau to assist the City in developing this project and provide a cost-share of 25 percent for the project.

The current Hermiston Water Plant discharges ''Class C'' water that can be used only for a limited amount of off-project pastureland irrigation or discharged into the Umatilla River. Beginning in December 2010, a new National Pollutant Discharge Elimination System limit will go into effect, changing the water temperature and pollutants requirements of treated water being put back into the river. Although the city is currently in compliance, once the new limits take effect, the city's current plant will not allow the city to meet the new requirements. As a result, the city will need to construct a new treatment plant, but it would still have difficulty meeting the water temperature requirements.

An upgrade of the plant would not only bring the city into compliance with the new discharge requirements, but it would increase the quality of the recycled water output from ''Class C'' water to ''Class A'' water, making it suitable for all irrigation needs, not just pastureland. Further, the proposed new plant would be configured to discharge its treated water to the West Extension Irrigation District, a Bureau of Reclamation-supported irrigation project. This will significantly increase the amount of water available to the District and will have a beneficial, long-term impact on a regional farming community that faces dwindling water supplies. Acreage available to utilize the city's recycled water discharge would increase from roughly 550 acres to nearly 11,000 acres.

Finally, by ending the discharge of warmer, lower quality water into the Umatilla River, the project will improve the habitat for wildlife and fish in the River, especially for endangered and threatened species. I am pleased that the Confederated Tribes of the Umatilla Indian Reservation, which has fishing rights in the Umatilla River, supports the city's efforts in this regard.

By Mr. MERKLEY (for himself and Mr. LUGAR):

S. 1574. A bill to establish a Clean Energy for Homes and Buildings Program in the Department of Energy to provide financial assistance to promote residential-, commercial-, and industrial-scale energy efficiency and on-site renewable technologies; to the Committee on Energy and Natural Resources.

Mr. MERKLEY. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1574

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 ''Clean Energy for Homes and Buildings Act of 2009''.

SEC. 2. FINDINGS.

Congress finds that—

(1) homes and commercial or industrial buildings in the United States consume significant quantities of energy, including energy for electricity and heating, the generation or combustion of which creates significant quantities of greenhouse gas emissions;

(2) in most cases, energy efficiency is the most cost-effective and rapidly deployable strategy for reducing greenhouse gas emissions, energy demand, and the need for long-distance transmission of energy;

(3) on-site renewable energy generation reduces greenhouse gas emissions, demand on the electricity transmission grid, and the need for long-distance transmission of energy;

(4) many energy efficiency measures and on-site renewable energy generation systems produce a net cost savings over the course of the useful life of the measures and systems, and often over a shorter time frame, but the initial expense required to purchase and install the measures and systems is often a significant barrier to widespread investment in the measures and systems;

(5) financial products, financing programs, and other programs that reduce or eliminate the need for the initial expense described in paragraph (4) can permit building owners to invest in measures and systems that reduce total energy costs and realize net cost savings at the time of the installation of the measures and systems, defer capital expenditure, and enhance the value, comfort, and sustainability of the property of the owners; and

(6) State and local governments, utilities, energy efficiency and renewable energy service providers, banks, finance companies, community development organizations, and other entities are developing financial products and programs to provide financing assistance for building owners to encourage the use of the measures and systems described in paragraph (4), including programs that allow repayment of loans under programs described in paragraph (5) through utility bills, or through property-based assessments, taxes, or charges, to facilitate loan repayment for the benefit of building owners and lenders or program sponsors.

SEC. 3. PURPOSE.

The purpose of this Act is to encourage widespread deployment of energy efficiency and on-site renewable energy technologies in homes and other buildings throughout the United States through the establishment of a self-sustaining Clean Energy for Homes and Buildings Program that can—

(1) encourage the widespread availability of financial products and programs with attractive rates and terms that significantly reduce or eliminate upfront expenses to allow building owners (including homeowners, business owners, owners of multi-family housing, owners of multi-tenant commercial properties, and owners of other residential, commercial, or industrial properties) to invest in energy efficiency measures and on-site renewable energy systems with payback periods of up to 25 years or the useful life of such a measure or system by providing credit support, credit enhancement, secondary markets, and other support to originators of the financial products and sponsors of the financing programs; and

(2) help building owners invest in measures and systems that reduce energy costs, in many cases creating a net cost savings that can be realized in the short-term, and may also allow building owners to defer capital expenditures and increase the value, comfort, and sustainability of the property of the owners.

SEC. 4. DEFINITIONS.

In this Act:

(1) COST.—The term ''cost'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) DIRECT LOAN.—The term ''direct loan'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(3) LOAN GUARANTEE.—The term ''loan guarantee'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(4) PROGRAM.—The term ''Program'' means the Clean Energy for Homes and Buildings Program established by section 6.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(6) SECURITY.—The term ''security'' has the meaning given the term in section 2 of the Securities Act of 1933 (15 U.S.C. 77b).

(7) STATE.—The term ''State'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

SEC. 5. CLEAN ENERGY FOR HOMES AND BUILDINGS GOALS.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall develop and publish for review and comment in the Federal Register near-, medium-, and long-term goals (including numerical performance targets at appropriate intervals to measure progress toward those goals) for—

(1)(A) a minimum number of homes to be retrofitted through energy efficiency measures or to have on-site renewable energy systems added;

(B) a minimum number of other buildings, by type, to be retrofitted through energy efficiency measures or to have on-site renewable energy systems added; and

(C) the number of on-site solar energy, wind energy, and geothermal heat pump systems to be installed; and

(2) as a result of those retrofits, additions, and installations—

(A) the quantity by which use of grid-supplied electricity, natural gas, home heating oil, and other fuels will be reduced;

(B) the quantity by which total fossil fuel dependence in the buildings sector will be reduced;

(C) the quantity by which greenhouse gas emissions will be reduced;

(D) the number of jobs that will be created; and

(E) the estimated total energy cost savings for building owners.

(b) ESTIMATES BY ORIGINATORS OR SPONSORS.—The Secretary may rely on reasonable estimates made by originators of financial products or sponsors of financing programs for tracking progress toward meeting the goals established under this section instead of requiring building owners to monitor and report on the progress.

SEC. 6. CLEAN ENERGY FOR HOMES AND BUILDINGS PROGRAM.

(a) ESTABLISHMENT.—There is established in the Department of Energy a program to be known as the Clean Energy for Homes and Buildings Program.

(b) ELIGIBILITY CRITERIA.—

(1) IN GENERAL.—In administering the Program, the Secretary shall establish eligibility criteria for applicants for financial assistance under subsection (c) who can offer financial products and programs consistent with the purposes of this Act.

(2) CRITERIA.—Criteria for applicants shall—

(A) take into account—

(i) the number and type of buildings that can be served by the applicant, the size of the potential market, and the scope of the program (in terms of measures or technologies to be used);

(ii) the ability of the applicant to successfully execute the proposed program and maintain the performance of the proposed projects and investments;

(iii) financial criteria, as applicable, including the ability of the applicant to raise private capital or other sources of funds for the proposed program;

(iv) criteria that enable the Secretary to determine sound program design, including—

(I) an assurance of credible energy efficiency or renewable energy generation performance; and

(II) financial product or program design that effectively reduces barriers posed by traditional financing programs;

(v) such criteria, standards, guidelines, and mechanisms as will enable the Secretary, to the maximum extent practicable, to communicate to program sponsors and originators, servicers, and sellers of financial obligations the eligibility of loans for resale;

(vi) the ability of the applicant to report relevant data on program performance; and

(vii) the ability of the applicant to use incentives or marketing techniques that are likely to result in successful market penetration; and

(B) encourage—

(i) use of technologies that are either well-established or new, but demonstrated to be reliable;

(ii) applicants that can offer building owners payment plans generally designed to permit the combination of energy payments and assessments or charges from the installation or payments associated with financing to be lower than the energy payments prior to installing energy efficiency measures or on-site renewable energy technologies;

(iii) applicants that will use repayment mechanisms convenient for building owners, such as tax-increment financing, special tax districts, on-utility-bill repayment, or other mechanisms;

(iv) applicants that can provide convenience for building owners by combining participation in the lending program with—

(I) processing for tax credits and other incentives;

(II) technical assistance in selecting and working with vendors to provide energy efficiency measures or on-site renewable energy generation systems;

(v) applicants the projects of which will use contractors that hire within a 50-mile radius of the project, or as close as is practicable;

(vi) applicants that will use materials and technologies manufactured in the United States;

(vii) partnerships with or other involvement of State workforce investment boards, labor organizations, community-based organizations, State-approved apprenticeship programs, and other job training entities; and

(viii) applicants that can provide financing programs or financial products that mitigate barriers other than the initial expense of installing measures or technologies, such as unfavorable lease terms.

(3) DIVERSE PORTFOLIO.—In establishing criteria and selecting applicants to receive financial assistance under subsection (c), to the maximum extent practicable, the Secretary shall select a portfolio of investments that reaches a diversity of building owners, including—

(A) individual homeowners;

(B) multifamily apartment building owners;

(C) condominium owners associations;

(D) commercial building owners, including multi-tenant commercial properties; and

(E) industrial building owners.

(c) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—For applicants determined to be eligible under criteria established under subsection (b), the Secretary may provide financial assistance in the form of direct loans, letters of credit, loan guarantees, insurance products, other credit enhancements or debt instruments (including securitization or indirect credit support), or other financial products to promote the widespread deployment of, and mobilize private sector support of credit and investment institutions for, energy efficiency measures and on-site renewable energy generation systems in buildings.

(2) FINANCIAL PRODUCTS.—The Secretary—

(A) in cooperation with Federal, State, local, and private sector entities, shall develop debt instruments that provide for the aggregation of, or directly aggregate, programs for the deployment of energy efficiency measures and on-site renewable energy generation systems on a scale appropriate for residential, commercial, or industrial applications; and

(B) may insure, guarantee, purchase, and make commitments to purchase any debt instrument associated with the deployment of clean energy technologies (including subordinated securities) for the purpose of enhancing the availability of private financing for the deployment of energy efficiency measures and on-site renewable energy generation systems.

(3) APPLICATION REVIEW.—

(A) IN GENERAL.—To the maximum extent practicable and consistent with sound business practices, the Secretary shall seek to expedite reviews of applications for credit support under this Act in order to communicate to applicants in a timely manner the likelihood of support so that the applicants can seek private capital in order to receive final approval.

(B) MECHANISMS.—In carrying out this paragraph, the Secretary shall consider using mechanisms such as—

(i) a system for conditional pre-approval that informs applicants that final applicants will be approved, if established conditions are met;

(ii) clear guidelines that communicate to applicants what level of performance on eligibility criteria will ensure approval for credit support or resale;

(iii) in the case of an applicant portfolio of more than 300 loans or other financial arrangement, an expedited review based on statistical sampling to ensure that the loan or other financial arrangement meets the eligibility criteria; and

(iv) in the case of an applicant with a demonstrated track record with respect to successfully originating eligible loans or other financial arrangements and who meets appropriate other criteria determined by the Secretary, a system for delegating responsibility for meeting eligibility criteria that includes appropriate protections such as buyback mechanisms in the event criteria are determined not to have been met.

(C) DISPOSITION OF DEBT OR INTEREST.—The Secretary may acquire, hold, and sell or otherwise dispose of, pursuant to commitments or otherwise, any debt associated with the deployment of clean energy technologies or interest in the debt.

(D) PRICING.—

(i) IN GENERAL.—The Secretary may establish requirements, and impose charges or fees, which may be regarded as elements of pricing, for different classes of applicants, originators, sellers, servicers, or services.

(ii) CLASSIFICATION OF APPLICANTS, ORIGINATORS, SELLERS AND SERVICERS.—For the purpose of clause (i), the Secretary may classify applicants, originators, sellers and servicers as necessary to promote transparency and liquidity and properly characterize the risk of default.

(E) SECONDARY MARKET SUPPORT.—

(i) IN GENERAL.—The Secretary may lend on the security of, and make commitments to lend on the security of, any debt that the Secretary has insured, guaranteed, issued or is authorized to purchase under this section.

(ii) AUTHORIZED ACTIONS.—On such terms and conditions as the Secretary may prescribe, the Secretary may—

(I) give security;

(II) insure;

(III) guarantee;

(IV) purchase;

(V) sell;

(VI) pay interest or other return; and

(VII) issue notes, debentures, bonds, or other obligations or securities.

(F) LENDING ACTIVITIES.—

(i) IN GENERAL.—The Secretary shall determine—

(I) the volume of the lending activities of the Program; and

(II) the types of loan ratios, risk profiles, interest rates, maturities, and charges or fees in the secondary market operations of the Program.

(ii) OBJECTIVES.—Determinations under clause (i) shall be consistent with the objectives of—

(I) providing an attractive investment environment for programs that install energy efficiency measures or on-site renewable energy generation technologies;

(II) making the operations of the Program self-supporting over the long term; and

(III) advancing the goals established under this Act.

(G) EXEMPT SECURITIES.—All securities issued, insured, or guaranteed by the Secretary shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the United States, be considered to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

SEC. 7. GENERAL PROVISIONS.

(a) PERIODIC REPORTS.—Not later than 1 year after commencement of operation of the Program and at least biannually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes a description of the Program in meeting the purpose and goals established by or pursuant to this Act.

(b) AUDITS BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—The programs, activities, receipts, expenditures, and financial transactions of the Program shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—The representatives of the Government Accountability Office shall—

(A) have access to the personnel and to all books, accounts, documents, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to, under the control of, or in use by the Program, or any agent, representative, attorney, advisor, or consultant retained by the Program, and necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians;

(C) be authorized to obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to the audit without cost to the Comptroller General; and

(D) have the right of access of the Comptroller General to such information pursuant to section 716(c) of title 31, United States Code.

(3) ASSISTANCE AND COST.—

(A) IN GENERAL.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes.

(B) REIMBURSEMENT.—

(i) IN GENERAL.—On the request of the Comptroller General, the Secretary shall reimburse the General Accountability Office for the full cost of any audit conducted by the Comptroller General under this subsection.

(ii) CREDITING.—Such reimbursements shall—

(I) be credited to the appropriation account entitled ''Salaries and Expenses, Government Accountability Office'' at the time at which the payment is received; and

(II) remain available until expended.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $2,000,000,000.

By Mr. UDALL of Colorado (for himself and Mr. BENNET):

S. 1575. A bill to amend title 10, United States Code, to ensure that excess oil and gas lease revenues are distributed in accordance with the Mineral Leasing Act, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. UDALL of Colorado. Mr. President, today I am introducing the Naval Oil Shale Reserve Mineral Royalty Revenue Allocation Act. It is a bill designed to release mineral royalty receipts to Colorado where the receipts were generated from gas development within this reserve on the western slope near Rifle, Colorado.

By way of background, in 1997, Congress transferred the federal Naval Oil Shale Reserve lands in western Colorado from the U.S. Department of Energy, DOE, to the U.S. Bureau of Land Management, BLM, and directed the BLM to begin leasing the oil and gas resources under these lands. The Transfer Act also directed that the royalties recouped from this leasing program be set aside and the state portion not disbursed to Colorado until the Interior Department and the DOE certified that enough money from the royalty receipts accrued to satisfy two purposes.

The first was to provide funding to clean up the Anvil Points site on these lands. Anvil Points was an oil shale research facility that operated within the Naval Oil Shale Reserve for about 40 years. The facility was operated by DOE at one point, and private industry performed research there under contract. Waste material was produced at this facility from oil shale mining and processing. That waste accumulated in a pile of about 300,000 cubic yards of spent oil shale and other material—including arsenic and other heavy metals—which rests on slopes below the facility.

The second purpose was for the reimbursement of certain costs related to the transfer.

Following the transfer to the BLM, this area experienced significant natural gas leasing and, as a result, significant royalty revenue was generated.

On August 8, 2008, the DOI and DOE certified that adequate funds had accrued to accomplish the goals of cleanup and cost reimbursement and subsequently allocated all royalty revenue generated after this date according to the Mineral Leasing Act, which establishes that Colorado receive a proportionate share.

However, considerably more revenue accrued than was necessary to accomplish the cleanup and cost reimbursement goals. This bill would direct that this additional royalty revenue be allocated to Colorado according to the formulas and processes established for the disbursement of federal mineral royalties under the Mineral Leasing Act.

The bill also directs that the Colorado share of this remaining royalty revenue be allocated to the two Counties directly impacted by oil and gas leasing on the Naval Oil Shale Reserve lands—specifically, Garfield and Rio Blanco Counties. The bill further requires that the royalties be used to address these impacts through activities such as land and water restoration, road repair, and other capital improvement projects.

Based on figures provided by the BLM, there remains approximately $17 million in these accounts for Colorado's royalty revenue share. This bill would make Colorado whole and provide it with its rightful share of the remaining royalty revenue to address critical local needs and impacts from the very leasing that produced the royalty revenue.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was orderd to be printed in the RECORD, as follows:

S. 1575

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

SECTION 1. TREATMENT OF OIL SHALE RESERVE RECEIPTS.

Section 7439(f) of title 10, United States Code, is amended by adding at the end the following:

''(3)(A) The moneys deposited in the Treasury under paragraph (1) that exceed the amounts described in subparagraphs (A) and (B) of paragraph (2) shall be transferred by the Secretary of the Treasury in accordance with section 35 of the Mineral Leasing Act (30 U.S.C. 191) to the State of Colorado for use in accordance with subparagraph (B).

''(B) Amounts transferred to the State of Colorado under subparagraph (A) shall be used by the State and political subdivisions of the State for—

''(i) conservation, restoration, and protection of land, water, and wildlife resources affected by oil or gas development activities in Garfield and Rio Blanco Counties in the State;

''(ii) repair, maintenance, and construction of State and county roads in each of those counties; and

''(iii) the conduct of capital improvement projects (including the construction and maintenance of sewer and water treatment plants) that are designed and carried out to address the impacts of oil and gas development activities in each of those counties.''.

By Mrs. SHAHEEN (for herself, Ms. SNOWE, Ms. COLLINS, Mr. SANDERS, Mr. MERKLEY, Mr. LEAHY, Mr. WYDEN, and Mr. SCHUMER):

S. 1576. A bill to require the Secretary of Agriculture to establish a carbon incentives program to achieve supplemental greenhouse gas emission reductions on private forest land of the

United States, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mrs. SHAHEEN. Mr. President, I rise today to introduce legislation that will establish a Forest Carbon Incentives Program to help America's family forest owners slow climate change by increasing carbon sequestration and storage on private forestland. This will be critical for our national climate change response, and will create important economic opportunities for landowners across America. I want to thank my colleagues, Senators SNOWE, COLLINS, SANDERS, MERKLEY, WYDEN, LEAHY and SCHUMER, with whom I have worked closely to draft this bill. I also want to acknowledge Senator STABENOW, who has long provided leadership on this issue of carbon sequestration.

This legislation is driven by a simple fact: we cannot achieve our greenhouse gas reduction goals without comprehensive and effective utilization of U.S. forests for carbon sequestration. The U.S. Environmental Protection Agency estimates that U.S. forests currently sequester a remarkable 10 percent of our annual U.S. carbon emissions. Even more remarkably, the EPA estimates that we could double this sequestration capacity to 20 percent of emissions with the right management and conservation.

Unlike some of our emerging energy technologies, forest carbon sequestration is a climate strategy that is ready to go to work right now on meeting our emissions reduction goals. We can immediately put forest owners to work on their lands undertaking activities to help move us to that 20 percent sequestration goal, and create new revenue streams for those small and family landowners to help them navigate through these troubled economic times.

One important pathway to achieve these forest carbon sequestration goals will be through carbon offset markets. For those able to participate, carbon offset programs will provide important financial incentives for projects that reduce greenhouse gas emissions while, at the same time, helping to keep the costs of a climate program low. The opportunity to earn offset credits will create a financial incentive for large forest landowners to undertake activities that increase carbon sequestration and storage on their lands and that can be measured and verified with the precision necessary to meet rigorous environmental integrity requirements.

However, offset markets will not be easily accessible to the many family forest owners and other smaller landowners who do not have the necessary economies of scale to effectively participate in offset markets. Offset projects come with many upfront and ongoing transactional expenses that will undermine financial gains and constrain the flexibility that family forest owners and other smaller scale landowners will require to participate.

Furthermore, there are some important types of carbon sequestration and storage activities, such as permanent conservation easements, that produce real carbon gains over the long term but are hard to quantify with the precision necessary for offset markets.

We also need to engage the full range of carbon strategies to meet our carbon sequestration goals, even if they cannot conform to the requirements of offsets.

Engaging family forest owners in sequestration is no small piece of the forest carbon equation—America's family forest owners control more than half of all U.S. private forestland, with 119 million acres in ownerships of 100 acres or less. We must create new tools to engage these individuals in efforts to sequester carbon and provide economic opportunities to gain financial incentives for doing that work.

In my home State of New Hampshire, our forests embody this diverse ownership pattern and the unique opportunity to address climate change through forest carbon incentives. New Hampshire is the second most forested state in the nation, and more than 80 percent of that forestland is in private hands. We do have some large private ownerships, including large blocks of working forestland. But most of our privately owned forestland is in small ownerships—averaging 37.5 acres. According to the U.S. Forest Service, 49 percent of New Hampshire's forestland, 2,358,000 acres, is in family ownership, with 124,000 family forest owners in the Granite State.

If these landowners could aggregate their capacity to store carbon on the 2 million acres they own, they could make a significant contribution to needed reductions in the presence of carbon dioxide in our atmosphere. Each year New Hampshire forests already take up by photosynthesis 25 percent of the total CO2 emitted by the State from man-made sources.

But we can capture even more carbon in our Nation's forests with the right incentives like those in our proposed program. Creating incentives for forest carbon would represent a win-win for New Hampshire and a win-win in every State in the Nation that has privately owned forested landscapes.

Simply, the Forest Carbon Incentives Program will provide financial incentives for small private forest owners to engage in carbon sequestration activities and help our country meet its desired carbon reduction goals. The Forest Carbon Incentives Program will be run through the U.S. Forest Service and State forestry agencies. These experienced forest professionals will work with interested private forest owners to develop a ''climate mitigation contract'' for undertaking forest management activities that will increase carbon absorption and storage. Incentives will be awarded on a straightforward ''practices per acre'' basis, giving landowners a clear and simple agreement and reliable incentive payments. Carbon reductions achieved through these practices are not required to be permanently stored, so landowners will retain more flexibility with future management decisions. This simple and efficient program structure will enable landowners at any scale to participate, especially family forest owners holding smaller parcels that are unlikely to participate in carbon offset markets.

The program will create additional incentive opportunities for interested landowners to protect carbon gains achieved through a climate mitigation contract. Landowners can gain ''bonus'' incentive payments for also undertaking management that addresses pests, fire, and other threats that could damage forests and release the carbon that has been stored there. Landowners can also be paid for a permanent conservation easement that will assure that their lands in the program will never be developed, thereby protecting the carbon in those forests.

This legislation already enjoys support from a broad spectrum of national organizations that care about America's forests, such as the American Forest Foundation, the National Association of State Foresters, The Trust for Public Land, the National Wildlife Federation, and The Nature Conservancy among many others. Of equal importance, it has earned broad support from local, state, and regional interest groups, including the Society for the Protection of New Hampshire Forests, New Hampshire Timberland Owners Association, Northland Forest Products, Appalachian Mountain Club, and a host of other leading forest organizations in my home state.

America must use every tool available to address climate change, and should especially favor strategies that are ready to go now and that create new economic opportunities. This legislation will provide both a meaningful climate mitigation strategy and create real jobs in the woods. I encourage my fellow Senators to consider it carefully.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1576

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 ''Forest Carbon Incentives Program Act of 2009''.

SEC. 2. CARBON INCENTIVES PROGRAM TO ACHIEVE SUPPLEMENTAL GREENHOUSE GAS EMISSION REDUCTIONS ON PRIVATE FOREST LAND.

(a) DEFINITIONS.—In this section:

(1) AVOIDED DEFORESTATION AGREEMENT.—The term ''avoided deforestation agreement'' means a permanent conservation easement that—

(A) covers eligible land that—

(i) is enrolled under a climate mitigation contract; and

(ii) will not be converted for development; and

(B) is consistent with the guidelines for—

(i) the Forest Legacy Program established under section 7 of the Cooperative Forestry Assistance Act (16 U.S.C. 2103c); or

(ii) any other program approved by the Secretary for use under this section to provide consistency with Federal legal requirements for permanent conservation easements.

(2) CLIMATE MITIGATION CONTRACT; CONTRACT.—The term ''climate mitigation contract'' or ''contract'' means a contract of not less than 15 years that specifies—

(A) the eligible practices that will be undertaken;

(B) the acreage of eligible land on which the practices will be undertaken;

(C) the agreed rate of compensation per acre; and

(D) a schedule to verify that the terms of the contract have been fulfilled.

(3) ELIGIBLE LAND.—The term ''eligible land'' means forest land in the United States that is privately owned at the time of initiation of a climate mitigation contract.

(4) ELIGIBLE PRACTICE.—The term ''eligible practice'' means a forestry practice, including improved forest management that produces marketable forest products, that is determined by the Secretary to provide measurable increases in carbon sequestration and storage beyond customary practices on comparable land.

(5) PROGRAM.—The term ''program'' means the carbon incentives program established under this section.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(b) SUPPLEMENTAL GREENHOUSE GAS EMISSION REDUCTIONS IN THE UNITED STATES.—

(1) IN GENERAL.—The Secretary shall establish a carbon incentives program to achieve supplemental greenhouse gas emission reductions on private forest land of the United States.

(2) FINANCIAL INCENTIVE PAYMENTS.—

(A) IN GENERAL.—The Secretary shall provide to owners of eligible land financial incentive payments for—

(i) eligible practices that measurably increase carbon sequestration and storage over a designated period on eligible land, as specified through a climate mitigation contract; and

(ii) subject to subparagraph (B), permanent avoided deforestation agreements on eligible land covered under a climate mitigation contract.

(B) NO AGREEMENT REQUIRED.—Eligibility for financial incentive payments under a climate mitigation contract described in subparagraph (A)(i) shall not require an avoided deforestation agreement.

(c) PERFORMANCE OF SUPPLEMENTAL REDUCTIONS.—In carrying out the program, the Secretary shall report under subsection (f) on progress toward reaching the following levels of carbon sequestration and storage through climate mitigation contracts:

(1) 100,000,000 tons of carbon reductions by 2020.

(2) 200,000,000 tons of further carbon reductions by 2030.

(d) PROGRAM REQUIREMENTS.—

(1) CONTRACT REQUIRED.—To participate in the program, an owner of eligible land shall enter into a climate mitigation contract with the Secretary.

(2) PROGRAM COMPONENTS.—In establishing the program, the Secretary shall provide that—

(A) funds provided under this section shall not be substituted for, or otherwise used as a basis for reducing, funding authorized or appropriated under other programs to compensate owners of eligible land for activities that are not covered under a climate mitigation contract;

(B) emission reductions or sequestration achieved through a climate mitigation contract shall not be eligible for crediting under any federally established carbon offset program; and

(C) compensation for activities under this program shall be set at such a rate so as not to exceed the net estimated benefit an owner of eligible land would receive for similar practices under any federally established carbon offset program, taking into consideration the costs associated with the issuance of credits and compliance with reversal provisions.

(3) REVERSALS.—

(A) IN GENERAL.—In developing regulations for climate mitigation contracts, the Secretary shall specify requirements in accordance with this paragraph to address intentional or unintentional reversal of carbon sequestration during the contract period.

(B) INTENTIONAL REVERSALS.—If the Secretary finds an owner of eligible land violated a climate mitigation contract by intentionally reversing a practice or otherwise intentionally failing to comply with the contract, the Secretary shall terminate the contract and require the owner to repay any contract payments in an amount that reflects the lost carbon sequestration.

(C) UNINTENTIONAL REVERSAL.—If the Secretary finds an eligible practice has been unintentionally reversed due to events outside the control of the owner of eligible land, the Secretary shall reevaluate and may modify or terminate the climate mitigation contract, after consultation with the owner, taking into consideration lost carbon sequestration and the future carbon sequestration potential of the contract.

(e) INCENTIVE PAYMENTS.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue regulations that specify eligible practices and related compensation rates, standards, and guidelines as the basis for entering into climate mitigation contracts with owners of eligible land.

(2) SET-ASIDE OF FUNDS FOR CERTAIN PURPOSES.—

(A) IN GENERAL.—Not less than 35 percent of program funds made available under this program for a fiscal year shall be used—

(i) to provide additional incentives for owners of eligible land that carry out activities and enter into agreements that protect carbon reductions and otherwise enhance environmental benefits achieved under a climate mitigation contract; and

(ii) to develop forest carbon monitoring and methodologies that will improve the tracking of carbon gains achieved under the program.

(B) USE.—Of the amount of program funds made available for a fiscal year, the Secretary shall use—

(i) at least 25 percent to make funds available on a competitive basis to compensate owners for entering avoided deforestation agreements on land subject to a climate mitigation contract;

(ii) not more than 10 percent to provide incentive payments for additional management activities that increase the adaptive capacity of land under a climate mitigation contract; and

(iii) not more than 2 percent for the Forest Inventory and Analysis Program of the Forest Service to develop improved measurement and monitoring of forest carbon stocks.

(f) PROGRAM MEASUREMENT, MONITORING, VERIFICATION, AND REPORTING.—

(1) MEASUREMENT, MONITORING, AND VERIFICATION.—The Secretary shall establish and implement protocols that provide monitoring and verification of compliance with climate mitigation contracts, including both direct and indirect effects and any reversal of sequestration.

(2) REPORTING REQUIREMENT.—At least annually, the Secretary shall submit to Congress a report that contains—

(A) an estimate of annual and cumulative reductions achieved as a result of the program, determined using standardized measures, including measures of economic efficiency; and

(B) a summary of any changes to the program that will be made as a result of program measurement, monitoring, and verification.

(3) AVAILABILITY OF REPORT.—Each report required by this subsection shall be available to the public through the website of the Department of Agriculture.

(4) PROGRAM ADJUSTMENTS.—At least once every 2 years the Secretary shall adjust eligible practices and compensation rates for future climate mitigation contracts based on the results of monitoring under paragraph (1) and reporting under paragraph (2).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 237—COMMENDING BLUE STAR FAMILIES FOR SUPPORTING MILITARY FAMILIES AND INCREASING AWARENESS OF THE UNIQUE CHALLENGES OF MILITARY LIFE

Mr. WARNER submitted the following resolution; which was referred to the Committee on Armed Services.

S. RES. 237

Whereas more than 1,000,000 United States troops have served in ongoing operations in Iraq and Afghanistan, including members of the National Guard and Reserve,

Whereas the millions of immediate family members of United States servicemembers, including spouses, children, and parents, have contributed and sacrificed as well;

Whereas the families of each servicemember contribute vitally to the strength of the United States Armed Forces;

Whereas military families, often facing significant challenges such as long separations from loved ones and frequent household moves, are civilians who serve in support of United States servicemembers;

Whereas Blue Star Families is an organization of family members of active duty, National Guard, and Reserve members of the Armed Forces serving during war time, and connects military families with civilian communities, increases awareness of the unique challenges of military life, and provides morale and support for military families; and

Whereas, in order for military families to continue to support servicemembers during this extended period of conflict, the Senate and people of the United States should support military families: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the sacrifices made by Blue Star Families as members of military families and as an organization dedicated to all military families and improving the welfare of the United States;

(2) commends the patriotic efforts of Blue Star Families;

(3) commends, and offers sincere thanks to, all servicemembers and military families; and

(4) urges the people of the United States to acknowledge the inspirational sacrifices of military families.

SENATE RESOLUTION 238—TO PROVIDE FOR A POINT OF ORDER AGAINST ANY LEGISLATION THAT ELIMINATES OR REDUCES THE ABILITY OF AMERICANS TO KEEP THEIR HEALTH PLAN OR THEIR CHOICE OF DOCTOR OR THAT DECREASES THE NUMBER OF AMERICANS ENROLLED IN PRIVATE HEALTH INSURANCE, WHILE INCREASING THE NUMBER OF AMERICANS ENROLLED IN GOVERNMENT-MANAGED HEALTH CARE

Mr. DEMINT submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 238

Resolved,

SECTION 1. POINT OF ORDER ON LEGISLATION THAT ELIMINATES OR REDUCES THE ABILITY OF AMERICANS TO KEEP THEIR HEALTH PLAN OR THEIR CHOICE OF DOCTOR.

(a) IN GENERAL.—In the Senate, it shall not be in order, to consider any bill, joint resolution, amendment, motion, or conference report that—

(1) eliminates or reduces the ability of Americans to keep their health plan;

(2) eliminates or reduces the ability of Americans to keep their choice of doctor; or

(3) decreases the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care.

(b) SUSPENSION OF POINT OF ORDER.—A point of order raised under subsection (a) shall be suspended in the Senate upon certification by the Congressional Budget Office that such bill, joint resolution, amendment, motion or conference report does not—

(1) eliminate or reduce the ability of Americans to keep their health plan;

(2) eliminate or reduce the ability of Americans to keep their choice of doctor; or

(3) decrease the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care.

(c) WAIVER.—This section may be waived or suspended only by an affirmative vote of three-fifths of the Members, duly chosen and sworn.

(d) APPEALS.—An affirmative vote of three-fifths 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 this section.

SENATE RESOLUTION 239—SUPPORTING THE GOALS AND IDEALS OF ''NATIONAL PURPLE HEART RECOGNITION DAY''

Mrs. LINCOLN (for herself, Mr. CRAPO, Mr. CARDIN, Mr. LIEBERMAN, Ms. MURKOWSKI, Mr. SESSIONS, and Mrs. SHAHEEN) submitted the following resolution; which was considered and agreed to:

S. RES. 239

Whereas the Purple Heart is the oldest military decoration in the world in present use;

Whereas the Purple Heart is awarded in the name of the President to a member of the Armed Forces who is wounded in a conflict with an enemy force or is wounded while held by an enemy force as a prisoner of war, and is awarded posthumously to the next of kin of a member of the Armed Forces who is killed in a conflict with an enemy force or who dies of wounds received in a conflict with an enemy force;

Whereas the Purple Heart was established on August 7, 1782, during the Revolutionary War, when General George Washington issued an order establishing the Honorary Badge of Distinction, otherwise known as the Badge of Military Merit;

Whereas the award of the Purple Heart ceased with the end of the Revolutionary War, but was revived in 1932, the 200th anniversary of the birth of George Washington, out of respect for his memory and military achievements; and

Whereas observing National Purple Heart Recognition Day is a fitting tribute to George Washington and to the more than 1,535,000 recipients of the Purple Heart, approximately 550,000 of whom are still living: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of ''National Purple Heart Recognition Day'';

(2) encourages all people in the United States to learn about the history of the Purple Heart and to honor its recipients; and

(3) calls upon the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate support for members of the Armed Forces who have been awarded the Purple Heart.

SENATE RESOLUTION 240—DESIGNATING SEPTEMBER 9, 2009, AS ''NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY''

Ms. MURKOWSKI (for herself, Mr. JOHNSON, Mr. HATCH, Mr. DORGAN, and Mr. SPECTER) submitted the following resolution; which was considered and agreed to:

S. RES. 240

Whereas the term ''fetal alcohol spectrum disorders'' includes a broader range of conditions and therefore has replaced the term ''fetal alcohol syndrome'' as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was $5,400,000,000 in 2003, and it is estimated that each individual with fetal alcohol syndrome will cost taxpayers of the United States between $1,500,000 and $3,000,000 in his or her lifetime;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked ''What if ... a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol . . . would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2009, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize further effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection on the ninth hour of September 9, 2009, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2290. Mr. REED submitted an amendment intended to be proposed to amendment SA 2284 proposed by Mr. DODD to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table.

SA 2291. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2240 proposed by Mr. BARRASSO (for himself, Mr. VITTER, Mr. HATCH, Mr. ROBERTS, Mr. ENZI, Mr. THUNE, and Mr. JOHANNS) to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2292. Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 2276 submitted by Mr. SANDERS to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2293. Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 2276 submitted by Mr. SANDERS to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2294. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed to amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2295. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed to amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2296. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed to amendment SA 2257 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 1908 proposed by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2297. Mr. NELSON, of Nebraska submitted an amendment intended to be proposed to amendment SA 2258 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 1908 proposed by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, supra; which was ordered to lie on the table.

SA 2298. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table.

SA 2299. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3435, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2290. Mr. REED submitted an amendment intended to be proposed to amendment SA 2284 proposed by Mr. DODD to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 7____. Notwithstanding any other provision of law and until the receipt of the decennial census in the year 2010, the Secretary of Agriculture may fund community facility and water and waste disposal projects of communities and municipal districts and areas in Connecticut, Massachusetts, and Rhode Island that previously were determined by the appropriate rural development field office of the Department of Agriculture to be eligible for funding, if the applications for the projects were received prior to August 1, 2009.

SA 2291. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2240 proposed by Mr. BARRASSO (for himself, Mr. VITTER, Mr. HATCH, Mr. ROBERTS, Mr. ENZI, Mr. THUNE, and Mr. JOHANNS) to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 7____. (a) Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall complete—

(1) a State-by-State analysis of the impacts on agricultural producers of the American Clean Energy and Security Act of 2009 (H.R. 2454, as passed by the House of Representatives on June 26, 2009) (referred to in this section as ''H.R. 2454''); and

(2) a State-by-State analysis of the adverse impacts of rapid climate change on agricultural producers and consumers.

(b) In conducting the analysis under subsection (a), the Secretary shall consider the impacts of H.R. 2454, the benefits of H.R. 2454, and the adverse impacts of rapid climate change on a range of fishing, aquaculture, livestock, poultry, and swine production and a variety of crop production, including specialty crops.

(c) Not later than 60 days after the date of enactment of this Act, the Secretary of Agriculture shall—

(1) complete a State-by-State analysis of the adverse impacts of rapid climate change on agriculture and forestry, including, at a minimum, an assessment of the impacts of invasive species and disease, drought, and flooding; and

(2) identify the benefits to agriculture and forestry of the full implementation of H.R. 2454.

SA 2292. Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 2276 submitted by Mr. SANDERS to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 24, line 12, strike ''$1,253,777,000'' and insert ''$1,603,777,001''.

SA 2293. Mr. SANDERS submitted an amendment intended to be proposed to amendment SA 2276 submitted by Mr. SANDERS to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 1 of the amendment, line 2, strike ''$1,603,777,000'' and insert ''$1,603,777,001''.

SA 2294. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 80, between lines 22 and 23, insert the following:

(c)(1) In determining the market value of the applicable beef cattle on the day before the death of the beef cattle under section 531(c)(2) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)(2)) and section 901(c)(2) of the Trade Act of 1974 (19 U.S.C. 2497(c)(2)), the Secretary of Agriculture shall use 4 weight classes for the beef cattle consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more.

(2) To carry out paragraph (1), $4,000,000 shall be derived by transfer from the amount under the heading ''RISK MANAGEMENT AGENCY '' of title I.

SA 2295. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

On page 80, between lines 22 and 23, insert the following:

(c)(1) Section 531(c)(2) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)(2)) is amended by inserting before the period at the end the following: ''using, in the case of beef cattle, 4 weight classes consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more''.

(2) Section 901(c)(2) of the Trade Act of 1974 (19 U.S.C. 2497(c)(2)) is amended by inserting before the period at the end the following: ''using, in the case of beef cattle, 4 weight classes consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more''.

(3) To carry out the amendments made by this subsection, $4,000,000 shall be derived by transfer from the amount under the heading ''RISK MANAGEMENT AGENCY '' of title I.

(4) The amendments made by this subsection take effect on June 18, 2008.

SA 2296. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 2257 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 1908 submitted by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

(c)(1) Section 531(c)(2) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)(2)) is amended by inserting before the period at the end the following: ''using, in the case of beef cattle, 4 weight classes consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more''.

(2) Section 901(c)(2) of the Trade Act of 1974 (19 U.S.C. 2497(c)(2)) is amended by inserting before the period at the end the following: ''using, in the case of beef cattle, 4 weight classes consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more''.

(3) To carry out the amendments made by this subsection, $4,000,000 shall be derived by transfer from the amount under the heading ''RISK MANAGEMENT AGENCY '' of title I.

(4) The amendments made by this subsection take effect on June 18, 2008.

SA 2297. Mr. NELSON of Nebraska submitted an amendment intended to be proposed to amendment SA 2258 submitted by Mr. NELSON of Nebraska and intended to be proposed to the amendment SA 1908 proposed by Mr. KOHL (for himself and Mr. BROWNBACK) to the bill H.R. 2997, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserting, insert the following:

(c)(1) In determining the market value of the applicable beef cattle on the day before the death of the beef cattle under section 531(c)(2) of the Federal Crop Insurance Act (7 U.S.C. 1531(c)(2)) and section 901(c)(2) of the Trade Act of 1974 (19 U.S.C. 2497(c)(2)), the Secretary of Agriculture shall use 4 weight classes for the beef cattle consisting of less than 400 pounds, 400 pounds or more but less than 700 pounds, 700 pounds or more but less than 1,000 pounds, and 1,000 pounds or more.

(2) To carry out paragraph (1), $4,000,000 shall be derived by transfer from the amount under the heading ''RISK MANAGEMENT AGENCY '' of title I.

SA 2298. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. REIMBURSEMENT OF AUTOMOBILE DISTRIBUTORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, any funds provided by the United States Government, or any agency, department, or subdivision thereof, to an automobile manufacturer or a distributor thereof as credit, loans, financing, advances, or by any other agreement in connection with such automobile manufacturer's or distributor's proceeding as a debtor under title 11, United States Code, shall be conditioned upon use of such funds to fully reimburse all dealers of such automobile manufacturer or manufacturer's distributor for—

(1) the cost incurred by such dealers during the 9-month period preceding the date on which the proceeding under title 11, United States Code, by or against the automobile manufacturer or manufacturer's distributor is commenced, in acquisition of all parts and inventory in the dealer's possession on the same basis as if the dealers were terminating pursuant to existing franchise agreements or dealer agreements; and

(2) all other obligations owed by such automobile manufacturer or manufacturer's distributor under any other agreement between the dealers and the automobile manufacturer or manufacturer's distributor arising during that 9-month period, including, without limitation, franchise agreement or dealer agreements.

(b) INCLUSION IN TERMS.—Any note, security agreement, loan agreement, or other agreement between an automobile manufacturer or manufacturer's distributor and the Government (or any agency, department, or subdivision thereof) shall expressly provide for the use of such funds as required by this section. A bankruptcy court may not authorize the automobile manufacturer or manufacturer's distributor to obtain credit under section 364 of title 11, United States Code, unless the credit agreement or agreements expressly provided for the use of funds as required by this section.

(c) EFFECTIVENESS OF REJECTION.—Notwithstanding any other provision of law, any rejection by an automobile manufacturer or manufacturer's distributor that is a debtor in a proceeding under title 11, United States Code, of a franchise agreement or dealer agreement pursuant to section 365 of that title, shall not be effective until at least 180 days after the date on which such rejection is otherwise approved by a bankruptcy court.

SA 2299. Mr. CORKER submitted an amendment intended to be proposed by him to the bill H.R. 3435, making supplemental appropriations for fiscal year 2009 for the Consumer Assistance to Recycle and Save Program; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. TARP RECIPIENT OWNERSHIP TRUST..

(a) AUTHORITY OF THE SECRETARY OF THE TREASURY TO DELEGATE TARP ASSET MANAGEMENT.—Section 106(b) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216(b)) is amended by inserting before the period at the end the following: '', and the Secretary may delegate such management authority to a private entity, as the Secretary determines appropriate, with respect to any entity assisted under this Act''.

(b) CREATION OF MANAGEMENT AUTHORITY FOR DESIGNATED TARP RECIPIENTS.—

(1) FEDERAL ASSISTANCE LIMITED.—Notwithstanding any provision of the Emergency Economic Stabilization Act of 2008, or any other provision of law, no funds may be expended under the Troubled Asset Relief Program, or any other provision of that Act, or to carry out the Advanced Technology Vehicles Manufacturing Incentive Program established under section 136 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17013), on or after the date of enactment of this Act, until the Secretary of the Treasury transfers all voting, nonvoting, and common equity in any designated TARP recipient to a limited liability company established by the Secretary for such purpose, to be held and managed in trust on behalf of the United States taxpayers.

(2) APPOINTMENT OF TRUSTEES.—

(A) IN GENERAL.—The President shall appoint 3 independent trustees to manage the equity held in the trust, separate and apart from the United States Government.

(B) CRITERIA.—Trustees appointed under this paragraph—

(i) may not be elected or appointed Government officials;

(ii) shall serve at the pleasure of the President, and may be removed for just cause in violation of their fiduciary responsibilities only; and

(iii) shall serve without compensation for their services.

(3) DUTIES OF TRUST.—Pursuant to protecting the interests and investment of the United States taxpayer, the trust established under this subsection shall, with the purpose of maximizing the profitability of the designated TARP recipient—

(A) exercise the voting rights of the shares of the taxpayer on all core governance issues;

(B) select the representation on the boards of directors of any designated TARP recipient; and

(C) have a fiduciary duty to the American taxpayer for the maximization of the return on the investment of the taxpayer made under the Emergency Economic Stabilization Act of 2008, in the same manner and to the same extent that any director of an issuer of securities has with respect to its shareholders under the securities laws and all applications of State law.

(c) LIQUIDATION.—The trustees shall liquidate the trust established under this section, including the assets held by such trust, not later than December 24, 2011, unless the trustees submit a report to Congress that liquidation would not maximize the profitability of the company and the return on investment to the taxpayer.

(d) CIVIL ACTIONS AUTHORIZED.—

(1) IN GENERAL.—Any person who is aggrieved by a violation of the fiduciary duty established by subsection (b)(3) may bring a civil action in any appropriate United States district court.

(2) LIMITED INDEMNIFICATION.—In any case brought under paragraph (1), the court may provide for limited indemnification with respect to a trustee, for actions taken in good faith, with the sole objective of meeting the fiduciary duty to maximize value for the American taxpayer.

(e) DEFINITIONS.—As used in this section—

(1) the term ''designated TARP recipient'' means any entity that has received, or will receive, financial assistance under the Troubled Asset Relief Program or any other provision of the Emergency Economic Stabilization Act of 2008 (Public Law 110-343), such that the Federal Government holds or controls, or will hold or control at a future date, not less than a 17 percent ownership stake in the company as a result of such assistance;

(2) the term ''Secretary'' means the Secretary of the Treasury or the designee of the Secretary; and

(3) the terms ''director'', ''issuer'', ''securities'', and ''securities laws'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KOHL. 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 4, 2009, at 9:30 a.m., to conduct a hearing entitled ''Strengthening and Streamlining Prudential Bank Supervision.''

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. KOHL. 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 4, 2009, at 2:30 p.m., to conduct a hearing entitled ''Rail Modernization: Getting Transit Funding Back on Track.''

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, August 4, 2009, at 2:45 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, August 4, 2009, at 10 a.m., in room 406 of the Dirksen Senate Office Building.

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

COMMITTEE ON FINANCE

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, August 4, 2009, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Climate Change Legislation: Allowance and Revenue Distribution.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during session of the Senate on Tuesday, August 4, 2009.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, August 4, 2009, at 2:15 p.m.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate on Tuesday, August 4, 2009.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled ''Protecting Patients from Defective Medical Devices'' on Tuesday, August 4, 2009. The hearing will commence at 2:30 p.m., in room 430 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. KOHL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on August 4, 2009, at 2:30 p.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The Performance Rights Act and Parity among the Music Delivery Platforms.''

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

ADHOC SUBCOMMITTEE ON DISASTER RECOVERY

Mr. KOHL. Mr. President, I ask unanimous consent that the Ad Hoc Subcommittee on Disaster Recovery of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, August 4, 2009, at 10:30 a.m., to conduct a hearing entitled ''Focusing on Children in Disasters: Evacuation Planning and Mental Health Recovery.''

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Liz Dunn and Erik Peterson of my staff be granted floor privileges for the duration of today's session.

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

Mr. BROWN. Mr. President, I ask unanimous consent that Mike Gerhardt, a consultant on Senator LEAHY's Judiciary Committee staff, be granted the privilege of the floor during the floor debate of Sonia Sotomayor to be Associate Justice of the Supreme Court.

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

Mr. BROWN. Mr. President, I ask unanimous consent that Chan Park, a detailee on Senator LEAHY's Judiciary Committee staff, be granted the privilege of the floor for the remainder of the 111th Congress.

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

Mr. HARKIN. I ask unanimous consent that Becky Moylan and Maeshal Abid of my staff be granted the privileges of the floor for the duration of today's session.

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

Mr. MENENDEZ. Mr. President, I ask unanimous consent that Christa McDermott, Ashley McCabe, and Joia Starks, legislative fellows in my office, be granted the privilege of the floor for the remainder of the debate on the confirmation of Judge Sonia Sotomayor.

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

ORDER OF PROCEDURE— EXECUTIVE CALENDAR NO. 309

Mr. BROWN. Mr. President, I ask unanimous consent that at 10 a.m., Wednesday, August 5, the Senate proceed to executive session to resume consideration of Calendar No. 309, with the debate time until 2 p.m. divided in 1-hour alternating blocks of time, with the majority controlling the first hour; further, that the time from 2 to 3 p.m. be equally divided and controlled, with the majority controlling the first 30 minutes and the Republicans controlling the final 30 minutes; that at 3 p.m., the Senate stand in recess until 5 p.m.; that upon reconvening at 5 p.m., the Senate resume for 1-hour alternating blocks of time, with the Republicans controlling the first hour.

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

EXECUTIVE CALENDAR

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar Nos. 316, 317, 318, 320, 321, 322, 323, 324, 325, 326, 327, and 328; that the nominations be confirmed en bloc, and the motions to reconsider be laid upon the table en bloc; that no further motions be in order; and that any statements relating thereto be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Patricia A. Butenis, 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 Socialist Republic of Sri Lanka, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Maldives.

Charles Aaron Ray, of Maryland, 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 Zimbabwe.

Gayleatha Beatrice Brown, 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 Burkina Faso.

Pamela Jo Howell Slutz, of Texas, 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 Burundi.

Patricia Newton Moller, of Arkansas, 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 Guinea.

Jerry P. Lanier, of North Carolina, 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 Uganda.

Alfonso E. Lenhardt, of New York, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the United Republic of Tanzania.

Samuel Louis Kaplan, of Minnesota, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

James B. Smith, of New Hampshire, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

Miguel Humberto Diaz of Minnesota, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Holy See.

Fay Hartog-Levin, or Illinois, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of the Netherlands.

Stephen J. Rapp, of Iowa, to be Ambassador at Large for War Crimes Issues.

LEGISLATIVE SESSION

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

MILITARY SPOUSES RESIDENCY RELIEF ACT

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 108, S. 475.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 475) to amend the Servicemembers Civil Relief Act to guarantee the equity of spouses of military personnel with regard to matters of residency, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BROWN. Mr. President, I ask unanimous consent that the bill be read the third time and passed; that the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

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

The bill (S. 475) was ordered to be engrossed for a third reading, was read the third time and passed, as follows:

S. 475

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 ''Military Spouses Residency Relief Act''.

SEC. 2. GUARANTEE OF RESIDENCY FOR SPOUSES OF MILITARY PERSONNEL FOR VOTING PURPOSES.

(a) IN GENERAL.—Section 705 of the Servicemembers Civil Relief Act (50 U.S.C. App. 595) is amended—

(1) by striking ''For'' and inserting the following:

''(a) IN GENERAL.—For'';

(2) by adding at the end the following new subsection:

''(b) SPOUSES.—For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a State or local office, a person who is absent from a State because the person is accompanying the person's spouse who is absent from that same State in compliance with military or naval orders shall not, solely by reason of that absence—

''(1) be deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State;

''(2) be deemed to have acquired a residence or domicile in any other State; or

''(3) be deemed to have become a resident in or a resident of any other State.''; and

(3) in the section heading, by inserting ''**AND SPOUSES OF MILITARY PERSONNEL**'' before the period at the end.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act (50 U.S.C. App. 501) is amended by striking the item relating to section 705 and inserting the following new item:

''Sec. 705. Guarantee of residency for military personnel and spouses of military personnel.''.

(c) APPLICATION.—Subsection (b) of section 705 of such Act (50 U.S.C. App. 595), as added by subsection (a) of this section, shall apply with respect to absences from States described in such subsection (b) on or after the date of the enactment of this Act, regardless of the date of the military or naval order concerned.

SEC. 3. DETERMINATION FOR TAX PURPOSES OF RESIDENCE OF SPOUSES OF MILITARY PERSONNEL.

(a) IN GENERAL.—Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. 571) is amended—

(1) in subsection (a)—

(A) by striking ''A servicemember'' and inserting the following:

''(1) IN GENERAL.—A servicemember''; and

(B) by adding at the end the following:

''(2) SPOUSES.—A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.'';

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(3) by inserting after subsection (b) the following new subsection:

''(c) INCOME OF A MILITARY SPOUSE.—Income for services performed by the spouse of a servicemember shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the spouse is not a resident or domiciliary of the jurisdiction in which the income is earned because the spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders.''; and

(4) in subsection (d), as redesignated by paragraph (2)—

(A) in paragraph (1), by inserting ''or the spouse of a servicemember'' after ''The personal property of a servicemember''; and

(B) in paragraph (2), by inserting ''or the spouse's'' after ''servicemember's''.

(b) APPLICATION.—Subsections (a)(2) and (c) of section 511 of such Act (50 U.S.C. App. 571), as added by subsection (a) of this section, and the amendments made to such section 511 by subsection (a)(4) of this section, shall apply with respect to any return of State or local income tax filed for any taxable year beginning with the taxable year that includes the date of the enactment of this Act.

SEC. 4. SUSPENSION OF LAND RIGHTS RESIDENCY REQUIREMENT FOR SPOUSES OF MILITARY PERSONNEL.

(a) IN GENERAL.—Section 508 of the Servicemembers Civil Relief Act (50 U.S.C. App. 568) is amended in subsection (b) by inserting ''or the spouse of such servicemember'' after ''a servicemember in military service''.

(b) APPLICATION.—The amendment made by subsection (a) shall apply with respect to servicemembers in military service (as defined in section 101 of such Act (50 U.S.C. App. 511)) on or after the date of the enactment of this Act.

RECOGNIZING THE NONCOMMISSIONED OFFICERS OF THE UNITED STATES ARMY

Mr. BROWN. Mr. President, I ask unanimous consent that the Committee on Armed Service be discharged from further consideration of H. J. Res. 44, and that the Senate proceed to its consideration.

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

The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 44) to recognize the service, sacrifice, honor and professionalism of the Noncommissioned Officers of the United States Army.

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. BROWN. Mr. President, I ask unanimous consent that the joint resolution be read the third time and passed; that the motion to reconsider be laid upon the table; that the preamble be agreed to; further, that any statements relating thereto be printed in the RECORD.

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

The joint resolution (H.J. Res. 44) was ordered to a third reading, was read the third time and passed.

The preamble was agreed to.

NATIONAL PURPLE HEART RECOGNITION DAY

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 239, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 239) supporting the goals and ideals of ''National Purple Heart Recognition Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I rise today to thank two of my colleagues, Senators LINCOLN and CRAPO for introducing the Senate resolution designating August 7, 2009, as National Purple Heart Recognition Day.

I am proud to support the commemoration of our Nation's Purple Heart recipients by granting them and their families a much deserved day of recognition. More than one and a half million Americans have earned the Purple Heart Medal, and this is just one more way we can honor their service.

The Purple Heart Medal is awarded in the name of the President, and it designates those servicemembers who have been wounded in the service of our Nation during combat or an act of terrorism. Many recipients have paid the ultimate sacrifice, and it is a symbol of true selflessness. The brave men and women of the U.S. Armed Forces today volunteer knowing full well the hazards of their chosen profession. On

August 7, 2009, all Americans should be encouraged to learn about the significance of the Purple Heart, honor those selfless citizens who wear the award and bear the proud scars earned in service protecting and defending our Nation.

Today, there are approximately 550,000 Purple Heart recipients still living in the United States. I am sure that each Member of this body knows someone in their respective States who is a Purple Heart recipient, the family member of a recipient, or the friend of a recipient. A day of recognition is the least we can do to honor those who have been awarded this medal for serving our country.

Mr. BROWN. Mr. President, 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 that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 239) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 239

Whereas the Purple Heart is the oldest military decoration in the world in present use;

Whereas the Purple Heart is awarded in the name of the President to a member of the Armed Forces who is wounded in a conflict with an enemy force or is wounded while held by an enemy force as a prisoner of war, and is awarded posthumously to the next of kin of a member of the Armed Forces who is killed in a conflict with an enemy force or who dies of wounds received in a conflict with an enemy force;

Whereas the Purple Heart was established on August 7, 1782, during the Revolutionary War, when General George Washington issued an order establishing the Honorary Badge of Distinction, otherwise known as the Badge of Military Merit;

Whereas the award of the Purple Heart ceased with the end of the Revolutionary War, but was revived in 1932, the 200th anniversary of the birth of George Washington, out of respect for his memory and military achievements; and

Whereas observing National Purple Heart Recognition Day is a fitting tribute to George Washington and to the more than 1,535,000 recipients of the Purple Heart, approximately 550,000 of whom are still living: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of ''National Purple Heart Recognition Day'';

(2) encourages all people in the United States to learn about the history of the Purple Heart and to honor its recipients; and

(3) calls upon the people of the United States to conduct appropriate ceremonies, activities, and programs to demonstrate support for members of the Armed Forces who have been awarded the Purple Heart.

NATIONAL FETAL ALCOHOL SPECTRUM DISORDERS AWARENESS DAY

Mr. BROWN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 240, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 240) designating September 9, 2009, as ''National Fetal Alcohol Spectrum Disorders Awareness Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. BROWN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 240) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 240

Whereas the term ''fetal alcohol spectrum disorders'' includes a broader range of conditions and therefore has replaced the term ''fetal alcohol syndrome'' as the umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy;

Whereas fetal alcohol spectrum disorders are the leading cause of cognitive disability in western civilization, including the United States, and are 100 percent preventable;

Whereas fetal alcohol spectrum disorders are a major cause of numerous social disorders, including learning disabilities, school failure, juvenile delinquency, homelessness, unemployment, mental illness, and crime;

Whereas the incidence rate of fetal alcohol syndrome is estimated at 1 out of 500 live births and the incidence rate of fetal alcohol spectrum disorders is estimated at 1 out of every 100 live births;

Whereas although the economic costs of fetal alcohol spectrum disorders are difficult to estimate, the cost of fetal alcohol syndrome alone in the United States was $5,400,000,000 in 2003, and it is estimated that each individual with fetal alcohol syndrome will cost taxpayers of the United States between $1,500,000 and $3,000,000 in his or her lifetime;

Whereas in February 1999, a small group of parents of children who suffer from fetal alcohol spectrum disorders came together with the hope that in 1 magic moment the world could be made aware of the devastating consequences of alcohol consumption during pregnancy;

Whereas the first International Fetal Alcohol Syndrome Awareness Day was observed on September 9, 1999;

Whereas Bonnie Buxton of Toronto, Canada, the co-founder of the first International Fetal Alcohol Syndrome Awareness Day, asked ''What if ... a world full of FAS/E [Fetal Alcohol Syndrome/Effect] parents all got together on the ninth hour of the ninth day of the ninth month of the year and asked the world to remember that during the 9 months of pregnancy a woman should not consume alcohol ... would the rest of the world listen?''; and

Whereas on the ninth day of the ninth month of each year since 1999, communities around the world have observed International Fetal Alcohol Syndrome Awareness Day: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 9, 2009, as ''National Fetal Alcohol Spectrum Disorders Awareness Day''; and

(2) calls upon the people of the United States—

(A) to observe National Fetal Alcohol Spectrum Disorders Awareness Day with appropriate ceremonies—

(i) to promote awareness of the effects of prenatal exposure to alcohol;

(ii) to increase compassion for individuals affected by prenatal exposure to alcohol;

(iii) to minimize further effects of prenatal exposure to alcohol; and

(iv) to ensure healthier communities across the United States; and

(B) to observe a moment of reflection on the ninth hour of September 9, 2009, to remember that during the 9 months of pregnancy a woman should not consume alcohol.

MEASURE READ THE FIRST TIME—S. 1572

Mr. BROWN. Mr. President, I understand that S. 1572, introduced earlier today by Senator DEMINT, is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

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

Mr. BROWN. Mr. President, I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will receive its second reading on the next legislative day.

ORDERS FOR WEDNESDAY, AUGUST 5, 2009

Mr. BROWN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Wednesday, August 5; 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, and the Senate proceed to a period of morning business until 10 a.m., with Senators permitted to speak therein for up to 10 minutes each; further, I ask that following morning business, the Senate proceed to executive session and resume consideration of the nomination of Sonia Sotomayor, as provided under the previous order.

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

PROGRAM

Mr. BROWN. Mr. President, as a reminder, the Senate will recess from 3 p.m. to 5 p.m. tomorrow to allow for a special Democratic caucus.

ORDER FOR ADJOURNMENT

Mr. BROWN. Mr. President, if there is no further business to come before

the Senate, I ask that following the remarks of Senator GRASSLEY, it adjourn under the previous order.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SOTOMAYOR NOMINATION

Mr. GRASSLEY. Mr. President, I want to discuss the nomination of Judge Sotomayor to be Associate Justice. I want to begin by saying that I have a lot of respect for her. I think she is an incredibly talented individual who has worked very hard and has had an extraordinary life story. I am impressed with the way Judge Sotomayor was able to beat the odds and reach new heights. Unfortunately, as I voted in committee, I vote on the floor. I cannot support her nomination because of my concerns with her judicial philosophy.

There are a number of qualifications a Supreme Court nominee should have: a superior intellect, distinguished legal experience, integrity, proper judicial demeanor, and temperament. But the most important qualification of a Supreme Court nominee is truly understanding the proper role of a Justice as envisioned by our great Constitution. In other words, a Justice must have the capacity to faithfully interpret the law and Constitution without personal bias or prejudice.

It is critical that judges have a healthy respect for the constitutional separation of power and the exercise of judicial restraint. Judges must be bound by the words of the Constitution and legal precedent. Because the Supreme Court has the last word as far as what the lower court says, Justices are not constrained like judges in the district and appellate courts. In other words, the Supreme Court and its Justices have the ability to make precedent. Because there is no backstop to the Supreme Court, Justices are accountable to no one. That is why we must be certain these nominees will have the self-restraint to resist interpreting the Constitution to satisfy their personal beliefs and preferences. A nominee to the Supreme Court must persuade us that he or she is able to set aside personal feelings so he or she can blindly and dispassionately administer equal justice for all.

That is what I was looking for when I reviewed Judge Sotomayor's record. That is what I was looking for when I asked Judge Sotomayor questions both at the hearing and in writing. Unfortunately, I now have more questions than answers about Judge Sotomayor's judicial philosophy. I am not convinced that the judge will be able to resist having her personal biases and preferences dictate her judicial methods when she gets to the Supreme Court.

I find it very troubling that President Obama is changing the standard by which our country's Federal judges are selected. Instead of searching for qualified jurists who can be trusted to put aside their personal feelings in order to arrive at a result required by the law, President Obama has said he is looking for a judge who has ''empathy,'' someone who will embrace his or her personal biases instead of rejecting them.

This concept represents a very radical departure from the normal criteria for selecting Federal judges and Supreme Court Justices. In his statement opposing the confirmation of Chief Justice John Roberts, then-Senator Obama compared the process of deciding tough cases in the Supreme Court—can you believe it—comparing it to a marathon. He said:

> That last mile can only be determined on the basis of one's deepest values, one's core concerns, one's broader perspective on how the world works and the depth and breadth of one's empathy. . . . Legal process alone will not lead to you a rule of decision. . . . [i]n those difficult cases the critical ingredient is supplied by what is in the judge's heart.

That is the end of the quote from then-Senator Obama.

Until now, judges have always been expected to apply law evenhandedly and to reach the result that the law requires. When speaking about the law, lawyers and judges often talk about what the law is or what the law requires, instead of what the law should be. We expect judges not to confuse the two. We expect judges not to bend the law in order to reach a result that they would want personally instead of what the law requires. We expect judges not to decide cases in favor of a particular litigant because he or she may be more worthy of compassion. We don't ask what the judge's heart says about a particular case of a legal issue. We ask what the law says.

A mandate of judicial empathy turns that traditional legal concept on its head in favor of a lawless standard. If empathy for a litigant's situation becomes a standard for deciding cases, then there is no limit to the effect on American jurisprudence. If a judge's decision in the hard cases is supplied by the content of his or her heart, then that decision cannot be grounded upon objective legal principles. If the last mile that then-Senator Obama referred to is determined by a judge's deepest feelings instead of legal precedent, then the outcome will differ based on which judge hears the case. Predictably and consistently, hallmarks of the American legal system will be sacrificed on the altar of judicial persuasion and compassion.

When a judge improperly relies on his or her personal feelings instead of relying solely on the law, it leads to creation of bad precedent. If a judge's decision is affected by his or her empathy or sympathy—whatever you want to say—for an affected party or group, then the law of unintended consequences dictates that others will be affected in the future, beyond the present case, and they will be judged by a standard that should not be applied to them because of what a previous judge did about personal sympathy instead of what the law says.

Justice is blind. Empathy is not. Empathetic judges take off the blindfolds and look at the party instead of merely weighing the evidence in light of what the law is. Empathetic judges put their thumbs on the scales of justice, altering the balance that is delicately crafted by the law. Empathetic judges exceed their role as part of the judicial branch and improperly take extraneous, nonlegal factors into consideration. That is why President Obama's judicial standard of empathy is problematic, and why we should be cautious in deferring to his choices for the judicial branch.

Judge Sotomayor's speeches and writings reveal a judicial philosophy that bestows a pivotal role to personal preferences and beliefs in her judicial method—although Judge Sotomayor attempted to spin away her statements. At her confirmation hearing I had difficulty reconciling what she said at the hearing with statements she has repeated so often throughout the years. That is because the statements made at the hearing and those speeches and law review articles outside the hearing cannot be reconciled.

Since 1994, the judge has given a number of speeches where she responded to a remark by Justice O'Connor that a judge's gender should be irrelevant to judicial decisionmaking process. Judge Sotomayor said that she ''hope[d] that a wise Latina woman . . . would more often than not reach a better conclusion than a white male who hasn't lived that life.''

This statement suggests, very contrary to the Constitution, that race and gender influence judicial decisions and that some judges can reach a ''better conclusion'' solely on the basis of belonging to a particular demographic.

When questioned about this issue, Judge Sotomayor initially stood by her words, saying that they were purposefully chosen to ''inspire the students to believe that their life experience would enrich the legal system,'' and that it was merely their context that ''ha[d] created a misunderstanding.''

Even if that were the case, repeatedly misrepresenting to her audience one of the most fundamental principles of our judicial system demonstrates inappropriate and irresponsible behavior for a judge. However, Judge Sotomayor proceeded to contradict those very words by saying that she ''does not believe that any ethnic, racial, or gender group has an advantage in sound judging,'' and claimed that her criticism was actually agreeing with Justice

O'Connor's argument, saying the words she used ''agree[d] with the sentiment that Justice Sandra Day O'Connor was attempting to convey.'' I fail to see how Judge Sotomayor can reconcile her views with those of Justice O'Connor because it is clear that they stand in direct contradiction to each other.

The judge continued to confuse us, claiming that hers and Justice O'Connor's words ''literally made no sense in the context of what judges do.'' Assuming that Judge Sotomayor truly does agree with Justice O'Connor, then I find it troubling that she doesn't recognize that it is important for judges to understand their gender and ethnicity should have no bearing on their judicial decisions.

Moreover, the judge contradicted herself again when she later attempted to brush aside these remarks, claiming that they were a ''rhetorical flourish'' and ''can't be read literally.'' However, if she truly believed that these words ''fell flat,'' why would she continue to use the same words on at least four more separate occasions?

Some of my colleagues claim that the significance of Judge Sotomayor's ''wise Latina'' statement has been exaggerated. Unfortunately, we are not concerned with just one statement. The judge has a record of freely articulating a judicial philosophy at odds with the fundamental principles of our legal system.

Justice Story once said that, without justice being impartially administered:

> Neither our persons nor our rights nor our properties can be protected.

That is the end of Justice Story's quote.

In her opening testimony Judge Sotomayor appeared to agree with Justice Story, saying she seeks to strengthen ''faith in the impartiality of our justice system.'' However, that statement is contradicted by her long history of expressing skepticism toward judicial neutrality and impartiality. In at least four separate speeches Judge Sotomayor said that ''the aspiration to impartiality is just that—it's an aspiration.''

It is easy for a nonlawyer like me to become very cynical when I hear that. But when questioned about that statement, Judge Sotomayor argued that she ''wasn't talking about impartiality [being] impossible'' and tried to reconcile her views as ''talking about academic question.''

In other speeches, the judge also expressed skepticism with Judge Cedarbaum's belief that judges must transcend their personal sympathies and prejudices, saying that she ''wonder[ed] whether achieving that goal is possible in all, or even most cases.''

That is enhancing my cynicism.

At the hearing, Judge Sotomayor failed to sufficiently explain those troubling remarks. Instead, she departed from the clear meaning of her words, arguing that they were actually intended ''to make sure that one understood that a judge always has to guard against those things affecting the outcome of a case.''

Once again, her contradictory interpretation of her own words makes me question her sincerity and candor with our committee.

In another speech in a law journal article, Judge Sotomayor declared that she ''willingly accept[s]'' that judges ''must not deny the differences resulting from experiences and heritage, but attempt, as the Supreme Court suggests, continuously to judge when those opinions, sympathies and prejudices are appropriate.''

So I am concerned that these words radically depart from the bedrock principle of judicial impartiality that judges swear to uphold when they take their oath of office.

When questioned about these words, Judge Sotomayor made the far-fetched claim that her words were actually ''talking about the very important goal of the justice system to ensure that personal biases and prejudices of a judge do not influence the outcome of the case.'' Once again, I fail to see how Judge Sotomayor can reconcile both of those statements.

Furthermore, her statement is especially concerning within the context of other ideas she expressed in the same ''Raising the Bar'' speech. That is her title of her speech, ''Raising the Bar.''

For example, Judge Sotomayor openly questioned whether ''ignoring our differences as women, men or even people of color, will do a disservice both to the law and to society.'' Reason to be cynical, once again. This is yet another example of an out-of-the-mainstream judicial philosophy. The majority of Americans understand that allowing physiological differences to influence judging is a disservice to the law and demonstrates a blatant lack of regard for the principle of blind justice.

At the hearing, the judge attempted to justify her words as simply part of an ''academic discussion.'' Contrary to the plain meaning of her words, she claimed that she was not encouraging or attempting to encourage the belief that ''personal characteristics'' and ''experiences'' should drive the result.

These excuses ring hollow and contradict other parts of the same speech where she declared, ''I accept there will be some differences in my judging based on my gender and my Latina heritage.''

Similarly and even more concerning, she expressed in that speech on at least five other occasions that ''I accept the proposition that a difference there will be by the presence of men and women, people of color on the bench, and that my experiences affect the facts I choose to see as a judge.''

When explaining those remarks at the hearing, the judge continued to display troublesome evasiveness, claiming that she ''did not intend to suggest that it is a question of choosing to see some facts or another.''

Taken together, I remain unconvinced that Judge Sotomayor's history of freely delivered speeches demonstrates an appropriate understanding of the importance of approaching the law neutrally and upholding judicial impartiality. I am also concerned that over the past 13 years the judge has articulated that judges play a role as a policymaker.

At a Duke University panel discussion she claimed that, ''The court of appeals is where policy is made.''

Likewise in her Suffolk University law review article, the judge embraced the notion that judges should encroach on the constitutional power of legislatures by changing the law to adapt to social needs. She lamented that ''our society would be straitjacketed were not the courts, with the able assistance of the lawyers, constantly overhauling the law and adapting to the realities of ever-changing social, industrial and political conditions.''

And in the same article, the judge noted that ''a given judge or judges may develop a novel approach to a specific set of facts or legal framework that push the law in a new direction.''

I thought that was part of our checks and balances system of government. That is why we had a separate legislature, to make policy. Because if a Supreme Court Justice makes policy, they have got a lifetime position. You cannot vote them out of office, whereas if we make wrong policy, our constituents have an opportunity at every election to put us out on the street.

So not understanding the proper role of a Justice is a problem for me. Even more alarming is that the judge has, on multiple occasions, expressed her own personal role in shaping policy in the bench. When describing the role of judges in a November 2000 speech before the Litigators Club, the judge stated, ''Our decisions affect not only the individual cases before us, but the course of litigation and the outcomes of many similar cases pending. This fact has made me much more aware of the policy impact of the decisions I have drafted or worked on.''

In at least two other speeches, the judge told her audience, ''I wake up each morning excited about the prospects of engaging in the work that fulfills me and gives me the chance to have a voice in the development of the law.''

These statements demonstrate either a lack of understanding or a blatant disregard for the proper constitutional role of judges. Rather than seriously addressing this aspect of her judicial philosophy at her confirmation hearing, the judge capriciously changed her views. She appeared to retract all of her previous statements by telling Senator COBURN that ''judges do not make law,'' and in responding to my questions about vacuums in the law by saying that judges are ''not creating law.''

I find these statements disingenuous because in her posthearing written responses, the judge endorsed her previous views by justifying judges who

''apply broadly written statues by filling in gaps in the laws according to their personal common sense.''

This is troubling because judges who fail to uphold their constitutional role and impose their own policy preferences undermine democracy and undermine our checks and balances system of government.

Also, I was disturbed by Judge Sotomayor's general lack of candor at the hearing. Throughout her testimony, she repeatedly contradicted statements she had openly and unequivocally expressed on numerous occasions from her own bench. Even the Washington Post characterized Judge Sotomayor's hearing testimony as ''less than candid,'' and ''uncomfortably close to disingenuous.''

That is not a Republican Senator making the statement, that is the Washington Post, one of the guardians of democracy, as the first amendment allows newspapers to be.

For example, despite her 7-year history of telling at least six different audiences that ''my experiences affect the facts I choose to see as a judge,'' and, '' I accept there will be some differences in judging based on my gender and my Latina heritage,'' she also told us, ''I do not permit my sympathies, personal views, or prejudices to influence the outcome of my cases.''

Likewise, when I questioned her about whether it was ever appropriate for judges to allow their own identity politics to influence their judgment, the judge answered ''absolutely not.''

While I agree with her answer, it is still troubling and significant that it completely contradicts her previously expressed views. I find it interesting that she appears to have had a sudden confirmation conversion.

I am also concerned about Judge Sotomayor's involvement with the Puerto Rican Legal Defense and Education Fund and her denials that she did not work on matters in a substantive or policy role relative to controversial issues during her tenure at that organization.

During her supervision of this Defense and Education Fund, the organization took a number of radical positions on abortion, including the view that abortions on demand could not be restricted for any reason; that taxpayers should be required to pay for abortions; and that parents did not have the right to even be notified if their minor daughter was going to get an abortion.

I find it hard to believe that the chair of the litigation committee of the organization had no substantive or policy involvement in the formulation of these legal briefs.

Even when asked whether these positions were extreme and allowed an opportunity to disavow them, Judge Sotomayor refused to do that.

I also was dismayed that the judge was not straightforward about her philosophy toward the use of foreign law. In a recent speech before the ACLU of Puerto Rico, the judge advocated and justified American judges using such foreign law. She told her audience that, ''International law and foreign law will be very important in the discussion of how to think about the unsettled issues in our own legal system.''

She went on to say, ''To suggest to anyone that you can outlaw the use of foreign or international law is a sentiment that's based on a fundamental misunderstanding . . . nothing in the American legal system stops us from considering those ideas.''

As examples of using foreign law to strike down American statutes, she favorably cited Roper v. Simmons and Lawrence v. Texas, saying the courts were using foreign law to ''help us understand whether our understanding of our own constitutional rights fell into the mainstream of human thinking.''

However, at the hearing, Judge Sotomayor contradicted herself saying, ''Foreign law cannot be used . . . to influence the outcome of a legal decision interpreting the Constitution or American law.''

Which Sotomayor, comparing those two quotes, is going to judge from the bench of the Supreme Court? In that same speech, Judge Sotomayor also openly disapproved criticisms by Justice Scalia and Justice Thomas on the use of foreign law saying she shared the ideas of Justice Ginsburg that, ''Unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, then we are going to lose influence in the world,'' and, ''foreign opinions . . . can add to the story of knowledge relevant to the solution of a question.''

However, at the hearing, Judge Sotomayor reversed herself, claiming that she ''actually agreed with Justice Scalia and Thomas on the point that one has to be very cautious even in using foreign law with respect to things American law permits you to.''

So, once again, comparing those two statements, which Sotomayor view is going to be used on the bench of the Supreme Court? Once again, either Judge Sotomayor's beliefs were extremely short lived, or she failed to openly present her true opinions during her hearings.

A few days after testifying that, ''Foreign law could not be used to interpret the Constitution and the statutes,'' Judge Sotomayor advocated her previous beliefs that, ''Decisions of foreign courts can be a source of ideas in forming our understanding of our own constitutional rights'' and ''to the extent that the decisions of foreign courts contain ideas that are helpful to that task, American courts may wish to consider those ideas.''

Supporters of Judge Sotomayor discount her controversial statements and writings made over the years as a sitting judge and urge us to look at her judicial record. So I have had the opportunity to do that, and am still not convinced. I participated in the confirmation hearing and listened to her discuss her cases. For the most part, Judge Sotomayor refused to give a clear answer to our questions and in the end left us with more questions than we had before the hearing started.

Most lawyers understand that hard cases say the most about a judge. And as we all know, the Supreme Court only takes hard cases. Yet those are the kinds of cases that raise the most concerns about the judge and what she will do if she is confirmed to the highest Court.

Statements she made at the hearing raise concerns that she will inappropriately create or expand rights under the Constitution. Further, some of her cases raise questions about whether she will impose her personal policy decisions instead of those of the legislative or executive branch.

Moreover, Judge Sotomayor's record with the Supreme Court is unimpressive. When the Supreme Court reviewed her work, it rejected her outcome 8 out of 10 times and disagreed with her analysis on another one of those cases. I am not sure a 1 in 10 record warrants elevation to the Nation's highest Court.

What is troubling to me is how Judge Sotomayor has handled cases of first impression or important constitutional issues that have appeared before her on the Second Circuit Court of Appeals. I am concerned that she dismisses cases with cursory analysis in order to obtain a politically desired result.

The firefighters case Ricci v. City of New Haven is a case that should not be overlooked in an examination of Judge Sotomayor's judicial philosophy. Judge Sotomayor admittedly is opposed to and has litigated against standardized tests because she believes they are racially biased. This is the background she brought to the Ricci case, which she dismissed without writing an opinion. But the fortunes of the firefighters changed when Judge Cabrenas discovered the case by reading the local newspaper. Judge Cabrenas recognized that a detailed analysis of this case would serve a jurisprudential purpose and wanted the Second Circuit to reconsider it. The Second Circuit voted 7–6 not to reconsider this important case, with Judge Sotomayor casting the deciding vote. One has to question whether Judge Sotomayor allowed her personal biases against standardized test to seep into her decisionmaking process. Although Judge Sotomayor continued her efforts to sweep this case under the rug, the firefighters, because Judge Cabrenas highlighted the importance of the case in a dissenting opinion, were able to justify appealing to the Supreme Court.

The Supreme Court issued an opinion which held that there was no ''strong basis in evidence'' to support the ruling made by Judge Sotomayor. All nine Justices rejected the legal reasoning applied by Judge Sotomayor's three judge panel. Justice Alito summarized the case best in his concurring opinion,

where he stated ''a reasonable jury could easily find that the City's real reason for scrapping the test results was not a concern about violating the disparate impact provision of Title VII, but a simple desire to please a politically important racial constituency.'' As such, ''Petitioners were denied promotions for which they qualified because of the race and ethnicity of the firefighters who achieved the highest scores on the City's exam.'' As to Judge Sotomayor's expressed empathy for ruling against the firefighters, Justice Alito wrote:

> the dissent grants that petitioners' situation is ''unfortunate'' and that they ''understandably attract this Court's sympathy.'' But ''sympathy'' is not what petitioners have a right to demand. What they have a right to demand is evenhanded enforcement of the law—of Title VII's prohibition against discrimination based on race. And that is what, until today's decision, has been denied them.

At the hearing, I wasn't persuaded by Judge Sotomayor's claims that she followed precedent in reaching her decision. I also was not convinced with Judge Sotomayor's explanation about why she dismissed this case with no legal analysis. I was left with the impression that Judge Sotomayor either she didn't understand the importance of the claims before her, or she issued a ruling based on her own personal biases.

Some colleagues argue that her critics can only point to one controversial case over a 17-year career on the Federal bench. That is not quite accurate, because there are several of her decisions that raise concerns.

For example, Judge Sotomayor issued another troubling decision in Didden v. Village of Port Chester, where Mr. Didden presented evidence that local government officials attempted to extort him in exchange for not seizing his property. When Mr. Didden refused to be extorted, the Village took his property and gave it to another private developer. This case was on the heels of the Supreme Court's decision in Kelo v. City of New London, which held that the government is not ''allowed to take property under the mere pretext of a public purpose, when its actual purpose is to bestow a private benefit.'' Yet Judge Sotomayor dismissed Mr. Didden's claim with a one paragraph opinion.

I asked Judge Sotomayor about the Didden case, but wasn't satisfied with her answers. First, she inaccurately characterized the Supreme Court's holding in Kelo. I was also troubled with her failure to understand that her decision expanded the ability of State, local, and Federal governments to seize private property under the Constitution. Further, she told me that she had to rule against Mr. Didden because he was late in filing his claim. Mr. Didden had 3 years to file his claim. He filed it January 2004, 2 months after he was approached with what he classified as an extortion offer. Judge Sotomayor told us that Mr. Didden should have filed his claim in July 2002, before he was extorted and before he knew the city was going to take his property in November 2003. This is simply not a believable outcome, especially in a one paragraph opinion, where it was never explained to Mr. Didden why the government could take his property. I specifically asked her how Mr. Didden could have filed his claim before he knew he had a claim. Judge Sotomayor did not answer this question directly, but the net result is, as Professor Somin stated, property owners in this situation will never be able to have their day in court:

> the panel's ruling that [the plaintiffs] were required to file their claims before their property was actually condemned creates a cruel Catch–22 dilemma . . . If [the plaintiffs] had filed a Takings Clause claim before their property was condemned, it would have been dismissed because it was not yet ''ripe''). . . It is surely both perverse and a violation of elementary principles of due process to rule that the government can immunize unconstitutional condemnations from legal challenge simply by crafty timing.

There might not be a decision more disturbing than Judge Sotomayor's summary dismissal in Maloney v. Cuomo. If this summary dismissal is allowed to stand, the right to bear arms as provided for in the second amendment will be eviscerated. Instead of carefully considering whether the District of Columbia v. Heller case properly left open the question of whether owning a gun is a fundamental right, Judge Sotomayor in one paragraph held that it is settled law that owning a firearm is not a fundamental right. The Supreme Court noted in Heller that it declined to address the issue of whether owning a firearm was a fundamental right. At the hearing, I was concerned with Judge Sotomayor's explanation of her holding that the second amendment is not ''fundamental'' and her refusal to affirm that Americans have a right of self-defense. In my mind, and I think anyone who reads the second amendment, when the Supreme Court does consider this issue, we will find that Judge Sotomayor was once again on the wrong side of an opinion.

So based on her answers at the hearing and her decisions, writings and speeches, I am not convinced that Judge Sotomayor has the right judicial philosophy for the Supreme Court. I am not convinced that she will be able to set aside her personal biases and prejudices and decide cases in an impartial manner based upon the Constitution. I am concerned about Judge Sotomayor's dismissive handling of claims raising fundamental constitutional rights—I am not convinced that she will protect those rights, nor am I convinced that she will refrain from creating new rights. For these reasons, I must vote against her nomination.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 9:56 p.m., adjourned until Wednesday, August 5, 2009, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate:

DEPARTMENT OF THE INTERIOR

MARCIA K. MCNUTT, OF CALIFORNIA, TO BE DIRECTOR OF THE UNITED STATES GEOLOGICAL SURVEY, VICE MARK MYERS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Tuesday, August 4, 2009:

DEPARTMENT OF STATE

PATRICIA A. BUTENIS, 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 SOCIALIST REPUBLIC OF SRI LANKA, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALDIVES.

CHARLES AARON RAY, OF MARYLAND, 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 ZIMBABWE.

GAYLEATHA BEATRICE BROWN, 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 BURKINA FASO.

PAMELA JO HOWELL SLUTZ, OF TEXAS, 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 BURUNDI.

PATRICIA NEWTON MOLLER, OF ARKANSAS, 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 GUINEA.

JERRY P. LANIER, OF NORTH CAROLINA, 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 UGANDA.

ALFONSO E. LENHARDT, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED REPUBLIC OF TANZANIA.

SAMUEL LOUIS KAPLAN, OF MINNESOTA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF MOROCCO.

JAMES B. SMITH, OF NEW HAMPSHIRE, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

MIGUEL HUMBERTO DIAZ, OF MINNESOTA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE HOLY SEE.

FAY HARTOG-LEVIN, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF THE NETHERLANDS.

STEPHEN J. RAPP, OF IOWA, TO BE AMBASSADOR AT LARGE FOR WAR CRIMES ISSUES.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.