

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.

The other factor that is critical to notice is that unemployment compensation does not add to the structural deficit. That is in sharp contrast to the tax cuts, which my colleagues on the other side are urging be extended without paying for them, and in sharp contrast to the largest expansion of an entitlement program since the 1960s, the Medicare Part D Program, which was not paid for. Those programs do add to the structural deficit because they are not replenished periodically in the good times because people qualify for them as soon as they hit an age—65—or as soon as they qualify by filing their income taxes. Those are structural deficit issues. Yet the other side says that is not important. I can't figure that out.

If the deficit is so overwhelming, so all-consuming, then why are my colleagues on the Republican side, first, suggesting we extend all the tax cuts of the Bush years without any offsets; and why did they, in the past, vote for the creation of Medicare Part D, really? Why did they vote for 2 wars that were unpaid for? There is something inconsistent in that.

As I pointed out, unemployment compensation is not a problem of structural deficit because, as the economy recovers, people will continue to pay into the unemployment compensation trust fund through payroll taxes. In good times those funds increase so that in the unfortunate times we can provide assistance.

What we are doing now with this legislation is recognizing that this is a particularly challenging moment for families and for States, and they need further assistance. Part of the legislation we have is fully compensating the States for the Extended Benefits program, which, in other times, are shared 50 percent by the States and 50 percent by the Federal Government. In these extraordinary times, we have to pass this legislation.

We also recognize, too, in terms of the offsets of the legislation, that this is part of our overall attempt to stimulate the economy. For every dollar of unemployment benefits, there is at least \$1.60 or \$1.90 in economic activity. It makes sense. When they get that \$360 a week, they take whatever resources they have and they go to the store. They don't go off jetting to Europe on a vacation. They go to the store and buy food, clothes, and those things that are essential to their families.

Mr. President, I am continually baffled by the reluctance, the resistance, and the obstruction of the other side in terms of doing what has to be done, and done promptly. It will be done in a way in which it will assist the recovery that we are beginning to sense throughout the country.

I note the arrival of my colleague, the junior Senator from Rhode Island. I think he is about to take the floor.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The junior Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, first of all, let me compliment the work of my senior Senator, JACK REED, on this issue. When I first came to the Senate 3 years ago, Senator REED had already established his reputation as somebody who fought passionately for unemployment insurance for people who were out of work. He understood that a family who is out of work, through no fault of their own, very often has the unemployment insurance they and their employers have contributed to as their only lifeline; that as our vibrant economy goes through ups and downs, there are times when individual families pay a terrible price when the economy contracts, when jobs are lost, and when individual families have to make what Vice President BIDEN called that "longest walk" up the stairs to tell their kids, their families, they have lost their job.

At that time, that lifeline for a hard-working family who, through no fault of their own, is out of work is all important. Senator REED knows that well. He has been a champion on this issue, not just when it has been at the forefront of national attention as it is right now, but day in and day out, constantly fighting for the people in Rhode Island and folks across this country who need this lifeline.

I wanted to say a few words to echo Senator REED's comments. Rhode Island still has 12 percent unemployment. We have the fourth worst unemployment of any State in the country. It has been that way month after month after month, with individual families paying the terrible price of the economic consequences of something that took place well outside of Rhode Island. It was Wall Street that collapsed. It was the big Wall Street banks. It was the bets by the Wall Street banks in a wild derivatives market, a wild mortgage security market, that tanked this economy, that required emergency action by Congress to try to put it right before a real depression ensued, and that kicked off the great recession that we have been suffering since then. That great recession washed like a tsunami across our country, and it hit particularly hard in my home State of Rhode Island.

In Rhode Island, we have 70,000 families who have somebody out of work. It is actually probably more than that because the unemployment numbers tend to undercount the actual harm. But the official count is over 70,000 families. I can promise you this: There aren't 70,000 jobs waiting around for those people in Rhode Island. They are just not there.

The notion that the Republican side has often developed, which is that unemployment insurance contributes to unemployment; that people who are looking for work need a little bit more motivation to go out there and take a job, and if you could just threaten

their families' survival, threaten their ability to have food on the table, threaten their ability to stay in their homes, and threaten their ability to afford health care, they will then be motivated enough and will go out and get those jobs—I don't know where they get that from, but it is not from Rhode Island. We are a hard-working State. We don't have the jobs to take 70,000 people and put them back to work as this economy just haltingly now begins to recover.

Six-thousand Rhode Islanders have lost their emergency unemployment insurance benefits because of the stall tactics of the other side of the aisle; 2.5 million Americans across the country have lost their benefits. Those sound like big numbers. Behind every one of those 6,000 Rhode Islanders is a family story, a story about an individual who has to face some hard choices about whether they are able to pay the mortgage, whether they are able to buy new clothes for kids when the kids go back to school, whether they are able to pay for their medications, whether they are able to simply keep food on the table and a roof over their heads.

It certainly played a crucial part in preventing economic disaster for Sandy in Warwick, RI, who is 60 years old. She has a background in accounting. She has been unemployed now for 13 months and is trying to find a job in that tough, tough, tough, Rhode Island economic climate. She has applied for about 100 jobs. She is out there working. She is out there trying to find a place where she can put her skills back to work the way she always did, but no luck so far.

Her lifeline was unemployment insurance. If the Senate Republicans had been successful in their filibuster of this unemployment insurance, Sandy would have lost what is now her only remaining source of income. The consequences of that, obviously, are catastrophic for Sandy, for the other 6,000 Rhode Islanders in that position, and for 2½ million Americans around the country.

The great argument we hear our friends on the other side make is: We understand how painful this is going to be. We understand that people are going to have to come home and tell their kids we are going to have to move. We can't keep our home any longer. You are going to have to pack up your bedroom, put the stuffed animals in a box, and we are all going to have to clear out because I simply don't have the income.

Crossroads, our biggest shelter in Rhode Island, is packed. We have people sleeping in conference rooms. But the Republicans say: You know, we understand that is tough. We understand if you can't pay for medication for your spouse, that is tough. As people start to think about heading back to school in September, and you can't pay for clothes for the kids, you can't pay for pens, pencils, and schoolbooks, that is tough. But something more important is at stake here, they tell us, and

that is our national debt. We have to worry about that more than the care of American families who are out of work, through no fault of their own, because of the wild spree that Wall Street took under the Bush administration.

I would think more of that argument if it were at least consistent, but it is not consistent. It is an argument that they apply when regular working families are out of work through no fault of their own because of the Wall Street meltdown from the Bush policies. That is when they get all excited about how important the deficit is. But when it comes to, say, oh, tax cuts for billionaires, tax cuts for corporate CEOs, well, then a different rule prevails. Then the debt isn't so important. Then the deficit isn't so important. What is more important are the folks with the big salaries—the CEOs earning on average these days 400 times what a regular average salaried worker gets paid—400 times more every day than the average worker. That is the kind of tax cut that is more important than the deficit.

I saw this cartoon the other day, and I wanted to share it on the Senate floor. I thought it was a pretty good description of where we are on this. Here are our friends on the other side. It says "Senate GOP" on this cranky fellow's hat, and a little cat on the front of the boat says "jobless benefits," if you can't read it. The fellow is saying to the little cat on the front of the boat: Too much weight. You get off the boat into the water. You are on your own. We don't care. Actually, it ends at get off the boat. I added the rest. On the back of the boat we see tax cuts for the wealthy.

But the Republicans do not see that. They do not worry about that. They are not concerned about that. Since the estate tax went to zero, four estates have been reported in the media of more than \$1 billion—more than \$1 billion. Each estate has gone through tax free, at a cost to the Treasury, at a cost to the deficit and the debt of hundreds of millions of dollars, and not a peep—not a peep—from the other side from those who are concerned about the deficit, when that is the issue. But you get a poor family out of work, one lifeline left keeping them in their home, one lifeline left keeping food on the table, and giving that lifeline the chop is something they are all for. That is something they are all for.

Well, fortunately, what happened here in the Senate yesterday is they lost. They didn't lose on a fair-and-square up-and-down-majority-rules vote. They lost on a 60-40 filibuster vote. They made us win by 20 points. Not just majority rules, the way it is in most places, but they forced us to 60-40 and we still won. So the unemployment insurance benefits should begin to flow to those families who are in such distress right now, and wondering how they are going to make it through the next day, through the next moment.

But it is not enough for them, once losing the debate, to simply pick themselves up, dust themselves off and, like good sports, go on to the next disagreement. We have other things we will disagree about. Nope. That is asking too much of our friends, unfortunately, to have that kind of good sportsmanship—to stand up, get back on the field and go back to the battle. We have to burn 30 hours of Senate floor time to no purpose. We can't do other work during this period. We can't do amendments during this period.

We know how the vote is going to come out. Literally, no possible purpose is accomplished by requiring us to burn the 30 hours, except two things for sure will happen. One thing for sure that happens is that all those families out there—those 6,000 Rhode Island families, those 2½ million families across the country—will have to wait a little longer. They have been stretched to the very end of their budgets and they are hanging on by their fingernails. But instead of saying: Fair and square, okay, we tried. We threw up every obstacle we could, but we lost 60-40, so let's go on to the next thing—nope, they are going to make them hang on for another 30 hours.

The other thing they accomplish through this is that they burn Senate floor time. The Good Lord only gives us so much time. You can't get minutes back when they are gone. You can't get hours back when they are gone. You can't get days back when they are gone. We have a lot of work to do in this Chamber, and our friends on the other side would like to have us do as much work as possible in as little time as possible, because, frankly, they want as little done as possible. So it actually suits their goal to burn floor time to no effect here on the Senate floor.

So that is what we are doing. I am here alone right now. Senator REED was here alone a minute ago. I suspect that when I leave, we will go back into a quorum call and time will tick, tick, tick past with nothing being accomplished here. We could be working on jobs legislation. We sure need that. We could be working on energy legislation. We sure need that. There are a host of things Americans want us to be working on. But the Republican side of this Chamber has a strategy to prevent anything from getting done. Their policy is saying no, no matter what the question is—that is their answer, no matter the proposal—as long it comes from the Obama administration. That is their purpose, and they achieve that purpose when they burn this time.

So here we are on the Senate floor with time ticking away, second by second, minute by minute, accomplishing nothing other than burning 30 hours that, frankly, belongs to the American public. These are 30 hours we should be accomplishing the public's business, moving on to the next issues and going forward.

I would hope that, if nothing else, out of the spirit of good sportsmanship,

our friends on the other side would call this off and say: All right, enough. We wish we had won. We want a world in which the deficit only applies to unemployment benefits for working families and we get to dig big holes in the debt and the deficit when it is our tax cuts for the wealthy, but we lost on that one. Let us move on. We will take the hand up off the field, we will dust ourselves off and move on to the next one. If for no other reason than good sportsmanship, I would hope they would do that and call off this period of delay.

That would also allow us to get to other business. We may disagree, but we might as well get to the business. We might as well have these arguments out. We might as well have our fight. Let's not just kill time here. So I hope my colleagues will reconsider. Time ticks away, awasting here. Everybody has work to be done. The American people await us, particularly on jobs legislation. There is an enormous amount we could do to help them if we could simply get to it.

We have a small business bill we are trying to tee up that would provide enormous value to the economy, including in particular Rhode Island, where small business is so important. Small business is the heartbeat of Rhode Island's economy. To the extent we can provide additional capital and support for small business, we could get to that. We could be working on that right this minute instead of being stuck in this long delay, in this empty Chamber while 30 hours ticks uselessly away because our friends simply can't dust themselves off after their defeat, stand up and go on to the next issue. They have to force this long 30-hour stall.

I thank the Presiding Officer again for the time, I yield the floor, and 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. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the House message on 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 with an amendment to H.R. 4213, an Act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.