that the U.S. administration, Congress and the American voters will take a closer look at history and prevent our automotive industry from following down the Dacia, Oltcit or Jaguar path.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, how much time is left?

The PRESIDING OFFICER. There is 12 minutes remaining.

SOTOMAYOR NOMINATION

Mr. SESSIONS. Madam President, I express my appreciation to the Senator from Tennessee for his insightful comments. Indeed, it is a tangled web we create when we first start to regulate. It is a tangled web, too, when we start owning automobile companies which we know nothing about. Madam President, we are looking forward to next week and working as hard as we can to ensure that we have a very fine confirmation hearing in the Judiciary Committee for the judge nominated to be a Justice of the Supreme Court by President Obama, Judge Sotomayor. I will share a few thoughts about that and some matters that I think are important for my colleagues to think about as they study this issue and work to do the right thing about it.

The President's nominee is, of course, his nominee, and it is our responsibility—and the only opportunity the American people have to know anything about this process is the hearing in which the nominee has to answer questions and respond. Senators will make comments and ask questions.

When we elevate one of our citizens to a Federal judgeship, we give them an awesome responsibility, and particularly so when elevated to the Supreme Court. They are the final word on our Constitution, how the Constitution and our laws are to be interpreted. Some judges, I have to say, have not been faithful in their responsibilities. They have allowed personal views and values to impact them, in my view. We ask them as judges to take on a different role than they have in private practice. We ask them to shed their personal beliefs, their personal bias and, yes, their personal experiences. We ask them to take an oath to impartial justice.

Our wonderful judicial system—the greatest the world has ever seen—rests upon this first principle. It is an adversarial system that is designed to produce, through cross-examination and other rules and procedures, truth—objective truth. The American legal system is founded on a belief in objective truth and its ascertainability. This is a key to justice.

But in this postmodern world, our law schools and some intellectuals tend to be of a view that words don't really have meaning; words are just matters some politically powerful group got passed one day, and they don't have concrete meanings and you don't have to try to ascertain what they meant. And, indeed, a good theory of law is to allow the judge to update it, change it, or adopt how they would like it to be.

I suggest this is not a healthy trend in America. It impacts this Nation across the board in so many ways. But I think it is particularly pernicious, when it comes to the law, if that kind of relativistic mentality takes over.

This notion of blind justice, objectivity, and impartiality has been in our legal system from the beginning, and it should not be eroded. Every judge takes this oath. I think it sums up so well the ideals of the fabulous system we have. A judge takes this oath:

> I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution and laws of the United States, so help me God.

Well, I guess the Court hasn't gotten around to striking their oath yet—at least that part that says ''so help me God.'' Those phrases have certainly been attacked around the country by Federal judges, in many instances. This oath—I have to say this—stands in contrast to the President's standard for judicial nominees.

I am concerned, based on her speeches and statements, that it may also be the judicial philosophy of Judge Sotomayor.

In 2005, then-Senator Obama explained that 5 percent of cases, he believes, are determined by ''one's deepest values and core concerns . . . and the depth and breadth of one's empathy.'' He means a judge's personal core concerns, values, and empathy.

Well, according to the President, in 5 percent of the cases where issues are close, that is acceptable. I think we must draw from his statement that it is acceptable for judges to not set aside their personal beliefs, not discard personal bias, not dispense with their personal experiences as they make rulings, as they decide cases, which is what judges do.

According to the President, in 5 percent of cases, Lady Justice should remove her blindfold, take a look at the litigants, and then reach out and place her thumb on the scales of justice on one side or the other. I think this is a dangerous departure from the most fundamental pillar of our judicial system—judicial impartiality. That is why judges are given lifetime appointments. They are supposed to be unbiased and impartial.

Whatever this new empathy standard is, it is not law. It is more akin to politics than law. Whenever a judge puts his or her thumb on the scale of justice in favor of one party or another, the judge necessarily disfavors the other party. For every litigant who benefits from this so-called empathy, there will be another litigant who loses not because of the law or the facts, but because the judge did not empathize or identify with them.

What is empathy? Is this your personal feeling that you had a tough childhood or some prejudice that you have—you are a Protestant or a Catholic or your ethnicity or your race or some bias you brought with you to life and to the court? Is that what empathy is? Well, it has no objective meaning, and that is why it is not a legal standard. The oath of ''impartiality'' to ''equal justice to the rich and the poor alike'' is violated when such things infect the decisionmaking process.

With this as his stated standard, the President nominated Judge Sonia Sotomayor for the Supreme Court of the United States. Thus far our review of her record suggests that she may well embrace the President's notion of empathy, and I will share a few thoughts on that.

On a number of occasions over the years, Judge Sotomayor delivered a speech entitled ''Women in the Judiciary.'' In it she emphasizes that she accepts the proposition that a judge's personal experiences affect judicial outcomes:

> In short, I accept the proposition that a difference will be made by the presence of women on the bench and that my experiences will affect the facts that I choose to see as a judge.

In fact, in one speech, she rejected another woman judge's view that a woman and a man should reach the same decision in a case. She explicitly rejected that concept. She reaffirms:

> I simply do not know exactly what that difference will be in my judging, but I accept there will be some [differences] based on my gender and the experiences it has imposed on me.

I think this would tend to be a rejection of even the aspiration, the ideal, of impartiality that is fundamental to our legal system and our freedoms.

In a later speech, Judge Sotomayor takes a giant step, expressing a desire to draw upon her experiences in her judging. She states:

> Personal experiences affect the facts judges choose to see. My hope is that I will take the good from my experiences and extrapolate them further into areas with which I am unfamiliar. I simply do not know exactly what that difference will be in my judging. But I accept that there will be some based on my gender and my Latina heritage.

Well, are the days now gone when judges should see their taking office as a commitment to set aside their personal experiences, biases, and views when they put on the robe? Gone are the days when judges even aspire to be impartial.

In that same speech, which has been given a number of times, Judge Sotomayor goes a step further, saying:

> I willingly accept that we who judge must not deny the differences resulting from experience and heritage, but attempt continuously to judge when those opinions, sympathies and prejudices are appropriate.

She says a judge should attempt continuously to judge when those opinions, sympathies, and prejudices are appropriate. That means that a judge's prejudices are appropriate to use in the decisionmaking process.

I find this to be an extraordinary judicial philosophy. Some might say you

are making too much of it, that empathy sounds fine to me; I don't have any problem with that. Empathy is great, perhaps, if you are the beneficiary of it. The judge is empathetic with you, your side of the argument, but it is not good if you are on the wrong side of the argument, if you don't catch a judge's fancy or fail to appeal to a shared personal experience.

This approach to judging, as expressed in her speeches and writings, appears to have played an important part in the New Haven firefighters' case Senator MCCONNELL mentioned earlier. These are the 17 firefighters who followed all the rules, studied for the test. It was publicly set out how the promotions would take place in that department. A number of people passed, but a number of people did not, and there were a number of minorities who did not pass. They wanted to change the test after it had been carried out, to change the rules of the game after it had been carried out because they did not like the results. This is a results-oriented question.

Bowing to political pressure, the city government looked only at the test results and the statistical data and changed the rules of the game. They threw out the test. This was challenged by the persons who passed. The district judge then agreed with the city in a 48-or-so-page opinion. It was appealed to Judge Sotomayor's court. In one paragraph only, she agreed with that decision, even though it raised fundamental, important constitutional questions, important questions.

She concluded that the complaining firefighters were not even entitled to a trial, that the pretrial motions were sufficient to deny them the remedy they sought and to affirm the city's opinion in one paragraph.

The U.S. Supreme Court disagreed. They wrote almost 100 pages in their opinion, and all nine Justices voted to reverse the opinion. It was not 5 to 4. Five of the Justices, the majority, ruled that based on the facts in evidence that had been presented prior to trial, the firefighters were entitled to total victory and be able to win their lawsuit. This is a pretty significant reversal, I have to say.

The question is: Did she allow her prior experiences and beliefs to impact her decision in that case? I point out that she was an active member of the Puerto Rican Legal Defense Fund, where she spent a number of years working on cases such as this and filing litigation and challenging promotion policies in cities around the country, which is a legitimate thing for a group to do. But they did take a very aggressive standard criticizing tests and the standardized process of testing.

Of course, her stated philosophy is that a judge should use life experiences in reaching decisions. We do know she believes a judge is empowered to utilize his or her personal ''opinions, sympathies, and prejudices'' in deciding cases. We do know her particular life experiences with the Legal Defense Fund were contrary to the claims brought by the New Haven firefighters. We know she was a leader and board member and chair of that organization's litigation committee. According to the New York Times, she ''met frequently with the legal staff of the organization to review the status of cases.'' According to the New York Times, ''she was involved and was an ardent supporter of their various legal efforts.'' She oversaw, as a board member and litigation chair, several cases involving the New York City Department of Sanitation, which challenged a promotion policy because Hispanics comprised 5.2 percent of the test takers but only 3.8 percent had passed the test. They declared that was an unfair result and challenged the test. Another involved the New York City Police Department on behalf of the Hispanic Police Society. Another one involved police officers in a discrimination case challenging the New York Police Department's lieutenants exam, claiming that exam was biased.

Under her leadership, the Puerto Rican Legal Defense Fund, before she became a judge, involved itself in a series of cases designed to attack promotion exams because the group concluded that after the fact, after the test, not enough minorities were being promoted. It sounds a lot like this firefighters case we talked a good bit about so far.

We are left to wonder what role did the judge's personal experiences play when she heard the case. Did her personal views, as she has stated, ''affect the facts she chose to see?''

The PRESIDING OFFICER. The Republican time has expired.

Mr. SESSIONS. Madam President, I ask unanimous consent for 1 additional minute.

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

Mr. SESSIONS. Madam President, those are important questions, and we will ask about them and give her full and ample opportunity to respond. I did wish to raise these issues.

The firefighters were denied promotion, and under her stated philosophy, her prior background, they are left to wonder: Was perhaps the reason they lost in her court because she brought her background and her prejudices to bear on the case and did not give them a fair chance? Very few cases are taken by the Supreme Court, but the Supreme Court did take this one, to the benefit of the firefighters, and reversed this decision. All nine Justices concluded the decision was improperly done and should be reversed, and five of them rendered a verdict in favor of the firefighters on the record as existed then.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

ORDER OF PROCEDURE

Mr. DURBIN. Madam President, it is my understanding the Senator from North Carolina is going to make a unanimous consent request; is that correct?

Mr. BURR. Madam President, the Senator is correct. I believe the Senator from Nebraska, as well. I ask unanimous consent to be recognized after the Senator from Nebraska, it is my understanding, for up to 10 minutes as in morning business.

Mr. DURBIN. The time suggested for the Senator from Nebraska is how much?

Mr. JOHANNS. Madam President, I anticipate 10 minutes, and I ask unanimous consent to speak for 10 minutes.

Mr. DURBIN. My only hesitation is the fact that we are having a Senator sworn in at 12:15 p.m., and there is going to be a speech given before that by his colleague. We also wanted to have opening statements on the bill. If I may ask the Senators—I will not object—but if I may ask them to be closer to the 5-minute mark, I think we can achieve all that in a timely fashion. I ask unanimous consent that the Senator from Nebraska be recognized for 5 minutes——

Mr. JOHANNS. Five minutes.

Mr. DURBIN. In morning business and that the Senator from North Carolina be given up to 10 minutes. I know he said he would not use up to 10 minutes, and we will be protected with whatever time is used by these two Republican Senators being allocated to the Democratic side for morning business, which we will not likely use. I make that unanimous consent request.

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

The Senator from Nebraska.

HEALTH CARE

Mr. JOHANNS. Madam President, I spent several days during the recess hosting a series of discussions on health care. I met with doctors and hospitals, underwriters, small business owners, and uninsured Nebraskans. Many of them feel as if they are one illness away from a crisis. The economic slowdown has only heightened this fear as they worry that they may lose their job and the health insurance their family depends upon to stay healthy.

Their concerns are real, and Congress should act carefully to address them. We need to create a health care system that protects patient rights, let's them see their doctor, and is affordable.

But I am concerned about the discussion that is occurring today. The American people deserve true solutions and should not be led down a path that is fraught with shadowy numbers and unfulfilled promises. Specifically, I have reservations about a government-run public plan. Some have attempted to sugar-coat this new bureaucracy as simply an option. However, the more you learn about it, the more you realize there is nothing optional about it.