But perhaps we can provide justice for tens of thousands of other Indians by doing the right thing.

I have other things to say, but I know some of my colleagues wish to say a few words. If I might, the Senator from Arkansas has to be away from the Chamber very briefly. She wanted to say a few words. Then I know that Senator KYL and some others wish to say some other words as well.

The PRESIDING OFFICER. The Senator from Arkansas.

PIGFORD II SETTLEMENT

Mrs. LINCOLN. Madam President, I want to say a special thanks to my colleague, Senator DORGAN, not only for yielding, but also, most importantly, for his incredible passion for justice. He has worked long and hard in this body and in the other, but certainly working hard for justice for those whose voices are often quieted. He does a tremendous job at it. I think we are all very grateful for that passion and for that plea for justice.

I come to the Senate floor today to urge with great passion my Senate colleagues to support another important piece of legislation; that is, to fund the racial discrimination settlement known as Pigford II between African-American farmers and the U.S. Department of Agriculture.

The time is long overdue to move beyond USDA's discriminatory past and begin to right the wrong of African-American producers and what they have experienced. We have a keen opportunity today to be able to move forward and to see, again, justice as has been described by Senator DORGAN in talking about moving forward and away from the past and the discrimination that occurred and putting an end to these settlements that have already been settled. We have spent the time and the energy and the resources to settle these arguments. Now we need to make sure those who have been wronged will be right.

Between 1981 and 1996, African-American farmers seeking farm loans and credit were discriminated against, denying them access to government programs and to capital. In some cases, these farmers were discouraged from even applying for loans. They were told they were ineligible or that application forms were unavailable. In other instances, loan applications were intentionally delayed to miss deadlines, continuing to disadvantage those African-American farmers. As a result of the discrimination, many of these farmers were unable to run successful businesses and sustained severe damages to their credit histories.

Despite these challenges, despite all of what they were presented with and what they were dealing with, some of these farmers are still farming today, embodying the essence of resilience and the industrious characteristic of all American farmers. We should be proud they are still farming today, and we should honor that by making sure we move this settlement forward and make sure these awards are granted to those who have been wronged.

Another fallout faced by African-American farmers is their shaken faith in the USDA and, by extension, the U.S. Government. Who can blame them—to have been wronged and to be found they were in the right and yet still not to be made whole? Many farmers have spent more than 20 years seeking recognition of the discrimination they experienced. While no settlement can completely compensate them for the anxiety, the anguish, and, of course, the humiliation they experienced, finally funding this settlement is a critical first step in restoring the USDA's credibility among minority farmers.

I hope my colleagues will understand how critically important this is to the embodiment of who we are as a people and a government to move this forward. While it is understood that a legal settlement agreement is rarely perfect, funding this agreement will provide much needed reconciliation for African-American farmers. It is an opportunity to restore their faith in their government, by renouncing a past riddled with discrimination and rightfully honoring the settlement.

Time is of the essence, as many Pigford claimants have passed away waiting for closure on this matter, just as Senator DORGAN mentioned Native Americans who have passed away waiting for justice. We simply cannot afford to delay this process any further. We have seen multiple opportunities and efforts to try to move forward. I hope today is an opportunity none of us will deny to move the issue forward.

In my State of Arkansas, I have heard the stories of hard-working farm families who, despite years of neglect and discrimination from their own government, continue pushing ahead. I have heard from farmers such as Mr. Charlie Knott, a hard-working Arkansan who sought farm loans in the 1980s but was misled and mistreated in that process. Mr. Knott was refused timely access to sufficient capital because of discrimination, limiting production and ultimately crippling his business.

When Mr. Knott fell ill, his children tried to take over the farm but were also met with resistance and neglect from their government, leading to destroyed credit ratings, a loss of 230 acres, as well as the family tractor and other farm equipment. After farming on the same land for over 100 years, the Knott family was forced to quit.

Adding insult to injury, the Knott children were once again denied access to the Pigford claim because of missed filing deadlines. The Knott children are determined to return to farming, to restore the family business and their dignity, and to uphold the legacy of their father, who fought for years not only to serve his family and community but to contribute to the strong legacy of American farming.

Farmers such as Mr. Knott deserve justice and gratitude from a nation that wouldn't be what it is today absent their sacrifices and contributions. Farmers such as Mr. Knott have suffered gross injustices. It is incumbent on the Members of Congress to demonstrate the leadership to correct this injustice and to pass this legislation. If not today, when? When will we do this? This action is long overdue. The time has come to take this step, to live up to our founding principles, to begin the healing process that is so needed, and to restore faith in our government. I urge my colleagues to support this measure today as we move forward and put it behind us, as we begin to heal and rebuild faith in our government.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I thank the Senator from Arkansas for what she has said. It really is unfortunate that we cannot get this Pigford legislation passed.

I know the distinguished Presiding Officer, the junior Senator from North Carolina, has been working on this very hard as well. In fact, she and I have cosponsored a piece of legislation to give justice in this area as well.

Today, we have an opportunity to finally take care of this situation of bringing justice to Black farmers who have been waiting for decades to settle their discrimination claims against the Department of Agriculture. Earlier this year, Secretary Vilsack was able to reach a settlement agreement with the Pigford II claimants who were denied a determination on the merits of their claims against the USDA for no reason other than they had filed late.

The government has an obligation to fund the settlement, which is subject to court approval, and Congress must act to provide relief for these claimants and do it quickly. The Black farmers have been asking for stand-alone consideration of this bill. That is what I was hoping to get done today.

I have nothing against what my colleagues are doing on the Cobell settlement as well.

I think it is fair to say that such appropriation for the Pigford settlement ought to be offset.

There is an advocate for the Black farmers—John Boyd. I have been working with him for a long period. He was working hard on this a long time before I was. We should be getting this resolved for the benefit of the farmers but also for the advocates, those people who have been working so hard finding ways to get it done. We thought now was the opportunity to get it done.

The farm bill we passed last year does one thing right: it focuses a considerable amount of resources on new and beginning farmers and ranchers. Many of the Pigford claimants were in that same boat 20 years ago. We have an opportunity to rectify that misjustice. We know USDA has admitted the discrimination occurred. Now

we are obligated to do our best getting relief to those who deserve it. It is time to make these claimants right and move forward into a new era of civil rights in the Department of Agriculture.

I look forward to the time we can get this done. I plead with my colleagues, as the Senator from Arkansas pleaded, to get this done right now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, I add my voice in support of coming to closure on this important issue. I thank Senator DORGAN and Senator LINCOLN for their extraordinary leadership for the Pigford and Cobell claimants. We are very close to settling a grave injustice that has gone on in two communities, one the Native-American community and the other the African-American community. I surely hope we can find a way forward in the next few hours, before we leave, to get this done; if not, that it would be one of the first orders of business when we return.

Explanations have been made beautifully on both sides. I represent 1,000 African-American farmers. I am going to fight for them and advocate for them and continue to bring their cases before this body until we get justice.

People in Louisiana generally, of many different races, understand systematic injustice. Talking about oil moneys not coming the way they should, there are many people in Louisiana right now shaking their heads in great sympathy with the stories the Senator from North Dakota shared with us about Native Americans.

I support the Pigford settlement. I support the Cobell settlement. I hope we can find the $5 billion, approximately, so that it does not affect the deficit, paid for in a responsible way to end this discrimination and to provide some hope and support to these families.

I was proud to send Clarence Hawkins' name to run the USDA in Louisiana, the first African-American administrator to do so, former mayor of Bastrop. The President appointed him at my suggestion. We are making some headway in Louisiana to rectify past injustices.

Again, I thank Senators DORGAN and LINCOLN for their leadership.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, Senator BARRASSO and I, as chairman and vice chairmen of the Indian Affairs Committee, have been working on this issue for a long while. Senator KYL, Senator BAUCUS—we have had discussions. Senator KYL had to leave the floor, but I believe he will return. He very much wants to find a way to resolve these issues, as do I and others.

This is not complicated. This is a case where the Federal Government said to American Indians in the late 1800s: We are going to break up these tribal lands and give you personal ownership of these lands. And then we will manage the lands for you and take care of it for you in trust, and the income that comes off those lands will be yours. We will manage your trust accounts.

The fact is, they took control of the lands and created trust accounts. And the Indians got bilked, looted. Grand theft occurred.

Let me show one more photograph. This fellow is still alive. His name is James Kennerly. He is a Blackfeet Indian, standing in front of his rather humble home. He is hoping that Congress will resolve this by approving the settlement. His father was a World War I veteran, wounded, disabled in combat. The family lives on land that has considerable oil and gas leases. Thousands of barrels a week were pumped off that land. Years later, the oil wells still continue to pump, but all the lease documents have disappeared. This family lives in a humble home despite having had oil interests on their property.

Another person waiting for justice, Johnson Martinez, a Navajo Indian in his seventies, lives in a rundown trailer house near Bloomfield, NM. He has no running water and no electricity. At night, he builds a fire to keep himself and his dogs warm. He lives yards away from where the gas pipelines cross his family's land. He lives off the right-of-way fees for the gas pipeline. One month, he got a check for $80. Sometimes he gets a check for a few cents. A court-appointed investigator found that non-Indians were receiving 20 times more than Navajo Indians such as Johnson Martinez were receiving in the same circumstances.

And then there is Esther and Sam Valdez—Navajo Indians—they live 100 feet from natural gas wells. They have been producing natural gas for a long while. Yet this family has trouble putting food on the table. They receive checks for $6 and $8. Sometimes the checks come, sometimes they don't. The Federal Government can never explain to them what happens to the money. This is grand theft.

For more than a century, American Indians were cheated. Yes, there is some incompetence here. That is the comfortable word. But there is also looting and theft involved in having these folks cheated.

The lawsuit was filed 15 years ago. Ten years ago, the Federal court said the Federal Government is completely without merit and violated its trust. The court found in favor of the plaintiffs, saying that they have been bilked. That was 10 years ago. But, the case continued in Federal court with more and more money spent on lawyers.

Finally, at long last, Interior Secretary Salazar and Attorney General Holder, and the plaintiffs in this case negotiated an agreement, and the Federal judge in the case said: This looks like justice to me. This settlement was sent to the Congress for approval and to provide the funding for this agreement.

I came to the floor to offer a unanimous consent request to see if at long last we might put the Cobell litigation behind us and do the fair thing. I understand a unanimous consent request would be objected to at this moment because of what is called the ''pay-for.'' So we have a disagreement about that. But I also understand from discussions we have held that there is the possibility and the potential that this afternoon we might find a way to reach agreement on the ''pay-for'' portion of this and have the Senate finally approve the Cobell settlement, and also the Pigford settlement so that we can move beyond on this.

In the situation that led to the Cobell case, there are people who should hang their head in shame, many of them now departed, who have bilked the Indians out of so much money over so many years.

I would finally say this about the Cobell matter and the American Indians involved. This is a chart that shows the 10 poorest counties in America, the 10 counties with the most significant poverty in our country. Madam President, 8 of the 10 counties have Indian reservations in them—8 of them. We know that. We know what is going on.

Then I talk about these people, American Indians, who live in humble homes with no money, with six oil wells on their land. Somebody is getting the money, but the Indians are not. Who is cheating them? Who cheated them a decade ago, five decades ago, ten decades ago? Will we ever settle our account here? Will this country ever deal responsibly with what I call a shame?

Well, my colleague, Senator BARRASSO, and I have worked on this a long while. He has had some concern about certain aspects of the settlement, but I do not think there is a disagreement between us at all about the need to move forward to resolve this issue. My hope is we can do that very soon.

As I said, I was intending to seek a unanimous consent request, but I think I will stop short of that at this moment because there is the potential, perhaps later this afternoon, for us to reach agreement on the ''pay-for'' and a couple of other elements and get a unanimous consent request agreed to, which would be a very significant achievement in this body today.

I know Senator BARRASSO from Wyoming wishes to seek recognition. Let me yield the floor so that might happen.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Wyoming is recognized.

Mr. BARRASSO. Mr. President, I appreciate the hard work done by my colleague from North Dakota and his commitment as chairman of the Indian Affairs Committee to try to come to a solution in the Cobell settlement.

He is absolutely right. We still need to work on some policy issues, as well

as some issues in terms of how this will be paid for. He and I both agree we need to settle the Cobell lawsuit. There has been much rhetoric. We both agree we need to settle the Cobell lawsuit.

At the President's insistence, and the House and the Senate majorities, they have repeatedly tried to get this bill enacted outside the regular process. This settlement has been inserted into various bills over the past several months that have absolutely nothing to do with American Indian issues. You ask yourself why. Well, perhaps folks wanted to avoid some scrutiny—scrutiny by Congress, by the press, and, most of all, by those who have been most affected, the stakeholders.

Two weeks ago, I came to the floor and offered an amendment to legislation that addressed some of the more egregious problems with the settlement. I am talking policy as well as pay-for issues. The majority leader dismissed my amendment, and he called it the ''beat up the lawyers'' amendment. Well, he called it that because one of the provisions in the amendment establishes a $50 million cap on presettlement attorneys' fees—$50 million. The settlement says it should be between $50 million and $100 million. My amendment said, let's keep it at that lower figure. Only in Washington, DC, would anyone ever call a $50 million cap on attorneys' fees—$50 million of attorneys' fees—as beating up the lawyers.

Well, because attorneys' fees were capped at $50 million, the majority leader objected to both the Cobell and the Pigford settlements.

There was and still is a good reason for that cap. Every Member of this body should read a couple of op-eds on this Cobell settlement. One was in the August 1 edition of The Hill, the other in today's August 5th edition. The August 1 article: ''Cobell settlement worth doing right, together.'' The one from today: ''Unconscionable Cobell.''

Mr. President, I ask unanimous consent that both these articles be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hill's Congress Blog, Aug. 2, 2010]

COBELL SETTLEMENT WORTH DOING RIGHT, TOGETHER

(By Kimberly Craven)

Today, the Senate will be asked to approve by unanimous consent settlement of the proposed Cobell lawsuit (Cobell v. Salazar). Senators are not being advised that the proposed settlement is constitutionally dubious and greatly expands the original litigation. It authorizes a mandatory class of plaintiff with no regard to the due-process rights of individuals to opt. It creates a new class to settle land and natural resource mismanagement claims which were never part of the original litigation and not been part of the 14–year-long Cobell lawsuit which, we have been told, sought only an accounting of individual Indian money (IIM) accounts.

If Congress approves it, the settlement will consist of two classes: those of the historical accounting class and the new ''un-litigated'' class—the trust mismanagement class. The first class will receive $1,0oo and any traditional safe-guard of opting-out will be denied this class. The new second class will receive $500 and a formula based on the top 10 sums that have filtered through a person's IIM account.

Creation of the new class has been disturbing to many tribes and American Indians. The government will be authorized to pay more than $3.4 billion without even filing an Answer to the new Complaint of land mismanagement claims. What it means is that if you're a Native person whose land has been flooded or damaged, timber destroyed, mineral royalties underpaid, soil poisoned, grass lands over-grazed by your lessee or if you've just been the victim of trespass, your claims will be settled for $500 and a formula amount that bears no resemblance to actual damages or loss.

Many American Indians think this entire settlement, although cloaked in righteous language, has been cobbled together for the primary purpose of permitting the Administration to fulfill a campaign promise. This settlement will permit the attorneys to claim as much as $100 million in attorney fees with a side agreement they are not even required to document the time spent on the case for the first fourteen years. Personally, I find it disturbing that one of the plaintiff attorneys served on the Obama campaign, transition team, and posted pictures of himself on Facebook partying at the White House holiday party around the time the settlement was reached, and now is rumored to be up for 10th Circuit Court of Appeals nomination. The lead plaintiff has been very upfront that some Indians will get hundreds of thousands of dollars and is on record as saying, ''Some people will be very, very rich.'' I think we know who some of those people might be. The litigation was filed in a Court of Equity where only an accounting (an equitable action) could be ordered and money damages could not be awarded. The seven attorneys will share in $100 million and the lead plaintiff will also be entitled to up to $15 million in ''reimbursements'' for ''repayable grants,'' surely an oxymoron even in Washington-speak, plus an undisclosed amount in ''incentive fees for the four lead plaintiffs.''

As I wrote this opinion piece, I researched elements of an unfair class action lawsuit and found this information at www.classactionlitigation.com/faq. Elements include ''any settlement where the release being demanded as a condition of the settlement is extremely overbroad and encompasses claims that were neither pursued in the class complaint nor subject to true adversarial litigation prior to the settlement and virtual nonexistence of discovery by the class counsel who proposes a settlement.'' This surely meets those thresholds with no discovery, judicial record, or due process for the proposed second class.

Both the Affiliated Tribes of Northwest Indians and the Great Plains Tribal Chairmen's Association are on record as wanting changes to the settlement. Sen. John Barrasso (R–Wyo.) has recommended many of these changes to address the fairness, restoration, due process, and other infirmities in the settlement proposed today and many Indian people appreciate his efforts in his leadership role as Vice Chairman of the Senate Indian Affairs Committee. Having worked for a Republican Senator, Sen. Daniel J. Evans (R–Wash.), who also served in this capacity, I know firsthand that Indian issues are not partisan in nature. If this is worth doing to the tune of $3.4 billion, then it's worth doing right together.

[From the The Hill's Congress Blog, Aug. 5, 2010]

UNCONSCIONABLE COBELL

(By Richard A. Monette)

A few facts about the Cobell settlement to be voted on in Senate today:

Number of published court opinions in the case: 80-plus;

Amount awarded to plaintiffs by courts at present: $0;

Amount to attorneys under settlement: $100 Million (through Dec. 7, 2009);

Amount to each account holder under settlement: $1,000.00;

Number of accounts with less than $15: 107,806;

Total amount of money in accounts with less than $15 (small accounts): $15,210.51;

Average balance in 107,806 small accounts: $7.09;

Total to be paid under settlement to small accounts: $107,806,000.

The Senate is asked today to give approval, sight-unseen and by unanimous consent, to a $3.4 billion ''settlement'' of a 14-year-old lawsuit brought by five individuals on behalf of all American Indians who have money or land held in trust by the United States. $2 billion of this amount will be earmarked to pre-fund an existing Bureau of Indian Affairs program for 10 years. The amount awarded by the courts to date after more than 10 trials is exactly zero dollars and zero cents. If approved by the Congress, and subsequently by the courts, the remainder of this money will be parceled out by formula in the form of reparations without regard to any individual's actual losses or damages.

The only individuals who will be permitted to present actual clams are the attorneys and the five named individual plaintiffs. The five named plaintiffs are authorized up to $15 million as ''reimbursements'' for ''repayable grants,'' plus an undisclosed amount as ''incentive fee awards.'' The lawyers will be authorized to claim up to $100 million off the top, plus their ''normal hourly rates'' for as long as it takes to settle up with some 300,000 individuals, more than 83,000 of whose whereabouts are unknown. Much smaller mass settlement awards have taken more than 10 years to close out.

More than 100,000 of these individuals have account balances of less than $15. Each of them will receive a check for $1,000, or an amount more than 6,600 percent of their current balance. Those individuals with more than $1 million in their accounts will receive $1,000 also, or less than one-tenth of 1 percent of their current balances. There is neither rhyme nor reason to this scheme.

The $2 billion, pre-funded BIA program completely usurps the authority of the Appropriations Committees for 10 years. This settlement also confers jurisdiction on a federal district court that does not presently have it; rewrites the Federal Rules of Civil Procedure for this case to authorize the court to exercise the conferred jurisdiction; and presents the court not with a case or controversy as required by Article III of the Constitution, but with a pre-packaged financial program simply to administer. The sponsor of this measure in the Senate stated that no other committee (i.e., Judiciary) needs to review this measure before it is presented for a vote.

Proponents claim this settlement will ''turn the page'' on a dark chapter. Some who are familiar with the litigating history beyond this case of the lead counsel and lead plaintiff think this settlement is more likely only to fuel a war chest for subsequent, similarly entrepreneurial and extortionate litigation. No senator should think this settlement approximates ''justice'' that has somehow escaped the attention of the federal

judges who have actually presided over the 14–year history of this case.

Mr. BARRASSO. So there are issues of policy dealing with transparency, dealing with the production of records by the attorneys who are involved in this. When you read one of these editorials, the one in today's Hill, ''Unconscionable Cobell,'' written by a law professor at the University of Wisconsin-Madison:

Number of published court opinions in the case: 80-plus

Amount awarded to plaintiffs by courts at present: $0

Amount to attorneys under settlement: $100 Million. . . .

Amount to each account holder under [this] settlement:

We are talking now about those who have been affected by this—

$1,000.00

What an incredible disparity.

Well, if we were all to take the time to look through these two editorials, the changes to the settlement I have been proposing would not only seem reasonable, they would be absolutely necessary. They point out several real problems with the settlement, including the way the attorneys' fees are handled. I am continuing to work with my colleagues on dealing with that. These are the blunt facts.

So I agree with my colleague from North Dakota, the problems with the Cobell settlement are by no means insurmountable. They can and they must be resolved. In fact, I do not think it would be difficult to resolve the differences we have regarding the Cobell settlement. We can sit down, and we plan to do that, to discuss the issues directly. I think we can get beyond this impasse, and that is what I am committed to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. Mr. President, as I indicated, I intend to withhold the unanimous consent request because it would clearly be objected to. There are some people who disagree with the method by which this settlement would be paid for.

But I also wish to mention that I have some hope that later today, finally at long last, we may be able to come to the floor of the Senate with an agreement that would be able to withstand the unanimous consent request. If we do that before we break, we would have resolved a very longstanding issue, not just 15 years of litigation, or a century of mismanagement, but also since last December, when this agreement was reached and the Congress was given time to approve it, but then that deadline had to be extended six times. At long last, perhaps we will be able to decide we can do this together.

I very much appreciate the work Senator BARRASSO is doing and Senator KYL and Senator BAUCUS and others. My hope is that later this afternoon I will be able to come to the floor with such a unanimous consent request.

Mr. CARDIN. Mr. President, I rise today to talk about the Pigford II settlement pending full action by the U.S. Senate.

We all know that farming is a difficult occupation. The hours are long, the weather is unpredictable, and the challenge of competing in a global marketplace is intense. Tens of thousands of Black farmers have had to face all those normal challenges. Tragically, they have also had to deal with a challenge that was unique to them based solely on race. The U.S. Department of Agriculture, USDA, was discriminating against them.

More than 12 years ago, Black farmers across America brought a class action suit against the USDA for racial discrimination. The history of that discrimination is a sad one, and it is well documented. Farmers, like all businesses, need access to loans. They need to borrow money for expensive equipment and they need funding to help them when droughts strike or when markets collapse. The Congress has recognized this need for decades, and we have established special loan programs in the USDA to support these special needs. But when it came to lending, tens of thousands of Black farmers were the victims of systemic discrimination. During the 1980s and 1990s, the average processing time for a loan application by White farmers was 30 days; the average time for a loan application by Black farmers was 387 days. Black farmers had to wait 12 times as long to receive a loan. This discrimination earned the USDA the regrettable nickname ''the Last Plantation.''

Black farmers finally sought justice through a class action lawsuit in 1997. More than 20,000 farmers initiated claims citing racial discrimination in the USDA farm loan programs. Two years after the action was initiated, the U.S. District Court for the District of Columbia entered a consent decree approving a class action settlement to compensate these farmers for years of racial discrimination by the USDA. Each farmer who could prove discrimination was entitled to damages. Out of the initial 20,000 farmers, 15,000 were meritorious in the claims they brought.

As the legal process continued, additional farmers began to join the class action and filed their own claims. Approximately 80,000 farmers eventually brought claims. Unfortunately, many of these farmers did not know about the class action suit, and by the time they learned of its existence, the filing deadline had passed.

In 2008, Congress recognizing the injustice of stopping 80 percent or more of the farmers who potentially suffered discrimination by our government—decided to take action and created a new cause of action for farmers previously denied access to justice. In the 2008 farm bill, with bipartisan support, Congress included $100 million for payments and debt relief as a downpayment to satisfy the claims filed by deserving claimants denied participation in the original settlement because of timeliness issues.

After years of litigation and negotiation between the Department of Justice, which represented the USDA, and lawyers for the farmers, a settlement was finally reached in February 2010. The Pigford II settlement agreement will provide $1.25 billion, which is contingent on appropriation by Congress, to African-American farmers who can show they suffered racial discrimination in USDA farm loan programs. Once the money is appropriated farmers can pursue their individual claims through the same nonjudicial process used in the first case.

To address this funding need, President Obama included $1.15 billion in additional funding for his fiscal year 2010 and fiscal year 2011 budgets. Both Chambers of Congress have worked to pass appropriations to fulfill the settlement agreement since February. The House of Representatives has passed funding language for the Pigford case twice; once as part of the war supplemental and the other on a tax extenders bill. But the Senate has not been able to do the same. Despite the majority leader's efforts in finding ways to pay for the legislation and move the legislation for full Senate consideration, we have been unable to proceed to a rollcall vote. This bill has come before the Senate a half dozen times. There are no known objections to the settlement, yet we have failed to pass the funding therefore denying the process for funding to these farmers who were discriminated against by our own government.

We must move to appropriate these funds. The settlement that was reached is only valid until August 18, 2010. Failure to appropriate the money by then could cause the agreement to be voided. William Gladstone once said that ''justice delayed is justice denied.'' Let us not be in the business of delaying and denying justice for African-American farmers. Let us be in the business of allowing the justice system to work and provide them with adequate redress. I urge my colleagues to support this funding.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I think my friends and colleagues on the other side have blocked out some time. If they would not mind, I would be very grateful if I could take 5 or 6 minutes to make some comments about the Kagan nomination. I see heads nodding affirmatively, so I appreciate it.

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES—Resumed

The PRESIDING OFFICER. The Senate will proceed to executive session to