In the final days of this process, I suggest we keep those words in mind. I hope my fellow Senators will bring to this debate the same appreciation for what is critical to the Court and to our country, that will keep it separate from what is not.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

MEASURE PLACED ON CALENDAR—H.R. 5901

Mr. LEAHY. Mr. President, I understand that H.R. 5901 is at the desk and due for a second reading.

The ACTING PRESIDENT pro tempore. Without objection, the clerk will read the title of the bill for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 5901) to amend the Internal Revenue Code of 1986 to exempt certain stock of real estate investment trusts from the tax on foreign investment in United States real property interests, and for other purposes.

Mr. LEAHY. I object to any further proceedings on this measure at this time.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

Mr. LEAHY. Mr. President, what is the order?

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont, Senator LEAHY, will control the first 30 minutes, and the Senator from Alabama, Senator SESSIONS, will control the second 30 minutes.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, more than 12 weeks ago, President Obama nominated Elena Kagan to succeed Justice John Paul Stevens as an Associate Justice of the Supreme Court of the United States. When the President announced his choice on May 10, he talked about her legal mind, her intellect, her record of achievement, her temperament and her fair-mindedness.

Having heard from Solicitor General Kagan at her confirmation hearing 5 weeks ago, I believe the American people have a sense of her impressive knowledge of the law, her good humor, and her judicial philosophy. In her testimony, she made clear that she will base her approach to deciding cases on the law and the Constitution, not on politics, not on an ideological agenda. She indicated that she will not be the kind of Justice who will substitute her personal preferences, and overrule the efforts of Congress to protect hard-working Americans pursuant to our constitutional role. Solicitor General Kagan made one pledge to those of us who were at that hearing: that she will do her ''best to consider every case impartially, modestly, with commitment to principle, and in accordance with law.''

Incidentally, I might say, at the outset, I compliment Republicans and Democrats alike for the amount of time Senators spent at the hearing. I certainly compliment the ranking member, Senator SESSIONS. We may have disagreed on the outcome and on the vote, but I think Senators worked very hard to get questions asked, to make sure that the American people knew who Elena Kagan was. I note that Senator SESSIONS and I set the times for witnesses and all. We were constrained somewhat by the distinguished Presiding Officer's predecessor, who died that week, and we were trying to arrange time for many of us to go to the funeral. I wanted to publicly thank Senator SESSIONS for his help in working out that schedule.

No one can question the intelligence or achievements of this woman. No one should question her character either. Elena Kagan was the first woman to be the Dean of the prestigious Harvard Law School and the first woman in our Nation's history to serve as Solicitor General, a position often referred to as the ''Tenth Justice.'' As a student, she excelled at Princeton, Oxford and Harvard Law School. She worked in private practice and briefly for then-Senator JOE BIDEN on the Judiciary Committee. She taught law at two of the Nation's most respected law schools, and counseled President Clinton on a wide variety of issues. She clerked for two leading judicial figures, Judge Abner Mikva on the Court of Appeals for the District of Columbia Circuit, and then for Supreme Court Justice Thurgood Marshall, on one of the most extraordinary lawyers in American history.

I have been here since the time of President Gerald Ford, and I have long urged Presidents from both political parties to look outside what they call the ''judicial monastery,'' and not feel restricted to considering only Federal appellate judges to fill vacancies on the Supreme Court. This, of course, is what Presidents used to do. With his second nomination to the Court, President Obama has done just this; he has gone outside the judicial monastery. When confirmed, Elena Kagan will be the first non-sitting judge to be confirmed to the Supreme Court in almost 40 years, since the appointments of Lewis Powell and William Rehnquist.

I know there was criticism by some Republicans that this nominee lacks judicial experience. Of course, that ignores one key fact. President Clinton nominated her to the DC Circuit Court in 1999. The Senate was controlled by Republicans at the time and it was Senate Republicans who refused to consider her nomination. She was pocket filibustered. Had the Republicans not done so, Elena Kagan would have been confirmed and would have had more than 10 years judicial experience. To give you some idea of her abilities, instead, when she was not allowed to have a vote for the DC Circuit Court, she went on to become an outstanding law professor, the first woman Dean of Harvard Law School—one of the most prestigious law schools in the country, actually the world—and the first woman to serve as the Solicitor General of the United States. Her nomination to the Supreme Court received the highest possible rating from the American Bar Association's Standing Committee on the Federal Judiciary. Her credentials and legal abilities have been extolled by many across the political spectrum. Two of these individuals were Justice Sandra Day O'Connor and Justice Antonin Scalia. In addition, Michael McConnell, Kenneth Starr and Miguel Estrada have given praise to this nomination. Like Justices Hugo Black, Robert Jackson, Earl Warren, William Rehnquist and so many others, Solicitor General Kagan's experience outside the judicial monastery will be valuable to her when she is confirmed. No one can question the intelligence or achievements of this woman. I hope nobody would question her character either.

From the moment her nomination was announced, Solicitor General Kagan has spoken about the importance of upholding the rule of law and enabling all Americans to have a fair hearing. She said that ''law matters; because it keeps us safe, because it protects our most fundamental . . . freedoms; and because it is the foundation of our democracy.'' Like her, I believe the law does matter in people's lives. That is why I went to law school. That is why I practiced law and then became a prosecutor. That is why I ran for the Senate. I believe that the law matters in people's lives, because the Constitution is this amazing fabric of our Nation; it is our protection. She understands this, as did her mentor, Justice Thurgood Marshall.

In her contribution to the 1993 tribute to Justice Marshall by the Texas Law Review, Elena Kagan recalled how Justice Marshall's law clerks had tried to get him to rely on general notions of fairness, rather than a strict reading of the law, so they could allow an appeal to proceed on a discrimination claim. She wrote that the then 80-year-old Justice referred to his years trying civil rights cases and said: All you could hope for was that a court would not rule against you for illegitimate reasons. You could not expect that a court would bend the rules in your favor. That is the rule of law. Just as Sir Thomas More reminded his son-in-law in that famous passage from ''A Man for All Seasons,'' that the law is our protection, Justice Marshal reminded his law clerks that the existence of rules and the rule of law is the best protection for all, including the least powerful. Elena Kagan concluded, as I do, that Justice Marshall ''believed devoutly . . . in the rule of law.'' He was a man of the law in the highest sense. He understood the Constitution's promise of equality.

I was disappointed to see the manner in which his legacy was treated by some during the recent confirmation hearing, and to read that there are Republican Senators, currently serving, who recently said they would vote

against Thurgood Marshall's confirmation to the Supreme Court if he were up now. He was a giant, and I would hope that if he were here again, those Senators would reconsider whether they would vote for him.

With this nomination, Elena Kagan follows in the footsteps of Justice Marshall, who was also nominated to the Supreme Court from the position of Solicitor General. She broke a glass ceiling when she was appointed as the first woman to serve as Solicitor General of the United States and when she served as the first woman dean of the Harvard Law School. When the Supreme Court next convenes, for the first time in our history, I predict there will be three women serving together among the nine Justices.

The stakes at the Nation's highest court could not be higher. One need look no further than the Lilly Ledbetter case to understand the impact that each Supreme Court appointment has on the lives and freedoms of countless Americans. In the Ledbetter case, five Justices of the Supreme Court struck a severe blow to the rights of working families across our country. Congress acted to protect women and others against discrimination in the workplace more than 40 years ago, but we still struggle to ensure that all Americans—women and men—receive equal pay for equal work. It took a new Congress, joined by our new President, to reverse the activist conservative majority in the Supreme Court by passing the Lilly Ledbetter Act, striking down the immunity the Supreme Court had given to employers who discriminate against their employees and successfully hid their wrongdoing. The Ledbetter case said, in a decision I still find shocking, that they could pay men a higher rate than women for the same work. As long as they kept it hidden, it was OK.

Recently in the Citizens United case, just one vote on the Supreme Court determined that corporate money can drown out the voice of Americans in elections that decide the direction of our democracy. They said that if British Petroleum wanted to spend hundreds of millions of dollars to defeat people who want to tighten the controls on our offshore drilling, or want to tighten the kind of inspections required for offshore drilling, British Petroleum, according to the Supreme Court, could spend hundreds of millions of dollars to defeat these people.

I had hoped that Senate Republicans would join our effort to respond to the conservative activist majority of the Supreme Court, who wrongly decided to override its own precedent and 100 years of legal development in Citizens United. Unfortunately, last week they filibustered the DISCLOSE Act and gave their endorsement to unfettered corporate influence in American elections.

For all the talk about ''judicial modesty'' and ''judicial restraint,'' from the nominees of a Republican President at their confirmation hearings, we have seen a Supreme Court in the last 5 years that has been anything but modest and restrained. What we have seen all too often in these last years is the activist conservative members of the Supreme Court substituting their own judgment for that of the American people's elected representatives.

I have always championed judicial independence. I think it is important that judicial nominees understand that, as judges, they are not members of an administration—any administration, Democratic or Republican, but they are judicial officers. They should not be political partisans, but judges who uphold the Constitution and the rule of law for all Americans. That is what Justice Stevens did in Hamdan, which held the Bush administration's military tribunals unconstitutional, and what he tried to do in Citizens United. That is why intervention by an activist conservative majority in the 2000 Presidential election in Bush v. Gore was so jarring and wrong. Mr. Gore had gotten the majority of votes throughout the country, but there was just one vote on the Supreme Court that he didn't get—the one vote that decided the election. That one vote was given to President Bush.

During her confirmation hearings, Solicitor General Kagan reflected an understanding of the judicial role and the traditional view of deference to Congress and judicial precedent. This is the mainstream view and one once embraced by conservatives. She indicated she would not be the kind of Justice who would substitute her personal preferences and overrule congressional efforts designed to protect hard-working Americans pursuant to our constitutional role. In fact, it is precisely because of Solicitor General Kagan's independence that many Republicans have announced their opposition to her nomination. They oppose her not because she would be a judicial activist as they claim, but rather because she would not overrule Congress as much as they would like. They seem not to like the fact that she is genuinely committed to judicial restraint rather than furthering a conservative ideological agenda.

Some who oppose this nomination do so because they seek to make this nomination a continuation of the fight over health care. They seek to transform this policy dispute they lost in Congress into a constitutional one that goes against 100 years of law and Supreme Court precedents. They would turn back the clock by resurrecting long-discredited legal doctrines wisely rejected nearly a century ago. They oppose Solicitor General Kagan because she will not commit to a narrow and outmoded legal view that would undermine the constitutionality of health insurance reform.

Congress has enacted and the President has signed into law the landmark Patient Protection and Affordable Care Act. I believe Congress was right to do so in order to address our health care crisis and ensure that Americans who work hard their entire lives are not robbed of their family's security because health care is too expensive. We were right to make sure that hard-working Americans do not risk bankruptcy with every illness. Many Republican Senators disagreed, as is their right, and voted against the law. But many of those who opposed this law now seek to do in the courts what they could not do by obstruction in Congress. They are so adamant in seeking this result, that they would turn back the clock by resurrecting long-discredited legal doctrines wisely rejected a nearly a century ago.

In framing their opposition to health insurance reform as a constitutional attack, these critics would also undermine the constitutional basis of laws against child labor and those setting a minimum wage or the Social Security Act, Medicare, the Clean Water Act, the Clean Air Act, and the landmark Civil Rights Acts. All are constitutional because of Congress's authority to legislate pursuant to the core powers vested in Congress by article I, section 8 of the Constitution, including the general welfare clause, the commerce clause, and the necessary and proper clause. The radical consequences of a narrow-minded agenda would be to erode the Supreme Court's time-honored interpretation of these enumerated powers that give Congress the ability to promote the general welfare of the American people.

These critics wish to return to the conservative judicial activism of the early 1900s, a period known by reference to one of its most notorious cases, the 1905 Lochner decision in which the Supreme Court struck down a New York State law protecting the health of bakers by regulating the number of hours they could work.

During this period of unbridled conservative judicial activism, the Supreme Court substituted their own views of property for those of the elected branches in order to strike down nearly 200 laws, including laws outlawing child labor—something we take for granted today—and laws protecting Americans from sick chickens—something that created a huge health hazard. They envisioned their principal role as the defender of business's profits—profits they made with child labor—and the protector of unrestrained ability to perform contracts, however onerous or one-sided. The American people suffered. Their rights went unprotected. Congress was unable to provide assistance. That is not a time anyone should want to return to because it was based on artificial legal restraints that shackled the people's elected representatives in Congress.

Millions of Americans rely on Social Security, Medicare, unemployment benefits, minimum wage laws, and other programs to protect Americans in tough economic times. This radical conservative agenda is a threat to Federal disaster relief and environmental

regulations and even laws responding to the reckless and fraudulent behavior that wrecked our economy.

Progressive opponents of these artificial legal restraints ultimately succeeded, with the support of the American people, in establishing Social Security, minimum wage laws, and antidiscrimination laws to protect the American people. The programs of the New Deal that helped Americans through the Great Depression would be unconstitutional if radical conservative critics had their way. Radical conservatives who seek to again impose artificial legal restraints on Congress and the American people would abandon the New Deal programs of the 1930s such as social security and the Great Society programs of the 1960s such as Medicare to the detriment of the American people. These are the programs that for the last 75 years have helped the United States become a world leader, with the economic security of our citizens leading our economy to grow to lead the world.

Millions of Americans rely on Social Security, Medicare, unemployment benefits, minimum wage laws and other programs that protect American families in tough economic times such as these. This is no academic discussion. This radical conservative agenda is a threat to Federal disaster relief, environmental regulations, and even laws responding to the reckless and fraudulent behavior that wrecked the economy. America's great safety net for those in need would be left in tatters if this outmoded legal doctrine were to take root.

Ask our fellow Americans in the gulf, those who have lost their jobs in the recession and those who have lost their homes, whether the Court should adopt this radical view of the limits of Congress's power to help them. Ask them if they want to roll back the clock and overturn laws passed by Congress to protect hard-working Americans. The conservative agenda to restore the Lochner era would leave hard-working Americans without the protection their lifetimes of hard work have earned them.

The fact that Elena Kagan will not state that she shares the views of those who opposed helping hard-working Americans obtain access to affordable health care does not mean she is outside the mainstream—far from it. The fact that some Republican critics opposed health care reform does not make it unconstitutional.

The Constitution in fact provides a clear basis for Congress' authority to enact health care insurance reform. Our Constitution begins with a preamble that sets forth the purposes for which ''We the People of the United States'' ordained and established it. Among the purposes set forth by the Founders was that the Constitution was established to ''promote the general Welfare.'' It is hard to imagine an issue more fundamental to the general welfare of all Americans than their health. The authority and responsibility for taking actions to further this purpose is vested in Congress by article I of the Constitution. As I stated earlier, article I, section 8, sets forth several of the core powers of Congress, including the general welfare clause, the commerce clause and the necessary and proper clause. These clauses form the basis for Congress's power.

Any serious questions about congressional power to take comprehensive action to build and secure the social safety net have been settled over the past century. As noted by Tom Schaller, enforcing the individual mandate requirement by a tax penalty is far from unprecedented, despite the claims of critics. Individuals pay for Social Security and Medicare, for example, by payroll taxes collected under the Federal Insurance Contributions Act, FICA. These FICA payments are typically collected as deductions and noted on Americans' paychecks every month. Professor Schaller wrote:

> These are the two biggest government-sponsored insurance programs administered by the [Federal Government], and two of the largest line items in the federal budget. These paycheck deductions are not optional, and for all but the self-employed they are taken out immediately.

The individual mandate requirement in the Patient Protection and Affordable Care Act is hardly revolutionary when viewed against the background of Social Security and Medicare that have long required individual payments.

Congress has woven America's social safety net over the last threescore and 13 years, beginning before I was born. Congress's authority to use its judgment to promote the general welfare cannot now be in doubt. America and all Americans are the better for it. Growing old no longer means growing poor. Being older or poor no longer means being without medical care. These developments are all due in part to congressional action.

The Supreme Court settled the debate on the constitutionality of Social Security more than 70 years ago in three 1937 decisions. In one of those decisions, Helvering v. Davis, Justice Cardozo wrote that the discretion to determine whether a matter impacts the general welfare falls ''within the wide range of discretion permitted to the Congress.'' Turning then to the ''nation-wide calamity that began in 1929'' of unemployment spreading from state to state throughout the Nation, Justice Cardozo wrote of the Social Security Act: ''The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.'' In the Supreme Court's decision upholding the constitutionality of Social Security, Justice Benjamin Cardozo, one of our greatest jurists, explained that it is the people's elected representatives in Congress that consider the general welfare of the country and laws to secure it. He recognized that it was the people's wisdom as enacted through their representatives that was to be respected, not the personal preference of a small elite group of judges.

The Supreme Court reached its decisions upholding Social Security after the first Justice Roberts—Justice Owen Roberts—in the exercise of good judgment and judicial restraint began voting to uphold key New Deal legislation. He was not alone. It was Chief Justice Hughes who wrote the Supreme Court's opinion in West Coast Hotel v. Parrish upholding minimum wage requirements as reasonable regulation. The Supreme Court also upheld a Federal farm bankruptcy law, railroad labor legislation, and the Wagner Act on labor relations. In so doing, the Supreme Court abandoned its judicially created veto over congressional action with which it disagreed on policy grounds and rightfully deferred to Congress's constitutional authority.

The opponents of health care insurance reform are now opposing the nomination of Elena Kagan and now going to the extreme to attempt to call into question the constitutionality of America's established social safety net. They would turn back the clock to the hardships of the Great Depression, and thrust modern America back into the conditions of a Charles Dickens novel. That path should be rejected again now, just as it was when Americans confronted great economic challenges more than 70 years ago. To attempt to strike down principles that have been settled for nearly three-quarters of a century is wrong, damaging to the Nation, and would stand the Constitution on its head.

Due to Republican obstruction, it took an extraordinary majority of 60 Senators, not a simple majority of 51, for the Senate's will to be done. The fact that Senate Republicans disagree with the effort to help hardworking Americans obtain access to affordable health care does not make it unconstitutional. As Justice Cardozo wrote for the Supreme Court 73 years ago in upholding Social Security:

> [W]hether wisdom or unwisdom resides in the scheme of benefits set forth . . . it is not for us to say. The answer to such inquiries must come from Congress, not the courts.

Justice Cardozo understood the separation of powers enshrined in the Constitution and the powers entrusted by our Constitution to Congress. This is true judicial modesty reflecting the understanding of the respective roles of Congress and the courts. Surely when Congress acts to provide for the general welfare of all Americans it does so pursuant to its constitutional authority.

I believe that Congress was right when it decided that the lack of affordable health care and health insurance and the rising health care costs that

burden the American people are problems, ''plainly national in area and dimensions.'' Those were the words Justice Cardozo used to describe the widespread crisis of unemployment and insecurity during the Great Depression. I believe that it was right for Congress to determine that it is in the general welfare of the Nation to ensure that all Americans have access to affordable quality health care. Whether other Senators agree or disagree, I would hope that none would contend that we should turn back the clock to the Great Depression when conservative activist judges prevented Congress from exercising its powers, making its legislative determinations and helping the American people through tough economic times. Sadly, some are making precisely that argument and contend that this settled meaning of the Constitution should be upended.

The dark days of unbridled conservative judicial activism in which Congress's hands were tied from outlawing child labor and enacting a minimum wage and social security are long gone and better left behind. The Constitution, Supreme Court precedent, our history and the interests of the American people all stand on the side of Congress's authority to enact health care insurance reform legislation.

Under article I, section 8, Congress has the power ''to regulate Commerce . . . among the several States.'' Since at least the time of the Great Depression and the New Deal, Congress has been understood and acknowledged by the Supreme Court to have power pursuant to the commerce clause to regulate matters with a substantial effect on interstate commerce. That is consistent with Elena Kagan's testimony.

In Solicitor General Kagan's responses to questions about the commerce clause I heard an echo of Justice Cardozo's explanation for why Social Security is constitutional and of Justice Oliver Wendell Holmes's famous dissent in Lochner. In particular, I recall Solicitor General Kagan's response to a question from Senator COBURN that he later admitted was intended to get her to signal how she would decide a constitutional challenge to health care insurance reform. He asked Solicitor General Kagan what she thought of a hypothetical law requiring Americans to eat three vegetables a day. She went on to explain:

I think the question of whether it's a dumb law is different from . . . the question of whether it's constitutional, and . . . I think that courts would be wrong to strike down laws that they think . . . are senseless just because they're senseless.

The Supreme Court long ago upheld laws like the Fair Labor Standards Act against legal challenges, overruling its decision barring Congress from outlawing child labor and establishing basic working conditions such as a minimum wage. The days when women and children could not be protected are gone. The time when the public could not be protected from sick chickens infecting them are gone. The years when farmers could not be protected from market failures or natural disasters are gone. The era of conservative activist judges voiding regulation that did not guarantee profits to corporations should be gone. The reach of Congress's commerce clause authority has been long established and well-settled. Solicitor General Kagan's answer to Senator COBURN's question reflects not only this well-settled understanding, but also the understanding of the proper roles of each of the branches that was restored when the Supreme Court rejected the misguided conservative activism of the Lochner era.

Since the great Chief Justice Marshall's interpretation of the commerce clause in 1824, Congress has been understood and acknowledged by the Supreme Court to have the power ''to prescribe rules'' to govern commerce that ''concerns more than one State.'' It was this same understanding that Justice Cardozo followed in upholding the Social Security Act and that Justice Felix Frankfurter later praised as Chief Justice Marshall's extraordinary achievement of capturing, for all time, the essential meaning of the commerce clause. Pursuant to this understanding of its power under the commerce clause, Congress enacted not only Federal disaster relief from the 18th century but also the 1964 Civil Rights Act prohibiting racial discrimination by public accommodations and the landmark Clean Air and Clean Water Acts, both of which President Nixon signed into law. Would conservative activists now argue that these acts, the Civil Rights Act, the Clean Air Act and the Clean Water Act, should suddenly be declared unconstitutional as beyond Congress's power?

Even recent decisions by a Supreme Court dominated by Republican-appointed justices have affirmed this rule of law. In 2005, the Supreme Court ruled in Gonzales v. Raich that Congress had the power under the commerce clause to prohibit the use of medical marijuana. This was upheld even though the marijuana was grown and consumed at home. It was upheld on the same rationale as Wickard v. Filburn in 1942, because of its impact on the national market for marijuana. Yet Republican Senators and conservative ideologues contend that Wickard should be discarded. Would they also demand that Federal laws against drugs be declared unconstitutional?

Justice Anthony Kennedy and Justice Sandra O'Connor, both conservative Justices appointed by Republican Presidents, astutely noted in their 1995 concurrence in United States v. Lopez:

[T]the Court as an institution and the legal system as a whole have an immense stake in the stability of our Commerce Clause jurisprudence as it has evolved to this point. [That] fundamental restraint on our power forecloses us from reverting to an understanding of commerce that would serve only an 18th-century economy . . . and mandates against returning to the time when congressional authority to regulate undoubted commercial activities was limited by a judicial determination that those matters had an insufficient connection to an interstate system.

They are right as a matter of law and right when it comes to the interests of the American people.

The Constitution also provides in article I, section 8, that Congress has the power ''to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by his Constitution in the United States.'' The Supreme Court settled the meaning of the necessary and proper clause almost 200 years ago in Justice Marshall's landmark decision for the Supreme Court in McCullough v. Maryland, during the dispute over the National Bank. Justice Marshall wrote that ''the clause is placed among the powers of Congress, not among the limitations on those powers.''

He continued:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

He concluded by declaring, in accordance with a proper understanding of the necessary and proper clause, that Congress should not be deprived ''of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to human affairs'' by judicial fiat. Chief Justice Marshall understood the Constitution, knew its text and knew the Framers. He rejected the constraints on Congress that conservative activists now propose in order to empower conservative judicial activism.

The necessary and proper clause goes hand in hand with the commerce clause to ensure congressional authority to regulate activity with economic impact. Just this year the Supreme Court upheld provisions of the Adam Walsh Child Protection and Safety Act, a law we passed to allow for the civil commitment of sexually dangerous Federal prisoners, which was based on the commerce clause and the necessary and proper clause of the Constitution. As Justice Breyer wrote for seven Justices, including Chief Justice Roberts:

[T]he Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are ''convenient, or useful'' or ''conducive'' to the authority's ''beneficial exercise.''

Congress passes laws like the Adam Walsh Act every year to protect the American people. Would those who want to redraft and limit the Constitution really want to declare the Adam Walsh Act and its provisions against pedophiles unconstitutional?

Solicitor General Kagan's testimony shows that she both understands and recognizes, in accordance with the longstanding judgments of both Congress and the Supreme Court, that Congress's power to legislate under the commerce clause power and the necessary and proper clause is broad but

not unlimited. Indeed, she agreed with the Senator from Texas that the Supreme Court's decisions in Lopez and Morrison limit Congress's power to legislate ''when the activity that's being regulated is not itself economic in nature and is activity that's traditionally been regulated by the States.'' But, she noted that ''to the extent that Congress regulates the channels of commerce, the instrumentalities of commerce, and . . . things that substantially affect interstate commerce, there the Court has given Congress broad discretion.'' She is right as a matter of law. The American people are able to act through their elected representatives in Congress to secure the blessings of liberty because of this meaning of our Constitution.

Through Social Security, Medicare, and Medicaid, Congress established some of the cornerstones of American economic security. And comprehensive health insurance reform has now joined them. Congress has acted within its constitutional authority to legislate for the general welfare of all Americans, whether they are from Vermont or West Virginia or Alabama or anywhere else. No conservative activist court should overstep the judiciary's role by seeking to turn back the clock and deny a century of progress.

Those who would corrupt the Constitution by trying to revive the Lochner era are intent on a results-oriented litmus test. This litmus test would lead them now not just to vote against this nomination and the confirmation of Justice Thurgood Marshall as they have said, but also against Senate confirmation of Justice Sandra Day O'Connor, Justice David Souter, Justice John Paul Stevens, and Justice Anthony Kennedy—four Justices appointed by conservative Republican Presidents, all nominations I voted to confirm.

It is interesting. I was here when John Paul Stevens' nomination came up. He was seen as a conservative from Illinois. He was nominated by a conservative President, Gerald Ford. He nominated him, and 2½ weeks later, the Senate, which was overwhelmingly Democratic, voted unanimously to confirm Justice John Paul Stevens. I have not always agreed with every decision of his, but, boy, I have agreed with my vote for his confirmation.

With this litmus test I mentioned, it is not just Chief Justice Earl Warren, and Justice William Brennan and Justice Thurgood Marshall whose jurisprudence they are rejecting. Using these results-oriented litmus tests would require us to reject the vast majority of Justices who have served honorably on the U.S. Supreme Court, including Justice Benjamin Cardozo, Justice Oliver Wendell Holmes, Jr., Justice Harlan Fiske Stone, and Justice Charles Evans Hughes. I assume they would, as well, reject the greatest judge not to have been appointed to the Supreme Court, the Second Circuit's Judge Learned Hand, because he had been an outspoken critic of the so-called economic due process doctrine that allowed activist conservatives to substitute their views for those of Congress. Indeed, if they were to be consistent, they would have to rethink their support for the current Chief Justice, John Roberts, who testified at his confirmation hearing that during the Lochner era, when the Supreme Court was striking down economic regulations in the late 1800s to the early 1930s, to quote John Roberts, ''it's quite clear that they [were] not interpreting the law, they [were] making the law.'' I agree with him. I will say parenthetically that I wish he had stayed consistent to that principle since he became Chief Justice. The demand by critics that Solicitor General Kagan adhere to legal views that would put her at odds with so many great Justices as the price of their vote is a strong reminder of how far many are seeking to stray from basic constitutional principles and traditions.

We do not need judges or Justices to pass a litmus test from either the right or the left. In fact, I have urged Senators—they have heard me say this many times—do not listen to the single issue or special issue groups on either the right or the left when it comes to the Supreme Court. We have 300 million Americans in this great country. Most of the Justices we vote on will be here long after any one of us leaves this Chamber. There are only 100 Americans who actually get to vote on them. There are actually 101 people who are involved in this choice—first, the President, who nominates the person, but he cannot appoint the person unless we advise and consent. So we have 101 people with this awesome duty to pick somebody and to vote on somebody who is going to be there to protect the justice and the rights of all 300 million Americans. It is an awesome responsibility.

I tell groups of either the right or the left—and I have heard from many of them over the years on all these nominees on whom I voted—I am going to make up my own mind. I am going to bring my own Vermont principles, my own sense of Vermont fairness, my own experience, my own judgment to bear, and then I will make up my mind. I urge all Senators to do that. Ignore the special interest groups on the right or the left. Make up your own mind.

As I said, we do not need judges or Justices who would pass a litmus test from the right or the left. We need judges and Justices who will respect the laws as passed by Congress and appreciate that adherence to precedence is a foundation of public confidence in our courts.

(Mrs. SHAHEEN assumed the chair.)

Mr. LEAHY. It is important that we restore public confidence in our courts. They do protect our rights. They do protect the Constitution. But we have to make sure we respect what they do. We need judges and Justices who will fairly apply the law and use common sense, Justices and judges who appreciate the proper role of the courts in our democracy and make decisions in light of the fundamental purposes of the law. This is the standard I applied when reviewing this nomination. It is the same standard I applied to every Supreme Court nomination, including six Justices nominated by Republican Presidents for whom I have voted. It is a standard I believe Solicitor General Kagan has met.

Solicitor General Kagan not only has the necessary qualifications to be a Supreme Court Justice but has also demonstrated her respect for the rule of law, her appreciation for the separation of powers, and understands the meaning of our Constitution. Some may not want our country to move forward, to make progress, to move toward a more perfect union. But the issue squarely before this body is whether Solicitor General Kagan has the necessary qualifications, respect for the rule of law, and judicial independence to be confirmed by the Senate to serve on our Nation's highest court. I believe she does. This Vermonter will vote for Elena Kagan to be a Supreme Court Justice, and I will do it proudly.

Madam President—the Chair having changed during this speech, first presided over by the distinguished Senator from West Virginia, and now my distinguished neighbor, the State of New Hampshire—the distinguished Senator from New Hampshire presides. With that, I will close.

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. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Madam President, I see the distinguished Senator from Alabama on the floor. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I appreciate Chairman LEAHY. He is a strong and effective leader of our committee. We agree a lot of times. I try to work with him, and sometimes we disagree. One thing we will soon be doing that I look forward to very much is going to the White House—maybe in 30 minutes or so—to participate in the signing of a bill to eliminate the vast disparity between crack and powder cocaine sentences. The sentencing mechanism under the guidelines I think was unfair and needed to be corrected. I have been working on that issue for some time, and so has Chairman LEAHY. We certainly agree on a lot of issues and get some things done, but we do not agree on this nomination.

The office of Justice of the U.S. Supreme Court is one of the most important positions in our National Government. Justices are granted a degree of

independence unequaled anywhere in the United States. Justices hold lifetime terms, subject only to impeachment, and Congress may not even reduce their pay. Why did the Founders take such a step? They wanted our courts to be impartial, doing justice to the poor and the rich under the Constitution and laws of the United States, as their oath says, and they did not want them subject to political or other pressures that might affect their objectivity. They wanted judges who could do the right thing year after year, day after day.

Presidents get to nominate, but the Senate must confirm. This advise-and-consent power the Constitution gives is a confirmation process; it is not a coronation. Here, five Justices on the Supreme Court can hold—and four of them recently voted to, not the five necessary to render a majority opinion—that a company cannot publish a book or a pamphlet that criticizes a politician before an election. Five justices can hold that the government can allow States and cities to deny Americans the personal right to keep and bear arms, a right clearly stated in the Constitution.

The American people have no direct control over these Justices. All they have and what they have a right to expect is that our Justices exercise self-control year after year, decade after decade. If this young nominee, Elena Kagan, were to serve to the age of the individual she seeks to replace, she would serve 38 years on the Supreme Court.

Well, I am not able to support Elena Kagan for this office. I believe she does not have the gifts and the qualities of mind or temperament one must have to be a Justice. Worse still, she possesses a judicial philosophy that does not properly value discipline, restraint, and rigorous intellectual honesty. Instead, she seems to admire the view, and has as her judicial heroes, judges who favor expansive readings of what they call the living Constitution; whereby, judges seek—and in President Obama's words, who certainly shares this view—to advance ''a broader vision of what America should be.''

Well, I don't believe that is a responsibility or a power given to judges—to advance visions of what America should be. Whose vision is it they would advance, I would ask. It would be the judge's vision. But they weren't appointed for that purpose. They were appointed to adjudicate cases.

President Obama's judicial philosophy, I think, is flawed, and I certainly think Ms. Kagan shares his philosophy. The President basically said so when he appointed her. Her friends say it is so. Her critics say so. Her record of public action says so, and the style and manner of her testimony at the hearing evidenced such an approach to judging. I don't think it is a secret. I think this is pretty well known, that this is not a nominee committed to restraint or objectivity but one who believes in the power of judges to expand and advance the law and visions of what the judge may think is best for America.

Ms. Kagan has been described as collegial, engaging, a consensus builder. These are fine qualities in many circumstances, and I am sure she possesses them. She seems to. But as to personal discipline, clarity of mind, the ability to come quickly to the heart of a matter, objectivity or impartiality, and scrupulous intellectual honesty—characteristics essential for a judge—not so much has been said. Perhaps this is so because many liberal activists in America have lost faith in the idea of objectivity, which means they have lost faith in the reality of objective truth, the finding of which—the finding of truth—has been the goal, the central focus of the American legal system since its creation.

Our modern law school minds and some false intellectuals far removed from real trials—and I have had the honor and privilege to have spent 15 years trying cases before Federal judges and so I have a sense of this, I truly believe—are removed from these trials and from the necessity of rules for civil order. They think, many of them do—these professors and theoreticians—that laws are just tools for the powerful to control the powerless and that words can't have fixed meanings. Things change. We can't consult 16th century dictionaries to find out what the Founding Fathers meant when they wrote our Constitution. Indeed, Justice Sotomayor recently confirmed this when she quoted, with approval, the line: ''There is no objectivity, just a series of perspectives.''

Americans are sick of political spin by politicians, and they do not want it from judges. They reject judges who rely on their empathy, as the President said a judge must have and that is what he looks for in a judge. The American people don't believe judges should rely on their empathy to decide legal cases or seek to advance their vision of what America should be. They know Justices are not above the law. They know Justices should be neutral umpires, not taking sides in the game. Above all, they know judges—especially Supreme Court Justices—should not legislate from the bench.

I do not desire that the Supreme Court advance my political views. It is enough, day after day, that the Court follows the law deciding cases honestly. No more should ever be asked of them. I might not agree one day with this case or that one, but we have a right to expect those judges would be objective and not promote agendas. A recent commentator once said: ''We liberals have gotten to the point where we want the court to do for us that which we can no longer win at the ballot box.''

Well, this nominee, I think, in my honest evaluation, comes from that mold. Yes, she is young, but her philosophy is not. It is an old, bankrupt judicial activism—a philosophy the American people correctly reject. In her writings, her judicial heroes, her extensive political activities, her actions at Harvard to unlawfully restrict the military, her hostility to congressional actions against terrorism in a letter she wrote, her efforts to block restrictions on partial-birth abortion while in the Clinton White House, her arguments before the Supreme Court last year that Congress can ban pamphlets criticizing politicians and, perhaps the most disturbing to me as someone who spent 15 years in the Department of Justice, her actions as Solicitor General of the United States, whereby she failed to defend the don't ask, don't tell congressional law—not military policy, a law she had openly, deeply opposed but promised to vigorously defend were she to be confirmed as Solicitor General—leave no doubt what kind of judge she would be: an activist, liberal, progressive, politically minded judge who will not be happy simply to decide cases but will seek to advance her causes under the guise of judging.

In addition, her defense of these positions at her hearings, her testimony, in my opinion, lacked clarity, accuracy, and the kind of intellectual honesty you look for in someone who would sit on such a high and important Court. Indeed, her testimony was curious. She failed to convey to the committee, in my opinion, a recognition of the gravity of the issues with which she had been dealing and the nature of her role in dealing with some of these issues that she was involved with in her career. She seemed to suggest that things happened around her and she did all things right and no one should get upset about it.

Some of these concerns, I think, could have been overcome, had we seen the superb quality of testimony at her hearing as given by that of Justices Roberts and Alito at their hearings. But, alas, that we did not see, not even close. Glib, at times humorous, conversant on many issues but not impressive on any in a more serious way, in my view. Based on so little serious legal practice—only 2 years, right out of law school in a law firm and 14 months as Solicitor General—this perhaps should not be surprising. The power of the testimony of Roberts and Alito did not spring fully formed from their minds either, though both seemed to be naturally gifted in the skills needed for superior judges, and I fear Elena Kagan is not so blessed.

While she is truly intelligent, the exceptional qualities of her mind may be better suited to dealing with students and unruly faculty than with the daily hard work of deciding tough cases before the Supreme Court. But Roberts and Alito, on the other hand, were steeped in the law over many years as lawyers and judges. That is who they were. That is their skill. That was their craft. That was their business. They understood it. It showed. Ms. Kagan did not show that. I believe that

lack of experience was part of the reason her testimony was unconvincing.

I think a real lawyer or experienced judge who had seen the courtroom and the practice of law would not have tried, as she did, to float their way through the hearing in the manner she did. Her testimony failed to evidence an understanding of the gravity of the issues with which she was dealing and the important nature of her role in them. She seemed to suggest these events just happened around her, none of which was her responsibility. Several times in the course of her testimony she inaccurately described the circumstances and the nature of the matters in which she had been engaged, to a significant degree. Her testimony was more consistent with the spin the White House was putting out than the truth. I was surprised and disappointed that she was not more candid and did not, through accurate testimony, dispel some of the false spin that had been put out in her favor.

So now we are at the beginning of the discussion of the Kagan nomination. While I have been firm in my criticisms of the nominee, I have given considerable thought to the criticism that I have made and tried not to be inaccurate in them. I believe they are correct. But if I am in error, I will be pleased to admit and correct that error. No nominee should have their record unfairly sullied in this great Senate. That would be wrong. I, therefore, ask and challenge the supporters of the nominee to point out any errors in my remarks as we go forth so we can, above all, get the facts straight.

The matters I will set forth today and later are serious. There is disagreement, I believe, between what the record, the facts, and the testimony show and the White House spin and even the Kagan spin—and I use that word carefully. So let us, therefore, begin this debate in all seriousness. Let us get to the bottom of these matters. There is a truth. We can ascertain what happened. Let us find out what happened in these matters. Let us get to the bottom of it.

Some raise the question of how many Republicans will vote for the nominee. Another question to ask is: How many Democrats will vote against the nominee? I call on every Senator to study the record and make an informed and independent decision. We are not lemmings. We have a constitutional duty to make an independent decision. So I urge my Democratic colleagues to not just be a rubberstamp, to not allow political pressures to influence your decisions but conduct an independent and fair analysis of the nominee. I believe if Senators strongly advocate and believe judges should follow the law, not make it; that they should serve under the Constitution and not above it; that they should be impartial and objective—if Senators believe in that—they should have very serious trouble with this nomination.

At this moment I am going to briefly mention a few of the serious concerns that were raised in the committee. I will in greater detail go through each of them in the next several days. I am sure other Senators will talk about them also. I will attempt to do so honestly and fairly, and at the end I will be listening to see if somehow I have misjudged the nominee on these matters and whether I should change my views. But I am very serious when I say the actions of this nominee over the entirety of her career indicate an approach to judging that is inconsistent with the classic American view of a judge as one who shows restraint, who follows the law, who adjudicates the matters before the court, and who is objective and fair.

One of the more serious issues that has been discussed quite a bit is the nominee's handling of the U.S. military while she was dean at Harvard. She reversed Harvard's policy and banned the military from the campus recruiting office. During that period of time a protest against the military was held. She spoke to that protest crowd while in the building next door a military recruiter was attempting to recruit Harvard students for the U.S. military.

She participated in the writing of a brief to oppose the don't ask, don't tell policy which she deeply opposed.

The U.S. military did not have a policy called don't ask, don't tell. That was a law passed by the U.S. Congress and signed by President Clinton. It was the law of the land and it was not their choice. They followed, saluted, and did their duty. Yet Ms. Kagan barred them from the campus at Harvard. On four different occasions this Congress passed laws to try to ensure that our military men and women, during a time of two wars, were not discriminated against on college campuses in this country. One of them was a few months before, finally, it was written in a way they could not figure out a way to get around it. That was shortly before she barred them from the campus, subjecting Harvard to loss of Federal funds, which resulted in the military, when they finally realized that she had reversed this policy and found out they had been stonewalled and the front door of the university had been closed to them, appealed to the president of Harvard University and he reversed her position. It was not justified. It was wrong. It should not have been done.

She did not seem to complain about the policy when she worked for President Clinton, who signed the law. But she punished the men and women who were prepared to serve and defend our country, and Harvard's freedom to carry on whatever these silly activities they want to carry on. So this is not a little bitty matter.

When she was nominated for Solicitor General, this was raised and she was asked what if this don't ask, don't tell law is challenged in the Court? We know you oppose it. We know you have steadfastly opposed it. Will you defend it? It is the law of the land. You will be Solicitor General. You represent the U.S. Government before the Supreme Court. Will you defend it?

She flat out said that she would defend the laws passed by Congress and specifically promised to defend don't ask, don't tell. This is a matter of some importance. I asked her about it, gave her opportunity to respond. She took 10 minutes—I did not interrupt her—with her explanation of why she did not assert an appeal to the Ninth Circuit ruling that seriously undermined don't ask, don't tell, because we know President Obama opposes it and we know she opposed it. We know the ACLU opposed it. They were the litigants in this case. She met with the ACLU.

The ACLU did not want the Ninth Circuit case to go up to the Supreme Court. Why? The reason is they expected the Supreme Court would affirm the law. So what did Elena Kagan do? Did she vigorously defend the law? Did she take the opportunity to take this case to the Supreme Court and seek its affirmation by the Supreme Court? No, she allowed the case to be sent back—without appealing it—to a lower court to go through a long, prolonged process of discovery and trial that is disconnected to the plain fact of the legality of the policy. She did not properly defend the laws of the United States and she did not defend the law in this matter.

The Solicitor General has that duty whether they like the law or not. Congressional actions, when challenged, should be defended, particularly one so easily defended, in my opinion, as this one. I believe that is a serious matter, so serious that if my analysis is correct, that she failed to defend that action after explicitly having promised to do so, then this is disqualifying in itself. She would have allowed her personal views, political pressures from perhaps her appointing officer, President Obama, to influence her decision in a way that went against her duty as Solicitor General. We are going to talk about that in great detail as we go along.

As Solicitor General in the 14 months that she was there, she approved a filing of a brief calling on the Supreme Court to review and overturn a ruling by the Ninth Circuit Court of Appeals that had affirmed an Arizona law that said Arizona businesses that failed to use E-Verify or otherwise hire people who are illegally in the country would lose their business license. There is a Federal statute that explicitly says States can revoke licenses of businesses that violate our immigration laws.

This is quite a bit stronger case than the other Arizona case that I think is improvidently being challenged, also by the Obama Department of Justice. But she approved this and again the trial court had ruled the law was good. The Ninth Circuit, the most liberal activist circuit in the country, approved

it unanimously, and now it is before the Supreme Court and now she asked that the Supreme Court take it and reverse that.

I think this was bad judgment legally, and I believe it is another example of her personal policy views influencing the decisions she made as a government official—not the kind of thing you want in a Supreme Court Justice.

Then there was the time she was in the Clinton White House and became involved in the great debate we had in the Senate, that went on for a period of years, over the partial-birth abortion issue, where unborn babies are partially removed from the mother and there are techniques used to remove the child's brain. It is a horrible procedure. The physicians group, the American College of Obstetricians and Gynecologists, ACOG, had issued a finding that there was never any medical necessity for this horrible procedure that Senator Daniel Patrick Moynihan referred to as so terribly close to infanticide.

President Clinton apparently was prepared to support a ban on this procedure. But Ms. Kagan, as a member of his staff, advised that it might be unconstitutional. In her notes from her time at the Clinton White House, she said the groups, that is, the pro-abortion groups—the groups will go crazy. She even got ACOG to issue a new statement and was able to influence President Clinton to oppose the legislation. Six or 8 years went by before we finally passed a law banning the procedure.

When I raised this at her hearing, she tried to make it seem like she had nothing much to do with it, like she just happened to be in the White House. She said, ''at all times trying to ensure that President Clinton's views and objectives were carried forward.'' That is all I was doing.

She was asked about that: If that was your view, say so.

Well, I was just doing whatever the President wanted me to do.

I do not think that was an accurate analysis of it. Sometime after it became clear that ACOG had reversed its position—it caused quite a bit of national controversy. She was right at the center of that, contacting the leaders of ACOG and prompting them to change the wording of their statement without talking to the professionals on the committee that had issued the original analysis. There was never any need for this kind of procedure to take place. This was concerning to a lot of members of the committee. Her testimony is relevant to that.

With regard to the second amendment, she used the same language in her testimony to give the impression that she understood that the Heller and the McDonald cases, recently out of Chicago, were settled law and implied that if she were on the Court, she would vote to uphold the right to keep and bear arms, which is plainly in the Constitution. I went back and asked her again. Settled law became mere precedent. That precedent is the 5-to-4 decision in two cases, Heller and McDonald, where by one vote the Supreme Court is upholding the right to keep and bear arms. If one vote were to switch, the Court could rule 5 to 4 that any city and any State in America could ban completely the right to keep and bear arms, violating what I would say are the plain words of the Constitution. Her actions, both as a law clerk and in the Clinton White House, indicate she has a hostile view to gun ownership. She grew up on the upper west side of New York. It is pretty clear she is one of a group who sees the NRA as a bad group and does not believe in gun ownership as a constitutional right. This is a serious matter because it is such a narrowly decided Court.

Who is this nominee? We will learn more about it as the days go by. I believe her actions, her background, and her approach to judging is unhealthy. It is not the kind of thing we need on the Supreme Court. It evidences a tendency to promote her political agenda rather than being objective. Who is she? Vice President BIDEN's chief of staff, Ron Klain, a lawyer with whom she worked closely in the Clinton administration and a longtime friend, said of her not long ago:

> Elena is clearly a legal progressive . . . I think Elena is someone who comes from the progressive side of the spectrum. She clerked for judge Mikva

A renowned Federal activist judge—

clerked for Justice Marshall—

One of the most activist Justices on the Supreme Court—

worked in the Clinton administration, worked in the Obama administration. I don't think there's any mystery to the fact that she is, as I said, more of the progressive role than not.

What does that mean, a legal progressive? In the early 20th century, progressives thought that intellectuals and the elites in this country knew more than the great unwashed, and they were seeking to advance political agendas that went beyond what a lot of people thought was appropriate and constitutional. The progressives saw the Constitution as an impediment, not as a protector of our liberties, of our freedom, of our prosperity, of our property. They saw it as an impediment to getting done what they would like to do. It is a dangerous philosophy.

Ultimately, all our liberties depend on faithful adherence to the Constitution—the free speech, free press, the right to a trial by jury. All those things that are so important to our rights are in that document.

This nominee is indeed of that background. She is not sufficiently respectful of the plain words of the Constitution. She will be the kind of activist judge who seeks to advance her vision of what America should be. That is not an appropriate approach for a Justice on the Supreme Court to take. That is why I will be opposing the nomination.

I suggest the absence of a quorum and ask unanimous consent that time under the quorum call be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. I will proceed on leader time.

RECOGNITION OF THE MINORITY LEADER

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

The minority leader is recognized.

FMAP

Madam President, the American people are getting a good reminder this week of why they have lost faith in Washington Democrats. Not only is one of the last things Democrats plan to vote on here before the August recess another bailout, it is also just the kind of bloated, slapdash affair Americans have come to expect and to loathe from Democrats in Washington. Basically what we are seeing here this week is the final act in Washington's guide for responding to a recession.

On Thursday they threw together a bill without even knowing how much it would cost the taxpayers, expecting us to vote on it yesterday. When they found out last night it cost more than they thought it would, they threw another bill together and expect us to vote on that one tomorrow—just before Senators head out of town. This is precisely the kind of rushed and reckless approach to lawmaking that has most Americans thinking congressional Democrats can't go on their August recess fast enough. If it means one less bailout cobbled together without regard for details or its impact on the taxpayers or its impact on the debt, taxpayers would probably be glad to help book Democrats' plane tickets out of here.

Americans are fed up. They have had enough. The trillion-dollar stimulus bill was supposed to be timely, targeted and temporary. Yet here we are, a year and a half later, and they are already coming back for more. The $100 billion they got for State education budgets the first time wasn't enough, even though more than a third of the original $100 billion hasn't even been spent yet, and none of the extra money they are asking for will necessarily be used to save teachers' jobs. The purpose of this bill is clear: it is to create a permanent need for future State bailouts, at a time when we can least afford it.

Same goes for health care spending. The original stimulus included about $90 billion in additional Federal Medicaid spending. That too was supposed to be temporary. Yet here we are, a year and a half later, and they want more.

So, as I said, the purpose of this bill is clear. It is a last-minute effort by