

Judge Sonia Sotomayor is an American of tremendous qualifications. Both her academic record and her career experience are second to none. She graduated *summa cum laude* from Princeton University and went on to do as well at Yale, where she was a member of the *Law Review*. She has served as a prosecuting attorney, a lawyer in private practice; she was on the trial bench and an appellate judge. After she is confirmed, she will be the only Justice in the current Supreme Court with experience as a trial judge—experience that I believe will be valuable to her colleagues.

One of the objections people have had about the makeup of the Court is that people come with basically no experience in the courtroom other than the appellate judges who sit in back rooms and listen to arguments once in a while and not in a courtroom listening to cases being presented, sustaining and overruling objections, and listening to arguments to the jury. They simply have not had that experience. She has. She has developed a 17-year record as a moderate, mainstream judge.

When the judge testified before the Senate Judiciary Committee for 4 grueling days, she respectfully and thoroughly answered questions from both sides of the aisle—Democrats and Republicans. This week, the Senate will debate her nomination. It will be a fair debate. It will be a full debate.

I appreciate the statements from my colleagues on the other side of the aisle who have said they will vote to confirm her to the Supreme Court.

Many Senators have very thoughtfully said they regret how politicized the process of confirming judges has become in recent years. An unsung hero in the battle for the judiciary is LAMAR ALEXANDER, the Senator from Tennessee. Senator ALEXANDER has been Governor of the State of Tennessee. He was in the Cabinet as Secretary of Education. During the very difficult nuclear option, when there was a knockdown, drag-out fight that I felt would have ruined the basic makeup of the Senate and what the Senate stood for, it was he who quietly and in the background came up with the idea of the Gang of 14. Basically, he said to me and to others: Why don't we have an equal number of Democrats and Republicans sit down and try to work this out. He took none of the limelight. He stepped back, and the process he suggested went forward.

He has decided to vote for Sonia Sotomayor. Most of his colleagues are not going to do that. I am sure if you ask LAMAR ALEXANDER why he decided to do that, of course, the qualifications are fine, but I think one reason he wants to do it is he believes in having temperate suggestions on both sides of the aisle to make a better Senate.

So I am very fond of LAMAR ALEXANDER. I appreciate his ability to bring sides together, and I appreciate his standing up in this instance for this judge, because the process of con-

firmed judges has become in recent years very politicized. Whose fault is it? It is probably the fault of both sides. It is something that just got out of hand. Hopefully, we can bring it back to where it has been in the past.

I have tried during the time I have been the majority leader to allow full and firm debate. There have been limited instances out of necessity where we haven't had full opportunities to amend pieces of legislation. That is the way it used to be when I came here, and that is the way I hope it is going to be in the future.

In light of the battle we have had in the past over the so-called nuclear option, I appreciate the sentiments of a number of Senators. LINDSEY GRAHAM is an example. LINDSEY GRAHAM has had editorials all over the country written on his behalf. Columns have been written in major newspapers in Nevada complimenting the Senator from South Carolina for the statements he made regarding this judicial problem we have now.

I am disappointed that not more of my colleagues on the other side of the aisle are likely to vote for this outstanding nominee, particularly in light of her record and qualifications, but maybe in the future things will get better. I am, however, grateful for the respect my colleagues have shown her throughout this process, even those who have said they are not going to vote for her.

I look forward to voting to confirm Judge Sotomayor as soon as we can so that she can continue her commendable service to our country.

RECOGNITION OF THE MINORITY LEADER

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

SOTOMAYOR NOMINATION

Mr. McCONNELL. Mr. President, the Senate will soon begin debate on the nomination of Judge Sonia Sotomayor to be an Associate Justice of the Supreme Court. Before that debate begins, I wish to make a few observations.

First, I thank the chairman and the ranking member of the Judiciary Committee, along with their respective staffs, for conducting what can only be described as a dignified and respectful hearing. I know it was gratifying to them, as it was to me, to hear Judge Sotomayor say that every single Senator who had promised to give her the opportunity to explain her views had kept that promise. It was equally gratifying to hear Senators DURBIN and SCHUMER describe the hearings as respectful and fair.

As I have often said, our goal in the Senate should be to disagree without being disagreeable. I think we hit the mark during the hearings on Judge Sotomayor, and the Judiciary Com-

mittee should be commended for it. As we begin final consideration, our goal should be the same: Those who support the nomination will make their case, those who oppose it will make theirs, and then we will vote, fulfilling our constitutional responsibility with the seriousness and the deliberation the American people expect.

Over several weeks, I have outlined my concerns about the nominee in some detail. Once the hearing was over, I said that those concerns had only multiplied. But the primary reason I will not support this nomination, as I have already said, is because I cannot support the so-called empathy standard upon which Judge Sotomayor was selected and to which she, herself, has subscribed in her writings and rulings.

As I have said, the empathy standard is a very fine quality. And I have no doubt that Senator Obama, now President Obama, had very good intentions when he made the case for a so-called empathy standard as a Senator, a candidate, and now as President. But when it comes to judging—when it comes to judging—empathy is only good if you are lucky enough to be the person or group for whom the judge in question has empathy. In those cases, it is the judge, not the law, which determines the outcome. That is a dangerous road to go down if you believe, as I do, in a nation not of men but of laws.

Judge Sotomayor has impressed all of us with her life story, but if empathy is the new standard, then the burden is on nominees such as she who are chosen on that basis to demonstrate a firm commitment to equal justice under the law. On the contrary, Judge Sotomayor has openly doubted the ability of judges to adhere to this core principle, and she has even doubted the wisdom of them doing so.

In her writings and in her speeches, Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. Let me say that again. Judge Sotomayor has repeatedly stated that there is no objectivity or neutrality in judging. She has said her experiences will affect the facts she chooses to see as a judge. Her experiences will affect the facts she chooses to see as a judge. She has argued that in deciding cases judges should bring their sympathies and prejudices to bear. She has dismissed judicial impartiality as an "aspiration" that cannot be met even in most cases. She has even questioned whether a judge trying to be as fair as possible in applying the law does a disservice both to the law and to society. These statements suggest not just a sense that impartiality is not possible but that it is not even worth the effort.

Nothing could be more important in evaluating a judicial nominee than where they stand on the question of equal justice. As I have said, Americans expect one thing when they walk into a courtroom—whether it is traffic court or the Supreme Court—and that is equal treatment under the law.

Americans have accepted serious ideological differences in Supreme Court nominees over the years. But one thing they will never, ever tolerate is a belief that some groups are more deserving of a fair shake than others. Nothing could be more offensive to the American sensibility than that.

Judge Sotomayor is certainly a fine person with an impressive story and a distinguished background. But a judge must be able to check his or her personal or political agenda at the courtroom door and do justice evenhandedly, as the judicial oath requires. This is the most fundamental test. It is a test that Judge Sotomayor does not pass.

I yield the floor.

RESERVATION OF LEADER TIME

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2997, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2997) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Kohl/Brownback amendment No. 1908, in the nature of a substitute.

Kohl (for Murray/Baucus) amendment No. 2225 (to amendment No. 1908), to allow State and local governments to participate in the conservation reserve program.

Kohl (for Nelson (FL) amendment No. 2226 (to amendment No. 1908), to prohibit funds made available under this act from being used to enforce a travel or conference policy that prohibits an event from being held in a location based on a perception that the location is a resort or vacation destination.

McCain amendment No. 1912 (to amendment No. 1908), to strike a provision relating to certain watershed and flood prevention operations.

McCain amendment No. 2030 (to amendment No. 1908), to prohibit funding for an earmark.

Johanns/Nelson (NE) amendment No. 2241 (to amendment No. 1908), to provide funding for the tuberculosis program of the Animal and Plant Health Inspection Service.

Brownback (for Barrasso) amendment No. 2240 (to amendment 1908), to require the Secretary of Agriculture to conduct a State-by-State analysis of the impacts on agricultural producers of the American Clean Energy and Security Act of 2009 (H.R. 2452, as passed by the House of Representatives on June 26, 2009).

Coburn amendment No. 2243 (to amendment No. 1908), to eliminate double-dipped stimulus funds for the Rural Business-Cooperative Service account.

Coburn amendment No. 2244 (to amendment No. 1908), to support the proposal of the President to eliminate funding in the bill for digital conversion efforts of the Department

of Agriculture that are duplicative of existing Federal efforts.

Coburn amendment No. 2245 (to amendment No. 1908), to strike a provision providing \$3,000,000 for specialty cheeses in Vermont and Wisconsin.

Coburn amendment No. 2248 (to amendment No. 1908), to prohibit no-bid contracts and grants.

Coburn amendment No. 2246 (to amendment No. 2226), to provide additional transparency and accountability for spending on conferences and meetings of the Department of Agriculture.

Kohl amendment No. 2288 (to amendment No. 2248), to provide requirements regarding the authority of the Secretary of Agriculture and the Commissioner of Food and Drugs to enter into certain contracts.

Sanders amendment No. 2276 (to amendment No. 1908), to modify the amount made available for the Farm Service Agency.

Sanders amendment No. 2271 (to amendment No. 1908), to provide funds for the school community garden pilot program, with an offset.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided and controlled between the managers and the Senator from Arizona, Mr. MCCAIN, or their designees.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum and ask that the time be divided equally on both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. 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.

Mr. MCCAIN. Mr. President, what are the proceedings under the unanimous consent agreement?

The ACTING PRESIDENT pro tempore. The time until 10:30 is equally divided.

Mr. MCCAIN. Following that, there would be a vote on two amendments; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the second rollcall vote be vitiated and replaced by a voice vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1912

Mr. MCCAIN. Mr. President, this vote will be on amendment No. 1912. The amendment eliminates, as recommended by the President of the United States, the USDA Watershed and Flood Prevention Operations Program, also known as the Small Watershed Program.

This program is the perfect example of how reckless earmarking can devastate a well-intentioned government program. Like the previous four Presidents' budgets, this administration has

proposed to terminate this account—four previous Presidents—because “Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.”

According to the Congressional Research Service, the Small Watershed Program was 97 percent earmarked in fiscal year 2009, which severely marginalized the ability of the U.S. Department of Agriculture to evaluate and prioritize projects.

A 2003 Office of Management and Budget study showed this program has a lower economic return than any other Federal flood prevention program, including those in the Army Corps of Engineers and the Federal Emergency Management Agency.

The onslaught of earmarks over the years has most certainly contributed to the current backlog of about 300 unfunded authorized small watershed projects, totaling \$1.2 billion.

As was originally intended, the Small Watershed Program may be a worthwhile program, but by inundating it with so-called “congressionally designated projects,” the program is challenged to function properly to the point where four previous Presidents have recommended its termination. Nevertheless, the Appropriations Committee hasn't given up on plundering it just yet. The bill provides \$24.3 million for this program, including \$16.5 million in earmarks for various unauthorized projects.

I urge my colleagues to support the President's recommendation. Again, I will quote from the President's recommendation—the President of the United States:

The administration proposes to terminate the Watershed and Flood Prevention Operations Program. The Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.

So it goes on and on. Every analysis is that it has a lower economic return than any other program. Four Presidents have sought to eliminate it. We will probably lose this vote. But if there is ever a graphic example that once a program is established and once you fund it, it acquires a constituency and a powerful special interest and that funding continues on and on—we are proving, and we will continue to prove as we go through the appropriations bills, that there is no program that, once it exists, is going to be eliminated by this body, and that the appropriators continue to defy not only the President of the United States but logic and good sense as we amass deficits of monumental proportions which are mortgaging our children's and grandchildren's futures.

We cannot even stop a program the President wants terminated, that has no value, that the Office of Management and Budget and any objective observer will say deserves termination. It