

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]

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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