

Those are the things that will make a difference. That is why I come to the floor today. I offer my second opinion about health care law, and now it is the law that I think is going to end up—and the American people understand this, and they see through it—is going to end up being bad for patients who need care, bad for payers, people paying for their health care costs, and the taxpayers of this country, as well as bad for providers, the nurses and the doctors and the hospitals who take care of those patients.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

NOMINATION OF ELENA KAGAN

Ms. KLOBUCHAR. Mr. President, I am pleased to come to the floor today with a few of my women colleagues to discuss the President's nomination of Solicitor General Elena Kagan to be an Associate Justice of the Supreme Court. I am a member of the Judiciary Committee. We are looking forward to the hearings coming up in a few weeks. We hope the country is watching because this is a very important job and Ms. Kagan is a very impressive person.

With that, I turn to the Senator from Michigan, Ms. STABENOW.

The ACTING PRESIDENT pro tempore. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I thank the Senator from Minnesota.

We are here to talk about President Obama's nomination of Elena Kagan. I will come to the floor at a later point to respond to my friend from Wyoming with a different view about health care reform. We have a vote in just a few moments, a very important vote as to whether to support the ability of States, in these difficult times, to be able to continue health care for people who are out of work and for seniors who are in nursing homes, low-income seniors who find themselves caught in the economic crunch. In Michigan, there are 6 individuals out of every 100 who are on Medicaid now or who need to be on Medicaid. The upcoming vote will determine whether we place a value on health care, place a value on seniors in nursing homes and people who, because they have lost a job or because of some other situation in this economy, find themselves without health care. I hope colleagues who express concern about people having access to health care will join us in voting yes.

I thank the Senator from Minnesota for organizing and bringing us to the floor. I join her in speaking in favor of the President's nomination of Elena Kagan to be the next Justice of the U.S. Supreme Court.

She grew up in a family like so many in Michigan, with parents who worked hard for a living so they could provide for their children. Her mom was a teacher. Her dad was a tenants lawyer in New York City. She saw firsthand

the effects of laws and court decisions on the everyday lives of Americans. Throughout her distinguished career, she has brought the lessons she learned from her parents—in her words, “service, character and integrity”—to every role she has had.

She took those lessons with her to the White House, where she worked with Democrats and Republicans to forge commonsense solutions to issues such as restricting tobacco companies from targeting ads to children.

She took those lessons with her to Harvard, where she became a successful and beloved professor. As dean, she worked to engage her students in service and to honor those who have served. Every year, she invited all of the military veterans on campus to her home for a Veterans Day dinner. She reached out to students from all across the political spectrum and proved to them one-on-one that she was a smart and pragmatic leader. Very conservative law students at Harvard tend to join the Federalist Society, while progressive law students are more likely to join the American Constitution Society. The two groups disagree on almost everything. Yet both groups sent letters to the Judiciary Committee supporting Elena Kagan's nomination as Solicitor General. That is rare in politics and is proof that Elena Kagan is respected for her fairness and impartiality.

Besides her parents, perhaps the biggest influence in her life was her one-time boss and mentor Justice Thurgood Marshall, who was also the Solicitor General before becoming a Supreme Court Justice. She admired his ability, in her words, to understand the way law works “in practice, as well as in the books—of the way in which law acted on people's lives.”

In private practice, Elena Kagan represented clients in litigation. Today, she represents all of us as the people's lawyer, the Solicitor General of the United States. Her job every day is to represent her clients, the people of our great country, before the U.S. Supreme Court. As a Justice, she will continue to represent the people. That is why I urge my colleagues today to join with us in confirming her nomination without delay.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I am pleased to join my colleagues, Senators STABENOW and KLOBUCHAR, in supporting the nomination of Elena Kagan to be an Associate Justice of the Supreme Court. However, before addressing the nomination of Elena Kagan, I wish to echo the remarks of Senator STABENOW about the need to look at the legislation that is going to come before us in a few minutes.

My colleague, Senator BARRASSO, talked about wanting to help those people who are most in need of health care. One of the best ways we can do

that is to pass the legislation pending before this body which includes an extension of Medicaid benefits, which is so important to States and to the people who are most in need, who have the least ability to get health care. I hope that as our colleagues are thinking about how they can support health care for Americans, they will support this legislation and make sure we extend Medicaid benefits for people throughout the States.

Turning to the Elena Kagan nomination, I am extremely pleased that President Obama has selected a woman with such impressive and unique credentials to serve on the Nation's highest Court. I had the good fortune to meet Solicitor General Kagan a number of years ago when both of us were at Harvard. I was at the Kennedy School as the director of its Institute of Politics, and she had just become dean of the Harvard Law School. It didn't take her very long to get a reputation there as someone who was loved by the students and the faculty, who was able to get everyone to work together. It comes as no surprise to me that she has continued her impressive accomplishments.

My favorable impression of Elena Kagan was confirmed after a recent meeting with her in my Senate office, spending more time really looking at what her record has been with the law. I wish to focus my remarks this morning on Elena Kagan's record that has prepared her to be a Justice.

A number of my colleagues from across the aisle have implied or stated directly that the Solicitor General lacks sufficient range of professional experience. A number of Senators are concerned that Elena Kagan does not have judicial experience. To address this point, it is worth noting that 41 of the Court's 111 Justices have joined the Court without any previous experience as a judge. Among these 41 are some of the most notable jurists of the last century: Justices Louis Brandeis, Felix Frankfurter, William Douglas, Byron White, and Lewis Powell. Chief Justices Harlan Stone, Earl Warren, and William Rehnquist were also chosen for the Court without prior judicial experience. The Presidents who nominated these Justices and the Senators who confirmed them were right to recognize that experiences other than being a judge can prepare one to serve on the Supreme Court with distinction. Elena Kagan certainly has had that experience. She has traveled a path of extraordinary accomplishment. I am confident she will continue that trend once she is elevated to the bench.

With more than 24 years of legal experience in a range of settings, she will bring a distinct perspective to judging that will serve both the Court and Americans well. Without a doubt, Ms. Kagan has been a lifelong student of the Supreme Court. As we heard from Senator STABENOW, she began her career as a clerk in the chambers of two highly regarded jurists, including the

legendary Thurgood Marshall. These formative years early in Ms. Kagan's career instilled in her an appreciation of the impact of judicial decisions on people and gave her an ability to zero in on critical facts and issues in cases.

After 3 years in private practice in Washington, Ms. Kagan became a professor of law at the University of Chicago. She focused there on scholarship and constitutional law, particularly the first amendment. She quickly became known as a powerful advocate for individual constitutional rights.

She served as an Associate White House Counsel and later Deputy Director of the Domestic Policy Council during the Clinton White House. These positions forced Elena Kagan to tackle difficult public policy matters while analyzing the limits of executive branch power.

Later, as dean of the Harvard Law School, Ms. Kagan is credited with making immense progress toward uniting a fractious faculty of very powerful opinions and intellects. She built bridges across academic and political groups.

A recent letter from the deans of law schools across the country describes Ms. Kagan as "a superb and successful dean" who "revealed a strong and consistent aptitude for forging coalitions that achieved smart and sensible solutions, often in the face of insoluble conflict."

Harvard professor Charles Fried captured the thoughts of many of Ms. Kagan's Harvard colleagues when he described her as someone who had a "masterful" ability to work well with diverse faculty.

Ms. Kagan's intellect and work ethic caught the attention of President Obama when she was tapped to serve as Solicitor General. She is the first woman to hold this position which is often referred to as the 10th Justice of the Court. During her tenure, Solicitor General Kagan has filed 66 briefs and has argued numerous times before the Court. I can't imagine better training for a position on the Court than the experience gained by a Solicitor General. Elena Kagan has publicly demonstrated her ability to critically analyze the law and advocate forcefully at the level demanded by our Nation's highest Court.

Elena Kagan has dedicated her life to legal study. She has excelled as a clerk, a teacher, administrator, counsel, and advocate. I know these experiences have given her a full understanding and appreciation of the Supreme Court's role in our democracy. Elena Kagan has built a career that shows she has the technical skills, the intellectual aptitude, and the personal judgment to be an extremely effective Justice. I look forward to the swift confirmation of a very impressive individual and urge all of my colleagues on both sides of the aisle to support her nomination.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank my two colleagues, Senators

SHAHEEN and STABENOW, for joining me in making open arguments in favor of Solicitor General Kagan to be the next Associate Justice of the Supreme Court. If Members listened to Senator SHAHEEN's discussion of the experience of Elena Kagan, something quickly emerged: she has always been on the front line and has not been afraid to get into battle. She is the one who had to go before the Supreme Court and argue the Citizens United case that basically came up with a ruling from the current Supreme Court with which I don't agree. The Supreme Court went beyond their bounds in how they interpreted election law, reversing decades of precedent. Yet it was Elena Kagan who was the one willing to stand there as Solicitor General and basically say corporations are not people; people are people.

I like the thought of someone of her experience—such an intellectual heavyweight—getting on the Court to basically match Justice Roberts.

As Senator SHAHEEN has pointed out, she has consensus-building skills in addition to that. She is someone who has been able to bring together people of diverse views. With such a divided Court, as we see right now, I think it is going to be very helpful—if she gets through our process, which I believe she will—to have her on that Court. She also is a trailblazer.

She was the first woman dean at Harvard Law School in their 186-year history. In 2009 she became the first woman to serve as Solicitor General. As has been pointed out, she has also been a law professor, a member of the White House Counsel's Office, and a domestic policy adviser to President Clinton.

When I look at her resume, I notice two things: The first is that she has practical experience thinking about the impact of laws and policies on the lives of ordinary Americans. When you are involved in considering the nitty-gritty details of policies—as has emerged, as we look at all the thousands and thousands of documents she has given to the Judiciary Committee—she is someone who has been actually involved in crafting those ideas, those policies. When you have to figure out, as she has, whether to compromise or hold firm on a piece of legislation, you have to know exactly what the consequences of your recommendations will be. You have to think about the lives that will be impacted.

The second thing I notice about her resume is that she has a track record of listening to different viewpoints and bringing people together—whether it is her legacy of helping to recruit talented academics to Harvard from across the political spectrum or working with Senators from both parties on antitobacco legislation.

It is worth noting this is a nominee who once got a standing ovation from the Federalist Society when she spoke to them—that is a conservative legal

society—during her time as a law school dean. It was not because she agreed with them on every substantive matter. In fact, she noted that at the beginning. It was because they respected her because she was willing to listen to other viewpoints and bring in other viewpoints. We need that kind of consensus builder on the Supreme Court of the United States.

Finally, we have to add to her list of achievements that she managed to calm the factionalism and frustration for which the law school faculty had previously been known. I can tell you after managing 167 lawyers it is not easy, but it is even harder to manage a number of law professors.

What you come up with, when you look at her whole career, is she has the practical experience of reaching out to and working with people who have different beliefs. I think that is exactly what we need on the Supreme Court.

Some of my colleagues, as has been pointed out, question whether she is fit to be a Supreme Court Justice because she has never before been a judge. Well, right now every single Justice on that Supreme Court has been a judge. While they may have different backgrounds, they have come up through what is called the "judicial monastery." I think the fact that the President has nominated someone who has been on the front line, deciding policies but also arguing intricate legal cases, is a good thing.

As has been pointed out by Senator SHAHEEN, I do wonder whether these same colleagues who are objecting on the judicial experience issue would have objected to putting Chief Justice Rehnquist on the Supreme Court or Justice Brandeis or Justice Frankfurter. They did not have any judicial experience either.

It is worth noting this opinion on the importance of judicial experience is not shared by at least one member of the Supreme Court who believes that may not quite be necessary. In a speech he gave at the end of May, Justice Scalia said he was "happy to see that this latest nominee is not a federal judge—and not a judge at all."

For historical context, Justice Scalia noted when he first arrived at the Supreme Court in 1986, three of his colleagues had never been a Federal judge. Chief Justice Rehnquist came to the bench from the Office of Legal Counsel. Justice Byron White was Deputy Attorney General. Justice Lewis Powell was a private lawyer in Richmond. Beyond that, her current job—Solicitor General—as Senator SHAHEEN noted, is actually referred to as "the tenth Justice" because it is such an important position. She represents the people before the Supreme Court. That is incredibly important training for an individual nominated to serve on the Supreme Court.

It is worth noting that the last Solicitor General who subsequently became a Supreme Court Justice was none other than Thurgood Marshall—Elena Kagan's mentor and former boss.

So I hope we can put to rest this idea that only judges are qualified to be Justices. That is not a standard that we have applied throughout history, and it is not one we should start applying today.

Just think—and I will end with this, Mr. President—how far we have come. When Sandra Day O'Connor graduated from law school 50 years ago, the only offer she got from a law firm was for a position as a legal secretary. Justice Ginsburg faced similar obstacles. When she entered Harvard in the 1950s, she was only one of nine women in a class of more than 500, and one professor actually asked her to justify taking a place in that class that could have gone to a man. Later, she was passed over for a prestigious clerkship despite her impressive credentials.

In the course of the more than two centuries of this great country, 111 Justices have served on the Supreme Court. Only three have been women. If confirmed, Ms. Kagan would be the fourth, and for the first time in the history of our country three women would take their places on the bench when arguments are heard in the fall.

I look forward to our Judiciary Committee hearing. I have to tell you, I hope my colleagues listen to what Elena Kagan has to say. When she came before our Judiciary Committee as a nominee for Solicitor General, she was very impressive. She got bipartisan support. I would like to see that again.

Our job is to look at the qualifications of this nominee. Our job is to decide if she is competent. As Senator GRAHAM said during the confirmation hearing for Justice Sotomayor, he may not have picked a particular nominee, he may have supported someone else for President, but in the end, our job is to look at their qualifications and whether they will serve our country well on the Supreme Court.

I believe the answer for Elena Kagan will be yes. We are all looking forward to the hearings, and I urge my colleagues to come to the hearings with an open mind.

Mr. President, I yield the floor.

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. BAUCUS. 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.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the

Senate will resume consideration of the House message to accompany H.R. 4213, which the clerk will report.

The legislative clerk read as follows:

Motion to concur in the House amendment to the Senate amendment to H.R. 4213, an act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Pending:

Baucus motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Baucus amendment No. 4301 (to the amendment of the House to the amendment of the Senate to the bill), in the nature of a substitute.

Reid amendment No. 4344 (to amendment No. 4301), to amend the Internal Revenue Code of 1986 to extend the time for closing on a principal residence eligible for the first-time homebuyer credit.

Thune/McConnell amendment No. 4333 (to amendment No. 4301), of a perfecting nature.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 5 minutes of debate equally divided between the Senator from Montana and the Senator from Iowa or their designees.

The Senator from Montana is recognized.

AMENDMENT NO. 4301

Mr. BAUCUS. Mr. President, this vote is about jobs—plainly and simply about jobs. Fifteen million Americans are out of work. Fifteen million Americans need our help.

We need to continue our efforts to get Americans back to work. Creating jobs has been a top priority. The pending substitute amendment to the American Jobs and Closing Tax Loopholes Act would help achieve that goal.

The amendment would cut taxes for American workers and families by more than \$4 billion. The amendment would cut taxes for businesses by \$18 billion to help them expand and create jobs.

The amendment would extend Small Business Administration loan programs to help restore the flow of credit. These programs will help small businesses to grow and hire new workers. This extension eliminates fees for certain SBA loans and increases government loan guarantees.

Since their creation in the Recovery Act, these provisions have supported more than \$26 billion in small business lending. They have helped to create or retain more than 650,000 jobs.

The amendment would expand community college and career training grants offered through the Trade Adjustment Assistance Program. These grants provide Americans who have lost their jobs through no fault of their own the opportunity to learn new skills to find good jobs.

The amendment would support more than 350,000 jobs for youth ages 14 to 24 by expanding successful summer jobs programs created in the Recovery Act. This age group has some of the highest unemployment levels. Fully one-quarter of those aged 16 to 19 are unemployed—one-quarter.

The amendment would extend funding for States to provide wage assist-

ance to employers who hire new workers. Wage assistance helps companies that might not otherwise be able to afford the cost of hiring new workers to create jobs.

The amendment would provide targeted, temporary pension relief to help employers who are struggling in this tough economy to continue to fund employee pensions without cutting jobs or restricting new hiring.

This amendment is about creating good jobs.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BAUCUS. Mr. President, I thank the Chair, and I urge my colleagues to support the amendment. Let's advance this effort to create jobs.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, this bill, as it comes forward, spends more money than we budgeted for and, as a result, it violates the budget. We are trying to get some fiscal discipline around here. This would be one of the places we should start.

So I raise a point of order that the pending amendment offered by the Senator from Montana would cause the aggregate level of budget authority and outlays for fiscal year 2010, as set out in the most recently agreed to concurrent resolution on the budget, S. Con. Res. 13, to be exceeded. Therefore, I raise a point of order under section 311(a)(2) of the Congressional Budget Act of 1974.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(g)(3) of the Statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of the pending amendment, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Arkansas (Mrs. LINCOLN), are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. ROBERTS).

The PRESIDING OFFICER (Mr. BURRIS). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 45, nays 52, as follows:

[Rollcall Vote No. 190 Leg.]

YEAS—45

Akaka	Brown (OH)	Casey
Baucus	Burr	Conrad
Bennet	Cantwell	Dodd
Bingaman	Cardin	Dorgan
Boxer	Carper	Durbin