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