opposition parties have virtually no chance to participate in an open system, denying the people a real democracy. But here with justice, Russia has a chance to do so.

I find it remarkable that Mr. Khodorkovsky's spirits are still strong, as Senator WICKER pointed out. Let me read a recent quote from Mr. Khodorkovsky himself, who is in prison:

> You know, I really do love my country, my Moscow. It seems like one huge apathetic and indifferent anthill, but it's got so much soul. . . . You know, inside I was sure about the people, and they turned out to be even better than I'd thought.

I think Senator WICKER and I both believe in the Russian people. We believe in the future of Russia. But the future of Russia must be a nation that embraces its commitments under the Helsinki Final Act. It has to be a country that shows compassion for its citizens and shows justice. Russia can do that today by doing what is right for Mr. Khodorkovsky and his codefendant: release them from prison, respect the private rights and human rights of its citizens, and Russia then will be a nation that will truly live up to its commitment to its people to respect human rights and democratic principles.

Again, I thank Senator WICKER for bringing this matter to the attention of our colleagues. It is a matter that can be dealt with, that should be dealt with, and we hope Russia will show justice in the way it handles this matter.

Mr. WICKER. I thank my colleague and yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank my colleagues for their remarks. It is worthy of all of us giving most serious consideration. Perhaps we have been too silent in failing to criticize some of the activities of Russia. We want to be friends with them, but good friends tell friends the truth. I believe my colleagues are speaking the truth.

NOMINATION OF ELENA KAGAN

Mr. SESSIONS. Mr. President, the Judiciary Committee is now reviewing the record of Elena Kagan, President Obama's nominee to the Supreme Court. The truth is, her legal record is thin. She has never been a judge and has very limited experience even in the practice of law. She has never tried a case, never cross-examined a witness or made a closing argument in a trial.

A lack of judicial experience is not a total disqualifier for the job of Supreme Court Justice, but it is true and fair to say this nominee has less real legal experience than any nominee confirmed to the Court in the last 50 years. That fact concerns me and many Americans. Ms. Kagan's lack of experience puts even greater emphasis on the central question in the nomination process: If confirmed, what kind of judge will Elena Kagan be? Will she take the traditional view that judges are impartial umpires who decide cases based on the rule of law under the Constitution? Or is she from the activist school, which teaches that judges may take sides and reinterpret the meaning of our laws to advance certain political agendas the judge may find acceptable or desirable or better? Are judges empowered to do that in the American system?

The American people have a right to know. This is no time for a stealth candidacy to the Court. We know one thing. We know her political views are leftist and progressive. That is clear from her record. She has a rather extensive political record. But with no judicial record and little legal record, clues to Ms. Kagan's judicial philosophy can be found perhaps by looking at people she admires, her mentors, judges she thinks represent the best way of conducting their office.

The three judges Ms. Kagan most often mentions are Judge Abner Mikva, Justice Thurgood Marshall, and former Israeli Judge Aharon Barak. Together I think it is fair to say these three judges represent the vanguard of a judicial activist movement that has certain intellectual roots and is quite afoot in our law schools and some of our legal commentators.

Each of these judges affirms the concept that a judge's own views, their personal views, may—sometimes even should—guide their interpretations of the law. In effect, this philosophy argues that the outcome of the case is more important than the legal process that guides the decisions, more important than fidelity to the Constitution. These Kagan heroes believe judges should have the power to make law. This results-oriented philosophy raises questions about whether Ms. Kagan may see judicial power as a way to advance her philosophy. It is a liberal, big government agenda for America. She has been active in that philosophy throughout her lifetime.

Let's look at some of her heroes in more detail. Judge Mikva is someone with whom she has been close. He was appointed to the bench by President Carter a number of years ago to the DC Circuit Court of Appeals.

She clerked for Judge Mikva in 1986 and 1987 and later worked for him in the Clinton White House. After he had resigned from the bench and came into the Clinton White House, she was hired to work with him in that office. On the day she accepted President Obama's nomination, Ms. Kagan noted that Judge Mikva ''represented the best in public service'' and that working for him was part of the ''great good fortune'' that had marked her career. He served five terms as a Congressman from Chicago, where he earned the reputation as ''the darling of American liberals.'' He has advocated for strict gun control, reportedly referring to the National Rifle Association as a ''street-crime lobby.'' He was a fierce opponent of the war in Vietnam and has said he supports the results in Roe v. Wade. The results.

Regarding how to interpret the Constitution or statute, Mikva has said that for ''most law, there is no original intent.'' The general view is that one should find out what the law was intended to mean when it was passed.

Some people dismiss that and are cynical about that, think that is an impossible goal. That is what Judge Mikva apparently believes. He has defined judicial activism as ''the decisional process by which judges fill in the gaps'' in the law and the Constitution. That is similar to President Obama's theory—which I think is flawed—that for ''the five percent of the cases that are truly difficult,'' the judge's decision depends on ''the depth and breadth of one's empathy.''

So the critical ingredient is supplied by what is in a judge's heart. Whatever a heart is, it is not the mind and it is not, therefore, objective judgment. It is more akin to something else. I have said this kind of thinking is more akin to politics than law. It is certainly not law, not in the American tradition of law.

Ms. Kagan also clerked for Justice Thurgood Marshall, whom she refers to as her hero. Indeed, Marshall is a historic figure. He was courageous at a time when courage was definitely needed and an effective leader in the civil rights movement. He was a great attorney and a fierce advocate for his clients and his ideals. He could be a hero of anyone as an American advocate and a person who played a fundamental role in the breakdown of segregation in America. But he also became one of the most active judges on the Court in our Nation's history.

In describing his own judicial philosophy, Marshall said that ''[y]ou do what you think is right and let the law catch up.'' He dissented in all death penalty cases because he and Justice Brennan declared the prohibition of ''cruel and unusual'' punishment that is in the Constitution barred any death penalty.

That might sound plausible in one sense. But in truth, this can never be a fair interpretation of the cruel and unusual clause in the Constitution, since there are multiple references in the Constitution to the death penalty and how it should be carried out.

How could you possibly construe the document as a whole to say that ''cruel and unusual'' prevents the death penalty? Well, they did not like the death penalty; Marshall and Brennan did not. They thought it was wrong. They thought the world had developed and moved forward to a ''higher land'' and they were just going to declare it and the law would follow.

Well, according to Kagan, in Justice Marshall's view, ''constitutional interpretation demanded . . . that the courts show a special solicitude for the despised and disadvantaged.'' Certainly the courts should be sure that the despised or disadvantaged have a fair day

in court. But the way this plays out, I believe, as suggested in the full remarks, is that it untethers the judge from the rule of law. I think it contradicts, in fact, the sworn oath of a judge, which reads ''I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution and laws of the United States, so help me God.'' Even so, Ms. Kagan said that showing ''a special solicitude'' for certain groups was Marshall's ''vision of the Court and Constitution. And . . . it [was] a thing of glory.'' Well, it certainly represents a great vision for an advocate, but I do think we need to be sure that the judge who puts on the robe is going to follow their oath to be impartial and to decide matters based on the law and facts.

But, interestingly, the judge Ms. Kagan praises the most happens to be perhaps the most activist judge on Earth: Aharon Barak, the former president—or chief justice—of the Israel Supreme Court. The respected Federal judge Richard Posner flatly described Barak as a ''judicial activist.'' Elena Kagan described him as her ''judicial hero.''

To judicial activists around the world, Aharon Barak is an icon. After inviting him to Harvard, Ms. Kagan called him ''a great, great judge'' who ''presided over the development of one of the most principled legal systems in the world.'' Her comments are troubling to anyone who believes in limited government and democracy and a limited role for judges. Under Barak, the Israeli court assumed extraordinary governmental power over the people of Israel. The basic democratic rights we take for granted in our country were ignored in his actions. The unelected court in Israel assumed the authority to set aside legislation and executive actions when there were disagreements about policy—not violations of the constitution, but disagreements about policy. It would alter the meaning of enacted laws and override even national defense measures.

Judge Posner wrote that Barak inhabits ''a completely different—and, to an American, a weirdly different—juristic universe.'' He goes on to say: ''What Barak created . . . was a degree of judicial power undreamed of even by our most aggressive Supreme Court justices.'' Judge Posner compared Barak's actions to ''Napoleon's taking [of] the imperial crown out of the Pope's hands and crowning himself.''

Well, is that what we want in the Court? Do we want someone who sees this judge as one of the most admirable judges in the world? Do we want to allow a disregard for the limits of governmental power to further infect our own government? Is that disrespect for the views of ordinary men and women something to which we should aspire? In other words, do unelected, lifetime judges, who are unaccountable to the people—are they entitled to this kind of power? Is this progressive idea that ''experts'' know best consistent with the American view of individual responsibility and popular sovereignty? I think not.

What is Judge Barak's judicial philosophy, as he expresses it? He has written that a judge's role ''is not restricted to adjudicating disputes'' between parties, as is required by the cases and controversies clause of our Constitution. Rather, he says:

> The judge may give a statute new meaning. . . .
>
> ''The judge may give a statute new meaning''—
>
> a dynamic meaning, that seeks to bridge the gap between law and life's changing reality without changing the statute itself. The statute remains as it was, but its meaning changes, because the court has given it a new meaning that suits new social needs.

Well, I would say that Justice Barak let the cat out of the bag. In America, activist judges firmly deny this is what they are doing, but in reality, often that is exactly what they are doing—just taking plain statutes and giving the words new meaning and making them say what they would like for them to have said had they written them in that given period of time.

I believe that to the American people, those words, are offensive and strike at the heart of our democracy. I do not know how you would describe that philosophy, but I do not think it is law, not the law in the great American English tradition of law, a tradition that has attracted people all over the world because they believe they have an opportunity to achieve justice here. Again, I think it is more akin to politics, which should not be a judge's role. There is no place for politics in the courtroom.

Perhaps we should not be surprised that Ms. Kagan—President Obama's nominee—so greatly admires someone who endorses a results-oriented approach, however, because President Obama's Press Secretary, Robert Gibbs, just recently described the President himself as ''results-oriented'' when it comes to law and judging. Amazingly, Gibbs said this about President Obama's view of judging:

> The president is a very pragmatic person who is far less wedded to the process and the mechanics of how you get something done and more wedded to what will the results be.

He is results-oriented, Gibbs said. What do we mean by ''results-oriented''? Results-oriented judging can only mean that a judge enters the courtroom with a preconceived idea of what the results should be, even before he has reviewed the law or heard the facts of the case. And what kinds of conclusions do they have in mind before the trial starts? Well, it is based on the judge's political views or personal feelings about parties or issues in the case. What else could they be? He or she might suggest that those views are somehow provided to them as knowing better than anyone else and that they, therefore, have a duty to impose those ''wise'' ideas on the people and the parties in the case. But I think most of us are not so willing to acknowledge judges are any wiser than anyone else. And what if the Constitution does not support such a result? The judge simply would then declare the law to mean something other than it says.

So that is the philosophy, I contend, that has been endorsed, frankly, by the President. I fundamentally disagree with his philosophy, which is also a philosophy shared by the heroes of Ms. Kagan.

This nominee has a very slim legal record, and it is difficult to evaluate that. She does have a very clear liberal political record. What legal record she has seems to be outside the concept that a judge must serve under the law and under the Constitution.

So it is fair to ask, Does she agree with her heroes? Does she agree with her President? Does she see her lifetime appointment to the Court as an opportunity to promote ideas she desires and then let the law catch up? To that question, we cannot simply accept a confirmation testimony: I will follow the Constitution. Too often, nominees have testified before the committee like Chief Justice John Roberts and gone on to rule more like Aharon Barak. Lipservice to the rule of law is not enough. Activists who have a postmodern view of the law think the Constitution really has no set meaning, there is no way to honestly interpret what it means. So it is easy for them to promise to follow the law because the law, to them, is something that can be changed. It is malleable. It is inexact. It is not finite. They can make it say what they want it to say.

So the question is, Is that the approach Ms. Kagan will take at the hearing? And is that her basic philosophy of judging? She has written that judges should be forthcoming at the confirmation process, and I think we will need to talk about those issues. It is an important confirmation. It is not a coronation. This is a lifetime appointment. This young nominee could easily serve for more than three decades. Indeed, the man she is replacing is—if she lives to his age and serves to his age, she would serve 40 years.

So I think she is entitled to fair and respectful treatment. She is entitled to have an opportunity to discuss and respond to the questions I have raised and others will raise. That is absolutely true, and we cannot use unfairness to besmirch a nominee. But we do need to know: Is this her philosophy of law? What kind of judge will she be? Isn't it true that a person's heroes tell a great deal about who they really are? Few would dispute that these heroes of hers represent three of the most well-known activist judges in the world. So I think the questions are important.

As I have said before, I will oppose—and every Senator should oppose—any

nominee who does not understand and fully accept that their duty is to serve, as the oath says, ''under the Constitution and laws of the United States.'' That is why I think it is only fair to state these concerns before the hearing. I hope my colleagues will be following it. I know our committee members are working hard. It is being a bit rushed, but we are doing our best to be ready next Monday to commence the hearing. I think it will be a good time. I look forward to it, and I hope people who see it will feel as if it was fairly conducted and beneficial not only to Senators, who must vote, but to the American public at large.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to speak in morning business for up to 20 minutes.

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

HEALTH INSURANCE RATE AUTHORITY ACT

Mrs. FEINSTEIN. Mr. President, tomorrow the President of the United States will address the Nation on the 90-day anniversary of the passage of health care reform, so I have come to the floor at this time to discuss an omission from the health care bill, and that omission is the protection of consumers from unfair medical insurance premium rate increases, which, as I will show in the next 15 minutes, are now taking place virtually all over this Nation.

On March 4, I introduced legislation to provide the Secretary of Health and Human Services with the ability to set up a rate review procedure to provide that insurance premium rate increases are reasonable. Senators BOXER, BURRIS, CASEY, GILLIBRAND, LAUTENBERG, MIKULSKI, REED, SANDERS, and WHITEHOUSE have all cosponsored this bill. I originally proposed the amendment during the health care reform debate. We worked with the Administration in putting it together. We worked with the Finance Committee. We worked with Representative SCHAKOWSKY in the House, who has introduced the same legislation. President Obama decided to include it in his health care reform proposal, but unfortunately it did not meet the criteria for reconciliation and therefore had to be dropped. On March 4, I introduced a bill to provide this rate review, and on April 20 Senator HARKIN was good enough to hold a full hearing in the HELP Committee.

The time has come to take action. The time has come to protect consumers from the egregious abuse of insurance companies that are, in fact, taking place across this very Nation today.

Health insurance premiums have been spiraling upwards at out-of-control rates—10, 20, 30 percent per year—all while big national insurance companies enjoy increasing profits.

Everyone by now is familiar with the increases that Anthem Blue Cross, a subsidiary of WellPoint, was set to impose—as much as 39 percent—for 800,000 Californians in the individual market. It turns out that Anthem Blue Cross used flawed data to calculate these health insurance premium increases for hundreds of thousands of California policyholders, resulting in increases that were larger than necessary. The State insurance commissioner ordered an independent actuarial study, and here is what they found: They found that the 25-percent average increase proposed by Anthem should only have been 15.2 percent.

What is most disturbing is that Anthem's case is not an aberration. Far from it. The five major insurers in the small group market in California—Blue Shield, Kaiser Permanente, Anthem Blue Cross, Aetna, and United Health Care—have just announced rate increases for small businesses that will average 12 to 23 percent. Some will be hit with rate increases as much as 76 percent. That likely means people will lose their insurance. This means that over 1.6 million Californians will shortly see increases in premiums. These premium increases have been going on all along. As a matter of fact, literally hundreds of thousands of Californians have had to lose their insurance because they can't pay these premium increases.

This is not a problem unique to California. The White House reports that premium rates have been rising across the Nation with substantial geographic variation. For employer-sponsored family coverage, premiums have increased 88 percent in Michigan over the past decade compared with a 145-percent increase in Alaska.

A recent report by the Center for American Progress Action Fund found that WellPoint is pursuing double-digit increases in the individual market for 10 other States in addition to California: Colorado, Connecticut, Georgia, Indiana, Maine, Nevada, New Hampshire, New York, Virginia, and Wisconsin.

Here are a few examples of those rate increases in the individual market. Average rates in Colorado will increase by 19.9 percent. Some consumers will see increases as high as 24.5 percent. In Maine, Anthem Blue Cross Blue Shield requested a 23-percent increase in 2010. They then sued the State's insurance commissioner for rejecting an 18.5-percent increase last year on top of it. But in April a Maine court upheld the insurance commissioner's decision. In Indiana, rates are expected to increase 21 percent in 2010.

Other insurance companies are also raising rates. Health Care Service Corporation of New Mexico proposed 24.6 percent increases for about 40,000 individual policies last fall. The school district in Weston, CT, is served by CIGNA, which proposed a 23-percent increase in the district's insurance premiums for the 2010–2011 fiscal year.

In a recent Kaiser Family Foundation survey, 77 percent of people purchasing insurance in the individual market report being asked for premium increases. That is over three-fourths. These increases are averaging 20 percent. We don't know the extent of the problem nationwide, but the reporting requirements in the health reform law will improve the information available. However, right now, until changes go into effect, there is a glaring loophole which allows for private for-profit medical insurance companies—the big ones—to increase rates as much as they possibly want to and possibly can.

The recently signed health care bill does require insurance companies to provide justification for unreasonable premium increases to the Secretary of Health and Human Services. They must also post these justifications on their Web sites. This provides transparency, granted, but it leaves the loophole. Simply stated, the Secretary has no authority to do anything about these rate increases. So an insurance company can argue the large increase is justified, but in some States there is no review to see that it is. In other States, officials may not have the authority to block an increase that is not justified. We need to close this loophole.

The bill we have introduced will do just that. This legislation gives the Secretary of Health and Human Services the authority to block premium or other rate increases that are unreasonable. In some States, insurance commissioners already have that authority, and that is fine. The bill doesn't touch them. In Maine, for example, the State superintendent of insurance was able to block Anthem's proposed 18.5-percent increase last year. She approved only a 10.9-percent increase.

In 23 States, including my own—California—companies are not required to receive approval for rate increases before they take effect.

So this legislation we have introduced simply creates a Federal fallback, allowing the Secretary to conduct reviews of potentially unreasonable rates in States where the insurance commissioner does not—and I repeat, does not—already have the authority or the capability to do so. That is in 23 States.

The Secretary would review potentially unreasonable premium increases and take corrective action. This could include blocking an increase, providing rebates to consumers, or adjusting an increase.

Under this proposal, the Secretary would work with the National Association of Insurance Commissioners to implement the rate review process. She would identify States that have the authority and capability to review rates. States already doing this work will continue to do so unabated and unfettered. The legislation would not affect