

critical importance—are all truly impressive.”

Some pundits have said the work we have done so far this year is unmatched except during the first year President Franklin Roosevelt was in office. I can assure Republicans that this serious, sustained activity will not stop. We will finish this year in the same active, productive way in which it started, and I encourage my Republican colleagues to join us. I am confident the steps we have taken in the first half of this year, and that we will continue to take, will certainly anchor our recovery. It has anchored our recovery and it will do even more so. But I also know we must keep going. We must do more, lots more.

One of the most important steps we can take is reforming health care and doing so the right way. It has to wind up being health care reform that helps the middle class, that helps everyone, not just reform to take care of those who have none. It has to be a program that takes care of those who are afraid they are losing their insurance and those who have lost their insurance. That is why we will soon bring to the Senate floor a plan that lowers the high cost of health care. We will also make sure every American has access to quality, affordable care, and we will make sure people can still choose their own doctors, hospitals, and health plans.

We will no longer let insurance companies use a patient's preexisting condition as an excuse to deny the needed coverage, and we will help small businesses give their employees health care while keeping costs as low as possible. We are committed to a plan that protects what works, fixes what is broken, and ensures that if you like the coverage you have, you will be able to keep it. We will lower costs by preventing disease in the first place, reducing health disparities, and encouraging early detection and effective treatments that save lives and money.

This is the year we must act, and when we do we must act as partners, not partisans. Rising health care costs and the risk of losing one's health care is now greater than ever. The status quo is unacceptable. Doing nothing is not an option because the costs of inaction are too great.

Americans are paying too much for health care. They can lose this health care they have with just one pink slip, one accident or one illness. Every day, more Americans go bankrupt or lose their homes trying to stay healthy, and every year we do not act health care costs increase by the billions of dollars. We must, and we will, pass health care reform.

But health care is not the only issue on our agenda. We will also continue working on a number of appropriations bills to keep our government running, funding our government. With Republican cooperation, we can finish these bills, starting today by funding the legislative branch and tomorrow by doing

the same for the Department of Homeland Security. We will continue working to confirm President Obama's many nominees for critical positions, including his outstanding nominee for the Supreme Court, Judge Sotomayor. Those who have chosen to serve our country must be able to get to work without delay. We have far too many nominees who have not moved forward because of Republican holds.

The Independence Day holiday was one where all Americans observed the birth of our country. The Independence Day holiday was one that reminded us of the debt we owe to the first patriots who stood for liberty and the many who died for liberty. Brave Americans have never stopped sacrificing so we can now know the self-evident truths and exercise the inalienable rights Jefferson described.

Keeping the Department of Defense strong is one of the ways we can support and thank those patriots. This work period we will do just that by passing the Department of Defense authorization bill.

The revolutionary document Congress adopted on July 4, 1776, declared that power derives from the consent of the governed. In the 233 years since that day, we have also learned we must govern by consensus. Although we will discuss, debate and disagree, I urge my colleagues to remember that finding common ground is in our common interest. I ask them not to forget that the governed, those who sent each of us here, sent us with their hopes we will work with each other, not against each other.

Finally, let me say that the long Senate race in the State of Minnesota is over. Al Franken will be sworn in as a Senator tomorrow before the weekly party caucuses. History will write about that race for generations to come. Three million votes were cast by hand. The recount was long, deliberate, and fair. Al Franken won by 312 votes.

He is a good man. He is someone who is extremely smart—he is Harvard educated. He had chosen as his life's work the entertainment world. He has been on many USO caravans and trips. He has a great love for the American soldier. I met with him in my office today, and I was so impressed that his first piece of legislation is going to be one involving veterans—unique and very important.

I want everyone within the sound of my voice to understand that we have 60 Senators on the Democratic side. That means that now more than ever we have to work together. We have no intention—I have no intention of running roughshod over the Republicans. I think we have proven that during this first 6 months. We want cooperation from the Republicans, we deserve cooperation from the Republicans as they do from us.

I started my remarks by talking about what a terrific legislative session it has been so far. We have accomplished, I repeat, as much as any other

legislative first 6 months, other than the first Roosevelt year. We have accomplished all that, and we needed Republican votes to get it done. We haven't gotten a lot of Republican votes—I wish we had gotten more—but we have gotten enough to get it done.

I hope in the next few weeks we all realize we have so much important work to do. I laid that out with my remarks here today. We have to get as many appropriations bills done as we can; we have to finish the Defense Department bill; we have to do health care reform; we have to do Judge Sotomayor. We have a huge schedule. As I have said and we all know—everyone has been alerted, this is no message the people have not heard—this period is going to be a long hard slog.

We have lots to do. We are going to be working in the evenings, Mondays and Friday—weekends, if necessary, to get all our work done.

I say to my Republican colleagues I, of course, am very thankful for Al Franken. It is terrific that Minnesota now has two Senators. For over 8 months, they have gone with just one. But I repeat, this is not the time for people to be arrogant or attempt to throw their weight around. Things have not changed. We still need to work together. That is what the American people want and that is what the message is to my Republican colleagues.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

SOTOMAYOR NOMINATION

Mr. KYL. Mr. President, we have heard some debate recently centered on whether it is appropriate for judges to consider foreign law and public attitudes when interpreting our U.S. Constitution and laws.

In our constitutional system, the American people, through their elected representatives, make the laws by which we are governed. As James Madison said in *Federalist* 49:

The people are the only legitimate fountain of power, and it is from them that the Constitutional charter, under which the several branches of government hold their power, is derived.

Judges have the responsibility to faithfully interpret the Constitution and the laws that have been adopted through our democratic processes. Again, judges do not make the law, they interpret it.

Within our constitutional structure, the growing idea of using foreign law to interpret our own laws and Constitution is troubling and problematic for two main reasons:

First, as Chief Justice John Roberts pointed out during his confirmation hearings, the consideration of foreign law by American judges is contrary to the principles of democracy. Foreign judges and legislators are not accountable to the American electorate. Using foreign law, even as a thumb on the scale, to help decide key constitutional issues devalues Americans' expressions through the democratic process. An analogy would be to allow noncitizens to vote in our elections, thus devaluing the votes of every American.

Second, even if the use of foreign law were not inconsistent with our constitutional system, its use would free judges to enact their personal preferences under the cloak of legitimacy. If an American judge wants to find a foreign judicial decision or legislative enactment consistent with his or her preferred outcome in a case, he or she could find it in the laws of at least 1 of the 192 United Nations member states. That would be judicial activism compounded by the error of using inappropriate precedent.

As we soon begin the consideration of Judge Sonia Sotomayor's nomination to the Nation's highest Court, both the American people and the Senate deserve to know where she stands on the issue of the use of foreign law to interpret the U.S. Constitution. Although we do have some materials that suggest her views, we are still waiting on a number of important documents that will help us better understand her views. For example, in response to the Senate Judiciary Committee's questionnaire, Judge Sotomayor identified 200 public speeches or remarks she has given. Of those, we have not received a draft, video, or a sufficient topic description for more than 100 of them. These include four occasions in which she publicly spoke on the issue of foreign law. On one of these occasions, Judge Sotomayor apparently participated in a panel discussion with foreign judges at St. John's Law School in November of 2006. According to her Judiciary Committee questionnaire, she said she "spoke on the permissible uses of international law by American courts." And in October 2008, Judge Sotomayor participated in a roundtable discussion at New York University's law school on the "Dynamic Relations Between International and National Tribunals."

With hearings scheduled to begin in a couple of weeks, getting this information is critical to our understanding of her judicial philosophy. The most notable of the materials we do have is a 22-minute speech Judge Sotomayor gave to the ACLU of Puerto Rico on April 28, 2009, entitled "How Federal Judges Look to International and Foreign Law Under Article VI of the U.S. Constitution." From that speech, we begin to see how foreign law could shape Judge Sotomayor's jurisprudence in the future. Her views were not casual observations but directed to this specific topic. In this speech, she says:

[I]nternational law and foreign law will be very important in the discussion of how we think about the unsettled issues in our own legal system. It is my hope that judges everywhere will continue to do so because . . . within the American legal system we're commanded to interpret our law in the best way we can, and that means looking to what other, anyone, has said to see if it has persuasive value.

What on Earth does this have to do with judging, asking what "anyone has said to see if it has persuasive value"? How about using the traditional rules of judicial construction, precedents, and our judicial tests based on our common law heritage.

Judge Sotomayor also reveals that she believes foreign law is a source for "good ideas" that can "set our creative juices flowing." Deciding an antitrust case or a commerce clause dispute or an Indian law issue or an establishment of religion case does not require "creative juices." Indeed, it could interfere with specific rules of construction or application of precedent. But Judge Sotomayor says that not considering foreign law would be "asking American judges to close their minds to good ideas." What is "closedminded," I would ask, about requiring that American judges interpret our laws and our Constitution? That is what they take their oath of office to do.

Let's also remember that Judge Sotomayor has previously stated that appellate courts are "where policy is made." When you combine the notion that judges may usurp the legislative power of policymaking with the view that foreign law is an incubator of creative ideas for a judge to employ as he or she sees fit, you open the door to the worst form of judicial activism, one completely untethered from American legal principles. Judges do not have the responsibility of finding new good ideas that would make good policy. That is the role for our elected representatives. The ideas expressed by Judge Sotomayor threaten to undermine a system that has served us well for over two centuries.

Judge Sotomayor went on in the same ACLU speech to criticize two sitting justices and align her views with those of Justice Ginsburg, who recently endorsed the use of foreign law at a symposium at the Moritz College of Law at Ohio State University.

Specifically, Judge Sotomayor stated that "[t]he nature of the criticism

comes from . . . a misunderstanding of the American use of that concept of using foreign law and that misunderstanding is unfortunately endorsed by some of our own Supreme Court justices. Both Justice Scalia and Justice Thomas have written extensively criticizing the use of foreign and international law in Supreme Court decisions. . . ."

She continues: "I share more the ideas of Justice Ginsburg in thinking . . . that unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world. Justice Ginsburg has explained very recently . . . that foreign opinions . . . can add to the story of knowledge relevant to the solution of a question, and she's right."

Judge Sotomayor's rationale for judges looking to foreign law—so that the United States does not "lose influence in the world"—is absolutely irrelevant to the role of judges in America. It is the province of the President and the legislative bodies—not activist judges—to make policy and manage foreign affairs.

In defending the Supreme Court's use of foreign law, Judge Sotomayor made an astonishing argument: Courts, she said, "were just using that law to help us understand what the concepts meant to other countries, and to help us understand whether our understanding of our own constitutional rights fell into the mainstream of human thinking." But the words of our Constitution were not intended to reflect the "mainstream of human thinking." Think about mainstream public opinion in Europe, Asia, Africa, and South America at the end of the 18th century. Even today, it is doubtful the United States would be satisfied being governed by the thinking of most of the governments in the world, such as China, much of the Muslim world, and the dozens of kleptocracies around the world.

As I noted in my remarks that related my concerns about Harold Koh's views on foreign law, if the Founding Fathers had been given to transnationalism, America would not be the leading light of freedom in the world that it is today. Nor would it be a leader in convincing other nations to protect free speech, assembly and other political freedoms, such as are being asserted in Iran right now.

Do we really want judges to look to the laws of foreign countries when deciding our most treasured, constitutional provisions, such as, for instance, the Second Amendment? I do not, and the American people share my view. Judicial activism is not a popular concept.

While I do not intend to judge her qualifications to decide cases on the U.S. Supreme Court based on this one speech, I believe it is fair to ask what else she has said on the subject. There are apparently other speeches that we do not have. The nominee should either

find these speeches or ask whether there are other records—for example, transcripts, tape or video recordings, press accounts, and so on—that would indicate whether her April 28 speech is indicative of her approach to judging.

As we begin to consider the nomination of Judge Sotomayor, we will need this information to properly evaluate her qualifications, especially as it relates to her view that using foreign or international law is an appropriate way for U.S. Supreme Court Justices to interpret the U.S. Constitution.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. NELSON of Florida. I ask unanimous consent to speak for 15 minutes.

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

BURMESE PYTHONS

Mr. NELSON of Florida. Mr. President, tragedy has struck. It is not like we haven't been warned. With the proliferation of the Burmese python being brought into the United States, these pythons people buy as pets, and then they get so big that the people don't want them around the house anymore and they release them. Of course, in south Florida they are releasing them into a natural habitat which is the Florida Everglades, so much so that the superintendent of the Everglades National Park has now estimated that they have proliferated to the tune of 150,000 to 180,000 of these Burmese pythons.

When Secretary Salazar came down a month ago for us to take him into the Everglades so he could see that extraordinary feature of Mother Nature, the river of grass, we took him in an airboat out across this river of grass. We also wanted to show him what is lurking beneath that grass now. We took him to two captured Burmese pythons. One was about an 8 footer and another one was a 16 footer. A 16-foot Burmese python in his midsection is that much in diameter. It took three grown men to hold that python. The oldest registered Burmese python in captivity has grown to 27 feet. Indeed, an 18 footer was captured and killed in the Everglades, and it was a female. They found inside of her 56 eggs that were ready to hatch. That is why we have a proliferation.

We have spent a lot of money, along with the State of Florida, to restore the Everglades, one of the great natural wonders of the world. Mankind, over the course of three quarters of a century, has diked and drained the Everglades, and we are trying to restore them now. But here we have an invasive species that has been introduced that is upsetting the entire ecological balance. Already we have found, for example, somehow a Burmese python swam across the ocean to Key Largo in the upper Florida Keys. They found inside this Burmese python the endangered Key Largo wood rat. They

have found a full size bobcat. They have found a full size deer. Indeed, the Burmese python is at the top of the food chain. These pythons, in fact, get into fights with alligators, and they found inside one of the Burmese pythons a 6-foot alligator.

I want to show what I am talking about. I want colleagues to see this critter. This is only a 6 footer. This Burmese python is 2 feet shorter than the Burmese python 4 days ago that, after it had escaped from its glass container at midnight, the man of the house found missing. He went and got the Burmese python, put it back in the container and, unfortunately, did not secure the top of the container, put, if we can believe it, a quilt over the top and secured down the edges of the quilt. Guess what an 8-foot Burmese python can do coming out of a glass container? Tragedy struck, because that python slithered throughout the house and up into a baby crib where there was a 2-year-old little girl named Shaiunna Hare. That Burmese python attached its fangs to the forehead of that child and then did what they do, wrapped its body around the body of the little child and proceeded with all of that muscle to strangle the child to death. This is what we have been saying was going to happen. This happened with a domestic pet in a home. This is what is capable of happening with 180,000 of these pythons in the Florida National Everglades Park.

Sooner or later, a Burmese python will get the endangered Florida panther. Sooner or later, for an unsuspecting tourist in the Everglades National Park, there will be an encounter with a human. Tragically, it took this event of the strangulation by one of these snakes of a child within her own home in the child's crib to bring this to our attention.

This Wednesday there will be a hearing in the committee chaired by Senator BOXER. I will be testifying. I will bring further evidence than these photographs. Here are wildlife officers encountering a snake with an attachment that grabs the snake from right behind the head. In this case, it is probably a 6½ footer—relatively small. But we can see the size. This is solid muscle. That is why these constrictor snakes have the capability of asphyxiating their prey before they then consume their prey. We have heard the old adage, a pig in a python. That is exactly what it is. Once they asphyxiate their prey, then their jaws are capable of totally opening and they ingest the entire victim into their body. There is the old phrase: a pig in a python with the hump. That is exactly what it is.

That is the alligator that was found, the 6-foot alligator, within the stomach of the snake. That is the same thing.

There is something we can do about this. No. 1, the U.S. Fish and Wildlife Service has the capability under law now to declare this an injurious species. Since they have been studying

this for the last 2½ years and have still not acted, although I believe that Secretary of the Interior Salazar is getting them off dead center and is going to get them to start moving, there is something else we can do. We can change the law. We can stop the importation by changing this from being a species that is allowed to be imported into one that is injurious. That change of definition in the law would stop the importation of these snakes into this country and would stop the exporting of these snakes from one State across State lines to another.

The State of Florida has a registration fee. They now require the implantation of a chip so that if the snake gets loose, we will have a chance of chasing it down. Nevertheless, when we have 150,000 to 180,000 of these snakes in the Everglades National Park alone, we can see that the ecological balance of Mother Nature is definitely being upset. We must change it. We must do it quickly.

Therefore, in front of the Boxer committee will be the legislation I have offered with a number of other Senators, trying to put a halt to the things that led to this tragedy of this little girl being strangled to death by a Burmese python.

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

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

The legislative clerk proceeded to call the roll.

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

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

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

HEALTH CARE

Mr. MCCONNELL. Mr. President, over the past several weeks, Americans have heard a number of proposals for reforming health care, and they are increasingly concerned about many of the details. Americans want reform, but they want the right reform, not a reform that ends up costing them much more for worse care than they already receive. Unfortunately, the government-run plan that some are proposing would do just that.

A government-run plan would force millions of Americans to give up the care they currently have and replace it with a system in which care is denied, delayed, and rationed. Instead of increasing access and quality, it could limit access and options. It could lead us into deeper debt. And millions could well remain uninsured.

Americans are skeptical about all of this. They do not want to be forced to