

Again, as a law professor and dean of Yale Law School, I understand law professors advocating cutting edge and, indeed, provocative legal interpretations. But to say this is appropriate not in the classroom as a teaching exercise but, rather, important for Federal judges to do in the exercise of their article III powers is an entirely different notion altogether.

In 2002, Professor Koh gave a lecture titled "A World Drowning in Guns," in which he argued for a "global gun control regime."

In 2007, he argued that foreign prisoners of war held by the U.S. Armed Forces anywhere in the world—not just enemy combatants held at Guantánamo Bay—are entitled to the same rights as American citizens under habeas corpus law as applied by our Federal courts.

Perhaps most timely, Professor Koh appears to draw a moral equivalence between the Iran regime's political suppression and human rights abuses, on the one hand, and America's counterterrorism policies on the other hand.

Professor Koh has written:

[U.S.] criticism of Iranian "security forces [who] monitor the social activities of citizens, entered homes and offices, monitored telephone conversations, and opened mail without court authorization" is hard to square with our own National Security Agency's sustained program of secret, unreviewed, warrantless electronic surveillance of American citizens and residents.

Furthermore, the United States cannot stand on strong footing attacking Iran for "illegal detentions" when similar charges can be and have been lodged against our own government.

The U.S. policies that Professor Koh is criticizing were authorized by the Congress in a bipartisan fashion, and each of us is accountable to our constituents for the decisions we make.

It is offensive to compare the policies of the U.S. Government with those of a theocratic dictatorship that responds to criticism with brutal violence against its own people.

We have heard enough moral equivalence regarding Iran over the last week and a half. We have heard enough apologies for the actions of the United States—and enough soft-peddling of the brutal suppression by the Iranian regime of their own people. We don't need another voice in the administration whose first instinct is to blame America—and whose long-term objective is to transform this country into something it is not.

For these reasons, I urge my colleagues to vote no on the cloture motion on this nomination.

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. 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, before I begin, are we in morning business or on the Koh nomination?

The PRESIDING OFFICER. We are in morning business.

#### SOTOMAYOR NOMINATION

Mr. LEAHY. Mr. President, I thank Senator MENENDEZ and Senator SCHUMER for their outstanding statements to the Senate today. As I review Judge Sotomayor's record in preparation for her confirmation hearing on July 13, I am struck by her extraordinary career and how she has excelled at everything she has done. I know how proud her mother Celina is of her accomplishments. I was delighted to hear Laura Bush, the former First Lady, say recently that she, too, is "proud" that President Obama nominated a woman to serve on our Supreme Court. I recall that Justice Ginsburg said she was "cheered" by the announcement and that she is glad that she will no longer be "the lone woman on the Court." I contrast this reaction to President Bush's naming of Justice O'Connor's successor a few years ago when Justice O'Connor conceded her disappointment "to see the percentage of women on [the Supreme Court] drop by 50 percent." Are these women biased, or prejudiced, or being discriminatory? Of course not. I hope that all Americans are encouraged by the nomination of Judge Sotomayor and join together to celebrate what it says about America being a land of opportunity for all.

A member of just the third class at Princeton in which women were included, Judge Sotomayor worked hard and graduated summa cum laude, Phi Beta Kappa, and shared the M. Taylor Senior Pyne Prize for scholastic excellence and service to the university. Think about that. She was a young woman who worked hard, including during the summers, to make up for lessons she had not received growing up in a South Bronx tenement. That is why she read children's books and classics, and arranged for tutoring to improve her writing. She went on to excel at Yale Law School, where she was an active member of the law school community, served as an editor of the prestigious Yale Law Journal, and as the managing editor of the Yale Studies in World Public Order working on two journals during her 3 years of law school. She was also a semifinalist in the Barrister's Union mock trial competition at the law school. Now, some Republican Senators have made fun of her achievements and some seek to belittle them. They question how she could be an editor without providing a major article that she edited. I know from my experience that members of student journals do not all edit major articles. It is an achievement to be affiliated with the Yale Law Journal in any capacity. They act as if she made this up. If this really is a major concern, and they wish to ask her about it at her confirmation hearing, they can. I have never known Sonia Sotomayor to be one who padded her resume. Frankly, she does not need to. Her

achievements are extraordinary and impressive.

She is the first nominee to the Supreme Court in 100 years to have been nominated to three Federal judicial positions by three different Presidents. Indeed, it was President George H.W. Bush, a Republican, who nominated and then appointed her with the consent of the Senate to be a Federal district court judge. She has the most Federal court experience after 17 years of any nominee to the Supreme Court in 100 years. She is the first nominee in more than 50 years to have served as a Federal trial judge and a Federal appellate judge at the time of her nomination to the Supreme Court. She will be the only member of the Supreme Court to have served as a trial judge. She will be one of only two members of the Supreme Court to have served as a prosecutor.

I remember well when she was nominated to the United States Court of Appeals for the Second Circuit by President Clinton, and when an anonymous Republican hold stalled her appointment for months. Finally, in June 1998, a column in *The Wall Street Journal* confirmed that the Republican obstruction was because they feared that President Clinton would nominate her to fill a Supreme Court vacancy, if one were to arise. After that Supreme Court term ended without a vacancy, we were finally able to vote on her nomination and she was confirmed overwhelmingly. Not one word was spoken on the Senate floor and not one word was inserted into the CONGRESSIONAL RECORD by those who had opposed her to explain their opposition or to justify or excuse the shabby treatment her nomination had received.

It is apparent that some Republicans are responding to the demands of conservative pressure groups to oppose her confirmation by doing just that. The truth is that they were prepared to oppose any nomination that President Obama made. Just today, a number of Republican Senators have come to the Senate floor to speak against President Obama's nomination of Judge Sonia Sotomayor to the Supreme Court. The Senate Republican leader, the ranking Republican on the Judiciary Committee, and the head of the National Republican Senatorial Committee have all taken a turn.

My initial reaction to their effort is to note that they have doubly demonstrated why a hearing should not be delayed. In fairness, no one should seek to delay her opportunity to respond to their questions and concerns and to answer their charges. As I said when I set the hearing date after consulting with Senator SESSIONS, I wanted it to be fair and adequate—fair to the nominee and adequate to allow Senators to prepare. To be fair to her, we need to give her the earliest possible opportunity to answer. As for preparedness, those Republican critics were prepared to air their grievances and concerns and to discuss her record and her cases 3 weeks before

the scheduled date of the hearing. What they clearly demonstrated today is that they are prepared to proceed with the July 13 hearing.

I do not agree with their characterization of her distinguished record on the Federal bench, or with their mischaracterization of her manner of judging. Judge Sotomayor's approach to the law should be clear to all after a 17-year record of fairly applying the law on the Federal bench. I remind them that when I asked Judge Sotomayor about her approach to judging she told me that, of course, one's life experience shapes who you are, but she went on to say this: "Ultimately and completely"—and she used those words—as a judge you follow the law. There is not one law for one race or another. There is not one law for one color or another. There is not one law for rich and a different one for poor. There is only one law. She said ultimately and completely, a judge has to follow the law no matter what his or her upbringing has been. That is the kind of fair and impartial judging that the American people expect. That is respect for the rule of law. That is the kind of judge she has been.

For all the talk we have heard for years about judicial modesty and judicial restraint from nominees at their confirmation hearings, we have seen a Supreme Court these last four years that has been anything but modest and restrained. One need look no further than the Lilly Ledbetter and Diana Levine cases, or the Gross case from last week, to understand how just one vote can determine the Court's decision and impact the lives and freedoms of countless Americans.

The question we should be asking as we consider Judge Sotomayor's nomination is whether she will act in the mold of these conservative activists who have second-guessed Congress and undercut laws meant to protect Americans from discrimination in their jobs and in voting, laws meant to protect the access of Americans to health care and education, and laws meant to protect the privacy of all Americans from an overreaching government. We should be asking whether she will be the kind of Justice who understands the real world impact of her decisions.

I know Judge Sotomayor is a restrained and thoughtful judge. She understands the role of a judge. Her record is one of restraint. In fact, the cases her critics chose to highlight are cases in which she showed restraint and followed the law. I hope that she is also a judge who understands that the courthouse doors must be as open to ordinary Americans as they are to government and big corporations.

I wish Republican Senators would pay less attention to the agitating from the far right, take a less selective view of a handful of Judge Sotomayor's cases to paint her—inaccurately—as an activist and, instead, consider her record fairly. She has been a judge that Kenneth Starr has endorsed. The other

judges on the Second Circuit think the world of her, and have great respect for her judgment and judging. She is a nominee in which all Americans can take pride and have confidence. She has been a judge for all Americans and will be a Justice for all Americans.

I am sorry that some critics are seeking to caricature Judge Sotomayor and mischaracterize her involvement with respectable mainstream civil rights organizations. Judge Sotomayor was a member of board of directors of the Puerto Rican Legal Defense and Education Fund, PRLDEF, now known as LatinoJustice PRLDEF, from 1980 until her resignation in 1992. Today, Republican critics chose to malign PRLDEF. This is a respected organization that was founded in the early 1970s with the support of Senator Jacob Javits, former Attorney General Nicholas Katzenbach, former New York Attorney General Robert Abrams, and legendary New York County District Attorney Robert Morgenthau, who was Judge Sotomayor's boss when she worked in his office as a prosecutor after graduating from Yale Law School.

It was modeled on the NAACP Legal Defense and Educational Fund. Its mission is to develop a more equitable society by creating opportunities for Latinos in areas where they are traditionally underrepresented. It seeks to ensure that Latinos have the legal resources necessary to fully engage in civic life. Financial support for PRLDEF comes from widely regarded foundations like Ford and Carnegie, and corporate contributions from businesses like Time Warner. These foundations and corporations are not radical. Neither is PRLDEF.

Other past directors of PRLDEF include the honorable Jose Cabranes of the U.S. Court of Appeals for the Second Circuit, former Congressman Herman Badillo, now a senior fellow at the Manhattan Institute, and former Governor of New York Hugh Carey. Jack John Olivero, a former regional director of the Equal Employment Opportunity Commission and deputy director of its Washington office was PRLDEF's fourth president and general counsel. The list goes on and on of distinguished lawyers who have served in leadership capacities at PRLDEF.

One of PRLDEF's core missions is increasing diversity in the legal profession. To that end, PRLDEF mentors youth from all backgrounds, assisting them in completing their law school applications, mentoring them throughout law school, and supporting them during their years as young lawyers. Thousands of attorneys, including prominent civic, government, and corporate leaders, credit PRLDEF for helping them realize their dreams of becoming lawyers.

We all know about this part of Sonia Sotomayor's life because she disclosed her board membership and status as an officer in response to the Judiciary Committee's questionnaire. We know

about it because Judge Sotomayor not only reviewed her own records to provide documents from her time at PRLDEF, but she also went above and beyond what the bipartisan questionnaire called for and asked that PRLDEF conduct its own search of its records. Judge Sotomayor has now provided the committee with additional documents from this search related to her work for PRLDEF. The record before us is public and it is transparent. We already have a more complete picture of Judge Sotomayor's record than we ever had of the records of John Roberts or Samuel Alito.

The committee did not receive 15,000 pages of documents related to key parts of Chief Justice Roberts' career in executive branch until the eve of the hearings, and many of them were heavily redacted. The Bush administration refused to meet or even discuss the Democrats' narrow request for specific memoranda relating to 16 key cases on which John Roberts worked while he was the principal deputy to Solicitor General Kenneth Starr in the administration of President George H.W. Bush. As a result, the committee had little knowledge of highly relevant parts of John Roberts' work as a political appointee in the office of "the people's lawyer"—the Solicitor General. Because John Roberts had fewer than 3 years on the bench at the time of his nomination, these documents would have provided a crucial window into his qualifications. But we never received them.

During the committee's consideration of the Alito nomination, we requested documents from Samuel Alito's 6 years in the Department of Justice. However, the Bush administration just days before his hearing refused to produce 45 of the 50 opinions Sam Alito had written or supervised while in the Office of Legal Counsel. The administration also refused to provide most of the documents he wrote while in the Solicitor General's Office. Indeed, in refusing our request for these documents, the Department of Justice wrote:

Judge Alito has sat on the federal appellate bench for more than 15 years, and his decisions in that capacity represent the best evidence of his judicial philosophy and of the manner in which he approaches judicial decision-making.

I do not recall a single Republican saying that we did not have a complete record to consider those nominations of President Bush to the Supreme Court even though there were significant gaps in the records. We should not apply a double standard to the nomination of Sonia Sotomayor.

We have Judge Sotomayor's record from the Federal bench. That is a public record that we had even before she was designated by the President. Judge Sotomayor's mainstream record of judicial restraint and modesty is the best indication of her judicial philosophy. We do not have to imagine what kind of a judge she will be because we see what kind of a judge she has been.

I thank Judge Sotomayor for her quick and complete answers to the committee's questionnaire, and for going above and beyond what is required. My review of Judge Sotomayor's record has only bolstered the strong impression she has made over the past several years. She is extraordinarily qualified to serve on the Nation's highest court. She will bring to the Supreme Court more than just her first-rate legal mind and impeccable credentials. Hers is a distinctly American story. Whether you are from the South Bronx, the south side of Chicago or South Burlington, the American Dream inspires all of us, and her life story is the American dream.

I am confident that when elevated to the highest court in the land Judge Sotomayor will continue to live up to Justice Marshall's description of the work of the judge. Justice Marshall said:

We whose profession it is to ensure that the game is played according to the rules, have an overriding professional responsibility of ensuring that the game itself is fair for all. Our citizenry expect a system of justice that not only lives up to the letter of the Constitution, but one that also abides by its spirit. They deserve the best efforts of all of us towards meeting that end. In our day-to-day work we must continue to realize that we are dealing with individuals not statistics.

It is a pretty awesome responsibility when a Justice of the Supreme Court is nominated. Most Justices will serve long after the President who nominated them is gone, long after most of the Senators who vote on that nominee are gone. We have 300 million Americans. There are only 101 Americans who get a direct say in who is going to be on the Supreme Court. First and foremost, the President of the United States, when he makes the nomination to the Supreme Court, and then the 100 Senators who either vote yes or vote no. So let's stop delegating our work to special interest groups. Let's delegate our work to ourselves. Let's do what we are paid to do. Let's do what we have been elected to do.

This is a historic nomination. It should unite the American people and unite the 100 of us in the Senate who will act on their behalf. It is a nomination that keeps faith with the words engraved in Vermont marble over the entrance of the Supreme Court: "Equal Justice Under Law."

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. KAUFMAN). The clerk will call the roll. The assistant legislative clerk proceeded to call the roll.

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

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

#### HEALTH CARE

Mr. SANDERS. Mr. President, I think most Americans understand that

our current health care system is disintegrating. Today, 46 million Americans have absolutely no health insurance, and even more are underinsured, with high deductibles and high copayments. At a time when 60 million people, including many with insurance, do not have access to a medical home—do not have access to a doctor of their own—close to 20,000 Americans die every single year from preventable illnesses because they do not get to a doctor when they should. This is six times the number of people who died during the tragedy of 9/11, but these deaths occur every single year.

I can vividly recall talking to physicians from Vermont—and I am sure the same is the case in Delaware and every other State in this country—who told me that patients walked into their office very sick, and they would say: Why didn't you come in here before? You are very ill. And they said: Well, I didn't have any insurance. I didn't want charity. I thought I would get better.

By the time people ended up walking in the door, their situation was so bad that the doctors lost those patients—people who should not have died. This is happening close to 20,000 times every single year in this country.

Recently, the Boston Globe had a big story—and this is in the State of Massachusetts, which supposedly has universal health care—which reported that patients with chronic illnesses, such as diabetes and heart disease, were not taking their medicines or not getting the treatments they needed because they couldn't afford the 25-percent copay. Yet Massachusetts has almost everybody covered.

So when we talk about the health care crisis, it is not just the number of people who have no health insurance, it is people who are underinsured. When you add that together, we have huge numbers of people who are not getting the medical care they need when they need it. The result is not only personal suffering, the result is that they end up going to the emergency room, costing the system far more than it should or they end up in the hospital at a highly inflated medical cost. This makes zero sense and is a manifestation of a dysfunctional health care system.

In the midst of all of this, somebody may say: Well, you have 46 million uninsured, you have more underinsured, people are dying needlessly, but at least you are not spending a lot of money. If you bought an old broken down car and you started complaining that it doesn't work well, I would say to you: Hey, what do you expect? You didn't spend a whole lot on your car.

The reality is—and this is an important point to make, because people say that Canada has problems. Canada does have problems. They say the United Kingdom has problems. Sure, they have problems. France has problems. Every country has problems. But the reality is that we are spending almost twice as much per capita on health care as any

other nation. We should be doing far better in terms of health care outcomes than every other country on Earth, and that is certainly not the case. The reality is we are spending close to \$2.7 trillion on health care, which is 18 percent of our GDP, and the skyrocketing cost of health care in America is unsustainable both from a personal point of view and a macroeconomic point of view.

At the individual level, the average American today is spending about \$7,900 per year on health care. Do you believe that? How many people do you know in Delaware who are making \$25,000, \$30,000 a year who are spending \$8,000 a person on health care? That is beyond comprehension.

Here is an important point to make. Despite this huge outlay, a recent study found that medical problems contributed to 62 percent of all bankruptcies in the year 2007. That means that this year there will be approximately 1 million Americans who are going bankrupt because of medically related problems. Stop and think: a million Americans going bankrupt because they can't pay their medical bills.

On a personal level, what does it mean? Imagine dealing with cancer, dealing with diabetes, dealing with heart disease, and at the same time having to stress out and worry about how you are going to pay the bill. I am not a doctor, but I can't help believing that it doesn't make one's recovery process any better when you are sitting around wondering whether you are going to go bankrupt. We are the only country in the entire world—the entire industrialized world—where people are worrying about having to go bankrupt because they committed the crime of getting sick. This is unacceptable, and we as a nation can and must do much better than that.

That is from the personal point of view. What about the macroeconomic point of view, the business perspective? Well, we know that large corporations, such as General Motors, for example, having so many economic problems, spends more on health care per automobile than they do on steel. That is a big corporation. We also have small businesses in the State of Vermont and around the country that are forced to divert hard-earned profits into health coverage for their employees rather than into new business investments. That is what they are faced with: Do they spend the money growing their business or do they provide health insurance to their workers?

Because of rising costs, it is no secret that many employers, many businesses, are cutting back on the level of their coverage, and passing more of the cost on to their workers. In more and more instances, you know what employers are saying? Sorry, can't do it anymore; we are not going to provide any health care coverage to the workers.

What we are looking at is a situation which is disastrous for millions of