The assistant legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SOTOMAYOR NOMINATION

Mr. SESSIONS. Madam President, the individual right to keep and bear arms—I think a fundamental right guaranteed by the explicit text of the second amendment of the U.S. Constitution—is at risk today in ways a lot of people have not thought about.

Although the Supreme Court recently held that the second amendment is an individual right, which is a very important rule, many significant issues remain unresolved, which most people have not thought about.

The Supreme Court, including whoever will be confirmed to replace Justice Souter, will have to decide whether the second amendment has any real force or whether, as a practical matter, to allow it to eviscerate its guarantees.

The second amendment says that ''the right of the people to keep and bear Arms, shall not be infringed.'' ''[T]he right of the people to keep and bear Arms, shall not be infringed.'' I know there is a preamble about a well-regulated militia being important to the security of the State, but the Supreme Court has ruled on that in Heller and said that does not obviate the plain language that the right to keep and bear arms is a right that individual Americans have, at least vis-a-vis the U.S. Government.

Not all the amendments, I would say, are so clearly a personal right. The first amendment, if you will recall, protects freedom of religion and freedom of speech. It talks about restricting Congress: Congress shall make no law with respect to the establishment of a religion or prohibiting the free exercise thereof.

So some could argue that does not apply to the States. It would apply only to the Federal Government because it explicitly referred to it. However, the Supreme Court has held it does apply to the States, and the right of speech and press and religion are applicable to the States and bind the States as well.

In the case of District of Columbia v. Heller, the Supreme Court recently held that the second amendment ''confer[s] an individual right to keep and bear arms.'' This is consistent with the Constitution and was a welcome and long-overdue holding.

Despite this holding, however, many important questions remain. For example, it is still unsettled whether the second amendment applies only to the Federal Government or to the State and local governments as well—a pretty big question. This question will determine whether individual Americans will truly have the right to keep and bear arms because if that is not held in that way, it would allow State and local governments—not bound by the second amendment—to pass all sorts of restrictions on firearms use and ownership. They may even ban the ownership of guns altogether.

So we are talking about a very important issue. Remember, the District of Columbia basically banned firearms. It is a Federal enclave, in effect, with Federal law. And the Supreme Court held that the Federal Government could not violate the second amendment, was bound by the second amendment, and that legislation went too far. But they, in a footnote, noted they did not decide whether it applies to the States, cities, and counties that could also pass restrictions similar to the District of Columbia.

President Obama, who nominated Judge Sotomayor, has a rather limited view of what the second amendment guarantees.

In 2008, he said that just because you have an individual right does not mean the State or local government cannot constrain the exercise of that right—exactly the issues the Supreme Court has not resolved yet. Can States and localities constrain the exercise of that right in any way they would like?

In 2000, as a State legislator, the President cosponsored a bill that would limit the purchase of handguns to one a month.

In 2001, he voted against allowing the people who are protected by domestic violence protective orders—because they felt threatened—he voted against legislation that would allow them to carry handguns for their protection.

So there is some uncertainty about his personal views.

Let's look at Judge Sotomayor, whom the President nominated, and her record on the second amendment. That record is fairly scant, but we do know that Judge Sotomayor has twice said the second amendment does not give you and me and the American people a fundamental right to keep and bear arms.

The opinions she has joined have provided a breathtakingly, I have to say, short amount of analysis on such an important question to the U.S. Constitution. And the opinions she has written lack any real discussion of the importance of these issues, in an odd way.

Judge Sotomayor has gone from sort of A to Z without going through B, C, D, and so forth. For example, in her most recent opinion in January of this year—Maloney v. Cuomo—which asked whether the Supreme Court's protection of the right to bear arms in DC—the Heller case—would apply to the States, she spent only two pages to explain how she reached her conclusion. Her conclusion was that it did not.

The Seventh Circuit dealt with this same question and reached the same conclusion, but they gave the issue the respect it deserved and had eight pages discussing this issue, at a time when Judge Sotomayor only spent about two pages on it and not very much discussion at all.

The Ninth Circuit reached a different opinion. They say the second amendment does apply to individual Americans and does bar the cities of Los Angeles or New York or Philadelphia from barring all hand guns because you have an individual constitutional right to keep and bear arms. So the Ninth Circuit disagreed, and they had 33 pages in discussing this important issue.

Further, in deciding that the second amendment applies to the people, the majority in the Supreme Court dedicated, in Heller, 64 pages to this important issue. Including dissents and concurrences on that decision, the entire Court generated 157 pages of opinion. Judge Sotomayor wrote only two pages in a very important case as important as Heller. Judge Sotomayor's lack of attention and analysis is troubling.

These truncated opinions also suggest a tendency to avoid or casually dismiss constitutional issues of exceptional importance. Other examples might include the New Haven firefighters case, Ricci v. DeStefano, which is currently pending before the Supreme Court on review, and the fifth amendment case of Didden v. Village of Port Chester, which was recently discussed in the New York Times. It dealt with condemnation of a private individual's property. All those were serious constitutional cases. They had the most brief analysis by the court, which is odd.

I do not think it is right for us to demand that we know how a judge will rule on a case in the Supreme Court. I am not going to ask her to make any assurances about how she might rule. But I do think it will be fair and reasonable to ask her how she reached the conclusions she reached and perhaps why she spent so little time discussing cases of fundamental constitutional importance.

I am not the only one who has been troubled by the second amendment jurisprudence of Judge Sotomayor. As I mentioned previously, the Ninth Circuit disagreed with her opinion and held that the second amendment is a fundamental right applicable to the States and localities.

Additionally, in a June 10 editorial, the Los Angeles Times—a liberal newspaper—disagreed with her view in Maloney as to whether the second amendment applies against States and localities.

Moreover, in a June 10 op-ed in the Washington Times, a leading academic argued that the decision in Maloney was flawed.

So these are critical questions that will determine whether the people of the United States have a fundamental right guaranteed by the Constitution to keep and bear arms. So I think it is important and it is more than reasonable for the Senators to analyze the opinions on this question and to inquire as to how the judge reached her decisions and what principles she used in doing so.

I would say we are moving forward with this confirmation process. It is a

difficult time for us in terms of time. There are now only eight legislative days before the hearings start. There is a lot of work to be done, a lot of records that have not yet been received. So our team and Senators are working very hard, and we will do our best to make sure we have the best hearings we have ever had for a Supreme Court nominee.

I see my colleague, Senator HATCH, in the Chamber, who is a fabulous constitutional lawyer and former chairman of this Judiciary Committee. I was honored to work for him, serve under him, when he was our leader. I know whatever he says on these subjects is something the American people need to listen to because he loves this country, he loves our Constitution, and he understands it.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague for his comments. He knows how deeply I respect him and how proud I am that he is the Republican leader on the Judiciary Committee. He will do a terrific job, and has been doing a terrific job, ever since he took over.

Considering a Supreme Court nominee is one of this body's most important responsibilities. I come at this wanting to support whomever the President nominates. The President has the right to nominate and appoint, and we have a right, it seems to me, to vote up or down one way or the other and determine whether we will consent to the nomination. We can also give advice during this time.

Only 110 men and women have so far served on our Nation's highest Court, and President Obama has now nominated Judge Sonia Sotomayor to replace Justice David Souter. Our constitutional rule of advise and consent requires us to determine whether she is qualified for this position by looking at her experience and, more importantly, her judicial philosophy.

President Obama has already described his understanding of the power and role of judges in our system of government. He has said he will appoint judges who have empathy for certain groups and that personal empathy is an essential ingredient for making judicial decisions. Right off the bat, President Obama's vision of judges deciding cases based on their personal feelings and priorities is at odds with what most Americans believe. A recent national poll found that by more than three to one, Americans reject the notion that judges may go beyond the law as written and take their personal views and feelings into account.

Judge Sotomayor appears to have endorsed this subjective view of judging. In one speech she gave several times over nearly a decade, she endorsed the view that there is actually no objectivity or neutrality in judging, but merely a series of perspectives. She questioned whether judges should even try to set aside their personal sympathies and prejudices in deciding cases, a view that seems in conflict with the oath of judicial office which instead requires impartiality.

We must examine Judge Sotomayor's entire record for clues about her judicial philosophy. She was, after all, a Federal district court judge for 6 years and has been a Federal appeals court judge for nearly 11 more. While we were told that this is the largest Federal judicial record of any Supreme Court nominee in a century, we are being allowed the shortest time in recent memory to consider it. The 48 days from the announcement to the hearing for Judge Sotomayor is more than 3 weeks—more than 30 percent—shorter than the time for considering Justice Samuel Alito's comparable judicial record. There was no legitimate reason for this stunted and rushed timetable, but that is what the majority has imposed on us and that is where we are today.

I wish to take a few minutes this afternoon to look at Judge Sotomayor's judicial record on a very important issue to me and, I think, many others in this body: the right to keep and bear arms protected by the second amendment to the Constitution.

Some can be quite selective about constitutional rights—prizing some, while ignoring others. Some even trumpet rights that are not in the Constitution at all as more important than those that are right there on the page. It appears that Judge Sotomayor has taken a somewhat dim view of the second amendment. Two issues related to the scope and vitality of the right to keep and bear arms are whether it is a fundamental right and whether the amendment applies to the States as well as to the Federal Government. On each of these issues, Judge Sotomayor has chosen the side that served to limit, confine, and minimize the second amendment. She has done so without analysis, when it was unnecessary to decide the case before her, and even when it conflicted with Supreme Court precedent or her own arguments.

In a 2004 case, for example, a Second Circuit panel including Judge Sotomayor issued a short summary order affirming an illegal alien's conviction for drug distribution and possession of a firearm. The case summary and headnotes supplied by Lexis take up more space than the three short paragraphs proffered by the court. Judge Sotomayor's court rejected a second amendment challenge to New York's ban on gun possession in a single sentence relegated to a footnote with no discussion, let alone any analysis of the issue whatsoever. In fact, the court neither described the appellant's argument nor indicated how the district court had addressed this constitutional issue, but merely cited a Second Circuit precedent for the proposition that the right to possess a gun is ''clearly not a fundamental right.''

That is pretty short shrift for a constitutional claim. Last year, in the District of Columbia v. Heller, the Supreme Court held that the second amendment right to keep and bear arms is an individual rather than a collective right. But the Court also noted that by the time of America's founding, the right to have arms was indeed fundamental, and that the second amendment codified this preexisting fundamental right. Several months later, a Second Circuit panel including Judge Sotomayor affirmed a conviction under State law for possessing a weapon. Citing a 1886 Supreme Court precedent, the Second Circuit held that under the Constitution's privileges and immunities clause, the second amendment applies only to the Federal Government, not to the States. Whether correct or not, that holding was obviously enough to decide the issue in that particular case. Judge Sotomayor's court, however, went beyond what was necessary to further minimize the second amendment by once again characterizing it as something less than a fundamental right. The court said that there need be only a so-called rational basis to justify a law banning such weapons, a legal standard it said applies where there is no fundamental right involved. The court simply ignored and actually contradicted the Supreme Court's decision in Heller by treating the second amendment as protecting less than a fundamental right. In fact, the very 1886 precedent Judge Sotomayor's court cited to hold that the second amendment limits only the Federal Government recognized the preconstitutional nature of the right to bear arms. Her court never addressed these contradictions.

The Seventh Circuit has since also held that under the privileges and immunities clause, the second amendment limits only the Federal Government. But the Ninth Circuit last month held that under the Constitution's due process clause, the second amendment does indeed apply to the States. These courts gave this issue much more analysis than did Judge Sotomayor's court and neither found it necessary to address whether the right to keep and bear arms is fundamental. I wish Judge Sotomayor's court had shown similar restraint.

It appears that Judge Sotomayor has consistently and even gratuitously opted for the most limiting, the most minimizing view of the second amendment. No matter how distasteful, this result would be legitimate if it followed adequate analysis, if it properly applied precedent, and if it was necessary to decide the cases before her. In that event, it would not like it but probably could not quarrel with it. But as I have indicated here, this is not the case. There was virtually no analysis, her conclusion conflicted with precedent, and was unnecessary to decide the cases before her. This is not the picture of a restrained judge who has set aside personal views and is focusing on applying the law rather than on

reaching politically correct results. These are serious and troubling issues which go to the very heart of the role judges play in our system of government. These are elements not from her speeches but from her cases that give shape to her judicial philosophy. We have a written Constitution which is supposed to limit government, including the judiciary. We have the separation of government power under which the legislative branch may employ empathy to make the law, but the judicial branch must impartially interpret and apply the law. We have a system of self-government in which the people and their elected representatives make the law and define the culture. It is no wonder that most Americans believe that judges must take the law as it is, not as judges would like it to be, and decide cases impartially. That is exactly what judges are supposed to do if our system of ordered liberty based on the rule of law is to survive.

President George Washington said that the right to keep and bear arms is ''the most effectual means of preserving peace.''

Justice Joseph Story, in his legendary commentaries on the Constitution, called this right the ''palladium of the liberties of a republic.''

I, for one, am glad that our Founders did not give short shrift to this fundamental individual right.

Let me close my remarks this afternoon by saying that these are some of the questions that need answers, issues that need clarification, and concerns that need to be satisfied as the Senate examines Judge Sotomayor's record. Perhaps such answers, clarification, and satisfaction exist. My mind is open, and I look forward to the hearing in which these and many other matters no doubt will be raised. These are important issues that can't be shunted aside as though they are unimportant, and Judge Sotomayor needs to answer some of these issues and questions that we are raising as we go along.

I told her that we will ask some very tough questions and that she is going to have to answer them. She understands that, and I appreciate that.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, I rise today to follow up on some of the comments made by my colleagues who had come to the floor to talk about the nomination of Judge Sotomayor to the Supreme Court of the United States.

Any confirmation the Senate considers is important but none more so than a lifetime appointment to the most distinguished judicial office in our Nation.

Now that the President has nominated Judge Sotomayor, it is the Senate's job to give advice and consent. As Alexander Hamilton told the Constitutional Convention:

> Senators cannot themselves choose—they can only ratify or reject the choice of the President.

I take this role very seriously, as do all of my Senate colleagues. In fact, just 3½ years ago, on this very floor, one of our colleagues in the Senate at the time rose and gave the following views on a then-pending Supreme Court nomination. I will quote for you what he said:

> There are some who believe that the President, having won the election, should have complete authority to appoint his nominee and the Senate should only examine whether the Justice is intellectually capable and an all-around good person; that once you get beyond intellect and personal character, there should be no further question as to whether the judge should be confirmed. I disagree with this view. I believe firmly that the Constitution calls for the Senate to advise and consent. I believe it calls for meaningful advice and consent and that includes an examination of the judge's philosophy, ideology, and record.

The Senator who made those remarks was then-Senator Obama. He spoke those words in January 2006 on this floor when the Senate was debating the confirmation of now-Supreme Court Justice Samuel Alito.

I, like the President, believe it is the Senate's constitutional duty to thoroughly review all nominees to the Federal bench, especially those who will have a lifetime appointment to the highest Court in our Nation. This review should be thorough and fair and cover a nominee's background, judicial record, and adherence to the Constitution. This is especially true with the voluminous judicial record Judge Sotomayor has compiled, with over 3,600 Federal district and appellate level decisions. The Senate must also work to ensure that the nominee will decide cases based upon the bedrock rule of law as opposed to their own personal feelings and political views.

As part of this confirmation process, I had the opportunity this morning to meet with Judge Sotomayor. Like many in this body, I agree that she has an impressive background, as well as a compelling personal story. But what we have to do is examine and look at her record when it comes to her understanding of the Constitution, especially as it relates to the second amendment right to bear arms, and that is an area where I have significant concerns.

While sitting on the Second Circuit Court of Appeals, Judge Sotomayor consistently advanced a narrow view of the second amendment and did so with little explanation or reasoning. For example, twice, Judge Sotomayor has ruled that the second amendment is not a ''fundamental right.'' The first time she did so with a one-sentence footnote, and most recently it was simply stated as fact without any explanation or reasoning being provided. Judge Sotomayor's views on whether the second amendment right to bear arms is a fundamental right are so important because the Supreme Court has made this determination a key element in deciding whether to apply parts of the Bill of Rights, such as the second amendment, to State and local governments.

This question, also known as incorporation, is likely to be the next second amendment issue the Supreme Court will consider because the circuit courts of appeal are split, and the Supreme Court specifically noted that they were not deciding this issue in the landmark District of Columbia v. Heller decision, which was decided last year.

What is most troubling to me, though, is that these second amendment cases point out a disturbing trend that legal experts have expressed about Judge Sotomayor: That she has a record of avoiding or casually dismissing difficult and important constitutional issues. It doesn't take an attorney to notice that Judge Sotomayor's discussion of incorporation, a challenging and constitutionally significant issue, consists of just a few paragraphs. In contrast, the opinions for both the Ninth Circuit and the Seventh Circuit discuss the issue at length and, in doing so, give this important issue the attention and analysis it deserves. While I understand that writing styles can and do vary, even in the writing of judicial opinions, I am still concerned about the apparent lack of thoughtfulness and thorough reasoning in her decisions.

Another example of a Judge Sotomayor opinion that appears to be unnecessarily short and inadequately reasoned is the Ricci v. DeStefano case, or more popularly known as the New Haven firefighter promotion case. In this case, a three-judge panel, which included Judge Sotomayor, published an unusually short and unsigned opinion that simply adopted the lower district court's ruling without adding any original analysis. Even one of Judge Sotomayor's own mentors, Judge Jose Cabranes, commented that the Ricci opinion ''contains no reference whatsoever to the constitutional claims at the core of this case'' and that the ''perfunctory disposition [of the case] rests uneasily with the weighty issues presented by this appeal.'' Without careful reasoning being provided, critics and supporters alike have been left to wonder on what basis these decisions have been made. I am left with concerns about these rulings and whether they are based upon personal views and feelings rather than the rule of law.

My short meeting with Judge Sotomayor this morning did not provide either of us with enough time to address these issues and these concerns at length, and that is why, like many colleagues, I will be monitoring closely the confirmation hearings that are set to occur next month. During those hearings, it is my hope that the members of the Judiciary Committee will take the necessary time to explore and thoroughly examine her positions and legal reasoning, especially on the second amendment, in greater detail.

I, like many of my colleagues, am anxious to see this process move forward. We also understand the weight that is attached to the constitutional role of the Senate when it comes to advice and consent. When you consider a

lifetime appointment to the highest Court in the land, you better make sure that you do your homework and that you thoroughly and completely and fairly examine the record.

I hope the Judiciary Committee—and I know they will—will conduct this in a way which is consistent with the tone that ought to be a part of this. It ought to be a civil discussion. It also needs to be thorough because we are talking about a lifetime appointment to the Supreme Court. Whoever ends up on that Court will be faced with a great many issues, all of which have lasting consequences for this great Republic.

In my view, it is important that we have judges who are put on the Supreme Court who understand that the role of the judiciary in our democracy is not to play or take sides; it is to be the referee, the umpire, to be someone who applies the Constitution, the laws of the land, fairly to the facts in front of them in the cases they will hear. I certainly hope that, as we have an opportunity to more thoroughly review the record of this nominee, the members of the Judiciary Committee and all of the Members of the Senate will take that responsibility very seriously. That will be the criteria and the filter by which I look at this nominee—whether or not, in my view, she exercises an appropriate level of judicial restraint and doesn't view the role of a judge in our judiciary system in this country to be that of an activist, someone who expresses personal feelings or tries to advance a particular political agenda, but someone who, in terms of philosophy and temperament, is committed to that fundamental principle of judicial restraint, which is a hallmark of our democracy and has been for well over 200 years.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. THUNE. 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. THUNE. Mr. President, I didn't have an opportunity to address the Koh nomination this morning. We had a cloture vote on the nomination of Harold Koh to be the next State Department Legal Adviser. I wish to express some of the views and concerns I have. Obviously, cloture was invoked this morning, and my guess is that he will ultimately be confirmed. We have an opportunity in a postcloture period to talk a little bit about this nominee.

I have to say this is an important position. If confirmed, Mr. Koh would be the top lawyer at the State Department and would be involved in the negotiation, the drafting, and the interpretation of treaties and U.N. Security Council resolutions. He would also represent the United States in other international negotiations, at international organizations, and before the International Court of Justice. To put it simply, he would be viewed as the top legal authority for the United States by the international community.

Similar to Judge Sotomayor, Mr. Koh highlights an alarming trend which I think we see in some of President Obama's nominees. They have impressive backgrounds, but when their records are examined in detail, there are substantive questions about their understanding of the Constitution. For example, Mr. Koh has said repeatedly, including at his confirmation hearing, that he believes the congressionally authorized 2003 U.S. invasion of Iraq ''violated international law'' because the United States had not received ''explicit United Nations authorization'' beforehand. He also said that the U.S. Supreme Court should ''tip more decisively toward a transnationalist jurisprudence'' as opposed to basing decisions on the U.S. Constitution and laws made pursuant to it.

His views on the second amendment are also extremely worrisome. In a speech called ''A World Drowning in Guns,'' which was given at Fordham University Law School in 2002 and later published in the Law Review, he explains why he believed there should be a global gun control regime and admits that ''we are a long way from persuading government to accept a flat ban on the trade of legal arms.''

He concludes his speech with this statement:

> When I left the government several years ago, my major feeling was of too much work left undone. I wrote for myself a list of issues on which I needed to do more. One of those issues was the global regulation of small arms.

Given, again, that Mr. Koh will be the top legal adviser at the State Department on both domestic and international issues, I have concerns, because of statements such as these, that he could place his own personal agenda ahead of the needs of our country and the Constitution.

So we will have an opportunity probably—we have had the cloture vote on the nomination, but I wanted to express for the record my concerns about this nominee and the types of statements he has made in the past, the type of agenda he has expressed support for, and how, in my view, it contradicts many of the basic constitutional freedoms and rights—the second amendment being one—that I would raise as a major concern but also this notion that transnational jurisprudence—that the Supreme Court ought to tip more decisively in that direction. That is a cause for great concern.

I hope that on final disposition of this nominee, the Senate will vote to reject this nomination. It is, in my view, dangerous to the national security interests of the United States and some of our basic constitutional freedoms when he rules in the way he has in the past and continues to issue statements that, in my view, are very troublesome. I will be opposing this nomination, and I hope my colleagues will as well.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

Mr. DURBIN. It is my understanding we are postcloture, speaking on the nomination of Harold Koh to be Legal Adviser for the Department of State; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DURBIN. Mr. President, earlier today the Senate voted to invoke cloture and move forward with this nomination. Sixty-five Senators recognized the extraordinary qualifications that Mr. Koh will bring to the State Department. Yet in the last few weeks, some Senators on the other side of the aisle have done everything they can to slow down the work of the Senate, even going so far as to delay the consideration of a bill to promote tourism in America. That is a noncontroversial bill with 11 Republican cosponsors but a bill that could only get two Republican Senators to support it when we asked to move it forward.

Unfortunately, the same thing is happening with the nomination of Mr. Koh. This is a nomination which is not controversial for most Members of the Senate—65 supported going forward. Yet the Republicans are insisting, as they have the right to do under Senate rules, that we delay for maybe up to 30 hours before we actually get to the vote. If we are going to waste that much time on a noncontroversial nomination for a person to become Legal Adviser to the State Department, the people of this country have a right to ask what is the goal of the Republicans in doing this?

There is a lot we need to do in the Senate. There is a lot the American people are counting on us to do, measures we should be considering. I have a bipartisan measure on food safety. I have been working on this for over 10 years. There is not a week that goes by that there is not some new press report about something dangerous: pet food, cookie dough—you name it. All of these things have been in the headlines over the last several years, and we can do a better job making sure the items we purchase at our local stores for our families, for our pets, are safe; making sure the things we import from other countries are safe. But we cannot even get to that measure because there is a strategy on the Republican side of the aisle to stop us, to delay as much as possible to try to make sure the Senate does as little as possible.

In the last election, the people of this country said: We think it is time for change in this town of Washington. We are sick and tired of this partisan bickering and this waste of time and Democrats banging heads with Republicans. Why don't you all just roll up your sleeves and be Americans for a change and try to solve the problems? You may not get it completely right, but do your best and work at it. Spend some time on it.

Look at what we have, an empty Chamber. This Senate Chamber should be filled with debate on critical issues, but it is not because, unfortunately, this is a procedural strategy on the other side of the aisle which is slowing us down.

This man whose nomination is before us should have just skated through here. This is an extraordinarily talented man. Mr. Harold Koh has a long and distinguished history of serving his country and the legal profession. During the Reagan administration, a Republican President's administration, he was a career lawyer in the Office of Legal Counsel at the Department of Justice; in 1998, unanimously confirmed as the U.S. Assistant Secretary of State for Democracy, Human Rights and Labor, a bureau in the State Department that champions many of our country's most cherished values around the world.

Mr. Koh's academic credentials are amazing—a Marshall Scholar at Oxford, graduate of Harvard Law School, editor of the Harvard Law Review, and he went on to be a clerk at the Supreme Court across the street, which is about as good as it gets coming out of law school.

Since the year 2004, Harold Koh has served as dean of the Yale Law School. Mr. Koh was a Marshall Scholar at Oxford. He has been awarded 11 honorary degrees and 30 human rights awards.

I don't know that you could present a stronger resume for a man who wants to serve our country, to be involved in public service and step out of his professional life as a lawyer in the private sector, with law schools. He has been endorsed by leaders, legal scholars from both political parties, including the former Solicitor General, Ted Olson, former Independent Counsel Ken Starr, former Bush Chief of Staff Josh Bolton, seven former Department of State Legal Advisers, including three Republicans, more than 100 law school deans, and 600 law school professors from around the country. What more do we ask for someone who wants to serve this country?

Several retired high-ranking military lawyers have written: If the U.S. follows Koh's advice, as State Department Legal Adviser:

[It] will once again be the shining example of a Nation committed to advancing human rights that we want other countries to emulate.

Here is an excerpt from a recent letter for support Ken Starr sent to Senators KERRY and LUGAR. I have had my differences with Ken Starr. Politically we are kind of on opposite sides. Here is what he said of Dean Koh, who is being considered by this empty Senate Chamber as we burn off 30 hours. He wrote:

My recommendation for Harold comes from a deep, and long-standing, first-hand knowledge. We have been vigorous adversaries in litigation. We embrace different perspectives about a variety of different substantive issues. As citizens, we no doubt vote quite differently. But based on my two decades of interaction with Harold, I am firmly convinced that Harold is extraordinarily well qualified, to serve with great distinction in the post of legal adviser. . . . Harold's background is, of course, the very essence of the American dream. . . . Harold embraces, deeply, a vision of the goodness of America, and the ideals of a nation, ruled, abidingly, by law.

There is overwhelmingly bipartisan support for Harold Koh. Usually these nominations are done routinely late at night when there are few people on the floor, and when we are going through a long series of things to do. Someone with this kind of background does not even slow down as they move through the Senate on to public service.

But, unfortunately, the strategy on the other side of the aisle is to slow things down, do as little as possible this week. I sincerely hope that when the time comes, when the 30 hours have run, when the Republicans have finally decided they do not want to delay the Senate any longer, they will bring Mr. Koh's nomination to a vote.

I enthusiastically support his nomination and encourage my colleagues to join me in voting him out of the Senate quickly so he can continue his record of public service.

HEALTH CARE REFORM

Mr. President, you are well aware from your State of Oregon and from my State of Illinois how much this health care reform debate means to everybody we represent. When you ask the American people what we can do about health insurance, 94 percent of people across America overwhelmingly support change in our current health care system. Some 85 percent of the people across this country, Democrats, Republicans, and Independents, say that the health care system needs to be fundamentally changed.

This is the time to do it. This is the President to lead us in doing it. We had better seize this moment. If we do not, if we miss it, we may never have another chance for years and years to come. That is unfortunate.

Democrats want to build on what is good about the current system. It is interesting that so many people would say we should change the health care system, but about three out of four people say: I kind of like my health insurance.

So what we have to do first is to say we are going to keep the things in the current system that work, and only fix those things that are broken. If you have a health insurance plan that you like and you trust it is good for you and your family, you need to be able to keep it. We should not be able to take it away from you. We do not want to. That is the starting point. And then when we start to fix what is broken in the system, we address some issues that I think are really critical.

Health insurance companies today can deny you coverage because of an illness you might have had years ago, exclude coverage for what they call preexisting conditions, which sadly we all know about, or charge you vastly more because of your health status or your age.

We want to make sure that the end of the day, after health care reform, we keep the costs under control, make sure you have a choice of your doctor, make certain you have privacy in dealing with your doctors so that the doctor-patient relationship is protected and confidential.

We want to protect quality in the system, to make certain we bring out the very best in medical care, and not reward those who are doing things poorly. We believe we can do this on a bipartisan basis, with both parties working together.

Some of the critics of this effort basically are in denial that we need to change our health care system. I do not think they are taking the time to look at it closely. Whether you talk to people, average families, or small businesses, large corporations, you understand that the cost of health care now is spinning out of control, and if we do not do something dramatic and significant about it, it will become unaffordable.

I had a group of people in my office who were in the communications industry. They are union workers. They are worried because every year when they get more money per hour for working, it always goes to health insurance. They learn each year there is less coverage: pay more, get less.

We have got to do something about containing the cost of a system that is the most expensive health care system in the world. We spend, on average, more than twice as much as the next country on Earth for health care for Americans. We have great hospitals and doctors. We have amazing technology and pharmacies. But the bottom line is, other countries get better results for fewer dollars.

So the first item we must address is bringing down the cost of health care, stop it from going through the roof, so that families and businesses can afford it, and government can afford it as well.

The second thing we have to make sure we do is protect the choice of individuals for their doctor and their hospital, their providers. There are limitations now. In my home town of Springfield, IL, my health insurance plan tells me there is one preferred hospital of the two I can choose, and I know if I do not go to that hospital, I can end up with a bill I have to pay personally. So there are limitations under the current system, and that is to be expected.