

the odds. For it is up to us now to light the world, as he did.

In this past week, I think we have all found new meaning in those familiar words of Aeschylus, when he said:

And even in our sleep, pain that cannot forget falls drop by drop upon the heart, and in our own despair, against our will, comes wisdom to us by the awful grace of God.

Today, in our despair, let wisdom come. Let us honor the memory of Senator Edward Moore Kennedy by not only remembering the man but by continuing the good work he has done.

I yield the floor.

Mrs. SHAHEEN. Mr. President, I am honored to be here to add my voice to so many of those who today have eloquently remembered Senator Ted Kennedy. Like so many who have spoken today, I was the beneficiary of so many personal kindnesses from Senator Kennedy.

I actually first met him on the campaign trail. In 1980, I was actually on the other side in New Hampshire when he was running against Jimmy Carter. Despite the fact that was a very hard-fought campaign and we won and he lost, when I ran a winning campaign 4 years later in the New Hampshire primary, Senator Kennedy was one of the first people to call and congratulate me.

After that, I had the opportunity to campaign over the years with Senator Kennedy. There was no one who could fire up a crowd as he could. In 2000, I remember he was there for Al Gore when times were tough in New Hampshire. He was there for JOHN KERRY in 2004. And I had the opportunity to travel around the country with him in support of JOHN KERRY, his very good friend.

But I really got to see the difference he made in so many lives when I worked with him at the Institute of Politics at the Kennedy School of Government at Harvard. I had the opportunity to be chosen to be the director there, and Senator Kennedy was one of those people who helped make that decision and make that happen for me. What was so impressive was that it did not matter how busy he was with the work in Washington, with what he was doing in Massachusetts, he never missed a meeting. His first concern was always: What are the students doing? What is going to excite them? What is going to get them involved in politics and public service, because that was the mission of the Institute of Politics. It was one of two memorials that were established by the Kennedy family to remember his brother, President John Kennedy. It was always amazing to me to see someone who was so busy, so prominent in national life, who never missed an opportunity to talk with the freshman student who was there who wasn't quite sure what they wanted to do, to talk with and encourage the young people who were involved at the institute to get involved in politics, in government, in public service.

I know Senator Kennedy will be remembered by so many of the

kindnesses he provided to people. He will be remembered by the tens of thousands of people whose lives he touched. But I think one of his most significant legacies will be those young people who are encouraged to get involved in politics, who appreciate that public service in government is an honorable profession because of his leadership and the work he did.

I feel very honored and privileged to have worked with him and to have had the opportunity to serve with him, however briefly, in the Senate. I know we will all remember for future generations what Senator Kennedy has done.

ORDER OF PROCEDURE

Ms. STABENOW. Mr. President, I ask unanimous consent that at 2:30 today, the Senate resume executive session and consideration of the nomination of Cass Sunstein; that all post-cloture time be yielded back except for 75 minutes, with that time equally divided and controlled between Senator LIEBERMAN and the Republican leader or his designee; that at 3:45 p.m., the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table, no further motions be in order, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; that upon resuming legislative session, the Senate then proceed to the consideration of Calendar No. 153, H.R. 3288, the Department of Transportation, Housing, and Urban Development and Related Agencies appropriations bill.

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CASS R. SUNSTEIN TO BE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET

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 Cass R. Sunstein, of Massachusetts, to be Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget.

Ms. STABENOW. Mr. President, I suggest the absence of a quorum and ask that the time be charged equally to both sides.

Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. STABENOW.) Without objection, it is so ordered.

Mr. KYL. Madam President, Professor Cass Sunstein's academic credentials are impressive. He has taught at the University of Chicago School of Law and at the Harvard School of Law, and has been a prolific writer on a wide variety of topics.

He has some fine ideas on cost-benefit analysis, and I hope they will be reflected in his approach as administrator of Office of Information and Regulatory Affairs.

I do, however, find that some of the arguments he has made, and the positions he has taken in his writings and speeches, fall outside the mainstream.

One theme that has appeared repeatedly in his writings and speeches is his strange belief that animals should have legal standing in court. Professor Sunstein wrote in his book *Animal Rights: Current Debates and New Directions* that, "We could even grant animals a right to bring a suit without insisting that animals are persons. . . . We could retain the idea of property but also give animals far more protection against . . . neglect of their interests."

He goes on: "It seems possible that before long Congress will grant standing to animals in their own right. . . . Indeed I believe that in some circumstances, Congress should do exactly that, to provide a supplement to limited public enforcement efforts."

In a paper for the University of Chicago School of Law, Professor Sunstein wrote that, "Representatives of animals should be able to bring private suits to ensure that anticruelty and related laws are actually enforced. If, for example, a farm is treating horses cruelly and in violation of legal requirements, a suit could be brought, on behalf of those animals."

Of course, no one favors animal cruelty. That is why there are laws against it. That should go without saying. But there is a big difference between having concerns about the treatment of animals and taking Professor Sunstein's position that an animal deserves a lawyer in court.

An animal is not a person, and it cannot function as a plaintiff during a trial. Laws and regulations that would give animals legal standing in court could open the door to a flood of ridiculous lawsuits that would wreak havoc on research labs, restaurants, farms, and the like.

Imagine what could happen if a group wanted to represent lab rats or farm chickens in a class-action lawsuit. Even if claims were found baseless in courts, someone, farms, laboratories, business owners, would still bear the costs of litigation.

There may be room for this kind of thinking in academia. But it has no place in the executive branch of the U.S. Government, especially in the top regulatory office of the administration.

As the Discovery Institute's Wesley J. Smith has written on Professor Sunstein's position on animal standing in courts, it "would do more than just plunge the entire animal industry into chaos . . . the perceived exceptional importance of human life would suffer a staggering blow by erasing one of the clear legal boundaries that distinguishes people from animals."

Professor Sunstein was also out of the mainstream when, in a 2003 paper, "Lives, Life Years, and Willingness to Pay," he explained his views on a life-valuation system: "No regulatory program makes people immortal. The only issue is life extension, and, in terms of welfare, a program that saves 10,000 life years is better than one that saves 1,000 life years, holding all else constant. In welfare terms, a program that saves younger people is unquestionably better than one that saves older people." That is plainly not true if you believe in the moral equality of all lives.

While discussions about the value of an older person's versus a younger person's life may be acceptable inside the cozy confines of elite academic settings, they raise serious concerns when written by the person nominated to be America's regulatory czar. This is especially true at a time when we are engaged in a debate over the future of our healthcare system and as Congress considers several proposed bills that call for the administration to act on new healthcare regulations that could end up under the purview of OIRA.

Cost-benefit analysis is fine, but not as a means to ration healthcare, e.g., to America's elderly. Professor Sunstein's views call to mind the British basis for healthcare rationing: the Quality-Adjusted Life Years, (QALY.)

I am also troubled by the outcome of a Democratic retreat in which Professor Sunstein participated after the 2000 election. As the New York Times reported in May of 2001, the "principal topic was forging a unified party strategy to combat the White House on judicial nominees."

The strategy that resulted from this retreat led to two fundamental, and I believe, corrosive, changes in the way judicial nominees are considered. The first was to encourage filibusters, previously unknown for judges, and the second was that when voting for a judicial nominee, a Senator should determine the political views of nominees and vote against those with whom you disagree.

As the Times reported, one participant said of the panel discussion in which Professor Sunstein's participated, "They said it was important for the Senate to change the ground rules and there was no obligation to confirm someone just because they are scholarly or erudite."

The net result, a very negative result, of these changes was a hyper-par-

tisan judicial confirmation process during the Bush administration, one that tarnished many nominees and in which too many votes were determined by party affiliation and ideology. Some very worthy nominees, such as Miguel Estrada, were filibustered and, therefore, wrongly denied a confirmation vote.

I see this nomination as part of a broader pattern: One that shows that the Obama administration has repeatedly nominated or hired individuals with overly-partisan or bizarre views. Just last week, the facts came to light about the radical ideology and associations of Van Jones, President Obama's now-former green jobs czar, who was not subject to a Senate confirmation process.

While he has tried to explain away some of his views and assure Senators that he won't try to apply his personal opinions as part of his official duties, I believe that Professor Sunstein's nomination reflects this administration's pattern of favoring out-of-the-mainstream individuals for key jobs. If a Republican judicial nominee harbored such views, I have no doubt that the participants at the Democratic retreat in which Professor Sunstein participated would have found justification for a filibuster or negative vote, notwithstanding his fine legal credentials. While I have serious concerns about the standard, Democrats won that debate and now apply the standard. There cannot be one standard for Democrats and one standard for Republicans. Therefore, I must oppose this nomination.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Madam President, I ask unanimous consent to speak as in morning business.

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

WELCOMING GEORGE S. LEMIEUX

Mr. NELSON of Florida. Madam President, momentarily, the Vice President will arrive to conduct one of the most important and very signal events of an individual's life, and that is being sworn in as one of 100 Senators representing the United States. As our new Senator, GEORGE LEMIEUX from Florida, assumes his duties, he will find that, indeed, he will understand that this has been called one of the greatest debating institutions designed by mankind to exist on the face of this planet. It is a great privilege to be a part of an institution that values democracy, that values free debate, that values the opinions of others. In this mix of two Senators representing each of our States, we come together to build consensus in order to lend our part to this constitutional process. For GEORGE LEMIEUX, this is going to be a red-letter day. I want to share with the Senate that it is a privilege for me to have the new Senator as my colleague. Our colleagues know the special rela-

tionship I had with Senator Martinez who I have had the privilege of having a 30-year personal relationship with. We continued that in our professional relationship here. Now with the new Senator duly appointed according to Florida law by our Governor, we have him coming to join us in this august body representing our State of Florida. That opportunity is now upon us since the Vice President has entered the Chamber.

I yield the floor.

CERTIFICATE OF APPOINTMENT

The VICE PRESIDENT. The Chair lays before the Senate a certificate of appointment to fill the vacancy created by the resignation of former Senator Mel Martinez of Florida. The certificate, the Chair is advised, is in the form suggested by the Senate. If there is no objection, the reading of the certificate will be waived, and it will be printed in full in the RECORD.

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

STATE OF FLORIDA

Office of the Governor

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Florida, I, Charlie Crist, the Governor of the State of Florida, do hereby appoint George S. LeMieux, a Senator from Florida to represent the State of Florida in the Senate of the United States until the vacancy therein caused by the resignation of Mel Martinez, is filled by election as provided by law.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, this 9th day of September, 2009

CHARLIE CRIST

Governor.

KURT S. BROWNING,

Secretary of State.

[State Seal Affixed]

FILED

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DEPARTMENT OF STATE

TALLAHASSEE, FLORIDA

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the Senator-designate will present himself to the desk, the Chair will administer the oath of office.

The Senator-designate, GEORGE S. LEMIEUX, escorted by Mr. NELSON of Florida and former Senator Connie Mack, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the Vice President, and he subscribed to the oath in the Official Oath book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause. Senators rising.)

Mr. DURBIN. I suggest the absence of a quorum and ask unanimous consent