proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5872) to provide adequate commitment authority for fiscal year 2010 for guaranteed loans that are obligations of the General and Special Risk Insurance Funds of the Department of Housing and Urban Development.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statement be printed in the RECORD.

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

The bill (H.R. 5872) was ordered to a third reading, was read the third time, and passed.

INCREASING FLEXIBILITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 5981, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5981) to increase flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Ms. LANDRIEU. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statement related to the bill be printed in the RECORD.

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

The bill (H.R. 5981) was ordered to a third reading, was read the third time, and passed.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 100–458, Section 114(b)(2)(c), reappoints William F. Winter, of Mississippi, to the Board of Trustees of the John C. Stennis Center for Public Service Training and Development, for a term expiring 2012.

The Chair, on behalf of the Majority Leader pursuant to Public Law 100–458, Section 114(b)(2)(c), appoints the following individual to the Board of Trustees of the John C. Stennis Center for Public Service Training and Development, for a term expiring 2014: Mike Moore of Mississippi, vice William Cresswell.

Ms. LANDRIEU. Mr. President, I yield the floor.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to executive session.

NOMINATION OF ELENA KAGAN TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT—Continued

Mr. BROWNBACK. Mr. President, I rise to discuss the nomination of Solicitor General Elena Kagan to the U.S. Supreme Court. Just over a year ago, the Senate considered the nomination of Judge Sonia Sotomayor to the Supreme Court and today we continue the debate on Solicitor General Kagan's. Then, as now, I think it is fully appropriate for us to discuss the judicial philosophy of the nominees being put forward because of the increasing intrusion of the Supreme Court into very contentious issues within the society. If that is the case, then I think judicial philosophy needs to be discussed, and I think that is one that we need to consider in this nominee in Solicitor General Kagan.

The debate and discussion of Solicitor General Kagan's nomination followed a different path from the Sotomayor nomination, but it has led me to the same result: I have too many questions about the nominee's judicial philosophy to permit me to support the nomination to a lifetime appointment to the Supreme Court of the United States.

As I said last year, a nominee's judicial philosophy is a key concern at the heart of the Supreme Court confirmation process. For me, the question is whether a nominee to the Court supports an activist judicial philosophy that would invite the judiciary into all sorts of areas of American life where it has not intruded before, or whether they hold a more deferential view of the Constitution that would limit the role of the courts. It is really that view, of what is the appropriate role of the courts under the Constitution that I think is key, given the more activist role the Court has taken in this society in recent years.

As I noted during the Sotomayor debate, in my view, democracy is wounded when Justices on the high Court, who are unelected, invent constitutional rights and alter the balance of governmental powers in ways that find no support in the text, structure, or history of the Constitution. Unfortunately, in recent years the courts have assumed a more aggressive political role.

In last year's confirmation debate, we talked a lot about whether a nominee's life story and experiences should be a significant factor in assessing that nominee. Whatever the merits of that debate, Judge Sotomayor was nominated as a Federal judge with a judicial background that offered some clues as to her judicial philosophy. With this nominee, we have comparatively little of written record to evaluate.

Solicitor General Kagan has no previous experience on the bench. If confirmed, she would be the first Supreme Court Justice without prior experience on the bench in almost 40 years. In order to hire anyone for any job, an employer looks at an applicant's past employment history. That is true for private sector jobs and public sector jobs. It is true for the staffs we maintain in the Senate and it is certainly true for Supreme Court nominees. I think most Americans would agree that prior judicial experience would be a good thing for a nominee to the Supreme Court to have. It is not a prerequisite for confirmation. Certainly, we have had Justices in the past who did not have any prior judicial experience. But I would suggest that since Solicitor General Kagan lacks prior experience on the bench, we have an obligation to look even more closely at the professional experience she does have.

There is no question she has an outstanding résumé. Few people in America can say that they have her academic credentials, including an Ivy League law degree, as well as experience teaching at the University of Chicago and as the dean of Harvard Law School. And she has terrific political credentials, including working on the Dukakis for President campaign and as a policy adviser in the Clinton administration. Unfortunately, very little of her résumé pertains to formal legal practice, let alone time on the bench.

So Solicitor General Kagan's experience is not necessarily the experience we would prefer, but it is the experience that we have to go on. And as I look through this professional experience, I see plenty of reasons to be concerned about the philosophy that she would bring to the bench.

In particular, I want to highlight her experience as a policy adviser. From the Presidential campaign trail in 1988 to the Senate Judiciary Committee to the Clinton White House, she has spent a great deal of time working on tough, highly contentious issues. In each of those cases, I think it is clear that she favors the kind of judicial activism that has concerned me throughout my time in the Senate. Her views, and the policies she has supported, endorse a role for the courts that I find very troubling. And let me be clear, whether or not I agree with her views on any particular issue, I am most concerned about the way those views will shape her still-emerging judicial philosophy.

For example, let's take a look at the life issue. As an adviser in the Clinton White House, Ms. Kagan led efforts to preserve partial-birth abortion. Obviously, I disagree with that position, as do most Americans, but that is the role that advisers often play inside the White House. Unfortunately in this case, however, the evidence shows Ms.

Kagan manipulated arguments about the need for a partial-birth abortion ban and whether such a ban is constitutional. When a draft scientific statement from a medical association threatened to undermine the policy she supported, Ms. Kagan seems to have rewritten that statement in a way that did not reflect the considered medical judgment of the association but was more in line with the policy she supported. Her explanation that she was merely helping the association state its own views more accurately does not bear scrutiny. This should be a red flag for Senators considering confirmation of someone to the Supreme Court. Without a judicial track record to evaluate, I am concerned about how she would apply her personally held views on similar matters if she is confirmed.

To turn to another example, as many of my colleagues have pointed out, the scandal over military recruitment at Harvard also shows evidence of politically held views coloring the nominee's legal judgment. Ms. Kagan opposed military recruiting on campus as part of a protest against the military's don't ask, don't tell policy, even during a time of war, denying the military access to Harvard's on-campus recruiting program while the university was receiving Federal money. It was apparent at the time that she was openly defying the intent of the Solomon Amendment, but she felt comfortable defying the law in the ''hope'' that the Defense Department would simply fail to enforce it. Her argument that law schools could take such steps despite the plain intent of the Solomon Amendment was, again, primarily a political argument with very little, if any, legal standing. The Supreme Court unanimously disagreed with her.

Based on other statements she has made about issues ranging from military tribunals for detainees in the war on terrorism to political speech under the first amendment, there are numerous reasons to be concerned about how Solicitor General Kagan might apply the law as an Associate Justice of the Supreme Court.

It is worth asking whether the solicitor general has ever argued that the law should be applied contrary to her political views. Perhaps I would not have to ask that question if we could assess extensive legal writings or a history of judicial rulings. But since this nominee lacks such experience, I am left to question how Ms. Kagan would let her political views shape her judicial philosophy. The weight of the available evidence clearly suggests political motivations for her legal views.

I have long believed that the judicial branch helps itself through refraining from action on political questions. This concept was perhaps best expressed by Justice Felix Frankfurter, a steadfast Democrat appointed by President Franklin Roosevelt.

Justice Frankfurter said this:

> Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures. Primary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the Congress.

I would add, not to the court.

When the courts improperly assume the power to decide issues more political than legal in nature, the People naturally focus less on the law and more on the lawyers who are chosen to administer it. Some are keen to impose their policy agendas through the judicial process. Others want judges who will stick to interpreting the law, rather than making it. It is beyond dispute that the Constitution and its Framers intended for judges to satisfy the latter criteria.

I know that many of my colleagues on the other side of the aisle have underscored Ms. Kagan's strong intellect and outstanding academic background as evidence that she would rule fairly if confirmed to the Court. Perhaps they are right. But we ought not be operating in the realm of ''perhaps'' when it comes to a Supreme Court appointment. Advise and consent is a serious matter and we have to do better than ''maybe.'' As I read about Ms. Kagan's experience and background and look for clues to her judicial philosophy, I believe it is far more likely than not that she will rely on a set of political views to guide her decisions rather than a strict construction of the Constitution. After many weeks of public debate, hearings and discussion, I cannot escape the conclusion that this nomination would only perpetuate judicial activism on the Nation's highest Court. I opposed the confirmation of Judge Sotomayor on that basis, and I will oppose Ms. Kagan's confirmation on those grounds also. I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I also rise to discuss President Obama's nomination of Elena Kagan, Solicitor General, to serve on the U.S. Supreme Court. I agree very strongly with the remarks made by my colleague who has just indicated there is a strong concern about the continuation of a pattern of increasing judicial activism in our country, which we definitely do not need to perpetuate on the highest Court of our land.

I appreciate the work that has been done by my colleagues on the Senate Judiciary Committee to examine this nomination and to hold thorough hearings. There is no doubt that Ms. Kagan's educational resume is impressive, with a degree from Princeton and from Harvard Law School. It is unfortunate that the Senate confirmation process has reached the point, though, where nominees are no longer comfortable candidly discussing their judicial philosophy and views on key issues, especially when the nominee herself decries this development prior to being nominated.

To date, I have received more than 1,500 letters and e-mails and phone calls from my Idaho constituents, overwhelmingly in opposition to Elena Kagan's nomination. Many of the concerns raised in the correspondence I have received mirror concerns I also have about her nomination. It was my hope, through the committee hearings and questionnaires and in my own personal meeting with Ms. Kagan, that my concerns and those of my constituents could be resolved. As Ms. Kagan stated in her committee testimony, because she has not had prior experience as a judge, my Senate colleagues and I must assess her nomination based on her other career experiences. Therefore, we must evaluate a career that has been focused largely in her role as a policy advocate and political adviser and whether she would carry this political advocacy with her to the Court. I would like to discuss, in that context, some of my areas of concern—first of all, the broad area of judicial activism.

I am concerned about Ms. Kagan's background in political advocacy and activism and how her previous statements suggest her willingness to bring that activism to the bench. Rather than pursuing a path of judicial restraint, carrying out a limited role in interpreting the Constitution, Ms. Kagan's writings and testimony suggest that she sees the Supreme Court as a body that must lead the Nation and have the freedom to change the law in response to ''new conditions and new circumstances.''

As dean of the Harvard Law School, Ms. Kagan used her position to lead the school in a direction not based on the law but based on her own personal policy preferences when she denied military recruiters equal access to the students at Harvard Law School, complying with the law only when forced to do so by the Court.

It seems that Ms. Kagan has an extremely broad view of the powers of all branches of the Federal Government and does not seem to respect the traditional limits the Constitution places on each of those branches. If the Constitution requires that a certain outcome can only be achieved through the actions of the legislative branch and if the legislative branch fails to take those actions, it does not mean the executive or judicial branch can then have the opportunity to independently take those actions or achieve those policy objectives. I am not convinced Ms. Kagan respects that constitutional separation of power.

She has gone so far as to cite Israeli Chief Justice Aharon Barak as her ''judicial hero,'' even though Judge Barak is widely regarded as one of the most activist judges in the world.

The Framers of the Constitution wisely, clearly, and intentionally set

limits on the powers of the Federal Government. The Framers also set forth a method with an appropriately high threshold for expanding or curtailing those powers. That method for expanding or curtailing the powers of the government is the constitutional amendment process. Judges must respect the limits placed on the government by our Constitution and must not try to circumvent the constitutional amendment process by seeking other opportunities to expand the powers of the Federal Government to meet their own personal policy preferences. I am not convinced Ms. Kagan respects that limit in our Constitution and the responsibility to have limited judicial activism and interpret our Constitution as it was intended.

I also have a very specific concern on a specific issue. In fact, this is the same concern I had when we were presented with the President's nomination of the last nominee, Sonia Sotomayor, to our Court; that is, the second amendment right to bear arms—a specific provision in the U.S. Constitution which has been a very controversial and debated provision in recent years in the United States.

On June 26, 2008, the Supreme Court of the United States affirmed, in the District of Columbia v. Heller, that the second amendment to the Constitution guaranteed an individual's right to keep and bear arms for self-defense purposes. This landmark ruling finally established that the right to bear arms in the second amendment is an individual right but left open the question of whether this right in the second amendment applies to the States rather than just to Federal enclaves such as the District of Columbia.

For those of us who believe in the right to law-abiding citizens to protect themselves, the Court's ruling in Heller marked a new beginning, especially for those who believe the second amendment to our Constitution gives Americans an individual right to bear arms. For too long, many law-abiding Americans were told by their elected representatives and by some courts that the Constitution did not necessarily guarantee an individual's right to own a firearm, denying citizens the right to protect themselves, their property, and their families.

Soon thereafter, though, a case entitled McDonald v. Chicago made its way through the court system, in which a Federal district court and a circuit court of appeals ruled that the very severe restrictions on second amendment rights in two Illinois municipalities were constitutional because Heller only applied to the rights of those living in Federal enclaves such as Washington, DC.

On June 28, 2010, the Supreme Court also overturned that decision, affirming that the 2nd amendment, like most of the provisions of the Bill of Rights, is applicable to the States via incorporation principles derived from the 14th amendment. The Court affirmed that individual rights established in Heller did not just apply to those living in Federal enclaves such as Washington, DC; they ruled they also apply to all law-abiding Americans who wish to keep and bear arms for self-defense. It is now firmly established by these two rulings from our highest Court that our Constitution guarantees an individual right to keep and bear arms for self-defense purposes no matter where you live.

All of this brings us to our nominee, Ms. Kagan, and the question before the Senate with regard to her nomination. Those of us who believe in an individual's right to keep and bear arms have a responsibility to ensure that hostility to the second amendment does not find home in the hands of the Supreme Court.

With no judicial record to review, Ms. Kagan invited Senators to glean what we can from the body of her work, her statements, her academic life, and the policies for which she has actively advocated during her career, including her Supreme Court clerkship and her later career in political activism.

We took her at her invitation to see how her past reflected her views on the issue of second amendment rights. After discussing this issue with her personally, fully reviewing her past actions in relation to the second amendment, and evaluating her statements before the Judiciary Committee, I am convinced she does not believe the second amendment reserves to all Americans a strong and broad right to bear arms.

To cite some well-known examples, as a Supreme Court law clerk, Ms. Kagan wrote that she was ''not sympathetic'' to a challenge to Washington, DC's, ban on firearms. After the Supreme Court struck down certain provisions of the Brady law in Printz v. United States, Ms. Kagan, who was then serving on President Clinton's staff, worked to reimpose those unconstitutional provisions by Executive order, without the approval of Congress and contrary to the ruling of the Court. When the McDonald case came before the Supreme Court, Ms. Kagan, who was then the Solicitor General of the United States, did not even see it necessary to file a brief in support of the second amendment.

When asked about her position, Ms. Kagan has stated that she accepts the Heller and McDonald cases as settled law. But she has also made it clear that in her opinion these two cases leave much of the detail as to what this right entails to future court interpretation. This is very similar to what now Justice Sotomayor said when she was before the U.S. Senate for confirmation.

As a judge on the Second Circuit Court of Appeals, then-Judge Sotomayor ruled on a case that was very similar to and, in fact, was later incorporated into the Chicago case, Maloney v. Cuomo. In that ruling, then-Judge Sotomayor ruled that Heller only guaranteed an individual right to keep and bear arms for residents of Federal enclaves. Her explanation was that Heller answered ''a different question'' than Maloney and relied on a precedent from 1886 to do so.

Pressed about Heller at her Senate hearings, Judge Sotomayor stated that she accepted that Heller was now ''settled law.'' Yet when the McDonald case came before the Supreme Court, Justice Sotomayor voted against it, joining with the dissenting opinion, stating that ''in sum, the framers did not write the Second Amendment in order to protect a private right of self defense.''

The Supreme Court's decisions in Heller and McDonald were important milestones for establishing the second amendment right to bear arms, but they were long overdue. Countless law-abiding Americans were denied their constitutional rights to keep and bear arms for way too long. It is imperative that the next Supreme Court Justice fully understand and accept and support these rights. I am not convinced that Ms. Kagan does, and that causes me great concern.

Similar to now Justice Sotomayor, Ms. Kagan has stated that she accepts Heller and McDonald as settled law. But that does not mean she would not vote to overrule them if an opportunity presented itself. As she herself has said, that also does not define the scope and breadth of this right, which will fall to future Court decisions. A Supreme Court hostile to the Heller and McDonald decisions or a Supreme Court with a narrow view of the right to bear arms protected by the second amendment could severely limit or restrict that right. As I have said, I do not believe Ms. Kagan believes in the strong and broad right to bear arms that I do or that the majority of Idahoans do.

These concerns have also been expressed by our ranking member on the Senate Judiciary Committee, Senator SESSIONS, who noted:

> Ms. Kagan's record regarding the Second Amendment leaves little doubt that she will be hostile to the rights of law-abiding citizens to own and possess firearms.

For these reasons—her activist philosophy and her position that I expect we will see on the second amendment right to bear arms—I cannot vote to confirm her to the highest Court of our land.

Mr. President, I take the responsibility of confirming Supreme Court Justices very seriously, and my decision was not reached lightly. Judges take an oath to ''administer justice without respect to persons, and do equal right to the poor and to the rich.''

My review of Ms. Kagan's record gives me reason to question whether she will abide by that standard. Her statements, actions, and writings throughout her public life suggest a vision for the Court that is not restrained by the Constitution but that has a responsibility in being activist in

reaching policy goals. As such, I must vote against her nomination to sit on the highest Court in our country.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Idaho for his comments. He is one of the most capable lawyers in the Senate. He is a practicing lawyer, clerked on the court of appeals, and is scholarly and careful in what he says. I believe he has raised some very troubling points about this nomination that should be considered.

I say to Senator CRAPO, I notice today that a single sitting Federal judge in California has just wiped out proposition 8 that was passed by a majority of the people in California. I guess there were millions voting on that, which simply said a marriage should be defined as being between a man and a woman.

This judge struck down proposition 8 and, obviously, at some point, this will get to the Supreme Court of the United States, as the Senator well knows. It will go first to the Ninth Circuit, on which the Senator clerked, and then it will go to the Supreme Court probably. We will have the nominee who is before us today who has already demonstrated at Harvard that her views about don't ask, don't tell and similar social and marriage issues involve such strong feelings on her part that she has not been able to follow the law. I am worried about that. I think the American people are worried about that, and I think they have a right to be.

Let me talk a little bit about today's decision by a Federal judge in California that was replete, in my view, with results-oriented liberal judicial activism. I think that is what it is, as the court explained in substituting its judgment, the judge's judgment and opinion, for the judgment of the people of California expressed in a full statewide referendum. Now this is a powerful thing.

Was there some clear statement in the Constitution or law that would invalidate the people's expression of what a marriage should be in the State of California? I submit not. This is what the judge said.

> [W]hat remains of proponents' case is an inference, amply supported by evidence in the record, that Proposition [8] was premised on the belief that same-sex couples simply are not as good as opposite-sex couples. Whether that belief is based on moral disapproval of homosexuality, animus towards gays and lesbians or simply a belief that a relationship between a man and a woman is inherently better than a relationship between two men or two women, this belief is not a proper basis on which to legislate.

So the judge just declared that laws that are on the books in virtually every State in America—and certainly by referendum in California—are improper. States cannot legislate in this area. It is not ''a proper basis'' on which to legislate.

That is what activism is. It is a judge replacing the people's views with his views.

President Obama has made similar statements. He said that judges should decide cases based on ''one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.''

This was in a floor speech in the Senate delivered from right over there from his desk in which he opposed Chief Justice John Robert's confirmation to the Supreme Court—one of the finest nominees ever to be brought before this body.

This is the kind of rationale, the kind of empowerment that many judges feel. Well, they can just use their broader perspective on how the world works or the depth and breadth of their empathy or their deepest values or core concerns. Whose core concerns? The judge's core concerns. What does this have to do with law, I ask?

Indeed, I would suggest that this whole litany of matters raised by President Obama is not law. These are invitations for judges to allow their bias to influence how they decide cases, an encouragement for judges to use their power of defining the words of our laws and Constitution to promote their agenda. This is an unacceptable view. It is contrary to the great heritage of law this country is based on and should not be tolerated by the judiciary.

When Justice Stevens announced his retirement, whom Ms. Kagan would replace—he served 38 years; he served until age 88—if Ms. Kagan were to serve till that age, she would serve 38 years on the Supreme Court without ever having to answer once to the American people. She has never tried a case. We have no judicial history. She has never really practiced law in any serious way. She has been a political lawyer most of her life. She has been an advocate for a lot of leftwing views and that is all right.

You can have a view that the military's don't ask, don't tell policy—law passed by Congress; it is a law not a policy—you can oppose that. That is fine. That should not disqualify you from serving on the bench. You can be against the death penalty and serve as a good judge if you understand that if the law requires the death penalty, you should have to apply it. You cannot obstruct the law because you do not agree with it. This is basic to the understanding of the American jurisprudence system.

When Justice Stevens announced his retirement, President Obama rephrased his empathy standard that took a lot of criticism and, indeed, was renounced by Justice Sotomayor in her confirmation hearings last year. He said he wanted a nominee with a ''keen understanding of how the law affects the daily lives of the American people.''

Well, I think that is what Congress is supposed to do. We are supposed to be monitoring how the laws affect the daily lives of the American people. If we do not think, as a matter of policy, it is doing it correctly, we should fix the law, change it, eliminate it, and do whatever is appropriate. That is not the judge's responsibility. The judge's responsibility is to enforce the law, to follow the law, or else he is a lawmaker instead of a judge.

When the President announced Elena Kagan's nomination, he said: ''She has often referred to . . . Justice Thurgood Marshall, for whom she clerked, as her hero'' and ''credits him with reminding her that, as she put it, 'behind law there are stories—stories of people's lives.' ''

Well, there are stories, and a judge should certainly be very aware of the facts in a case. Judges should not deny relevant evidence. But in the end, the judge must find the true facts, and then apply that truly to the law as it is whether they like it or not. Activism arises when a judge allows their personal values, even deepest values, core concerns, broader perspectives on how the world works, and the depth and breadth of their empathy to influence decisions. Isn't that bias? Who knows what these judges believe—they have a lifetime appointment and they get to impose their core concerns on us? No. This is a serious matter.

I think the American people understand it because when you empower a judge to do these kinds of things, you have given him control over you. You have given him the power to redefine marriage when the people of the State don't want to. And you have no recourse. They have a lifetime appointment. Some people say nine judges can do that. Only five, really. It only takes five. They meet and have tea and they go to the great salons of Europe, and they get these ideas about how to make America a better place, and they want to come back and get itching to write it into some opinion somewhere.

I would say that no drafter of the Constitution or any of the provisions in it at any point that those amendments were adopted would ever have imagined a Federal judge in California would declare that the people of California's decision to define marriage as it has been since the founding of the Republic as between a man and a woman is unconstitutional. Make no mistake. When a judge says something is unconstitutional, this is not a little bitty matter. The American people have no recourse, except to pass a constitutional amendment. It takes two-thirds of both the House and the Senate and three-fourths of the State. They make it so because they say it is so. There is nothing in the Constitution that defines marriage. If it is defined—the most logical argument is that when it was written, if they had wanted to change the definition of marriage, they would have put it in there, because every State in America at the time the Constitution was drafted and every amendment to it defined marriage as between a man and a woman.

That is what we get. Right now we have had battles over those kinds of

issues. They are the cause celebre of the day, but they become further issues in the future. Do we think maybe in the future it comes down to whether a judge can require the State to raise taxes? Will it require a State to provide insurance to everyone or the Federal Government to do so because the Constitution somewhere said that everybody should have equal protection of the law? Does that mean everybody should have health insurance?

We have one nominee President Obama has submitted, Mr. Liu, who says everybody in America is entitled to constitutional welfare rights. Presumably, if you file a lawsuit in front of him, he would order the State to provide welfare to everybody, whether we can afford it or whether the legislature decided that is the right thing. This is what activism is. It is a serious matter.

I wanted to speak of a few additional points for discussion that relate to matters that have been raised in the last day or so about this nomination. I am trying to be correct in what I say. I want to be correct and fair. This nominee deserves fair treatment and accuracy, and we should try to achieve that in the Senate. If I have said anything before or say anything now that is in error, I hope my colleagues will call that to my attention and I will be pleased to admit that I made an error, if I have, and correct it. Likewise, I am beginning to wonder—I have said this before—since nobody has corrected any significant matter I have stated, they must be agreeing to it.

One of our Senators defended Ms. Kagan by insisting that any arguments she made as Solicitor General were made on behalf of her client, the United States, and should not be held against her. They suggest that her actions as Solicitor General should, therefore, be immune from criticism. In other words, she didn't necessarily do what she thought ought to be done, but she had a duty to defend the law.

It misses the point about the Witt case, the important case I talked about in which I criticized her decisions as Solicitor General. The problem with Ms. Kagan's actions in the Witt case is she did not make all appropriate arguments in defense of her client, the United States. She declined to effectively represent her client, the United States. I went into some length about that today. We are not saying that she must agree with every argument she made as Solicitor General in terms of policy. Solicitors General are required by their duty to defend the laws Congress passes. They don't have to agree with the law, but they have a duty to defend it if it is challenged as being unconstitutional or in some other fashion improper.

What is most important about this is that in the Witt case, it dealt with the military's don't ask, don't tell policy. People can disagree on that, as I indicated, but it was the law passed by Congress and signed by President Clinton. She spent 5 years in the Clinton White House. She never complained to him about the law, to my knowledge. She didn't protest or quit working for him. She goes to Harvard, however, and bars the military from being able to enter the Career Services Office and recruit students because she didn't like the law Congress passed and her former boss signed. She punished the military officers who were there on campus to recruit Harvard students to be JAG officers in the military. Maybe those officers just got back from Iraq and Afghanistan—we were in two wars at the time—yet they were treated as second-class citizens, not allowed to enter the career services office.

Oh, they could call the little veterans group on campus and they could ask them and they could help them. One officer wrote in a memo that was produced by the Defense Department: We were relegated to wandering the halls hoping somebody would stop and speak to us. They weren't able to recruit properly on the Harvard campus. Her suggestion that this was nothing she was doing and unimportant is not accurate. It was a misrepresentation of the grave circumstances that occurred at Harvard when she was dean. She led this effort. She personally led the effort to reverse Harvard's policy and deny the military the right to enter the Career Services Office. They said, Well, it is OK, they can call the veterans groups. They were offended by it. They sent out an e-mail and said we are not able to arrange for these kinds of meetings. We are law students here who happen to be veterans. We can't do what the career services can do to provide assistance to the military. It was plainly against the Solomon amendment which was in effect at all times when she reversed Harvard's policy and began to bar the military from coming on campus.

When she came up for confirmation last year to be Solicitor General of the United States and there were cases filed around the country challenging the constitutionality of don't ask, don't tell, it was clear it might fall to her duty to defend that law, and she was asked in committee about it. She was asked: Will you defend the law? She said: Absolutely, she would. She committed to it. Generally she would commit to defending all laws of the United States and, specifically, in answer to a written question, she committed to defending don't ask, don't tell.

What I wish to say is that my colleagues were in error in their statements about this because it wasn't that she made arguments to the Court that she didn't believe in and that somehow we are unfairly criticizing her for doing that. What I am saying is there were arguments she did not make that she was duty bound to make to defend the law and actions that she was duty bound to take.

It has been said by one of our colleagues that it is ''Lawyer 101'' that an attorney will take positions on behalf of the client even when the lawyer disagrees with it. Well, that is exactly right. An attorney does have an obligation to vigorously defend his or her client, but Ms. Kagan refused to do that. Her client was the United States of America. When the Solicitor General of the United States stands before the U.S. Supreme Court or any lawyer—as I had the privilege to do for 15 years—in the Department of Justice stands up in a Federal court, do you know what they say? The first thing they are asked is, Counsel, the judge will say, is the government ready? And the lawyer says, The United States is ready, Your Honor. The United States is ready. That is who the lawyer's client is: the United States of America. It is not her personal view of don't ask, don't tell. It is not President Obama's interests or idea of what should be don't ask, don't tell; not his views. It is the United States of America. And what is the position she was defending? The lawfully passed statutes of this Congress signed by her former boss, President Clinton, passing the law don't ask, don't tell that was being challenged.

I am of the view that in failing to properly defend that case, as I said earlier, she violated a direct, specific commitment she made to the Congress and violated her duty even if she hadn't made that commitment as Solicitor General to defend the laws of the United States.

One of my colleagues made reference to Justice Souter, saying:

> Justice Souter pointed out in a recent commencement address recently [that] different aspects of the Constitution point in different directions toward different results, and they need to be reconciled.

Judges do have to do that.

> Acknowledging these inherent tensions is not only Main Street, it is as old as the Constitution.

Well, there is some truth to that, but Justice Souter's speech and others in his philosophical mold are very troubling. In fact, Justice Souter's speech intellectually followed on to Justice Brennan's 1985 Georgetown speech which is clearly the playbook for judicial activism. In it, Justice Brennan, former Justice of the U.S. Supreme Court, stated:

> For the genius of the Constitution rests not in any static meaning it might have had in a world now dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be their measure to the vision of our time.

So if the Constitution's drafters decided that every American from time immemorial, unless the Constitution was specifically amended, had a right to keep and bear arms, Justice Brennan would say, Well, we can look at that. We need to see what the vision for our time is. Maybe we need to consult the Europeans as they did in this recent case, the dissenters in a 5-to-4 vote that narrowly upheld the right to keep and bear arms.

Allowing judges to determine the vision of our time is a recipe for legislating by unelected judges. What is the vision of our time is decidedly in the eye of the beholder. It is the job of the elected branches of government to make these calls in our constitutional system, not the unelected judiciary. The job of the judiciary is to interpret the law, not make the law. That is so basic. Don't we all know that?

As Professor John Baker of LSU put it:

> The choice is between two distinct modes of decision-making.
>
> Legislators make laws; they do not write opinions. Legislators can legitimately make laws to govern future conduct only. . . . Legitimate judging, on the other hand, concerns the existing law. Interpretation of the existing law, contrary to lawmaking, focuses on the past. Legitimate interpretation of existing law explains the result in a well-reasoned opinion.

I think that was nicely said. Judges are not empowered to amend laws, to promote their vision. They are not empowered to alter the meaning of the words of laws or the Constitution to promote their core values.

What is Ms. Kagan's view about that? She wrote a law review article entitled ''Confirmation Messes, Old and New.'' It is kind of interesting. She has said nominees should be far more forthcoming when they testify. Most people think she failed to meet the standard in her own law review article. She also quoted Stephen Carter's book, with approval, saying:

> In every exercise of interpretive judgment, there comes a crucial moment when the [judge's] own experience and values become the most important data.

The judge's own experience and values become the most important data? That is not law. I don't know what that is, but it is not law.

In a 2004 interview in Metropolitan Corporate Counsel, she said:

> The attitudes and views that a person brings to the bench make a difference in how they reach those decisions.

Is that not biased? Is that not an affirmation that a judge can bring to the bench their attitudes and views, instead of being a neutral umpire, putting on that black robe to symbolize impartiality? I think it is. This is a philosophy of law that is afoot in many of our law schools. There is no doubt about it. It is out there. People advocate it. She wrote about and advocated it. Many judges are adhering to this, and it is wrong. They are not empowered to do these kinds of things.

In one interview in a magazine, in 2004, she said:

> There should be a range of opinions on the [Supreme] Court; it should not just be about lawyerly qualifications.

The opinions we need on the Court are that a judge should identify the law and then follow it. That is what the view should be.

Mr. President, people are still asserting things about the Harvard issue that I don't think are quite accurate. I do not believe she handled the Harvard military question in any way that is defensible. I have looked at it very carefully. I have laid it out in some detail. And now I wish to respond to some of the statements that have been made.

One their efforts has been to point out and to assert that Elena Kagan treated veterans at Harvard Law School with great respect, hosting them for private dinners in her home, publicly recognizing them and thanking them for their service to our country. She has been praised by several law school veterans who have said Ms. Kagan is not antimilitary. Those things have some truth to them, and Senator LEAHY has introduced some letters.

But, for the most part, Dean Kagan's outreach to Harvard Law veterans began after all this brouhaha and the resistance to military recruiting occurred on campus and things got tense.

It was not such a pleasant time. The military veterans were not comfortable. She talked about other students being uncomfortable with the military on campus. She said that herself. So the annual veterans dinner I referred to began in 2006, after the university president, Larry Summers, had instructed the law school to restore equal access to military recruiters and after the Supreme Court had rejected her argument that the Solomon Amendment, which Congress passed to make sure these law schools either admitted the military or ceased getting Federal money—her argument that the Solomon amendment did not require Harvard to give the military access to the career services office was rejected by the U.S. Supreme Court 8 to 0.

According to the military veterans who attended Harvard Law School during this period, 2004 to 2006, the dinners were actually initiated at the suggestion of the school—the university's dean of students, Ellen Cosgrove, to whom the military veterans had expressed their concerns about the hostile campus environment toward the military. In other words, they had gone to Dean Cosgrove and complained about the hostile environment on campus toward the military, and she started some of these dinners. It was only later that Dean Kagan—who was speaking at one time to a protest rally while the military recruiter was in the next building trying to recruit students—she was out there speaking to a protest rally about the military being on campus, saying how wrong she thought the military was.

Most law school veterans who have praised Dean Kagan were either not present at the law school during the height of the controversy or were not then even in the military. Almost all of them were more recent graduates or current students at Harvard, people who liked her outreach efforts at that time. But that was after she was forced to let the recruiters back on campus by the President of the school and by the Supreme Court. None of the individuals who have written and said positive things were members of the student veterans association that she tried to conscript to take care of the needs of the military recruiters. None of them wrote any such letter.

I wished to share a few of those thoughts and again challenge my colleagues to be as accurate as they can in what they say, either for or against this nominee. She is entitled to fair treatment, but these matters are very serious. The American people want judges who are committed to their oath, and their oath says they are to be impartial, that they are to do equal justice to the poor and the rich, and that they are to serve under the Constitution and laws of the United States, not above it. That is the commitment they must have.

We, the Senate, should never vote to confirm any judge—liberal activist or conservative activist—who, once they put on that robe, will not be impartial or provide equal justice but will allow personal biases, core beliefs, prejudices or politics to influence how they decide cases. That is a disqualifying factor.

We must know that any nominee is committed to the ideal of impartial justice. I don't believe this nominee has ever demonstrated that she would be unbiased in these situations, and, indeed, the record indicates she has consistently allowed her personal feelings to override the law and her duties. Therefore, I will oppose the nomination.

I yield the floor and 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. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

THE DREAM ACT

Mr. DURBIN. Mr. President, I rise to speak about S. 729, known as the DREAM Act. This is bipartisan immigration legislation that I have introduced with Republican Senator DICK LUGAR of Indiana.

Immigration is a controversial issue, but I hope there is one aspect of this debate that does not divide us: Innocent children should not be victims of our broken immigration system.

That is why I introduced the DREAM Act almost 10 years ago. The DREAM Act would give a select group of immigrant students the chance to earn legal status if they grew up in the United States, have good moral character, and attend college or enlist in the military of our country.

The DREAM Act has broad, bipartisan support. The last time the Senate considered the DREAM Act, it received 52 votes, including 11 Republicans, but

we needed 60 votes under the Senate rules. It is clear, though, that a bipartisan majority in the Senate supports the DREAM Act.

Since then, support for the DREAM Act has only grown, and the bill now has 40 cosponsors. The DREAM Act also is the only immigration bill that the Obama administration has officially and publicly endorsed. Just this month, President Obama said:

> We should stop punishing innocent young people for the actions of their parents by denying them the chance to stay here and earn an education and contribute their talents to build the country where they have grown up. The DREAM Act would do this, and that is why I supported this bill as a State legislator, as a U.S. Senator, and I continue to support it as President.

The DREAM Act is also supported by a broad coalition of education, labor, business, civil rights, and religious leaders, including the AFL–CIO, the American Jewish Committee, the Leadership Conference on Civil Rights, the National PTA, and the U.S. Conference of Catholic Bishops.

It also has the support of the CEOs of Fortune 500 companies, such as Microsoft and Pfizer, and dozens of colleges and universities.

The DREAM Act also has broad support from the American people. According to a recent poll by Opinion Research Corporation, 70 percent of likely voters favored the DREAM Act, including 60 percent of the likely Republican voters.

Here is how it works. A student would have the chance to qualify only if he or she meets the following requirements: came to the United States as a child; has lived here for more than 5 years; has good moral character; has not engaged in criminal activity; does not pose any threat to national security; passes a thorough background check; and graduates from an American high school. If a student fulfills all of these requirements, he or she would receive temporary legal status. Next, they would be required to serve in the military or attend a college for at least 2 years. After 6 years, if this requirement is completed, the student could apply for permanent legal status. If this requirement is not completed, that student would lose their legal status and be subject to deportation.

Students who obtain conditional legal status under the DREAM Act would not be eligible for Pell grants. They also would be subject to tough criminal penalties for fraud. The DREAM Act would not allow what is known as chain migration. In fact, DREAM Act students would have very limited ability to sponsor family members for legal status.

Let me tell you why I first introduced the DREAM Act almost a decade ago. I was contacted in my office by a Korean woman living in Chicago. She told me she had several children. Her oldest daughter turned out to be an accomplished classical pianist. Her daughter finished high school and was accepted to the Juilliard music school in New York. It is amazing because so few are accepted there—several hundred each year. She was so proud of her daughter.

She said when they were completing the form for Juilliard, there was a question about her daughter's nationality or citizenship. Her daughter turned to her mother and said: American, right?

Her mom said: We brought you here at the age of 2, but we never filed any papers.

The girl said: What should we do?

The mother said: Let's call DURBIN.

They called my office. It is the first time I can ever recall ever facing something quite like this. My staff said: Let's look into it and find out what the legal situation is.

After telling the facts to the immigration agency of our government, we were informed that the girl's choice was obvious. She had to return to Korea, a place she had never been for 16 years, with a language she did not speak. The rest of her family—her mother, all of her siblings—were American citizens. She was not. Her parents failed to file the paperwork.

She had made a choice about her career and knew that she was ineligible for a lot of the student assistance available to those who are legal residents of the United States.

I thought to myself: That is fundamentally unfair. I reflected on my own story. My mother was brought to this country at the age of 2 as an immigrant. Her mother came from Lithuania. She came in her mother's arms and arrived in 1911 with a brother and a sister. They made it to East St. Louis, IL, where other Lithuanians were waiting, as well as my grandfather. My mother did not have any vote in that family decision to get on the boat and come to America. I am glad she did because her son now gets to serve as a Senator from the State of Illinois, where they emigrated.

I thought of this poor little girl, 2 years of age, brought to this country from Korea, now being told at age 18: Go back to Korea.

That is what the laws of America say, and that is why I introduced the DREAM Act.

When I first introduced the DREAM Act, I started telling the story about the Korean girl, and I noticed something interesting was happening as I told the story: there would be young people waiting after the speech asking if they could speak to me privately. Many of them were Hispanic, some were Polish. They were from all over. They would take me aside, look around to make sure no one was there, and say: I was one of those kids. I was brought here illegally by my parents who were legal at the time, and I am illegal today. But this is the only country I have ever known, gone to school here, this is where my friends are, this is where my future is. Help me. That is what the DREAM Act is all about.

Over the years, these people who used to wait nervously in the shadows have started coming out of the shadows and telling their stories. They are student council presidents, they are valedictorians, they are junior ROTC leaders, star athletes. They are tomorrow's scientists, soldiers, and teachers in America. They were brought to the United States when they were so young that they did not understand what was going on. They grew up here. It is the only home they ever knew.

The fundamental premise of the DREAM Act is that we should not punish the children for the parents' actions. That is not what America is about. Instead, the DREAM Act says to these students: America will give you a chance with strict requirements, but we will give you a chance.

Nine years after I introduced this legislation, I have noticed the DREAM Act students are not whispering in the shadows anymore. Recently, I met with four young people who would qualify for the DREAM Act: Felipe Matos, Carlos Roa, Gaby Pacheco, and Carlos Rodriguez. These four students walked from Miami, FL, to Washington, DC—1,500 miles—in order to build support for the DREAM Act. Along the way, they were joined by hundreds of supporters, young students and young people in the same situation they were in but other young people who understood the injustice that is being perpetrated on these people. They called this trip, this long 1,500-mile hike, ''the trail of dreams.''

I also would like to update the Senate on two DREAM Act students about whom I have spoken in the past.

This is Tam Tran. Tam was born in Germany and was brought to the United States by her parents when she was 6 years old. Tam's parents are refugees who fled Vietnam as boat people at the end of the Vietnam war. They moved to Germany, and then they came to the United States to join relatives. An immigration court ruled that Tam and her family could not be deported to Vietnam because they would be persecuted by the Communist government. The German Government refused to accept them. Tam literally had nowhere else to go, so she grew up in America. She graduated with honors from UCLA with a degree in American literature and culture. She was studying for a Ph.D. in American civilization at Brown University. But 2 months ago, Tam was tragically killed in an automobile accident.

Three years ago, Tam was one of the first ''dreamers''—that is what I call these students—to speak out when she testified before a House Judiciary Committee. This is what she said:

> I was born in Germany, my parents are Vietnamese, but I have been American raised and educated for the past 18 years. . . .Without the DREAM Act, I have no prospect of overcoming my state of immigration limbo; I'll forever be a perpetual foreigner in a country where I've always considered myself an American.

Tam was sitting right up here in the gallery when the DREAM Act received

52 votes on the Senate floor. After the vote, I met with Tam and several other DREAM Act students. Tam was hopeful, even though we lost the vote. She knew we had 52 and realized we needed 60, but she would not give up hope. She talked about the need to pass the DREAM Act so she would have a chance to contribute more fully to this country—the country she loved so much.

I wish to use this moment to offer my condolences to Tam Tran's family and friends and assure them I will do everything I can to honor her memory by working to pass the DREAM Act.

Let me tell you about another DREAM Act student. This is Oscar Vasquez. Oscar was brought to Phoenix, AZ, by his parents when he was a small child. He spent his high school years in Junior ROTC and dreamed of enlisting in the military. But at the end of his junior year, a recruiting officer told Oscar he was ineligible for military service because he was undocumented.

Oscar found another outlet. He entered a robot competition sponsored by NASA. Oscar and three other DREAM Act students worked for months in a storage room in their high school. They were competing against students from MIT and other top universities, but Oscar's team won first place.

The story does not end there. Last year, Oscar graduated from Arizona State University with a degree in mechanical engineering. Oscar was one of only three Arizona State University students who were honored during President Obama's commencement address at that university.

Following his graduation, Oscar did an extraordinary thing: he voluntarily returned to Mexico, a country he had not lived in since he was a child. He has now applied to reenter the United States. Oscar said:

I decided to take a gamble and try to do the right thing.

But there is a problem. Unless Oscar is granted a waiver, he will not be able to enter the United States for at least 10 years, if not longer. In the meantime, he is going to be separated from his wife Karla, who is here in the United States, and their 2-year-old daughter Samantha, who are both American citizens.

This extraordinary young man—a mechanical engineer who won a national competition, a person who can add something to America, who has a wife and family here, who is doing the right thing by going back to the country of his origin even though he has little connection with it anymore—is being told: America doesn't need you. Wait for 10 years, separated from your family.

It is not fair.

There are so many other stories of young people who would be eligible for the DREAM Act. Every week—every single week—I receive calls, e-mails, and letters from these dreamers. Let me tell you about two others.

This is Benita Veliz. Benita Veliz was brought to the United States by her parents in 1993. She was 8 years old. Benita graduated valedictorian of her high school class at the age of 16. She received a full scholarship to St. Mary's University. She graduated from the honors program with a double major in biology and sociology. Benita's honors thesis was written about the DREAM Act.

Benita sent me a letter recently, and I am going to read into the RECORD what she said. Benita said:

I can't wait to be able to give back to the community that has given me so much. I was recently asked to sing the national anthems for both the U.S. and Mexico at Cinco de Mayo community assembly. Without missing a beat, I quickly belted out the Star Spangled Banner. I then realized that I had no idea how to sing the Mexican national anthem. I am American. My dream is American. It's time to make our dreams a reality. It's time to pass the DREAM Act.

Let me show one other. This is Minchul Suk. Minchul was brought to the United States from South Korea by his parents in 1991 when he was 9 years old. Minchul graduated from high school with a 4.2 GPA. He graduated from UCLA with a degree in microbiology, immunology, and molecular genetics. With support from the Korean American community, Minchul was able to graduate from dental school. He has passed the national boards and licensing exam to become a dentist, but he cannot obtain a license because he does not have legal status.

Minchul sent me a letter recently. Here is what he wrote:

After spending the majority of my life here, with all my friends and family here, I could not simply pack my things and go to a country I barely remember. I am willing to accept whatever punishment is deemed fitting for that crime; let me just stay and pay for it . . . I am begging for a chance to prove to everyone that I am not a waste of a human being, that I am not a criminal set on leeching off taxpayers' money. Please give me a chance to serve my community as a dentist.

The DREAM Act is not just the right thing to do, it is the right thing for America. Wouldn't America be a better place if someone such as Minchul Suk would be able to serve his community as a dentist? Couldn't our military use someone such as Oscar Vazquez, a mechanical engineer who has overcome so many obstacles in his young life? Wouldn't we all be better off if these talented young immigrants were able to contribute more fully to the country they love?

Michael Bloomberg, the mayor of New York City, knows something about economic development. He sent me a letter supporting the DREAM Act. Here is what he said:

Why shouldn't our economy benefit from the skills these young people have obtained here? It is senseless for us to chase out the home-grown talent that has the potential to contribute so significantly to our society. They're the ones who are going to start companies, invest in new technologies, pioneer medical advances.

Michael Bloomberg is right.

Our country would also benefit from thousands of highly qualified, well-educated young people who are eager to serve the United States of America in our armed services. I know. I have spoken with those who work at the Pentagon. Diversity is important in our military. There are not enough, primarily from Hispanic populations, currently enlisting. This is a good way to change that, to make sure the next generation of leadership in the military truly reflects the United States of America.

Immigrants have an outstanding tradition of military service. More than 65,000 immigrants are currently on Active Duty. The Center for Naval Analysis has concluded that ''noncitizens have high rates of success while serving—they are far more likely, for example, to fulfill their enlistment obligations. . . .''

Many DREAM Act students come from a demographic group that is already predisposed toward military service. The RAND Corporation found that ''Hispanic youth are more likely than any other groups to express a positive attitude toward the military'' and ''Hispanics consistently have higher retention and faster promotion speeds than their white counterparts.''

The Army says high school graduation is ''the best single predictor'' of success in the military. However, in recent years, the Army has accepted more applicants who are high school dropouts, have low scores on the military aptitude test, and even some with criminal backgrounds. In contrast, under the DREAM Act, which I have introduced, all recruits would be well qualified as high school graduates with good moral character and no criminal record.

Since the Bush administration, we have worked closely with the Defense Department on the DREAM Act. Defense Department officials have said to me publicly and privately that it is a very appealing law. It would apply to the cream of the crop of students and be great for military readiness.

Military experts also support the DREAM Act. LTC Margaret Stock, a professor at West Point, wrote an article supporting the DREAM Act. She concluded:

Passage of the DREAM Act would be highly beneficial to the United States military. The DREAM Act promises to enlarge dramatically the pool of highly qualified recruits for the U.S. Armed Forces.

Mr. President, I am sorry I waited until late in the evening and held the staff here for this, but this means a lot to me and it means a lot to literally hundreds of thousands of young people across America. I have introduced a lot of bills in my career. Some of them have become law. Most of them haven't. Most of them aren't even noticed. This one is noticed by hundreds of thousands of young people who, when they hear the name DURBIN, ask the next question: When is he going to

pass the DREAM Act? Our lives depend on it. I feel a special, personal obligation to these young people.

I want to take this story to my colleagues because I think they believe that America is a just and caring country, that these young people can bring talent and service to our great Nation and they deserve a chance. They should not be punished for any wrongdoing by their parents. They deserve a chance to prove themselves and to make this a better nation.

Mr. President, I yield the floor.

ORDER OF PROCEDURE

Mr. DURBIN. Mr. President, I ask unanimous consent that on Thursday, August 5, following the period of morning business, the Senate resume the House message to accompany H.R. 1586 and that all postcloture time be considered expired except for 20 minutes, with 10 minutes each under the control of Senators BAUCUS and DEMINT or their designees; that during this period, it be in order to consider the DeMint motions to suspend and they be debated within the parameters of the remaining time; that upon the use or yielding back of time, the Senate proceed to vote with respect to the DeMint motions to suspend in the order in which offered; that upon disposition of the motions, amendment No. 4576 be withdrawn, no further amendments or motions be in order except the pending motion to concur with amendment No. 4575, and without further intervening action or debate, the Senate proceed to vote on the motion to concur in the House amendment to the Senate amendment to H.R. 1586 with amendment No. 4575; that upon disposition of the House message, the Senate proceed to executive session and resume consideration of the Kagan nomination.

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

ORDERS FOR THURSDAY, AUGUST 5, 2010

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, August 5; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and that following any leader remarks, the Senate proceed to a period of morning business until 11 a.m., with the time equally divided and controlled between the two leaders or their designees; that following morning business, the Senate resume consideration of the House message with respect to H.R. 1586, as provided for under the previous order, and that the time during any adjournment or period of morning business count postcloture.

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

PROGRAM

Mr. DURBIN. Mr. President, at approximately 11:20 a.m., Senators should expect a series of up to three rollcall votes. Those votes will be in relation to two DeMint motions to suspend the rules and on the motion to concur with the Murray amendment on FMAP and teacher funding with respect to H.R. 1586.

Tomorrow, the majority leader would like to reach agreements to consider the child nutrition bill and to vote on confirmation of the nomination of Elena Kagan to be Associate Justice of the Supreme Court.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 8:34 p.m., adjourned until Thursday, August 5, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF JUSTICE

JEFFREY THOMAS HOLT, OF TENNESSEE, TO BE UNITED STATES MARSHAL FOR THE WESTERN DISTRICT OF TENNESSEE FOR THE TERM OF FOUR YEARS, VICE DAVID GLENN JOLLEY, TERM EXPIRED.

STEVEN CLAYTON STAFFORD, OF CALIFORNIA, TO BE UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE GEORGE W. VENABLES.

PAUL CHARLES THIELEN, OF SOUTH DAKOTA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF SOUTH DAKOTA FOR THE TERM OF FOUR YEARS, VICE WARREN DOUGLAS ANDERSON, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT FOR APPOINTMENT ON THE RETIRED LIST OF THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER ARTICLE II, SECTION 2, CLAUSE 2 OF THE UNITED STATES CONSTITUTION:

To be general

MAJ. GEN. JOHN D. LAVELLE

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant colonel

PATRICK L. MALLETT
CHRISTOPHER R. REID
SCOTT H. SINKULAR

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

To be lieutenant colonel

LANNY J. ACOSTA, JR.
JAMES A. BAGWELL
BRIAN R. BATTLES
ROBERT D. BROUGHTON, JR.
THOMAS F. CRUMLEY
RICARDO J. DIAZ
JERRETT W. DUNLAP, JR.
JACQUELINE L. EMANUEL
TERRI J. ERISMAN
JANINE P. FELSMAN
JESSICA A. GOLEMBIEWSKI
LISA L. GUMBS
MICHELLE A. HANSEN
WILLIAM M. HELIXON
RICHARD J. HENRY
GARY T. JOHNSON
PETER KAGELEIRY
SAMUEL W. KAN
CHRISTOPHER A. KENNEBECK
EUGENE Y. KIM
JENNIFER L. KNIES
CHARLES A. KUHFAHL, JR.
JAMES D. LEVINE II
JOHN M. MCCABE
MATTHEW J. MCDONALD
JEFFREY J. MULLINS
WILLIAM J. NELSON
MAY L. NICHOLSON
CHARLES L. PRITCHARD, JR.
STEPHANIE D. SANDERSON
ROBERT L. SHUCK
CARLA A. SIMMONS
JULIE A. SIMONI
DEREK C. STRATMAN
MARGARET F. THOMAS
JACKIE L. THOMPSON, JR.
MARY C. VERGONA
PATRICK L. VERGONA

IN THE NAVY

THE FOLLOWING NAMED INDIVIDUAL FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be commander

ROBERT C. MOORE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

STEVEN D. SENEY
NICHOLAS A. SINNOKRAK

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

ABBY L. ODONNELL
WILLIAM M. PETERNEL
STELLA J. WEISS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

PATRICK P. DAVIS
ANGELA M. EDWARDS
NAM H. HAN
TAEKO E. MCFADDEN
ANDREW H. TAM
JERRY Y. TZENG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

ROBERT E. ATKINSON
ERIN M. CESCHINI
ROLAND E. CLARK
TRAVIS J. CLEM
DAVID B. COLBERT
SARAH L. HEIDT
HEATHER R. HORNICK
RUSSELL G. INGERSOLL
SCOTT A. IRETON
RACHEL J. LIPPERT
DAVID R. MARINO
RAMON P. MARTINEZ, JR.
MATTHEW PAWLENKO
MATHIAS K. ROTH
JONATHAN A. SAVAGE
GEORGE Y. SUH
KEITH B. THOMPSON
GIANCARLO WAGHELSTEIN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

ANTHONY H. BEASTER
JOHNNY D. BOBO
DANIELE BRAHAM
DANA J. CHAPIN
PATRICK M. COPELAND
LIONEL P. DACPANO
ADAM J. DIAZ
SHANNON M. FITZPATRICK
DARREN H. GREENAMYER
DANIEL J. HARMON
KENNETH G. HARRIS
BRIAN M. HART
JASON M. JUERGENS
SHALETHA R. MORAN
JAMES D. PAFFENROTH
CINDY T. ROSE
RICHARD E. SCHMITT
JEFFREY M. SIRKIN
MARK C. WADSWORTH, JR.
JONATHAN C. WOOD

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

CHARLES M. ABELL
BRIAN T. BADURA
KARIN R. BURZYNSKI
NATHAN J. CHRISTENSEN
JODIE K. CORNELL
JENNIFER L. CRAGG
CHARLES J. DREY
DONNELL EVANS