

Elena Kagan has demonstrated, time and time again, that she understands that.

In fact, listening is one of her strong suits. Justice Stevens often said that openly debated differences benefit democracy and he promoted what he called “understanding before disagreeing.” The lawyer and teacher the President has chosen to succeed Justice Stevens believes the same.

When General Kagan spoke last year to graduates of Harvard Law School, where she was beloved by the students and faculty alike, she reminded them: “You only learn something when your ears are open, not when your mouth is open.” That shows wisdom. It takes a smart person to recognize that we make progress and make the right decisions when we approach each person and each problem with an open mind. It takes a smarter one to say as much. So I hope each Senator will approach this vote the way General Kagan will approach each question that comes before the Court: with deference to the facts, the evidence, and our shared national interests.

General Kagan is a public servant who has remained far above the political fray and will be the only Justice who comes from outside the judicial monastery. She is a student and teacher of the law who looks up from her books out into the real world. She knows that while we are a nation of laws and not of men, the former has a genuine and personal impact on the lives of the latter.

Because of her intellect and integrity; her reason, restraint, and respect for the rule of law; her unimpeachable character and unwavering fidelity to our Constitution, I am proud to cast my vote for Elena Kagan’s confirmation to be a Justice of the U.S. Supreme Court.

We are going to wait until the hour of 3:30 arrives before we start to vote. Senator LEAHY, at that time, will have a request to make.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination of Elena Kagan to be an Associate Justice on the Supreme Court of the United States.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Elena Kagan, of Massachusetts, to be an Associate Justice of the United States Supreme Court?

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 63, nays 37, as follows:

[Rollcall Vote No. 229 Ex.]

YEAS—63

Akaka	Bingaman	Cardin
Baucus	Boxer	Carper
Bayh	Brown (OH)	Casey
Begich	Burr	Collins
Bennet	Cantwell	Conrad

Dodd	Klobuchar
Dorgan	Kohl
Durbin	Landrieu
Feingold	Lautenberg
Feinstein	Leahy
Franken	Levin
Gillibrand	Lieberman
Goodwin	Lincoln
Graham	Lugar
Gregg	McCaskill
Hagan	Menendez
Harkin	Merkley
Inouye	Mikulski
Johnson	Murray
Kaufman	Nelson (FL)
Kerry	Pryor

NAYS—37

Alexander	Crapo	McConnell
Barrasso	DeMint	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Risch
Brown (MA)	Grassley	Roberts
Brownback	Hatch	Sessions
Bunning	Hutchison	Shelby
Burr	Inhofe	Thune
Chambliss	Isakson	Vitter
Coburn	Johanns	Voinovich
Cochran	Kyl	Wicker
Corker	LeMieux	
Cornyn	McCain	

The nomination was confirmed.

The PRESIDING OFFICER. A motion to reconsider this vote is considered made and laid on the table. The President shall be notified of the Senate’s action.

Mr. LEAHY. Mr. President, the Senate has concluded our consideration of the nomination of Elena Kagan and confirmed her as an Associate Justice on the U.S. Supreme Court. For the second time in 2 years, we have considered a nomination for a lifetime appointment to the Supreme Court, one of our most consequential responsibilities. I am proud that process we followed in considering this nomination in the Judiciary Committee and in the Senate has garnered praise from many Senators for its fairness and thoroughness.

We could not have given this nomination the attention it deserved without the help of dedicated staff. For months, the staff of the Judiciary Committee has worked long hours dutifully to obtain and review extensive amounts of documents and information and help Senators in our review. I wish to thank the following members of the majority staff in particular, Jeremy Paris, Erica Chabot, Kristine Lucius, Shanna Singh Hughey, Maggie Whitney, Hasan Ali, John Amaya, Sarah Hackett, Sarah Hasazi, Michael Gerhardt, Elise Burditt, Noah Bookbinder, Anya McMurray, Liz Aloï, Tara Magner, Kelsey Kobelt, Juan Valdivieso, Matt Virkstis, Curtis LeGeyt, Roslyne Turner, Erin O’Neill, Julia Gagne, Brian Hockin, Joseph Thomas, Elizabeth Saxe, Katharine McFarland, Miles Clark, Christine Paquin, David Zayas, Lydia Griggsby, Adrienne Wojciechowski, Dan Taylor, Patrick Sheahan, Matt Smith, Scott Wilson, Kiera Flynn, Rachel Pelham, Bree Bang-Jensen, Chuck Papirmeister, and Bruce Cohen. I also thank my staff for their hard work on this nomination, in particular, Edward Pagano, David Carle, Laura Trainor, and Kevin McDonald. I would also like to thank

Reed
Reid
Rockefeller
Sanders
Schumer
Shaheen
Snowe
Specter
Stabenow
Tester
Udall (CO)
Udall (NM)
Warner
Webb
Whitehouse
Wyden

Stacy Rich from Senator MURRAY’s staff who helped manage the floor.

I commend and thank the hard-working staffs of the other Democratic members of the Judiciary Committee for their tremendous contributions to this effort.

I also commend and thank Senator SESSIONS, the committee’s ranking Republican, and his staff, in particular, Brian Benczkowski, Danielle Cutrona, Ted Lehman, and Lauren Pastarnack, for their hard work and professionalism.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

The PRESIDING OFFICER. The Senator from Michigan.

UNANIMOUS CONSENT REQUEST— S. 3454

Mr. LEVIN. Mr. President, it is obvious we are not going to be able to get to the Defense authorization bill this week. However, it is important we get to it as soon as possible after we return. In order to facilitate that, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 414, S. 3454, national defense authorization.

The PRESIDING OFFICER. Is there objection?

Mr. MCCAIN. Reserving the right to object, and I do so with some reluctance, I remind my colleagues that last year we took up the consideration of the Defense authorization bill without warning. The distinguished chairman of the committee introduced a hate crimes bill which had no business on the Defense authorization bill, filled up the tree, and then, of course, we spent a great amount of time on hate crimes.

I have only been a member of this committee since 1987. I have never seen what the chairman of the committee did last year by bringing forth a totally irrelevant and very controversial issue and putting it on the Defense authorization bill. We spent weeks on that when we should have been spending time on defending this Nation. It was a betrayal of the men and women who are serving this country.

I am not going to allow us to move forward, and I will be discussing with my leaders and the 41 Members of this side of the aisle as to whether we are going to move forward with a bill that contains the don’t ask, don’t tell policy repeal before—before—a meaningful survey of the impact on battle effectiveness and morale of the men and women who are serving this Nation in uniform.

It is, again, the chairman of the committee and the majority leader and the other side moving forward with a social agenda on legislation that was intended to ensure this Nation’s security.

Along with it, abortion now is going to be performed in military hospitals for the first time in a long time. There is going to be a transparency. The distinguished chairman and his staff, without informing me or anybody else, put in \$1 billion worth of porkbarrel projects instead of the \$1 billion the administration asked for us to aid Iraq as we are finally leaving.

It is a terrible piece of legislation, ramrodded through. My greatest concern, of course, is about repeal of don't ask, don't tell without any survey being done to find out the battle effectiveness and morale, which we were assured would take place before the repeal of don't ask, don't tell. It is purely a political promise on the part of the President of the United States and the Members on the other side of the aisle, and it is disgraceful to have it on this legislation without a survey being done about our battle effectiveness and the morale of the men and women in the military from whom I am hearing all the time.

Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, each of the items which the Senator from Arizona mentioned were voted on in committee. These are decisions that were made by the committee, and if we can get this bill to the floor, the decision will not be left up to the Armed Services Committee; it will be left up to the Senate. If anyone wishes to strike a provision that is in this bill—and the provisions which the Senator from Arizona talked about are all relevant provisions. It was a Senate Armed Services Committee bill which put into place don't ask, don't tell. The provision we have in there now which changes that policy makes it conditional upon that survey being completed and a certification from the military leaders that there is no negative impact on morale. So we have taken into consideration that survey.

The main point is that the place to debate these policies is on the floor of the Senate. The Senate will determine, if we can get this bill to the floor, whether we make that conditional change in the don't ask, don't tell policy or whether we do a number of other things, some of which I objected to in committee.

Some of the amendments of the Senator from Arizona that were adopted in committee I objected to and voted against. I am not going to deny the Senate the opportunity to take up a bill which is essential for the men and women in the military because I disagree with some provisions in that bill. I will then move to strike those provisions if I disagree that much, if we can get the bill to the floor. That is what the Senate debate is supposed to be about.

I am sorry there is an objection to this bill coming up. Obviously, we are going to try to get this bill up in Sep-

tember so we can debate the issues which the Senator from Arizona points to. They are legitimate issues for debate. We should debate them, but the only way we can debate them is if we get the bill to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I will respond again. Last year, the Senator from Michigan did not allow exactly what he is espousing now. He brought up hate crimes and filled the tree so that even if the Senator from Arizona wanted to have an amendment on it, I could not do it. The hate crimes bill had nothing to do with national defense. It had everything to do with the social agenda of the chairman of the committee.

What we have done is, we have eroded the confidence of Members on this side of the aisle as to what the agenda is going to be.

Perhaps the Senator from Michigan can tell me what hate crimes had to do with the defense of this Nation. It had everything to do with his social agenda. I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I will be happy to tell the Senator from Arizona what hate crimes has to do with the defense of this country. Men and women who defend this country defend this country for a lot of reasons. One of them is we try to act against hate in this country. That is one of the values we stand for; that we try to defeat hate. That was debated last year. It was voted on last year. The vote maybe did not come out the way the Senator from Arizona wanted.

If we want to debate last year, that is OK. Let's bring the bill to the floor so we can debate it. But the objection now makes it much more difficult to bring a bill to the floor so we can debate the very issues the Senator from Arizona wants to debate.

We should debate the don't ask, don't tell decision we made in the committee. It was debated there; it should be debated on the Senate floor. By the way, it is a conditional change in the don't ask, don't tell policy. The policy was put in place by the Pentagon and by the Armed Services Committee and by the Senate. It is perfectly appropriate that it be considered as part of this bill because it was our committee which put that policy in effect to begin with.

The debate is appropriate. But how do we have that debate unless we can get it to the floor of the Senate? How can we debate the amendments of the Senator from Arizona? There were two or three that he offered in committee that I objected to. How do we get to those debates unless we can get the bill to the floor?

I cannot get a guarantee from everybody that I will prevail in my effort to strike the amendments of the Senator from Arizona. I cannot get that guar-

antee in advance, nor should the Senator from Arizona seek a guarantee in advance as to what will be in the final bill or will not be in the final bill.

Mr. MCCAIN. Mr. President, I can guarantee that we would not fill up the tree the way the Senator from Michigan did last year and would probably do again this year in violation of what I believe is what the Senate should be all about—amending on different legislative proposals that are before the Senate instead of filling up the tree and not allowing amending of the bill, despite what the chairman says had something to do with national defense.

Hate crimes? Really? Then that means that everything in the social agenda of the Senator from Michigan has to do with the men and women who are serving in the military. I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, it was the Senate which made a decision last year on hate crimes. It was not the Senator from Michigan, although I very much favored what the Senate of the United States did. But it was the Senate of the United States which acted in a way which the Senator from Arizona does not agree to—I don't know how many amendments we adopted last year, but it was a large number of amendments which were adopted. A large number of amendments were defeated. I don't know if that tree was filled up, as the Senator puts it, last year or not, or when it was filled up. But we had a huge number of amendments that were considered on this bill.

It is the intention, I hope and believe, of the leader, and it is surely my intention this year, that we have an amendment process which is traditional for the Defense authorization bill; that it be a very open process for amendments on this bill. That is my intention. It is the intention of the majority leader as well. I want to assure my friend from Arizona that will be the case again this year.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Arizona.

Mr. MCCAIN. Madam President, I won't repeat myself over and over. The fact is, last year, the Senator from Michigan brought up hate crimes, filled up the tree, and we spent almost all of the first 2 weeks debating hate crimes, which had nothing to do with the purpose and mission of the Senate Armed Services Committee. It is the first time I have ever seen such a thing happen. I am not going to let it happen again if I have anything to say about it.

As I have said to the Senator from Michigan, I will talk to our leadership and our caucus and all the Members over on this side of the aisle, and when we get back a decision will be made as to whether we will object to the motion to proceed. In the meantime, I object.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Is the Senator from Arizona suggesting we did not have a vote on hate crimes last year?

Mr. MCCAIN. The Senator from Arizona is saying that the Senator from Michigan filled up the tree; did he not? Was the tree filled up? You are the chairman of the committee.

Mr. LEVIN. It is not my recollection, but that is not my question. My question is whether we had a vote on hate crimes.

Mr. MCCAIN. My response is did you prevent the tree from being filled?

Mr. LEVIN. We did not prevent a vote on hate crimes last year. That is my answer.

The PRESIDING OFFICER. The Senator from Arkansas.

**HEALTHY, HUNGER-FREE KIDS
ACT OF 2010**

Mrs. LINCOLN. Madam President, I ask unanimous consent that the Sen-

ate proceed to the immediate consideration of Calendar No. 363, S. 3307, the Healthy, Hunger-Free Kids Act of 2010.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3307) to reauthorize child nutrition programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mrs. LINCOLN. Madam President, there is a Lincoln-Chambliss substitute amendment at the desk, and I ask that the amendment be considered and agreed to, the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relating to the bill be printed in the RECORD, without intervening action or debate, and that the pay-go statement from Senator CONRAD be printed in the RECORD.

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

The amendment (No. 4589) was agreed to.

(The amendment is printed in today's RECORD under "Text of amendments.")

The bill (S. 3307), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. CONRAD. Mr. President, this is the Statement of Budgetary Effects of PAYGO Legislation for S. 3307, as amended.

Total Budgetary Effects of S. 3307 for the 5-year Statutory PAYGO Scorecard: net increase in the deficit of \$814 million.

Total Budgetary Effects of S. 3307 for the 10-year Statutory PAYGO Scorecard: net increase in the deficit of \$2.189 billion.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act.

The table is as follows:

ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO S. 3307, REAUTHORIZING CHILD NUTRITION PROGRAMS (AS TRANSMITTED ON AUGUST 5, 2010—WE110567)

(Millions of dollars, by fiscal year)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020
Net Increase or Decrease (–) in the On-Budget Deficit Relative to Current Law (as of August 5, 2010)													
Net Budgetary Impact	0	–51	–50	279	–5,108	–4,127	–2,484	–1,004	–165	265	259	–9,056	–12,184
Less:													
Previously Designated as Emergency Requirements ¹	0	0	0	0	–5,446	–4,424	–2,775	–1,290	–438	0	0	–9,870	–14,373
Statutory Pay-As-You-Go Impact	0	–51	–50	279	338	297	291	286	273	265	259	814	2,189
Net Increase or Decrease (–) in the On-Budget Deficit Relative to the Effects of H.R. 1586 as Amended by the Senate on August 5, 2010													
Net Budgetary Impact ²	0	–51	–50	279	–2,138	297	291	286	273	265	259	–1,662	–287
Less:													
Previously Designated as Emergency Requirements ¹	0	0	0	0	–2,476	0	0	0	0	0	0	–2,476	–2,476
Statutory Pay-As-You-Go Impact	0	–51	–50	279	338	297	291	286	273	265	259	814	2,189

Note: Components may not sum to totals because of rounding.

¹ Savings in Title IV that would result from a change to the Supplemental Nutrition Assistance Program that was previously designated as emergency.

² If H.R. 1586 were to clear the Congress prior to this bill, the net deficit impact would change because some of the savings in Title IV of the child nutrition legislation that would result from a change to the Supplemental Nutrition Assistance Program are also included in H.R. 1586. Total savings would decline from \$14.4 billion to about \$2.5 billion over the 2010–2020 period. The net decrease in the deficit would be \$1.7 billion over the 2010–2015 period and \$287 million over the 2010–2020 period, if H.R. 1586 were to clear the Congress prior to this bill.

Source: Congressional Budget Office.

Mrs. LINCOLN. Madam President, for the past 2 weeks, I have come to the floor of the Senate to speak about the critical importance of passing child nutrition legislation before we adjourn for the August recess, and I want to say a very special thanks to all of my colleagues for their hard work on this initiative, their willingness to rise above partisan politics, regional differences, or anything else, to seize this opportunity. I am so pleased today to say we have seized this opportunity to make a historic investment in our children.

I started out my discussion here on the floor last week by saying all we would need to get this bill done was a mere 8 hours—a simple 8 hours to pass a bill that would improve the lives of millions of children across this country. With the assistance of my colleagues, we were able to accomplish this goal in much less time than that, and I want to thank my colleagues again for sending such a strong bipartisan message of support for child nutrition.

Before I go any further, I wish first to thank my good friend and the ranking member of our Agriculture Committee, Senator CHAMBLISS, for his tremendous assistance in crafting this

legislation and bringing us to this vote today. He is a wonderful partner in the Senate Committee on Agriculture, Nutrition, and Forestry, and he has been a true partner in this effort. I greatly appreciate all his work on this bill. We could not have gotten to this point, nor could we have passed this, without him. So I am grateful to him. I also add my thanks to his staff—Martha Scott Poindexter and Kate Coler. And, of course, all my thanks go out to my staff on the Agriculture Committee—Robert Holifield, Brian Baenig, Dan Christenson, Hillary Caron, Courtney Rowe, and Julie Anna Potts. They are the absolute best.

I also need to thank the administration—the President and First Lady, as well as Secretary Vilsack—for their incredible leadership on childhood nutrition. Their hands-on involvement, particularly in the last few days, has ensured that we will be able to accomplish this goal. I know this is an issue they all care very deeply and passionately about, and that is reflected in the many shared priorities between the Congress and the administration that are included in this bill.

I must say the presence of the First Lady, her compassion, her diligence, her tenacity in wanting to see some-

thing happen on behalf of the children of this country that was productive, was progressive, and that moved us forward past the benchmarks we had been at since 1973 have been amazing, and I am certainly grateful to her for all she has done.

With the passage of this bill, I am pleased we are bringing some fresh bipartisan air into the Senate. It goes to show that when you are willing to roll up your sleeves, work across the aisle in a collective and bipartisan manner, you truly do see results. That is what the American people elected us to do. That is what they expect and that is what this bill represents.

Most importantly, this bill is about our children, and about doing what is right for them and for their families. It is about connecting more children with the child nutrition programs which their families depend upon to make ends meet. It is about making sure they get the nutritious meals they deserve so they can succeed in the classroom and learn better. It is about making sure our schools and classrooms, our childcare settings are all places that promote good health and wellness, because we know that children who are healthier learn better and they also