of judges as the faithful interpreters of the law, Kagan voiced her support for judges who seek to serve as legislators, who develop their own empathy standards and apply the law in a matter they personally see fit. Her self-acknowledged judicial hero, Aharon Barak, perfectly fits this mold. In her testimony before the committee, she even affirmed that she would consider foreign law when she decides cases. She said:

I guess I'm in favor of good ideas from wherever they come.

We are talking about referring to other countries that have a different judicial system and saying maybe they are right and maybe we are wrong. I simply cannot support a nominee who looks to other judicial systems or judicial philosophies or evolving standards of decency rather than the text of the Constitution to interpret law.

I have thoroughly reviewed the record of Elena Kagan and have come to the firm conclusion that she lacks the qualification and experience to be a Supreme Court Justice.

I have named six things. Any one of these six should be disqualifying. One is, she wants to consider foreign judiciaries. Two, she has no judicial or trial experience. Third, she is a judicial activist. Four, she is extreme in her philosophy on abortion and anti-second amendment views, and she is anti-military.

I think of all the things I have mentioned, probably the part that concerns me most is her position that if we are trying someone in a military trial, maybe a terrorist or an activist, that they would be given the right to appeal to our court system and inherit all the benefits any citizen of the United States has.

I can only say what I said several months ago when she was first nominated. In my opinion, as 1 of 100 Senators, if she is not qualified to be Solicitor General, she is certainly not qualified for the higher job of Justice of the U.S. Supreme Court.

HYDRAULIC FRACTURING

I also wish to discuss one of the problems that is going to come up tomorrow, and that is with the Democratic and Republican energy bills. I am very concerned about a process that has been successful in extracting oil and primarily gas out of tight formations, known as hydraulic fracturing. Hydraulic fracturing started in Oklahoma in 1949. We have used hydraulic fracturing to get at these tight formations for 60 years, and there has never been one case of any kind of contamination of water.

There are people who want to do away with our ability to run this machine called America. They don't want oil, gas, coal, or nuclear. That kind of gives an idea of what might be behind this.

Some say: No, we are not against hydraulic fracturing. This bill merely says we want the Federal Government to know what chemicals are used.

This is already being done on a State-by-State basis. Things aren't the same in Oklahoma as they are in New York. In Oklahoma, we have very strict rules. They know exactly what chemicals are used. By the way, 99 percent of what is used on these formations is water and sand.

I am looking forward to talking in more detail with my good friend Senator CASEY. He is kind of the author of this portion of the bill. Yet his State of Pennsylvania has huge opportunities for natural gas. I think we need to talk about that. We have enough natural gas that if we would take away all the inhibitions we have and keep hydraulic fracturing as a process to be used, we could run the country for 100 years. I think it is our job to make sure we protect that.

RECESS

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

Thereupon, at 12:29 p.m., the Senate recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

NOMINATION OF ELENA KAGAN TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Continued

The PRESIDING OFFICER. Under the previous order, the time until 8:15 p.m. will be divided in alternating 1-hour blocks, with the majority controlling the first block.

The Senator from Wisconsin.

Mr. KOHL. Mr. President, I join my colleagues today in congratulating Chairman LEAHY and Senator SESSIONS for conducting fair and impartial hearings for Solicitor General Kagan. I am here today to support General Kagan's nomination to the Supreme Court. Her confirmation will be a milestone that we can all be proud of. For the first time in history, three women will be serving on the Supreme Court at one time.

General Kagan came before the Judiciary Committee with an impressive resume that had all the trappings of an accomplished lawyer worthy of appointment to the Supreme Court. During her hearings, she proved herself to be very well qualified for the job.

She impressed us with her sharp and keen mind, her intellect, and comprehensive knowledge of the Constitution and the law. She pledged to consider each case with an open mind and to impartially uphold the rule of law. She appeared mindful of the need for judicial modesty and fidelity to precedent, but not when it stands in the way of ending injustice or guaranteeing our fundamental rights.

At times during the hearings, Solicitor General Kagan seemed to be somewhat more candid than previous nominees. She disavowed a purely originalist interpretation of the Constitution, recognizing that such a limited approach will not always solve our 21st-century problems. I was pleased she unequivocally expressed her support for opening the Supreme Court to cameras. So I believe with General Kagan's confirmation, the American people will be one step closer to seeing for themselves the Supreme Court debate our most pressing legal and constitutional issues.

But despite the strength of her qualifications, like so many nominees before her, General Kagan often retreated to the generalities and platitudes she once criticized. I am pleased she rejected the analogy that Supreme Court Justices are like umpires, simply calling balls and strikes. Instead, she acknowledges that each Justice's legal judgment determines the outcome of close cases. But at times her answers gave us too little insight into what informs her unique legal judgment and how it will impact those close cases.

As I have said before, the confirmation process demands more than that. This was the public's only opportunity to hear from General Kagan. In my opinion, she made small inroads, but we still have a long way to go in meeting the high standard to which we should hold Supreme Court nominees during their confirmation hearings.

In sum, I am voting for General Kagan because she is unquestionably well qualified, has a record of being a principled, consensus-building lawyer, and because I believe her judicial philosophy is within the mainstream of our country's legal thought. I am confident she will make a superb Supreme Court Justice and is a worthy nominee to carry on Justice Stevens' long legacy of exemplary public service to our Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. FRANKEN. Mr. President, above the entrance of the U.S. Supreme Court are four words, and four words only: ''Equal Justice Under Law.''

I rise today to support the nomination of Solicitor General Elena Kagan to be an Associate Justice of the U.S. Supreme Court. But I also rise today to put General Kagan's nomination in the context of the history of the Supreme Court and how that Court has affected the lives, the jobs, and the safety of working Americans.

I want to ask if working Americans are actually getting equal justice under law in the highest Court of our land. And I do not want to talk about the Court's impact on working Americans in terms of stare decisis or deference to the political branches or judicial modesty. I want to talk about this in terms of the real things that are happening to real people—real working people—right here in the United States.

In 2003, a 54-year-old man named Jack Gross was working for an insurance company in Iowa. A few years earlier, his company had chosen him to rewrite all of their policies in 1 year. And

he did it. In fact, he was one of the company's top employees. His 13 years of performance reviews placed him in the top 3 to 5 percent of the company.

But when his company merged with another company, Jack Gross got demoted. In fact, so did all of the other Iowa employees who were 50 or older. So Mr. Gross sued for age discrimination under a Federal law called the Age Discrimination in Employment Act. He went to trial before a jury of his peers, and he won.

The Roberts Court overturned that verdict. They said the Age Discrimination in Employment Act did not ban all kinds of age discrimination, only age discrimination where age was the single determinative reason for a firing or a demotion.

The funny thing is that before the Roberts Court decided this, no one had made that argument—not Gross, not the company, not Congress, no one. The Court just pulled it out of thin air in favor of the company.

Is that equal justice under law?

In 1979, Lilly Ledbetter went to work at a Goodyear tire plant in Gadsden, AL. She was also very good at her job. She even earned the company's top performance award. Being one of just a few women at the plant, she endured harassment that her male colleagues never faced.

But one day, after 19 years on the job, she found a note in her locker which told her she was making much less than her male coworkers. So she went to court and tried to get Goodyear to pay her the same thing they had paid the men who had her same job. She went to trial before a jury of her peers, and she won. The jury awarded Ms. Ledbetter $3 million.

But the Roberts Court struck down the award. Why? Because Lilly Ledbetter had not gone to court within 180 days of her first discriminatory paycheck decades earlier, even though she had no way of knowing what her male coworkers were making back then, even though the company continued to discriminate against her for decades after that, even though the Congress did not write the law that way.

Is that equal justice under law?

In February 1989, a man named Joe Banta was preparing for the herring fishing season in his hometown of Cordova, AK. For three generations, the Banta family had made their living fishing herring—as the Presiding Officer well knows this story—and digging for clams in Prince William Sound.

All of that ended on March 24, 1989, when the Exxon Valdez—the oil tanker—crashed into a reef and spilled hundreds of thousands of barrels of crude oil into the sound in the Presiding Officer's home State.

Shortly before leaving port, the captain of the Valdez had downed not one, not two, but five double Vodka shots. There was proof that Exxon knew full well about his alcohol problem. To this day we can find oil from the Exxon Valdez in the waters of Prince William Sound. To this day the herring in Prince William Sound have not come back. To this day generations of fishermen such as Joe Banta are out of work.

With the help of a Minnesota attorney, Brian O'Neill, the fishermen of Prince William Sound took Exxon to court. They took Exxon before a jury of their peers, and they won. The jury awarded them $5 billion. That is a fraction of Exxon's $45 billion in profit in 2008. But the Roberts Court slashed the verdict to one-tenth of its original size. Five million dollars is, of course, a lot of money, but it had to be divided among 32,000 people.

Here is the other thing: There was not a rule that called for this. There is no statute or precedent that said the Court had to cap the fishermen's damages. So the Roberts Court just made one up. They made up a cap for what the fishermen could recover—after the fishermen sued and got a verdict from a jury of their peers.

When the Court needed to justify that cap, it said jury verdicts were too unpredictable for companies and that even a ''bad man'' deserves reasonably predictable jury verdicts. This is the standard that will soon be applied to the fishermen of the gulf coast.

Is this equal justice under law?

Jack Gross, Lilly Ledbetter, and Joe Banta are not alone.

Since 2005, the Roberts Court has also struck down a century-old precedent that protected small business owners from price fixing. It has made it harder for investors to sue the firms that knowingly participated in a scheme to defraud them. In fact, it has made it harder for everyone to get their day in court, especially individual employees and investors.

It has removed half of the Nation's largest known polluters from coverage under the Clean Water Act. It has found that corporations—corporations—have the same free speech rights in our elections as human beings.

When the Roberts Court chooses between corporate America and working Americans, it goes with corporate America almost every time, even when the citizens of this country, sitting in a duly appointed jury, have decided it the other way.

That is not right. It is not equal justice under the law.

Today we consider the nomination of Solicitor General Elena Kagan to a Court that has made those words an empty promise to most working Americans. It is fitting that General Kagan has been nominated for Justice Stevens' seat because the last three Justices to occupy this seat—Justice Stevens, Justice Douglas, and Justice Brandeis—were all deeply skeptical of corporate power. All three Justices rejected the idea that the Constitution cannot tell the difference between corporations and human beings.

Justice Louis Brandeis argued throughout his career that the massive wealth held by corporations was dangerous to democracy; that corporate interests could wield far too much influence, not because of the strength of their arguments but because of the size of their bank accounts. In fact, he wrote a book about this. It is called ''Other People's Money—and How Bankers Use It.'' In that book, Brandeis catalogued example after example of how Wall Street bankers took advantage of their position to enrich themselves at the expense of the American people. Does this sound familiar? And it was in this book that he famously stated that ''sunlight is said to be the best of disinfectants''—that you have to train an unwavering spotlight on the schemes and machinations of corporate America.

After he joined the Supreme Court, Justice Brandeis wrote in a dissent in a 1933 case that our Nation's Founders understood the ''insidious menace inherent in large aggregations of capital, particularly when held by corporations,'' and that this ''difference in power between corporations and natural persons is ample basis''—ample basis—for treating them differently under the law.

Justice William Douglas joined the Supreme Court upon Justice Brandeis's retirement. Before joining the Court, Justice Douglas was Chairman of the SEC, where he crusaded for investor protections and led investigations into unethical corporations. While Chairman of the SEC, in an address to the Fordham University Alumni Association, Douglas warned that ''one aspect of modern life which has gone far to stifle men is the rapid growth of the tremendous corporation'' and that in these conglomerates, ''service to human beings becomes subordinate to profits.''

In a 1949 case, Justice Douglas wrote that if Americans ''want corporations to be treated as humans are treated, if they want to grant corporations this large degree of emancipation from state regulation, they should say so. [. . .] We should not do it for them through the guise of interpretation.'' Justice Douglas understood that corporations are not people, don't have the same rights as people, and that our laws are critical in keeping their power in check.

Justice Stevens continued this tradition. In Ledbetter, in Gross, in Exxon, in Stoneridge, in Rapanos, and in Citizens United, Justice Stevens fought the empowerment of big business at the expense of working Americans. In fact, in most of these cases, Justice Stevens led the dissent. He is the Justice who said in no uncertain terms that ''corporations are not a part of 'We, the People,' by whom and for whom our Constitution was established.''

I have said it before—General Kagan has big shoes to fill. But after months of learning more about General Kagan and a week of confirmation hearings, I think it is safe to say there is no question she can do it.

Some have criticized General Kagan because she lacks experience as a

judge, even though 40 out of the 111 Justices in the Supreme Court's history had not been judges before they served on the High Court and even though Justice Scalia said only this January in a speech in Jackson, MS, that the Court needs Justices who haven't been judges.

It seems to me that Senators have been going to absurd lengths to discount General Kagan's qualifications. We even had a Senator in the hearings who acknowledged that, yes, there has been a long history of Justices who have never served previously as judges but that those Justices averaged more than 20 years of private practice experience, whereas General Kagan only worked for 2 years in a law firm. To me, this has a tortured ring of someone arguing that every southpaw Cy Young winner in the American League since the advent of the designated hitter has had a lower ERA in away games on AstroTurf than any right-hander.

To people making these kinds of arguments, I wish to say this: You only have one life. I think that in her 50 years, General Kagan has amassed an incredible record of service and accomplishment. She has been a clerk for a Justice of the U.S. Supreme Court; special counsel to the Senate Judiciary Committee; a top adviser to the 42nd President of the United States; the first woman dean of Harvard Law School; and the first woman to be Solicitor General in the history of the United States. So is she qualified for the job? Of course. Of course she is. But General Kagan has done more than show she is qualified for the job; she has also shown she understands it. She has shown she understands the obligation of the Supreme Court to the American people and to the Congress that represents them.

For years, conservatives have warned that we should beware of activist judges who overreach their powers, that we should beware of judges who legislate from the bench. Now that the Roberts Court is in power, suddenly these same conservatives are saying there is really no such thing as judicial activism, it is all in the eye of the beholder, and that an activist judge is just a judge who issues decisions you don't like. But General Kagan hasn't taken the bait. General Kagan said there is such a thing as activism. She said it herself: An activist judge is a judge who doesn't defer to the policy decisions of the political branches, who doesn't respect precedent, and who doesn't decide cases narrowly, avoiding constitutional questions when possible. And when she said that, I think most people sitting in the committee room at her confirmation hearing liked that definition.

When you apply that definition to the Roberts Court—to the cases upon cases where the Roberts Court has limited the rights of workers or pensioners or investors or small business owners or voters—you find there is no question, no question whatsoever that this is an activist Court. It is a Court that has replaced Congress's policy judgments with its own perspective, with its own prejudices, a Court that has legislated from the bench.

But, as I said, in her confirmation hearings, General Kagan didn't just define activism, she didn't just acknowledge its existence, she also said clearly and repeatedly that she would avoid it. If she is confirmed and if we have a Justice Kagan, as I am certain we will, she will continue a long tradition of protecting and serving the American people. She will serve them with equal justice under law.

I urge all of my colleagues to support her nomination.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to thank the Senator from Minnesota. I certainly concur with his conclusion. We serve on the Judiciary Committee together. We both heard the testimony of Elena Kagan as well as had a chance to ask her questions and listen to her responses to other Senators. She is an extraordinarily talented woman who could bring to the Supreme Court a wealth of experience. I couldn't agree with the Senator from Minnesota more that the fact that she has not worn a judicial robe before does not in any way disqualify her. She has an exemplary resume.

I thank the Senator for noting the most important element here is that many of the arguments that have been used against judicial nominees in the past have evaporated on the other side of the aisle because the Roberts Court is in the midst of an activist phase—something they promised would never happen, and it has happened, but it has happened to the satisfaction of one part of the political spectrum, where there are fewer critics as a result.

I thank the Senator from Minnesota for his eloquent remarks in relation to Elena Kagan.

CREDIT CARD REFORM

Mr. President, this morning I took a look at the Wall Street Journal Web site, and there was an article entitled ''The New Credit Card Tricks.'' I thought to myself, I hope my wife doesn't get a chance to see this because ever since last year when we reformed credit cards in America, I come home on the weekends to Springfield, IL, and my wife hands me a new envelope she has opened.

Guess what they are doing, Mr. Senator.

In that envelope will be the latest changes in our credit cards from these companies. I have to say we pay off our credit cards. We do our best and almost always pay them off on a monthly basis. We have a pretty good credit rating—maybe not the best but a pretty good one. Yet we have been receiving notices for the last year from these credit card companies about changes and to read the contract. I wear these glasses, but I need a magnifying glass to read the contract, and I am a lawyer. Trying to understand what they are doing to me is very hard. But then in bold print you will see an interest rate number that has just gone up or a charge that has just gone up.

My wife said to me: What is this all about? I thought you reformed credit cards.

This morning's Wall Street Journal, in an article entitled ''The New Credit Card Tricks,'' tells the story about what has been happening since 2009 when we decided to reform credit cards. Well, as one man said, whose name is Victor Stango and who is an associate economist with the Federal Reserve Bank of Chicago—he has been analyzing the Credit Card Reform Act, and he said it is a race between regulators writing ever more complex laws and credit card companies setting up evermore complex fees.

Just to give an idea of what we are talking about, the article says:

> So the banks are getting aggressive. According to a July 22 report from Pew Charitable Trust, a nonpartisan research group, the industry's median annual fee on bank credit cards jumped 18 percent to $59 between July of 2009 and March of this year, 2010.

Credit unions, which are often viewed as the hometown, smalltown mom-and-pop, closest to the people, your best friends when it comes to banking—listen to this:

At credit unions, annual fees soared 67 percent in that same period to $25. During the same period, the median cash-advance and balance-transfer fees jumped by 33 percent.

So it isn't just a matter of raising fees; it turns out they are raising them at a gallop, at a fast rate, trying to get ahead of the credit card reform bill.

They have also dreamed up a dozen different ways to beat the law. Give us a year, they said, so we can change our books and get everything ready for the new credit card reform. They spent their year with their lawyers and accountants dreaming up new ways to avoid the law. We should have known it. We shouldn't have given them all this time.

They have dreamed up something called professional cards. These are like corporate cards but carry the same terms as consumer cards and they aren't covered under the new law. They are reinventing the credit card with a new name and a higher fee and a higher interest rate, and they skirt around the laws we passed.

We said in the law—incidentally, we stipulate that late-payment fees shouldn't be triggered on a Sunday or a holiday because you couldn't put anything in the mail. Well, here is a man, whom they talk about in this article, by the name of Alan Condon of Woodstock, GA. He ended up facing one of these penalty fees, and he noticed that the day it was triggered was a Sunday. He has read the new Credit CARD Act. That is not supposed to happen. You can imagine what it took for Mr.

Condon to challenge the Discover Card, which eventually, after all of his protests, waived the late fee they charged him. How many people have that kind of determination to stick with it, as he did?

They have new cards such as a rebate card which, if you don't read it carefully, sounds like a great deal on a credit card and ends up taking money away from you.

I could go on and on.

Mr. President, I ask unanimous consent that this article be printed in its entirety in the RECORD.

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

[From the WSJ.com, Aug. 3, 2010]

(By Jessica Silver-Greenberg)

Whomever President Barack Obama taps to head the new Bureau of Consumer Financial Protection could find it difficult to keep ahead of the credit-card industry.

The Credit Card Accountability Responsibility and Disclosure Act of 2009, known as the Card Act, was intended to reshape the contours of consumer finance. Among other things, it forces card issuers to give customers more notice about interest-rate increases and restricts certain controversial billing practices such as inactivity fees.

Yet some of the biggest card issuers in the U.S., including Citigroup Inc., J.P Morgan Chase & Co. and Discover Financial Services, are already rolling out a slew of fees designed to recapture some of their lost income, in part by skirting the new rules. Some banks may even be violating the law outright, say consumer advocates.

''Card companies are figuring out how to replace old fees with new ones,'' says Victor Stango, an associate economist with the Federal Reserve Bank of Chicago and a professor at the University of California, Davis, who has been analyzing how the Card Act will affect consumer banking. ''It's a race between regulators writing ever-more-complex laws and credit-card companies setting up ever-more-complex fees.''

The banks have a big gap to fill. The Card Act is expected to wipe out about $390 million a year in fee revenue, according to David Robertson, the publisher of industry newsletter Nilson Report. On July 16, during its second-quarter earnings call with analysts, Bank of America Corp. Chief Financial Officer Charles Noski warned that the Card Act and other regulatory changes would prompt the bank, the nation's largest in assets, to write off up to $10 billion in the third quarter.

''If you have every major issuer saying that we are losing our shirt, then that speaks volumes,'' Mr. Robertson says. ''Proportionately, these fees should be understood as almost inconsequential compared to the losses.''

So the banks are getting aggressive. According to a July 22 report from Pew Charitable Trusts, a nonpartisan research group, the industry's median annual fee on bank credit cards jumped 18% to $59 between July 2009 and March 2010. At credit unions, annual fees soared 67% to $25. During the same period, the median cash-advance and balance-transfer fees jumped by 33%.

All of these increases are perfectly legal, of course. Banks and other issuers would have a difficult time extending credit to consumers, even at high interest rates, if they couldn't augment those revenues with fee income. ''We're coming out of a deep recession that issuers are still working through,'' says Peter Garuccio, a spokesman for the American Bankers Association.

But some banks may be going too far. In a July 7 letter to the Office of the Comptroller of the Currency, which regulates many of the biggest U.S. banks, a coalition of consumer groups including the National Consumer Law Center, the Consumer Federation of America and Consumer Action flagged several ''potential violations of the Credit Card Act.''

Other banks are ramping up their marketing of so-called professional cards. These are like corporate cards but can carry the same terms as consumer cards—and aren't covered under the new law. In the first quarter of this year, issuers sent out 47 million professional-card offers to U.S. households, up from 13.2 million in the corresponding period last year, according to research firm Synovate.

''This can be a very easy way around the Card Act,'' says Josh Frank, a senior researcher at the Center for Responsible Lending, a consumer group.

The upshot: Borrowers must be more vigilant than ever—even before they make their first charge on a new credit card.

SADDLED WITH LATE FEES

Alan Condon of Woodstock, Ga., says he carefully reviews his card statements each month, and even read the Card Act—all 33 pages—after it was passed in May 2009.

Among other things, the Card Act stipulates that late-payment fees shouldn't be triggered on a Sunday or holiday, when there is no mail delivery.

The rule ''is clearly meant to offer cardholders some semblance of relief so that they don't get saddled with late fees for making a reasonable payment on the next business day,'' says Chi Chi Wu, a consumer credit lawyer at the National Consumer Law Center.

Mr. Condon says he was shocked when he opened his credit-card statement dated June 18 and saw that Discover had charged him $39 for a late payment—and had upped his interest rate on future purchases from 17% to 24.99%. He says the company considered him late because he paid on June 14, instead of June 13, a Sunday.

''I just got mad,'' says the 56-year-old computer-software developer, who says he had never before been late on a Discover payment.

''We were in compliance with the Card Act,'' says Discover spokesman Matthew Towson. ''The law states that if a creditor does not receive or accept payments on weekends or holidays, then the date is extended. But we accept payments seven days a week.''

Nevertheless, Discover reviewed Mr. Condon's account at The Wall Street Journal's request and decided to waive the late fee and reduce Mr. Condon's interest rate to its earlier level.

The Card Act also stipulates that issuers can't jack up rates on existing balances unless a cardholder is at least 60 days late. But there is a creative maneuver around that: the so-called rebate card.

Citibank rolled out rebate-card offers to some of its customers last fall, offering to refund up to 70% of finance charges when customers pay on time. The problem: Rebate offers aren't governed by the Card Act, and an issuer can revoke them suddenly and hit cardholders with high charges.

The net result is the same as raising rates—and because it is perfectly legal, customers have little recourse. ''Rebates on finance payments may seem like a good deal, but you could end up with a very high interest rate suddenly,'' says Mr. Frank, of the Center for Responsible Lending.

''The rebate offer is clear, transparent, and we believe fully within the spirit of the Card Act,'' says Citigroup spokesman Samuel Wang.

Shortening the billing cycle is another new tactic some banks may be using. The Card Act requires companies to provide a window of at least 21 days from when a statement is mailed and when payment is due.

Yet the National Consumer Law Center and Consumer Action say they have received complaints from borrowers who allege that their billing cycles have been shortened to fewer than 21 days.

''Since the passage of the act, we've heard from numerous borrowers alleging that they are shortchanged on billing cycle time,'' says Joe Ridout, a consumer-services manager at Consumer Action.

INACTIVITY FEES RETURN

As expected, issuers also are raising basic fees in the wake of the Card Act, in some cases significantly. Many credit-card companies, for example, are increasing their balance-transfer charges sharply. ''We are seeing an increase across the board in fees because card companies are sensitive about their ability to price for risk,'' says Mr. Robertson of the Nilson Report.

Last June, for example, J.P. Morgan's Chase unit alerted customers that its maximum balance-transfer fee was rising to 5% from 2% on a wide range of its cards.

''In a higher-loss environment, it's important that we are prudent with our balance-transfer offers,'' says Stephanie Jacobson, a spokeswoman for the bank. She adds that ''We often do have lower rates in a competitive marketplace.''

Companies are raising their minimum finance charges, too. Before the Card Act, the average minimum monthly finance charge was about 50 cents, according to Nick Bourke, director of the Safe Credit Card Project at Pew. Now, he says, those fees can reach $1.50.

That difference might not seem like a lot, but it adds up. Borrowers pay $430 million a year in minimum-finance charges alone, according to the Center for Responsible Lending.

The Card Act's provisions are being implemented in stages, with the last phase taking effect on Aug. 22. After that, issuers will no longer be able to charge ''inactivity fees,'' or extra charges for people who don't spend a certain amount each year.

So companies are dressing them up in other ways.

Citigroup, for example, has started charging some of its customers an annual fee, which can be waived if a customer's card activity exceeds $2,400 a year.

Tristan Denyer of San Francisco says he was surprised when he got a notice that Citigroup was instituting a $60 annual fee on his card. Mr. Denyer, 37, a senior Web designer, says he rarely carried a balance on his card, and refused to rack up the $2,400 in charges necessary to erase the fee.

''I figured this was just a tactic to get me to spend more and give them more money,'' Mr. Denyer says. He says he decided to close his account.

Citigroup's Mr. Wang acknowledges that Card Act rules forbid the waiving of annual fees based on ''a customer's annual spending on the card.'' He adds, however, that ''the rules will not prohibit cash-back rewards or similar incentives that encourage account usage.''

Another potential trap: low-credit-limit cards, which are popular among college students.

The Card Act says a card's total annual fees can't exceed 25% of a borrower's credit line. But some issuers may be evading the fee restrictions by charging an upfront processing fee that doesn't fall under the 25% cap.

First Premier Bank, headquartered in Sioux Falls, S.D., offers several low-credit-

limit cards. Its Centennial card comes with a $300 limit and a $95 upfront processing fee.

Melinda Robinson of Lorena, Texas, learned firsthand how rapidly fees could eat into her credit limit. After receiving a card with a $250 credit limit from First Premier, she says, she was immediately charged $170 in combined fees. When she tried to use the card for the first time, she exceeded her credit limit, triggering more fees.

''When they first send you the card, they automatically charge you fees that eat up half of it,'' says Ms. Robinson.

First Premier Bank's president and chief executive, Miles Beacom, says the $95 processing fee doesn't violate the Card Act because it is assessed before the account is opened. He adds that the fee offsets the risk associated with offering these cards to ''high-risk individuals.''

Foreign-transaction fees are on the march as well. The average fee for foreign transactions has jumped to 3% of the transaction from roughly 2% in 2008, according to Ben Woolsey, director of marketing and consumer research at Creditcards.com.

Some card holders are finding they don't even need to leave their living room to get hit with a foreign-transaction fee. Ruth Ann Sando, a small-business owner in Washington, says she has been burned repeatedly on her Visa card issued by Pentagon Federal Credit Union, the third-largest credit union in the U.S.

Ms. Sando used to do a lot of business with AbeBooks, an online retailer. But she found that she was getting hit with foreign-transaction fees even though her purchases were in dollars. That is because while the seller and shipper were based in the U.S., Abe, headquartered in Canada, provides the forum for book sellers and collects a portion of the proceeds from all sales.

So late last year, Ms. Sando says, she decided to stop buying from the site altogether. ''Not buying books is the only way I can protest the fee,'' she says.

''The fee is legal, but all these fees circumvent the [Card Act's] goal of clear and straightforward pricing,'' Mr. Woolsey says.

Pentagon Federal Credit Union says some of its cards carry a foreign-transaction fee of 2% of the U.S. dollar amount of the transaction.

FIGHTING BACK

While the credit-card landscape may seem littered with landmines, there are ways to guard against some of the worst pitfalls. The first and simplest: Make your card payments on time.

Second, say consumer advocates, people should dispute fees directly with the issuer when they believe something is amiss.

''Cardholders would be surprised at how much they can raise hell and get a change,'' says Mr. Condon, who says he immediately contacted Discover after the late charge appeared on his statement.

They might have to make repeated calls, however.

''While the Credit Card Act did make great strides in protecting consumers, it in no way closed all avenues for cardholders to get hit with fees,'' says Ms. Wu, from the National Consumer Law Center. ''It's a first step.''

Mr. DURBIN. Mr. President, I say to those who will be critical of the remarks I am about to make, this is not from some French Socialist journal; this is not from some left-leaning magazine; this is a news story in the Wall Street Journal this morning which is talking about what the credit card companies are doing.

So the obvious question one would ask if you live in Illinois or any other place, for that matter, and which we should ask ourselves is, Are we powerless to stop this? Are we powerless to stop these banks, credit unions, and credit card companies from basically ignoring reform in the law, from finding ways to skirt the law and charge even more?

Well, the answer is we are not. I will tell you why. Because last week President Obama signed into law the strongest consumer financial protections in the history of the United States. The bill, which was authored by Senator CHRIS DODD, chairman of the Senate Banking Committee, and Congressman BARNEY FRANK, his counterpart in the House, the Wall Street Reform and Consumer Protection Act included many provisions that will help consumers immediately—especially regarding mortgages and credit cards. Make no mistake, as this article tells us, the big banks on Wall Street are working overtime already to dream up ways to avoid this new law as well. The law will never keep up with their lawyers and accountants. They will always find a way around it.

That is why the bill included something we have never had before in the United States: a Bureau of Consumer Financial Protection.

This bureau has one responsibility: to make consumer financial markets work for American families, not just for the banks. The bureau will ensure that sellers of mortgages, credit cards, private student loans, pay-day lenders, and other types of financial products must compete for customers based on the quality of their products, rather than the number of tricks and traps they can hide in the fine print they stick behind your monthly statement.

Here is the thing. This agency is only going to be as effective as the people who run it and work for it. That is even more true for a brandnew agency such as this one. The person who is chosen as the first leader will set the tone for the regulators for years to come, even decades.

It is critical that the Bureau of Consumer Financial Protection be put in place with a director who is aggressive, intelligent, and understands the challenge they will face; a director who is fair, one who believes in the power of the marketplace but understands that markets work better if everybody participating in those markets benefits; a director who will listen to what bankers are saying but can see through them when they try to slant lending markets too far in their favor; a director who thinks, first and foremost, about how American families can thrive in today's complicated economy.

Fortunately, there is a person who can fill that job effectively. Her name is Elizabeth Warren.

Professor Elizabeth Warren first proposed the creation of an independent financial regulator to look out for consumers 3 years ago, in 2007. In 2008, she helped me draft a bill based on her idea. We called it the Consumer Credit Safety Commission back then.

In the spring of last year, she worked to change the bill, and we renamed it the Financial Product Safety Commission.

Last summer, when the Obama administration released its plan for reforming Wall Street, our idea was rechristened as the Consumer Financial Protection Agency.

It is now officially called the Bureau of Consumer Financial Protection, and it is now the law of the land. Whatever the name, Professor Elizabeth Warren of Harvard Law School, more than any person in this country, was the driving force behind the creation of this agency.

Years ago, Professor Warren made a name for herself when she wrote a book called ''The Two-Income Trap,'' in which she described how hard it is for working families to get by in today's economy. She taught a popular course at Harvard on bankruptcy and has written extensively on how difficult it is for many families to start over when their lives take a turn for the worse.

She has most recently last served as a watchdog, a chairwoman of the congressional oversight panel for the Troubled Asset Relief Program, otherwise known as TARP. She has taken a look at the money—the taxpayer dollars—given to these banks to make sure we weren't cheated and to blow the whistle on banks that didn't do the right thing.

She has done that and done it extremely well. For the past 3 years, she has advocated tirelessly for the creation of this agency. The purpose of this agency is to empower every single one of us, as consumers, to get the right information and not be tricked or deceived, so we can do the right thing for ourselves and our families and our small businesses.

Throughout her work, a common theme has emerged: Government should work for the American people and not the other way around. Elizabeth Warren is the right person to head this new agency.

Much has been written—some of it critical—on the prospect of Professor Warren being nominated as Director of this new consumer bureau. Wall Street banks anonymously argue to the media—and even to Senators—that she would restrict access to credit. Nonsense. The only types of credit she would restrict are predatory loans. That is just a smokescreen for saying the banks are going to face their responsibilities and perhaps not take all the profit they want at the expense of consumers who are deceived.

Professor Warren has said publicly—and I believe her—that she doesn't begrudge banks making profits; they are in business. She would prefer—as I and I think most Americans would—that banks make money by providing American families with good products, good credit cards, good mortgages, and good student loans.

The banks also argue she doesn't understand their business well enough to

regulate it. They are afraid of her. They know how smart she is and that she would not be teaching at Harvard Law School successfully and leading so many efforts forward for this country if she didn't have the skill and intelligence it takes.

Professor Warren will bring to the bureau passion and compassion, a big-picture vision and nuts-and-bolts knowledge. She is the right person for the most important job in the country.

I say to my wife and to anybody who read the Wall Street Journal this morning, with the right person at this new Consumer Financial Protection Bureau, help is on the way. We need to put into place someone who will blow the whistle on those who break the law, abuse the law, and engage in practices that deceive Americans and American families. We need somebody at that agency who empowers us, as consumers, to make the right decisions for our families. Elizabeth Warren, professor of Harvard Law School, is the right person.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to speak in support of the nomination of our Solicitor General, Elena Kagan, as Associate Justice of the Supreme Court of the United States.

The power the Constitution gives the Senate to advise and consent to Presidential nominations is a very important one but never more significant than when we are called upon to respond to a President's nomination of a Justice to the U.S. Supreme Court because this nomination is for a lifetime to the Court, from which there is no appeal. It is the final arbiter of justice in our system of justice, in our system of government. So these are important moments, when we are called upon to respond to a President's nomination to the Supreme Court.

I remember once, early on, after I came to the Senate, during a controversial nomination to the Supreme Court, and our late and truly great colleague, Robert C. Byrd of West Virginia, said something I will never forget. He said that, normally, when we consider whether to advise and consent to a President's nomination to a Federal position, we give, understandably, the benefit of the doubt to the nominee, the person whom the President has nominated; when it comes to the Supreme Court—Senator Byrd said and counseled—the benefit of the doubt should go to the Supreme Court because of the lifetime tenure of Justices of the Supreme Court and their beyond-appeal role in our system of government.

I have that in mind by way of saying, beyond any doubt, I feel certain Elena Kagan, Solicitor General, will serve the cause of justice and our Nation very well as an Associate Justice of the U.S. Supreme Court.

Those either in the galleries or watching the debate on C–SPAN may wonder, occasionally, when they hear us refer to the nominee as ''general''—General Kagan. It reminds me of when I was privileged to be elected attorney general of Connecticut. I went to an orientation for new attorneys general and I walked in and somebody said, ''Hello, General.'' I turned around, thinking somebody was behind me. It was the first time I had been addressed that way. Solicitors General are referred to as ''general'' as well.

So establishing the standard as I have, I would say General Elena Kagan possesses impressive academic and professional qualifications, with her broad range of experiences as a clerk for a Supreme Court Justice, a lawyer in private practice, a legal and policy adviser to President Clinton, a law professor at the University of Chicago, and then at Harvard, where she ultimately became dean, and most recently as Solicitor General of the United States, which will enable her to serve our Nation and the cause of justice well if—and I hope when—she is confirmed as an Associate Justice of the Supreme Court.

General Kagan showed, on the day the President nominated her, that she understands the importance and unique importance of the Supreme Court. She said:

> The Court is an extraordinary institution in the work it does and in the work it can do for the American people by advancing the tenets of our Constitution, by upholding the rule of law, and by enabling all Americans, regardless of their background or their beliefs, to get a fair hearing and an equal chance at justice.

General Kagan then continued by complimenting retiring Justice John Paul Stevens, whose seat she will fill if confirmed to this position, for the ''distinguished and exemplary role'' Justice Stevens has played on the Supreme Court for the last 35 years.

I wish to say that, in my opinion, the most significant thing about Justice Stevens' service has been his independence of mind, his single-minded focus and commitment to the cause of justice because this is the branch of our government that must be beyond politics and even rigid ideology.

The Founders, in all their genius, when they put together the form of the American Government, coming from England as so many of them did, worried about the autocratic power of the King, wanted to create a democracy and yet wanted to make sure there were checks and balances. The Supreme Court was set up as one of the three branches of our government that was not accountable to the people; its accountability was solely to the Constitution. I think Justice Stevens, whether you agreed with every decision he wrote or not—and I agreed with some but not others—always demonstrated an ability to transcend politics and ideology and put the requirements of justice and the law, as he saw them, above all else.

I am confident General Kagan, as a Supreme Court Justice, will follow Justice Stevens' example. I predict today that, in the years ahead, if and when confirmed, Justice Kagan will surprise many people, including Senators who on this vote will vote for her and those who will vote against her. She will not be predictable. That is one of the best things I think we can say about a Supreme Court nominee. She will be judicial and independent-minded. She will serve the Constitution and the national interest, not any party or people or rigid ideology.

I must say I have been encouraged in this view by the way in which General Kagan has carried out her duties as Solicitor General of the United States. She has consistently demonstrated her commitment to upholding the Constitution, as well as her understanding of and respect for the appropriate roles of Congress, the executive branch, and the courts. She has not shied away from difficult cases or taking difficult positions when she has come to the conclusion that those positions were demanded by the Nation's needs and by the law's requirements.

I wish to cite one powerful example, to me, which I discussed with her when I met her on her rounds in the Senate; that is, her case before the U.S. Court of Appeals for the District of Columbia, in the case of Al Maqaleh v. Gates. It was a Federal district court judgment, where the court ruled it had jurisdiction to consider the habeas petitions of prisoners of war being held by the U.S. military at Bagram Air Force Base in Afghanistan. In other words, the court said that if we captured an enemy terrorist or soldier in Afghanistan and put them in the U.S. prison facility or detention facility at Bagram Air Force Base in Afghanistan, that individual could file a habeas petition before the Supreme Court of the United States in Washington to have his or her detention reviewed by our highest Court. To me it is an unbelievable decision and a harmful decision.

The Solicitor General typically represents our government only in cases before the U.S. Supreme Court. I asked General Kagan why she got involved in this case. She told me that she felt so strongly about how harmful the District Court decision would be to our Nation's ability to succeed in the wars against radical Islamist extremism we are involved in now that she made this case the exception in which she felt it appropriate and necessary for her as Solicitor General to argue on behalf of the United States in the Court of Appeals, not just in the U.S. Supreme Court.

I could not agree more with General Kagan's assessment of the importance of the case and wrongness of the District Court decision. I agree with her assessment of the merits of the case. I appreciate that she chose to get involved. And I was extremely pleased when the DC Court of Appeals agreed with the position argued by General Kagan and reversed the decision of the District Court. That, I think, tells us a

lot about the independence of mind and commitment to the higher national interests of General Elena Kagan.

In reviewing the respective backgrounds of Justice Stevens and General Kagan as his proposed replacement, I was pleased to see some similarities in their careers. I suppose it is true of many nominated to the Supreme Court. They both have impeccable academic credentials. They both clerked for Supreme Court Justices at the beginning of their legal careers. They both then served in private practice, followed by times in academia and then the government.

The important point I am making and what I believe would be a similarity between these two great Americans is that General Kagan, like the jurist she will be replacing, will be viewed at the end of her career as a Justice who put partisanship, politics, and ideology aside and put justice first.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator has consumed 10 minutes.

Mr. LIEBERMAN. I, therefore, say in conclusion that I support Elena Kagan. I urge my colleagues to give her a strong vote of confirmation to be our next Associate Justice of the Supreme Court.

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

The legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Madam President, I have also come to support the nomination of Elena Kagan. She has an impressive background. I was very pleased with her nomination by the President for a lifetime term on the Supreme Court.

I had the opportunity to meet with her in my office, and I found her engaging and interesting, with a lively sense of humor. I found her to be a very interesting person. I had the opportunity to interview and talk with a number of folks who have been nominated to the Supreme Court. She stands out to me.

She has a very impressive background: bachelor's degree in history from Princeton; master of philosophy from Oxford; a law degree from Harvard. She has done a lot of things—associate White House counsel for President Clinton. She was a professor at Harvard Law School and then dean of the Harvard Law School. She was confirmed by the Senate as Solicitor General on March 19 of last year. I voted for that confirmation. I think she will make an excellent Justice of the Supreme Court.

I want to say that some of the criticism of Elena Kagan has been that she does not have judicial experience. In other words, she has not been a judge. That is true, in fact. Forty of the 111 Supreme Court Justices, including Justices John Marshall, Louis Brandeis, Felix Frankfurter, and the previous Supreme Court Chief Justice William Rehnquist, had no judicial experience either. In many ways, that was considered a significant asset.

My colleagues who now criticize Elena Kagan for not having judicial experience extolled the virtue of that very thing when the Senate was considering the nomination of William Rehnquist who similarly had no judicial experience.

I find it a significant asset for Elena Kagan. She brings different kinds of experiences to the Federal bench, and I think she will make an exceptional Supreme Court Justice.

I might say, every Solicitor General, the position Elena Kagan now occupies, since 1985, including Kenneth Starr and Ted Olson, have said that Kagan ''would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law . . . We support the nomination of Elena Kagan . . . and believe that, if confirmed, she will serve on the Court with distinction.'' That is from every former Solicitor General going back to the mid-1980s. That is, in my judgment, some support.

The determination of who sits on the Supreme Court in this Nation is one of the most important decisions the Senate makes. It is a judgment by the President, first of all, to send a nomination to the Senate, and then the advise-and-consent responsibility of the Senate is to make a judgment about that nomination.

The decisions the Court makes have a profound impact on the lives of the American people, have an impact on the questions of what kind of freedoms exist in this country. We have at this moment one of the most conservative courts we have had in a long time in this country, perhaps in this country's history the most conservative court.

A recent study by Richard Posner, who sits on the Seventh Court of Appeals, and William Landes, University of Chicago law professors, ranked all 43 Supreme Court Justices who have served since 1937 on their ideology and their decisions. Their conclusion was that four of the five most conservative Justices since Franklin Roosevelt sit on this Supreme Court right now.

I do not think we ought to be thinking of this in terms of conservative versus liberal. I only use that category because so many of my colleagues said it is very important to have a conservative Justice. What I want on the Supreme Court is a Justice who will use common sense in interpreting the Constitution and do so without an understanding that they are on one team or another.

Frankly, it is disappointing not just to me but most Americans to see that the Supreme Court has become a court of nine Justices who break into teams: Our side, your side; five on one side, four on the other. That is not what we would expect of the Supreme Court.

My hope would be that the Supreme Court would take a look at issues not as conservatives or liberals, but as Supreme Court Justices who have studied the law and who would make a commonsense judgment about what the Constitution of this country means.

So often I find that the Supreme Court stands logic on its head. The recent decision in Citizens United is an unbelievable decision to me: that corporations should be treated as individuals for the purpose of campaign financing without any precedent or plain text basis. They overturned a statute by Congress because they said corporations are people.

Oh, really? Most of us understand corporations are artificial people created by the State for the purpose of allowing an entity to be created, to sue and be sued, contract and be contracted with. But no one ever suggested corporations represent a real person. If so, I assume one of these days we will have corporations running for office, perhaps a corporate candidate for the Senate. We can have General Motors running against IBM. Get your money together because it is going to be expensive. Which desk in the Senate chamber will belong to which corporation?

If corporations are, in fact, real people, as the Supreme Court has ruled, then it will not be long before we have that kind of political race in our country. It is an absurd decision.

The 5-to-4 decision in the Court in Ledbetter v. Goodyear is another shocking example of standing common sense and a commonsense reading of the Constitution on its head. Lilly Ledbetter worked 19 years at Goodyear and had consistently gotten sterling, very high performance evaluations by her supervisors. Once she learned she had been paid much less than other workers who happened to be male—she learned this after 19 years, by the way. For 19 years, she worked hard, got paid, and then discovered all of those years she had been paid much less than the male counterparts doing exactly the same job.

She finally sued, and the Federal courts said: You are right; Goodyear, you have to make back payments. The appeals court then overturned it, and the Supreme Court ruled that this woman had to have taken action within 180 days of the discrimination beginning.

The fact is, she could not have done that in the first 180 days. She did not have the foggiest idea they were mistreating her, saying: If you are a man, you get this salary, and if you are a woman, you get this salary for doing the same thing, working side by side. She did not discover they were mistreating her for 19 years.

The Supreme Court did not care about that. They just said that if she did not pick it up in 180 days, sorry, out of luck, tough luck. It stands logic on its head once again.

The fact is, the Supreme Court has a profound impact in terms of the way they interpret the Constitution of the

United States. What I have seen recently and certainly in the case of Citizens United—and I believe it is the case in Ledbetter v. Goodyear—the Supreme Court too often these days divides into teams. By the way, the team that seems to be winning is the team on the side of the powerful, the team on the side of the big interests, the team on the side of the corporate interests. That ought not be the way the Supreme Court operates.

I came to support the Kagan nomination because I think she is someone with a facile, interesting mind who is going to bring a new spark to the debate among Justices about what this Constitution means. I do not know if she is a liberal or a conservative. I don't care very much. What I care is that we put some people on the Supreme Court we believe have the capability to make good decisions—decisions that will make life in this country better, that will reflect accurately the interpretation of the U.S. Constitution.

I hope very much when the dust settles and the vote is taken that we will have a very strong vote in support of Elena Kagan to become the next Supreme Court Justice. I think her background, her skill, her capability will make her an outstanding Supreme Court Justice. I will be proud to vote for her nomination when we have that vote this week.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, Solicitor General Elena Kagan has been nominated to fill the upcoming Supreme court vacancy left by the retirement of Justice John Paul Stevens.

I know of few, if any, responsibilities of the Senate that are more important than the confirmation process providing, in the terms of the Constitution, ''Advice and Consent'' to the nomination of an individual to serve for life on the U.S. Supreme Court.

There are two constitutional responsibilities that are invoked every time a nominee is chosen. One is by the President of the United States. It is his prerogative to choose whomsoever he wishes. But that is not the end of it. The second constitutional duty that is invoked anytime a vacancy occurs and a nomination is made is that of the Senate to provide, again in the terms of the Constitution, ''Advice and Consent'' on the nomination. That is what we are engaged in doing now—in deciding whether that advice and consent should be, yes, she shall serve, she shall be confirmed or, no, she should not be confirmed.

We know judges are different. In the words of the high school civics class, we are called the three branches of government, and all three serve different functions. But the role of the judge is entirely different from the role of a Senator or the role of the President because they are nominated and appointed to serve for life and protected from having to run for office and seek election. They are given a limited but very important role in our government; that is, to render impartial justice, to make decisions based on the law, not based on perhaps their own political or ideological preference or a political agenda.

I think it is very important that this process be fair and dignified, and I commend not just the chairman of the Judiciary Committee, Senator LEAHY, but the ranking member, Senator SESSIONS of Alabama, who is in the Chamber, for making sure this nominee got the kind of confirmation hearing in the Judiciary Committee that, frankly, she deserves and that every nominee deserves whether or not they are confirmed. But at the same time, we need to make sure in addition to a dignified and fair process that it is thorough and it is careful and it is comprehensive.

It is vital, in my view, to recall the core principles that should guide the Senate in carrying out its constitutional duty because I think today there is more of a sense than there has been at any other time in my adult life that the Federal Government simply does not recognize any constraints imposed upon its authority under the Constitution. Frankly, I think there is a widespread feeling across the country that the Federal Government—the National Government—believes it is, in effect, the only government in our country anymore and that the States and local governments are just the servants of the National Government.

But that isn't, of course, how our Framers of the Constitution conceived of this unique form of government known as federalism, where the Federal Government, under our Constitution, is a government of delegated—or sometimes it is called enumerated—powers, and all rights—or all power—not given to the Federal Government are reserved, under the terms of the tenth amendment of the Constitution, to the people and to the States.

I am afraid that Washington, DC, and particularly this Congress at this particular time, seem to have that turned around. Unfortunately, I worry that a Supreme Court Justice who does not recognize the limited nature of the authority given to the Federal Government, and who isn't willing to enforce it, is not qualified to serve on the U.S. Supreme Court.

As the Federalist Papers remind us in Federalist 78:

> The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body.

That is a little archaic—that kind of language, of course, going back a couple of centuries—but, basically, it means the people who are responsible for making policy are those who are elected and who have to stand before the people and ask for their vote; namely, the Members of Congress or the Chief Executive, the President, and not judges who are completely insulated from any political accountability for their decisions.

The only reason the Constitution gives that sort of lifetime tenure and protection from the voters is because under the Constitution judges are not supposed to be making policy but merely enforcing the law that is made by the Congress and the President. It is very important that the power to make new laws belongs to the people—we the people—and not to unelected judges.

When the Supreme Court presumes to create new rights, the Justices take away the power of the people to govern themselves through their elected representatives. It is completely turning democracy on its head—this idea of saying judges ought to be making policy even though unelected and serving with lifetime tenure and substituting their view for the views of the people and their elected representatives. That is not the way our democracy is supposed to work.

Some have disagreed over the years and embraced this concept of judicial activism. According to those who subscribe to this view, the Constitution is somehow not a written document that we can read and understand what is in it, but it has become a ''living document,'' which has changed over time, even though the words on the paper remain the same. Unfortunately, this notion of a living document often is an excuse for judges to reach a desired outcome or a result in a lawsuit. This activist view takes the power to make and change the law away from we the people and gives that power to unelected judges who are insulated from any kind of accountability for their decisions, and it lets the Supreme Court decide what rights we have and what rights we don't have, which is the opposite of what the Framers thought they were doing when they wrote our constitution and when the States ratified it.

The question raised by every Supreme Court nomination is whether the nominee believes in this activist vision for judges or whether, in contrast, they believe in a traditional role for judges. The question is, Will the nominee enforce a written constitution and laws passed by Congress or will they presume to be able to invent new rights according to their subjective view of the law? Will the nominee enforce a written constitution or will he or she see that it is their job to change the Constitution to match their policy preferences when they do not like the outcome?

To be confirmed, I believe a nominee must establish that he or she should embrace the role of a traditional vision of a judge. I believe that is absolutely critical because someone who presumes to say: After I get confirmed, I am going to call cases the way I see them; and if I don't like the way the Constitution calls for those cases to be decided, or the way Congress has written

the law, I am going to substitute my opinion for that and I am going to twist the law to reach a particular result—in my view, a judge who presumes to be a lawmaker by twisting the law to accomplish a particular result, in effect, becomes a lawbreaker. A judge who presumes to be a lawmaker, I believe, is a lawbreaker.

Elena Kagan, our nominee, is obviously enormously bright. She has excellent academic credentials and has had an accomplished career. Her testimony before the committee, however, did not persuade me that she agrees with this traditional role for a judge. In fact, her testimony about judicial philosophy is open to multiple interpretations and was intentionally vague. In her own responses following the hearing, for example, Solicitor General Kagan indicated that she would decide cases based on not the written Constitution, not the laws passed by Congress, but based on her ''constitutional values.'' But she acknowledged that her constitutional values can point in different directions at different times and claimed that she would exercise prudence and judgment in resolving the tension between them.

Well, that all sounds pretty fine and well, but what that means is she would not agree that her decisions should be confined to the written Constitution that has been ratified by we the people and the laws passed by the elected representatives of the American people, for which we are electorally accountable every election. She presumes, it seems to me, by her vague and subjective language, to suggest that her constitutional values—which point in different directions depending on the case—and the fact that she says she would exercise prudence and judgment in resolving tensions is somehow a substitute for taking an oath to uphold the Constitution and laws of the United States. That is simply unacceptable.

In voting on a Supreme Court nominee, I think we need more certainty than the simple assurance that a nominee would exercise their judgment. Of course, we expect for the nominee to exercise judgment, but that is not sufficient. We need a Justice who will follow the law, someone who will follow and enforce the Constitution of the United States. You know what. If we don't like the Constitution as written, and we think it needs to be amended, well, under article V of the Constitution there is a process to do that. And you know what. If we don't like the law Congress makes, well, Congress, of course, is free to change it. But if we the people still don't like the way Congress writes the law, and they refuse to respond to the will of the people, we have a right to replace Members of Congress. That is the way a democracy is run, not by a judge dictating to us what he or she thinks is good for us.

In voting on a nominee, I think we need more assurance from the nominee than she will simply exercise her judgment and she will exercise prudence in resolving tensions in the constitutional values.

Solicitor General Kagan also testified the Constitution is written in general terms that enable the courts to change the law in response to ''new conditions and new circumstances''—changes that she testified occur ''all the time.''

She says that because the Constitution is written in general terms, the courts are empowered to change the law in response to new conditions and new circumstances—changes that she testified ''occur all the time.''

Well, I have an alternative suggestion. Rather than ceding to an unelected Supreme Court or a Federal judiciary, why isn't it that we the people have the right to petition Congress to change the law? That is the way democracies are supposed to work. It is the job of a judge to enforce that law, and if we don't like the way the Constitution is written, well, we have passed 27 amendments during the course of our history amending the Constitution. But that reserves the right to we the people and does not cede that authority to any unelected, lifetime-tenured judge.

I was also troubled by a couple of other specific areas and her interpretation of the law—one that has to do with the power of the Federal Government. I mentioned that a moment ago. Under the commerce clause of the Constitution, the Supreme Court has previously basically given the Federal Government almost limitless powers.

We have seen that at play in the debate over the individual mandate in the health insurance bill that was recently passed, with an unprecedented reach of Federal power into your living rooms, where we are sitting on our couches, and which says: You know what. The Federal Government demands that you purchase a government-approved health insurance policy. If you don't, we are going to penalize you.

That power is unprecedented. That is why it is being litigated now.

But Solicitor General Kagan did not seem to recognize that the Federal Government's powers are one of enumerated powers, delegated by the States and by the people, and all rights not delegated were reserved to the people and to the States.

I was also troubled by her testimony with regard to the second amendment—the right to keep and bear arms. She did say the recent decisions in Heller and McDonald are ''settled law,'' but I worry that her interpretation of settled law means until there are five new Justices who take a look at that settled law and just decide to change it.

Unfortunately, we saw the same sleight of hand with Justice Sotomayor's testimony regarding the second amendment. Last year, she testified that Heller was settled law. But last month, she joined in a dissenting opinion in McDonald urging it be overturned, saying she did not believe the second amendment conferred a fundamental individual right to keep and bear arms. I think the second amendment, and all of the amendments of the Constitution, in the entire Constitution, are too important to leave to such an empty promise.

Madam President, I see my friend and colleague from Utah here to speak. Let me just say that the last thing I wanted to address—and I will plan on coming back, assuming we have enough time to talk about it—is, frankly, the stigma that Ms. Kagan and the folks at Harvard imposed on our men and women of the military by banning them from the Career Services Office at Harvard Law School and, in effect, stigmatizing them and causing people to disrespect them, even though they were merely applying the law that Congress passed and over which they had no control.

I am very troubled by that, and I will come back to talk about that more as time permits. But for these reasons I have given, and others I will expand upon later, I oppose the nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I compliment the distinguished Senator from Texas. There is hardly anybody in this body who can equal the expertise and experience he has, not only as an attorney general in his State but also as a justice on the Texas Supreme Court. With that experience, he is someone we should all listen to. I thank the distinguished Senator for his comments.

I rise today to discuss the appointment of Elena Kagan to be Associate Justice of the U.S. Supreme Court. The Senate's role of advice and consent is a check on the President's power to appoint—not a substitute for it. At the same time, the Senate's role must be more than an empty formality or a mere rubberstamp.

I have examined Ms. Kagan's record, I participated in her entire hearing before the Judiciary Committee, and I have listened to supporters and opponents both in Utah and across the country.

I can say this: I lectured at Harvard when she was dean at Harvard. I appreciated the way I was treated while I was there. It was clear she probably did not agree with some of the things I was saying, but she was courteous and decent. I like her personally. But if I apply the standard I have consistently used for judicial nominees, that standard leads me to conclude that I just cannot support her appointment.

Qualifications for judicial service include both legal experience, which summarizes the past, and judicial philosophy, which describes the future. Two categories of legal experience stand out among the 111 men and women who have served on the U.S. Supreme Court. Two-thirds of them, including every current Justice and the

Justice Ms. Kagan has been nominated to replace, had previously been a judge. The 39 previous Justices who lacked judicial experience had an average of 21 years of legal practice. In other words, Supreme Court Justices have had experience behind the bench as a judge, before the bench as a lawyer, or both.

Ms. Kagan has neither. She was a junior associate in a large law firm for only 2 years. She has never tried a case, never argued before any appellate court before becoming Solicitor General just last year. I am sure the reason they made her Solicitor General was to give her some experience so they could do what they have now done and nominate her to the Supreme Court. Although Harvard law students must contribute at least 40 hours of law-related pro bono service as a condition of graduation, Harvard's former Dean Kagan appears to have done none at all.

Ms. Kagan's experience is, instead, academic and political. One of my Democratic colleagues said here on the floor that Ms. Kagan's best qualifications for the Supreme Court are her experience making policy and her ability to build consensus. I, for one, believe that the line between the political and the judicial is already too blurred. While the political or policy mindset focuses on achieving desirable results, judges must focus on following the right process.

Without any real experience or grounding in the actual practice of law, Ms. Kagan's experience makes me more, not less, skeptical of her suitability for the Supreme Court. It puts even more emphasis on her judicial philosophy, which is the second and more important qualification for judicial service.

As I said at the confirmation hearing for Justice Ruth Bader Ginsburg in 1993, there must be clear and convincing evidence that a nominee understands the proper role of the judiciary in our system of government. What is the proper role of judges in our system of government? One of my predecessors as Senator from Utah, George Sutherland, served on the Supreme Court for 16 years. He distinguished between interpreting the Constitution and amending it in the guise of interpretation. Confusing the two, he wrote, converts ''what was intended as inescapable and enduring mandates into mere moral reflections.'' These are fundamentally different judicial philosophies that identify inherently different relationships between the judge and the law.

The central confirmation question before us today is what kind of a Justice Ms. Kagan would be. The answer begins with the President who nominated Ms. Kagan. When he was a Senator, President Obama said judges decide cases based on their deepest values, their core concerns, and what is in their heart. As a Presidential candidate, he said he would appoint judges who have empathy for certain groups. As President, he has nominated judges who believe they may find the Constitution's meaning in such things as social practices, evolving norms, practical consequences, and even foreign law. President Obama has clearly taken sides in the judicial philosophy debate.

Ms. Kagan has identified a general and a specific source of evidence for us to examine. She told the Judiciary Committee generally that ''you can look to my whole life for indications of what kind of judge or justice I would be.'' And she told one of my Judiciary Committee colleagues specifically that we can learn a lot about her ''by seeing how I did when I worked at the White House.''

In graduate school, Ms. Kagan wrote that the Supreme Court may overturn previous decisions because, as she put it, ''new times and circumstances demand a different interpretation of the Constitution.'' She wrote that judges may ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' Ms. Kagan was describing a judicial philosophy guided by moral reflections rather than by enduring mandates.

When asked about this thesis at her hearing, Ms. Kagan said, ''Let us just throw that piece of work in the trash, why don't we?'' I cannot do that. While every piece of a nominee's record must be viewed in its proper context, I cannot simply ignore whatever may raise questions or doubts about Ms. Kagan's judicial philosophy. It was Ms. Kagan, after all, who told us to examine her whole life for evidence of the kind of Justice she would be. This obviously includes writings such as her Oxford graduate thesis.

Writing as a law professor several years later, Ms. Kagan agreed that in most cases that come before the Supreme Court, the Justice's own experience and values are the most important elements in the decision. If that is too results-oriented, Ms. Kagan wrote, so be it. Well, to be candid about it, it is indeed too results-oriented and echoes the same activist approach Ms Kagan embraced in her graduate thesis.

While Ms. Kagan has not herself been a judge, she has singled out for particular praise judges who share this activist judicial philosophy. In a tribute she wrote for her mentor, Justice Thurgood Marshall, for example, she described his belief that the Supreme Court today has a mission to ''safeguard the interests of people who had no other champion.'' Ms. Kagan did more than simply describe Justice Marshall's judicial philosophy but wrote: ''And however much some recent Justices have sniped at that vision, it remains a thing of glory.''

Justice Marshall was a pioneering leader in the civil rights movement. He blazed trails, he empowered generations, he led crusades. But he was also an activist Supreme Court Justice. He proudly took the activist side in the judicial philosophy debate. Some on the other side have suggested that honestly identifying Justice Marshall's judicial philosophy for what it is somehow disparages Justice Marshall himself. I assume that this ridiculous and offensive notion is their way of changing the subject because they cannot defend an activist, politicized role for judges.

In 2006, when she was dean of the Harvard Law School, Ms. Kagan praised as her judicial hero Aharon Barak, who served for many years on the Supreme Court of Israel. Aharon Barak has been described by U.S. circuit judge Richard Posner, one of the leading lights on the judiciary in this country, as an aggressively interventionist judge who has ''created a degree of judicial power undreamt of by our most aggressive Supreme Court Justices'' and for whom ''the judiciary is a law unto itself.'' Ms. Kagan did not simply describe Justice Barak's judicial philosophy or praise him as a person; she called him ''the judge or justice in my lifetime whom I think best represents and has best advanced the values of democracy and human rights, of the rule of law, and of justice.''

My friends on the other side of the aisle try to spin away Ms. Kagan's praise of Justice Barak by noting that Justice Antonin Scalia once warmly introduced him. But while Justice Scalia said he had ''respect for the man,'' he made clear that he and Justice Barak had ''fundamental philosophical, legal and constitutional disagreements.'' Ms. Kagan, in contrast, said that Justice Barak was her judicial hero and represented the rule of law better than any other judge. It appears that the very first time she distanced herself from his judicial philosophy was at her confirmation hearing.

When she was dean, Ms. Kagan had opportunities to choose between her personal views and the law. Federal law, known as the Solomon Amendment, requires that military recruiters have equal access to students as other employers. Harvard protested the don't ask, don't tell law regarding military service by homosexuals by allowing military recruiters access not through its Office of Career Services but through the Harvard Law School Veterans Association, a private group with no office, no staff, and no budget. The Defense Department told Harvard in 2002 that this policy did not comply with the Solomon Amendment.

Ms. Kagan, who had very publicly denounced the military service law, joined a lawsuit challenging the Solomon Amendment. Within 24 hours of the decision of the U.S. Court of Appeals for the Third Circuit enjoining it, she again banned military recruiters from the career office even though the ruling did not apply to Harvard, which is in the First Circuit. In other words, she reinstated a policy that she knew violated Federal law and even kept that policy in place when the Third Circuit stayed its own injunction. Ms. Kagan could have opposed the law in various ways but chose to do so in a

way that undermined the military and defied Federal law. Her personal views drove her legal views.

Ms. Kagan also told us to examine her service in the Clinton administration, a period during which she has said she acted as a policy adviser rather than as a lawyer. She was, for example, a key player behind the Clinton administration's extreme abortion policy, including its defense of the barbaric practice of partial-birth abortion. In a 1996 legislative strategy memo, she labeled as a disaster a proposed statement by a key medical group that there exists no circumstances in which partial-birth abortion is the only option for doctors to take. That was the organization representing the obstetricians and gynecologists. She drafted and persuaded that group to adopt language with a much different political spin. At her hearing, Ms. Kagan offered the implausible claim that she was merely trying to ensure that the medical group accurately expressed its own medical opinion. In other words, the disaster she identified was a PR disaster for the medical group, not a political disaster for the Clinton administration. That is too hard to believe, especially in light of evidence that Ms. Kagan also sought to persuade the American Medical Association to change its similar conclusion that partial-birth abortion is not medically necessary. Political objectives appear to have trumped medical science.

Let's understand what partial-birth abortion is, this barbaric practice. It is where they turn the child around, even a child capable of living on its own outside the womb, until its head is coming first. Then they ram scissors or some other sharp instrument into the back of the skull, suck out the brains, then pull the baby out and say it is not a human being. I don't know anybody who should not consider that tremendously offensive and barbaric.

In May 1997, after President Clinton had vetoed the Partial Birth Abortion Ban Act, Ms. Kagan wrote a memo recommending that he support a sham ban offered by Democratic Senators. Everybody here knew it was a sham. She argued that this step might attract votes from Senators who otherwise would vote to override President Clinton's veto. Since the substitutes would not pass—she knew they would not—partial-birth abortion would remain legal. Whether you are for or against abortion, most people find that practice barbaric.

Significantly, however, Ms. Kagan noted that the Office of Legal Counsel had concluded that these substitute bans were unconstitutional under the Supreme Court's Roe v. Wade decision. There is no indication that she disagreed with this conclusion. The point is that Ms. Kagan urged a purely political position on abortion that was at odds with what the Clinton administration then believed the Constitution required. That is something that really bothered me and I do not think she was forthcoming about it at the hearing. It especially bothered me because it looked once again like politics trumped the law.

Ms. Kagan's hearing did nothing to temper the activist picture that emerges from her record. She chose an approach to answering questions that was far different from what she once argued was necessary for the Senate properly to evaluate nominees and educate the public. I asked three times, for example, if she had written the 1996 memo I discussed a minute ago. Mind you, the memo has her name on it and includes a page of her own handwritten notes. After three tries, Ms. Kagan would say only that it was in her handwriting which I suppose leaves open the possibility that it was forged. It was certainly her prerogative not to give Senators anything meaningful during her hearing, but it leaves the rest of her record as the basis for determining what kind of Justice she would be.

Other Senators will discuss in more depth additional troubling issues raised by her record. These certainly include positions she has taken and arguments she has made that signal a sweeping, unprecedented view of Federal Government power. At the hearing, for example, I questioned her about the troubling position she took before the Supreme Court in the Citizens United v. FEC case. She argued that the first amendment allows the Federal Government to determine who may say what, when, and in what manner about political candidates. She argued that the government may ban certain print or electronic books, movies, and pamphlets that mention candidates close to an election. Political speech is the speech perhaps most protected by the Constitution. Yet she argued that the government may silence unions, for-profit corporations, nonprofit groups and even tiny mom-and-pop businesses, if they organize legally as a corporation. Thankfully the Supreme Court sided with freedom of speech.

As if that breathtaking degree of Federal power were not bad enough, Ms. Kagan also worked in the Clinton administration to weaken and limit other individual rights such as the second amendment right to keep and bear arms. In her hearing, Ms. Kagan refused to acknowledge any real limits on the Federal Government's power, which the Supreme Court has already expanded far beyond anything America's Founders intended, to regulate everything imaginable in the name of interstate commerce.

I will summarize. Ms. Kagan's academic and primarily political experience make critical the need for clear and convincing evidence that she is committed to the proper role of judges in our system of government. The critical confirmation question is the kind of Justice Ms. Kagan would be. Will the Constitution control her, or does she believe she may control the Constitution? Looking where she directed me to look, I believe the evidence shows she embraces an essentially activist view of judicial power.

This is a grave decision and it is about more than simply one person. The liberty we enjoy in America requires that the people govern themselves and that, in turn, depends upon the kind of Justices who sit on the highest Court in the land.

George Washington said in his Farewell Address:

> The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.

Judges who bend the Constitution to their own values, who use the Constitution to pursue their own vision for society, take this right away from the people and undermine liberty itself.

As my colleagues can see, I am very worried about this nomination. I never voted against a Supreme Court nominee before when I voted against now Justice Sonia Sotomayor but I think I have been proven right in a number of instances. Let me mention one. She basically said that the Heller case on the right to keep and bear arms was settled law. Yet within a year or so, she voted that the right to keep and bear arms is not a fundamental right.

I hope that soon-to-be Justice Kagan proves me wrong. I hope that she will use her legal mind and the abilities she has to uphold rather than tear down the Constitution. I hope she will do what the Founding Fathers expected all Justices on the Court to do. But like Justice Sotomayor, I think the evidence about her judicial philosophy shows that I am right.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise to speak on the nomination of Solicitor General Elena Kagan to be an Associate Justice of the U.S. Supreme Court. I will not support General Kagan's nomination. I did not come to this decision lightly. As I said last August during the debate on Justice Sotomayor, the role of the Senate in the nomination of a Supreme Court Justice is to give its advice and consent on the President's nomination, with the Senate to judge whether an individual is qualified based on a number of factors. Among these factors are the nominee's education, legal experience, prior judicial experience, written record, judicial temperament, commitment to the rule of law, and overall contributions to the law. Based on my review of Elena Kagan's record and using these factors, I have determined General Kagan at this time does not meet the criteria for membership on our Nation's highest Court.

The President deserves deference in his nominations and, of course, Presidential elections have a direct impact on the makeup of our judiciary; that is to say, elections do have consequences.

But Senate confirmation should not be a simple mechanical affirmation of the President's selection, especially when the nominee will enjoy a lifetime appointment. A Senator is duty bound to conscientiously review the qualifications of the President's nominee and make an independent assessment of the nominee's qualifications.

General Kagan is well educated, intelligent, bright, and engaging, and advanced quite rapidly in her career of teaching and law school administration. But one must ask, is that enough? I believe it is not. I believe a judicial nominee must have substantial experience in the law, especially when the nominee is seeking a lifetime appointment to the highest Court in the land.

After reviewing her background, I believe General Kagan does not have that relevant experience. General Kagan is the first nominee to the Supreme Court with no prior judicial experience since 1971, almost 40 years ago. While I do not believe a lack of judicial experience should bar one from serving on the Supreme Court, I note that reviewing prior judicial service is obviously the easiest way to assess a nominee's fitness for the Court. This lack of judicial experience does not prevent her nomination, but in my opinion it does shift the burden to the nominee to demonstrate her relevant experience.

For example, when the Senate considered Justice Sotomayor's nomination, there were over 1,000 prior opinions one could review to decide if she was ready for the job. With General Kagan, there are none. When I asked her to name opinions she worked on with Justice Marshall with which she disagreed, she stated she could not remember any individual opinion she worked on, much less whether she disagreed with Justice Marshall on any of them. She could not remember.

During our meeting, General Kagan noted her service as Solicitor General, another job I did not think she was qualified to hold, and said it was relevant because she was the Solicitor General. I agree it is relevant, but her time as Solicitor General has been too short. Since President Kennedy's Solicitor General, Archibald Cox, only one confirmed Solicitor General has served for a shorter period of time than General Kagan.

General Kagan argued her first case before the Supreme Court less than a year ago, and now we are going to confirm her as a member of that Court?

If we base her qualifications on her earlier legal experience, her experience is particularly limited. General Kagan worked for 2 years as a practicing attorney. Justices Rehnquist and Powell, the last two Supreme Court nominees without prior judicial experience, each spent many years in the active practice of law. Justice Rehnquist practiced in Arizona for over 16 years. Justice Powell was a partner in a major Virginia law firm for over 25 years and in practice for 38 years. General Kagan has 2 years of experience in private practice and 1 as Solicitor General.

I also think it is worth noting that the independent Congressional Research Service has found that, on average, the 39 Justices who lacked prior judicial experience had over 20 years of experience in the practice of law. General Kagan's experience pales in comparison.

During Justice Sotomayor's confirmation, I spoke about how President Obama's standard for selecting judicial nominees based on what was in their heart flew in the face of meritocracy—flew in the face of meritocracy. We, as a nation, aspire to hire people for jobs based on their skill, not on where they are from or who they know. Justice Sotomayor, in addition to her 17 years of total service on the trial and appellate benches, was in private practice for 8 years and was a district attorney for 4 years. Justice Sotomayor's experience as a lawyer and a judge, her judicial temperament, and the fact that her opinions were within the judicial mainstream gave me confidence that she had the relevant experience to sit on the Supreme Court.

Because there is such a limited record with General Kagan and because she has gone out of her way, quite frankly, not to answer questions, I have no idea what she will do on the bench and whether she will be able to suppress her own values to apply the law. The fact is, we really do not know much about her views.

Frankly, I have been surprised by some of my colleagues who attempt to compare her to the famous Justice Brandeis, another Justice with no prior judicial experience. Justice Brandeis practiced the law for almost 30 years before his nomination, much of his practice being pro bono in his later years. Furthermore, Justice Brandeis is widely regarded as one of the great legal minds of not just his time but of American history, having developed numerous areas of modern law from scratch. Yet, again, General Kagan pales in comparison.

In my meeting with General Kagan, I asked her about how little writing she had published, and she responded that she had more academic writing than other members of the Supreme Court. This is factually incorrect and misleading. First, this is incorrect. Justice Scalia is widely published with numerous articles and books. Justice Ginsburg went so far as to learn Swedish to coauthor a book on Swedish judicial procedure. And Justice Breyer was one of the most foremost authorities on administrative law, with many books and articles to his name before joining the Court. Second, it is misleading because each Justice publishes hundreds of pages a year in the form of opinions, greatly eclipsing General Kagan's academic production.

There are over 800 Federal judges, many of whom clearly have the experience, intelligence, and legal skill to serve on our Supreme Court. Additionally, if one believes, which I do not, that the Federal judiciary is somehow out of touch with our society, thousands, if not tens of thousands, of State court judges are out there with lengthy judicial records, many ready to serve on the Supreme Court. I think back to Justice Sandra Day O'Connor, who was on the supreme court of the State of Arizona for 8 years before she became a member of the Supreme Court.

As an aside, only a former law professor would think that the dean of a law school is somehow more in touch with everyday people than a judge. Every day, a judge is presented with the facts of everyday life and must apply them to the law. A dean at a law school, surrounded by professors earning hundreds of thousands of dollars a year and donors worth millions and students soon to enter into a professional career, never gets to see everyday life and is never faced with the factory worker, the farmer, or any other hardworking blue-collar Americans. How is a law school dean more in touch—more in touch—with everyday people?

Some of my colleagues would like to have had a less liberal person nominated by the President. My position is, the President will surely nominate a liberal. The most important question is, Is that liberal nominee qualified to be a member of the Supreme Court? I would argue that General Kagan has been nominated based on her friendships and personal attachments with President Obama and others at the White House, not based on objective qualities that would indicate she is qualified to be a member of the U.S. Supreme Court.

In closing, lack of judicial experience should not be an absolute bar to serving on the Supreme Court. However, Solicitor General Kagan not only lacks judicial experience but has limited experience as a practicing attorney with only the last year as Solicitor General and 2 years as a junior associate making up her entire practice.

Additionally, General Kagan has had an extremely limited written record—I mean limited written record—which should make all of us unsure as to what sort of Justice General Kagan will be.

For these reasons, I cannot in good conscience support the nomination of General Kagan to be a member of 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 bill 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, a number of comments have been made about Ms. Elena Kagan's actions at Harvard in barring the military from utilizing or having access to the Career Services Office and asking the veterans

group—that was not able, as they said—to somehow fill that role.

I will take a few minutes, as we have a few minutes left, to deal with one of the arguments I have heard my colleagues repeat; that, well, she did not reduce recruiting, therefore, no harm, no foul. I do not agree. There was a foul and there was a harm. But even if there had not been a harm, there was a foul.

It was very wrong to blame the U.S. military for the don't ask, don't tell policy, and very, very, very wrong to blame some young officer who was there to recruit people to serve in the JAG Corps of the U.S. military, perhaps having just returned from combat duty in Iraq or Afghanistan, and to be told: You can't come in the front door of the building. You can't use the recruiting services because we don't like your policy.

But it was not the military's policy; it was the Congress's policy. It was President Clinton's policy. He signed the bill. I do not believe that Ms. Kagan complained to President Clinton when she was on his staff for 5 years and he signed the bill. Was there any protest to him? No. Her protest was lodged, and the discrimination was directed against the men and women in uniform who defend our country, who had nothing to do with the policy.

That is a fact, and I do not think it is a matter that should be lightly dismissed. ''Oh, the recruiting didn't go down,'' they say. Well, let's just talk about that. They said she merely reinstated Harvard Law's pre-2002 policy, which forced the military to work through this veterans association, and recruiting did not suffer. But that is not true.

Harvard's pre-2002 policy—before she became dean—had obstructed military recruiting. As an internal memorandum authored by the recruiting chief of the Air Force JAG Corps in 2002 states—this is what the chief of recruiting for the Air Force JAG said:

> Career Services Offices are the epicenter for all employer hiring activities at a law school. . . . Without the support of the Career Services Office, we are relegated to wandering the halls in hopes that someone will stop and talk to us. . . . [D]enying access to the Career Services Office is tantamount to chaining and locking the front door of the law school—as it has the same impact on our recruiting efforts.

The military's ''after action reports'' from pre-2002 recruiting efforts organized through the veterans association on campus show mixed results, but recruiting clearly improved after her predecessor, Dean Clark, granted the military equal access through the Career Services Office. This is what the Air Force said:

> Since Harvard's policy change, the Air Force has . . . had very positive responses from a number of students. . . . [I]n the 16 months since Harvard's change in policy, we have attracted at least four Harvard students, when in the prior twelve years, we recruited a total of only nine.

That is while the discrimination was in effect.

The statistics reveal that our recruiting efforts have greatly improved since the change in policy by Harvard to comply with the Solomon Amendment. We only assessed 2 Harvard Law students in the 1990s.

This is not accurate, what we have been hearing. Then she reversed that policy and went back to the policy of discrimination. The reports show it obstructed their recruiting efforts. The chief of recruiting for the Air Force JAG Corps was repeatedly blocked from participating in Harvard's spring 2005 recruiting season, after Ms. Kagan changed the policy, saying this:

> Harvard is playing games and won't give us an OCI [On-Campus Interviewing] date; their official window for employer registration has closed. Their recruiting manager told me today that she's still ''waiting to hear'' whether they'll allow us.

The chief of Air Force JAG recruiting also recounted a conversation with Harvard's dean of career services after the close of the recruiting season, when you are supposed to be recruiting—they missed the whole season—this is what he says, talking about the dean.

The PRESIDING OFFICER. The 1-hour time of the minority has expired.

Mr. SESSIONS. Mr. President, I don't see anyone here—I ask unanimous consent to speak for 1 additional minute.

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

Mr. SESSIONS. The dean of career services told the Air Force JAG:

> He stated that the faculty had still not decided whether to allow us to participate in on-campus interviews. . . . I asked him if I could at least post a job posting via their office and he said no.

The Army was blunt in their afteraction report:

> The Army was stonewalled at Harvard. Phone calls and e-mails went unanswered and the standard response was—''We're waiting to hear from our higher authority.''

That certainly would appear to be Dean Kagan, who had reversed the policy, personally.

This is what the veterans group said when Dean Kagan reversed the policy and said: We want you to help take care of the military. We are not going to let them in our office. They are not worthy to be in our office. This is what they wrote and sent an e-mail to all the students:

> Given our tiny membership, meager budget, and lack of office space, we possess neither the time nor the resources to routinely schedule campus rooms or advertise extensively for outside organizations as is the norm for most recruiting events. . . . [Our effort] falls short of duplicating the excellent assistance provided by the HLS Office of Career Services.

To claim that 2005 had increased recruiting is inaccurate. The 2005 class at Harvard would have been recruited during the time the military enjoyed full access of the career services office before she reversed the policy, not in the spring of 2005, a mere 3 months before graduation. They were counting the graduates, not people who signed up. The recruiting has not been shown to increase after this effort.

Finally, I would note: What was the purpose of all this? Why did they have this policy? It was to harm and hamper the U.S. military in their effort to recruit on campus. Apparently, it was effective in reducing their ability. They had a direct intent to punish the military for a policy the military did not establish but Congress and President Clinton established and it was wrong then and it is wrong now.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I am so honored to come to the floor with a number of women Senators to discuss the President's nomination of Solicitor General Elena Kagan to be the Associate Justice on the U.S. Supreme Court.

As is the Presiding Officer, I am a member of the Senate Judiciary Committee, and we both had the opportunity to question Elena Kagan and to listen to her brilliant and insightful responses. Everyone heard her, and no matter how anyone is voting on this nomination—although it is hard for me to understand how they could oppose her—I think there was very much consensus on this idea that she knew what she was doing, that she has done every job that she has had very well, that she has confronted very difficult situations, and that she has always been a leader and someone who can bring consensus. She consistently demonstrated the quality that some of us had already seen in her records; that is, of pragmatism and reasonableness and a consensus builder.

So I will save my remarks until later because I have been joined by the Senator from New York, Mrs. GILLIBRAND, who is from Elena Kagan's home State. While she may have worked in Massachusetts for quite a while, she actually came from New York. It is an honor to have Senator GILLIBRAND, who is also an attorney, joining us today.

I yield for Senator GILLIBRAND.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I thank the Senator from Minnesota for her leadership, for her guidance, for her distinguished career, and for her service on the Judiciary Committee. It is so meaningful to all of us to have her ability to review these candidates in such depth.

I am so proud to stand in support of Solicitor General Kagan's nomination to the U.S. Supreme Court. With his decision, President Obama has chosen an individual of the highest caliber, a women with an enormous history of achievement, a history of service and, perhaps most importantly, a history of bridge building.

Elena Kagan is widely regarded as one of the Nation's leading legal scholars. She is a stalwart defender of the Constitution, and through her sharp intellect, steadfast integrity, sensible

judgment, and extraordinary work ethic, Elena Kagan has made it clear she is eminently qualified to serve as a U.S. Supreme Court Justice.

Dean of Harvard Law School, magna cum laude from Harvard Law, editor of the Harvard Law Review, and summa cum laude from Princeton, these are just some of the many accolades she obtained during her vast and distinguished career.

Throughout the course of this nomination process, it has been made abundantly clear that Solicitor General Elena Kagan has a profound and exceptional understanding of the Constitution and our system of law. Unfortunately, it appears that some of my colleagues are determined to criticize Elena Kagan regardless of these facts. They can no longer find partisan or ideological fodder by which to create a straw man of opposition, so they are now questioning her intellect, her clarity of mind, and her temperament. It is deeply concerning to me that my colleagues would dismiss the judgment of every Solicitor General of the past 25 years and dismiss the views of law professors from all across the United States and even sitting Supreme Court Justices who have suggested that Elena Kagan is eminently qualified to sit on the Court.

These distinguished legal experts from across the country and across the ideological spectrum say Elena Kagan is not only an intellectual giant, but she is as qualified to serve on the Nation's highest Court as any of her other predecessors. Every Solicitor General over the last quarter century—Democrats and Republicans—wrote a letter of support for her nomination as Solicitor General, noting her brilliant intellect, her candor, and the ''high regard in which she is held by persons of a wide variety of political and social views.''

The support of Miguel Estrada, Ken Starr, and Ted Olson, along with the support of some of my Republican colleagues such as Senator LINDSEY GRAHAM, all speak to her ability to build bridges and to find common ground. These are the traits we need in a Justice when so many decisions right now are narrowly being decided at the 5-to-4 margin.

An attorney with over two decades of experience working in all three branches of the Federal Government, Kagan's breadth of experience will bring diversity to a Court consisting entirely of former judges. Many of the Justices on both sides of the aisle are quite fond of Elena Kagan from her time as Solicitor General and have commented on how her distinct professional background is a welcome contribution to the Court.

Based on her record of achievement, it is clear Elena Kagan possesses the temperament that will distinguish her as a consensus builder on a deeply divided Court.

Narrow 5-to-4 decisions by a conservative majority have become the hallmark of the Roberts Court. These decisions have often been overreaching in scope and have repeatedly ignored settled law and congressional intent. For example, in the Citizens United case, the Court not only disregarded the extensive record compiled by Congress but abandoned established precedent. Solicitor General Kagan's unique ability to build coalitions will be very helpful in bridging this very serious divide.

Since the announcement of her nomination, I know more than a few of my colleagues have struggled to find a viable reason to object to her nomination. The bottom line remains that there has yet to be a credible reason to oppose this outstanding confirmation.

I look forward to enthusiastically casting my vote in support of General Kagan's nomination and confirmation to the Supreme Court of the United States. I urge my colleagues to join me and support her nomination as well.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New York for that enthusiastic endorsement. I like how she took on some of these criticisms that have been lodged against Solicitor General Kagan. I also understand that at least one of my colleagues who spoke out in opposition has stated that, in his words: ''I believe she does not have the gifts and qualities of mind or temperament that one must have to be a Justice.'' Well, anyone who sat through those hearings or watched them on TV, as Senator GILLIBRAND has pointed out, would have to disagree. Anyone would have seen an incredibly smart, intellectually engaged person who answered Senators' questions astutely and whose energy never seemed to flag. Neither did her sense of humor, I will add. She had immediate recall about every single case or constitutional doctrine that she was asked about, and to say she doesn't have the gift or quality of mind is simply ridiculous.

This is a woman who is a trailblazer: the first woman dean of Harvard Law School, first woman Solicitor General. To say she does not have the gifts or the qualities of mind to be a Justice is nothing short of ridiculous.

I next will yield for someone who knows something about having a good temperament and a good quality of mind, the Senator from New Hampshire, who is also a trailblazer in her own right: the first woman to serve as both a Governor and a Senator, Mrs. JEANNE SHAHEEN of New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mrs. SHAHEEN. Thank you very much, to my colleague, Senator KLOBUCHAR, and a special thanks for bringing us together this afternoon to speak on this important nomination.

I am very pleased to once again be able to come to the floor and speak in support of the confirmation of Elena Kagan to be the next Justice of the U.S. Supreme Court. I am happy to join Senators KLOBUCHAR, GILLIBRAND, MIKULSKI, and HAGAN to support this excellent candidate for the High Court.

The members of the Senate Judiciary Committee did a thorough job in vetting Ms. Kagan, and I thank them all for their hard work. I think the hearings they held on her nomination revealed three things; first, that Elena Kagan is a person of good character; second, that she is someone who understands and respects the rule of law and the role of courts in our democracy; third, that she is indeed qualified to be a Supreme Court Justice. I believe the President chose wisely when he nominated her.

Back in June, after the nomination, I spoke about Ms. Kagan's impressive list of professional accomplishments, so I am not going to repeat them this afternoon. It is clear Elena Kagan has thrived in a number of settings and that she will bring a diverse set of experiences and abilities to the Court. In her rise to the top of the legal profession, Ms. Kagan gained practical experience that forced her to evaluate the impact of laws on people. She also has a track record of building bridges across the ideological spectrum, something I saw firsthand when I was the director of the Institute of Politics at the Kennedy School at Harvard and she was dean of the Harvard Law School. She had that reputation on campus as someone who could work with everyone. These are critical skills for a Justice, and I am glad we have a Supreme Court nominee before us who has a variety of real-world experiences and has not been isolated only within the judicial system.

Perhaps most impressively, in her latest role as Solicitor General, Ms. Kagan has served as the representative of the American people before the Supreme Court. She has represented us forcefully in complex cases, including ones that dealt with major issues, such as our ability to conduct the war on terror and the amount of influence that big businesses should have in our elections. As is the case for every attorney who regularly appears in court, she won some and she lost some.

But above all, Ms. Kagan has shown she is capable of analyzing the law at the level required by the Nation's highest Court. She has the talent and the intellect to join the Court as a Justice. I think that is something on which most of us can agree. Unfortunately, the politics that have come to surround judicial confirmations in modern times mean that Ms. Kagan's qualifications to serve on the Court are just one piece of this debate. I wish this weren't the case.

These proceedings should force us to take a hard look at the role our Founders intended for the Senate in the confirmation process. When we provide advice and consent on judicial nominations, Senators are not supposed to be substituting their individual political judgments for those of the President.

We are collectively supposed to be checking that a nominee is qualified, that a nominee falls somewhere in the mainstream of legal philosophy, and that a nominee respects the rule of law and understands that judges are not meant to be politicians.

A few weeks ago, Senator LINDSEY GRAHAM, as my colleague from New York, Senator GILLIBRAND, alluded to earlier, gave a powerful reminder of this when he spoke at the Judiciary Committee's final hearing on Ms. Kagan. I appreciated especially his reference to Alexander Hamilton's words in Federalist Paper No. 76: The Senate should have a ''special and strong reason for the denial of confirmation.'' We should remain focused on that standard, keep politics to a minimum, and really strive to conduct an evenhanded review of nominees.

Prior to joining the Senate, I had the privilege of serving as Governor of the State of New Hampshire. New Hampshire is one of those States where judges are not elected but appointed by the Governor. Once appointed, they can serve until age 70. So having been in the position of appointing judges, I fully understand that making lifetime appointments to our courts is a very solemn responsibility.

Knowing that, I believe the President has made an excellent selection. In Elena Kagan, we have been presented with a nominee who is a loyal American, an upstanding individual, and a supremely talented lawyer. Lawyers are, by definition, legal advocates for others. It is to be expected that, as a lawyer, Elena Kagan may have advocated certain positions with which we may not agree. That, however, does not disqualify her from being a judge. It almost goes without saying that her record presents no ''special and strong reason'' to vote against confirmation. These facts have been recognized by conservatives both in this body and outside of it who are willing to drop political rhetoric and speak candidly. This includes Senator GRAHAM as well as my own senior Senator from New Hampshire, JUDD GREGG. I hope more of my colleagues from across the aisle will follow their lead.

I intend to proudly cast my vote in favor of Elena Kagan's confirmation, and I am confident that, as a Justice, she will serve this country with honor and distinction.

I yield back to my colleague from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from New Hampshire, my neighbor in the Chamber. I thank her for her fine remarks.

I was listening when she talked about Senator GRAHAM's comments. I truly believe that was a moment of leadership, where basically he said he had spent a lot of time in the last 2 years trying to elect a different person for President, but President Obama won and he respected his nominee and that his job was to look to see if that person was qualified to be on the Supreme Court. Despite political differences—and he didn't agree with everything she said—he said his job was to see if she was qualified. He said at the hearing, which I will never forget, that he was proud to be supporting her.

I imagine the Senator from New Hampshire has had similar experiences in her State with having to grapple with those kinds of things when appointing judges.

Mrs. SHAHEEN. That is correct. Like the Senator from Minnesota, I am certainly pleased to see people who have been willing to come out and take a leadership position and say: Even though we understand the nominee may not be one who is supported by all of the Members of our party, we still believe she is qualified, and we will support her.

Ms. KLOBUCHAR. One thing about Elena Kagan: When you look at her series of jobs, you realize she has been in the arena as a manager, a teacher, an adviser, a consensus builder, and a lawyer. In every job, she has worked very hard and has done very well.

Her work on the front lines tells me she has the practical experience in thinking about the impact of the law and policies on ordinary people, and I think sometimes that is missing in some of these decisions. There is a case I dwell on involving prosecutions and what kind of evidence can come before the court when you are dealing with some of the DNA tests, and I disagree with the recent Court decision that actually wasn't decided on ideological grounds but I believe was decided in an impractical way. I believe Solicitor General Kagan will bring that kind of practicality to the Court. When you are involved in considering the nitty-gritty details of different policies, when you are actually in the game as a decisionmaker, as she has been, you have to figure out when to compromise and when to hold firm. You have to know what the consequences of your recommendations will be.

As a law school dean, Elena Kagan was widely credited with bringing together a faculty that was rife with division. Whether she was helping recruit talented professors from across the political spectrum or later, when she was working with Senators from both parties on tobacco legislation, she forged coalitions and found resolution between seemingly intractable parties.

It strikes me that it takes a pretty extraordinary person who, after working in the Clinton administration, still gets a standing ovation from the conservative Federalist Society; who inspires a group of 600 law students, who can be a bit cynical, to show up for a rally wearing ''I love Elena'' T-shirts; someone who earned the respect of the law professors she worked with, regardless of their ideology, a group that I would say, as I said in the hearing, can be somewhat fearless in the face of supervision.

In sum, she has had a lot of practical experience reaching out to people who hold very different beliefs, and that is increasingly important on a very divided Supreme Court. I believe that is why, when you look at the past, all the previous Solicitor Generals from the past 25 years, under Democratic and Republican administrations, support Elena Kagan's confirmation. This practical experience is also why she has the support of the National District Attorneys Association, which I used to belong to in my previous job. They actually wrote about her, saying that the National District Attorneys Association believes Solicitor General Kagan's diverse and impressive life experiences will be a welcome addition to the Court in fashioning theory that will work in practice.

One of the things that I think show the practicality of her and how she responded to our questions is when I asked her about the metaphor Chief Justice Roberts made famous at his confirmation hearing. I asked what she thought about the idea that judges were like umpires who just need to ''call balls and strikes'' and whether that was a useful metaphor. She gave an interesting and insightful response. She said the metaphor is useful in some respects but maybe not in others. It is useful because judges have to be fair and neutral like umpires and judges have to be aware that they have a powerful but limited role—that they can't legislate from the bench, they aren't elected officials. But she also said the metaphor has its limits if it suggests that judging is some kind of ''robotic enterprise,'' if it makes people think judging is an easy, automatic kind of thing because issues are always clear-cut. That isn't right, and it definitely isn't right at Supreme Court level.

Cases that come before the Supreme Court, I say, are by their very nature not clear-cut or they would not have ended up there. What is necessary is good judgment. We have to look for nominees who are going to bring that kind of good judgment to the Court.

I see I have been joined by the Senator from North Carolina, Mrs. HAGAN, which rhymes with the name of our nominee, Solicitor General Kagan. We are pleased to be joined by Senator HAGAN.

We have now had four women Senators here today in support of Solicitor General Kagan's nomination. We are also well aware that if she is confirmed, we will have three women on the Supreme Court when the Court goes into session in the fall—something that has never happened in the history of the United States.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I am here today to speak in support of Solicitor General Elena Kagan's nomination to be an Associate Justice of the Supreme Court of the United States. Solicitor General Kagan's background

demonstrates that she is an extremely well-qualified nominee and has a brilliant legal mind. She has the utmost respect for precedent and believes in fidelity to the law. I believe she will make our Nation proud as a Justice on the Supreme Court.

I have always said I do not believe there should be any one litmus test for judicial nominees. We have to look at a nominee's record in its entirety. Solicitor General Kagan's record is nothing short of remarkable. With over 20 years of legal experience and government service, she has distinguished herself throughout her career with the highest integrity and sound judgment.

In the 220-year history of the Supreme Court, 111 Justices have served on the bench. Yet only three have been women. It took almost two centuries—close to 200 years—before the first woman, Justice Sandra Day O'Connor, was confirmed to the Supreme Court.

Solicitor General Kagan's professional achievements are clear. Let me highlight a few of her triumphs that hold historical significance as well as personal significance for me and many women across America. She was the first woman to serve as dean of Harvard Law School. She was the first woman to be appointed as U.S. Solicitor General. When confirmed, she will become, as Senator KLOBUCHAR just said, the fourth woman to serve as an Associate Justice on the U.S. Supreme Court. For the first time in history, the Supreme Court will have three women serving at the same time. Women in America can take pride in Solicitor General Kagan's achievements, learn from them, and set their goals just as high.

Elena Kagan has a compelling personal story. She was born into a family of Russian-Jewish immigrants. Her mother was a public school teacher, and her father was a tenants' lawyer. She inherited a strong work ethic and a focus on education. She graduated summa cum laude from Princeton University and received a master's degree in philosophy from Oxford University's Worcester College and a law degree from Harvard Law School, where she was supervising editor of the Harvard Law Review.

She went on to clerk for Judge Abner Mikva on the U.S. Court of Appeals for the District of Columbia and then for Justice Thurgood Marshall on the Supreme Court. She also became active in her community, demonstrating her strong desire to serve others.

In the years following her time as a clerk, Solicitor General Kagan practiced law and began her long career in academia as a professor of law and later as a dean. In addition, she worked under two Presidents—first under President Clinton as an Associate Counsel and as a Deputy Assistant for Domestic Policy and now under President Obama as Solicitor General of the United States.

Her confirmation hearings were a testament to her overwhelming qualifications to serve on the Supreme Court. I believe members of the Judiciary Committee saw in Solicitor General Kagan the same qualities President Obama saw: fairness of mind, supreme intellect, and an unsurpassed devotion to the law and to our system of government.

Some opponents have sought to stir up controversy by quoting Solicitor General Kagan out of context, trying to suggest she will not be impartial. However, she has made it clear that her background does not influence her interpretation of the law.

If Senators are not persuaded by her statements to the Judiciary Committee, then they should be by her remarkable, impartial, 24-year legal career.

As Solicitor General Elena Kagan has said:

> I think a judge should try, to the greatest extent possible, to separate constitutional interpretation from his or her own values and beliefs. In order to accomplish this result, the judge should look to constitutional text, history, structure, and precedent.

With respect to the military, let me say I am proud to represent the most military-friendly State in the Nation, and I have the fullest confidence in Solicitor General Kagan's respect and admiration for our men and women in uniform.

She has said that she respects and, indeed, reveres the military. Her father was a veteran. One of the great privileges of her time at Harvard Law School was dealing with the wonderful students there who had served in the military and students who wanted to go into the military. She always tried to make sure she conveyed her honor for the military, and she always tried to make sure the military had excellent access to their students.

Veterans at Harvard Law wrote:

> Kagan has created an environment that is highly supportive of students who have served in the military . . . and under her leadership, Harvard Law School has gone out of its way to highlight our military service.

Solicitor General Kagan's sensible attitude toward following the law and her ability to objectively evaluate all angles of the Constitution has resulted in high ratings and endorsements by numerous organizations. The American Bar Association unanimously found Solicitor General Kagan to be well qualified, which is the highest rating the ABA gives to judicial nominees.

Solicitor General Kagan has an impressive list of law organization endorsements and supporters, including the National Association of Women Judges, the Women's Bar Association of the District of Columbia, the National Minority Law Group, the Constitutional Accountability Center, the Hispanic National Bar Association, the Leadership Conference on Civil and Human Rights, and the National Association for the Advancement of Colored People.

Solicitor General Kagan has also been endorsed by a group of law school deans, who stated:

> Her knowledge of law and skills in legal analysis are first rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law; with a deep understanding of both doctrine and policy . . . Elena Kagan has, over the course of her career, consistently exhibited patience, a willingness to listen, and an ability to lead, alongside enormous intelligence.

Former Solicitors General recently wrote a letter, including North Carolinian Walter Dellinger. In it they said:

> Elena Kagan would bring to the Supreme Court a breadth of experience and a history of great accomplishment in the law . . . The Constitution gives the President broad leeway in fulfilling the enormously important responsibility of determining who to nominate for a seat on the Supreme Court of the United States. In that spirit, we support the nomination of Elena Kagan to be Associate Justice and believe that, if confirmed, she will serve on the Court with the distinction.

I thank and congratulate the members of the Judiciary Committee for holding an extraordinarily civil and open Supreme Court nomination process. I commend President Obama for selecting an extremely well-qualified nominee who will serve this country with distinction. Based on my conversations with the nominee, her statements at her confirmation hearings, and my review of her record, I intend to support her confirmation when it is voted on, hopefully later this week. I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from North Carolina for her comments. I like how she pointed out how Solicitor General Kagan has received support from so many people on both sides of the aisle, and then also Solicitor General Kagan's support for the military.

I remember one of the most touching points of the hearing—that long and laborious hearing—was when Elena Kagan spoke about reading a letter from a student who had been at her law school in which, after she was nominated, he actually wrote a letter to the newspaper. He served in Iraq, and he wrote a letter about how fair she was to him and her strong support for him as a soldier. She said it was the only moment during the whole leadup to the hearing, with all those things that happen, that she said she shed some tears. I will never forget that moment in the hearing.

As we consider this nomination, I want to reflect on how far we have come.

I see I have been joined by the dean of the women Senators, Senator MIKULSKI from Maryland.

When Sandra Day O'Connor graduated from law school more than 50 years ago, as the Senator from Maryland knows, the only offer she got back then after she graduated high up in her class from Stanford Law School, the only offer she got at a law firm was as a secretary. Justice Ginsburg faced similar obstacles. When she entered

Harvard, she was only one of nine women in a class of more than 500. One professor actually asked her to justify taking that place in that law school class from a man.

I know we learned during the hearing that Solicitor General Kagan is well aware of the strides women have made. In a 2005 speech, quoting Justice Ginsburg, she described a student resolution at the University of Pennsylvania Law School. This resolution would have introduced a 25-cent per week penalty on all students without mustaches.

The women who came before Elena Kagan to be considered by the Judiciary Committee helped blaze that trail for Elena Kagan—people such as Justice Ginsburg, Sandra Day O'Connor, and Sonia Sotomayor. Although Elena Kagan's record stands on her own, she is also, to borrow a line from Isaac Newton, ''standing on the shoulders of giants.''

All the women Senators I know—both Democratic and Republican—always feel they are standing on the shoulders of giants, maybe somewhat short giants, when they see the dean of the women Senators, Senator MIKULSKI from Maryland, who has entered the Senate Chamber.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank the Senator from Minnesota for her kind words but also her leadership in terms of a leadership roll on the Judiciary Committee in the usual due diligent way she went about looking at Ms. Kagan's record, becoming an advocate for her and now urging us on the floor to speak on her behalf.

Also on behalf of myself and the people of Maryland, we extend our condolences to her on the passing of her mother. It is a tribute to Senator KLOBUCHAR that she is here today doing her duty. But from what I have heard about her mother, that is exactly where she would want her to be and exactly with those of us who are speaking today.

I come today in strong support of Elena Kagan. I am of the generation when a woman on the Court was going to be viewed as a novelty. I remember very well when Ronald Reagan nominated Sandra Day O'Connor and the world and the United States of America was abuzz: Wow, a woman is going to go on the Court. She went to the Court, and I think history, legal scholars, and the American people think she did a great job.

Then came Ginsburg, Sotomayor, and now Kagan. We are at the point now where women are being taken seriously—they are being put forth for high positions in government—and are no longer viewed as a novelty. We never wanted to be novelties. We want to do the job we are either elected to do or we are being recommended to do.

I can tell my colleagues that Elena Kagan brings that right stuff of the women who are currently on the Court, and Sandra Day O'Connor. She wants to be known and respected for what she will bring to the Court.

For us women, the reason we are advocating for her is not about gender but about the legal agenda before this Supreme Court. We want to have a Justice on that Court who is extremely qualified but brings a strong commitment to civil rights, to equal justice—someone who brings not only legal scholarship but an independent voice.

Ms. Kagan is extremely qualified in these areas. Her record demonstrates an understanding of how the Court affects the lives of ordinary Americans. She clerked for Justice Thurgood Marshall, another distinguished Marylander, someone who served on the Court, a trailblazer in civil rights and a trailblazer on the Court.

Much was made during the Judiciary Committee hearings about her clerking for Marshall and somehow or another that was not a good thing. I thought it was a fantastic thing for us in Maryland who revere Thurgood Marshall for his brilliance, his tell-it-like-it-is legal style, who brought scholarship and yet street corner savvy out from some of the meanest streets in Baltimore to the Court. We thought it was great. We think Justice Thurgood Marshall was a great member of the Supreme Court. And they think it is great Kagan mentored and learned under him.

During her tenure as dean of Harvard Law School, she, again, not only developed the best faculty but made sure there were legal clinics to help the poor, the left out, the marginalized, but she also wanted to make sure that Harvard was to ensure a more diverse student body.

In the face of this current Court that increasingly is on the side of big corporations rather than with the little guy or the little gal, we need a Justice such as Kagan who will understand what is going on in our communities.

I take my advise-and-consent responsibilities very seriously. It is one of the most important jobs we have as Senators, and it is one I approach with thorough deliberation.

I look at three criteria for the Supreme Court: absolute integrity, judicial competence and temperament, and a commitment to core constitutional principles. I want someone who is committed to the whole Constitution, the entire Constitution, the basic body of the Constitution and every single one of its amendments. There is a whole crowd in the Senate who only seems to like the second amendment. I like all of them, and I am particularly devoted to the first one and the 14th one.

Every day, the Supreme Court will make decisions that transcend generations. But today we have a Court that has an increasing willingness to favor corporate interests over the voice of people at the community level.

We also have a Court that seems to be increasingly out of touch with the American people. We want to be able to reassure that we have a member of the Court who understands this.

During this current Court's deliberations, I was appalled by the famous Lilly Ledbetter case, the wonderful woman who worked at Goodyear for 19 years and was a victim of pay discrimination. She sued Goodyear, and the case made it all the way to the Supreme Court. In appeal after appeal, she won. But, oh, the big guys with the big guns and the big bucks kept appealing, but she persisted. And then before the Court she was turned down. It was so appalling that Justice Ginsburg from the bench asked Congress to take action. We did. But we should not be the Congress to overturn Supreme Court decisions because they trample on the rights of people, because they trampled on the rights of a woman to get equal pay for equal work, trampled on the rights of a woman not to face retaliation in sexual harassment and humiliation when she tried to speak up for herself on the floor of the factory or on the courtroom floor.

I believe we need someone on the bench who understands the needs of the people but, most of all, understands the laws of the United States of America and loves this Constitution—the entire Constitution of the United States of America.

I am here today because of the Constitution. The first amendment enabled me to speak up and organize and be able to make it here. There was another amendment of the Constitution that enabled the direct election of the Senate. There is this whole other crowd out there in the community that wants to overturn that. I am here because the American people insisted in a constitutional amendment that women have the right to vote. Another constitutional amendment took it away from the State legislature and put it in the hands of the American people.

I love the Constitution. I love every single amendment of the Constitution. And I want somebody on the Supreme Court who feels the way I do.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator from Maryland for her fine words. She is someone who knew the Court before there were any women on that Court. She has seen many changes. I thank her for her work.

To break the glass ceiling, we have now been joined by one of our male colleagues, after hearing from five female colleagues. But we are going to let him speak. We have been joined by the senior Senator from the State of New Mexico. We are honored to have Senator BINGAMAN here to speak about Solicitor General Kagan.

Mr. BINGAMAN. Mr. President, I yield myself 5 minutes off the Democratic time.

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

Mr. BINGAMAN. Mr. President, let me first just commend all my colleagues for their eloquent statements

in support of Solicitor General Elena Kagan's nomination, and I join them in that support of her nomination to be an Associate Justice of the U.S. Supreme Court.

I strongly believe Solicitor General Kagan has the skill set, the intellect, and the experience necessary to be an exceptional Justice. She has a diverse legal background, with a distinguished career in government and academia, and she has served as our Nation's top lawyer before the Court. After reviewing her record, as Senator KLOBUCHAR pointed out, I believe Senator HAGAN also—and others have pointed out in their comments as well—the American Bar Association unanimously voted that she was ''well qualified'' to serve on the Court, which is the highest ranking the American Bar Association bestows.

I have also met with Ms. Kagan and closely followed her confirmation hearings before the Senate Judiciary Committee. She clearly demonstrated that she has the right temperament for this position and that her legal views are well within the mainstream of judicial thought in this country. Ms. Kagan also affirmed her commitment to interpret the law with fidelity and demonstrated that she understands how the decisions of this High Court have a very real impact on the lives and liberties of Americans.

Ms. Kagan's wide range of experience will serve the country well. She has served as a faculty member at the University of Chicago Law School, as a former dean of the Harvard Law School, as a clerk to former Justice Thurgood Marshall, as a White House aide to former President Bill Clinton, and in her current position as Solicitor General of the United States. In her current position as Solicitor General, she has filed approximately 100 briefs and argued six cases before the Supreme Court. Ms. Kagan has demonstrated sound judgment and has exhibited great skill in the cases she has handled before the Supreme Court.

She has been lauded by individuals across the political spectrum for her ability to build consensus and for her respect for those with differing views. For example, she has received support from eight former Solicitors General from both parties, including Kenneth Starr and Ted Olsen. At Harvard she worked to hire a faculty representing diverse political views, including conservative faculty members in order to ensure that students received a broad perspective on the issues they were studying.

While Ms. Kagan has a great deal of legal experience, much has been said about her lack of judicial experience. Although she has not served as a judge, Ms. Kagan is widely respected in the legal community. She will bring needed diversity to the bench with respect to her legal background. It is important to note that about 40 of the 111 previous Supreme Court Justices who have served did not have judicial experience prior to serving on the Supreme Court, including, I would point out, former Chief Justice William Rehnquist.

I strongly believe Ms. Kagan has the qualifications necessary to be an excellent Justice of the Supreme Court. I urge my colleagues to support her nomination.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, we have now been joined by the Senator from Delaware, and we are pleased to have him here as well as we continue our discussion about the fine qualities of Solicitor General Kagan for the job of Justice of the Supreme Court.

Senator CARPER.

Mr. CARPER. I thank the Senator, and I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. Madam President, I rise today in support of Solicitor General Elena Kagan's confirmation to the U.S. Supreme Court. I am confident that in the years to come, she will make proud the President who has nominated her as well as those of us who vote to confirm her.

I would like to begin today, if I may, first by explaining why I am supporting the nomination, and after I have done that I will outline why I believe a number of our Republican colleagues shouldn't just consider supporting that nomination but should support her nomination along with the rest of us.

This is my fourth opportunity to vote on a nomination to the Supreme Court. As do each of my colleagues, I take seriously our constitutional obligation to provide advice and consent to determine whether a President's judicial nominees truly merit a lifetime appointment. I realize a number of considerations are weighed not just by me but by each of us who serve here when making a decision that is as important as this one is for our Nation.

Before coming to the Senate, I was privileged to have served as Governor of Delaware, and in that role I nominated, over the course of 8 years, dozens, maybe scores, of men and women to serve as judges in our State courts. The qualities I sought then in judicial nominees included unimpeachable integrity, a keen intellect, a thorough understanding of the law, sound judicial temperament, a willingness to listen and to consider both sides of an argument, and a strong work ethic. These qualities are also the ones that guide me today as I decide how to vote on the judicial nominees that come before us in the Senate, whether that President is Barack Obama or George W. Bush.

In applying each of these standards to Elena Kagan, it has become clear to me while examining her record that she meets or exceeds all of them. First, if you will, just consider with me—I know others have touched on this, but I will do it again—her life and experience.

As others have reminded us, she graduated summa cum laude from Princeton University. She received a scholarship to pursue her graduate studies at Oxford University, and after that she earned her law degree magna cum laude from Harvard Law School.

Following law school, she clerked for DC Circuit Court and then for U.S. Supreme Court Justice Thurgood Marshall. Starting in 1989, Ms. Kagan spent 2 years in private practice before taking on a position as professor of law at the University of Chicago. Then in 1995, she went to work in the White House and she rose there to the position of Deputy Assistant to the President for Domestic Policy. In 2001, with the change in administrations, Ms. Kagan returned to the study of law as a professor first, and then as Dean of the Harvard Law School. I believe she is the first woman to achieve that.

More recently, in 2009, Elena Kagan was confirmed by the Senate, with the support of seven or eight of our Republican colleagues, to serve as the first female Solicitor General of the United States.

Ms. Kagan is widely recognized as one of our Nation's leading legal minds and has been hailed as a preeminent scholar of administrative law. The American Bar Association has bestowed upon her their highest rating of ''well qualified'' in assessing her record and in evaluating her judicial temperament.

I realize some have criticized Elena Kagan for not having previously served on the bench. I take a different view. As a nominee from outside the judicial monastery, I believe Ms. Kagan's background and experience will actually bring a valuable perspective and a breath of fresh air to the Supreme Court. As my colleagues consider her nomination, I hope they take into account the fact that in our Nation's history—listen to this—more than one-third of our Supreme Court Justices have had no prior experience on the bench, either in Federal Government or outside of Federal Government.

Others have objected to Ms. Kagan's nomination on the grounds that while serving as the dean of the Harvard Law School, she allegedly limited military recruiters access to students. This charge of my opponents on Ms. Kagan's nomination was one I took very seriously as I considered her nomination to serve on our highest Court.

As some of my colleagues know, I attended Ohio State University as a Navy ROTC midshipman and went on to serve 5 years as a naval flight officer during a hot war in Southeast Asia and for another 18 years as a ready reservist until the end of the Cold War. I deeply appreciate all that the military has done for me, and I believe our military recruiters should be allowed to have access to college campuses and to the students there.

Having examined this issue in some detail, I can say with confidence that I believe Elena Kagan honors and reveres the men and women who serve our country in its Armed Forces, as do I. The fact is, military recruiters did continue to have access to students throughout her tenure, and in some years recruitment actually rose rather than diminished.

Last month, I had the privilege of meeting personally with Elena Kagan, as a lot of my colleagues have as well. We spoke about many matters. We spoke about her life, her work, her views of the law. It was a revealing conversation for me and actually quite an encouraging one in no small part because I walked away feeling that Elena Kagan is not just uncommonly bright and a scholar of the law. Perhaps just as important, she has the potential to become, over time, the kind of consensus-builder that the Supreme Court needs at this time in our Nation's history.

Given the plethora of closely decided 5-to-4 decisions emanating from the Supreme Court in recent years, it is clear, at least to me, that they could use another Justice there who has the experience and the ability to help them find common ground and work toward sound, reasonable, commonsense solutions and opinions. Come to think of it, we could use a few more people like that here in the legislative branch of our government and on both sides of the aisle.

Fortunately, among her colleagues and in the legal community, Elena Kagan is known as a consensus builder. Even those who may have a different judicial philosophy than Ms. Kagan nonetheless respect her judgment and her abilities.

One of them is Michael McConnell. He is a constitutional law scholar who was nominated by President George W. Bush to serve as a U.S. circuit court judge on the Tenth Circuit. He had this to say about her:

> Publicly and privately, in her scholarly work and in her arguments on behalf of the United States, Elena Kagan has demonstrated a fidelity to legal principle even when it means crossing her political and ideological allies. I urge you to confirm Elena Kagan to be an Associate Justice of the Supreme Court.

We thank Mr. McConnell for that advice.

It is clear to me, and I believe to many others on both sides of the aisle, that if confirmed, a ''Justice Kagan'' would base her approach to deciding cases solely on the law and our constitution, and not on any ideological agenda or on the politics of a case.

Let me close, if I may, by expressing my appreciation to the handful of Republican Senators who have announced publicly in recent days that they intend to support Ms. Kagan's nomination. I am sure it was not an easy decision. I do believe, however, it is the right decision for our country, and I hope those men and women will be joined by a number of other Republican Senators when the final vote is taken later this week.

Many of us remember when, in 1986, President Reagan nominated William Rehnquist to serve as Chief Justice of the United States, and his subsequent confirmation by the Senate with the support of 16 Democratic Senators. However, not many recall that in 1971, when William Rehnquist was nominated to serve as an Associate Justice on the Court, he had no prior experience on the bench. Even so, in 1971, some 29 Democratic Senators joined their Republican colleagues in supporting his confirmation. As you know, Justice Rehnquist went on to have a long and distinguished career on the Supreme Court.

The fact that Chief Justice Rehnquist's nomination was supported by a large number of Democratic Senators not just once but twice is an important testament to the strength of our democratic process and our ability to work across party lines. I hope we can make a similar statement later this week with the confirmation of Ms. Kagan to the Supreme Court with the support of Senators from both sides of the aisle, including the Senator sitting across this Chamber today from the State of South Carolina who I think sets, in this instance, a particularly good example for us all.

With that, Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Madam President, I think this concludes our very broad discussion about all of the fine qualifications of Elena Kagan for this job and, again, refuting the words of one of our colleagues—unfortunate words—in which he said, I believe, that she doesn't have the gifts and the qualities of mind and the temperament one must have to be a Justice.

Look at the words of so many people across this country, along so many different ideological lines—69 law school deans who wrote about her knowledge of the law and skills in legal analysis as being ''first-rate.'' They say:

> Her writings in constitutional law and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy.

Listen at what the National Association of Women Judges has said:

> We recognize the essential qualifications that a justice of our highest court must have: superior intellectual capacity as well as an intimate knowledge and a deep understanding of constitutional law. It cannot be seriously disputed that General Kagan brings these qualifications with her in abundance.

From the Women's Bar Association:

> Solicitor General Kagan's intellect and legal acumen have been recognized by those across the political spectrum.

Of course, I already read into the RECORD the words of the National District Attorneys Association.

So many people have written in support of Solicitor General Kagan. But I would say that no words meant more to me than the words of our colleague, Senator GRAHAM, who is here across the aisle. He had the courage to stand up and explain why he made the decision to support her nomination.

He made very clear that he didn't agree with every position she had ever taken or would agree with every decision that she would ever make. But he talked about our role as Members of the Senate to not be political arbiters in terms of who the judge should be but to have the role of oversight and to figure out what the qualifications are and does this person meet the qualifications and does the person have the judgment to make decisions in very difficult cases. And, as Senator GRAHAM so eloquently stated that day during the hearing, Solicitor General Kagan—

The PRESIDING OFFICER. The time controlled by the majority has expired.

Ms. KLOBUCHAR. Makes the grade.

With that, I yield to my colleague from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Madam President, I appreciate the kind comments of the Senator from Minnesota. I have enjoyed working with her on the committee and hope to be able to work with her on a lot of different topics, including confirming judges.

My view of Elena Kagan is quite simple. I found her to be a good, decent person; well qualified in terms of her legal background to sit on the Court. The people who know her the best, who worked with her, have nothing but good things to say about her. She is not someone a Republican President would have picked—she is definitely in the liberal camp when it comes to judging—but I think within the mainstream of the left wing of the Court.

The Court has two wings to it. A lot of decisions are—not a lot, some decisions are 5–4. But you know who the conservatives on the Court are and you know who the liberals are. The one thing they have in common is that they are highly qualified, great Americans who happen to view the law a bit differently in terms of philosophy. But they have brought honor to the Court.

Justice Ginsburg is definitely in the left wing of the Court. Justice Scalia is definitely in the right wing of the Court. From what I have been told, they have a deep personal friendship; that Justices Scalia and Ginsburg have become fast friends and admire each other even though they often cancel out each other's vote and they have some real good give and take in their opinions. In that regard I think they represent the best in judging and the best in our democracy, and that is two different philosophies competing on the battlefield of ideas but understanding that neither one of them is the enemy. They have a lot of respect for each other.

What brought me to the conclusion to vote for Solicitor General Kagan? I

believe the advise and consent clause of the Constitution had a very distinct purpose. Under our Constitution, article 2, it allows the President of the United States to appoint Supreme Court Justices and judges to the Federal bench in general. That is an authority and a privilege given to him by the Constitution. You have to earn that by getting elected President.

After having watched Senator MCCAIN literally about kill himself to try to be President, I have a lot of admiration for those who will seek that office. It is very difficult to go through the process of getting nominated and winning the office. I daresay that Senator MCCAIN would indicate it is one of the highlights of his life to be nominated by his party and to go out and fight for the vote of the American people.

Senator Obama was a Member of this body before being elected President. I can only imagine what he went through, going through the primary process, beating some very qualified, high-profile Democrats to get the nomination of his party. When it was all said and done, after about $1 billion and a lot of sweat and probably sleepless nights, he was elected by the people of the United States to be our President. I want to honor elections.

My job, as I see it—and I am just speaking for me—each Senator has to determine what they believe the advise and consent clause requires. From my point of view I will tell you what I think my job is in this process. No. 1, it is not to be a rubberstamp. Why would you even have the Senate involved if the President could pick whomever he or she chose? So there is a collaboration that goes on here. There is a check and balance in the Constitution where we have to advise and consent. So I do not expect myself or any other Senator to feel once the election is over, you have to vote for whomever they pick. You do not. There may be a time when I vote ''no'' to a President Obama nominee.

But my view of things is sort of defined by the Federalist Paper No. 76, Alexander Hamilton, who was one of our great minds of this country's history. He said, ''The Senate should have special and strong reasons for denial of confirmation.''

I think his comment to us is that, yes, you can say no, but you need to have a special and strong reason because the Constitution confers upon the President the right to pick. What would those strong and special reasons be? Whatever you want it to be. That is the fact of politics. Those strong and special reasons can literally be whatever you want it to be as a Senator. But here is what Alexander Hamilton had in mind as to strong and special reasons. He continued:

> To what purpose, then, require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation.

I think that powerful and silent operation is meant to be a firm but not overly political check and balance; not a continuation of the campaign. Because the campaign is a loud experience. It is 50 plus 1, rah-rah-rah, build yourself up, tear your opponent down. So when Alexander Hamilton indicated to the Senate his view of the advise and consent clause, that it would be powerful, though in general a silent operation, I think he is telling us: The campaign is over. Now is the time to govern. So when this nominee comes your way from the person the Constitution confers the ability to pick and choose, you should have in mind a powerful but silent operation.

''It would be an excellent check upon a spirit of favoritism. . . .'' I think that is pretty self-evident, that one of the things we do not want to have with our judiciary is it becomes an award or prize for somebody who helped in the campaign, picking somebody who is close to you personally, related to you, so that the job of Federal judge becomes sort of political patronage. The Senate could be a good check and balance for that. I think that is one of the reasons we are involved in the process, to make sure that once the election is over, the President himself does not continue the campaign. The campaign is over and we have a silent operation in terms of how we deliver our advice and consent. So he is telling the President through the Senate that once the campaign is over, you should not pick someone who will help you politically or return a favor; you should pick someone who will be a good judge.

It ''would tend greatly to prevent the appointment of unfit characters from State prejudice.'' That is another view that Alexander Hamilton had, as to how the Senate should use its advise and consent duties, to make sure that unfit characters do not go on the Court. I can imagine that has probably been used in the past.

''From family connection,'' that one is obviously self-evident. You don't want to pick someone from your family unless there is a good reason to do so. ''[F]rom personal attachment or from a view to popularity.''

When I add up all these things, I am looking at the necessity of their concurrence with a: ''powerful, though, in general, silent operation. It would be an excellent check upon the spirit of favoritism . . . to prevent the appointment of unfit characters . . . from family connection, from personal attachment, or from a view to popularity.''

In other words, we are trying to make sure the President, he or she, picks a good, qualified judge, not some unfit character, some person tied to him or her personally, not someone who would be a popular choice but would be a lousy judge.

When I apply that standard to Elena Kagan, I cannot find anything about her that makes her an unfit character to me. Frankly, what I know about her from listening to her for a couple of days and having people tell me about her is I think she is a very fine person with stellar character.

The letter that moved me the most about Elena Kagan the person, I wish to share with the Senate and read, if I may. This comes from Miguel Estrada. For those of you who may not remember, Miguel Estrada was chosen by President Bush to be on the court of appeals. For a variety of reasons—there is no use retrying the past—he never got a vote by the Senate. He never got out of committee. All I can say from my point of view is, it was one of the great mistakes. I am sure there have been times when Republicans have done the same thing or something like it to a well-qualified Democratic selection. But I happened to be here when Miguel Estrada was chosen by President Bush. So he had a very unpleasant experience when it came to getting confirmed as a judge. But here is what he wrote about Elena Kagan, a Republican conservative lawyer chosen by President Bush to be on the court of appeals, writing for Elena Kagan:

> I write in support of Elena Kagan's confirmation as an Associate Justice of the Supreme Court of the United States. I have known Elena for 27 years. We met as first year law students at Harvard, where we were assigned seats next to each other for our classes. We were later colleagues as editors of the Law Review and as law clerks to different Supreme Court Justices; and we have been friends since.
>
> Elena possesses a formidable intellect, an exemplary temperament, and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments. Elena would also bring to the Court a wealth of experience at the highest level of our Government and of academia, including teaching at the University of Chicago, serving as the Dean of the Harvard Law School and experience at the White House and as the current Solicitor General of the United States. If such a person, who has demonstrated great intellect, high accomplishments and an upright life, is not easily confirmable, I fear we will have reached a point where no capable person will readily accept a nomination for judicial service.
>
> I appreciate that considerations of this type are frequently extolled but rarely honored by one side or the other when the opposing party holds the White House. I was dismayed to watch the confirmation hearings for then-Judge Alito, at the time one of our most distinguished appellate judges, and find that they range from the—

Well, I am not going to read it all.

> . . . one could readily identify the members of the current Senate majority, including several who serve on the Judiciary Committee [and their partisan views].
>
> Lest my endorsement of Elena's nomination erode the support she would see from her own party, I should make it clear that I believe her views on the subjects that are relevant to her pending nomination—including the scope of judicial role, interpretive approaches to the procedure and substantive law, and the balance of powers among the various institutions of government—are as firmly center-left as my own are center-right. If Elena is confirmed, I would expect her rulings to fall well within the mainstream of current legal thought, although on

the side of what is popularly conceived as ''progressive.'' This should come as a surprise to exactly no one: One of the prerogatives of the President under our Constitution is to nominate high federal officers, including judges, who share his (or her) governing philosophies. As has often been said, though rarely by Senators whose party did not control the White House at the time, elections have consequences.

Elena Kagan is an impeccably qualified nominee. Like Louis Brandeis, Felix Frankfurter, Robert Jackson, Byron White, Lewis Powell and William Rehnquist—none of whom arrived at the Court with prior judicial service—she could become one of our great Justices. I strongly urge you to confirm her nomination without delay.

I think that says a lot of Elena Kagan. I think it says a lot about Miguel Estrada. She wrote a letter basically—I asked her to—to tell me what she thought about Miguel Estrada. I will read that in a minute. But at the end of the day, those of us in the Senate have to understand that every branch of government includes human beings and there is a rule that stood the test of time. I didn't make this one up. It was somebody far wiser than I am, somebody far more gifted than I ever hope to be, somebody I put a lot of trust in.

It is called the Golden Rule. ''Do unto others as you would have them do unto you.'' That is probably one of the most powerful statements ever made. It is divine in its orientation, and it is probably something that would serve us all well if we thought about it at moments such as this.

I am going to vote for Elena Kagan because I believe constitutionally she meets the test the Framers envisioned for someone to serve on the Court. I don't think the Framers ever envisioned LINDSEY GRAHAM from South Carolina voting no because President Obama picked someone who is clearly different than I would have chosen. Because if that were the case, the campaign never ended. It would undercut the President's ability to pick someone of like philosophy. My job is to make sure the person he chose is qualified, of fit character, not chosen for favoritism or close connection but chosen based on merit.

I have no problem with Elena Kagan as a person. I have no problem with her academic background. I have no problem with her experience as a lawyer. Even though she has worked for Justices whom I would not have ruled like, even though she has taken up political causes I oppose, that is part of democracy.

Her time as Solicitor General, where she represents the United States before the Supreme Court, was reassuring to me. She has had frontline experience in the war on terror. She has argued before the Supreme Court that terrorist suspects should be viewed under the law of war. She supports the idea that someone who joins al-Qaida has not committed a crime. They have taken up arms against the United States, and they can be held indefinitely without trial if, under proper procedures, they have been found to be part of the enemy force. She understands detainees held at Bagram Airfield in Afghanistan should not be subject to judicial review in the United States because they are prisoners of war in an active theater of combat. If she gets on the Court—and I am certain she will—she will be able to bring to the Court some frontline, real-world experience in the war on terror. She has had an opportunity to represent the United States before the Supreme Court, arguing that this Nation is at war, and the people who attacked us on 9/11 and who continue to join al-Qaida are not some common criminals but people subject to the law of armed conflict. Her testimony when she was confirmed as Solicitor General was reassuring to me that she understood that very important concept.

How she rules, I don't know. I expect she will be more similar to Justice Stevens in the way she decides cases. The person she is replacing is one of the giants of the Court from the progressive side. I expect she will follow his lead most of the time. I do believe she is an independent-minded person. When it comes to war on terror issues, she will be a valuable member of the Court and may provide a perspective other judges would not possess. That is my hope.

I don't vote for her expecting her to do anything other than what she thinks is right, ruling with the Court most of the time in a way a Republican nominee would not have ruled. It gets back to my point of a minute ago. If I can't vote for her, then how can I ask someone on the other side to vote for that conservative lawyer, maybe judge, who has lived their life on the conservative side of the aisle, fighting for conservative causes, fighting for the prolife movement, standing for the conservative causes I believe in, a strong advocate of a second amendment right for every American? That day will come. I hope sooner. But one day that day will come. What I hope we can do from this experience is remember that when that day does come, the Constitution has not changed at all. The only thing changed was the American people chose a conservative Republican President. I ask my colleagues to honor that choice, when that conservative President, whoever he or she may be, picks someone whom my colleagues on the other side would not have chosen. But that has been the way it has been for a couple hundred years now.

Justice Ginsburg, the ACLU general counsel, got 96 votes. Justice Scalia got 96 or 97 votes. Senator Thurmond, my predecessor, voted for Justice Ginsburg. There is no way on God's green Earth Strom Thurmond would have voted for Justice Ginsburg if he believed his job was to pick the nominee. There is no way many of my colleagues on the other side would have ever voted for Justice Scalia if they thought it was their job or they had the ability to make a selection in line with their philosophy. No one could have been more polar opposite than Ginsburg and Scalia. But not that long ago, in the 1990s, this body, without a whole lot of fussing and fighting, was able to put on the Court two people who could not be more different but chose to be good friends.

The history of confirming nominees to the Supreme Court is being lost. Madam President, 73 of the 123 Justices who served on the Supreme Court were confirmed without even having a rollcall vote. Something is going on. It is on the left, and it is on the right. I hope this body will understand one thing: The judiciary is the most fragile branch of government. They can't go on cable TV and argue with us as to why they are qualified. They cannot send out mailings advocating their positions. They have no army. All they have is the force of the Constitution, the respect of the other branches and, hopefully, the support of the American people.

Having gone to Iraq and Afghanistan many times, the one thing I can tell my colleagues that is missing in most countries that are having difficult times is the rule of law. What is it? To me, the rule of law is a simple but powerful concept. If you ever find yourself in a courtroom or before a magistrate or a judge, you will be judged based not on what tribe you came from. You will be judged based on what you did, not who you are.

The one thing we don't want to lose in this country is an independent judiciary. We are putting the men and women who are willing to serve in these jobs sometimes through hell. Judge Alito was poorly treated. I am very proud of what Senator SESSIONS was able to do as ranking member. We had a good, spirited contest with Sotomayor and Kagan. I thought the minority performed their role in an admirable fashion. I appreciate what Senator LEAHY did working with Senator SESSIONS. I thought these two hearings were conducted in the best traditions of the Senate.

The votes will be in soon. She is going to get a handful of votes on our side. I have chosen to be one of those handful. From a conservative point of view, there are 100 things one can find at fault in terms of philosophy and judicial viewpoint with Elena Kagan. I have chosen not to go down that road. I have chosen to go down a different path, a path that was cleared and marked for me long before I got here, a path that has a very strong lineage, a path that I believe leads back to the Constitution, where the advice and consent clause is used in a way not to extend the election that is now over but as a reasonable, powerful but silent check on a President who chose a judge for all the wrong reasons. Choosing a liberal lawyer from a President who campaigned and governs from the left is not a wrong reason. Choosing a conservative lawyer or judge once you campaign for the job running right of center, in my view, is not the wrong

reason. The wrong reason would be if the person you chose was not worthy of the job, did not have the background or the moral character to administer justice. I cannot find fault with Elena Kagan using that standard.

I will vote for her. I will say to anybody in South Carolina and throughout the country who is listening: She is not someone I would have chosen, but it is not my job to choose. It is President's Obama's job. He earned that right. I have no problem with Elena Kagan as a person. I think she will do a good job, consistent with her judicial philosophy. I hope and pray that the body over time will get back to the way we used to do business. If we don't watch it, we are going to wake one day, and we will politicize the judiciary to the point that good men and women, such as Sam Alito, Justice Roberts, and Elena Kagan, will not want to come before this body and be a judge. If that ever happened, it would be a great loss to this country.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SESSIONS. 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. SESSIONS. Madam President, there has been some suggestion in the course of the discussion of Elena Kagan's nomination that her decision to bar the military from access to Harvard's recruiting office was a principled one and had no impact on the lives of Harvard law students in the military. I think that is not a fair way to describe it. Her decision relegated the military to second-class status at Harvard Law School. Military recruiters were, as she indicated in one statement, ''alienating'' to some students and were not welcome, and students who made public their interest in the military service otherwise might be ostracized in that climate. But she wanted the student veterans to quietly help the classmates who might be interested in military service to overcome the obstacles there.

Well, let me just say it this way: Ms. Kagan protested against don't ask, don't tell in reality by obstructing the mission of the junior military officers who had at that point in their career been assigned the duty of recruitment at law schools around the country, recruiting JAG officers for the military. But these junior officers had no control whatsoever over this law. We often refer to it as a military policy, but it is not a policy, it is law passed by the Congress of the United States.

So her effort to make a political point at the expense of the U.S. military and in defiance of clear Federal law passed by this Congress calls into question, really, her willingness to be governed by that law because she was punishing the military, really demeaning them, not allowing them equal access like any other law firm, presumably, in America and demeaning them in that fashion. So I really think this issue is not a little one. It is a very big one. It says something very significant about her ability and her objectivity. So for that reason, I think it calls into question her ability to serve on the bench as an objective person in justice.

I see the majority leader. He just appears out of the blue. I know he is busy, so I will yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I want my friend from Alabama to know that when I see him on the floor, I do not run to the floor. It just happens to work out a lot of times. So I appreciate his yielding.

I am going to send a cloture motion to the desk dealing with the Kagan nomination. I want the ranking member to understand that I have spoken to the Republican leader.

Could I have the attention of the Senator from Alabama? I want the Senator from Alabama to hear this. I am filing a cloture motion on the Kagan nomination. I have spoken to the Republican leader. This is in no way to cut off debate. We have had 20 Senators who have spoken today. I want Senators to have the ability to speak in whatever means they feel appropriate, but I just do not want a renegade Senator to stop us from being able to complete this nomination.

Mr. SESSIONS. If the Senator will yield?

Mr. REID. I will just say this: If it comes time for the cloture vote and more time is needed, everyone over here will be happy to make sure people have ample time. We will postpone the cloture vote as long as necessary to make sure people will have the opportunity to speak.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I will just say to the leader, I am a bit hurt. I do not think this is a necessary step, that the leader has indicated we will move forward in maybe 3 days and finish this debate. And to file a cloture motion—if it in any way suggests there is a deliberate attempt on this side to block an up-or-down vote, I will just say I have tried to make clear that I have a high standard before I would attempt to block an up-or-down vote, and I have not suggested and I think very few on this side have suggested—a vote at the time that is right should go forward. I would expect that it would.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I stated on the floor earlier today that I think the conduct of the chairman and ranking member on this nomination has been exemplary. I said that already. But if my friend from Alabama would listen just for a minute, I have so many things I am trying to work through procedurally so we can leave here at a reasonable time this week. I just do not want someone who gets mad because I have done something they do not like saying: I am not going to let you have a vote on this judge until I get what I want.

I want to make sure everyone who wants to has the opportunity to speak on Kagan. No one on the Republican side has even suggested a filibuster. OK. And I understand that. But this is to make sure one Senator in this body—not on the nomination of Kagan but on anything—they get their dander up a little bit, and he or she can cause the whole Senate to come to a standstill.

So I repeat, if there is more time needed, there will be ample time. When the time for voting comes up, I will give whatever time is necessary. What I have been trying to get—and I am sure it is too early to have done that—is a time certain to vote on Elena Kagan. But I think my friends on the other side of the aisle have told me it is too early to do that. But I say to my friend, there is no direction to prevent anyone from speaking on this nomination for however long they want.

Mr. SESSIONS. Well, I just do not want somebody to come back and say in the future that we had to file cloture to get a vote on this nomination, and you filibustered this nomination. I feel pretty strongly about that and am a bit uneasy that the leader has felt he needed to do this.

I thank the Chair.

Mr. REID. I will just repeat what I said before. Any one Senator, as we have learned—those of us who have served in the Senate and those who have not been around here a long time—any one Senator can really throw things into a turmoil, on your side or on my side. And the purpose of this is to make sure we finish the Kagan nomination before we leave.

Mr. MCCONNELL. Will the majority leader yield for an observation?

Mr. REID. I am happy to.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. We had this conversation earlier today on the telephone. I think filing a cloture motion is completely unnecessary and—

Mr. REID. Let me just interrupt my friend. If my two friends feel this way—my concern is that we get locked into the 30-hour time. But I guess I could still do it on Thursday. So I know everyone——

Mr. MCCONNELL. I cannot imagine what incentive anyone would have to create the scenario under which the majority leader is concerned with.

Mr. REID. The Republican leader and I know the many things we are trying to complete in the next few days. And because I do not do something, as I have had happen before—that somebody on either side of the aisle gets disturbed because of something I did or did not do—they say: I am not going to let you have a vote on Kagan now. That could be on my side or on your side.

So here is what I will do: I have not filed this motion yet. Based on the statement of my friend from Alabama and my friend the Republican leader, I will just hold this in abeyance. I just know what is coming tomorrow. If we get stuck in a 30-hour time period, realistically, it would take consent to even allow the debate to go forward on Kagan. I would certainly not stand in the way of that. And during the time of the 30 hours pending, as I understand the rules, I cannot file another cloture motion.

But recognizing that everyone wants to operate in the best way, what I would do is ask my two friends here, the ranking member of the Judiciary Committee and my friend the Republican leader—would the Republican leader consider allowing, if we get stuck in some procedural thing tomorrow, which is Wednesday—we have to complete this by Friday, I would think—would my friend consider a unanimous consent request to allow me to file tomorrow? Because if we are postcloture with 30 hours, I cannot file cloture tomorrow.

Mr. MCCONNELL. Yes. I would say to my friend the majority leader, I would be willing to consider that. The point I am trying to make here and the Senator from Alabama has tried to make is we are unaware of anybody on our side who does not expect a vote on Kagan on Thursday. As you and I have discussed on and off the floor, the thought was that we would have the Kagan vote. That would be the last vote prior to the August recess. That is the scenario under which we have been operating, and I am perplexed as to why my friend the majority leader feels this is a step he needs to take.

Mr. REID. The only thing I cannot do is guarantee that will be the last vote. There may be something else that comes up. But I will do my best to cooperate, as I know you will. So I will see if this is necessary some other time.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Madam President, I appreciate the majority leader withholding. We can continue to discuss this, even tonight if he would like, the two of us, privately.

Mr. REID. We will wait until the vote takes place tomorrow and find out what, if anything, we need to do.

Mr. MCCONNELL. Fair enough.

Mr. REID. I am not filing the motion at this time, and I appreciate very much the sincerity of my friend from Alabama, as usual, and, of course, my friend from Kentucky. He and I have worked together on a lot of things over the years, and I appreciate him being so candid today.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Madam President, this is the second time since I have become a U.S. Senator that I have been asked to provide the President advice and consent on a Supreme Court nominee. Last year, almost to the day, I spoke on the Senate floor on the nomination of Judge Sonia Sotomayor to be on the Supreme Court. So I come to the floor today to speak on the nomination of Solicitor General Elena Kagan.

During the debate in the Senate on Judge Sotomayor's nomination, I laid out the three criteria I use in evaluating an individual to fulfill the responsibilities of filling a vacancy on the Supreme Court. First, of course, we want to select the best candidate. Second, the Justice must be impartial and allow the facts and the Constitution to speak. And, third, a Justice has a responsibility to apply the law, not to write the law. Those are the criteria I have used in evaluating Elena Kagan's nomination.

I met with Solicitor General Kagan following her appearance before the Senate Judiciary Committee. She is personable and she is bright. Her career as an attorney has been exceptional. Although she has limited trial experience, she does understand the important role the judiciary plays in America. It is the second criteria that causes me concern: Solicitor General Kagan's ability to remain impartial. In particular, her actions and judgment as dean of the Harvard Law School as it related to military recruitment is, to me, a serious problem.

Military recruitment on college campuses is protected by what is commonly referred to as the Solomon Amendment. The Solomon Amendment is legislation that Congress passed in the mid-1990s. The Solomon Amendment directs that institutions of higher learning shall not be eligible for Federal funding if they refuse to follow Federal law. Funding shall be denied—denied—if it is determined that the school, as a policy or a practice, either prohibits or, in effect, prevents ROTC access to campus or military recruiting on campus.

In the late 1970s, Harvard Law School adopted a policy that barred organizations that discriminated against any group from recruiting on campuses. The ban applied to military recruiters. Other universities adopted similar policies. But following the passage of the Solomon Amendment, many institutions, including Harvard, adjusted their policies.

Ms. Kagan became dean of Harvard Law School in the year 2003. In 2003, America was fighting two wars. American men and women were voluntarily joining the military to serve and to defend our country. At a time when military recruiters were being allowed on campuses across the country, Dean Kagan was looking for ways to make it difficult for military recruiters to do their job at Harvard Law School. She wrote at the time:

> I abhor the military's discriminatory recruitment policy. . . . This is a profound wrong—a moral injustice of the first order.

Well, eventually, a legal challenge to the Solomon Amendment was initiated. On two occasions, Dean Kagan signed court briefs opposing the Solomon Amendment. In 2004, when a lower court rejected the Solomon Amendment, Dean Kagan immediately denied military recruiters the same access afforded to other recruiters on campus. She took this action even though the court making the ruling did not have jurisdiction over Harvard Law School. Harvard Law School is located in the First Circuit. The court that made the ruling was the Third Circuit.

The Pentagon notified Harvard that the restrictions on military recruiters violated the law. In 2006, the U.S. Supreme Court ruled on the challenge to the Solomon Amendment. The U.S. Supreme Court rejected the lawsuit as well as the arguments that were put forth in the brief signed by Dean Kagan, and it did so unanimously. All of the Justices on the Supreme Court, both conservative and liberal—all of them—agreed the Solomon Amendment did not violate the rights of law schools. The law was unanimously upheld, and that is an extremely rare occurrence from a Court usually divided.

For America's judicial system to work, judges must always remain impartial. I do believe that as dean of one of America's most prestigious law schools, Solicitor General Kagan allowed her personal biases to interfere with her judgment. Solicitor General Kagan had very strong opinions about military policies, including President Clinton's don't ask, don't tell policy. Like every American, she is entitled to her personal beliefs and the right to express those views. As the dean of Harvard Law School, she is also responsible to know the law and to not disregard it.

So, then, how can one explain the actions of Elena Kagan while dean of the Harvard Law School? No. 1, she didn't know the law; No. 2, she didn't understand the law; or No. 3, she simply chose to ignore the law because of her strongly held personal beliefs.

Many Americans may be able to get away with these explanations. Such explanations don't work for an individual seeking to become a Justice on the U.S. Supreme Court.

Elena Kagan has been nominated for a lifetime appointment to the Supreme Court. If confirmed, she will be entrusted to make decisions that will impact America for a long time. The decisions she will be asked to make on this Court must be based on the law not influenced by personal experiences or personal convictions.

In the case involving the Solomon Amendment, Dean Kagan failed to meet that standard. I believe Dean Kagan knew the law. I have no doubt she understood the law and wanted to find ways to get around the law.

I will not be supporting Solicitor General Kagan's nomination to the Supreme Court. I believe she allowed her personal beliefs to guide her. As a private citizen, that may be acceptable.

As a member of the U.S. Supreme Court, it is not.

Thank you, Mr. President. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEVIN. 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. LEVIN. Mr. President, I wish to add my support to the many voices calling for the confirmation of Solicitor General Elena Kagan to the position of Associate Justice of the Supreme Court.

At a time when the discussion of our legal system is so often dominated by ideological labels, Elena Kagan would bring years of practical, pragmatic experience to our highest Court. She is extraordinarily well qualified and will bring a valuable new perspective to the Court.

The highlights of Solicitor General Kagan's career are well known. Most recently, in 2009, she was the first woman to be nominated by a President and confirmed by the Senate to serve as Solicitor General of the United States. In this position in which she represents the interests of the U.S. Government before the Supreme Court, she has received numerous accolades from a broad range of observers. For example, Professor Michael McConnell, director of the Constitutional Law Center at Stanford Law School and former circuit court judge nominated by George W. Bush, in urging her confirmation said the following:

> Publicly and privately, in her scholarly work and in her arguments on behalf of the United States, Elena Kagan has demonstrated a fidelity to legal principle even when it means crossing her political and ideological allies.

Miguel Estrada, Assistant Solicitor General in the George H.W. Bush administration, said Solicitor General Kagan:

> . . . possesses a formidable intellect, an exemplary temperament and a rare ability to disagree with others without being disagreeable. She is calm under fire and mature and deliberate in her judgments . . . If [she] is confirmed, I would expect her rulings to fall well within the mainstream of current legal thought. . . .

Ten former Solicitors General, representing both parties, have praised her ''breadth of experience and a history of great accomplishment in the law'' and said further that her ''most recent experience as Solicitor General will serve her well as she wrestles with the difficult questions that come before the Court.''

Among those former Solicitors General were Kenneth Starr and Drew S. Days.

In 2003, Elena Kagan was named dean of the Harvard Law School, the first woman to hold that title. Throughout her distinguished career, she has shown a remarkable knack for reaching out to people across the ideological spectrum. As Harvard Law School's dean, she broadened the school's diversity of legal points of view, strengthened the academic program, and improved quality of life for students and faculty alike.

Elena Kagan will bring a different perspective to the Court, and we should welcome that. Justice Antonin Scalia put it this way:

> Currently, there is nobody on the Court who has not served as a judge—indeed, as a Federal judge—all nine of us. I am happy to see that this latest nominee is not a Federal judge—and not a judge at all.

Elena Kagan's sense of fairness, problem-solving ability, and balance is illustrated by one of the episodes in her career that some have inaccurately criticized her for. During her time as dean of Harvard Law School, that school, similar to many around the country, had a policy to not use the campus to promote discriminatory activities, such as don't ask, don't tell.

Some have sought to portray Elena Kagan's actions throughout this episode as antimilitary. I find nothing in her words or actions that constitutes hostility to the military. Quite the opposite. But don't take my word for it. Take the words of former students of hers—for instance, one who when he received his promotion to captain in the Massachusetts National Guard asked Elena Kagan to pin on his captain's bars at his promotion ceremony—hardly an honor for a soldier to bestow on someone who is antimilitary.

CPT Robert Merrill, who wrote an op-ed in the Washington Post, put it this way:

> She treated the veterans at Harvard like VIPs, and she was a fervent advocate of our veterans association. She was decidedly against ''don't ask, don't tell,'' but that never affected her treatment of those who had served.

Listen to 1LT David Tressler, who wrote:

> During the brief period when recruiters were not given access to students officially through the law school's Office of Career Services, they still had access to students on campus through other means . . . Kagan's positions on the issue were not antimilitary and did not discriminate against members or potential recruiters of the military. . . . She always expressed her support for those who serve in the military and encouraged students to consider military service.

Finally, you can take the word of veterans who attended Harvard Law School who said that ''Elena Kagan has created an environment that is highly supportive of students who have served in the military.''

Elena Kagan is smart, she is experienced, she is learned, and she is fair. She has the support of a host of organizations, a broad cross-section of organizations, including the National District Attorneys Association, as well as a broad range of prominent scholars. She will make an excellent Justice of the Supreme Court. I hope she is overwhelmingly confirmed.

Mrs. MURRAY. Mr. President, I am proud to support the nomination of Solicitor General Elena Kagan as the next Associate Justice of the U.S. Supreme Court. The Senate has few responsibilities more important than our constitutional obligation to advise and consent on the President's Supreme Court nominees. Supreme Court Justices are appointed for life, and the decisions they make affect the lives and livelihoods of every single family across the country. From the laws governing the role of corporations and special interests in our electoral process, to the rights of women over their own reproductive health—we have seen clearly over the years the impact of this Nation's highest court.

So I am very glad that President Obama nominated Elena Kagan to fill this critical position. I met with Solicitor General Kagan and talked to her about how she envisioned her role on the Court. I asked her about her judicial philosophy, and what she felt the Court's role was in protecting ordinary Americans. I followed her testimony before the Senate Judiciary Committee. I was extremely impressed with what she had to say. Elena Kagan has proven herself to be someone who understands the importance of a fair and independent approach to rendering justice. She is committed to making sure the voices of families across the country are represented in the chambers of the Supreme Court. And she possesses an evenhanded view of our justice system that gives me every assurance that any individual or group from Washington State could stand before her and receive fair treatment.

Solicitor General Kagan also has a strong legal background and is without a doubt a highly qualified choice for the Supreme Court. Following her graduation from Harvard Law School she served as a law clerk for Judge Abner Mikva on the U.S Court of Appeals, before moving on to clerk for Supreme Court Justice Thurgood Marshall. After spending some time in private practice, Elena Kagan went back into public service to work for President Clinton on the Domestic Policy Council. She then went back to Harvard Law School to teach and ultimately became the first woman to serve as dean of the school, where she cemented her reputation as a fair-minded leader who reaches out to all sides and builds consensus. When President Obama was elected he called Elena Kagan back into public service to serve as Solicitor General. In this new role as the so-called 10th Justice, she argued before the Court on a broad range of issues, including a vigorous defense of the government's right to limit the influence of corporations and special interests in the electoral process.

When I hear some of my colleagues on the other side of the aisle say that Elena Kagan lacks the experience to sit on the Supreme Court because she has never been a judge, I find that a little

hard to believe. Forty-one Justices have served on the Nation's highest court without having any prior judicial experience. Democrats and Republicans alike have expressed the notion that prior judicial experience is not a prerequisite for serving on the Supreme Court. In fact, for most of the Court's history there was a diversity of career experiences represented on the bench. Most recently, Chief Justice Rehnquist, who never served as a judge before he was nominated to the highest court. Neither did Justice Powell or Justice White. Nor did Justices Black, Warren, Jackson, or Marshall. So I find it interesting that the standard was changed with this nomination.

Elena Kagan is clearly qualified, and she is going to make an outstanding Supreme Court Justice. Her nomination is also another step forward toward making sure that we have a Supreme Court that is reflective of the country whose laws it safeguards. We are now on the verge of having the most women to serve together on the court at any one time. While we still have work to do to achieve a court that is truly representative of the full diversity of American experiences, I am proud that we are taking this strong step forward toward that goal.

After meeting with Solicitor General Kagan, hearing her testimony, and examining her record, I am confident that she has the judgment and impartiality to serve our Nation honorably on the Supreme Court. She is thoughtful and fairminded in her approach to some of the most pressing legal issues we face as a nation. She understands the struggles working families face and the role of the Supreme Court in protecting them. And she is committed to protecting the rights and liberties of all Americans.

I am proud to represent families from my home State of Washington and I am proud to join with my Democratic and Republican colleagues to cast my vote to confirm Elena Kagan as the next Associate Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. WHITEHOUSE. 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. WHITEHOUSE. Mr. President, I have come to the floor to speak for a few moments about the Kagan nomination, and I believe we have about 20 minutes of time on our side. If somebody wishes to come and speak, I would gladly yield the floor, since I have had the chance to speak on her nomination as a member of the Judiciary Committee. But in the absence of somebody who has not had that chance, I wanted to go ahead and say a few words because I have been listening off and on throughout the day to the debate that has taken place on the Senate floor regarding her nomination and I have heard over and over concerns expressed—particularly from the other side of the aisle—about this terrible spectre of judicial activism, the judicial activism that looms over the Court and looms over the Kagan nomination.

I know it is a familiar tune from the other side. I think most of them could sing it in their sleep, frankly. But if you actually look at where the activism is coming from, the surprising conclusion that I think objective people would have no choice but to reach is that it is the rightwing of the Supreme Court—the rightwing; the Roberts wing of the Court—that is in fact engaged in all of the activism.

I think to a certain extent activism is a term of general criticism and that it applies to decisions you don't like. So if it is a decision that goes a way you don't like, it is an activist decision. If it is a decision that goes your way, no matter how much it changes the law, then that is not activism because I agree with it. So I think the discussion about activism is a little bit flavored by the question of point of view.

Trying to set that point of view question aside, I thought a bit about what might the objective indicators of an activist Court—or in our case an activist bare majority on the Court—look like. What would the telltales be that you had an activist Court doing its thing? Well, I think there are a few, and they seem to be ones that are actually pretty germane to this activist bloc on the Supreme Court.

For instance, if you were an activist Court, or an activist bloc on the Court, you would issue a lot of 5-to-4 decisions, and you would issue 5-to-4 decisions in major cases. The reason you would do that is because the Court is constantly presented with the choice to reach far with a bare majority or dial its aspirations back and achieve a broader consensus on the Court. So every decision presents, to one degree or another, this choice. When you see recurring 5-to-4 decisions, you see a majority of five that would appear to want to go to a particular place, even if they can't bring the other four judges with them, and who have deliberately chosen not to write a narrower decision, a more modest decision, a more conservative—small ''c''—decision that could have attracted six or seven or eight, or even perhaps all nine members of the Court.

That is a flag that would fly over an activist Court—a penchant for 5-to-4 decisions. Sure enough, the Roberts Court is notorious for 5-to-4 decisions, particularly in major cases, and particularly in cases that change the law—that change the interpretation of the Constitution. So there is one flag, and they seem to be flying that warning flag right now.

If you were an activist Court, you would probably tend to break the informal rules of appellate decisionmaking. Because the rules might constrain you from getting where you want to go, and they would be a nuisance because you had a purpose—you had a place you wanted to get with your decision, and so that the rules would be less of a hindrance for you, because you would want to get beyond them, you would set them aside.

One of the dangers of the Supreme Court is that it is the court of final appeal. They have only their own self-restraint that prevents them from going anywhere. They stand above the checks and balances of our government in that respect. So these rules the Court tends to impose on itself to keep itself within proper bounds are important rules.

One of them is that appellate courts do not engage in factfinding. It is not their province. Factfinding is done by juries and it is done by trial judges. Those facts are established at the trial court level. Once you get up above that and into the appellate courts you should be looking just at questions of law. The courts should not be engaging in factfinding at those upper levels, certainly not at the Supreme Court level. The exception to that principle is where the fact is so obvious that the Court can take what they call judicial notice of it. The Court can take judicial notice that San Francisco is west of Denver. It is an indisputable fact. It is no big deal. But other than that, factfinding is discouraged. So another little telltale would be is where the Court is running over those principles that are principles of self-restraint.

Sure enough, you see the Roberts Court doing just that. Indeed, in one of its biggest leaps in which it knocked out enormous amounts of precedent, in which it knocked out enormous amounts of legislative practice and made a huge doctrinal shift, was the case of Citizens United. In that case, the Court made a finding of fact. It made a finding of fact that was critical to getting where it wanted to go in that decision. The finding of fact was the following—the finding of fact was that corporate money, the independent expenditure of corporate money in elections, cannot contribute to the corruption of those elections. Corporate money, independently spent in an American election, cannot possibly tend to corrupt that election.

It is an interesting finding of fact because I think, as anybody who has been through a contested election would understand, it is a finding of fact that is in fact wrong. It is untrue. Yet they made it as a finding of fact. It is also a finding of fact that ran contrary to the vast legislative record that had been built up in Congress on this question when it had come up in previous matters before the Court. But because of the peculiar manner in which they got to this question in Citizens United—it was not a question presented by the parties; they added the question themselves, the Court did, and asked the parties to brief it in, so there had not been a record on this.

They put themselves in a position where they could ignore the previous record of fact and then they created their own finding of fact notwithstanding that findings of fact are not something an appellate court is supposed to do, and in doing so they found a fact that was in fact not true. It is a false claim to assert that. It is not a fact.

When you look at that, another flag goes up. That is the kind of thing an activist Court would be doing. They would be trespassing over the self-imposed rules of judicial restraint when necessary to get to the point they wish to achieve. Again, it was 5–4, so you have a ''two-fer'' on that decision.

If you are an activist Court, you would probably want to keep doing what you are doing so you would start advancing theories that allowed you to look at the precedents of the Court, the history of its decisions, and selectively knock down precedent you did not like. Nothing could give a Court more power and more room for activism than to be free of the constraint of precedent, of the previous decisions of the Court.

The only way you can get yourself free of precedent—because it is there. The previous courts made those decisions. It is in the records. You go to the United States Supreme Court Reporter and you can look them up. So what you have to do is you have to knock it down if you do not like it. In order to do that, if that was your intention, you would want to come up with a theory that allowed you to do that. Sure enough, in Citizens United, in his concurring opinion, the Chief Justice of the United States did that. He came up with a theory that says if a precedent is hotly contested, then over time it clearly will be deemed not as valid as other precedent and ultimately it can be replaced with precedent that is not hotly contested.

Who gets to decide on the Supreme Court whether a precedent is hotly contested? Obviously, the Justices themselves. So you can create a self-fulfilling prophecy in which Chief Justice Roberts and his bloc of four other conservative voters who make up the group of five that is always steering the Court to the right, can hotly contest any precedent they please. They can hotly contest it, and hotly contest it, until they undermine it more and more and finally they knock it down. Despite all the things they said about respect for precedent and judicial modesty when they went through their hearings before the Senate, what they have actually done is create an analytical tool, a device for selectively undermining precedent they do not like, hotly contesting it, disabling it, and taking it out. They can reshape the precedent of the Court to their liking using this doctrine.

There is another flag that goes up. Why would you create a doctrine such as that, that allows you to selectively disrespect, hotly contest, and knock out the precedent of the Courts past if you did not have an intention to try to shift the precedent to support a particular direction? If you are an activist Court, you would give Congress very little deference. And this is a Court that gives Congress very little deference. Jeffrey Toobin, who writes on the Supreme Court frequently, in an article entitled ''No More Mr. Nice Guy, The Supreme Court's Stealth Hard-Liner,'' an article about Chief Justice Roberts, back in May of a year ago—so this is a little bit dated, May 25, 2009—said that:

In every major case since he became the Nation's seventeenth Chief Justice, Roberts has sided with the prosecution over the defendant, the State over the condemned, the executive branch over legislative, and the corporate defendant over the individual plaintiff. Even more than Justice Scalia has embodied judicial conservatism during a generation of service on the Supreme Court, Roberts has served the interests, and reflected the values, of the contemporary Republican Party.

''Served the interests and reflected the values of the contemporary Republican Party''—by, in every major case, siding with the executive branch over the legislative.

That is just one piece of it. The other is the disrespect for laws that have been passed by Congress and their intent. Lilly Ledbetter is the perfect case. Congress wanted to protect women from discrimination in the workplace, on what they are paid. Rather than read the statute to protect Lilly Ledbetter's right to a judgment, they came down with a finding that for so long as the company was successfully able to prevent her from finding out that she had been discriminated against, they were able to get away with it. That is not a finding this body ever would have accepted. But it was what the Court came down with. And it gave Congress no deference—again, a tradition in these Roberts Court decisions. Why would you want to defer to Congress if you have a point of view that you want to bring to the Court? You wouldn't want Congress's point of view involved, you would want your point of view, and therefore deferring to Congress would not be part of your goal.

So the lack of deference, a striking pattern in the Roberts Court, is again consistent with what you would expect from an activist Court. Most of all, if you were an activist Court, a pattern would begin to emerge to those decisions as the Court issued them, particularly those 5–4 decisions. On the Roberts Court, one pattern is striking, the clear pattern of corporate victories at the Roberts Court. It reaches across many fields—across arbitration, antitrust, employment discrimination, campaign finance, legal pleading standards, and many others. Over and over on this current Supreme Court, the Roberts bloc guiding it has consistently, repeatedly rewritten our law in the favor of corporations versus ordinary Americans. That is one of the reasons why Jeffrey Toobin, in his article, was able to say:

In every major case since he became the nation's seventeenth Chief Justice, Roberts has sided with the corporate defendant over the individual plaintiff.

Again, that was only effective May 25 of 2009, so it is a dated statistic. But certainly as of May 25 that was the record when corporations came before this Court.

A recent article—not May 25 of 2009; this one is July 24, 2010—was written by Adam Liptak. The headline was ''Court Under Roberts Has Become Most Conservative in Decades.'' It was published in the New York Times. Here are some of the findings:

In the 5 years [of the Roberts Court], the court not only moved to the right but also became the most conservative one in living memory, based on analysis of four sets of political science data.

The ideological direction of the court's activism has undergone a marked change toward conservative results.

Another quote from the article.

The first term of the Roberts court was a sharp jolt to the right.

Another quote from the article.

[F]ive years of data are now available, and they point almost uniformly in one direction: to the right.

That was another quote from the article.

A more human reaction was of Justice Sandra Day O'Connor:

''Gosh,'' Justice Sandra Day O'Connor said in the law school forum in January a few days after the Supreme Court undid one of her major achievements by reversing a decision on campaign spending limits. ''I step away for a couple of years and there's no telling what's going to happen.''

That was the reaction of Sandra Day O'Connor, a Republican appointee.

They turn things very quickly when they have the chance.

In 2000, the Court struck down a Nebraska law banning an abortion procedure by vote of 5 to 4, with Justice O'Connor in the majority—

making it a 5-to-4 striking down of that statute.

Seven years later, the court upheld a similar federal law, the Partial-Birth Abortion Act, by the same vote. ''The key to the case was not in the difference in wording between the Federal law and the Nebraska act,'' Erwin Chemerinsky wrote in 2007 in The Green Bag, a law journal.'' It was Justice Alito having replaced Justice O'Connor.

A new person on the Court, almost identical set of facts, complete reversion of decision, 5–4 to 5–4.

Similarly, in 2003, Justice O'Connor wrote the majority opinion in a 5–4 opinion to allow public universities to take account of race in university admissions decisions. A month before her retirement in 2006, a similar decision came up, and because that decision was there on the books, that opinion, the Court refused to hear a case challenging the use of race to achieve integration in public schools.

Almost as soon as she left, the article says, the Court reversed course. A 2007 decision limited the use of race for such a purpose, also on a 5–4 vote. So I suppose you could add another flag to

the list of signs of an activist Court and that would be that they change very recent decisions as soon as the majority changes so they control the votes, the way we might here in the legislature. It is very appropriate in the Senate when the majority shifts.

I see the distinguished ranking member of the Finance Committee. If he were to be the chairman of the Finance Committee, I am sure the focus of the Finance Committee would change from that under Democratic leadership, and that is part of majority control, but it is not supposed to be that way on the Supreme Court. The Supreme Court is supposed to be not dealing with partisan questions, not going for a simple majority, but answering to the Constitution.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate resume legislation session and proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each; that upon the conclusion of the so-called wrap-up period, the Senate then resume executive session and continue the debate on the Kagan nomination as provided for under a previous order and in the specified hour blocks; that upon the conclusion of the debate previously specified in the hour blocks, the Senate then resume legislative session.

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

LEGISLATIVE SESSION

MORNING BUSINESS

UNANIMOUS-CONSENT AGREEMENT—H.R. 1586

Mr. WHITEHOUSE. I ask unanimous consent that on Wednesday, August 4, after any remarks of the leaders, the Senate resume consideration of the House message to accompany H.R. 1586, with an hour of debate prior to a vote on the motion to invoke cloture on the motion to concur in the House amendment to the Senate amendment to H.R. 1586, with amendment No. 4575, with the time equally divided and controlled between the leaders or their designees, with Senator MURRAY designated to control the time of the majority leader; that upon the use or yielding back of the time, the Senate proceed to vote on the motion to invoke cloture on the motion to concur.

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

HONORING OUR ARMED FORCES

PETTY OFFICER SECOND CLASS JUSTIN MCNELEY

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of PO2 Justin McNeley. Petty Officer McNeley, a member of Assault Craft Unit One, ACU–1, based in San Diego, died from wounds sustained during a firefight that occurred on July 23, 2010. Petty Officer McNeley was serving in support of Operation Enduring Freedom in Logar Province, Afghanistan. He was 30 years old.

A native of Wheat Ridge, CO, Petty Officer McNeley enlisted in the Navy in 2001, following in his father's footsteps. Although his initial term of service had already finished, Petty Officer McNeley decided to stay in the Navy and continue to serve his country.

During over 9 years of service, Petty Officer McNeley distinguished himself through his courage, dedication to duty, and willingness to take on any challenge—no matter how dangerous. Commanders recognized his extraordinary bravery and talent. They described him with the words ''hard-working'' and ''dedicated,'' and noted that he regularly volunteered for hazardous duty.

Petty Officer McNeley worked on the front lines of battle, serving in the most dangerous areas of Afghanistan. He is remembered by those who knew him as a consummate professional with an unending commitment to excellence. His family remembers him as a dedicated father, who loved to serve his country. Friends and neighbors remember him as a motorcycle enthusiast with undeniable charisma. He even traded pen pal letters with students from an elementary school in Arizona, where he used to live.

Mark Twain once said, ''The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.'' Petty Officer McNeley's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Afghanistan. And though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Petty Officer McNeley will forever be remembered as one of our country's bravest.

To Petty Officer McNeley's entire family, I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Justin's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

PRESIDENT CALVIN COOLIDGE MUSEUM AND EDUCATION CENTER

Mr. LEAHY. Mr. President, I take this opportunity to call the Senate's attention to the imminent opening of the new President Calvin Coolidge Museum and Education Center, a wonderful year-round tribute to President Coolidge, located in the graceful and historic setting of the President's home town of Plymouth Notch, VT. The center's formal opening and dedication ceremony will take place next weekend, on August 7.

Calvin Coolidge, our 30th President, remains the only President born, sworn into office and buried in the State of Vermont. President Coolidge was originally elected to the Vice Presidency in 1920, winning that election alongside Warren G. Harding.

Three years into President Harding's first term, then-Vice President Coolidge received an unexpected messenger one evening while he was vacationing at his family's home in Plymouth Notch. The messenger informed him of President Harding's sudden and untimely death. It was at 2:47 the next morning that Calvin Coolidge was sworn in as President, in the parlor of his family home, alongside his wife Grace Coolidge, a capable and respected First Lady and a leading Vermonter in her own right. The oath of office was administered by President Coolidge's father, a State notary public official, by the light of a kerosene lamp. The new President left for Washington the next morning to assume the burdens of his new office.

President Coolidge was always known as a man of few words—the inspiration for his famous nickname, Silent Cal. Stoic in the New England tradition, President Coolidge also was an eloquent speaker who felt an obligation to communicate often with the American people to explain his policies.

Today, the Calvin Coolidge Memorial Foundation is dedicated to preserving the Nation's memory of Calvin Coolidge. Founded in 1960, the foundation is now celebrating its 50th year. By working closely with the Vermont Division for Historic Preservation, the Coolidge Foundation collects and preserves artifacts and resources related to the President. Many of the buildings within the village have become State-owned historical properties, and Plymouth Notch has been named the best-preserved Presidential site in the Nation. The development of the new museum and education center—solid and useful in the Yankee tradition—will expand the accessibility of these archives to the public, while providing a venue for students to learn about their country's history.

We Vermonters take pride in our history and heritage, and we feel the obligations of stewardship in these things. The Calvin Coolidge Memorial Foundation is faithfully tending to the preservation and dissemination of this part of Vermont's legacy and our country's history. It is my pleasure to congratulate the Calvin Coolidge Memorial Foundation, in partnership with the State of Vermont, on the occasion of the commemoration and dedication of the President Calvin Coolidge Museum and Education Center.

RECOGNIZING MIKOLE BEDE

Mr. BARRASSO. Mr. President, I would like to take the opportunity to express my appreciation to Mikole