

Arnold. Sure, he was a traitor, young Bill wrote, but what about his positive attributes, he suggested. Bill Stanley was suspended for 3 days from elementary school because of that essay. But that did not shake him. It is not that Bill abided treason but Benedict Arnold could not have been all that bad in Bill Stanley's mind—after all, he was from Norwich.

Later in life, he would insist that Samuel Huntington, not George Washington, should be recognized as our first President. Why? Well, among other things, Samuel Huntington was from Norwich, CT.

Each year, the Second Company Governor's Footguard of New Haven—Benedict Arnold's organization—would convene a ceremony at the cemetery where Samuel Huntington was buried. Why? Well, as the Footguard's Major Commandant said, "We did it for Bill." Because Bill Stanley is from Norwich. Well, 2 years ago, they even made Bill an honorary captain in the Footguard.

Bill fostered a lifelong crusade to create a Founding Fathers museum, designed to recognize the Presidents elected under the Articles of Confederation and the Continental Congress, to secure Norwich's rightful place. Samuel Huntington was the first President under the Articles of Confederation, so there is some legitimacy to Bill Stanley's cause, although it has never been recognized by many more than Bill Stanley and those of us who come from Norwich, CT.

When the executive editor of the Norwich Bulletin asked Bill to write a regular column about Norwich history, each one began, "Once upon a time." It became so popular that he eventually published 10 books, which earned \$1/4 million, which Bill promptly gave to charity. Because it wasn't all about glorifying Norwich's past—Bill made it his mission to build a better future as well for his neighborhood and friends and the people he cared deeply about.

In 1987, St. Jude Common, a retirement home, opened on three acres of land Bill donated to that charity. He used his political acumen to raise \$4.5 million in State funds to open the home, and another \$400,000 from the Diocese of Norwich.

A friend who served with him on the home's board of directors recalled:

Every year at Christmas, he would make sure we set up a dinner for all the residents. I would always attend to see the joy he had in bringing joy to others. He captured the Christmas spirit and was always a joy to be around.

Bill Stanley was truly a joy to be around. He was a fascinating guy, who always had an interesting story and was busy as he could be up until his last illness. He was a great friend to my family. My father loved him dearly. He was a loyal and true friend in so many wonderful ways. I am glad I never had a tough race against someone from Norwich as well.

I join his beloved wife Peg, his son Bill, Jr., whom I know so well, and his

daughters Carol and Mary in mourning Bill Stanley's passing, and I join every man, woman, and child in Norwich, CT, in giving thanks for the wonderful life of William Stanley.

With that, Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The assistant 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.

#### KAGAN NOMINATION

Mr. McCONNELL. Mr. President, last month, the President nominated his friend and member of his administration, Solicitor General Elena Kagan, to a lifetime position on the Supreme Court. Ms. Kagan has never been a judge and only practiced law for 2 years as a junior associate before her current position as Solicitor General. She has largely been an academic, administrator, and policy advocate and advisor.

So we have not had a lot of information about her background.

But recent documents from her time as a policy advocate in the Clinton administration have shed more light on her views. And, in my view, they help answer the question some have asked as to whether she would be able to transition into a very different kind of role; namely, that of an impartial jurist Americans expect to sit above the political fray.

As a judge on our highest court, Ms. Kagan would no longer be a member of President Obama's team. Rather, her job would be to apply the law evenhandedly to persons and groups with whom she might not necessarily empathize. And in that regard, it is instructive to see how she's viewed the law and applied it when it comes to persons and groups with which she may not agree.

I previously discussed Ms. Kagan's role in the Citizens United case. Here was a case in which the government said it could block a small nonprofit corporation from showing a movie that it made about then-Senator Hillary Clinton because it viewed the film as the kind of political speech that was prohibited by Federal campaign finance laws.

This was not only the first case Ms. Kagan argued as a member of the Obama administration; it appears to have been the first case she has ever argued in any court. And in it, she and her office took the position, at different points in the case, that the Federal Government had the power to ban videos, books and pamphlets if it didn't like the speech or the speaker, a shocking position for the solicitor general of a nation that has always prided itself

on a robust exchange of ideas under the first amendment.

The justices on the Supreme Court, conservative and liberal alike, also seem to have been taken aback by this position. As were legal commentators of all political stripes; but now, in looking at some of the documents from her time as a political advisor in the Clinton administration, perhaps her views before the Supreme Court in Citizens United are not that surprising after all.

As a part of President Clinton's team, Ms. Kagan co-wrote a memo in which she said it was unfortunate that the Constitution stands in the way of many government restrictions on spending on political speech. She also wrote that many of the Supreme Court's precedents that protect political speech in this area were, to quote her memo, "mistaken in many cases."

We have also learned from the documents produced by the Clinton Library last week that Ms. Kagan was a member of the campaign finance working group at the Clinton White House. These documents appear to show that in this area, at least, Ms. Kagan placed her political desires over an evenhanded reading of the law and of the rights that the Constitution protects.

What is more, these newly released documents show that Ms. Kagan went out of her way to prevent the professional lawyers at the Justice Department from officially noting their concerns that the legislation being considered in Congress could infringe on Americans' first amendment rights.

In the mid-1990s, for example, the Office of Legal Counsel was concerned with the constitutionality of campaign finance legislation making its way through Congress. As a July 17, 1996, memo by Ms. Kagan put it: The OLC believed that all of the campaign finance bills under consideration by the House at that time "present[ed] serious constitutional issues."

Now, Ms. Kagan did not say these lawyers were wrong. In fact, she noted that their concerns were to be expected in a case like this. But allowing them to express their legal analysis would have been at odds with the Clinton administration's political strategy, a strategy she helped develop.

She was determined, as one memo put it, to "try to head off DOJ . . . letters" that noted constitutional problems. So she called a political appointee at the Justice Department and told him that Clinton's Office of Management and Budget "might well disapprove" any such opinion letter from the Justice Department.

The phone call evidently worked. The documents we have now seen show that the political appointee with whom she spoke called back and told her the "OLC did not have adequate time to prepare comments on the campaign finance legislation and, given the possibility that such comments might not go through, would not attempt to do so." What a coincidence.

Whether one works in the judicial, legislative, or executive branches of government, you take an oath to support and defend the Constitution of the United States. In this case, Ms. Kagan recognized that the professional lawyers at the Justice Department had valid legal concerns that these bills might violate Americans' free speech rights. But she disregarded these valid concerns, and even helped prevent them from being aired, in order to help advance a political agenda.

Now, I understand that Ms. Kagan was part of President Clinton's team, just like she is now part of President Obama's team. Both Presidents were no doubt pleased with her political and policy advice. And we know President Obama is very pleased with the job she did in Citizens United. But if she were confirmed to the Supreme Court, she can not be on anyone's team.

Ms. Kagan has said that judging is a "craft," and that the Senate should always insist that a nominee's background show that they can "master" that craft. I agree with Ms. Kagan that judging is a craft. But for most of her adult life, she has practiced a much different craft, the craft of political advocacy. We must be convinced that someone who has spent the better part of her career as a political adviser, policy advocate, and academic, rather than as a legal practitioner or a judge, can put aside her personal and political beliefs, and impartially apply the law, rather than be a rubberstamp for the Obama or any other administration. The Clinton library documents make it harder,

not easier, to believe that Ms. Kagan could make that necessary transition.

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

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

#### AFFORDABLE HEALTH CARE FOR AMERICA ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 210, H.R. 3962; that the Baucus substitute amendment, which is at the desk, be considered agreed to, and the motion to reconsider be laid upon the table; that the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table; that the title amendment, which is at the desk, be considered and agreed to, and the motion to reconsider be laid upon the table; that any statements related to this measure be printed in the RECORD, with no further intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4383), in the nature of a substitute, was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The amendment (No. 4384) was agreed to, as follows:

Amend the title so as to read: "An Act to provide a physician payment update, to provide pension funding relief, and for other purposes."

Mr. CONRAD. This is the Statement of Budgetary Effects of PAYGO legislation for H.R. 3962, as amended by Senate Amendment No. 4383. This statement has been prepared pursuant to Section 4 of the Statutory Pay-As-You-Go Act of 2010, Public Law 111-139, and is being submitted for printing in the CONGRESSIONAL RECORD prior to passage of H.R. 3962, as amended, by the Senate.

Total Budgetary Effects of H.R. 3962:

2010-2015—net decrease in deficit of \$2.384 billion.

2010-2020—net decrease in deficit \$168 million.

Reduction of Total Budgetary Effects for Current Policy under Section 7:

2010-2015—\$6.348 billion.

2010-2020—\$6.348 billion.

Total Budgetary Effects of H.R. 3962 for the 5-year Statutory PAYGO Scorecard: -\$8.732 billion.

Total Budgetary Effects of H.R. 3962 for the 10-year Statutory PAYGO Scorecard: -\$6.516 billion.

I ask unanimous consent to have printed in the RECORD a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this act.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR AN ACT TO PROVIDE A PHYSICIAN PAYMENT UPDATE, TO PROVIDE PENSION FUNDING RELIEF, AND FOR OTHER PURPOSES (AS PROVIDED BY STAFF ON JUNE 18, 2010)

[Millions of dollars, by fiscal year]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010-2015	2010-2020
Net Increase or Decrease (—) in the On-Budget Deficit													
Total On-Budget Changes .....	-569	2,460	-1,266	-1,253	-981	-776	-467	-171	558	1,233	1,063	-2,384	-168
Less:													
Current-Policy Adjustment for Medicare Payments to Physicians <sup>1</sup> .....	2,708	3,640	0	0	0	0	0	0	0	0	0	6,348	6,348
Statutory Pay-As-You-Go Impact .....	-3,277	-1,180	-1,266	-1,253	-981	-776	-467	-171	558	1,233	1,063	-8,732	-6,516

Note: Components may not sum to totals because of rounding.

<sup>1</sup>Section 7(c) of the Statutory Pay-As-You-Go Act of 2010 provides for current-policy adjustments related to Medicare payments to physicians. CBO estimates that the maximum available adjustment for a physician payment policy through November 30, 2010, is about \$6.3 billion.

Sources: Congressional Budget Office and joint Committee on Taxation.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The bill (H.R. 3962), as amended, was passed.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, let me say to my friend, the majority leader, this is a good example of bipartisanship. I think we have come up with a proposal and achieved a goal that both sides wanted to achieve, which is to get a doctor fix for at least a 6-month period of time. Also, it is paid for. So we have done it without adding to the deficit, and I think that is something both sides can feel good about.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, sometimes the Senate can be terribly disconcerting and aggravating, but that is the way the Senate is. Those are the rules we work under. I love the Senate. Every day that goes by, I understand there are times I am aggravated and disconcerted, but the vast majority of the time I am amazed how we are able to get work done.

I say through the Presiding Officer to my friend, the Republican leader, I am glad we were able to work out this legislation. This is extremely important for everybody, and we are going to move on with the rest of the bill and try to finish that as early as possible.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I very much appreciate this development. This is very important. Now doctors

will be paid. More important, seniors will get the benefits they deserve. Payments under TRICARE will now go out. Military who participate in TRICARE, the retired military program, will get their benefits because that is all tied together. It is important because this provision expired June 1, this month, and it is about the last day for the payments to be paid; otherwise, there would be a 21-percent reduction in payments to physicians, and many providers would not provide the services to seniors, or even Medicaid, for that matter. So it is very important that we are taking this action this day; otherwise, there would be near chaos in the absence of medical care and procedures.

I appreciate the cooperation on both sides of the aisle in working this out. This is all paid for. This is not deficit