

was promoted to director of Cuba's military schools. Following his career in Cuban military education, Barquin was appointed as Cuba's military attache to the United States and delegate to the Inter-American Defense Board, where he was elected vice chair and led the team that developed the plan for a joint defense of the Western Hemisphere. For his work, Colonel Barquin was honored in 1955 by our government with the Legion of Merit, Grade of Commander.

While serving as attache, he learned of the shifting political winds in Cuba and conspired to prevent freedom from losing a foothold in his native land. I can remember as a young boy in Cuba living through tumultuous times. But I also remember my father often remarking that in Colonel Barquin, Cuba had its best hope for democracy.

It was the colonel's concerns that led him to participate in a failed military revolt against the Batista dictatorship and later to actively work against Castro's totalitarian regime. When Castro came to power, he asked Barquin to serve as defense minister. Concerned with the regime's repressive nature, Colonel Barquin refused and instead chose to serve in an ambassadorial post in Europe. As a result of that, he was able to flee to the United States and begin a new life, now in exile.

After briefly living in Miami, Barquin rekindled his passion for education by establishing a consortium of educational institutions in Puerto Rico. They included a K-12 school called the American Military Academy, summer camps, a university—Atlantic College—and an institute for civic education known as Instituto de Democratica. He was recognized for his hard work and entrepreneurship by the Puerto Rican government as the 1995 Educator of the Year.

Graduates of the K-12 academy he founded had kind words of appreciation for the colonel's work and character. One student remarked: "From the Colonel, I learned to love my country and he taught me the values that lead my life today."

As a Cuban American, a Floridian, and a Senator, it gives me great pleasure to pay tribute to an individual with a legacy as awe inspiring as that of COL Ramon M. Barquin. His unwavering commitment to freedom and democracy, his generosity, and his zeal for serving others is, and will be, sorely missed.

I also know that probably one of his proudest accomplishments was a wonderful family. I am privileged to know his son Ramon, who also carries his name, and also some of his grandchildren. I know that is, without a doubt, what I am sure he feels was his greatest legacy while he lived among us. I know that history would have been very different if he had had an opportunity to follow through on some of his ideas and some of his hopes.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, I rise to speak to my colleagues on two issues this afternoon. One is the nomination of Judge Sotomayor to the U.S. Supreme Court and the second is on the public option in health care.

SOTOMAYOR NOMINATION

Mr. SCHUMER. Mr. President, several of my colleagues across the aisle have come to the floor to attack Judge Sotomayor's nomination to the Supreme Court. I must say, I think these attacks are entirely misplaced. I have always had a consistent standard for evaluating judicial nominees. I use it when voting for them. I use it when joining in, in the nomination process. I did under President Bush and continue to under President Obama. Those three standards are excellence, moderation, and diversity.

I am confident Judge Sotomayor meets these criteria. Based on my review thus far of her lengthy and impressive record on both the district court and court of appeals, her impressive career in both public and private sectors, and her stellar academic credentials.

I have also been deeply impressed with her personal story, a true story of an American dream. She pulled herself up from the projects in the Bronx to stand before this body as a nominee to the highest Court in the land. Her history is truly inspirational, a history of which we should all be extremely proud. It is a great American story. It is what the greatness of America is all about, as my friend from New Jersey said earlier.

I think some of the comments I have heard from my Republican colleagues this morning have distorted Judge Sotomayor's distinguished record, so let's take a minute to consider what the real story is and how Judge Sotomayor's record reflects the highest ideals of judging.

Judge Sotomayor's record reveals her to be both modest and moderate, dedicated to the rule of law and not outcome oriented.

For example, Senator SESSIONS spent some of his time this morning criticizing one particular case, *Hayden v. Pataki*, about felon disenfranchisement—because Judge Sotomayor's dissent would have resulted in an outcome with which he did not agree. He neglected to mention that her opinion was based on the plain text of the statute before the court and he also left out some of the key, revealing comments she made in her dissent:

No one disputes that States have the rights to disenfranchise felons;

No. 2:

The duty of a judge is to follow the law, not question its plain terms;

And No. 3:

I trust that Congress would prefer to make any needed changes itself rather than have the courts do so for it.

These are the kind of statements, in the very case my good friend from Alabama uses to criticize the judge, that we have heard from people on the other side of the aisle over and over as to what a judge should do: Not replace his or her own judgment for that of a legislature or that of the law.

Judge Sotomayor was following text to a result, not the other way around. These quotes tell us a lot more about Judge Sotomayor's judicial philosophy and commitment to rule of law than simply looking at the outcome in any particular case. Even when we look at outcomes, the entirety of her record gives us a more accurate picture of her judicial philosophy than the outcome of any one case. She rejected discrimination claims in 81 percent of the cases she considered, and in those 78 cases rejecting discrimination claims she dissented from the panel she was on only twice.

When my office looked at her record on immigration cases she sided with the immigrant in asylum cases only 17 percent of the time. That is average for the entire Second Circuit. This should put to rest any notion she is swayed by outcomes rather than by law.

Obviously, she sympathizes with the immigrant experience, that has been clear. But she does not let those sympathies stand in the way of her judging what the law says and mandates. So she is clearly not a judicial activist, someone who reaches beyond the proper role of a judge to impose her personal preferences.

I think it is about time to debunk the notion of judicial activism, as some are using. I think that judicial activism is starting to become code for many of my friends on the other side of the aisle for "decisions with outcomes with which I don't agree." When they say judicial activist, they are not looking at how close or far from the law. They are, rather, looking at: Well, I didn't agree with the ultimate decision.

That is why I prefer to use the term "modest" in describing my ideal judge. It was a term that was used by Justice Roberts when he was before us.

I will quote from the Federalist Papers as some of my colleagues have done. In Federalist No. 78, the primary source for justification for judicial review in the Constitution, Alexander Hamilton explains the role of a judge very simply: A judge must interpret the Constitution, interpret the laws, and when there is "irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred."

An "irreconcilable variance"—that imposes a high bar on any judge who is tempted to strike down a law or a practice or any decision by a legislature or

executive as unconstitutional. This is, by the way, exactly the standard Judge Sotomayor lived up to in Ricci, when she deferred to the elected local official in New Haven and to Federal title VII law and to firm Second Circuit precedent.

It has always been my view that a commitment to modesty is key in a judge. A judge who is modest understands that any concept of doing justice must have as its touchstone the meaning that the authors of the text intended to give it.

I also believe it is consistent with judicial modesty to acknowledge that our Constitution is written to endure. It does not live and breathe like a flesh-and-blood child does, who evolves through adolescence and adulthood to become unrecognizable.

I don't believe in using those terms. Rather, the Constitution endures. It endures because the people whom it governs, the people who retain all of the many rights that are not listed in the document itself, believe that it continues to apply to them. The only reason it continues to apply to them is through guardianship of judges who are modest in reaching their conclusions. They understand that people have to live by the Court's interpretation and judgment. They understand that people want justice and that justice means predictability, adherence to text, and the willingness to avoid patently absurd results.

I am looking forward to the confirmation hearing of Judge Sotomayor. She is a gifted lawyer, she is a respected and serious jurist, and her life experiences will only serve to enrich the views of the eight other justices, each of whom brings with him or her individual lessons, lessons taught by a hard-working grandfather in Pinpoint, GA; by an independent, studious-minded mother who died the day before her daughter graduated high school; by a hotel owner in Chicago, IL; or by a single Spanish-speaking mother who told her daughter that she could do anything through hard work and a good education.

Let's be reasonable and realistic. These experiences do not turn a good judge into a bad one or who is not an impartial one or whatever my colleagues on the other side of the aisle are suggesting.

To recognize the role of personal experience is simply to acknowledge that in the art and science of interpreting the Constitution and laws of our country we have to ask ourselves the following questions: Do we trust more the decisions of judges who, as I have said before, have ice water in their veins, who view their role as stripping themselves of their pasts and ruling in a vacuum, free of human experience and common sense, or do we trust more the decisions of judges who acknowledge and address their own life experiences even while striving always to be fair and within the law—as Judge Sotomayor herself has said?

These are questions I look forward to discussing at Judge Sotomayor's upcoming hearing.

HEALTH CARE

Mr. SCHUMER. Mr. President, I rise to discuss the necessity of including a public option in the health care legislation Congress is currently drafting. One of our top priorities, as we undertake health care reform, must be increasing competition among health insurance companies in order to get costs under control and give consumers better choices. A recent New York Times/CBS poll clearly shows that a large majority of the American people, 72 percent in fact, want a government-sponsored health care option that would compete with private health insurance companies—72 percent.

What is even more incredible, 50 percent of all Republicans in this country want a public option. There seems to be a disconnect between my colleagues on the other side of the aisle and even their Republican constituents.

Do you know why so many Americans want a public plan? Because, despite what many of my colleagues on the other side of the aisle would have you believe, they do not believe they have affordable choices. Fundamentally, this is what lies at the heart of our public plan proposal. We want to ensure all Americans have a guaranteed affordable choice when it comes to health insurance. Right now, too many of them do not.

In many areas of the country, one or two insurers have a stranglehold on the entire market, which produces costly premiums and health care decisions that often serve the interests of the insurer, not the patient. In fact, according to a study of the American Medical Association, 94 percent of insurance markets are highly concentrated. This is why a public health insurance plan is absolutely critical, to ensure the greatest amount of choice possible for consumers and provide at least one option that is patient—not profit—focused.

When you read what percentage one insurance company or two insurance companies have of a market in each State, you know that robust competition is missing from the health care market. That is why so many people are worried about the future of the plans that they now have.

The public plan is not about government-controlled health care, socialism or any of the buzz words that have been tossed around as part of this debate.

I ask my colleagues, do they consider Medicare socialism? Would they like to abolish Medicare? Probably some of them would. But Medicare—hello, my friends—is a government-run plan. It is very popular with the American people. Very few propose eliminating Medicare. So let's be real here. The public option is about offering Americans a choice in the market that, far too often, offers them none.

I will tell you the choices too many Americans face: whether to pay for

health insurance or health care or to pay for other necessities of life, because health care has become so expensive. That is not a choice anyone should have to make, and maybe that explains why the American people do not agree with the critics of the public plan.

Half of all Americans think the government plan will provide better health care coverage than private insurance companies, and a significantly lower percentage disagree with that statement.

Let's be clear: A public plan may not have special built-in advantages. It would be a coverage option that would compete on an equal footing alongside private insurance plans in the market for individual and small business coverage. If a level playing field exists, then private insurers will have to compete based on quality of care and pricing instead of just competing for the healthiest consumers. In this way, a public plan will accomplish many of our most important goals. It will not waste money on costs incidental to providing health care. It will not focus on profits at the expense of the best health outcomes. Instead, it will spend money on improving health delivery and on trying innovative technologies and systems in order to save, save money. It will force many insurers that have been shielded and protected from competition for far too long to compete with a plan that provides comprehensive care at an affordable rate. It will, most importantly, give all Americans a choice. In fact, I think the thing that really scares opponents of the public option is choice, that Americans might actually choose the public plan over the plan of private insurance companies, because then the curtain might be pulled back on their friends at the insurance companies and Americans will finally see the hidden costs that have caused their premiums to skyrocket, the wasteful spending that does not improve health outcomes but fattens bottom lines, and the protection from competition that has been offered to private insurers over the last decade.

To truly reform our health care system, Congress must pass legislation that includes a public option. A figleaf public plan is no plan at all, and I will not settle for such a figleaf.

It is important to remember how we arrived here. For a long time, when thinking hypothetically about health care reform, many in this country suggested that we move to a single-payer option.

The PRESIDING OFFICER (Mr. UDALL of Colorado.) I would note that the Senator has used 10 minutes.

Mr. SCHUMER. I ask unanimous consent that I be given 5 additional minutes.

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

Mr. SCHUMER. The Republicans rejected the single-payer plan. So at the onset of this debate, we met them halfway with a framework that continues