I am confident that Solicitor General Kagan is highly qualified for this prestigious position. She has worked hard and earned a place at the top of the legal profession.

During her career, she has held various positions across the Federal Government that have prepared her well for this new position.

As Solicitor General since 2009, she worked on many issues currently before the Court.

She has argued a broad range of issues—from defending Congress's ability to protect kids from child predators—to the United States' ability to go after those supporting terrorist organizations.

Through several different assignments in the Clinton White House, Elena Kagan worked for the President on the challenges facing our Nation.

She also has experience in the judicial branch, including clerkships in the U.S. Supreme Court as well as the U.S. Court of Appeals for the DC Circuit.

Solicitor General Kagan also spent many years as a professor of law at the University of Chicago Law School and Harvard Law School.

As dean of Harvard Law School, she worked with the student body to improve the quality of student life and encourage a spirit of public service.

She also worked as a lawyer in private practice. In all, she has spent years studying complex legal theories and debating issues.

Some of the most difficult issues end up at the Supreme Court and each Justice needs a thorough understanding of the law.

Elena Kagan has demonstrated her knowledge of the law and I believe she will be a successful jurist.

Her nomination to our Nation's Highest Court is something our entire country can be proud of.

In recent years, we have taken many positive steps to make our government a better reflection of the American people.

Solicitor General Kagan's confirmation as associate justice will continue that progress and mark the first time the U.S. will have three women on the Supreme Court at the same time. This is a wonderful milestone for our country.

I was very impressed with Elena Kagan when we met earlier this year.

We talked about Hawaii and the importance of reconciliation with Native Hawaiians.

I was impressed with her history of building consensus and bringing people together—as well as her knowledge of the law. I know that she will do a tremendous job upholding our Constitution as an Associate Justice on the U.S. Supreme Court.

After receiving many letters of support for Solicitor General Kagan's nomination—and seeing for myself her character, her intelligence, and her legal expertise—I am pleased to support her nomination—and urge my colleagues to do the same.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest called the roll.

Mr. WARNER. 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. WARNER. Mr. President, I ask unanimous consent to speak as in morning business for up to 8 minutes.

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

## AUTHORIZING SETTLEMENT FUNDING

Mr. WARNER. Mr. President, I rise today, as this Chamber debates the nomination of Elena Kagan—someone I am looking forward to supporting when we vote—to raise another issue of ensuring justice in our country, an issue the Presiding Officer, I know, has been concerned about as well, and that is urging this Chamber to take action and approve funding for the settlement of racial discrimination claims made by thousands of African-American farmers.

This is an issue with which I have dealt for years, first as Governor of Virginia, now as a Senator. This issue was first brought to my attention by John Boyd, who is a fourth generation African-American farmer from Southside, VA. He founded the National Black Farmers Association in 1995.

He and a group of other African-American farmers brought forward a series of claims that were finally addressed in a lawsuit named Pigford v. Glickman. That lawsuit concerned allegations that the U.S. Department of Agriculture had denied farm loans and other services to African-American farmers between 1983 and 1997, although I think history will show those acts of discrimination long preceded 1983.

That case was settled in 1999. But due to very tight deadlines, thousands of farmers missed the deadline to file their complaints.

An estimated 74,000 Black farmers now await approval of funding by this body, following the announcement of a settlement of these additional claims by the USDA in February of this year. The USDA has acknowledged these claims. They have agreed to a settlement. These funds have been appropriated. This funding has been paid for.

According to Mr. Boyd, this effort, if we can get this funding approved, will mark the seventh time the Senate has tried to act on providing the Black farmers settlement money.

I have to say that as we debate the nomination of a very talented individual to serve on the Supreme Court and we hear folks on both sides of the aisle talk about American justice and American jurisprudence, it is a varnish on that record and, to a certain degree, on this body that we in the Senate have not acted to make sure that close to $1 billion in these settlement claims—again, that have been authorized by USDA—that those funds are not fully appropriated and approved by this Senate body for these farmers, many of whom have been struggling for decades, some who struggle due to the discrimination that has been acknowledged by our own Department of Agriculture. We have not acted. Senate procedure has gotten in the way of authorizing payment of these funds.

Now it is the time to act. This week the Senate has the opportunity to finally authorize funding of the settlement costs and turn the page on past discriminatory practices.

As I stated earlier, this legislation is fully paid for and there does not appear to be any substantive opposition to honoring the terms of this settlement.

I know we are all anxious to vote on Elena Kagan. I know many of us are anxious to vote on the small business legislation. I know we are all anxious, as well, for the August recess to start. As we go through this process on a matter that reflects on the integrity of this body, reflects on the value of our jurisprudence system, as we think through trying to get out of town and getting home, I hope our leaders can come together and act to make sure that these Black farmers, many times waiting literally for decades for the appropriate compensation that everyone throughout the judicial system has said is owed to them, that in this rush to get out and get back home, the Senate can finally take action in the Pigford case and these farmers can receive their appropriate compensation.

I again thank those involved in this action. I particularly thank Mr. John Boyd, as I mentioned, from Southside, VA, who has been a passionate and tireless leader on this issue for more than two decades.

I see my good friend, the Senator from Delaware, is here to speak on behalf of Elena Kagan. I know he and the Presiding Officer have also raised this issue making sure these Black farmers get—not their day in court; they have had their day in court, but they are waiting for the Senate to act on a noncontroversial issue so they can receive the funding that is long overdue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I associate myself with the remarks of the Senator from Virginia. He is right on point. This is not about a trial. This is about people getting what they justly deserve. It is time we do it. I thank him for coming to the floor and making that argument.

I wish to speak tonight in support of the nomination of Solicitor General Elena Kagan to be an Associate Justice on the Supreme Court.

On July 13, I first came to the floor and gave my reasons for supporting this outstanding nominee. She has a superior intellect, broad experience, superb judgment, and unquestioned integrity. Throughout her career, she has

consistently demonstrated a first-rate intellect and an intensely pragmatic approach to identifying and solving problems—two traits that are indispensable in any great judge, and she will be a great judge. I support her nomination with enthusiasm and without reservation.

I am here today not to repeat the basis for my support but to note briefly two aspects of this debate that I find particularly troubling.

First, I have heard some of my colleagues attack this nominee based on arguments she made and positions she took in her role as Solicitor General in a particular case when she made this argument on behalf of her client, the United States of America. That causes me great concern because I think these kinds of attacks—think about it for a minute now. She is not in a public forum. She is not giving a speech. She is not writing an article. What she is basically doing in court is representing the United States of America, making the argument that she thinks is the best argument to carry for the United States of America. And people pull that out on the Senate floor and read it and are critical of it.

I can understand why one disagrees with the Solicitor General on an argument they make. I can understand why one disagrees with the Supreme Court. But to pull that out and use that against a nominee is very troubling because it gets to the basic question of what is the job of a litigator, of a lawyer, of a solicitor in making the argument for their client.

Solicitors General are responsible for representing the United States before the Supreme Court. They should be free to make all appropriate arguments on their client's behalf without fear that those arguments might someday be held against them if they happen to be considered for another office.

The Solicitor General's role in selecting cases in which she must represent the government is very limited, particularly in the many cases in which the government is the respondent. We want lawyers representing the United States in any court to do so zealously, well within the bounds of the law. We should not give them reason to hesitate about doing so by later treating those arguments as reflecting their own personal, private beliefs, which they do not do.

I am reminded of the attacks we too often see on lawyers who represent unpopular clients, with the suggestion being that the lawyer's legal arguments must also reflect that lawyer's personal views. Think about that. A lawyer gets on a case, a lawyer is doing pro bono work, a lawyer has been assigned by a judge and makes an argument in court for their client, trying to get their client cleared, and we bring it back as if the lawyer is making that argument about themselves. I have heard it too often on this floor and in committee.

Let's not forget that the American tradition of representing unpopular clients is older than our Nation, dating at least as far back as John Adams' representation of British soldiers charged in the Boston Massacre. John Adams defended the British soldiers involved in the Boston Massacre. Would it be fair to bring that up on the floor of this body to say that he was in favor of the British soldiers and use that against him if, in fact, he had been nominated to a position?

The vigorous defense of the United States requires that we not limit its advocates to making only those legal arguments with which they personally agree. I am surprised I even have to make that statement on the floor.

More broadly, our adversarial system depends on advocates making all proper arguments that are in the interest of their clients. I feel as though I am in a lawyer 101 class. Why do I have to be saying this? It is simply wrong to assume a lawyer's arguments reflect his or her personal convictions. Again, lawyer 101. It is, therefore, also wrong to oppose a nominee based upon proper arguments that a nominee has made as a lawyer, regardless of whether an individual Senator regards those arguments to be legally correct.

My second concern relates to the repeated and unjustified comments by many of my colleagues regarding the word ''empathy,'' which they seem to regard as a trait deserving of recrimination. Empathy, empathy, empathy.

I commend to my colleagues a superb commentary on this point by Joel Goldstein, distributed by the History News Network. I ask unanimous consent to have this commentary printed in the RECORD.

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

[From History News Service]

HOW EMPATHY MAKES SUPERIOR JUDGES—AND JUSTICE

Critics ridiculed President Obama's statement that judges should be empathetic. But as the Senate prepares to vote on the Supreme Court nomination of Elena Kagan, legal historian Joel Goldstein argues that senators should be looking for that very quality.

In voting on President Obama's nomination of Elena Kagan for the Supreme Court this week, senators should consider her legal ability and constitutional vision, but also her capacity to be an empathetic justice.

Republicans mocked President Obama when he suggested that empathy was an important ingredient in a justice. In fact, the president was simply repeating the insight Theodore Roosevelt uttered more than a century ago when he explained to his close friend, Sen. Henry Cabot Lodge, why he was inclined to nominate Judge Oliver Wendell Holmes Jr. to the Supreme Court.

T.R. recognized that those who become judges invariably have had close association with wealthy and powerful people. Those relationships dispose them to understand perspectives of the successful classes. But would they give a fair shake to the less fortunate who were outside the professional or social circles that shaped and reflected their attitudes?

Roosevelt thought it ''eminently desirable'' that the Supreme Court show its ''entire sympathy with all proper effort to secure the most favorable personal consideration for the men who most need that consideration.'' He appreciated Holmes, who could ''preserve his aloofness of mind so as to keep his broad humanity of feeling and his sympathy for the class from which he has not drawn his clients.''

If anything, Obama's comment was more neutral than Roosevelt's. Roosevelt twice used ''sympathy'' which connotes identification with, or bias toward, another. ''Empathy,'' Obama's misconstrued word, simply implies an understanding of, and sensitivity to, the feelings or experiences of another, not any predisposition in favor.

In context Roosevelt and Obama were making the same point, that effective judging requires sensitivity to a wide range of experiences. It is relatively easy for judges, like other human beings, to relate to experiences and perspectives they have shared. What's difficult, for judges and for the rest of us, is to comprehend those to which we have not been exposed.

That reality sometimes inclines judges to favor those whose positions and circumstances are familiar. The bias may be unconscious but that does not make it any less real or decisive or unfair.

The Republican Roosevelt and the Democratic Obama recognized that empathy was an important corrective to these hidden preferences. Far from conferring favoritism or setting law aside, as Obama's critics contend, T.R. and Obama understood that empathy is often a prerequisite for impartiality.

Justice Holmes's great colleague, Justice Louis D. Brandeis, captured the Roosevelt-Obama insight when he wrote that ''knowledge is essential to understanding, and understanding should precede judging.'' A judge cannot fairly assess something he or she does not understand and they cannot understand that which is unfamiliar if they do not make a real effort to relate to it.

Whether Kagan is empathetic may determine how she will act when the court faces the watershed cases that often define the jurisprudence of a generation.

The quality of empathy, which Obama's critics ridicule, was critical in decisions which all now celebrate. Brown v. Board of Education declared racially segregated education a violation of the Equal Protection Clause because it created in African-American children a ''feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.'' By viewing the world from the perspective of black children, the court identified the moral wrong in segregation even while some strict constructionists saw the decision as lawless.

And imagine the national embarrassment America would have been spared in Korematsu v. United States, the case that sanctioned internment of loyal American citizens of Japanese descent during World War II, had the court followed Justice Robert Jackson's empathetic dissent, which, unlike the majority opinion, tried to understand the impact of imposing a racially motivated penalty on innocent Americans.

Although Roosevelt was a great Republican president of the 20th century and a hero to modern Republican luminaries such as George W. Bush, John McCain, Karl Rove and others, the idea's pedigree has not protected Obama from partisan caricature of his commonsense observation.

That's too bad. It has led some to distort as inconsistent with impartiality a quality that is really designed to help achieve it.

To their credit, Theodore Roosevelt and Obama recognized that a judge must make special efforts to understand the thoughts and perspectives of those whose experiences

she has not shared. It's time for Obama's critics to stop distorting his statement and pretending that this sensible insight is subversive to the law or judging.

Let's hope that senators of both parties include this bipartisan criterion as a desirable trait in a justice when they debate and vote on the Kagan nomination this week.

Mr. KAUFMAN. Mr. President, as Professor Goldstein points out, President Obama's interest in empathy in Supreme Court nominees follows in the path of President Theodore Roosevelt who chose to nominate Oliver Wendell Holmes in 1902 based in part on Holmes' capacity for empathy.

Roosevelt said it was ''eminently desirable'' that the Supreme Court make ''all proper effort to secure the most favorable personal consideration for the man who most needs that consideration.''

I can understand concern about sympathy. I do not have it, but I understand sympathy. But empathy? President Theodore Roosevelt was not suggesting that Justices should somehow favor or advantage the downtrodden; that is not what he was saying and that is not what President Obama was saying when he was a Senator, only that they make every effort to understand the position of the litigants from walks of life different from their own.

Likewise, President Obama's promotion of empathy is not, as his critics suggest, the advocacy of bias. ''Empathy,'' as a quick look at the dictionary will confirm, is not the same as ''sympathy.'' ''Empathy'' means understanding the experiences of another, not identification with or bias toward another. Let me repeat that. ''Empathy'' means understanding the experiences of another, not identification with or bias toward another. Words have meanings, and we should not make arguments that depend on misconstruing those meanings.

Let me quote several insightful paragraphs from Professor Goldstein's article about why empathy is important in judging. I quote Professor Goldstein:

In context, Roosevelt and Obama were making the same point, that effective judging requires sensitivity to a wide range of experiences. It is relatively easy for judges, like other human beings, to relate to the experiences and perspectives they have shared.

All of us can do that. We can relate to the people we know around us. We can relate to our experience. We can relate to people with whom we went to school. We can relate to all those things.

What's difficult, for judges and the rest of us, is to comprehend those to which we have not been exposed.

That reality sometimes inclines judges to favor those whose positions and circumstances are familiar.

We all know that. There but for the grace of God go I, reasons why juries will let someone go free.

The bias may be unconscious but that does not make it any less real or decisive or unfair.

To continue the quote:

The Republican Roosevelt and the Democratic Obama recognized that empathy was an important corrective to these hidden preferences. Far from conferring favoritism or setting law aside, as Obama's critics contend, T.R. and Obama understood that empathy is often a prerequisite for impartiality.

The quality of empathy, which Obama's critics parody, was critical in decisions which all now celebrate. Brown v. Board of Education declared racially segregated education a violation of the equal protection clause because it created in African-American children a ''feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.''

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

Mr. KAUFMAN. Mr. President, I ask unanimous consent for 1 more minute.

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

Mr. KAUFMAN. I thank the Chair.

By viewing the world from the perspective of black children, the Court identified the wrong in segregation even while some strict constructionists saw the decision as lawless.

I happen to think Elena Kagan is an outstanding nominee. I respect the fact that others disagree. I truly do. I hope that as this debate continues, we take care to make arguments that are fair expressions of our very real disagreements and avoid arguments that chill legitimate advocacy or deliberately misconstrue the words of others.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I am here to talk about the nominee, Ms. Kagan, for the Supreme Court, but I thought I would put it in the context of how I view what we are doing.

As a physician, a father, and a grandfather taking a look at where we are as a nation, it is very worrisome to me. The 62 years I have lived have been fraught with great opportunity, great challenges, but never with a fear that what we have in this country may not last. I have to admit to my colleagues that I have that fear now. And it is not an unfounded fear. You see, this year we will borrow almost $1.6 trillion from our grandchildren. We will borrow in excess of $4 billion a day—money we don't have. At this moment, we owe $13.35 trillion. No question, we are the biggest economy in the world, being fast caught by other large economies.

The uniqueness of the American experiment could have been predicted by those who studied republics because freedom and liberty were the basis for such an explosion in growth and wealth and freedom and standard of living. The poor in our country live far in excess of half of the world's populations because of the great republic we are.

I believe we have a short period of time to right the ship for our country. We have large disagreements in this body on how we do that, and others' ideas have as much value as mine. But it is not debatable the kind of trouble we are in as a nation. It is indisputable. We have a mountain of debt, and we are going to have interest costs that are going to chew up our freedom and chew up our children's prosperity and opportunity over the years that lie ahead of us.

So we have great responsibility as we place somebody on the Supreme Court. Our constitutional responsibility is to advise and either give consent or not give consent. I have no doubts that my speech on the floor this afternoon will change any Senator's mind. It won't. But what I hope to do is to lay out the questions, as we put Ms. Kagan on the Court, of where we will be with the basis of her philosophy. I have served on the Judiciary Committee for almost 6 years. I have been through four Supreme Court Justice hearings. I have met with four—actually, more than four—prospective nominees to the Supreme Court, and the responsibility is heavy.

Elections do have consequences. They give the President of the United States the right to appoint, with advice and consent, all the judges in this country, as well as numerous other officials. But none is greater and none is more important than a Supreme Court Justice.

My concern with Ms. Kagan is whether she really believes in what our Constitution says, and by her own words she fails to meet that test. So I think it is time for an extra parameter to be considered in light of the difficulties we face when we give consent for somebody who is going to be in a lifetime position who will, I believe, have negative consequences for our future. And I am going to spell out why I believe that.

Ms. Kagan is a highly qualified woman who has attained much in her young life. She is highly intelligent, highly articulate, and quite pleasant. I believe she did the best job of at least letting us get to see some of what she thinks of any of the Supreme Court nominees we have heard, and I give her credit for that. But what I saw causes me to shake in my boots, and let me tell you why.

Ms. Kagan made two critical statements. She believes Supreme Court precedent trumps the original intent of our Founders. Think about that for a minute. We just heard the Senator from Delaware mention Brown v. Board of Education. Under that philosophy, reaching back to our Declaration of Independence and our Constitution, Brown v. Board of Education would never have happened. We would have had ''separate but equal'' had we relied on Supreme Court precedent and not the underlying body of our Constitution.

As I was reading recently, I came across something written by Calvin Coolidge. He is not very often quoted in this body, and for some of that I understand why.

But one of the other things Nominee Kagan did was she refused to embrace natural rights in her testimony before the committee. You see, the whole foundation for our country is based on the fact that the rights we have are not given to us by the Congress of the

United States or the Government of the United States or the Constitution of the United States; they are inherently ours. They are inalienable rights—the right of life, the right of liberty, the right to pursue happiness. We have a government to be a caretaker, to ensure our rights are not infringed upon. So lacking that understanding—and it wasn't just once that she was asked that; she was asked that in terms of Blackstone's principles on the right of an individual to defend their life. She does not embrace that concept. It was not only evident in her plain words that she spoke but in her answers indirectly to other questions.

So we have a Supreme Court nominee who believes that the wisdom of men today, outside of the Constitution, based on precedent, trumps the wisdom that was brought forth by our forefathers in both the Declaration of Independence and the Constitution of the United States. And there are other proofs for this that I will go through during my speech to explain.

Listen to what Calvin Coolidge had to say:

About the Declaration there is a finality that is exceedingly restful. It is often asserted that the world has made a great deal of progress since 1776; that we have had new thoughts and new experiences which have given us a great advance over the people of that day, and that we may therefore very well discard their conclusions for something more modern. But that reasoning cannot be applied to this great charter.

Or the Constitution that followed it.

If all men are created equal, that is final.

It can't be improved upon. It can only be lessened.

If all men are endowed with inalienable rights, that is final.

It cannot be improved upon. It can only be lessened.

If governments derive their just powers from the consent of the governed, that is final.

The power of the U.S. Government comes from the power we loan to the government as people and citizens of the United States.

No advance, no progress can be made beyond these propositions. If anyone wishes to deny their truth or their soundness, the only direction in which he can proceed historically is not forward, but backward toward the time when there was no equality, no rights of the individual, no rule of the people. Those who wish to proceed in that direction cannot lay claim to progress. They are reactionary. Their ideas are not more modern, but more ancient, than those of the Revolutionary fathers.

Well said, Calvin Coolidge. Well said.

So we have before us a judge who said the following to me during our hearing:

To be honest with you, I don't have a view of what are natural rights, independent of the Constitution.

Oh, really? So we are going to have a Supreme Court Justice who has no view of what our inalienable rights are other than what the Constitution says? Where can that take us? It can take us anywhere she wants to go, outside the bounds of the very liberties we loan to the government to have a civil society.

If you look at the Declaration of Independence, it says:

We hold these truths to be self-evident—

Why aren't they self-evident to her? Why doesn't she hold an opinion on them—

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 . . .

We have inalienable rights. We have natural rights. Yet we are about to put a Justice on the Supreme Court for life who, by her own words, does not have a view of what are natural rights. I don't know anybody who is an adult in this country who doesn't have a view of what they think are their natural rights.

This is a quote from Elena Kagan:

In some cases original intent is unlikely to solve the question, and that might be because the original intent is unknowable or might be because we live in a world that's very different from the world in which the framers lived. In many circumstances, precedent is the most important thing.

No, that is just the opposite of what Coolidge had to say about the Declaration of Independence, just exactly the opposite. More modern, we got it right. Natural rights do not matter. Our wisdom, our intellect, our arrogance—of a government and the governing body—has more import, has more value, has more to do with what we do today than the wisdom of those inalienable rights and the Constitution that came out of it.

Do you realize that in the Constitution, for every time it gives us a responsibility, it says four or five times what we can't do? Because the Framers were interested, and knowing the condition of men, that we would abandon—our tendency would be to allow the concentration of power to abandon those very principles they put into the Constitution.

What did Madison have to say, just on the general welfare clause of the Constitution? He anticipated the Elena Kagans of this world. He said:

With respect to the words general welfare, I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators.

You see, that is how we have gotten into trouble as a country. That is why our economic future is not secure—because the Congress has exceeded its authority under a limited Constitution and the courts have failed to rein us in. They have failed to recognize their obligation.

So we are going to have someone who believes that the precedent and wisdom of modern men is much more important than the original intent of our Founders to keep us free, to secure our liberty, to provide our inalienable rights to the pursuit of life, liberty, and the pursuit of happiness.

Here is another area. If we read the Constitution and we read where they have set up our judicial system, what they reference, they say:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority. . . .

They gave no wiggle room for the utilization of foreign law in interpreting the U.S. Constitution—none. Here is Elena Kagan:

It may be proper for judges to consider foreign law sources in ruling on constitutional questions.

Here is what the Constitution says. Here is what the nominee to the Supreme Court says—exactly opposite of what the Constitution says. In other words, it is OK to use any source of law you want, not the source that the Constitution says you will be bound by in your oath.

Let's take it a step further, same quote: ''Judges can get'' good ideas ''on how to approach legal issues from a decision of a foreign court. It may be proper for judges to consider foreign law sources in ruling on Constitutional questions.''

Here is their oath:

I do solemnly swear that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a justice under the Constitution and laws of the United States. So help me God.

''Under the laws and the Constitution of the United States'' is not foreign law. That is the U.S. Constitution and our statutes. So as soon as she takes the oath, her very philosophy violates it because she honestly testified that it is fine to use foreign law to interpret our laws and our Constitution.

Again, how did we get in the trouble that we are in today? How did we get that 20 years from now every man, woman, and child in this country is going to be responsible for over $1 million worth of debt? How did we get to the point where $350 billion of waste, fraud, and duplication occurs every year in the Federal Government? How did we get to the point that we can take people's rights away because we deem so in the Congress, in our smart, modern wisdom that lessens liberty and freedom throughout this land?

We do it because we do not use the book, and we don't follow the oath that we are sworn to uphold; that is, the U.S. Constitution and the laws of this land.

Then it comes to the commerce clause. Elena Kagan:

The commerce clause has been interpreted broadly. It's been interpreted to apply to . . . anything that would substantially affect interstate commerce.

When asked if a Federal law requiring Americans to eat three fruits and three vegetables every day would be unconstitutional, Ms. Kagan avoided the question by simply saying, ''That would be a dumb law.''

Madison had something different to say:

Ambition must be made to counteract ambition.

He is talking about us.

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself.

We have had this vast expansion since the late 1940s in this country in the commerce clause. It started with Wickard v. Filburn. A farmer raising chickens was raising his own wheat. But the Government didn't want him raising his own wheat because they had allotted limits during the 1930s, the Great Depression—limits to what you could grow. So he owns his own land, he has his own chickens, but the Supreme Court said: You can't raise your own feed. You have to buy it from somebody.

So here we started with the Supreme Court ruling and moving in to take away the freedom of an individual farmer to raise his own feed for his own chickens for a greater good—supposedly to control the price and availability of wheat.

What has happened to us since then? Look at the expansion of the commerce clause and how it is moving power away from those who are governed without their consent to a central government in Washington. What does Ms. Kagan complain about during the hearing? That she thinks the Supreme Court may be moving to reverse that—of which she adamantly disagrees. When asked about the Seminole case and the Lopez case, she worried that it moves us back to individual freedom and a more restrictive commerce clause, a commerce clause that says our rights are more important than those of the government.

That goes back to the basis that she doesn't believe we have natural rights. The fundamental question of whether an individual, free in a country, can walk on to the Supreme Court and disavow inalienable rights and natural rights, that is a very dangerous concept because if you don't believe in natural rights, you don't worry about taking them from those who are governed. You don't worry about the Congress taking them from those of the governed.

We are about to move to a point where we are going to put somebody in a lifetime position on the U.S. Supreme Court who believes in foreign law utilization to interpret the issues before it; who believes that precedent trumps original intent of the Founders—in other words, the arrogance is we are much smarter than they were, our wisdom is much better, we are more modern, therefore things have changed, therefore we have to ignore what they have said; that the commerce clause is boundless; even if Congress passes stupid laws, they have the right to do it and there is no obligation on the Court to look at the Constitution and the documents behind it and what our Founding Fathers had to say about the authority and what they intended and meant as they wrote that clause into the Constitution.

Then, finally, one last point. She does not believe in the individual natural right that you have as a person to defend yourself. She wouldn't embrace that—which implies, very rightly so, that the second amendment, even though we now have precedent, is at risk under Elena Kagan as a Supreme Court Justice.

So, summing up, we are going to put somebody on the Court that I see will further the problems we have versus starting to reembrace the principles that made this country great. Are we going to embrace what has gotten us into trouble? Are we going to embrace the $13.34 trillion worth of debt growing at $1.4 trillion to $1.6 trillion today, that is stealing the opportunity of the future? We are. We are going to put her on there, and her wisdom and her vision is very different from our Founders, our Constitution, and our natural rights.

This will be a huge mistake for this country if we want to solve the problems in front of us. As I said, I don't expect anybody to change their vote on the basis of my viewpoint. I will congratulate her for being more honest and open on her testimony than others would because normally we would not find out these things about judges.

With a worried heart, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I am always reluctant to find out that I am following the Senator from Oklahoma on the floor of the Senate. He is always prepared and always eloquent. I commend the Senator on his speech.

But I want to commend him on his questioning in the hearing because he allowed us to gain, and Ms. Kagan to express, important points, important opinions, important judgments, and important statements for everybody in this body to make up their minds. That is really what this Senate is all about, and it is Senators like the Senator from Oklahoma who help us all to do our job, and I commend him very much for his work.

I also commend him for covering so many facts. My speech will be very brief. I announced about 4 weeks ago that I would not vote for the confirmation of Ms. Elena Kagan and expressed at that time the reasons. But I wanted to memorialize that on the Senate floor because it is a serious responsibility that we have to advise and consent on the nomination of the President of the United States.

In response to that, the advice and consent should always be thoughtful and should always be thorough, and mine is generally based entirely on the Constitution when it comes to the Supreme Court and the appointments the Presidents of the United States make because I am well aware my position, the President's position, and the position of all of us in this was a creation of those of our Founding Fathers who wrote the Constitution that created the government, that is the United States of America and the three branches of that government that will govern us as a nation: the executive, the legislative, and the judicial. Executive, as in the President; legislative, as in us; and the judicial, as the jury—the jury not of who is right and wrong but is the Constitution right, is the law right that we passed in relation to the Constitution that created us.

Two things in Ms. Kagan's past concern me greatly in terms of the direction she would go as a Justice on the U.S. Supreme Court. One is the Solomon rule application when she was dean of the Harvard Law School.

When I helped write, along with a lot of other Members in this body, No Child Left Behind, we made sure we covered this issue of military access on campuses of secondary schools and postsecondary schools.

The Solomon Amendment is a simple amendment that says: If you accept Federal funds as a public institution or as a private institution, in terms of Harvard through research or funds such as that, that U.S. military representatives will have access to the campus.

Ms. Kagan made the conscious decision as dean of the law school that that access would not be available at Harvard and, even after direction otherwise, continued in that position until she eventually withdrew. Well, if someone is going to the Supreme Court of the United States of America to be a judge of our Constitution and its application to our legislative and judicial branches, you must remember the first responsibility designated to this Congress and to this government is to protect and defend the domestic tranquility of the people of the United States of America and to constitute an army and a navy to do that.

You cannot draw on that army and navy if you cannot draw on the people in your country. At a time today, a contemporary time such as 2010, where everyone who serves—everyone, not a one is conscripted, every single one is a volunteer—the information about the opportunities, the availability and the promise of a career in the military or a period of service should not be denied anyone who goes to an institution that receives funds from the United States of America and from this Congress.

Secondly, you know there has been a lot of talk about the Citizens United case, and there have been a lot of political arguments about the Citizens United case. But it is a first amendment case. I do not think anybody argues about that.

In listening to the testimony in the Judiciary Committee and reading the record on the Citizens United case, it is obvious, in her expression and her arguments before the Supreme Court, Ms.

Kagan felt that even though you had a first amendment, through either printing or writing or video or audio, the government could restrict political speech.

Well, the first amendment is the guarantee of free speech. To argue a case that, notwithstanding the first amendment, political speech could be run by the government and judged by the government and its timing and its accessibility, to me, flies in the face of the very first amendment, of the first 10 amendments that finally allowed us to pass a Constitution and come together as a nation.

So there are a lot of other issues. The Senators who preceded me have raised a lot of those issues. I commend Ms. Kagan, too, on her complete congeniality and her complete candor before the committee. But in terms of this Senator, in terms of my vote, in terms of my judgment, it is the case and the opinions on the first amendment in Citizens United, and the actions contrary to the Solomon Amendment, and military access that, to me, deliver a temperament that I do not think is appropriate of a Justice of the Supreme Court at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, we are we here to discuss Solicitor General Elena Kagan's qualifications for the Supreme Court. We have heard a number of conversations from our colleagues who are themselves lawyers, who have sat in on the Judiciary Committee, and who have gone through the record with great detail.

As I have said before, I am unburdened with a legal education. I have great respect for those who have been taught to think like that and talk like that and who go into that kind of detail. But I view this from a slightly different point of view, and I hope it is a commonsense point of view. I would like to share it with my colleagues this afternoon.

I go back, not to start with Ms. Kagan but to start with an incident that occurred when we were discussing the possibility of John Roberts going to the Supreme Court as the Chief Justice. In that period of discussion, there was a particular case that was raised in the press where John Roberts had issued a ruling that, according to the newspapers and the reporters, was an egregious ruling.

Here are the facts of the case: There was a young woman riding the Metro who ate a french fry, not a lot of french fries—just one french fry. She had the misfortune—she was 12 years old—she had the misfortune to do that in the presence of one of the security officers of the Metro who arrested her for violating the publicly advertized zero-tolerance, no-eating policy in a Washington Metro station.

She was not just detained, she was arrested, searched, handcuffed, driven to police headquarters, booked, and fingerprinted. Three hours later, her mother showed up at the police station and she was released to her mother. The mother sued, alleging that her daughter was treated improperly, that an adult would have only received a citation, and that this was a terrible thing that had been done to her.

The law says children who violate this policy have to be detained until their parents can arrive. Well Justice Roberts, the case finally came to him on the circuit court, ruled that the Metro police had acted properly. In an attempt to derail his confirmation to Chief Justice, there was a dust-up in the newspapers and the media: This is a man, we want to put him as Chief Justice of the United States, and he will tolerate this kind of treatment of a young woman who does nothing more than eat a single french fry in a Metro station? Is that the kind of man we want on the Court?

I remember those kinds of editorials and denunciations that were made of Mr. Roberts. Then, the facts came out as they got into what happened. What I have said are, indeed, the facts. But this is what Justice Roberts said when he handed down his opinion. He said: No one is very happy about the events that led to this litigation. He said it was a stupid law. He did not say it in those kind of terms. He said it in appropriate legal terms. But basically the burden of what he said was it was a stupid law.

But he said: The question before us is not whether these policies were a bad idea but whether they violated the fourth and fifth amendments of the Constitution. And, as Judge Roberts concluded, they did not.

Interestingly, the city council, in response to this case, had changed the law. So he made it clear: I do not agree with this law. I think it is a bad law, but that is not my responsibility. My responsibility is to determine whether it violates the Constitution.

This is reminiscent of Justice Potter Stewart's dissent in Griswold v. Connecticut. He said: We are not asked in this case to say whether we think this law is unwise or even asinine. We are asked to hold that it violates the U.S. Constitution, and that I cannot do.

What does that have to do with Elena Kagan? She was faced with a similar situation. She was not a judge. But she was in a position of authority, and she was faced with a law that she decided was a bad law. This was the Solomon Amendment, having to do with the question of military recruiters on college campuses. She was in a position as the dean of the law school at Harvard, to prevent military recruiters from coming on campus.

The Solomon Amendment basically said: You cannot do that, Dean Kagan. You may disagree with the military's policy with respect to don't ask, don't tell, and you can do that. But you cannot accept federal funds and prevent military recruiters from coming on campus. You can even express your disagreement in a legal fashion, and she did. She openly opposed it. She joined other faculty to sign an amicus brief in support of a constitutional challenge of the Solomon Amendment.

I do not object to that. She has every right, as an American citizen, to challenge something she thinks is inappropriate in the law. But she does not have the right to flout the law, and to say: No, we choose not do it. When she became the dean at Harvard, she did that.

She refused to allow the recruiters to come on at the Harvard Law School. She says she did not. She says: The military had full access at all times. By the way, she was wrong on the law, as far as the Solomon Amendment is concerned, because the Supreme Court decided unanimously that the Solomon amendment was constitutional and that the military had the right to equal access to students at institutions receiving Federal funding.

So she should have waited for the Supreme Court to rule, but she did not. She said: I will comply with the law. This is what the recruiters said. She says they had full access. All right. If they had full access, I would think they would confirm that they had full access. But this is what they had to say. The Army's report from Spring 2005 said: The Army was stonewalled at Harvard. Phone calls and e-mails went unanswered and the standard response was: We are waiting to hear from our higher authority.

There is a Defense Department memo stating: Denying access to the Career Service 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 chief of recruiting for the Air Force JAG Corps was repeatedly blocked from participating in Harvard's 2005 recruiting session. He reported: Harvard is playing games and will not give us an on-campus interviewing date.

Three different recruiters give a different view of what was done with respect to Harvard. Yet General Kagan says: No. No. They all had full access at all times. If they did, then they are lying. If they did not, then she is giving us false information. She denies the entire incident.

I think she should have stated her opposition in the Judiciary hearings. The proper approach should be to say: I hate the Solomon Amendment. I think it is the wrong thing to do. But just as Judge Roberts upheld the action with respect to a 12-year-old girl that was clearly not appropriate, because it was the law, I have a responsibility, as a lawyer, and lawyers are officers of the court, I have a responsibility as a lawyer at Harvard, even as I am voicing my objection, to say: The Solomon Amendment is in place, and I am going to respect it.

She did not respect it. She denies that she did not respect it, in the face of testimony to the contrary from at

least three different sources who were directly involved in the case. I do not find that the kind of behavior, regardless of my ideological difference with her, the kind I think a Justice of the Supreme Court should have.

She has had much the same attitude with respect to the second amendment. She has taken a position of being above the law. She refused to declare support for the second amendment and when she was questioned about it, she simply dismisses it as ''settled law.'' Going back to the Solomon Amendment, wasn't that settled law? When she had an opportunity to act against it, she took that opportunity, feeling correctly that she would not be disciplined for it at Harvard. But now I do not think she can appropriately say she should not be questioned about it as she is being proposed for the Supreme Court.

When clerking for Justice Thurgood Marshall in 1987, Kagan was faced with a challenge to the District of Columbia gun ban. With respect to a plaintiff's contention with respect to the District of Columbia's firearms status—as he said, the District of Columbia violated his constitutional right to keep and bear arms—She wrote: I am not sympathetic, and she recommended that the Court not even consider the case. The Court recently considered the case and has ruled otherwise in the Heller decision.

So she is going to go to the Court—I assume she will be confirmed—with at least two circumstances where she has taken firm positions in opposition to the Court she intends to join. In one case it was a unanimous decision that overturned her; it was not a 5-to-4 decision.

My concern about her is that she has never shown any inclination toward impartiality. I do not mind people of strong opinions. This Chamber is filled with them. I do not mind judges who have strong opinions as long as they do not let those strong opinions get in the way of what the law says. I am afraid in her case she is one who will let her strong opinions get in the way of what the law says. For that reason, I intend to vote against her nomination.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I rise in opposition to the confirmation of Ms. Kagan to the Supreme Court, and I would like to put this opposition in context with what is going on all around the country.

All of us know, and we have seen on the news—and many of us have seen in person—that people are upset with what is happening in Washington. They are angry. They are fearful. They are frustrated at all the spending, the borrowing, the debt, the government takeovers. I keep hearing from people: What can we do? How can we stop it? Why is it happening?

That is a question we need to keep asking here: Why is it happening? Why has this country, this Congress, and many Congresses before spent this country to the edge of bankruptcy—and continue to spend week after week? Even though the President and the majority are talking every week about the unsustainable debt, almost every week we are adding to that debt, adding new programs. It makes no sense.

Our Founders believed it very important that every Member of Congress—the House and the Senate—the President, the Supreme Court, and the military officers all take an oath of office to protect and defend the Constitution. That may seem perfunctory, just something we do as a part of history. But that was not its intent because the Constitution is a document that limits what the Federal Government can do. If anyone reads it seriously, it is pretty clear its primary purpose is to limit what the Federal Government can do. It specifies a few things, such as protecting our Nation, making sure there is justice, making sure we have the rule of law and the enforcement of those laws across all of our States.

But it says a lot about what we cannot do. The whole Bill of Rights says much about what the government cannot do to take our freedoms. The 10th amendment itself says whatever is not specified in the Constitution is left to the States and the people.

Even though all of us take that oath of office, it seems to me, after being here a number of years, that just about everyone here sets aside that Bible when they put their hands down and completely forgets they have just taken an oath to protect and defend a constitution that limits what we can do.

Last year, when we passed this health care bill, Obamacare, a reporter asked Speaker NANCY PELOSI where in the Constitution did she find the authority to require people to buy a government-approved health insurance policy. All she could say is, ''Are you serious?'' In fact, if you talk about a limited constitutional government, as I often do in the Senate, you are considered a radical, even though all of us take that oath of office.

What we have turned into here—and the President has used this phrase a lot—is a ''yes, we can'' Congress. It does not matter what it is, what problem comes up all across the country, we can do it, we can fix it. Government has a solution to almost anything because we do not pay any attention to the Constitution.

The Constitution is a constitution of no, of what we cannot do. That is to protect us and to avoid where we are today, which is approaching a $14 trillion debt which is about to destroy our whole country.

Think about this: In the world's great bastion of freedom that we call America, our Federal Government owns the largest auto companies. It owns the largest insurance company. It owns the largest mortgage companies. It controls our education system. It just took over our health care system. It controls the whole energy sector and our transportation sector. The rules and regulations and taxes that we put on businesses pretty much means mostly it controls all the business activity in our country.

When Congressman PETE STARK was asked last week—in an interview we have seen all over the Internet—is there anything that the Federal Government cannot do, he said no because he had forgotten the constitutional oath of office.

What is the Court's rule, as we think about Ms. Kagan, the Supreme Court, the confirmation process? What is the role of the Court? The intent is pretty clear that it is to watch over Congress, the executive branch, to make sure we do not get outside the bounds of the Constitution. If we do, the Court is supposed to say: No, you can't; that is unconstitutional. But the Court, over the years, has pretty much thrown that responsibility out the window.

Back during FDR's days, in their interpretation of the commerce clause, it had essentially given Congress and the White House unlimited ability to do almost anything that comes up, any whim that we have. That is how we ended up with over $13 trillion in debt. I know this overactive government is really important. This idea of a limited government is very important.

When Ms. Kagan was in my office and I asked: Does the Constitution limit us from doing anything, she really could not come up with a good answer. It is pretty similar to her hearings, when Senator TOM COBURN asked her: If the Congress passed a law, and the President signed it, that every American had to eat their fruits and vegetables every day, would that be constitutional? And she said: It would be a dumb law. But she would not say that is unconstitutional.

Friends, if this government can tell us what we have to eat, it can tell us anything. We cannot claim to have any freedoms if this government can tell us what we have to eat. It is essentially the same thing as telling us we have to buy a government-approved health insurance policy. We cannot say no. But the Constitution is intended to make sure we do.

Ms. Kagan talked a lot about precedents, which are just previous court rulings, not much about the Constitution being our standard. The problem with that is a precedent is a lot like what we used to call the gossip game. Some people call it the telephone game, where you have a bunch of people sitting around a table, and the person at the head of the table whispers a phrase to the person next to them. They whisper it to the person next to them, and it goes all around the room. The whole funny part of the game is, by the time it gets back to the person who started it, you cannot even recognize the phrase. It has nothing to do with what was originally said.

That is exactly how precedent works. Once you throw the standard out, then

the whole idea of a constitutional standard is out the window, if we have judges today who are making decisions by picking and choosing the precedent that agrees with their opinion rather than basing their decisions on true constitutional standards.

I oppose Ms. Kagan's nomination because she, in my opinion, does not believe in constitutional limited government. She does not believe in the original intent of the Constitution but more of President Obama's belief of a more living Constitution. As President Obama said before he was elected, he sees the Constitution as a document of negative liberties because it tells the government what it cannot do. But it does not tell us what we have to do.

It was never supposed to tell us what we have to do. But the progressives in power in Washington and many of our judges believe they need, through court rulings, to change that Constitution. What has resulted in that is the government controlling more and more of our lives, spending and borrowing money we do not have, and bringing our country to the brink of economic disaster.

We cannot afford more ''yes, we can'' judges in our country. We can cannot afford more ''yes, we can'' Senators or Congressmen. And we certainly cannot afford another ''yes, we can'' President. The decisions that have been made about our economy over the last couple of years have brought our economy to its knees. This is no longer something we can blame on President Bush. In fact, the Democrats have been in control of policymaking, economic policy spending for 4 years now. This is not Bush's recession. This is the result of Democratic economic policies.

This nomination will continue our move in the wrong direction because it will put another person on the Court who does not see their role as limiting what we can do in Congress, and this Congress desperately needs a Supreme Court that tells Congress no when we step outside the bounds of the Constitution.

Mr. President, I believe America is looking at Congress closer than they ever have before. They expect us to make the hard decisions, to stop the spending, to stop the waste, to stop the borrowing, to stop the debt, to stop the government takeovers, and to stop our courts from taking our freedoms away. That is why I am opposing Ms. Kagan to be a Supreme Court Justice, and I encourage my colleagues to consider their vote and to vote no.

Mr. President, I yield back.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. Mr. President, we are not in a quorum call at this time. I am told there is a brief pause. I ask unanimous consent that I be allowed to speak as in morning business for 5 minutes.

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

COORDINATION OF WIND AND FLOOD PERILS ACT

Mr. WICKER. Mr. President, during this brief pause in the debate on the Supreme Court nominee, I rise to call to the attention of Senate Members my introduction of S. 3672, the Coordination of Wind and Flood Perils Act of 2010.

This month is, of course, the fifth anniversary of Hurricane Katrina. We are still rebuilding on the coast, and we are still rebuilding in many areas of the gulf, in the South, as depicted on this map.

Two weeks ago, I attended the opening of a municipal complex and library in the historic town of Pass Christian. The fact that we are just getting the money and just getting this library and city all rebuilt after 5 years is testimony to the extent of the destruction and the difficulty of funding projects like that. This is true in the public sector, and it is also true in the private sector.

But one of the greatest impediments to rebuilding, and one of the main reasons Katrina is still not over for the people of Mississippi and other areas of the gulf is the lack of affordable insurance. This is true in Mississippi, and it is also true from Texas all the way through the gulf, south, down to the tip of Florida, and on up through the New England coastal States. Anywhere there is coastal exposure there is a problem with affordability and availability of insurance.

I have had quite a number of visits to the coast in recent weeks, particularly in the last 100 days because of the oilspill. The recovery there is going to be a challenge.

There will be speeches later on this month commemorating the anniversary and discussing the heroism and the resilience and the determination of the people of the coast. All of this will be appreciated and necessary, but the truth is one of the best things that could be done for the gulf coast area—not just my State of Mississippi but in the entire area—is to resolve the issue of wind insurance versus flood insurance, and that is what S. 3672 is all about: coordinating the coverage between wind and flood perils coverage.

Of course, for people in this area, for people in my State of Mississippi, you need hazard insurance, you need fire insurance, as does everyone, you need wind insurance, and you need flood insurance. Back in 1968, that was the year of Hurricane Camille. It also was the year it became apparent to this Congress that something needed to be done at the Federal level to cover water damage. Hence, the National Flood Insurance Program was established in 1968. Since that time, Americans have been able to get flood insurance through the NFIP. Actually, in 1973, this Congress in its wisdom made such coverage mandatory for people mortgaging property in flood zones.

Let's fast forward to 2005, the year of Hurricane Katrina. Many victims who needed it didn't have flood insurance. One of the reasons they didn't have flood insurance is that the flood zone maps were wrong. I hope to a large extent this has been corrected. It is supposed to have been corrected now, and people in flood zones who have mortgages are required to have it. Oftentimes they cancel those policies, and that is something we need to attend to also, but that insurance is available.

The problem is wind insurance. The private insurance coverage for wind damage has pretty much left the coastal areas of many of our States in the eastern part of the United States. So we have this situation now where a homeowner needs flood insurance through the National Flood Insurance Program. They need their own hazard insurance that they get through their local broker. Then, they probably have to resort to the State wind pool, a State program, because private wind insurance is not available to them.

Another problem we had in 2005 after Katrina is that many homeowners found themselves caught in the middle between the issue of whether it was water damage in connection with the hurricane that caused their property loss or whether it was flood damage in connection with the hurricane that caused the loss. After hurricanes such as Katrina, if a homeowner has wind and flood insurance, the homeowner often has to prove in court whether it was wind or water that caused the damage. This is unacceptable. Let me emphasize this: Individuals who had all the appropriate insurance—wind and water—were, in many instances, caught in the middle and forced to go to court to watch the insurance carriers fight among themselves. My legislation would remove the burden of determining flood or wind loss allocation from the property owner and put it where it belongs—a decision to be made between the insurers.

If my bill becomes law, insurance companies, including State-run wind pools and the National Flood Insurance Program, would have to pay a claim as soon as possible after the hurricane. If there is a dispute, each would pay 50 percent. The homeowner would be paid for the loss while the parties responsible for paying the claim would work out the details.

My legislation—and again, it is S. 3672, the Coordination of Wind and Flood Perils Act of 2010—would prevent homeowners from having to go to court to determine what portion of the damages were caused by wind and what portion by water. This should not be part of the duties of the homeowner. Under my legislation, if there is a dispute between the parties responsible for paying the claim, the insured would be compensated immediately and the dispute between the insurers would be resolved by arbitration.

This is only a small step. It doesn't answer the whole problem. I still support the concept of putting wind coverage under the National Flood Insurance Program on a voluntary basis, as