

Mr. GREGG. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. KAUFMAN. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### KAGAN NOMINATION

Mr. KAUFMAN. Mr. President, I rise in support of the nomination of Solicitor General Elena Kagan to be an Associate Justice on the U.S. Supreme Court.

Last month, the Judiciary Committee held 4 days of hearings on General Kagan's nomination, including 2 very full days of testimony from the nominee herself.

I came away from the hearings deeply impressed with General Kagan's intellect, thoughtfulness, demeanor, and integrity. These characteristics, already plainly evident in her lifetime of accomplishment, were on full display during her testimony.

Last year, when Justice Souter announced his retirement, and again when Justice Stevens announced his retirement this April, I suggested that the Court would benefit from a broader range of experience among its members.

My concern was not just the relative lack of women or racial or ethnic minorities on our Federal courts, though that deficit remains glaring.

I was noting the fact that the current Justices all share very similar professional backgrounds. Every one of them served as a Federal circuit court judge before being appointed to the Supreme Court.

Not one of them has ever run for political office, like Sandra Day O'Connor or Earl Warren or Hugo Black.

I am heartened by what this nominee would bring to the Court based on her experience working in and with all three branches of government, the skills she developed running a complex institution like Harvard Law School, and yes, the prospect of her being the fourth woman to serve on our Nation's highest court.

Some pundits, and some Senators, have suggested her lack of judicial experience is somehow a liability. I could not disagree more.

While prior judicial experience can be valuable, the Court should have a broader range of perspectives than can be gleaned from the appellate bench.

In the history of the U.S. Supreme Court, more than one-third of the Justices have had no prior judicial experience before being nominated. And a nominee's lack of judicial experience has certainly been no barrier to success.

When Woodrow Wilson nominated Louis Brandeis in 1916, many objected on the ground that he had never served on the bench.

Over his 23-year career, however, Justice Brandeis proved to be one of the Court's greatest members. His opinions exemplify judicial restraint and his approach still resonates in our judicial thinking more than 70 years after his retirement.

Felix Frankfurter, William Douglas, Robert Jackson, Byron White, Lewis Powell, Harlan Fiske Stone, Earl Warren and William Rehnquist all became Justices without having previously been judges. They certainly all had distinguished careers on the Supreme Court.

As Justice Frankfurter wrote about judicial experience in 1957:

One is entitled to say without qualification that the correlation between prior judicial experience and fitness for the functions of the Supreme Court is zero.

We have all now had the opportunity to review General Kagan's extensive record as a lawyer, a policy adviser, and administrator, and to listen to her thoughtful and candid answers to a wide range of probing questions.

Throughout her career, she has consistently demonstrated the all-too-rare combination of a first-rate intellect and an intensely pragmatic approach to identifying and solving problems.

Last summer, during then-Judge Sotomayor's confirmation hearing, and again during General Kagan's hearing, I focused on the current Court's handling of business cases.

I am convinced, by education, experience, and inclination, that the integrity of our capital markets, along with our democratic traditions, is what makes America great.

Today, however, while we have a real need for significant financial regulatory reform, we also face a Supreme Court too prone to disregard congressional policy choices.

My concern is that a Court resistant to Federal Government involvement in and regulation of markets could undermine those efforts. I am not suggesting that we face a return to "a New-Deal-era Court—a Court determined to strike down regulatory reform as beyond the authority of Congress.

But a Court predisposed against government regulation might chip away at the edges of reform, materially reducing its effectiveness.

That is why my questioning of Solicitor General Kagan focused on business cases and on her philosophy concerning deference to congressional judgment.

During the hearing, she emphasized the importance of "judicial deference to the legislative process." She also acknowledged Congress's "broad authority" under the commerce clause to regulate the financial markets.

Finally, she stated emphatically her views on results-oriented judging. I really liked what she said on this point, so I'm going to quote it in full:

I think results-oriented judging is pretty much the worst kind of judging there is. I mean the worst thing that you can say about a judge is that he or she is results-oriented. It suggests that a judge is kind of picking

sides irrespective of what the law requires, and that's the absolute antithesis of what a judge should be doing, that the judge should be trying to figure out as best she can what the law does require, and not going in and saying, "You know, I don't really care about the law, you know, this side should win." So to be a results-oriented judge is the worst kind of judge you can be.

Based on General Kagan's ability to communicate her thoughts and ideas during the committee hearings last month, I am confident that other Justices and, by extension, the entire Court, will benefit by the addition of her voice to their deliberations.

One of the aspirations of the American judicial system is that it render justice equally to ordinary citizens and to the most powerful.

We need Justices on the Supreme Court who not only understand that aspiration but also are committed to making it a reality. I believe Elena Kagan, through her truly impressive record of accomplishment, and through the entire confirmation process, has demonstrated that commitment.

In short, this nominee has all the qualities necessary to serve well all Americans, and the rule of law, on our Nation's highest court.

I urge my colleagues to confirm her without delay.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### APPOINTMENT OF DONALD BERWICK

Mr. WHITEHOUSE. Mr. President, I came to the Senate floor earlier today to speak about the nomination of Don Berwick to run the CMS and talked a little bit this morning about the area in which he specializes, which is how to lower the cost of the American health care system by improving the quality of care; that it is a win-win and to call it rationing is incredibly misleading and raises a legitimate question about whose side somebody is on who wants to attack this kind of reform of the health care system.

I went back to my office and found an article in the Washington Post today, which is entitled "Hospital infection deaths caused by ignorance and neglect, survey finds." So if I could just read a few pieces from it, then I will ask unanimous consent to have this article printed in the RECORD.

An estimated 80,000 patients per year develop catheter-related bloodstream infections, or CRBSIs. . . . About 30,000 patients die as a result, according to the Centers for Disease Control and Prevention, accounting for nearly a third of annual deaths from hospital-acquired infections in the United States.

So 80,000 people get hospital-acquired infections in their blood from the catheters that go into them when they are

in a hospital. Of those 80,000, 30,000 die, and that is about one-third of the annual deaths from all hospital-acquired infections, which means about 90,000 Americans die every year from hospital-acquired infections.

This article goes on to say those deaths are preventable. We have known this for a long time. This article is confirming something that has been studied for a long time.

... evidence suggests hospital workers could all but eliminate [catheter-related bloodstream infections] by following a five-step checklist that is stunningly basic: (1) Wash hands with soap; (2) clean patient's skin with an effective antiseptic; (3) put sterile drapes over the entire patient; (4) wear a sterile mask, hat, gown and gloves; (5) put a sterile dressing over the catheter site.

A lot of this came out of original work that was done in Michigan, the so-called Keystone Project. We have taken that in Rhode Island and adapted it to try to reduce these hospital-acquired intensive care unit infections. But this is preventable. The point is, when we prevent it, we save money because those 80,000 patients per year developing catheter-related bloodstream infections—as to the last information I saw, I believe it costs about \$60,000 to treat hospital-acquired infections. So I cannot do the math in my head, but multiply \$60,000 times 80,000 patients per year getting these catheter-related bloodstream infections and we get into very big money very quickly.

Don Berwick is the leader of the health care reform effort that tries to take exactly that kind of problem and solve it so this process, this stunningly basic process that can prevent these infections, actually gets implemented over and over and over, every time, so we can eliminate these infections. When we eliminate them, we eliminate the cost of treating it; we eliminate the excess days that had to be spent in the hospital while the patient was treated for the infection; and, of course, most importantly, we eliminate 30,000 people dying from a hospital-acquired, catheter-related bloodstream infection every year.

What is not to like about that? That is the theory of health care reform that Don Berwick is the lead proponent of. So I came back to the floor because this story is so clearly on point as to exactly the kind of reform he has been a proponent of—from his years on the Clinton Consumer Quality and Protection Commission—I do not have its exact name right now, but it was a Clinton-era quality reform initiative—from his leadership writing “To Err Is Human,” the initial report that kicked off the health care quality reform movement, and the follow-on report, “Crossing the Quality Chasm.”

This is what this guy specializes in and this ability to go into the American health care system and find these ways where, by improving the quality of care, we lower the cost. Again, whatever 80,000 patients is times—I may have the number wrong, but my recollection is about \$60,000 per infection—

we get into pretty big money in a pretty big hurry. It is preventable, and it is that kind of savings that is going to help turn the corner for American health care.

So I ask unanimous consent that this Washington Post article entitled “Hospital infection deaths caused by ignorance and neglect, survey finds” by N.C. Aizenman, dated Tuesday, July 13, 2010, be printed in the RECORD.

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

[From the Washington Post, July 13, 2010]

HOSPITAL INFECTION DEATHS CAUSED BY  
IGNORANCE AND NEGLECT, SURVEY FINDS  
(By N.C. Aizenman)

Deadly yet easily preventable bloodstream infections continue to plague American hospitals because facility administrators fail to commit resources and attention to the problem, according to a survey of medical professionals released Monday.

An estimated 80,000 patients per year develop catheter-related bloodstream infections, or CRBSIs—which can occur when tubes that are inserted into a vein to monitor blood flow or deliver medication and nutrients are improperly prepared or left in longer than necessary. About 30,000 patients die as a result, according to the Centers for Disease Control and Prevention, accounting for nearly a third of annual deaths from hospital-acquired infections in the United States.

Yet evidence suggests hospital workers could all but eliminate CRBSIs by following a five-step checklist that is stunningly basic: (1) Wash hands with soap; (2) clean patient's skin with an effective antiseptic; (3) put sterile drapes over the entire patient; (4) wear a sterile mask, hat, gown and gloves; (5) put a sterile dressing over the catheter site.

The approach also calls for clinicians to continually reconsider whether the benefits of keeping the catheter in for another day outweigh the risks and to use electronic monitoring systems that allow them to spot infections quickly and assemble a rapid response team to treat them.

A federally funded program implementing these measures in intensive-care units in Michigan hospitals reduced the incidence of CRBSIs by two-thirds, saving more than 1,500 lives and \$200 million in the first 18 months. Similar initiatives across the country helped bring the overall national rate of these and related bloodstream infections down by 18 percent in the first six months of 2010, according to the CDC.

“Our research shows that the cost of implementing [such programs] is about \$3,000 per infection, while an infection costs between \$30,000 to \$36,000,” said Peter Pronovost, a professor at Johns Hopkins University School of Medicine who led the program. “That means an average hospital saves \$1 million.”

So why aren't hospitals leaping to adopt these best practices?

The survey released Monday, which was conducted by the Association for Professionals in Infection Control and Epidemiology and funded by Bard Access Systems, a maker of catheters, pointed to ignorance and neglect at the top.

More than half of the 2,075 respondents, most of whom were infection control nurses employed by hospitals, reported that they use a cumbersome paper-based system for tracking patients' conditions that makes it harder to spot infections in real time. Seven in 10 said they are not given enough time to train other hospital workers on proper proce-

dures. Nearly a third said enforcing best practice guidelines was their greatest challenge, and one in five said administrators were not willing to spend the necessary money to prevent CRBSIs.

Pronovost said part of the problem was that many hospital chief executives aren't even aware of their institution's bloodstream infection rates, let alone how easily they could bring them down.

When hospital leaders decide to create a culture in which preventing infections is a priority, he added, nurses feel empowered to remind physicians to follow the checklist when inserting catheters, physicians are provided antiseptic soaps as part of their catheter kits and infection control personnel have the best tools to monitor patients.

“If anyone in that chain of accountability doesn't work, you won't get your [infection] rates down,” he said. “But it's the hospital's senior leadership that is ultimately responsible.”

Mr. WHITEHOUSE. Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. KYL. Mr. President, I just want to take a moment to ask unanimous consent to have printed in the RECORD, at the conclusion of my remarks, an editorial dated today from the Arizona Republic. That is my hometown newspaper in Phoenix, AZ.

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

(See exhibit 1.)

Mr. KYL. The editorial is entitled “End run denies public a debate on health care.” The point of the editorial is that while we had a very long debate over the so-called health care legislation—I think the name of the act was the Patient Protection and Affordable Health Care Act—we never had the kind of debate that would have edified the American public on the general question of a government-run health care system versus one that was more amenable to the doctor-patient relationship and the privacy that Republicans were suggesting was a better way to go.

What the editorial says is that the President's recess appointment of Dr. Berwick obviated the kind of debate that could have occurred had he gone through the regular nomination process and had a hearing at which his views could be elicited, and we could have then debated whether he, with his views, was the right person to head the CMS, which is the entity that will be running the program.

The editorial concludes with these comments, after noting that even Democratic leaders in the Senate were perplexed by the recess appointment, noting Senate Finance Committee chairman, MAX BAUCUS, saying he was “troubled” by the move. The editorial concludes:

Considering how dubious the public remains about Obamacare, there is every reason to believe the Republicans really did want an exchange with the candid, erudite Berwick. The recess appointment strongly suggests the White House simply did not want to have another fight over the contentious health care issue.

Political parties can be devious. History is littered with appointments delayed to death out of little more than spite.

This wasn't one of those appointments. Dr. Berwick will head a federal agency that spends \$800 billion a year. The public deserves to know what he thinks.

The point is, we would have had an opportunity to know what Dr. Berwick thinks and for the American people to express themselves on that issue through their representatives in the Senate had we gone through the regular nomination process. But because the President decided to short-circuit that while we were off and back home on our July 4th recess, and made the recess appointment, we will never have that opportunity. As the editorial notes, that is lamentable. It denies the public an opportunity they would have had to understand better what his point of view was and perhaps to have a debate about the general underlying nature of the health care bill that was passed.

#### EXHIBIT 1

[From the Arizona Republic, July 13, 2010]  
END RUN DENIES PUBLIC A DEBATE ON HEALTH CARE

Crazy as it sounds, we did not have a real "debate" over health care 10 months prior to the passage of the Patient Protection and Affordable Care Act in March.

Basically, the warring factions had an 18-month fight over interpretations.

President Barack Obama and Democrats interpreted the new law as one that would, affirmatively, lower costs, preserve existing options, extend coverage near-universally and improve care overall.

On defense against the interpretations of mostly Republican critics, they argued the plan did not constitute socialized medicine, was not a Washington power grab, would not explode costs, would not create "death panels," would not reduce insurance options, would not foist new burdens on the states, and wouldn't increase federal deficit spending.

It was a debate over the meaning of a constantly evolving bill, not one of competing philosophies.

But a debate over the efficacy of a centralized, government-led health-care system vs. a decentralized, mostly private system? Rarely was the epic struggle ever that straightforward.

Senate hearings on the appointment of Obama's nominee to head the Centers for Medicare & Medicaid Services, Dr. Donald Berwick, would have been a great opportunity to hear those debates, at long last.

Unfortunately, that isn't going to happen. The president short-circuited those hearings by using his power to make appointments during congressional recesses. According to a White House spokesman, the president anticipated Republican obstructionism, and so performed the end run. That explanation is debatable. There was no discernable "impasse" on the Berwick appointment.

Republicans claim they greatly anticipated the Berwick hearings, given the Harvard-educated pediatrician's candid com-

mentary over the years about his enthusiasm for a single-payer health-care system similar to that of Great Britain. Likewise, Democratic leaders in the Senate also were perplexed at the recess appointment. Senate Finance Committee Chairman Max Baucus of Montana said he was "troubled" by the move.

Considering how dubious the public remains about Obamacare, there is every reason to believe the Republicans really did want an exchange with the candid, erudite Berwick. The recess appointment strongly suggests the White House simply did not want to have another fight over the contentious health-care issue.

Political parties can be devious. History is littered with appointments delayed to death out of little more than spite.

This wasn't one of those appointments. Dr. Berwick will head a federal agency that spends \$800 billion a year. The public deserves to know what he thinks.

Mr. KYL. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

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

#### UNEMPLOYMENT BENEFITS

Mr. BROWN of Ohio. Madam President, it is, I believe, day 42 since 41 Members of the Senate have blocked us through filibuster, through obstructionism, through threat of tying up the Senate and shutting it down basically so that we have not been able to extend unemployment benefits to workers in Charlotte, in Ashville, NC, and Columbus and Cleveland, OH. It is unconscionable. It is unfair to those workers who have worked for 20 years and lost their jobs through no doing of their own. It is bad economics.

Presidential candidate MCCAIN's economic adviser, Mark Zandi, during the Presidential campaign said every dollar of unemployment benefits generates \$1.60 in economic growth. He examined various kinds of expenditures—everything from tax cuts to a whole bunch of other government programs—and what would stimulate the economy best, from road construction to small business tax breaks, all the kinds of things that we could do for job growth.

He said—that is Republican JOHN MCCAIN who voted against unemployment extension—his economic adviser in the Presidential race said the best stimulus for the economy is unemployment benefits because every dollar that goes into the pocket of an unemployed worker in Lima, Gallipolis, Steubenville, or Miamisburg, OH, generates

\$1.60 in economic activity. That means they spend that dollar quickly because they need that money to pay their rent, to pay for utilities, to buy groceries, to go to the drugstore—to do all the things that are necessities of life that are obviously so important.

As the Akron Beacon Journal analyzed, Summit County emergency cash assistance cases rose 27 percent from May 2009 to May 2010. Food stamp cases climbed 22 percent over the same period.

It is an economic equation, to be sure, that extending unemployment benefits is the best thing for our economy. It is also a human equation, for all the problems people face in our country of not being able to simply provide for their families.

We can talk about the statistics; 90,000 Ohioans have seen their unemployment benefits expire. Forty-one Members of this body—40 of them Republicans—have said no to extending these benefits. We know these numbers. We see them all the time. We are blinded sometimes by all the statistics.

I would like to, as I do many days, put a human face on this issue and share what people in my State write to me telling me what these unemployment benefits mean to them.

Lisa from Cuyahoga County, the Cleveland area:

Please do not strand us here on the sea of uncertainty and washed up on the shore of ruin. That statement may be dramatic, but that is how it feels out here.

In my case, if I was guaranteed a 40 hour a week job working at a fast food restaurant, I would take it in a heartbeat.

I am currently taking care of my elderly mother college age daughter on \$213 a week after taxes. Do you know how far that goes? I have to pay rent, electric bills, and put food on the table. I am a single mother. How am I supposed to live?

I sit in a bedroom away from my mother and daughter and cry because I feel I have failed by family and we are headed for ruin. We already lost the family home due to unscrupulous lenders. Now I am one rent check away from being homeless.

Please, I am begging you to be my voice and the voice of the unemployed in Washington.

Again, these are people who want to work. Some of my colleagues, some of the 41 who vote no consistently—we have tried week after week to bring this legislation to a vote—seem to think unemployment is welfare. It is not welfare. Many of the letters I get are from people who worked in the same job 20 and 30 years and lost that job and are trying to find work, as they are required to under the law. If you draw unemployment benefits, you are required to continue to look for work. You send out resumes, make visits to the plant, the office, or restaurant to try to get a job.

Every one of these workers paid in. This is not welfare; this is insurance. Every one of these workers paid into the unemployment insurance fund, and now when they are unemployed, they are deserving of collecting on their insurance, if you will.