

All told, this bill would impose 533 new regulations on individuals and small businesses—regulations that will inevitably lead to the kind of confusion and uncertainty that will make it even harder for struggling businesses to dig themselves out of the recession.

It is just this kind of uncertainty that will continue to deter lending and freeze credit as lenders wait to see how they will be affected by the new regulations. And it is just this kind of uncertainty that businesses cite time and again as one of the greatest challenges to our economic recovery.

The White House will declare this bill a victory. But for millions of Americans struggling to find work, for millions of small business owners bracing themselves for all the new regulations they will have to deal with, or ordinary Americans who wanted to see an end to the bailouts, this bill is no victory. When out-of-work Americans see Democrats celebrating today, what they will see are lawmakers who have completely and totally lost touch and who have lost the trust of the American people.

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

WALL STREET REFORM

Mr. REID. Mr. President, some believe that if you say something long enough, even if it is without any factual basis, people will start believing it.

To think that banks—Wall Street—liked Wall Street reform is a stretch beyond our ability to comprehend. We needed to do something because Wall Street hurt America. They had a pretty good deal going there. They could use our money and gamble it—different than Las Vegas. They could gamble our money, and if they won, they kept it; if they lost, they came back to us for help. That is a good deal, and we have stopped that.

Does anyone think we should leave things the way they are? That was a crisis waiting to happen again. George Bush's Secretary of the Treasury Hank Paulson, when this bill passed, said it was a fine piece of legislation. I am paraphrasing what he said. Knowing Hank, that is about what he said. He liked the legislation, and he should know. He was President Bush's Secretary of the Treasury when this collapse took place.

This is all so quite interesting. My friend says that the stimulus has caused job loss. Again, that is without any factual basis. In fact, it is just the opposite. It saved or created 3 million jobs. Remember, we still have low unemployment because that started during the Bush years back in 2006 when the economy started faltering. As an example, in the last 6 months of the Bush administration, 3 million jobs were lost.

Health insurance: Always they talk about health insurance. But remember,

any poll we see today, the majority of the American people support what we did with health care. My friend was at a meeting we had yesterday, and we saw those numbers spread across the film we were shown.

Also, the reasoning is quite unique. My friend says we bailed out the auto industry. Isn't that a good thing we did? Isn't it a good thing today in America we have an automobile manufacturing sector? If it had been up to them, General Motors would be gone. If it were up to them, Ford Motor Company would probably be gone. Chrysler would definitely be gone. We decided they needed help, just as New York City needed help 25 years ago or so. They came out very strong. We are making money on what we did in investing in Detroit's automobile industry.

It is also interesting—I have seen this at home—some of my Republican friends criticized me for the bailout, the stimulus. Then I was criticized because I did not get more money.

In a little bit, I am going to go down to one of the Federal buildings for a signing of the Wall Street reform bill. What an important day for this country. After this financial collapse, we have reined in Wall Street. That is a day for celebration.

Think how much better this bill could have been had we had a little cooperation from our friends on the other side of the aisle. But we did plenty and, as has been said and written, it is the most significant change in the financial world since the Great Depression.

The mere fact that one says something that is without foundation a lot of times and simply is untrue does not make it truthful the more times one says it.

Will the Chair announce the business for the day?

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now be in a period for the transaction of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first 30 minutes and the majority controlling the final 30 minutes.

The Senator from Kentucky is recognized.

KAGAN NOMINATION

Mr. BUNNING. Mr. President, today I rise to speak on the nomination of Solicitor General Elena Kagan to be a Justice on the United States Supreme Court.

After much consideration, I cannot support this nomination. I have been following this progress very closely. I have been reading her memos and other documents from her career, and I watched her confirmation hearings before the Senate Judiciary Committee. I met with her one on one and was able to ask her eight different questions. Unfortunately, I find her unsuitable to serve a lifetime appointment as a member of the U.S. Supreme Court.

When I spoke on the nomination of Justice Sotomayor last year, I pointed out the problems of the Supreme Court and other judges trying to replace Congress and State legislatures. Important social issues have been taken out of the political process and decided by unelected judges. I can say for certain that this is not the way the Founding Fathers and the authors of the Constitution intended for it to work. The creation of law is reserved for elected legislatures chosen by the people. The Supreme Court is not a nine-person legislature created to interact with or replace the U.S. Congress.

When judges and Justices take the law into their own hands and act as if they are a legislative body, it flies in the face of the Constitution. Because of this, whether it is the Supreme Court or the lower courts, many people have lost respect for our judicial system. This cannot continue to happen.

In addition to the obvious constitutional concerns, if some day the public and the rest of the political system begin to tune out the courts and ignore their decisions altogether, it would be very dangerous for our country. I opposed Justice Sotomayor's nomination because I did not feel she understood this. I am afraid I have to say the same for Ms. Kagan.

The first problem I wish to discuss is her lack of experience. According to a Congressional Research Service analysis, Justices without prior judicial experience practiced law for an average of 21 years before their appointment to the Supreme Court. Recent polls have shown that an overwhelming majority of Americans feel that prior judicial experience is an important qualification to be a Justice on the Supreme Court.

Of modern Supreme Court Justices, former Chief Justice William Rehnquist was the last person nominated without judicial experience, and that was almost 40 years ago. However, Chief Justice Rehnquist was a practicing attorney for years prior to his nomination.

Ms. Kagan herself said:

It is an embarrassment that the President and Senate do not always insist, as a threshold requirement, that a nominee's previous accomplishments evidence an ability not merely to handle but to master the "craft" aspects of being a judge.

Prior to her appointment to the Solicitor General's job in 2009, Ms. Kagan was a stranger to the courtroom. She never tried a case to verdict or served as a judge. She argued her first case as

a lawyer less than 1 year ago. While Ms. Kagan has a very extensive background in the law, both academically and politically, I do not believe she has mastered the craft of judging.

I have serious concerns that Ms. Kagan will have a very hard time separating her personal views from the legal interpretation of the Constitution. While Ms. Kagan was dean of Harvard Law School, she banned military recruiters from the Harvard campus during a time of war because she believed the don't ask, don't tell law, developed by the Clinton administration in which she served—she called it a “moral outrage” of the “first order.”

She worked for Bill Clinton in his administration. She argued that the Solomon amendment, which Congress passed, despite its plain text and plain congressional intent behind it, allowed law schools to bar access to military recruiters. Ms. Kagan herself wrote an e-mail to the Harvard community that in barring recruiters, she was acting in the hope that the Federal Government would choose not to enforce the law of the land. I find it very troubling that a nominee to the Supreme Court would change school policy and disregard Federal law during a time of war because of her own personal beliefs. Fortunately, not a single Supreme Court Justice agreed with her position and noted that her interpretation was rather clearly not what Congress had in mind.

As associate White House counsel to President Bill Clinton, Ms. Kagan played a critical role in the debate over partial birth abortions and did everything she could to halt legislation going through Congress to ban that horrible procedure. She worked with the medical groups supporting the practice, rewriting their scientific conclusions to better reflect her preference on partial-birth abortion. The Supreme Court relied on this language in their decision to overturn a Nebraska law banning this procedure. It appalls me that someone with no medical background would try to alter scientific conclusions to defend such a monstrosity of a procedure.

In one memo, she advised President Clinton to support a Democratic alternative in order to “sustain [his] credibility on [the issue] and prevent Congress from overriding [his] veto.” This is concerning behavior from someone who now wishes to serve on the highest Court in the land. If she was willing to rewrite scientific conclusions, who is to say how far she would go with rewriting the Constitution?

I also have serious concerns about Ms. Kagan's hostility to second amendment rights. While she was clerking for the Supreme Court Justice Thurgood Marshall, Ms. Kagan was asked to consider a case similar to the 2008 Heller case, in which the Court struck down the DC gun ban and found that the second amendment confers an individual right to keep and bear arms. In examining this earlier case, Sandidge v. U.S., she wrote that:

Mr. Sandidge's sole argument is that the District of Columbia's firearm statute violates his constitutional right to “keep and bear arms.” I am not sympathetic.

Those were her words.

It is not the job of the Supreme Court or any other court of the land, for that matter, to be sympathetic. That belongs best in legislatures which can reflect the wishes of the people who voted for the Members of those bodies.

Recently, supporters of individual rights and liberties won an important victory when the Supreme Court ruled in the McDonald case that the second amendment was a fundamental right that is binding to all the States. I fear her appointment to the Supreme Court could undo the progress from the Heller and McDonald decisions that recognize Americans have the right to defend themselves. Throughout her confirmation hearings, Ms. Kagan repeatedly stated she would accept the Heller and McDonald decisions as settled law. In her confirmation hearings, Justice Sotomayor also appeared to accept the second amendment rights. Specifically, Justice Sotomayor said she understood “. . . the individual right fully that the Supreme Court recognized in Heller.” However, in her first year on the Court, she joined the dissenting opinion in McDonald saying:

I can find nothing in the Second Amendment's text, history, or underlying rationale that could warrant characterizing it as “fundamental” insofar as it seeks to protect the keeping and bearing of arms for private self-defense purposes.

Finally, I was not satisfied with Ms. Kagan's responses regarding the commerce clause and the limits of power of the Federal Government. Right now, we have the government taking over each sector of our economy, from banking, as the majority leader and minority leader spoke about, and the auto bailouts, which they both spoke about, to an unprecedented takeover of our health care system. In her testimony, Ms. Kagan left no doubt that she sees virtually no limit on congressional power. This is extremely frightening to me, to say the very least.

The Framers of the Constitution made it very clear what the role of the Court should be. Anyone appointed to the Supreme Court must be willing to evaluate laws as they are written under the plain meaning of the Constitution. A Justice should not be appointed in order to achieve specific results in any case. We have no judicial record of Ms. Kagan's to look at to see how she would rule in any of these such cases. We only have a record as an academic and a political adviser to look at as her qualifications to be a Supreme Court Justice. While Ms. Kagan has a very impressive background, I do not have faith that she would fully respect the roles of the judiciary and the legislative branch.

I am very sorry to say for just the second time while serving in the Senate that I will have to oppose a nomination to the Supreme Court, and I am

not happy to do so. However, it is the constitutional role of the Senate to provide confirmation for this position and my duty as a Senator to be a part of this process. On viewing the record of Solicitor General Kagan, I do not find her to be a suitable candidate for a Justice of the Supreme Court of the United States and will vote against her whenever the Senate considers her nomination.

I thank the President, yield the floor, and note 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. REED. 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.

UNEMPLOYMENT INSURANCE

Mr. REED. Mr. President, yesterday, the Senate voted for cloture on the unemployment insurance extension bill. Unfortunately, we are still delaying and deferring the final vote on this measure. This is essential to millions of Americans who need the money they receive—which, frankly, it is not a huge amount. In Rhode Island, the average weekly unemployment compensation is \$360 a week. But they need to have some certainty that this program is going to be there at least for the next several months.

We have made a lot of points rhetorically. Now it is time to take the final vote, to move forward, and to deal with a more fundamental issue; that is, how to create the jobs—now that we are providing some assistance to those who are unemployed. How do we go ahead and further create jobs in this economy so our unemployment rolls shrink?

That task is challenging. We have taken 2 months now to get to this juncture. In the past, extending unemployment compensation was a bipartisan initiative. It was done routinely and repeatedly. It was always extended as long as the unemployment rate was at least 7.4 percent. Today the unemployment rate nationally is 9.5 percent. In my State of Rhode Island it is 12 percent. We are not alone. There are many States that are very much mired in a huge economic crisis.

The other factor of this unemployment situation is that it has been a long-term unemployment for so many people, nearly half of those unemployed. So the money they put aside, the rainy day money, the money they put in the coffee can for that special occasion or that special treat, has long been exhausted. This unemployment compensation is absolutely essential for people.

There are many on the other side who will stand and say: We are all for unemployment compensation; we just want to pay for it. Well, historically, we have not paid for it. It is truly an emergency expenditure.