

the whole idea of a constitutional standard is out the window, if we have judges today who are making decisions by picking and choosing the precedent that agrees with their opinion rather than basing their decisions on true constitutional standards.

I oppose Ms. Kagan's nomination because she, in my opinion, does not believe in constitutional limited government. She does not believe in the original intent of the Constitution but more of President Obama's belief of a more living Constitution. As President Obama said before he was elected, he sees the Constitution as a document of negative liberties because it tells the government what it cannot do. But it does not tell us what we have to do.

It was never supposed to tell us what we have to do. But the progressives in power in Washington and many of our judges believe they need, through court rulings, to change that Constitution. What has resulted in that is the government controlling more and more of our lives, spending and borrowing money we do not have, and bringing our country to the brink of economic disaster.

We cannot afford more "yes, we can" judges in our country. We can cannot afford more "yes, we can" Senators or Congressmen. And we certainly cannot afford another "yes, we can" President. The decisions that have been made about our economy over the last couple of years have brought our economy to its knees. This is no longer something we can blame on President Bush. In fact, the Democrats have been in control of policymaking, economic policy spending for 4 years now. This is not Bush's recession. This is the result of Democratic economic policies.

This nomination will continue our move in the wrong direction because it will put another person on the Court who does not see their role as limiting what we can do in Congress, and this Congress desperately needs a Supreme Court that tells Congress no when we step outside the bounds of the Constitution.

Mr. President, I believe America is looking at Congress closer than they ever have before. They expect us to make the hard decisions, to stop the spending, to stop the waste, to stop the borrowing, to stop the debt, to stop the government takeovers, and to stop our courts from taking our freedoms away. That is why I am opposing Ms. Kagan to be a Supreme Court Justice, and I encourage my colleagues to consider their vote and to vote no.

Mr. President, I yield back.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. Mr. President, we are not in a quorum call at this time. I am told there is a brief pause. I ask unanimous consent that I be allowed to speak as in morning business for 5 minutes.

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

COORDINATION OF WIND AND FLOOD PERILS ACT

Mr. WICKER. Mr. President, during this brief pause in the debate on the Supreme Court nominee, I rise to call to the attention of Senate Members my introduction of S. 3672, the Coordination of Wind and Flood Perils Act of 2010.

This month is, of course, the fifth anniversary of Hurricane Katrina. We are still rebuilding on the coast, and we are still rebuilding in many areas of the gulf, in the South, as depicted on this map.

Two weeks ago, I attended the opening of a municipal complex and library in the historic town of Pass Christian. The fact that we are just getting the money and just getting this library and city all rebuilt after 5 years is testimony to the extent of the destruction and the difficulty of funding projects like that. This is true in the public sector, and it is also true in the private sector.

But one of the greatest impediments to rebuilding, and one of the main reasons Katrina is still not over for the people of Mississippi and other areas of the gulf is the lack of affordable insurance. This is true in Mississippi, and it is also true from Texas all the way through the gulf, south, down to the tip of Florida, and on up through the New England coastal States. Anywhere there is coastal exposure there is a problem with affordability and availability of insurance.

I have had quite a number of visits to the coast in recent weeks, particularly in the last 100 days because of the oil spill. The recovery there is going to be a challenge.

There will be speeches later on this month commemorating the anniversary and discussing the heroism and the resilience and the determination of the people of the coast. All of this will be appreciated and necessary, but the truth is one of the best things that could be done for the gulf coast area—not just my State of Mississippi but in the entire area—is to resolve the issue of wind insurance versus flood insurance, and that is what S. 3672 is all about: coordinating the coverage between wind and flood perils coverage.

Of course, for people in this area, for people in my State of Mississippi, you need hazard insurance, you need fire insurance, as does everyone, you need wind insurance, and you need flood insurance. Back in 1968, that was the year of Hurricane Camille. It also was the year it became apparent to this Congress that something needed to be done at the Federal level to cover water damage. Hence, the National Flood Insurance Program was established in 1968. Since that time, Americans have been able to get flood insurance through the NFIP. Actually, in 1973, this Congress in its wisdom made such coverage mandatory for people mortgaging property in flood zones.

Let's fast forward to 2005, the year of Hurricane Katrina. Many victims who needed it didn't have flood insurance.

One of the reasons they didn't have flood insurance is that the flood zone maps were wrong. I hope to a large extent this has been corrected. It is supposed to have been corrected now, and people in flood zones who have mortgages are required to have it. Oftentimes they cancel those policies, and that is something we need to attend to also, but that insurance is available.

The problem is wind insurance. The private insurance coverage for wind damage has pretty much left the coastal areas of many of our States in the eastern part of the United States. So we have this situation now where a homeowner needs flood insurance through the National Flood Insurance Program. They need their own hazard insurance that they get through their local broker. Then, they probably have to resort to the State wind pool, a State program, because private wind insurance is not available to them.

Another problem we had in 2005 after Katrina is that many homeowners found themselves caught in the middle between the issue of whether it was water damage in connection with the hurricane that caused their property loss or whether it was flood damage in connection with the hurricane that caused the loss. After hurricanes such as Katrina, if a homeowner has wind and flood insurance, the homeowner often has to prove in court whether it was wind or water that caused the damage. This is unacceptable. Let me emphasize this: Individuals who had all the appropriate insurance—wind and water—were, in many instances, caught in the middle and forced to go to court to watch the insurance carriers fight among themselves. My legislation would remove the burden of determining flood or wind loss allocation from the property owner and put it where it belongs—a decision to be made between the insurers.

If my bill becomes law, insurance companies, including State-run wind pools and the National Flood Insurance Program, would have to pay a claim as soon as possible after the hurricane. If there is a dispute, each would pay 50 percent. The homeowner would be paid for the loss while the parties responsible for paying the claim would work out the details.

My legislation—and again, it is S. 3672, the Coordination of Wind and Flood Perils Act of 2010—would prevent homeowners from having to go to court to determine what portion of the damages were caused by wind and what portion by water. This should not be part of the duties of the homeowner. Under my legislation, if there is a dispute between the parties responsible for paying the claim, the insured would be compensated immediately and the dispute between the insurers would be resolved by arbitration.

This is only a small step. It doesn't answer the whole problem. I still support the concept of putting wind coverage under the National Flood Insurance Program on a voluntary basis, as

my amendment would have done in 2008. It is an amendment that has passed the House of Representatives and it is known as the multi-peril concept. That did not get majority support in the Senate and is, frankly, unlikely to get that support in short order. They are having trouble with that concept in the House of Representatives, but I wish to emphasize that I still support the multi-peril concept. This is a step. It puts us on the right track and it removes the wind and water debate.

I would suggest that my friends in the Senate look at this bill. I invite them to become cosponsors, and I hope we will be able to add this simple amendment to the law in short order.

I thank the Presiding Officer and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I have been in the Senate a long time. This is my 25th year of service. This is one of the most exciting moments I have seen here. Today we have an opportunity to fulfill a great responsibility and an honor, to be able to stand in this Chamber to declare our support for the President's selection of an outstanding nominee: Solicitor General Elena Kagan to be a Justice of the Supreme Court of the United States.

Everyone is aware that she brings an intellect, experience, and knowledge of the law that places her among the few in this country so perfectly qualified to serve on this most important body of jurisprudence in the entire world.

Upon the entrance to the Federal courthouse in Newark, NJ, there is an inscription that reads: "The true measure of a democracy is its dispensation of justice." I was the author of that statement and I labored over it, short as it is, to reflect my view that reflects a fundamental principle of our democracy and the values on which the U.S. Constitution was founded. These values pervade throughout our government and legal system, and especially in the decisions of our Nation's highest Court.

I met with Solicitor General Kagan to hear her views and her personal history, and I watched the testimony before the Senate Judiciary Committee. I have no doubt that, if approved, Solicitor General Kagan will be an outstanding defender of our Constitution in the dispensation of justice entrusted to a Supreme Court member. That is why I hope that with this historic opportunity, the Senate will stand up for what is right, to confirm Ms. Kagan's appointment to become a member of the highest Court in our country because of her outstanding qualifications.

When I met with her, I told her the people of New Jersey were excited about her nomination not only because of her outstanding educational achievements—by the way, graduating from Princeton, NJ, *summa cum laude*, and contributing so much in her life through her commitment to public service. The excitement is generated because Ms. Kagan is a trailblazer who

has paved the way to the top of the legal profession that has helped open doors to women as well as men. She was the first woman chosen to be dean of Harvard Law School. She is the first woman ever to have served as Solicitor General of the United States, a post many call the "tenth Justice" of the Supreme Court. We must remember what that job is, what that task is, and that is to appear on behalf of the United States as an advocate, having tested abilities to bring the case to the Court, defending our country, and experience second to none in that courtroom.

Let us not forget that in the last year she has amassed an impressive record as Solicitor General. She has filed more than 3,500 pages of merit briefs before the Court, and she has argued cases on a broad range of issues from protecting children from pedophiles to protecting Americans from terrorists. If she is confirmed, of nine members of the Court, the proportion of women will be at its highest level in history, with women holding three seats.

She is the granddaughter of immigrants, and that experience shaped the world in which she grew up. Similarly, I came from parents brought to America by my grandparents, who had the common experience of so many of the struggle to learn a new language, adopt new skills to get by, mustering the determination to help their children rise above their circumstances in this new world. Though my parents worked very hard, they were never able to accumulate valuables. Instead, the heritage they left my sister and me was a set of values and a love for America with its freedom and opportunities and appreciation for what this country gives us all. They often reminded us that there were those far worse off than we and we had an obligation to contribute if we could to give something back to our community.

These same values are inherent in Ms. Kagan's views as she expressed them to me. Her father was a housing lawyer. Her mother was a public schoolteacher for 20 years, and she carries the heritage of their public service dedication. Solicitor General Kagan's career has confirmed her own commitment to public service, protecting rights and individual freedoms.

She served as a clerk to Justice Thurgood Marshall whom she, as many other Americans, greatly admired. Frankly, it is sad to see that some on this floor during her confirmation hearings attempted to discredit Solicitor General Kagan's reputation because of her association with Justice Thurgood Marshall. Justice Marshall was an icon who expanded respect and tolerance in America as few others have in our history. He argued *Brown v. The Board of Education*. He was the first African American to serve as Solicitor General of the United States, at which he excelled, amassing a remarkable record of Court victories. He was

the first African-American Supreme Court Justice and distinguished himself as one of America's greatest jurists.

Some on the other side, in order to keep this appointment from being confirmed, have gone so far in their desperation to denigrate Ms. Kagan that they have labeled Justice Marshall as some radical on the bench and attempted to tear apart the years of brilliant contributions of this great man.

I want to be clear. The fight to end racial discrimination may have been radical to some, but it was the right fight and the right cause, and there will never be anything shameful about a person whose great mind and ferocious eloquence made him a giant in the civil rights movement. Shame on those who would denigrate those achievements.

Ms. Kagan's lifelong dedication has been to break down barriers and work for what is right, not simply popular. At Harvard Law School, one of her accomplishments as dean was to welcome different views among faculty members. She believed—and exercised that belief—that her students would not get the legal education they deserved if it was limited by one ideological perspective. She made it a point to add faculty members who came from different points along the political spectrum. No wonder Solicitor General Kagan's nomination has not only been endorsed by liberals but also by conservatives, including Ken Starr, Ted Olson, and Miguel Estrada.

Considering a Supreme Court nominee is one of the most important responsibilities we have. The Supreme Court makes decisions that determine the very underpinnings of our country's character. It has a direct say on the rights—or lack thereof—our children and grandchildren will have. The Court can decide whether big corporations and the rich and famous should have a stronger claim to justice than the average person. The Court sets the table for government power—whether it goes unchecked or is responsible to the people. The rulings of the Court affect everyday New Jerseyans and everyday Americans. There is no doubt in my mind that Ms. Kagan understands that.

After careful consideration, I am going to proudly vote yes to confirm a person who I believe will be one of the great Justices of the Supreme Court of the United States of America.

Mr. President, I hope there isn't this continuing attempt and process we have seen here where it is the objective of individuals in this room—typically on the other side of the aisle—to stop things from happening, to be obstructionists. There is no point in exercising that kind of foolishness. This is a time to step up and say we want the best we can get for our Supreme Court. President Obama has chosen carefully and wisely, and we want to see Ms. Kagan seated on the Supreme Court. I hope my colleagues will vote affirmatively to make sure that happens.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

SMALL BUSINESS

Ms. LANDRIEU. Mr. President, I understand we are in controlled time. I will speak for the next 10 minutes, and if someone else comes to the floor, I will be happy to yield.

I know the discussion today has primarily been on our new potential Supreme Court nominee, but that is not why I have come to the floor. I have come to the floor to talk about an issue I have spent a good bit of time talking about in the last several weeks—particularly the last week—and that is the issue most Americans have on their minds right now, and that is, when is this recession going to end? That is a good question. My answer to that is that this recession is going to end as soon as we can get Main Street moving again.

The First Lady has been so wonderful in her advocacy to help Americans understand the importance of activity and moving, with her campaign "Let's Move," to help us all get into better shape—particularly the young children of our country. I think we can really use almost that same slogan for Main Street—to get Main Street moving again, percolating again, and generating jobs, because that is the only way this recession is going to end. We can pass bill after bill up here regarding big bank bailouts, saving the big auto manufacturers. We can step up and send money to big, troubled banks. But until we figure out a way to get money to Main Street, this recession is going to be with us a long time.

I think that is really what is on people's minds, at least in Louisiana, my home State, the places with which I am very familiar. Our situation in Louisiana is even more complicated, and right now I am not going to take the opportunity—but I will before this session ends—to talk about the gulf coast disaster and the moratorium that has been placed on drilling in the gulf, which has exacerbated our problem. Suffice it to say that on Main Street all over America, people are wondering—we know that Supreme Court Justices are important, that health care is important, and we know that stabilizing the financial situation is important.

When is Congress going to focus on Main Street and small business? That is what our bill, the small business lending bill and particularly the small business lending fund, does.

I want to start the first few minutes of this discussion—there will be some Members coming down to the floor—by reading an e-mail I received in my of-

fice 2 days ago. This e-mail was so well written and so passionate and so encouraging to me that I was afraid it was not real. I actually had my staff call the man who wrote it to make sure before I came to the floor of the Senate, because I did not want to be fooled or embarrassed by someone sending some kind of form e-mail and not being sure it was correct.

I want my colleagues to know that we called Mr. Bryan Gipson, Sr. I am going to read his e-mail because I think this says better than I could what is at stake for those who have tried to obstruct this bill, unfortunately, for many of my friends on the other side:

Dear Senator Landrieu, I wanted to start this e-mail by telling you I am a life long Republican and a former member of your district. I currently reside in Ocean Springs, Mississippi, and I am a Commercial Real Estate Broker. I watched with great interest today as the Senate debated H.R. 5297, the Small Business Jobs Credit Act. I was very, very disappointed by the unjustified stonewalling of the Republicans. To think that a Bill, whose only purpose is to provide funding for small business, create jobs and help the most battered segment of our economy recover from the worst recession of all time could be held up because one side had their feelings hurt because they don't have enough amendments is sickening.

Senator Landrieu, I am a commercial real estate broker. My company sells hotels, throughout the southeastern United States. We have not completed a transaction in almost two years. There is no third party commercial financing for commercial real [estate] in the United States today our industry has been battered because of this. Hotels are closing through out this country and workers are being laid off. These workers make beds and clean rooms. They work as wait staff, accountants, reservationists, and front desk personnel. Thousands of these hard working Americans have been laid off. It's time for Congress to do something to put Americans back to work on the jobs.

As I said, I am a life long Republican. I was sick to my stomach to see the leadership of the Republican Party do everything in their power to kill this bill. Please remind them they have lost my vote. I will do everything in my power to defeat my two Republican Senators when election time comes. It is plain to see the Senators of the Republican Party are holding the American economy and it's workers hostage for selfish, partisan politics, and the American voters are tired of it.

I will not read his last sentence because I do not think it is appropriate for the Senate.

Today I had the opportunity to speak with one of the region's most outstanding community bankers by phone. My phone call was prompted by a roundtable I held earlier this week—it was not yesterday but the day before—with some of the country's most outstanding entrepreneurs. I had several individuals from Louisiana—surprising to many people. You may be surprised to know that New Orleans, LA, has been on the front cover of Entrepreneurial magazine twice in the last year because after Katrina, some of the leaders, including myself, had the sense to say: We are not going to build back just what we had; we are going to build

back better and stronger, and part of that is inspiring young people around the country to come and start new businesses in New Orleans and help us build a greater city and a better region.

We also had individuals from all parts of the United States. One of the two most interesting individuals who owns arguably the most famous small business in America today, Georgetown Cupcake, better known as DC Cupcakes, the reality show—Sophie and Katherine were in my committee 2 days ago. I want to tell you what they said, and nobody is going to believe it. There is a transcript of this record.

This is one of the most famous, most popular small businesses in America. They have their own reality show. They testified to my committee that they could not themselves get a business loan. They knocked on bank after bank until finally a community banker—the chairman of the bank is Ron Paul. I spoke with him today. It is EagleBank right in this region. They finally gave them a loan which they paid back in 3 months. For 2 years they used every credit card they had. They used their entire savings. Even with a line 2 blocks long—if anyone in Washington, DC, doesn't know about it, they should know about it. I have not been there, but my children have been there. They ask me to take them there all the time. The line is 2 blocks long, I hear, every night.

If a small business not 10 minutes from the Capitol, with a line 2 blocks long, cannot get a loan from a bank and has to go through all this trouble—but they finally, thank goodness, found a community bank to lend them the money—do I have to say anymore about what we are trying to do?

Another young woman showed up in our committee. She graduated magna cum laude from Duke University. She received a scholarship from the Fulbright Scholarship Program. She went to Sri Lanka to work for a year under the Fulbright Scholarship Program. Her idea as a scholar was that maybe she could create a business using environmentally sensitive methods and practices designing very fashionable clothes that she could then sell to college students because our college students today are much more sensitive to the environment and to these sorts of things than we were when we were in college.

She had a very brilliant idea. She had a great market. She went to bank after bank with \$250,000 worth of purchase orders and could not get a loan and does not have one today.

If our young people who are graduating at the very top of their class, who have the most extraordinary ability to create jobs in America, cannot get money in their hands, we should close these doors and turn these lights off because it is never going to get fixed. That is what this bill tries to do.

It has been stopped by petty politics or slowed down considerably. We are