EXECUTIVE SESSION

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume executive session to hear the Kagan nomination.

The Senator from Iowa.

Mr. GRASSLEY. I thank the Senator from Rhode Island. He is always very courteous to me.

Mr. President, I rise to take a few minutes to discuss the reasons why I am voting against Elena Kagan to be Associate Justice. An appointment to the Supreme Court is one of the most important positions an individual can hold under our Constitution. It is a lifetime position on the highest Court of the land. I take very seriously my constitutional role of advice and consent. The Senate's job is not only to provide advice and consent by confirming nominees who are intelligent and accomplished. Our job is to confirm nominees who will be fair and impartial judges, individuals who truly understand the proper role of a Justice in our system of government. Our job, then, is to confirm nominees who will faithfully interpret the law and the Constitution without personal bias or prejudice.

When the Senate makes its determination, we must carefully assess the nominee's legal experiences, record of impartiality, and commitment to the Constitution and rule of law. We need to assess whether the nominee will be able to exercise what we call judicial restraint. We have to determine if the nominee can resist the siren call to overstep his or her bounds and encroach upon the duties of the legislative and executive branches. Fundamental to the U.S. Constitution are the concepts of these checks and balances and the principle of separation of powers. The preservation of our individual freedoms actually depends on restricting the role of policymaking to legislatures rather than allowing unelected judges with lifetime appointments to craft law and social policy from the judicial bench. The Constitution constrains the judiciary as much as it constrains the legislative branch and the executive branch under the President.

When President Obama spoke about the criteria by which he would select his judicial nominees, he placed a very high premium on a judge's ability to have, in his words, ''empathy when deciding the hard cases.'' This empathy standard glorifies the use of a judge's heart and broader vision of what America should be in the judicial process. He said that individuals he would nominate to the Federal judiciary would have ''a keen understanding of how the law affects the daily lives of American people.'' So when President Obama nominated Elena Kagan to the Supreme Court, we have to assume he believed she met his ''empathy'' standard.

This empathy standard is a radical departure from our American tradition of blind, impartial justice. That is because empathy necessarily connotes a standard of partiality. A judge's impartiality is absolutely critical to his or her duty as an officer of an independent judiciary, so much so that it is actually mentioned three times in the oath of office that judges take.

Empathetic judges who choose to embrace their personal biases cannot uphold their sworn oath under our Constitution. Rather, judges must reject that standard and decide cases before them as the Constitution and the law requires, even if it compels a result that is at odds with their own political or ideological beliefs.

Justice is not an automatic or a mechanical process. Yet it should not be a process that permits inconsistent outcomes determined by a judge's personal predilections rather than from the Constitution and the law. An empathy standard set by the President that encourages a judge to pick winners and losers based on that judge's personal or political beliefs is contrary to the American tradition of justice.

That is why we should be very cautious in deferring to President Obama's choices for the judicial branch. He set that standard; we did not. We should carefully evaluate these nominees' ability to be faithful to the Constitution. Nominees should not pledge allegiance to the goals of a particular political party or outside interest groups that hope to implement their political and social agendas from the bench rather than getting it done through the legislative branch.

When she was nominated to the Supreme Court, meaning Ms. Elena Kagan, Vice President BIDEN's Chief of Staff, Ron Klain, assured the leftwing groups that they had nothing to worry about in Elena Kagan because she is, in his words, ''clearly a legal progressive.'' So it is pretty safe to say that President Obama was true to his promise to pick an individual who likely would rule in accordance with these groups' wishes. A Justice should not be a member of someone's team working to achieve a preferred policy result on the Supreme Court. The only team a Justice of the Supreme Court should be on is the team of the Constitution and the law.

I have said on prior occasions that I do not believe judicial experience is an absolute prerequisite for serving as a judge. There have been dozens of people, maybe close to 40, who have been appointed to the Supreme Court who have not had that experience. Solicitor General Kagan, however, has no judicial experience and has very limited experience as a practicing attorney.

Unlike with a judge or even a practicing lawyer, we do not have any concrete examples of her judicial method in action. Thus, the Senate's job of advice and consent is much more difficult. We do not have any clear substantive evidence to demonstrate Solicitor General Kagan's ability to transition from a legal academic and political operative to a fair and impartial jurist.

Solicitor General Kagan's record and her Judiciary Committee testimony failed to persuade me that she would be capable of making this crucial transformation. Her experience has primarily been in politics and academia. As has been pointed out, working in politics does not disqualify an individual from being a Justice. However, what does disqualify an individual is an inability to put politics aside in order to rule based upon the Constitution and the law. In my opinion, General Kagan did not demonstrate that she could do that during her committee testimony. Moreover, throughout her hearings, she refused to provide us with details on her views on constitutional issues.

It was very unfortunate we were unable to elicit forthcoming answers to many of our questions in an attempt to assess her ability to wear the judicial robe. She was not forthright in discussing her views on basic principles of constitutional law, her opinions of important Supreme Court cases or personal beliefs on a number of legal issues. This was extremely disappointing.

Candid answers to our questions were essential for us as Senators to be able to ascertain whether she possesses the proper judicial philosophy for the Supreme Court. In fact, her unwillingness to directly answer questions about her judicial philosophy indicated a political approach throughout the hearing. I was left with no evidence that General Kagan would not advance her own political ideas if she is confirmed to the Federal bench.

General Kagan's refusal to engage in meaningful discussion with us was particularly disappointing because of her position in a 1995 Law Review Article entitled ''Confirmation Messes, Old and New.'' In that article she wrote—and she was then Chicago Law Professor Kagan—that it was imperative that the Senate ask about, and the Supreme Court nominees discuss, their judicial philosophy and substantive views on issues of constitutional law. Specifically, then-Professor Kagan wrote:

> When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.

That is in Professor Kagan's own words.

Bottom line, General Kagan did not live up to her own standard. She was nonresponsive to many of our questions. She backed away from prior positions and statements. She refused to discuss the judicial philosophy of sitting judges.

When asked about her opinions on constitutional issues or Supreme Court

decisions, she either declined to answer or engaged in an overview of the status of the law rather than a discussion of her own personal views. Because of her shallow record on the issues, this approach to the hearing was extremely troubling.

At her confirmation hearing, General Kagan told us to ''look to [her] whole life for indications of what kind of judge or Justice [she] would be.'' Well, General Kagan's record has not been a model of impartiality, as we looked at her record and her life just as she asked us to. There is no question that throughout her career she has shown a strong commitment to far-left ideological beliefs. Solicitor General Kagan's upbringing steeped her in deeply held liberal principles that at one point she stated she had ''retained . . . fairly intact to this date.'' Her jobs have generally never required her to put aside her political beliefs, and she has never seen fit to do so. Her first instinct and the instincts she has relied upon throughout her career are her liberal, progressive political instincts put to work for liberal, progressive political goals. I have no evidence that if Solicitor General Kagan were confirmed to the Supreme Court she would change her political ways or check her political instincts or goals at the courthouse door.

In fact, General Kagan gained her legal expertise by working in politics. She started out by working on Congresswoman Liz Holtzman's Senate campaign, hoping for, in her words, a ''more leftist left.'' She also worked as a volunteer in Michael Dukakis's Presidential run. The Dukakis campaign wisely put her to work at a task that is political to the core—opposition research. There she found a place where she was encouraged to use her political savvy and make decisions based upon her liberal, progressive ideology.

Moreover, while clerking for Justice Marshall, General Kagan's liberal personal convictions—rather than the Constitution and the law—seemed to be her ultimate guide when analyzing cases. General Kagan consistently relied on her political instincts when advising Justice Marshall, channeling and ultimately completely embracing his philosophy of ''do[ing] what you think is right and let[ting] the law catch up.'' Her Marshall memos clearly indicate a liberal and outcome-based approach to her legal analysis.

In several of her memos, it is apparent she had a difficult time separating her deeply held liberal views and political beliefs from the law. For example, in one case she advised Justice Marshall to deny certiorari because the Court might make ''some very bad law on abortion.'' In another case, she was ''not sympathetic'' that an individual's constitutional right to keep and bear arms had been violated. In essence, her judicial philosophy was a very political one.

During her tenure at the White House, Solicitor General Kagan worked on a number of highly controversial issues, such as abortion, gun rights, campaign finance reform, and the Whitewater and Paula Jones scandals. She herself described her work for President Clinton as being primarily political in nature.

In a 2007 speech, she said:

> During most of the time I spent at the White House, I did not serve as an attorney, I was instead a policy adviser. . . . It was part of my job not to give legal advice, but to choose when and how to ask for it.

Her documents from the Clinton Library prove just that. She forcefully promoted far-left positions and offered analyses and recommendations that were far more political than legal in nature. For example, during the Clinton administration, General Kagan was instrumental in leading the fight to keep partial-birth abortion on the books. Documents show that she boldly inserted her own political beliefs in the place of science. Specifically, she redrafted language for a nonpartisan medical group to override scientific findings against partial-birth abortion in favor of her own extreme views. Despite the lack of scientific studies showing that partial-birth abortion was never necessary and her own knowledge that ''there aren't many [cases] where use of the partial-birth abortion is the least risky, let alone the 'necessary,' approach,'' Solicitor General Kagan had no problem intervening with the American College of Obstetricians and Gynecologists to change their own policy statement.

After her intervention, this doctor group's statement no longer accurately reflected the medically supported position of the obstetricians and gynecologists. Rather, the group's statement now said that partial-birth abortions should be available if the procedure might affect the mother's physical, emotional or psychological well-being. The reality is that General Kagan's change was not a mere clarification. It was, in fact, a complete reversal of the medical community's original statement.

Other documents show that Solicitor General Kagan also lobbied the American Medical Association to change a statement it had issued on partial-birth abortion. These documents demonstrated her ''willingness to manipulate medical science to fit the Democratic Party's political agenda on a hot button issue of abortion.''

During her hearing, General Kagan refused to admit she participated in the decisionmaking process of what language the gynecologists would use in their statement on partial-birth abortion. The documents present a very different picture. Although she stated that there was ''no way she could have intervened with the ACOG,'' she did exactly that. Instead of responding to a legitimate inquiry in an open and honest manner, she deflected the question and gave, at best, nonresponsive answers.

In addition, Solicitor General Kagan worked on a number of initiatives to undermine second amendment rights. She was front and center of the Clinton administration's anti-second amendment agenda. She collaborated closely with Jose Cerda on the administration's plan to ban guns by ''taking the law and bending it as far as we can to capture a whole new class of guns.'' After the Supreme Court in Printz v. U.S. found parts of the Brady antigun law to be unconstitutional, she endeavored to find legislative and executive branch responses to deny citizens' second amendment rights.

Even in academia, Solicitor General Kagan took steps and positions that were based on her strongly held personal beliefs rather than an even-handed reading of the law. As dean of Harvard Law School, she actively defied Federal law by banning military recruiters from campus while the Nation was at war. Prior to her appointment as dean, the Department of Defense had made clear to Harvard that the school's previous recruitment policy was not in compliance with the Solomon Amendment, so Harvard did what Harvard should have done: changed its policy to abide by the Federal law. But when the Third Circuit, which does not include Massachusetts, ruled on the issue, then-Dean Kagan immediately reinstituted the policy barring the military from the Harvard campus. She took this position because she personally believed the military's longstanding policy of don't ask, don't tell, in her words, was ''a profound wrong—a moral injustice of the first order.'' She claimed her policy was equal treatment. However, the Air Force believed the policy was playing games with its ability to recruit. The Army believed the policy resulted in it being stonewalled. Then-Dean Kagan was entitled to her opinion, but—no different than anybody else in this country—she was not free to ignore the law. The Solomon Amendment required that military recruiters be allowed equal access to the university as any other recruiter.

The bottom line is that then-Dean Kagan refused to follow the law and instead interpreted that law in accordance with her personal beliefs. The Supreme Court unanimously rejected her legal position on the Solomon Amendment and upheld our military.

I am concerned that Solicitor General Kagan will continue to use her personal politics and ideology to drive her legal philosophy if she is confirmed to the Supreme Court, particularly since her record shows she has worked to bend the law to fit her political wishes.

Further, I am concerned with the praise Solicitor General Kagan has lavished on liberal jurors who promote activist philosophies such as those of Israeli Judge Aharon Barak. Judge Barak is a major proponent of judicial activism who believes judges should ''bridge the gap between law and society.'' He also went on to say that we

ought to use international law to advance a social and political agenda on the bench.

At a Harvard law event attended by then-Dean Kagan, Judge Barak noted with approval cases in which ''a judge carries out his role properly by ignoring the prevalent social consensus and becoming a flag bearer of new social consensus.'' When I asked General Kagan if she endorsed such an activist judicial philosophy, she replied that Judge Barak's philosophy was something ''so different from any that we would use or want to use in the United States.'' But that contradicts her previous statement about Judge Barak that he is a ''great, great judge'' who ''presided over the development of one of the most principled legal systems in the world.'' I am not able to ascertain if Solicitor General Kagan agrees with Judge Barak or if she rebukes his positions, so I am left to believe she endorses the judicial method of what she calls her ''judicial hero'' and his views on judicial restraint or lack thereof. I cannot support a Supreme Court nominee whose judicial philosophy endorses judicial activism as opposed to judicial restraint.

With respect to the second amendment, General Kagan testified that the Heller and McDonald cases were binding precedent for the lower courts and due all the respect of precedent. However, I worry that, if confirmed, her deeply engrained personal belief will cause her to overturn this precedent because she does not personally agree with those decisions or the constitutional right to bear arms. At the hearing, Solicitor General Kagan was unwilling to discuss her personal views on the second amendment or whether she believes the right to bear arms is what it is today—a fundamental right. When I asked her about her thoughts on the issue, she simply replied that she ''had never thought about it before.'' I also asked her whether she believed self-defense was at the core of the second amendment. She could only respond: ''I have never had the occasion to look into the history of the matter.'' As a former constitutional law professor both at Chicago and Harvard, Solicitor General Kagan's response ought to be troubling to anybody who heard it.

A key theme in the U.S. Constitution reflects the important mandate of the Declaration of Independence. It is the recognition that the ultimate authority of a legitimate government depends on the consent of a free people, the ''consent of the governed.'' As Thomas Jefferson wrote:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men deriving their just powers from the consent of the governed.

As former Attorney General Edwin Meese explains:

> That all men are created equal means that they are equally endowed with unalienable rights. . . . Fundamental rights exist by nature, prior to government and conventional laws. It is because these individual rights are left unsecured that governments are instituted among men.

So I am concerned that Elena Kagan refused to agree with my comments about the Declaration of Independence—that there are such things as inalienable rights and if government does not give, government cannot take away.

Similarly, Senator COBURN asked General Kagan if she agreed with William Blackstone's assessment about the right to bear arms and use those arms in self-defense. She replied:

> I don't have a view on what are natural rights, independent of the Constitution.

If you don't have a view about rights that existed before the Constitution was ever written, do you have the knowledge to be a Supreme Court Justice?

So this is concerning to me because, as one commentator stated:

> A legal scholar with no take on such a fundamental constitutional topic [of which individual rights qualify as natural or inalien in character] seems at best disingenuous and at worst, frightening. How can one effectively analyze and apply the Constitution without a firm grip on what basic freedoms underlie our founding documents and national social compact? How can one effectively understand the original intent of the Framers without any opinion on the essential place of certain liberties within the American legal framework?

Bottom line: The fact that General Kagan refused to answer our questions about her personal opinions on the right to bear arms leads me to conclude that she does not believe people have a natural right of self-preservation, unrelated to the Constitution.

I am concerned about Solicitor General Kagan's views on our constitutional right to bear arms not only because of her anti-second amendment work during the Clinton administration but also in light of her memo in the Sandidge case when she clerked for Justice Marshall. In her memo, she summarily dismissed the petitioner's contention that the District of Columbia's firearm statute violated his second amendment right to keep and bear arms. Instead of providing a serious basis for her recommendation to deny the certiorari, her entire legal analysis of this fundamental right consisted of one sentence: ''I am not sympathetic.''

A further basis for my concerns about whether she will protect or undermine the second amendment if she is confirmed is the decision of the Office of Solicitor General under her leadership not to even submit a brief in the second amendment McDonald case. Solicitor General Kagan's record clearly shows she is a supporter of restrictive gun laws and has worked on numerous initiatives to undercut second amendment fundamental rights. So, not surprisingly, as Solicitor General, she could not find a compelling Federal interest for the United States to submit a brief in a case that dealt with fundamental rights and the second amendment of the Constitution. This was a case that everyone knew would have far-reaching effects. It is apparent that political calculations and personal beliefs played a role in Solicitor General Kagan's decision not to file a brief in this landmark case to ensure that constitutional rights of American citizens were protected before the Supreme Court.

With respect to the Constitution's commerce clause, Solicitor General Kagan was asked whether she believed there are any limits to the power of the Federal Government over the individual rights of American citizens.

Unfortunately, her response didn't assure me that, if confirmed, she would ensure that any law Congress creates does not infringe on the constitutional rights of our citizens. Specifically, Senator COBURN asked her whether she believed a law requiring individuals to eat three vegetables and three fruits a day violated the commerce clause. Though pressed on this and other lines of questioning on the commerce clause, she was unwilling to comment on what would represent appropriate limits on Federal power under the Constitution—and probably the commerce clause has been used more than any specific power of Congress for greater control of the Federal Government over State and local governments or over the economy and probably depriving individual rights in the process.

I am not sure Solicitor General Kagan understands that ours—meaning our government—is a limited government and that the restraints on the Federal Government's power are provided by the Constitution and the concept of federalism upon which our Nation is founded. The powers of the Federal Government are explicitly enumerated in article I, section 8 of the Constitution. Further, the 10th amendment provides that the powers not expressly given to the Federal Government in the Constitution are reserved to the States.

The Founding Fathers envisioned that our government would be constitutionally limited in protecting the fundamental rights of life, liberty, and property and that the laws and policies created by the government would be subject to the limits established by the Constitution. As James Madison wrote in Federalist No. 45, ''The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State government are numerous and indefinite.''

I am not convinced the Solicitor General appreciates that there are express limits the Constitution places on the ability of Congress to pass laws. I am not persuaded by her nonanswers to our commerce clause questions that she won't be a rubberstamp for unconstitutional laws that threaten an individual's personal freedoms.

With respect to the institution of marriage, I am concerned with Solicitor General Kagan's ability to disregard her own personal beliefs in order to defend the Defense of Marriage Act. Under her supervision, the United States filed a brief stating that ''the Administration does not support DOMA as a matter of policy, believes that it is discriminatory, and supports its repeal.'' At the hearing, she refused to say whether this was an appropriate statement to make considering that it is the duty of the Solicitor General to vigorously defend the laws of the United States. How are we to believe she will uphold a law as a Supreme Court Justice when she disagrees with that law? When she was tasked as the government's lawyer to vigorously defend the law, clearly she put her personal politics and beliefs first. It is obvious that supporting the repeal of a law is not vigorously defending that law.

There are other occasions where General Kagan's personal beliefs rather than the law appear to have guided her decisions as Solicitor General. For example, with respect to her handling of the lawsuits attempting to overturn the don't ask, don't tell policy, she didn't file an appeal in the Witt v. Department of the Air Force case to uphold the constitutionality of the law, even though there was a split in the circuit courts on this issue. I have already discussed Solicitor General Kagan's actions at Harvard Law and how she thwarted our military's recruitment efforts because of her deeply held views against the don't ask, don't tell policy. I cannot imagine that her personal opinions on this matter did not play a role in decisionmaking at the Solicitor General's Office with respect to the Witt case.

I am also concerned about Solicitor General Kagan's views on property rights. The fifth amendment states that the government ''shall not take private property rights for public use without just compensation.'' In 2004, the Supreme Court took an expansive view of the words ''public use'' in Kelo v. City of New London, allowing the government to take private property so that it could be transferred to another person promoting economic development. At the hearing, Solicitor General Kagan refused to comment on whether she believed the Court had correctly interpreted the text of the Constitution in the Kelo case. She also did not elaborate on any limits to the government's ability to take private property. I am concerned that she does not agree that the ruling in Kelo undermines citizens' property rights contained in the Constitution.

Solicitor General Kagan's view of the role of international law is disturbing. At the hearing, she stated that a Justice could look to international law to find ''good ideas'' when interpreting the U.S. Constitution and our laws. However, when I pressed her on which countries a Justice should look to in order to find those ''good ideas,'' she refused to answer.

I am unaware of how international law can help us better understand our great Constitution. That is because international law should not be used to interpret our Constitution. When we begin to look to international law to interpret our own Constitution, we are at a point then where the meaning of the U.S. Constitution is no longer determined by the consent of the governed.

The importance Solicitor General Kagan places on international law is made abundantly clear by her actions as dean of Harvard, when she implemented a curriculum mandating that all first-year law students take international law. She said that the first year of law school is the ''foundation of legal education,'' forming lawyers' ''sense of what the law is, its scopes, its limits, and its possibilities.'' Yet, U.S. constitutional law, the class that teaches the founding document of our legal system—a class that almost every other law school in the country believes first-year students should have—is not a mandatory first-year course at Harvard Law.

I don't disagree that it is helpful for students to understand international law, but I question why it should be a first-year requirement and thus mandatory to graduate—especially when U.S. constitutional law is not required to graduate from Harvard Law School at all—yes, hard to believe; a student can graduate from Harvard Law without having to take a single constitutional law class.

When General Kagan was asked about this, she answered:

> Constitutional law should primarily be kept in the upper years, where students can deal with it in a much more sophisticated and in-depth way.

This may seem reasonable, but it does not address why a student is never required to take a constitutional law class to graduate. Because, as dean, she never saw the need to make constitutional law a requirement to graduate, then I am led to believe Solicitor General Kagan believes international law is more important than U.S. constitutional law. This is remarkable—or maybe I should say it is shocking—considering that the Constitution of the United States is our most fundamental law.

I am deeply concerned then that if confirmed to the Supreme Court, General Kagan will put her own strongly held personal views above that of the Constitution and the law.

Throughout her life, Solicitor General Kagan's background has allowed her to work without having to check her political and ideological views. Her experiences throughout her life have allowed her to indulge, reinforce, and ultimately submit her deeply ingrained liberal beliefs. In my opinion, her record strongly suggests she will not be able to act in an unbiased manner as a Justice.

Her answers and evasions to our questions at the Judiciary Committee hearing also raise serious concern about her ability to set aside her personal political goals when interpreting the Constitution. I am convinced that once confirmed to the Court, her ''finely tuned political antenna'' and her ''political heart'' will drive her judicial method, rather than judicial restraint.

At the hearing, General Kagan tried to distance herself from her Oxford thesis, where she embraced judicial activism. In that thesis, she wrote that ''it is not necessarily wrong or invalid'' for judges to try to ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' Our great American tradition and the U.S. Constitution soundly reject the notion of judges overstepping their constitutional role by implementing their personal, political, and social goals from the bench. I am not convinced that, if confirmed, General Kagan will actually be able to resist the temptation to do that. That is because I believe her judicial philosophy is really nothing more than a political philosophy. This being the case, I am not at all convinced she will be able to apply the law impartially and not be a rubberstamp for the President or the leftwing interest groups' political and social agenda.

Solicitor General Kagan acknowledged that it is ''difficult to take off the advocate's hat and put on the judge's hat.'' Yet she could not show us that she had the ability to make the transition from an academic and political operative to what we believe ought to be a fair and impartial jurist. Her testimony did not disprove her far-left record or demonstrate she would not let her political views dominate her approach to the law. I am not persuaded Solicitor General Kagan will be able to overcome that difficulty and transition into an unbiased judge, so I will vote no on her confirmation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

MEASURE READ THE FIRST TIME—S.J. RES. 38

Mr. LEMIEUX. Mr. President, as in legislative session, I understand there is a joint resolution at the desk. I ask for its first reading.

The PRESIDING OFFICER. Without objection, the clerk will state the title of the joint resolution for the first time.

The assistant legislative clerk read as follows:

> A joint resolution (S.J. Res. 38) proposing a balanced budget amendment to the Constitution of the United States.

Mr. LEMIEUX. Mr. President, I ask for a second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

Mr. LEMIEUX. Mr. President, I rise to speak on the President's nomination

of Elena Kagan to serve as an Associate Justice on the U.S. Supreme Court.

First, I congratulate my colleague from Iowa for his tremendous remarks this evening, as he went through the reasons he will not be supporting Elena Kagan. I congratulate him on such a reasoned and persuasive oration this evening.

Ms. Kagan has been nominated to fill the seat of Justice Stevens. I had the opportunity, in 2004, to appear before the Court in the position as deputy attorney general of Florida. During that time, because Chief Justice Rehnquist was ill, Justice Stevens presided.

I think before I go into an evaluation of Solicitor General Kagan, it is important to note what a historic figure Justice Stevens is to the American bench and the bar.

Even before he began his 35 years of service on the Supreme Court, he built a stellar reputation as a member of the bar as a lawyer and a careful jurist. He graduated from Northwestern School of Law. He served as a clerk to Supreme Court Justice Wiley Rutledge. Then he spent nearly 20 years, from 1949 to 1969, as a practitioner of law and one of the country's foremost experts on antitrust law. He taught courses at the University of Chicago, he served on a Department of Justice commission, and he authored various papers on antitrust issues.

It was in 1970 that President Nixon appointed Justice Stevens to the U.S. Court of Appeals for the Seventh Circuit. After 5 years of service there, he was elevated to the Supreme Court.

His service to this country should be remembered, and he gets our thanks. On behalf of a grateful nation, I send my gratitude to him for his unique and important service to this country.

In evaluating a nominee to the U.S. Supreme Court, we in the Senate exercise a solemn obligation. It is a rare time in our constitutional democracy when the three branches come together in one proceeding. One of those is the unfortunate proceeding of impeachment. Thankfully, that is not why we are here. But the other is this proceeding—a proceeding when the President submits for consideration a judicial nominee who is then evaluated by this body under the advice and consent clause of article II, section 2, clause 2 of the U.S. Constitution.

That clause reads, in part:

[The President] shall have Power, by and with Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States. . . .

While we do have that advice-and-consent role on a normal occasion for those other officers, for judges of the lower courts, for ministers and the like, it is a rare occurrence when this body has the honor and opportunity to evaluate a Supreme Court nominee. Because it is a rare occurrence and because this is a lifetime appointment to the head of one of the branches of our coequal government, we have a solemn responsibility to do our job and understand what our job is.

In preparing for this responsibility of providing advice and consent and in being a lawyer who wanted to do a good job and be lawyerly about this work, I took the opportunity to try to study up on what our opportunity and responsibility is in this confirmation of a Supreme Court Justice.

What do these terms ''advice and consent'' mean and what is our responsibility and how do we undergo that responsibility to fulfill our constitutional obligation? Certainly, in order to fulfill it, we must understand it.

What does advice and consent mean? Advice certainly means to provide information, counseling, and to give some feedback to the President of the United States as to a nominee. It seems to be more of the role of a counselor than anything else. But of the two words, it is not the most weighty.

The most weighty of the two is consent. In fact, the advice-and-consent function is not found within the enumerated legislative powers. Article I of the Constitution holds those responsibilities. Advice and consent is found in article II, which enumerates the powers of the executive branch, of the President. Advice and consent is shown as a limitation on the President's power. The President cannot just put whomever he or she wishes on a court. He can only do so with the advice and consent of this body. In fact, our Founders did not place this responsibility in both the House and the Senate. They solely put that responsibility among the Members of this body. ''Consent'' being the operative and, in my mind, meaningful term because without our consent, the nominee is not confirmed.

Our responsibility is not trivial, and we are certainly not here to be a mere rubberstamp on the President's nomination. It is our obligation to thoroughly evaluate and provide that consent because, but for our consent, the nominee will not be seated.

How do we execute that responsibility? What does it mean to provide consent and how should we do it?

Certainly, we have to look at the nominee and the applicant. We have to see that the person will be a person of integrity, that they are thoughtful, that they have experience, and that they will uphold the obligations of a Supreme Court Justice.

Last May, when I started my work of trying to evaluate how I would fulfill my constitutional obligation and started to do some reading of prior confirmation proceedings, the writings of Senators who have come before me, I came upon what I believe is a four-part criteria to evaluate a nominee to the Nation's highest Court.

It should be stressed how important a position this is. There are only nine Justices who sit atop the judicial branch, and they are appointed for life. There is no other portion of government where this is true, to be head of a coequal branch for life—Justice Stevens serving 35 years on the U.S. Supreme Court.

What criteria should we use? I propose the following: One, a nominee should present a robust body of work. Why? Because there needs to be something for us to evaluate. We need to have the ability, in providing our consent function, to look at a body of work so we can properly execute our responsibility.

This does not mean, nor do I believe, that it is required for a nominee to the U.S. Supreme Court that they have been a judge. In fact, our Constitution provides no requirements for a judge to serve on the U.S. Supreme Court. This is unlike what we see in the Congress. There are specific requirements of how old you have to be to be in the House, to be in the Senate, how many years you must be a resident of this country. The same requirements apply to the President. There are no requirements for a judge as it is stated in the Constitution, for a Justice of the Supreme Court.

In evaluating that there are no requirements, we certainly need to know what the Justice stands for and how the Justice will fulfill his or her obligations on the Court. Without a body of work, that is very difficult to evaluate. While there is no requirement that one be even, in fact, a lawyer, although every person who has been confirmed has been a lawyer, and there is no requirement that you be a judge, if you are not a judge, you do not have a robust body of work for us to evaluate. That makes it more difficult on our part to make a decision of whether we should give our consent and, I suggest, it provides an additional burden to the nominee to be forthcoming when answering questions. Since we do not have a body of work to evaluate, since we cannot look at prior decisions that a judge has handed down, to know how a judge ruled in the past and, therefore, glean how the judge will rule in the future, that nominee must be forthcoming so we can hear how he or she will do his or her job as a Justice.

Second, the nominee must demonstrate an unfailing fidelity to the text of the Constitution and proper restraint against the temptation to expand judicial power. Why do we find this important? I will talk about this more in a minute. It is because we have a separation of powers and checks and balances that were imbued in our Constitution by our Founders. They intended for our government to be counterbalanced by each branch—the legislative, the judicial, and the executive.

It is the beauty of the Constitution that no branch will exert too much authority because it will be checked by the other, each branch having checks on the other. Furthermore, sometimes forgotten, is that the Federal Government is part of a federalist society. We

are a Republic, and the Federal Government is only one piece of the governmental structure. The rest are the governments of the States and the powers and rights which are left to the people under our Constitution. Our Founders sought checks and balances between the Federal Government and the State governments and the people as well.

A nominee must understand that the judiciary cannot expand its role beyond the confines our Founders intended. In fact, we know our Founders intended for the judiciary not to serve as a legislative branch because in article II, the legislative power is vested solely in the Congress.

For a judge or Justice to take on a legislative role, to not have a firm adherence to the law as written, violates the separation of powers, violates the rights and responsibilities of the Congress.

Third, the nominee must make determinations about the meaning of Federal law and the Constitution and apply the law as written, again, because of that separation of powers.

Fourth, the nominee must understand the Court's role in stopping unconstitutional intrusions by the elected branches. Our Founders knew each branch of government would seek to expand the scope of its power. That is the beauty of the checks and balances system—to keep each body in check. They did not want a strong executive. They worried about the tyranny of the executive. But they also worried about the tyranny of the legislative. Nor did they hope the judiciary would become too strong.

Alexander Hamilton wrote in Federalist No. 78 that ''it is the courts that will serve as the bulwarks of limiting Constitution against legislative encroachment.''

Our Founders designed this intricate system of checks and balances to keep all the governmental bodies and institutions in check, to not expand to the detriment of another body, to not expand to the detriments of our rights and the rights of the States.

In evaluating Solicitor General Kagan—and I note also in comparing her to Justice Stevens—I find she does not have the experience that gives us the opportunity to evaluate her work, to determine what kind of judge or Justice she would be.

In preparing for this decision, I went back and I read a book that was written by one of our predecessors, Senator Paul Simon. It was a book he published in 1992. The book is called ''Advice and Consent.'' The book concerns the confirmation hearings of Justice Bork and Justice Thomas.

Interestingly, in this book—and it is a very fine book and I commend anyone who is interested in this topic to read it—there is a foreward in the book by Laurence Tribe, the famous constitutional scholar, at the time the Tyler Scholar of Constitutional Law at Harvard University, with whom I believe Solicitor General Kagan served when she was the dean of Harvard Law School.

In this foreward, I think that Professor Tribe provides a very cogent and focused analysis of the problem we experience in the modern confirmation setting where nominees fail to provide sufficient answers to questions.

Why this is so troubling with Solicitor General Kagan is because we do not have the body of work to evaluate. It has been the course, in the past 20 years, that it seems all the nominees to the Supreme Court give these sort of vapid answers. That is not my phrase. That is, in fact, her phrase. We will talk about that in a moment—vapid answers that come from questions from the Senators on the Judiciary Committee, failing to articulate what your position is on a particular point of law, all the more concerned when we have no record to evaluate.

Here is what Professor Tribe said:

> The Court and the Nation cannot afford any more ''stealth'' nominees who steadfastly decline to answer substantive questions the Senate might pose on the oft-invoked ground that the matter might come before the Court during their possible tenure. This easy refrain does not provide a valid excuse for stonewalling, no matter how frequently it is repeated . . .
>
> On the contrary, the adversary system works best when all concerned, and not just those who nominated the judge, know what there is to be known about the judge's starting predispositions on a pending issue. And let's stop pretending that such predispositions do not exist. It hardly fosters fairness to claim that a mind is completely neutral when in fact a lifetime of experiences has unavoidably inclined it one way or another and to other, and to equate an open mind with a blank one insults the intelligence of all concerned.

He goes on to say:

> A nominee whose record is too pale to read with the naked eye or whose views are shrouded in fog too dense for anything but the klieg lights of national television to pierce is probably ill-suited for a lifetime seat on the Supreme Court in any event.

Let me repeat:

> A nominee whose record is too pale to read with the naked eye or whose views are shrouded in fog too dense . . . is probably ill-suited for a lifetime seat on the Supreme Court.

Mr. President, unfortunately, that describes Solicitor General Kagan. She is an extremely bright and articulate woman. She has a tremendous academic background. I commend her for her public service—of serving in a Presidential administration. I commend her for serving as dean of a law school. That too is public service. But our job is to evaluate these nominees, and we cannot evaluate them if they have no record of how they would rule or how they have ruled, and they provide no sufficient information when they come before the Judiciary Committee of this body. Without that information, how can we faithfully provide our consent?

There is a notion in the law of consent needing to be informed. In fact, it can't really be consent in the law if it is not informed. Yet Solicitor General Kagan, without a judicial record and a failure to directly and clearly answer questions, as Professor Tribe writes, fails to give us the information to allow us to give consent in an informed way.

We need to look no further than her own words when she wrote, in a spring 1995 Law Review article. It was a comment on a book that was talking about the confirmation mess, and then-Professor Kagan, also bemoaning the state of confirmation hearings, said:

> When the Senate ceases to engage nominees in meaningful discussion of legal issues, the confirmation process takes on an air of vacuity and farce, and the Senate becomes incapable of either properly evaluating nominees or appropriately educating the public.

She described the process before the Judiciary Committee as becoming vapid, and, unfortunately, even though she should know more than anyone else—because those were her words, the charade that she condemned in her article in the 1990s—she engaged in the same charade when she appeared before the Judiciary Committee.

''A nominee whose record is too pale to read with the naked eye or whose views are too shrouded in fog . . . is probably ill-suited for a lifetime appointment,'' said Professor Tribe.

Ms. Kagan also has very little practical experience. Unlike Justice Stevens, who practiced law for 20 years, Ms. Kagan practiced law for 2. Never having served before as a judge, we don't know her record. She said that the confirmation proceedings in the past had an ''air of vacuity and farce,'' a ''vapid and hollow charade.'' Instead of following her own admonishment, she participated in that charade. She engaged in the same vapid exercise that she condemned.

The burden was on Ms. Kagan to demonstrate how she would rule as a judge. With no record for us to evaluate, she could not engage in the same charade that she had previously condemned and leave us with nothing to know as to how she would act in a lifetime appointment—an appointment, if Justice Stevens' record is any sort of indication of how long a ''Justice Kagan'' might serve, for 35 years.

I have an obligation, Mr. President, under article 2, section 2 to provide advice and consent, and I cannot do so where the nominee cannot or does not provide a record that my colleagues and I can evaluate. We are left without a solid basis upon which to judge how she would judge.

During the Judiciary Committee proceedings, she said she would give binding precedent all the respect of binding precedent. That is meaningless. It gives us no indication of how she might make her decisions, how she might rule.

So I am left with these serious concerns. I am left with the serious concerns about her commitment to uphold the constitutional principle of a limited government, the fundamental protections of the second amendment, and

placing law ahead of her personal and political views.

I spoke before about one of these criteria being the fidelity to the Constitution and the principle of a limited Federal Government. ''Thomas Jefferson warned us that our written constitution can help secure liberty only if it is not made a blank paper by construction.''

Ms. Kagan testified that her whole life provided indications of what kind of judge or Justice she would be. And in that statement I agree.

As mentioned earlier, before law school, when she was writing a thesis at Oxford, she stated that ''new times and circumstances demand a different interpretation of the Constitution,'' and that judges may ''mold and steer the law in order to promote certain ethical values and achieve certain social ends.'' That is not what the Founders intended for a Justice of the Supreme Court.

In that same thesis, she wrote:

> The judge's own experience and values become the most important element in the decision. If that is too results oriented, so be it.

Mr. President, that is a violation of the constitutional requirement that all power legislative be vested in this Congress.

I was concerned about the colloquy that she had with Senator COBURN. In fact, it was something I discussed with her in person prior to her testimony before the Judiciary Committee. This colloquy was about the commerce clause and whether or not it was limited. Remember that our Founders intended for the Federal Government to be limited in its powers. That is why there are enumerated powers in article 1. They are not plenary; they are limited by their number.

Senator COBURN asked her about sponsoring a bill, about requiring Americans to eat their fruits and vegetables, and it got a response from Solicitor General Kagan that it ''sounds like a dumb law.'' But Senator COBURN asked whether or not it would be constitutional and she failed to provide an answer.

Senator COBURN then put the meat on the bones and asked:

> What if I said that eating three fruits and three vegetables would cut health care costs by 20 percent? Now we're into commerce. And since the government says that 65 percent of all the health care costs [are because of health care], why isn't that constitutional?

No real meaningful answer to give clarity of how Solicitor General Kagan as Justice Kagan would rule.

Mr. President, the Federal Government has expanded its powers beyond what our Framers intended—far beyond what our Framers intended. James Madison, in Federalist 45, said:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.

But that is not how our constitution is modernly interpreted. We are away from what our Founders intended. We are away from the clear meaning of the words of the Constitution. And Solicitor General Kagan doesn't tell us that the commerce clause has a limit, in her view. And it is through the commerce clause that this Congress and Congresses in the past have sought to enter and to invade every portion of life in this country—things in which our Founders never intended the Federal Government to be involved.

It appears Ms. Kagan has this same view of an expansive Federal Government—a Federal Government that makes States its dependents and apparatuses thereto, a Federal Government that has no limits, a Federal Government that can invade every portion of our lives, a Federal Government that is too vast, too expensive and beyond what our Founders intended.

I am also concerned about Solicitor General Kagan's views on the right to bear arms enumerated in the second amendment. I think she has too little regard for some of our Constitution's most fundamental protections. As a law clerk, she was dismissive of the second amendment, saying she was not sympathetic to the amendment.

During the Clinton administration, she developed numerous anti-second amendment initiatives. In her confirmation process for Solicitor General, she declined to comment on second amendment rights.

There was a discussion earlier of my friend and colleague from Iowa talking about natural rights. I think it is important for us to remember the setting upon which our Framers brought this constitution to bear. There were the Articles of Confederation—a loose arrangement between the States where there was no central government. The Founders took it upon themselves to seek to enact a stronger Federal system but a system that, as the 9th amendment, the 10th amendment and other provisions of the Constitution show, leaves rights to the States and to people; that enumerates specific powers of the Federal Government.

Remember, initially, there were not even the first 10 amendments. Remember, there was a confirmation battle as to whether the States individually would ratify the Constitution. There were anti-Federalists who thought the constitution had gone too far and given too much authority to the Federal Government, and our Founders Hamilton, Madison and Jay, in writing the Federalist Papers, had to make the case of some form of central government. But they gave the assurances that most of the obligations to govern would be left to the people and the States. Ms. Kagan doesn't have that view, it appears.

Finally, I am concerned about the way that then-Dean Kagan treated the military as the dean of Harvard Law School. I think it is outrageous that the U.S. military was not allowed to recruit on campus while she was the dean of the law school. And this idea that the military could go through another part of the school—the Veterans Association but not the Career Services Office—is outrageous. The Veterans Association had no funding, no office. It was not set up to allow law students to interview with the military.

Some have called this the same as ''separate but equal.'' It was not even equal. It is outrageous. It is outrageous beyond the fact that Harvard received Federal dollars. It is outrageous that a premier institution such as Harvard University, one of our first institutions of higher learning, known throughout the world as being an exceptional school, would not allow the military the benefit of its students to serve by being interviewed on campus, in a regular on-campus process in which every law firm or other agency of government is allowed to participate. And that is a decision that she presided over. That is an error of judgment.

But I also believe that it was an error of law. In 1996, Congress passed the Solomon Amendment allowing the Secretary of Defense to deny Federal grants to institutions of higher education if they prohibited ROTC or military recruitment on campus. Under the Harvard Law School antidiscrimination policy, the military was banned from utilizing its services, and it was concluded that, therefore, those Federal funds would be suspended.

Ms. Kagan refused to abide by that Solomon Amendment when she was the dean. In 2002, Harvard was informed by the Department of Defense its practice of letting military recruiters contact students through the Harvard Law School Veterans Association, but not the Office of Career Services, violated the Federal law. In response, Dean Kagan filed a brief challenging the constitutionality of the Solomon Amendment, which is her right—not a good decision but her right.

The Court of Appeals for the Third Circuit enjoined the law. And Ms. Kagan reinstated Harvard's, in my view, discriminatory policy.

Now, you might say: Well, the court ruled; therefore, it was appropriate for her, if she so chose, to go back to the previous policy because that had been enjoined. However, Massachusetts is not in the Third Circuit, it is in the First. An appellate decision in the Third Circuit is not binding on the First Circuit. If Dean Kagan wanted to go to court again and seek to have it applied, that would have been one thing. What she did instead is unilaterally follow a decision that had no effect upon her and, in my view, violates the law.

Again, I think Solicitor General Kagan is an extremely intelligent person, an articulate person. I think that she has a commendable career of public service. But she has failed to meet the burden that is required of someone with no judicial record. She has failed to inform us of how she would judge as a member of the U.S. Supreme Court.

With no record to read, there is heightened scrutiny on the nominee, and we did not have the opportunity to have full and forthcoming answers from Ms. Kagan. Instead, what we had was the same vapid and vacuous answers that she condemned in her law review article in the mid-1990s, the same type of charade Lawrence Tribe said makes somebody ill-suited for a lifetime appointment, with such a thin record.

If perhaps she would have been more forthcoming, I would have been able to come to a different conclusion. But when you take the lack of her record, her inability to provide clear responses to questions to give us indication of how she would rule, and the concerns about the second amendment, about how she treated the military at Harvard, and her views about the activism of the Court—in light of all those reasons, I will be voting no on Ms. Kagan's confirmation.

I yield the floor.

ADJOURNMENT UNTIL 9:30 TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 8:42 p.m., adjourned until Wednesday, August 4, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF THE TREASURY

TIMOTHY CHARLES SCHEVE, OF PENNSYLVANIA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2010, VICE NANCY KILLEFER, TERM EXPIRED.

TIMOTHY CHARLES SCHEVE, OF PENNSYLVANIA, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2015. (REAPPOINTMENT)

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. CHRISTOPHER J. BENCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JAMES M. KOWALSKI

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. ARTHUR W. HINAMAN

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be brigadier general

COL. BENJAMIN F. ADAMS III

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be major general

BRIGADIER GENERAL DOUGLAS P. ANSON
BRIGADIER GENERAL ROBERT G. CATALANOTTI
BRIGADIER GENERAL GREGORY E. COUCH
BRIGADIER GENERAL DAVID S. ELMO
BRIGADIER GENERAL JEFFERY E. PHILLIPS
BRIGADIER GENERAL ROBERT P. STALL
BRIGADIER GENERAL WILLIAM D. WAFF

To be brigadier general

COLONEL DANIEL R. AMMERMAN
COLONEL EDWARD G. BURLEY
COLONEL JODY J. DANIELS
COLONEL WILLIAM F. DUFFY
COLONEL PATRICK J. REINERT
COLONEL DOUGLAS R. SATTERFIELD
COLONEL JOHN H. TURNER III
COLONEL HUGH C. VANROOSEN II
COLONEL RICKY L. WADDELL

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS ASSISTANT COMMANDANT OF THE MARINE CORPS, AND APPOINTMENT TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTIONS 5044 AND 601:

To be general

LT. GEN. JOSEPH F. DUNFORD, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. THOMAS D. WALDHAUSER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ROBERT B. NELLER

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be lieutenant colonel

ROBERT H. KEWLEY, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be lieutenant colonel

WILEY C. THOMPSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

RAYMOND C. NELSON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

BERNARD B. BANKS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS PERMANENT PROFESSOR AT THE UNITED STATES MILITARY ACADEMY IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTIONS 4333(B) AND 4336(A):

To be colonel

DAVID A. WALLACE

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

MELISSA R. COVOLESKY
TIMOTHY D. LITKA
JOHN H. STEPHENSON II

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

JONATHAN J. MCCOLUMN

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DANIEL E. BANKS

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

LATANYA A. POPE

THE FOLLOWING NAMED OFFICER FOR REGULAR APPOINTMENT IN THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

NED W. ROBERTS, JR.

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

JOHN W. PAUL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ERIC S. ALFORD
PAUL J. CISAR
MICHAEL K. HANIFAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

GEORGE W. MELELEU
AARON L. POLSTON

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DEAN P. SUANICO
DAVID A. THOMPSON

To be major

ELIZABETH R. OATES

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

BRIAN F. LANE

To be major

PATRICK J. CONTINO
KIMBERLY D. KUMER

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DUSTIN C. FRAZIER

To be major

ROGER E. JONES
COURTNEY T. TRIPP

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be lieutenant colonel

DONALD P. BANDY

To be major

KEITH J. WILSON

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

STANLEY GREEN
DAVID K. HOWE

To be major

CHRISTOPHER T. BIAIS
JEFFREY P. CHAMBERLAIN
LEVIE J. CONWAY
LAURA JEFFERIES
STEPHEN A. MARSH
CRAIG F. MITCHELL
AMANDA K. PARKHURST
JON B. TIPTON

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

TIMOTHY J. RINGO

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

WILLIAM A. BROWN, JR.
LESLIE H. TRIPPE
PAUL J. WISNIEWSKI

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

JAIME E. RODRIGUEZ

To be lieutenant commander

KIM P. EUBANKS
ROY FOO
VINCENT M. PERONTI