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Senate

The Senate met at 9:31 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Most merciful and gracious God, who has led this Nation through turbulent times in the past, keep us this day confident in the movements of Your loving providence. Ignite in our hearts the hope that out of the world's challenges and tragedies, Your spirit can guide us to a desired destination.

Today, give our lawmakers a clear sense of duty and honor in every decision. May they live and work not alone or by their own efforts but in Your strength and by Your wisdom. May Your justice, purity, and peace guide them to develop plans and make policies that will enable Your will to be done on Earth as it is done in Heaven.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 9, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, following leader remarks, there will be a period for morning business for 95 minutes. Senator DURBIN will control the first 5 minutes, the Republicans will control the next 60 minutes, and the majority will control the next 30 minutes. Following morning business, the Senate will resume consideration of H.R. 2892, the Homeland Security Appropriations bill. There will then be 10 minutes for debate prior to a vote in relation to a Kyl amendment, No. 1432. Additional rollcall votes are expected to occur throughout the day as we work toward completion of the appropriations bill.

I filed cloture last night on the substitute amendment and the underlying bill. As a result, germane first-degree amendments must be filed by 1 p.m. today.

There is a strong possibility—and I hope, on my behalf—that cloture will not be necessary and we will be able to complete action on the bill today. If we are unable to finish that bill, we will have cloture tomorrow morning, maybe into the weekend.

I acknowledge the cooperation and support of the Republicans in allowing us to move to the Defense bill, a very important bill. We are doing our best to accomplish what we set out to do

this week and not have to be in this weekend. That would be better for everyone. We all have a lot of things to do. This weekend, if we have to be here, will be a series of cloture votes and we hope that is unnecessary.

RECOGNITION OF THE MINORITY LEADER

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

SOTOMAYOR NOMINATION

Mr. McCONNELL. Madam President, over the past several weeks, my colleagues and I have raised a number of serious questions about the judicial record and public statements of Judge Sonia Sotomayor in connection with her nomination and upcoming confirmation hearings to the U.S. Supreme Court. These questions are driven by a growing sense, based strictly on the record, that Judge Sotomayor has allowed her personal and political views to cloud her judgment in the courtroom, leading her to favor some groups over others.

All of us are impressed by Judge Sotomayor's remarkable life story. It reaffirms not only to Americans but to people around the world that ours is a country in which one's willingness to dream and to work hard remain the only requirements for success.

And yet it is precisely this truth about America that makes it so important that our judges apply the law the same way to one individual or group as to every other.

This is why we have raised the questions we have. And this is why we will continue to raise them as the confirmation hearings for Judge Sotomayor proceed. This morning I would like to discuss an area of Judge Sotomayor's record that hasn't been touched upon yet, and that is her record on the fundamental right of free speech.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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This right to free speech was considered so important by our Founders that they included it as the first amendment in the Bill of Rights, along with the freedom of the press and religion, and the right to assemble and petition the government. It is one of the bedrocks of our government and our culture. And it is one of the primary defenses the Founders established against the perennial threat of government intrusion.

So it is essential that we know what someone who has been nominated for a life-tenure on the Nation's highest court thinks about this issue. And when it comes to Judge Sotomayor, her record raises serious questions about her views on free speech.

Let's start with a law review article that Judge Sotomayor co-wrote in 1996 on one particular kind of speech, political speech. In the article, Judge Sotomayor makes a number of startling assertions which offer us a glimpse of her thoughts on the issue.

First, and perhaps most concerning, she equates campaign contributions to bribery, going so far as to assume that a "quid pro quo" relationship is at play every time anyone makes a contribution to a political campaign. She goes on to say that:

We would never condone private gifts to judges about to decide a case implicating the gift-givers' interests. Yet our system of election financing permits extensive private, including corporate, financing of candidates' campaigns, raising again and again the question of what the difference is between contributions and bribes and how legislators or other officials can operate objectively on behalf of the electorate.

In the same law review article, Judge Sotomayor calls into question the integrity of every elected official, Democrat and Republican alike, based solely on the fact that they collect contributions to run their political campaigns. She writes:

Can elected officials say with credibility that they are carrying out the mandate of a "democratic" society, representing only the general public good, when private money plays such a large role in their campaigns?

In my view, the suggestion that such contributions are tantamount to bribery should offend anyone who has ever contributed to a political campaign—including the millions of Americans who donated money in small and large amounts to the Presidential campaign of the man who nominated Judge Sotomayor to the Supreme Court.

Judge Sotomayor's views on free speech would be important in any case. They are particularly important at the moment, however, since several related cases are now working their way through the judicial system—cases that could ultimately end up in front of the Supreme Court. One particularly important case on the issue, *Citizens United v. FEC*, will be reargued before the Supreme Court at the end of September.

Coincidentally, the most recent Supreme Court decision on the topic actually passed through the court on which

Judge Sotomayor currently sits, presenting us with yet another avenue for evaluating her approach to questions of free speech—with one important difference: in the Law Review article I have already discussed, we got Judge Sotomayor's opinion about campaign contributions. In the court case in question, *Randall v. Sorrell*, we get a glimpse of her actual application of the law.

Here is the background on the case. In 1997, the State of Vermont enacted a law which brought about stringent restrictions on the amount of money candidates could raise and spend. The law also limited party expenditures. Viewing these limits as violating their first amendment rights, a group of candidates, voters, and political action committees brought suit. The district court agreed with the plaintiffs in the case on two of the three points, finding only the contribution limits constitutional.

The case was then appealed to the Second Circuit, where a three-judge panel reversed the lower court and reinstated all limits in direct contradiction of nearly 20 years of precedents dating all the way back to the case of *Buckley v. Valeo*. It was in *Buckley* that the Supreme Court held that Congress overstepped its bounds in trying to restrict the amount of money that could be spent—so-called expenditure limits—but upheld the amount that could be raised—so-called contribution limits.

At that point, the petitioners in the Vermont case sought a rehearing by the entire Second Circuit, arguing that the blatant disregard of a precedent as well-settled as *Buckley* was grounds for review. Oddly enough, the judges on the Second Circuit, including Judge Sotomayor, took a pass. They decided to let the Supreme Court clean up the confusion created when the three-judge panel decided to ignore *Buckley*.

Traditionally, errors like these are precisely the reason that motions for a rehearing of an entire circuit are designed. In fact, according to the Federal Rules of Appellate Procedure, a review by the full court, what is commonly referred to as an en banc rehearing, is specifically called for in cases where "the proceeding involves a question of exceptional importance." And what could be more important for a lower court judge than following Supreme Court precedent and protecting and preserving the first amendment? But the Second Circuit declined.

In the end, the Supreme Court corrected the errors of the Second Circuit in a 6-3 opinion drafted by none other than Justice Breyer. Here is what Breyer wrote:

We hold that both sets of limitations [on contributions and expenditures] are inconsistent with the First Amendment. Well-established precedent—and here Justice Breyer was citing *Buckley*—makes clear that the expenditure limits violate the First Amendment.

One of the principal requirements for a nominee to the courts is a respect for

the rule of law. In this instance, according to Justice Breyer, that respect for the law was sorely lacking.

More than two centuries ago, the States ratified the first amendment to the U.S. Constitution to protect the right of every American from that moment and for all time to express themselves freely. "Congress shall make no law," it said, "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."

You could say, as I have said many times, that with the first amendment, our forefathers adopted the ultimate campaign finance regulation. And yet this issue continues to come before the courts, and will continue to come up before the courts. It is an issue of fundamental importance, touching on one of our most basic rights. And based on the writings and decisions of Judge Sotomayor, I have strong reservations about whether this nominee will choose to follow the first amendment or attempt to steer the Court to a result grounded in the kind of personal ideology that she so clearly and troublingly expressed in the law review article I have described.

It is not just this issue about which those concerns arise. Over the past several weeks, we have heard about a number of instances in which Judge Sotomayor's personal views seem to call into question her evenhanded application of the law.

Just last week, the Supreme Court reversed her decision to throw out a discrimination suit filed by a group of mostly White firefighters who had clearly earned a promotion. Notably, this was the ninth time out of ten that the high court has rejected her handling of a case.

We have heard her call into question, repeatedly over the years, whether judges could even be impartial in most cases. And she has even said that her experience "will affect the facts that [she] chooses to see as a judge".

Americans have a right to expect that judges will apply the law evenhandedly—that everyone in this country will get a fair shake, whether they are in small claims court or the Supreme Court, and whether the matter at hand is the right to be treated equally or the right to speak freely. Americans have a right to expect that the men and women who sit on our courts will respect the rule of law above their own personal or political views—and nowhere more so than on the Nation's highest court.

COMMENDING NORM COLEMAN

Mr. McCONNELL. Madam President, it was a politician from Kentucky who introduced the expression "self-made man" into the lexicon. But even Henry Clay didn't follow as unlikely a path as Norm Coleman did to the U.S. Senate.