

And if by reason of strength they be four-score years, yet is their strength labour and sorrow; for it is soon cut off, and we fly away.

On my 80th birthday, I was in Charleston, WV, and the then-Governor of the State, Gov. Cecil Underwood, had invited me over to the Governor's mansion. I was enjoying a luncheon there, given by Cecil Underwood in my honor. During the luncheon, I was called to the telephone. On the telephone was my chief of staff, Barbara Videnieks, who said to me, "Senator, we have a visitor in the office," meaning here in Washington. She said, "Senator TED KENNEDY is here, and he has with him 80 roses."

TED KENNEDY brought the roses to my office himself, 80 roses. I never had that to happen to me before, and I am not sure that many Senators in this Chamber, if any other than I, can recount such a beautiful experience as that was for me. There was TED KENNEDY in my office—I was in Charleston, at the Governor's mansion—with 80 roses on my 80th birthday. You can bet before he was able to get out of my office and down to the subway car I was on the telephone calling him and thanking him for being such a real friend.

You would think we vote together just like that all the time. We don't. But we never argue about it; we never have any falling out about it, when we have little differences of viewpoints with respect to legislation. There is this underlying bond of friendship between Senator KENNEDY and me.

Last year, I was at the Greenbriar with my wife of 63 years on our anniversary. And, lo and behold, here came to our room at the Greenbriar 63 red roses. From whom? TED KENNEDY. I was surprised. That is TED KENNEDY. Our friendship will always be strong. He thought of me on our wedding anniversary, and he thought of Erma. He is just like that. But who else sent me 63 roses on our wedding anniversary? Nobody.

I think it is remarkable that there has grown up that kind of bond of affection and friendship between these two Senators.

Most people probably remember President John F. Kennedy introducing himself to the people of France by saying he was the person who accompanied Jacqueline Kennedy to Paris. A year before that, President Kennedy, upon a return visit to the Appalachian coal fields in West Virginia, introduced himself saying—here is President Kennedy saying—"I will introduce myself—Teddy Kennedy's brother."

During the last election, I saw for myself a tremendous display of this continued affection for Senator KENNEDY among my people, the people of West Virginia. When Senator KENNEDY and I appeared at a political rally in the heart of the State's southern coal fields where I grew up, we were promptly swamped by swarms of people—swarms of West Virginians, mountain

people—seeking TED KENNEDY's autograph and wanting to shake hands with him or simply to see him.

I will always be pleased to introduce myself as Senator TED KENNEDY's friend, and I will always be glad that I have had the opportunity to serve with him in the Senate.

I say belatedly to TED KENNEDY, with his birthday of a few days ago, Senator KENNEDY, because of you, many people in this country are much better off. Because of you, millions of our citizens have a voice that is heard in these Halls. So happy birthday, Senator KENNEDY, and may God bless you.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

SENATOR DAYTON'S MAIDEN SPEECH

Mr. WELLSTONE. Mr. President, I was at a conference dealing with health care policy when my colleague, Senator DAYTON, spoke. I come to the floor to congratulate Senator DAYTON for his words.

When he campaigned for the U.S. Senate seat, he spoke on cost of prescription drugs, especially for the elderly. I think it applies to many other families as well. Over and over again, he said this was his No. 1 priority. He said our country could do better. He said this was a matter of elementary justice. He talked about older people in Minnesota—senior citizens—two-thirds of whom have no prescription drug coverage. He talked about, for example, seniors cutting pills in half because they could not afford them or people running out of food or their homes being cold.

I think it is very significant that when Senator DAYTON came to the floor of the Senate today to give his first speech, his maiden speech, he talked about prescription drug costs and his commitment to introducing responsible legislation that will make a real difference in the lives of people.

The reason I think it is significant is not only because he spoke on an issue that is very important to people's lives, but it is all the more important because he said something about MARK DAYTON in very personal terms. He campaigned on this issue. He listened to many people in Minnesota, and many elderly people talk about these costs.

He came to the Senate after winning the election, and he basically stayed true to the commitment he made to people in his State. Senator DAYTON has been my friend for many years. I think he will be a great Senator.

I always said—and I said to Senator Rod Grams after the election—that no

one can ever say to Senator Rod Grams that he did not vote for what he believed in; that he did not say what he believed. I think he deserves an awful lot of credit for that.

I never like it when anyone loses. I don't like to see people lose. I like to see people win. It is because of my Jewish roots.

I think MARK DAYTON is going to be a great Senator for the State of Minnesota and for this country, and I am very honored to serve in the Senate with him. As the senior Senator, I hope he will consider my views over and over again. I doubt that he will. And it will probably make him an even better Senator if he doesn't.

He spoke powerful words. I am sorry I was not on the floor with him. But I thank him for his commitment to the people. I thank him for his passion. I thank him for caring about public service, and I thank Senator DAYTON for caring about senior citizens and other citizens in the country. I thank him for his commitment to Minnesota.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are in a period of morning business, with Members allowed to speak for up to 10 minutes.

U.S. SUPREME COURT

Mr. LEAHY. Mr. President, I have become increasingly concerned about some of the recent actions of the U.S. Supreme Court. As a member of the bar of the Court, as a U.S. Senator, as an American, I, of course, respect the decisions of the Supreme Court as being the ultimate decisions of law for our country. As an American, I accept any of its decisions as the ultimate interpretation of our Constitution, whether I agree or disagree. I have probably supported the Supreme Court and our judicial system more than anybody else on this floor.

Having said that, I think we can at least still have in this country a discussion of some of the things the Court has done. Recently, we have seen another assault by the Court on the legislative powers of Congress.

My concern may be more in sadness than in anger over what has happened. It is very easy to give talks about activist Supreme Courts, but it is hard to think of a time, certainly in my lifetime, with a more activist Supreme Court than the current one. Last week, the Court held that State employees are not protected by the Federal law banning discrimination against the disabled. The case was decided by the same 5-4 majority that brought us

Bush v. Gore and other examples of judicial activism, the so-called "conservative" wing of the Rehnquist Court.

I accept they are indeed "conservative" in the sense that they greatly restrict the role of the Federal Government in protecting the individual rights and liberties of ordinary Americans. They are very conservative in the sense they have decided that the unelected five-member majority can go against the overwhelming bipartisan position of the elected Members of the House and the Senate, Republican and Democrat.

The case I speak of involved two Alabama State employees. Patricia Garrett sued the University of Alabama for demoting her when she returned to work after undergoing treatment for breast cancer. Milton Ash sued the State Department of Youth Services for refusing to modify his duties and work environment to accommodate his medical problems, which included chronic asthma.

These are precisely the sorts of grievances Congress set out to remedy when it passed a landmark civil rights law called the Americans with Disabilities Act, commonly known as the ADA. I was proud to be part of the overwhelming bipartisan consensus that passed the ADA—proud because of the principles the ADA stands for. It stands for the principle that America does not tolerate discrimination against those in our society who suffer misfortune and illness. It stands for the principle that every disabled person in America is entitled to be treated fairly in the workplace. And it stands for the principle that all employers, whether government or private employers, should be held accountable in a court of law when they violate the rights of the disabled.

Nondiscrimination, fairness in employment, and government accountability are each important core values in our society. They are principles that the American people know well and hold dear. They are the values that the first President Bush upheld when he signed the ADA into law. I remember it very well, that day at the White House when he signed the law. He reminded the Supreme Court of these principles when he took the unusual step of writing an eloquent brief to the Supreme Court in support of the ADA and in support of Patricia Garrett and Milton Ash's right to their day in court. I applaud him for that.

Sadly, last week the activist wing of the Supreme Court paid little heed to the view of either democratic branch of our government—the Congress that enacted the ADA or former President Bush who signed it into law. These five activist Justices gave short shrift to the core values of the American people that the ADA embodies.

Instead of protecting the disabled from discrimination, they denied the disabled their day in court. Instead of requiring fair treatment for all American workers, they created a special ex-

ception limiting the rights of government workers. Instead of promoting government accountability, they championed, above all else, the obscure doctrine of State sovereign immunity. That is legalese for saying the government gets a special exemption, preventing it from being held accountable in a court of law.

We hear a lot of rhetoric, complaining about so-called "activist" judges. I have heard it used by my friends on the other side of the aisle to describe Democratic judicial appointees who say they will uphold settled law, such as *Roe v. Wade*, or those who have been associated with public interest organizations that have fought to defend individual civil liberties. It is sometimes applied even to conservative Republican appointees such as Justices O'Connor and Kennedy, when it is felt that they are not being conservative enough.

When he served on the Judiciary Committee in the Senate, our new Attorney General gave a speech on what he called "judicial despotism." He complained about "the alarming increase in activism" on the Supreme Court. He referred to the majority of the Court, including Justice Kennedy, as "ruffians in robes."

I do not use such language. That kind of name calling does no good for the mutually respectful relationship among the three branches of government, the relationship that our Constitution and the American people call for. I have refrained from using such language, even when I strongly disagree with a decision, such as the 5-4 decision in *Bush v. Gore*, when the Supreme Court, in effect, decided a Presidential election.

But I mention the question of activism because the American people should know that activism does not come in just one flavor. Some would say judicial activism and liberal activism are one and the same. Of course they are not. Judicial activism can work both ways. It can work to expand protections for all our rights or it can be used to limit our rights.

As one of the Nation's leading constitutional scholars, Professor Cass Sunstein, pointed out in an article last month, history teaches that for most of the 20th century, judicial activism was predominantly conservative, and the unelected judicial branch was far to the right of the democratic branches of our Government.

Actually, that is where we are today at the start of the 21st century. The reality today in courts such as the U.S. Supreme Court and Fourth Circuit that are dominated by ideologically conservative Republican appointees is that the dominant flavor of judicial activism is right wing. In fact, I do not think we have seen such right-wing activism in the courts since the ultra conservative Supreme Court of the 1920s and the 1930s.

There is also, as some commentators have pointed out, an almost arrogant

disregard of the Congress by the Supreme Court. There is a feeling that the Congress is somehow unable, even in those cases where Republicans and Democrats join hands in an overwhelming majority—that somehow we are unable to express the will of the people or uphold the Constitution.

In statements that the Court has made, it acts as though the Congress is almost unnecessary; that we are not competent to do anything; that we are irrelevant. Well, not totally irrelevant. I have heard from the Justices that they do want a pay raise. Last year, of course, they were asking for permission to give high-paying speeches to special interest groups. I am glad the Court believes we are good for something.

Last week's ruling is really just the latest in a long and ever growing line of 5-4 decisions that second-guess congressional policy judgment to strike down Federal statutes and generally treat Congress as a least favored administrative agency rather than a coequal branch of the Federal Government.

Last year the Court took aim at the Age Discrimination in Employment Act and the Violence Against Women Act. Before that, it was our laws on intellectual property and workplace standards. Before that, it was our gun control laws.

Now the Court's "federalism" crusade adds workers with disabilities to its growing list of victims: older workers, children in gun-infested schools, intellectual property owners, and victims of violence motivated by gender, to name just a few.

If you accept the common theme of this 5-4 majority in the U.S. Supreme Court, the Congress ought to just close up shop and leave town because they will do everything for the American people. The elected representatives of the American people are unnecessary with, as I said, the possible exception of voting for the pay raise that the courts have asked for.

Now it is up to another President Bush and another Congress to seek new ways to protect the rights of disabled Americans and the rights of the other groups sacrificed on the Court's altar of federalism. I believe Congress needs to reassert its Democratic prerogatives—respectfully but firmly. Congress needs to reassert, in fact remind, the Supreme Court of the Constitution, that we are a coequal branch of government whose policy determinations deserve respect just as they ask respect for their legal determinations. It is time for the people's elected representatives, Democratic and Republican, to reengage the bipartisan consensus of principle that produced the ADA, and to work together to restore the rights of ordinary Americans that have been taken away by an increasingly activist U.S. Supreme Court.

Again, as I have said, I have stood on the floor of the Senate defending the Supreme Court as much or more than

anybody I know in my 26 years here. I have defended the Supreme Court on decisions even when I disagreed with the Court. I did that even with respect to the 5-4 decision on the Florida election—actually the national election. While I felt the Court was wrong, I stated that its decision was the law and that we must all abide by it.

But I am disturbed by this increasingly dismissive tone of the Court, in which it acts as though the Congress, Republicans and Democrats together, do not have the ability to represent the American people. The fact that we were elected by people all over this great Nation is almost irrelevant. In the ADA case, the fact that we had spent years on this, and that a Republican President had strongly supported our position, was irrelevant.

I think it is a dangerous path, just as it would be a dangerous path for us to be dismissive of the U.S. Supreme Court. It is equally dangerous for the Court to be dismissive of the Congress because ultimately the American people suffer. We as a Nation have maintained our democracy and fostered our wonderful growth because of our separation of powers—because of the way we have sustained the three equal branches of Government. What a shame it would be if one branch, the only unelected branch, continued to be so dismissive of the other two branches, both elected.

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

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

ASH WEDNESDAY

Mr. BROWNBACK. Mr. President, I rise to speak for a few minutes as if in morning business. It is on a broad topic. It is about this day and what this is.

It seems kind of interesting when we start to celebrate things like St. Patrick's Day or Valentine's Day. What is the basis? Why do we do these things? There is always this kind of digging into it to find a very interesting story.

For St. Valentine's Day, we celebrate it recognizing a priest who married people in Rome when it was forbidden. The Emperor at the time was not given enough soldiers to sign up for the military because they wanted to get married, have families, and stay home with their families. So the Emperor decreed that nobody could get married. The priest said: I don't agree with that. So he quietly and secretly married a number of people and was then later arrested, incarcerated, and beheaded for having done this nice, wonderful thing. It is a great reminder of what Valentine's Day is about when we send cards.

Today we celebrate Ash Wednesday. A number of people of different faiths celebrate Ash Wednesday.

What is Ash Wednesday about? It comes from a number of references in the Bible, particularly in Genesis where it says, "Dust thou art, and into dust thou shalt return".

It is a recognition of the symbolism of what we physically are, and how the physical body ends up.

This comes from the Web page of EWTN about Ash Wednesday: "The liturgical use of ashes originated in the Old Testament times. Ashes symbolized mourning, mortality, and penance. In the Book of Esther, Mordecai put on sackcloth and ashes when he heard of the decree of the King to kill all of the Jewish people in the Persian Empire. (Esther 4:1). Job repented in sackcloth and ashes. (Job 42:6). Prophesying the Babylonian captivity of Jerusalem, Daniel wrote, "I turned to the Lord God, pleading in earnest prayer, with fasting, sackcloth, and ashes." (Daniel 9:3). Jesus made reference to ashes, "If the miracles worked in you had taken place in Tyre and Sidon, they would have reformed in sackcloth and ashes long ago." (Matthew 11:21).

In the Middle Ages, the priest would bless the dying person with holy water, saying, "Remember that thou art dust and to dust thou shalt return." The Church adapted the use of ashes to mark the beginning of the penitential season of Lent, when we remember our mortality and mourn for our sins. In the present liturgy for Ash Wednesday, it remembers that as well.

I simply rise to remind us of what the symbolism is, if we go around the hallways and see people with ashes on their foreheads. The symbolism there is about the mortality of each of us, that from dust we came and to dust we return. And it is a symbolism and a day of reflecting on our own sins and our own needs. I think maybe that is a useful thing for us to do as a nation, to reflect on what we have done right, and what we have done wrong, and see what we can do better as we move forward.

So this day of Ash Wednesday seems to be a good day for us to reflect on our own mortality, our own sinfulness, and what we can do to be better both individually and as a nation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

PRESIDENT BUSH'S TAX CUT PROPOSAL

Mr. NICKLES. Mr. President, last night President Bush spoke before a joint session of Congress and outlined his agenda in many areas—certainly in education, in preserving and saving Social Security, and Medicare. He challenged Congress. He also made a very

strong case for reducing our taxes. He said: We can pay down the debt, we can fund our priorities, pay down the debt to the maximum amount practical—in other words, retire every bond that would mature between now and the year 2010—pay down the debt as much as possible, and we can still give significant tax relief.

Some people said that is not enough. Some people said it is too much. The President said it is about right. I happen to agree with him.

To my colleagues on the Democrat side who responded and said: We would agree to a \$900 billion tax cut but we can't go for the \$1.6 trillion tax cut—when we talk figures, I think it is important we talk policy and not just figures.

The policy—and the bulk and the essence of what President Bush is pushing for—is reductions in marginal rates, reducing tax rates for taxpayers. Some have said: Wait a minute. This is a greater dollar benefit for higher income people. But the fact is the President's proposal cuts the rates more for lower income people than it does for those people with a higher income level.

Unfortunately, some people, when taxes are discussed, want to play class warfare. They want to rob Peter to pay Paul. They want to use the Tax Code as a method of income redistribution. I do not think we should do that.

If we are going to have a tax cut, I think we should cut taxes for the people who pay the taxes. We have programs where we spend money for the general population, most of that focused on lower income populations. But if you are going to have a tax cut, you should cut taxes for taxpayers. President Bush's proposal does just that.

He has greater percentage tax reductions for those on the lower income scale than he does for those on the higher income scale. Let me just talk about that a little bit.

He takes the 15-percent bracket and moves it to 10 percent for many individuals. That is a 33-percent rate reduction. He reduces other rates. He moves the 28-percent rate to 25 percent. That is 3 percentage points, but that is about a 10- or 11-percent rate reduction. Yes, he moves the maximum rate from 39.6 percent to 33 percent, and that is an 11-percent rate reduction.

Some have said that is too much for the upper income. I point out that that rate, even if we enacted all of President Bush's income tax rate reduction, is still much higher than it was when President Clinton was elected because he raised the maximum rates substantially.

Let me just give a little historical background on what has happened to the maximum rate since I have been in the Senate.

When I was elected to the Senate in 1980, the maximum personal income tax rate was 70 percent. Ronald Reagan and 8 years later, it was 28 percent—a