plan. But within what Justice Souter says, and what I have just quoted, it is a matter of legislation when the Court moves into the fact-finding process.

The Lopez case was followed 5 years later by the case of United States v. Morrison. There, the Supreme Court of the United States invalidated portions of the Violence Against Women Act, holding that they were not constitutional because of the congressional method of reasoning. Again, Justice Souter sounded the clarion call, speaking for four Justices when he said:

> Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. . . . The fact of such a substantial effect is not an issue for the courts in the first instance . . . but for the Congress, whose institutional capacity for gathering evidence and taking testimony far exceed ours. . . . The business of the courts is to review the congressional assessment, not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact.

Justice Souter then went on to point out that there was a mountain of evidence in support of what the Congress had decided to do.

The Supreme Court of the United States later invalidated congressional legislation in Kimel v. Florida Board of Regents, largely on the same ground. The case involved allegations of violations of age discrimination in employment, and, in the Kimel case as in the Morrison case, the Court relied upon a test where it said the act of Congress should be judged in terms of its proportionality and congruence. This test of congruence and proportionality was articulated by the Supreme Court in the City of Boerne case. It had never been a part of constitutional doctrine, and the grave difficulty is in inferring what is meant by congruence and proportionality.

In a later floor statement, I will take up two decisions of the Supreme Court of the United States, each 5 to 4, involving the Americans with Disabilities Act.

One of the problems which has been found in the confirmation process is the grave difficulty of getting an idea of the ideology of the nominees because of the refusal of the nominees to answer questions. It was thought that the confirmation proceeding of Solicitor General Elena Kagan would provide an opportunity to find out something about the approach, the ideology or philosophy of the nominee because Ms. Kagan had written so critically, in a 1995 article in The University of Chicago Law Review, about the nomination proceedings involving Justice Ginsburg and Justice Breyer.

Ms. Kagan, in that argument, criticized them for stonewalling and not answering any questions. Also, Ms. Kagan in that article criticized the Congress—the Senate, really—for not doing its job in the confirmation process and finding out where the nominees stood.

When Ms. Kagan appeared before the Judiciary Committee, it was a repeat performance. One question which I asked her brought the issue into very sharp focus. I asked her what standard would she apply, if confirmed, on judging constitutionality? Would she use the ''rational basis'' standard, which had been the standard of the Supreme Court for decades, the standard which Justice Souter talked about in the two dissenting opinions I have just referenced? Or would she use the ''congruent and proportional'' standard, which had everybody befuddled.

Justice Scalia said that the standard of proportionality and congruence is a ''flabby standard,'' which was so indefinite, vague, and unsubstantial that it left the Supreme Court open to make any determination it chose and in effect to legislate.

In later floor statements, I will take up the question as to what might be done to try to stop this erosion of the doctrine of separation of powers, what might be done to stop the reduction of Congressional authority. One line which had been suggested was to defeat nominees. As I will comment later in more detail, there does not seem to be much of a Senate disposition to defeat nominees for failure to answer questions. Based upon what has happened in every confirmation proceeding since Judge Bork's confirmation proceeding in 1987, the practice has evolved of no answers and confirmation.

Another idea was explored by Senator DeConcini and myself after the Scalia hearings, where Justice Scalia answered virtually nothing. Justice Scalia was confirmed in 1986. Justice Bork's confirmation proceeding followed in 1987, and after Judge Bork did answer questions, as he really had to with such an extensive paper trail, Senator DeConcini and I decided we didn't need to pursue the idea of a Senate standard. But that is an option which might be considered.

Another potential method of dealing with the issue would be the idea of televising the Supreme Court—which I have talked about and will talk about in some detail at a later date. Taking off on what Justice Brandeis said about sunlight being the best disinfectant, and publicity being the way, as Justice Brandeis put it in a famous article in 1913—being the way to deal with social ills.

In an article in the Washington Post on July 14, just a couple of weeks ago, a noted commentator on the Supreme Court, Stuart Taylor, said that the only way the Supreme Court would change its ways is if there was an infuriated public. To infuriate the public, the first thing that has to happen is for the public to understand what the Supreme Court is doing.

In light of the lateness of the hour, that is a subject which I will take up at a later time in detail. But the focus today is on the three cases: the Lopez case, the Morrison case, and the Kimel case.

I thank the staff for staying overtime. I know there had been a hope to conclude a few minutes earlier, by 6, but we are not too far gone considering tradition on the Senate floor of extended presentations.

I believe there is an announcement the clerk would like me to make in concluding the proceedings today?

MORNING BUSINESS

Mr. SPECTER. Madam President, I ask unanimous consent to proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

20TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

Mr. DODD. Madam President, I rise today to commemorate the 20th anniversary of the passage of the Americans with Disabilities Act.

The enactment of this important legislation was a significant milestone in our national journey to perfect our Union, uphold our founding values, and reaffirm our commitment to ensuring that the rights enshrined in our Constitution are truly available to all of our citizens. I was honored to have been able to support this bill in 1990, and am proud to be here today to talk about what its enactment means to millions of our fellow Americans, as well as to celebrate the contributions of those whose tireless work, and undying support, made passage of this bill a reality.

Thanks to this landmark law, our country has made progress in eliminating the historical stigma previously associated with mental and physical disabilities. It is also a critical step toward guaranteeing basic civil rights for an entire population who, for much of our Nation's history, have faced incredible unfairness and isolation. For decades, we have fought for the civil rights of people with disabilities, combating the antiquated mindsets of segregation, discrimination, and ignorance. Our Nation has come from a time when the exclusion of people with disabilities was the norm. We have come from a time when doctors told parents that their children with disabilities were better left isolated in institutions. We have come from a time when individuals with disabilities were not considered contributing members of society.

Those times have thankfully changed. The passage of the ADA in 1990 provided the first step toward that change our country so desperately needed, and 20 years later, many of these individuals are thriving in ways that a few short years ago, would have been unthinkable. More and more, individuals with disabilities are able to integrate into communities across America. Thanks to the ADA, they are finding employment, buying their first home, and enjoying our public parks,

transportation, and other civic facilities far more successfully than ever before.

Just as I was a proud supporter of the ADA then, I was a proud supporter of the resolution which the Senate passed last week, introduced by my colleagues Senators HARKIN and HATCH, commemorating the 20th anniversary of that historic achievement. I would like to thank Senator HARKIN in particular for his leadership on the passage of the ADA.

I would also like to thank my former Connecticut colleague, Lowell Weicker, who, as a Senator in 1988, was the original sponsor of the legislation that went on to become the Americans with Disabilities Act, and is still a national leader in advocating for individuals with disabilities.

Without their tireless efforts and support, it would not have been possible to pass this legislation those 20 years ago.

Equal protection under the law is not a privilege in the United States of America—rather, it is a fundamental right due every citizen, regardless of race, gender, national origin, religion, sex, age, or disability. It is unacceptable to deny any individual his or her right to those protections because of a disability. Our country has an obligation to its citizens to ensure that their fundamental rights are protected, and, if those rights are violated, that the appropriate recourse is available.

In 2008, the overall percentage of people with a disability in my home State of Connecticut was 10.4 percent; approximately 350,000 residents. That is 350,000 reasons why 20 years later, I am proud of—and somewhat awed by—the impact this bill has made. And that is just in my home State. Across the entire country, more than 50 million people have been aided by the passage of this historic legislation.

The resolution that we passed in this body last week honors and commemorates the 20th anniversary of the ADA. We passed it 100–0. This strong, bipartisan statement underscores the far reaching importance of this landmark law. I am proud to not only have been able to vote for its passage those 20 years ago, but also to have been an original cosponsor along with several of my colleagues still present in this body, including Chairman HARKIN.

As we take this opportunity to commemorate the tremendous advances the disability community has made, we must not forget the steadfast support of the wide network of groups and individuals who have made it their mission to help every single American, despite his or her disability, reach his or her fullest potential, and which made this extraordinary achievement possible.

I have worked closely with these groups throughout my tenure in the Senate to ensure they have gotten the support they need from the Federal Government, especially the Consortium for Citizens with Disabilities. I thank them for their support and assistance, and truly value the working relationships I have established over my entire career.

In my capacity as a senior member of the Senate Committee on Health, Education, Labor, and Pensions, I have spent my career fighting alongside my colleagues to improve the lives of people with disabilities. Some of the most important pieces of legislation I have introduced or supported throughout my career have been to further that goal. From the Disability Savings Act, a bill I introduced in 2008 which would encourage individuals with disabilities and their families to start disability savings accounts for their unique disability-related needs, to the Best Buddies Empowerment for People with Intellectual Disabilities Act, a bill I introduced earlier this Congress with Senator HATCH which promotes the expansion of that acclaimed program. I am hopeful we can pass this important legislation this year.

I am also pleased that the recently enacted Patient Protection and Affordable Care Act makes further progress toward meeting the needs of the disabled community. That legislation incorporates an important idea known as the CLASS Act, which creates a voluntary disability insurance program designed to pay for nonmedical and support services so that persons with disabilities are able to live independently. Getting this program started was a remarkable achievement, and something many of my colleagues and I had worked for many years to accomplish.

Of course, none of the important advances we have made, legislatively or otherwise, would have been possible without the tireless work of one of the great advocates for equal opportunities for individuals with disabilities that the Senate has ever seen—my dear friend, the late Senator Ted Kennedy. For Teddy, the issue of fairness and empowerment for individuals with disabilities was always in the forefront of his mind and legislative agenda. Along with his late sister Eunice Kennedy Shriver, his commitment to this issue, which touches so many of our fellow citizens, is a legacy that we must seek to preserve and to continue.

On this, the 26th day of July 2010, I urge my colleagues and fellow citizens to celebrate the freedom and opportunities provided by the Americans with Disabilities Act, and recognize the strides we have made to raise the employment and graduation rates, increase self-sufficiency, and very simply, lift the self-esteem of those who for too long were denied these opportunities.

As we strive to perfect our Union, we must remember that we are a just society. We are a society that has enshrined the notion of equality, both in rights and opportunity, for all in our very founding documents. We must continue to reaffirm the promise made in those documents to each citizen, no matter their race, creed, or circumstance.

The passage of the Americans with Disabilities Act is one example of how we have worked to keep those promises. It represents a successful step toward fulfilling our Nation's goals of equality of opportunity, independent living, economic self-sufficiency, and full participation for Americans with disabilities. It has been a tremendous honor to have been able to support this law, and as I look back on the good it has done, 20 years later, I am confident that future generations will continue to build on its success as a cornerstone to ensuring that all Americans have equal access to the American dream.

Mrs. LINCOLN. Madam President, I join Arkansans and all Americans to commemorate the 20th anniversary of the Americans with Disabilities Act, known as ADA. This legislation has literally opened doors for countless Arkansans living with disabilities.

ADA protects the civil rights of all people with disabilities by expanding opportunities for Arkansans and all Americans with disabilities and by reducing barriers, changing perceptions and allowing all Americans to go to the schools of their choice, gain meaningful employment, and fully participate in community life.

This week, communities across Arkansas will commemorate the 20th anniversary of ADA with events and celebrations, including construction of wheelchair ramps by volunteers and a 5K Roll n' Walk Run event on the Fayetteville trail system in northwest Arkansas.

I commend these volunteers and participants for their dedication to ensuring that Arkansans with disabilities have full access to the resources they need, in addition to promoting ADA's anniversary.

On the 20th anniversary of the Americans with Disabilities Act, I join my fellow Arkansans to celebrate this historic legislation that has touched the lives of so many in our State and Nation.

REMEMBERING SENATOR ROBERT C. BYRD

Mrs. HUTCHISON. Madam President, I join my colleagues in paying tribute to our colleague Robert Byrd of West Virginia. He served his beautiful mountain State for a record-setting 57 years in Congress, including 51 years in this Chamber. He cast more rollcall votes and served in more leadership positions than any other Senator in U.S. history, including 12 years as his party's leader. He revered this body so much that he wrote four volumes on Senate history from 1789 to 1989. Over nine terms, he mastered parliamentary procedure in an effort to protect the Senate's rules and to defend the legislative branch's authority. He carried a copy of the Constitution in his pocket, and he peppered his speeches with frequent references to the intent of our Framers. When asked how many Presidents he had served under, he replied, ''None. I