concern because housing credits are provided on an accelerated basis in the sense that they are claimed over a ten-year period, while the property must remain in compliance with the targeting rules over a minimum 15-year period.

However, the experience with the housing credit over the past 15 years demonstrates that this concern is no longer valid. When the housing credit program was enacted, policymakers thought in terms of previous affordable housing tax incentives that supported an aggressive tax shelter market dominated by individual investors. As it turns out, virtually all (99% today) investment capital in the housing credit program is from publicly traded corporations that pose none of the risks of noncompliance that motivated enactment of the recapture bond rules. Ironically, sales of individual partnership interests in public partnerships with more than 35 investors are exempt from the recapture rules.

There are also other provisions in Code section 42 that adequately address potential noncompliance. In 1989, Congress added the requirement that all state allocating agencies adopt ''extended use agreements'' to be recorded as restrictive covenants on housing credit properties, which require the property to remain in compliance. In addition, the state allocating agencies were given oversight responsibilities to ensure continued compliance through site inspections and property audits.

The requirement to purchase recapture bonds forces investors to incur unnecessary costs and has produced a complex administrative burden on the IRS. Since bond filings are done building by building, and since single sales transactions frequently involve hundreds of properties, each with dozens of buildings, bond filings may involve thousands of separate filings. Worse yet, the few remaining surety companies writing this type of business operate in an inefficient market. Recapture surety bonds are priced in a fashion that does not measure the true risk of non-compliance, but rather relies solely on the credit rating of the company requesting the bond. This is a function of the fact that surety underwriters do not understand the housing credit program in general or the risk of noncompliance in particular.

At the same time, the incidence of non-compliance with housing credit program rules is exceedingly rare. Meanwhile in the aftermath of the September 11th terrorist acts and the spate of corporate accounting scandals, the surety market is in turmoil. Recapture bond premiums, even for highly rated public companies, have more than tripled over the past two years. This has imposed dead weight costs on the housing credit program. By making it more difficult to transfer credit investments, the recapture bond rule impairs the liquidity of housing credit investments, reducing credit prices generally, and undermining the overall efficiency of the program.

The IRS recently responded to a series of questions we posed about the recapture bond requirement. According to the IRS, since just 1997, recapture bonds covering approximately $1.8 billion of tax credits have been posted—but in the 17 years since the requirement was enacted, the Service has never made a claim on a recapture bond. That works out to bond premium payments of about $150 million, to ensure against an event that has never occurred. These costs are unnecessary and are imposing a real drag on the market for investments in housing credit properties.

Our bill will solve this problem by repealing the recapture bond requirement effective for disposition of interests in LIHTC properties after the date of enactment. An owner of a building (or interest therein) (generally, a limited partnership) that has been the subject of a disposition and is still within the remaining 15-year compliance period with respect to such building would be required to submit a report to its former investors when a recapture event with respect to such building occurs. A copy of recapture event forms sent to investors would be required to be filed with the IRS in order to provide the Service with the information necessary to ensure that all recapture liabilities are timely paid. The general statute of limitations applicable to taxpayers would be modified so that investors who dispose of a building after the effective date of the legislation would remain liable for any potential recapture liability for a period extending through the compliance period for such building to provide the IRS with additional time to audit the partnership's return to ensure the building's continuing compliance with the credit's requirements. Taxpayers who disposed of a building (or interest therein) prior to the date of enactment would not be required to maintain existing recapture bonds (or other alternative security), but cancellation of existing bonds would trigger an extension of the statute of limitations provided for in the legislation.

We encourage you to join us in cosponsoring this important legislation.

A FINE SENSE OF IRONY

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 21, 2003

Mr. SMITH of New Jersey. Mr. Speaker, Russian Foreign Minister Igor Ivanov demonstrated a fine sense of irony recently when he criticized the United States for an ''excessive tendency to use force'' in resolving international issues.

Let me state clearly that I do not believe my country should reach for its huge arsenal of weapons and troops every time we are faced with a difficult situation abroad. To everything there is a season.

Nevertheless, it is ironic that the Russian Government should accuse the United States of taking military action when back home in Chechnya the Russian Government has demonstrated not only an excessive tendency to use force, but also a tendency to use excessive force.

This is not meant to ignore or justify the human rights abuses of the Chechen separatist movement. The Russian Government is entitled to defend its territorial integrity and defend its citizens against civil disorder. But the fact remains that with its ''anti-terrorist operation,'' Moscow has unleashed a massive and brutal military campaign that frequently makes no distinction between combatants and noncombatants. As Newsweek's distinguished commentator Fareed Zakaria wrote in August of this year, ''Over the past ten years, Russia's military has had a scorched-earth policy toward Chechnya. The targets are not simply Chechen rebels but, through indiscriminate warfare, ordinary Chechens . . . Over time, the Chechen rebellion has become more desperate, more extreme and more Islamist.''

Not only are such tactics inhumane and cynical, they lead not to peace in Chechnya, but to a more protracted conflict. In this week's National Interest online, Seva Gunitsky reports on how the tactics of the Russian military has radicalized a population that might otherwise have rejected the armed militants: ''For by refusing to distinguish between fighters and civilians, the Russian army fused together the interests of previously disparate groups . . . [and] created a far more dangerous foe.''

Besides the widespread civilian casualties and property destruction caused by the indiscriminate use of force by Russian military and security forces, the Chechen conflict has resulted in the displacement of hundreds of thousands of persons. Moreover, the recent presidential elections in Chechnya were so obviously flawed that they could hardly be said to reflect the will of the people.

I welcome an exchange of opinions with other government leaders and parliamentarians regarding U.S. foreign policy. Nevertheless, I hope that Moscow will reexamine its own excessive tendency to use force in Chechnya and make every effort to reach a legitimate political settlement there.

HONORING PORTUGUESE EDUCATION FOUNDATION OF CENTRAL CALIFORNIA

HON. DENNIS A. CARDOZA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 21, 2003

Mr. CARDOZA. Mr. Speaker, I rise today to honor the continued efforts of the Portuguese Education Foundation of Central California and their numerous contributions to our community. The Foundation works tirelessly to educate the community and to recognize individuals for such efforts.

Tonight, the Foundation is honoring members of the community for their valued contributions and achievements. In addition, the Foundation is recognizing over 30 Foundation Scholarship recipients, lending these individuals strong support in their continuing pursuit of educational goals.

It is my distinct pleasure to pay tribute to the Foundation's 2003 community honorees.

Former Congressman Tony Coelho is being honored as the 2003 Citizen of the Year. Tony, my mentor and good friend, has been an exemplary member of the Portuguese community for many years. He served with distinction as Majority Whip in the United States House of Representatives and continues to think of our San Joaquin Valley as his home.

I am delighted to also recognize the achievements of Maria de Lourdes Silva. Maria has been selected as the 2003 Student of the Year by the Foundation. She is being honored for her outstanding academic achievement and research for the Portuguese Heritage Community of California. I commend her on her dedication to the community.

Finally, it is my honor to recognize Jose Luis da Silva, who has been selected as the 2003 Professor of the Year by the Foundation for his contributions and dedication to sharing

the language and culture of the Portuguese community with the many students of the San Jose High Academy. Mr. da Silva is a tireless advocate and tremendous resource for his students and our community.

The Portuguese Education Foundation of Central California continues to be a strong asset to our community. The Foundation's efforts are immense and I am honored to recognize them and their awardees this evening.

THE POLITICIZATION OF THE JUDICIAL NOMINATION PROCESS

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 21, 2003

Mr. SOUDER. Mr. Speaker, I rise to address a matter of deep concern to every Member of Congress and to every American citizen—the judicial nomination process. I am chairman of the Government Reform Committee's Subcommittee on Criminal Justice, Drug Policy and Human Resources, which has responsibility for oversight of, among other things, our federal judicial system. I am deeply concerned by the growing politicization of the judicial nomination process by a handful of left-wing groups and their advocates in Congress.

Last week, the Wall Street Journal reported on a number of memos written by Congressional staff between 2001 and 2003. They illustrate the extreme political prejudice, crass maneuvering, and pandering to special interest groups that are bringing the judicial nomination process to a standstill. One memo actually claims that ''most of [President] Bush's nominees are nazis''. Another shows that action on nominees was delayed to allow ''the groups''—i.e., left-wing special interest groups—''time to complete their research,'' i.e., to dig up as much dirt as they could on the President's nominees. And shockingly, a third memo shows that action was delayed on a nominee in order to affect the outcome of a case before the Sixth Circuit.

At present, no one can say for sure how the newspaper obtained the memos. Certainly illegal theft of any confidential materials should not be tolerated. I note, however, that given the large number of the memos, the fact that the source blacked out the names of the staff members who wrote and received the memos (presumably to save them from embarrassment), and the date of the documents (most are from 2001 and 2002) strongly suggest that the source was a member of the Democratic staff, and not someone illegally stealing the memos. In any case, now that these memos have been distributed to the press, I believe that it is important for the Members of Congress and the public to see them and judge their contents for themselves. I am therefore submitting the first installment of these memos for the RECORD, and intend to submit more of them in the days to come. I hope that a full and vigorous debate of this important issue will help the process to move forward, so that the President's nominees can quickly receive the yes or no vote that they deserve.

* * * * *

Big fight early next year. Three benefits: (1) Sends message on Supreme Court; (2) Forces WH to bargain; (3) encourages more moderate nominees.

To work, need all 10 Dems on board and need commitment not to go to the floor. Query: will it be possible to get all 10 Dems to commit before a hearing? Doubtful. There is a big risk. We must choose a nominee tailored to our weakest link. E.g., Pickering is bad but is he had enough? Probably not—finish him AFTER.

Who to fight? Not Estrada—hard to beat, and don't want him on the Supremes.

Groups have 3 names: Kuhl, Sutton, and Owens. Kuhl seems like a bad idea, b/c Boxer will never return the BS. Why waste that power, freeing up another nominee to go through? Similar with Sutton—he is being held up right now. Sutton will be hard to beat—very strong paper record, impressive credentials. GOP will carp about how only criteria should be excellence (''Should Ideology Matter?'' retread.) (Same problem with Estrada.) Sutton is personification of the threat the New Federalism poses to Civil Rights, but his defenders will muddle debate. Why not use someone else, show WH we mean business, then bargain to ''release'' hold on Sixth Circuit.

I say Owens. She is from Texas and appointed to SCT by Bush, so she will appear parochial and out of mainstream. She is definitively anti-abortion, in ways that make her look disingenuous. Pro-business. Questionable ethics. Plus can craft the message: concerted campaign to pack the Courts. Phase I: GOP blocks many well-qualified people—Johnson, Moreno, etc. Phase II: GOP picks extremists like Owen, and pushes hard. Court gets way out of wack. Focus not only on numbers, but tangible outcomes—rulings striking down VAWA, civil rights laws, environmental laws, etc.

No more hearings this year. Lay the foundations for next January/February. Schumer hearing on federalism, and the threat it poses. Coordinate media strategy, Drop hints. Schedule the hearing well in advance in January, so we don't face accusations of sandbagging,

Stress that we have cut the BS: no more anonymous holds, no more years without a hearing, no more ridiculous document requests, no more shutting down the Committee. Rather than hold a nominee up endlessly, and ruin their career, we will vote. There's a reason why they did that—most of Clinton's nominees were impeachable. There's a reason why we do what we do—most of Bush's nominees are Nazis. That doesn't mean we will roll over and play dead. Mainstream nominees will get quick turn around time. Controversial ones demand more careful scrutiny.

WHY HAVE A HEARING AT ALL?

Memorandum: June 21, 2002
To: Senators Kennedy, Schumer, Durbin, and Cantwell
From:———
Subject: Strategy on Judges

In advance of the Judiciary Democrats' meeting on Tuesday at 2:15, below is the strategy regarding judges that we recommend that you suggest to Senator Leahy.

1. Cancel or Reschedule Deborah Cook, 6th Circuit nominee. Senator Leahy is suggesting that a hearing for Deborah Cook be scheduled for August 1st, and, Senator Leahy may have promised Senator DeWine that he will hold a hearing for Cook this year. Cook is extremely controversial on labor, employee rights, and right to jury issues and should not have a hearing this year. If Senator Leahy has indeed promised DeWine a Cook hearing, we suggest that he schedule Cook for after the November elections. Given our schedule of controversial nominees (see below), it will be difficult to mount any effective challenge to Cook if she is scheduled for early August. We recommend that Reena Raggi (2nd Circuit) be scheduled for early August instead of Deborah Cook.

2. Limit the Number of Hearings. Senator Leahy has promised hearings for Priscilla Owen, Miguel Estrada, and Michael McConnell. Other than these nominees, and the two remaining noncontroversial nominees Reena Raggi (2nd Circuit) and Jay Bybee (9th Circuit), no additional judges should be scheduled.

3. Timing of Hearings:

Owen. The consensus is to make Priscilla Owen the big fight for July 18th, as Senator Leahy has suggested, with the hope that we will succeed in defeating her.

Estrada. Miguel Estrada will be more difficult to defeat given the sparseness of his record. We agree with Senator Leahy that Estrada should be scheduled for September 19th. This will give the groups time to complete their research and the Committee time to collect additional information, including Estrada's Solicitor General memos (see below).

McConnell. McConnell will also be difficult to defeat. While he has a clear anti-choice record, he has the strong support of some Democrats and progressives. McConnell's clear anti-choice record, however, makes him a good nominee to bring up before the November elections. While Senator Leahy has suggested that a hearing for McConnell be scheduled on October 3rd, we would suggest October 10th, to provide enough time for preparation after the difficult Estrada hearing.

Suggested Schedule, July 18th: Priscilla Owen—5th Circuit; August 1st: Reena Raggi—2nd Circuit (non-controversial)—instead of Cook; September 5th: Jay Bybee—9th Circuit (supported by Reid); September 19th: Miguel Estrada—D.C. Circuit; October 10th: Michael McConnell—10th Circuit.

4. Obtaining Estrada's Solicitor General's Memos. Senator Leahy took the important first step of asking for Memoranda that Estrada produced while working at the Solicitor General's Office. Unfortunately, the Department of Justice has refused to turn over the memos, and Senator Leahy has been harshly criticized for this in the Press (two pieces in the Washington Post alone). We expect the Administration will continue to fight any attempt to turn these over, but there is precedent for getting these Memos—it was done for the Bork nomination and three other lower court nominations. We suggest that you encourage Senator Leahy to continue fighting the Administration for these Memos and, if possible, that one of you help him in this fight.

U. MICHIGAN SCANDAL

Memorandum: April 17, 2002
To: Senator (Kennedy)
From: ———
Subject: Call from Elaine Jones re Scheduling of 6th Circuit Nominees

Elaine Jones of the NAACP Legal Defense Fund (LDF) tried to call you today to ask that the Judiciary Committee consider scheduling Julia Scott Gibbons, the uncontroversial nominee to the 6th Circuit at a later date, rather than at a hearing next Thursday, April 25th. As you know, Chairman Leahy would like to schedule a hearing next Thursday on a 6th Circuit nominee because the Circuit has only 9 active judges, rather than the authorized 16. (These vacancies are, as you know, the result of Republican inaction on Clinton nominees). Senator Leahy would also like to move a Southern nominee, and wants to do a favor for Senator Thompson.

Elaine would like the Committee to hold off on any 6th Circuit nominees until the