

how he will perform the duties if confirmed on the Federal bench. That is exactly what we evaluated in the Judiciary Committee, and we quickly spotted a number of red flags.

One of the most critical qualities for a judge is impartiality. Good judges are like good referees. They don't pick sides, they don't play favorites, and they don't make decisions that are essentially a result-oriented process. In other words, they start as a blank slate, consider the law and evidence, and then make a decision, not the other way around.

Judges should make decisions based solely on the law and the evidence presented in a courtroom—that is pretty basic stuff—nothing more, nothing less. In recent years, though, we have seen a disturbing trend of judicial activism.

That is entirely appropriate if you are an elected representative because the voters get to vote on you, but if you are a lifetime-tenure judge, to basically usurp the role of the political branches and to make policy yourself is an abuse of that power. That happens when judges inject their personal beliefs and biases in their decision-making process, and unfortunately this nominee has a record of doing that.

Throughout his career, he has repeatedly shown that he has an agenda, and I question his ability to give litigants a fair shake. That is the most basic responsibility of a judge. If you are someone, let's say, charged with a crime or maybe a civil litigant or maybe just any other one of a number of different types of cases, you want to be able to walk into the courtroom knowing that the judge has not already decided the case against you.

So when the judge, for example, requires all the people in his courtroom to announce their preferred pronouns as part of the process, I think you begin to question, can this judge actually be fair and treat everybody the same?

Look, we live in a diverse country, and some people find that sort of question appropriate and others do not, which is fine. Everybody is entitled to their own beliefs. But I believe it is completely inappropriate to have a Federal judge who will effectively require this sort of proclamation by ordinary litigants or chill anyone who may have a religious or other objection from claiming a pronoun.

Imagine this same protocol but with a different question. What if a judge told the parties they had to declare their religious affiliation before the judge would hear the case? Imagine lawyers, litigants, and witnesses being told to announce before an entire courtroom if they identify as a Christian, a Muslim, a Jewish person, an atheist, or some other religion. We wouldn't tolerate that sort of outcome or question in a courtroom. Would that be viewed as an act of inclusion or would it be condemned as religious discrimination?

Our court system is and should remain blind to who you are, where you come from, how rich you are, or whom you represent. Everyone is entitled to a fair shake, no matter what. That is the minimum required under our Constitution. In order for that to happen, judges have to set aside their personal beliefs and apply the law as written. Judge Kasubhai has proven that he cannot and will not do that.

I am afraid the judge's woke courtroom policies won't end there. Clearly, his own liberal bias has infiltrated his ability to make rational decisions on the evidence.

Consider this: In an interview a few years ago, Judge Kasubhai said:

We have to set aside conventional ideas of proof when we are dealing with the interpersonal work of equity, diversity, and inclusion.

Now, the standard of proof and what qualifies as evidence are things you learn about in law school that are applied to every single case. But now for the judge to say that we need to set aside those conventional ideas of proof when we are dealing with equity, diversity, and inclusion sends a very troubling signal. What I take that to mean is that he will disregard the facts, the law, and the applicable legal standard to get the results he wants.

Making matters worse, he later referred to diversity, equity, and inclusion as “the heart and soul of the court system.” I would argue that the “heart and soul” of our court system is the pursuit of justice and equal treatment under the law, not pursuit of diversity for its own sake.

I can't imagine anything more terrifying to a litigant than to walk into a courtroom where the judge has already put his finger on the scales of justice—a judge with an agenda.

Of course, judges are duty-bound by their oath to operate without fear or favor. They must base their decisions on the law, the evidence, and the facts before them, period. Based on Judge Kasubhai's history on the bench, I have no confidence that he will do that. He has a record of judicial activism. He has made it abundantly clear he is willing to set aside the facts and the law when considering some cases. He has proven that he values his own ideology more than he does his commitment to the rule of law or the evidence that is presented in court, and he has proven that he can't prevent his personal views from bleeding into his decisions as a judge.

Judge Kasubhai is not qualified for a lifetime appointment to the Federal bench. I know this, and I believe my Democratic colleagues know this too, which is why this vote had to be rescheduled a couple of times because Senator SCHUMER, who sets the agenda, wonders whether or not even enough Democrats will vote for the nomination to get him confirmed. The fact that Democratic leadership can't rally the votes among their own Members says everything you need to know about this nominee.

The American people, no matter where they live, deserve to have fair and unbiased judges on the bench, and they certainly deserve better than this nominee.

I believe the majority of Senators oppose this nomination, and I hope this marks the end of the road for this unqualified nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

FORT BELKNAP INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 2023

Mr. TESTER. Mr. President, I appreciate the recognition.

I rise today to talk about an issue that is a disaster. Earlier this week, we saw a water diversion project, that takes water from the St. Mary drainage and puts it in the Milk River, literally blow up. That siphon that blew up had been around for over 100 years. It is critical for Northern Montana. The project is near a town called Babb, MT.

The siphon failure caused thousands of gallons of water to flood the surrounding area, leading to extensive damage to local businesses in that area, and will damage irrigation opportunities for 120,000 acres. What do I mean when I say “damage irrigation”? They won't have any water to irrigate. It also provides water to four municipalities, two rural water systems, and two Tribes. It is a vital source of water for North Central Montana's water users and to so many farmers who feed the world.

Now, the timing of this could not be worse because there are literally hundreds of farmers and ranchers who are currently depending on the Milk River Project to irrigate their crops. Because of the severity of the situation, I immediately called on the Biden administration to work to ensure that the local community and irrigators have the resources they need to fix this problem and include the Milk River Project in the administration's domestic supplemental package.

That is what the administration can do, but Congress also has an opportunity and actually an obligation to do our job. Congress can unlock critical funding for the Milk River Project once again by passing the Fort Belknap Indian Community Water Rights Settlement.

The Fort Belknap Indian Community Water Rights Settlement Act is a critically important piece of legislation that addresses a wide range of issues. I am not going to get into all the details, but I will say this: When finalizing this settlement, the Fort Belknap Indian Community recognized how important the St. Mary Canal is to all the water users in North Central Montana. Because of the leadership and the vision from Tribal leaders like President Stiffarm, the Fort Belknap Indian Community Water Rights Settlement

was included and the St. Mary Canal project was included. Now, if this Fort Belknap Indian Community Water Rights Settlement passes, we can rehabilitate the St. Mary Canal, what exploded earlier this week.

The bipartisan bill passed the Senate earlier this Congress—this Fort Belknap Indian Community Water Rights Settlement—as an amendment to the NDAA, but Speaker JOHNSON and House Republicans stripped it from the final version.

For nearly a year, the House has failed to act to provide the North Central Montana water users the certainty they need. These folks are farmers that need to feed the country and entire world, but they are also businesses that will go broke without water.

Now is the time to move forward. The siphon failures that occurred earlier this week are a reminder that we must invest in infrastructure to protect water supply and food supply. So, today, the Senate hopefully will once again pass this critical water rights compact. This time, it is a stand-alone bill, not part of the NDAA.

I want to be clear: The House needs to pass this bill. The House needs to put aside the politics and pass this bill. Farmers' operations that have been generational in this region—their livelihoods are on the line. Water for municipalities is on the line. This is no time—no time—to play politics.

The siphon bursts that we saw earlier this week have left Montana families reeling. Congress can do its job. The Senate will do its job. It is time for the House to act responsibly too. Let's get this done so we can repair the Milk River Project and give the water users in North Central Montana the certainty and predictability they need to survive.

Mr. President, as if in legislative session, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of S. 1987 and the Senate proceed to its immediate consideration.

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

The legislative clerk read as follows:

A bill (S. 1987) to provide for the settlement of the water rights claims of the Fort Belknap Indian Community, and for other purposes.

There being no objection, the committee was discharged, and the Senate proceeded to consider the bill.

Mr. TESTER. Mr. President, I ask unanimous consent that the Tester-Daines substitute amendment at the desk be agreed to and the bill, as amended, be considered read a third time.

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

The amendment (No. 2074) in the nature of a substitute was agreed to.

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

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. TESTER. Mr. President, I know of no further debate on the bill, as amended.

The PRESIDING OFFICER. The bill having been read the third time and there being no further debate, the question is, Shall the bill pass?

The bill (S. 1987), as amended, was passed.

Mr. TESTER. I ask that the motion to reconsider be considered made and laid upon the table.

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

The PRESIDING OFFICER. The Senator from Nebraska.

WINNEBAGO LAND TRANSFER ACT OF 2023

Mrs. FISCHER. Mr. President, the Winnebago Land Transfer Act brings a simple issue of fairness to the Senate floor. I introduced this bill with my colleagues after hearing from members of the Winnebago Tribe about the trials they have faced over decades. These trials were sadly imposed by our own government, and that is why our government must resolve them.

In the mid-1800s, the government forcibly removed the Winnebago Tribe from their homeland. They settled in a new home in 1865—the Winnebago Indian Reservation in my home State of Nebraska.

The government promised that land to the Winnebago Tribe, and they promised it forever, but they did not keep that promise. In 1970, the U.S. Army Corps of Engineers condemned 1,600 acres of the Tribe's reservation land for a proposed recreation project—a project that was never even started. The land seizure launched over half a century of legal battles between the Winnebago Tribe and the U.S. Government—battles that never brought this matter to a just resolution.

But America is defined by our striving toward the ideals of justice and equality. Our government was established to protect these ideals, and that is what we will do by passing the Winnebago Land Transfer Act. Our legislation will restore the Tribe's rightful land, transferring the remaining tracts of land back from the U.S. Army Corps.

The House of Representatives passed this legislation earlier this year, and that is the version we are voting on today. They passed it because, like I said, it is a simple issue of fairness—one that all of us, no matter our political party, can get behind.

I am hopeful that today the Senate will follow suit, that we will uphold those ideals of justice and of equality. I am hopeful that we will pass this bill to return the land to its rightful owner, the Winnebago Tribe.

Mr. President, as if in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 411, H.R. 1240.

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

The legislative clerk read as follows:

A bill (H.R. 1240) to transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska, and for other purposes.

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

Mrs. FISCHER. I ask unanimous consent that the bill be considered read a third time.

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

The bill was ordered to a third reading and was read the third time.

Mrs. FISCHER. I know of no further debate on the bill.

The PRESIDING OFFICER. There being no further debate and the bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 1240) was passed.

Mrs. FISCHER. I ask unanimous consent that the motion to reconsider be considered made and laid upon the table.

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

Mrs. FISCHER. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I move to proceed to legislative session.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. SCHUMER. I move to proceed to executive session to consider Calendar No. 380.

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the nomination.

The senior assistant executive clerk read the nomination of Patricia L. Lee, of South Carolina, to be a Member of the Defense Nuclear Facilities Safety Board for a term expiring October 18, 2027.

CLOTURE MOTION

Mr. SCHUMER. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The senior assistant executive clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the