

EXECUTIVE SESSION

and private industry. Former government officials, both civilian and military, who have held positions of the highest responsibility for our national defense and nuclear security—including former Republican administration officials who had negotiated and implemented previous START treaties—were among those who testified and called for the treaty's speedy ratification.

All have been experts, with years, if not decades, of experience in the field of national security and arms control, and all have strongly endorsed ratification of the treaty.

In addition to its contribution to America's security, one of the most compelling reasons for the full Senate to ratify this treaty, and move quickly to do so, is to regain our insight into Russia's strategic offensive arms. Since START I expired last December, we have had no comprehensive verification regime in place to help us understand Russia's strategic nuclear forces.

We need the transparency to know what Russia is doing to provide confidence and stability, and we need that confidence and stability to contribute to a safer world. We will only regain that transparency by ratifying this treaty, and we are in dangerous territory without it.

Previous arms control treaties have been ratified with overwhelming bipartisan support. START I was passed 93 to 6 in 1994, and the Moscow Treaty passed 95 to 0 in 2003. Legislators recognized then that an arms control agreement between Russia and the United States is not just good for the security of our two nations but can lead the way for the rest of the world to reduce the proliferation of nuclear weapons. The ratification of this treaty reconfirms U.S. leadership on nuclear arms reduction and nonproliferation.

Over the past several months we have had ample time to review the documents and reports related to the treaty. I am sure my colleagues will join me in recognizing the necessity of ratifying New START. Not only will this treaty enhance the national security of the United States, it will serve as a significant step forward in our relationship with Russia, a key partner in the overall U.S. strategy to reduce the spread of nuclear weapons worldwide. I am glad to offer my support in the Foreign Relations Committee and look forward to the full Senate's ratification of this treaty as soon as possible.

Mr. President, with that, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

NOMINATION OF JANE BRANSTETTER STRANCH TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Jane Branstetter Stranch, of Tennessee, to be United States Circuit Judge for the Sixth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 2 hours of debate with respect to the nomination, with the time equally divided between the Senator from Vermont and the Senator from Alabama or their designees.

The Senator from Vermont.

Mr. LEAHY. Mr. President, parliamentary inquiry: I think the leadership and others were expecting a vote at 5:30. If the Democratic and Republican sides yield back any time to bring the vote at 5:30, that would be permissible; would it not?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. LEAHY. I thank the distinguished Acting President pro tempore.

This afternoon, the Senate is going to finally consider and finally vote on the nomination of Jane Stranch of Tennessee to the Sixth Circuit. She is a native of Nashville, TN. She has practiced law in that community for 32 years. She has often appeared before the Sixth Circuit, the court to which she is now nominated. Ms. Stranch has decades of experience in labor and employment law. Actually, that is an expertise she made useful when she taught a class on labor law at Nashville's Belmont University.

Ms. Stranch also has an active appellate practice, as well as significant experience with alternative forms of dispute resolution, such as mediation and arbitration. She is a leader in her community. She dedicates significant time to pro bono work, and that is something I always look for in a nominee. She dedicates significant time also to civic matters and her church. She has impressive academic credentials. She earned both her JD, Order of the Coif, and her BA, *summa cum laude* and Phi Beta Kappa, from Vanderbilt University.

Her nomination is supported by her home State Senators, both Republicans. Her nomination was reported by a bipartisan majority of the Judiciary Committee last November. That was nearly 10 months ago. Since then, every single Democratic Senator has said—actually they did right from the time she was reported—they were prepared to debate and vote on this nomination. I have spoken many times about the Democrats' willingness and the need to consider this nomination.

In mid-July, I came before the Senate to take the extraordinary step of propounding a unanimous consent request to consider this nomination because at that time we had waited months and months and months and months, and I felt she should be given a chance to have a vote.

The senior Senator from Tennessee, who I see on the floor now, supported that request. I made very clear at that time—and I will make very clear again today—that in no way do I fault the senior Senator from Tennessee for the delay. In fact, he has supported this nomination from the outset. He spoke to me in favor of the nomination at the time it came before the committee. He spoke to me in favor of the nomination when it was before the committee and immediately after it came out of the committee. He has been most supportive all the way through.

Indeed, I think this nomination is an example of how President Obama has reached out and worked with Senators from both sides of the aisle. But I made that request after she had been waiting 8 months for just a vote—for a vote up or down. But after being pending on the Executive Calendar for those 8 months, there was an objection to my request to at least let us go ahead and vote.

Now, I thank the Senate majority leader and the Republican leader for facilitating the agreement that finally allows her consideration this evening. I hope now the Senate will be allowed to turn to the other judicial nominations that have been stalled before the Senate.

One nomination is that of Albert Diaz from North Carolina to the Fourth Circuit, for example. It was reported unanimously by the Judiciary Committee, but it has been stalled since January—since the snows of January.

Others include Scott Matheson of Utah, nominated to the Tenth Circuit, and Janet Murguia of Arizona, nominated to the Ninth Circuit. I mention these because they are all supported by their Republican home State Senators, and they were reported by the Judiciary Committee unanimously, with no objections. It is hard to see how, when they are supported by Republicans in their State—the President has reached out to them, gotten their support—and they go out of the Judiciary Committee with no objections, they then sit here forever.

Another is Ray Lohier of New York, whose nomination to the Second Circuit was reported without objection. In addition, there are 12 district court nominations on the Senate Calendar that should be considered and confirmed without further delay. They were reported as long as 7 months ago.

A number of recent newspaper articles have discussed the judicial vacancy crisis that has been created by the Republican strategy of slow-walking the Senate's consideration of non-controversial nominations. Remember,

these are all people who, when they finally get a vote after waiting months and months and months, usually get a unanimous vote. These include district court nominations, which are traditionally considered without delays, and they have never been targeted for obstruction by Democrats or Republicans when they have been supported by their home State Senators. Last year, the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. So far this year, we have confirmed only 28 more and achieved what one recent news story noted is the lowest number of confirmations in more than 40 years.

I took serious note of the remarks of Justice Anthony Kennedy—a Justice nominated by a Republican President—who spoke last month at the Ninth Circuit conference about the cost of skyrocketing judicial vacancies not only in California but throughout the country. He said:

It's important for the public to understand that the excellence of the federal judiciary is at risk.

He further noted that:

If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled.

I hope all Senators will heed Justice Kennedy's serious warning because he is absolutely correct. We should not let partisan calculations stand in the way of doing our job for the American people.

If, in fact, the action we are taking this evening represents a bipartisan willingness to return to the Senate's tradition of offering advice and consent without extensive delay, then I welcome it. Because in my 36 years in the Senate, I have never seen anything to match the delays we have seen over the last year and a half, under either Democratic or Republican Presidents. I hope we will promptly consider the other 63 nominations that remain on the Executive Calendar, which have already been considered and favorably reported by the Judiciary Committee.

I remember President Bush's first year in office. I became chairman of the Senate Judiciary Committee halfway through that year. Many said: Well, after Senate Republicans had pocket-filibustered more than 60 of President Clinton's judicial nominations, then we should do the same to President Bush. I said, No; I don't want that kind of tit for tat. Because of the 60 pocket filibusters by the Republicans of President Clinton's nominations, judicial vacancies skyrocketed to more than 110. So what I did, during the only 17 months as chairman of the committee during President Bush's first 3 years in office, is I worked hard and we proceeded in that 17 months to confirm 100 of his judicial nominations. I did that in 17 months. I contrast this to the first 2 years of President Obama's term. Senate Republicans have allowed only 40 Federal circuit and district court nominees to be considered by the Senate.

The history of the Sixth Circuit is detailed in my July 29, 2002, Senate statement in support of another Tennessee nominee, Judge Julia Gibbons. As chairman, I proceeded to a confirmation hearing for Judge Gibbons in April of 2002. That was the first hearing for a Sixth Circuit nominee in 5 years. Republicans refused to hold any hearings for a Sixth Circuit nomination prior to that because they were made by a Democratic President, President Clinton. He nominated Judge Helene White, an experienced State court judge. They refused to hold a hearing. He nominated Kathleen McCree Lewis, an accomplished attorney and the daughter of former Solicitor General of the United States and former Sixth Circuit Judge Wade McCree. They refused. When the President nominated Kent Markus, a law professor and a former Justice Department official who had the support of his Republican home State Senator, they refused. By proceeding with President Bush's 2002 Sixth Circuit nomination of Judge Julia Gibbons of Tennessee and then his nomination of Judge Rogers of Kentucky, I wished to break that logjam and chose a better way of doing it.

When I resumed the chairmanship of the Judiciary Committee in 2007, we were able to fill the last remaining vacancies on the Sixth Circuit when we confirmed President Bush's nominations of Judge Helene White and Judge Ray Kethledge of Michigan to the Sixth Circuit. So after Republicans kept the Sixth Circuit vacant all those years by pocket-filibustering President Clinton's nominations, Democrats worked with a Republican President to bring it back to full. In fact, overall, judicial vacancies were reduced during the Bush years from more than 10 percent, caused by the pocket-filibustering of 60 of President Clinton's nominees, to less than 4 percent. But now, because of the blocking of President Obama's nominees, judicial vacancies are now again over 10 percent. Mind you, during the Clinton years, Federal Circuit vacancies doubled because of the pocket-filibustering by the Republicans. During the Bush years, the Federal circuit court vacancies reduced from a high of 32 down to single digits. We have not had the same cooperation on the Republican side with President Obama.

During the Bush years, Democrats enabled the reduction of vacancies in nine circuits. Since then, vacancies in six circuits have risen. During the first 2 years of the Bush administration, the 100 judges confirmed and considered by the Senate—and this is when I was chairman and President Bush was President, during his first 2 years—we considered these judges an average of 25 days after being reported by the Judiciary Committee. The average time for confirming circuit court nominees was 26 days. By contrast, the average time for the Federal circuit and district court judges confirmed since President Obama took office is 90 days

after being reported. The average time for circuit nominees is 147 days. Contrast this with when it was not unusual during President Bush's time when we would report them out one day and had them confirmed within 2 or 3 days thereafter.

It would be one thing if he made nominations opposed by home State Senators. President Obama has not. Typically, he has reached out. He was worked with home State Senators in both parties. Likewise, I have respected the minority. I have not brought up people who did not have the support of their Republican home State Senators. We have tried to strengthen the cooperation between the parties and branches. Frankly, it is disappointing that the others take the opposite approach. Again, I have been here with half a dozen different Democratic leaders and Republican leaders and half a dozen different Presidents. I have never seen anything such as this.

There is no good reason to hold up consideration, for weeks and months, of nominees who have been reported unanimously from the Judiciary Committee, where every Republican, every Democrat reported them favorably. In fact, over the recent recess, tensions increased again when someone from the Republican side of the aisle anonymously—didn't even come forward and say who it was—anonously objected to the standard practice of holding nominations in place during the August recess and insisted that five judicial nominees who had been reported favorably be returned to the President. Ironically, it was just days before that objection that the President and the Republican leader met and agreed to work together. I remember when Republicans used to contend that any nomination reported by the committee, whether unanimous or otherwise, was entitled to an up-or-down vote. That was then. I guess this is now. Indeed, 24 judicial nominations favorably reported by the Senate Judiciary Committee have not been acted upon by the Senate—24—because Republicans have objected.

We have fallen well off the pace we set for nominations in 2001 and 2002. When the Senate entered its August recess in 2002, we had confirmed 72 of President Bush's circuit and district court nominations, including our confirming 8 nominations by voice vote as the Senate wrapped up before the recess. I am rather proud of that because I had been chairman for barely 12 months when we did those 72. Only 6 nominations remained on the Executive Calendar, and all of them were later confirmed. No judicial nominations were returned to President Bush. By this date in 2002, we had already confirmed five more judicial nominations after the August recess, for a total of 77 of President Bush's district and circuit nominees confirmed by a Democratic Senate.

What has happened? What has happened? Democrats do not say we are

going to take revenge after what was done to President Clinton by a then Republican majority. We said we will move forward on these because the Federal judiciary should be separate from politics. They should be able to go forward. We can have elections and we can go and fight each other during elections and the voters will decide that one of us will get elected and one will not, but the Federal judiciary should be outside of that kind of politics.

So unlike those 77 of President Bush's district and circuit court nominees by this time, we have confirmed only 40 of President Obama's circuit and district court nominations. In fact, we were permitted only four non-controversial nominations as we headed into recess. Five judicial nominations were sent back to the President. So as a result, 17 judicial nominations remain stalled on the Executive Calendar today. It has been different, I would say, in the Judiciary Committee itself, and I thank the ranking Republican, Senator SESSIONS. He has cooperated with me and worked with me during the whole process of hearings in considering nominations in the Judiciary Committee. He knows I have respected and protected every single Republican on that committee when they have asked for extra time or asked for extra information. But the bottom line is, the Senate has taken more than five times as long to consider President Obama's reported circuit court nominations than we did to consider President Bush's during his first 2 years in office. It is not fair to the Senate judiciary. It is not fair to the nominees. They can't go forward with their lives while this is pending. They have a law practice. Everything is on hold for month after month after month. As we know, there are people who have turned down nominations because they said: Why should we wait for a year or so, even though we are going to get confirmed unanimously after that time.

As I have said, if the consent to schedule this debate and vote today is a signal that other nominations reported favorably by the Judiciary Committee will also be scheduled for final consideration without further unnecessary delay, I will be encouraged. We can, and must, do a better job responding to the judicial vacancy crisis.

I spoke a little longer than I normally would, but I am going to be speaking to the judiciary conference tomorrow at the invitation of Chief Justice John Roberts. I know the concern from the judges is why these people get nominated and then they wait for months or never get confirmed. Again, I would say, in this regard, it has been a joy to work with the senior Senator from Tennessee, somebody I have known in his role as Governor and Cabinet member. I consider him a good friend. If it had been left to just the two of us, this would have been done months and months ago.

So I yield the floor and reserve the remainder of my time.

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

Mr. ALEXANDER. Mr. President, I thank the Senator from Vermont for his remarks. It is my great pleasure today to recommend to the Senate Jane Branstetter Stranch, from Nashville. Jane has been nominated to be a judge on the U.S. Court of Appeals for the Sixth Circuit, as Senator LEAHY has said.

She has a distinguished academic background: summa cum laude with Phi Beta Kappa honors from Vanderbilt University, which is not easy to do; Vanderbilt School of Law, with top grades there. She has lots of practical experience, having taught labor law at Belmont College in Nashville.

Jane's law firm is a family affair. Her father, who I imagine is watching today, is one of Nashville's best known and most respected attorneys, Cecil Branstetter. As a member of the Tennessee legislature during the 1950s he introduced legislation to allow women to serve on juries, so I know he has some special pride today to see the Senate considering the nomination of his daughter to be a federal judge.

Maybe more important than any of these other things, Ms. Stranch has been very active in her PTA, in her church, and in the Nashville community.

I was Governor of Tennessee for 8 years. As Governor, I appointed about 50 judges. I didn't ask them their politics. I didn't ask them how they felt about the issues. I tried to determine if they had the character and the intelligence and the temperament to be a judge, whether they would treat people before the bench with courtesy and, most important, whether they were determined to be impartial to litigants before the court. I am convinced that Jane Stranch will be that kind of judge. For that reason I am pleased to recommend her to my colleagues in the Senate.

I thank Senator LEAHY, the chairman of the Judiciary Committee, and Senator REID, the majority leader, and Senator MCCONNELL, the Republican leader, for agreeing to schedule this vote today. All three have been instrumental in this in what is always a crowded Senate schedule. I also want to thank Senator SESSIONS, the ranking member of the Judiciary Committee, for his support of this nomination in committee.

I listened carefully to the Judiciary Committee chairman's remarks. I have no intention of getting into a historical debate with him about whether Republicans or Democrats are more guilty of holding up Presidential nominees. Of course, Members of the Senate have a constitutional right to advise and consent on Presidential nominations. I know a little bit about that myself. President George H. W. Bush nominated me to be the U.S. Education

Secretary. As soon as I came to a hearing on my nomination, one Senator said: Well, Governor ALEXANDER, I have heard a number of things about you that disturb me. I was held up anonymously by the other side of the aisle. Then, late one night, I was mysteriously confirmed. I went to see a Senator at that time, whose name was Warren Rudman, one of the most distinguished Members of our Senate. I said: What can I do about these Senators who are holding up my nomination? He said: Keep your mouth shut; you have no cards to play. Let me tell you a story. So Senator Rudman told me he had been nominated by President Ford in the 1970s to, I think, the Interstate Commerce Commission, and the incumbent Democratic Senator from New Hampshire had held up his nomination and never would say why. It became so embarrassing that Rudman finally asked President Ford to withdraw the nomination, because he was then Attorney General of New Hampshire and people were beginning to wonder what was wrong with him. I said: Is that the end of the story? He said: No, I ran against the so-and-so in the next election and beat him. That is how Warren Rudman became a Senator.

Senator SESSIONS, the ranking Republican on the Judiciary Committee, was defeated when he was nominated to be a Federal judge by Senators who didn't like his point of view. They voted him down in committee and didn't let his nomination come before the full Senate. Now, ironically, not only is he a Senator, he is the ranking Republican on the committee concerning judges.

I am sure there may have been times when Republican Members have gone overboard in the exercise of their constitutional prerogative to advise and consent. But as I said, without getting into a tit-for-tat on who did what to whom, I can vividly remember when I came to the Senate in 2003—having appointed nearly 50 judges when I was Governor, as I said, in many cases without regard to party—how shocked I was at the treatment President Bush's judicial nominees were receiving. This included nominees who I knew were perfectly qualified to be members of U.S. Courts of Appeals.

There was Miguel Estrada, against whom Democrats got together and said "we are going to filibuster him," and they blocked him permanently, even though the new Supreme Court Justice, Elena Kagan, said he would be well qualified to be a member of the Supreme Court.

Charles Pickering was made out to be somehow unacceptable in the civil rights movement when, in fact, he was a pioneer in that movement in Mississippi in the 1950s and 1960s, when a lot of people were not.

There was also William Pryor, from Alabama, who was enormously well qualified, and he was blocked by a filibuster on the Democratic side for two

years, even though he could have had a majority of the votes. I knew of William Pryor because he and I had both been law clerks to Judge John Minor Wisdom of New Orleans, one of the finest judges who had ever served on the court of appeals—the man whose court ordered that James Meredith be admitted to Ole Miss.

I was offended by the treatment of Miguel Estrada, Charles Pickering, William Pryor, and others. So I said at the time that while I am a Senator, my view is going to be that any Presidential nominee to the judiciary deserves an up-or-down vote. We had a debate about that and a discussion about that in the Senate. Some may remember the Gang of 14 who came together, Senators on both sides, and they came to an agreement to which I subscribe, which is that a President's nominee to a judicial position deserves an up-or-down vote within a reasonable period of time, except under extraordinary circumstances.

That is my view today, and I hope the Senate will come back to that view, whether we have a Republican President or Democratic President. On our side, many are still offended by the treatment of President Bush's nominees in 2003, 2004, and 2005. On the other side, as you heard Senator LEAHY say, there are some charges about Republican offenses. I think we should look to the future and recognize that Presidents are entitled to respect. They are elected by the people. The Constitution gives them the power to nominate and gives us the power to say yes or no. We should say yes or no in a reasonable period of time and reserve to ourselves the right to say no, as I do, to a nomination, or even to filibuster a nomination in an exceptional case—but only in an exceptional case.

In this case, I am glad to support Jane Stranch. She is from Tennessee and she is well qualified. I thank the Republican leader, the Democratic leader, and the chairman of the Judiciary Committee for scheduling this vote this afternoon. I urge my colleagues to vote "aye."

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

PREVENTION AND PUBLIC HEALTH FUND

Mr. HARKIN. Mr. President, I come to the floor today to discuss an amendment that Senator JOHANNIS, from Nebraska, will be offering to the Small Business Jobs and Credit Act. The amendment to be offered by the Senator from Nebraska—a good friend of mine and a former Secretary of Agriculture—however, would effectively kill the prevention and public health fund that is in the Health Care Act. That would be a grave mistake.

The prevention and public health fund was created by the Affordable Care Act that we passed earlier this year. On March 23, when President Obama signed that historic bill into law, our Nation made two giant strides forward. We ensured that all Ameri-

cans, regardless of means, will have access to quality and affordable health care. We committed ourselves to transforming America's current "sick care" system into a true health care system. I have been saying for years that what we have in America is not a health care system, we have a "sick care" system. Once you get sick, you get care one way or the other—emergency room, Medicare, Medicaid, health insurance, whatever. But that is always the most expensive—waiting until someone gets sick, and then you help them. So I have often said that we have a sick care system. A true health care system would put emphasis on keeping someone healthy and out of the hospital in the first place.

One of the most important elements of this transformational bill we passed this year—the health care reform bill—was the creation of the prevention and public health fund. For the first time in history, we have decided not just to pay lip service to wellness and prevention but to invest in prevention and wellness in a very robust way.

We cannot wait any longer to make these investments. By dedicating resources to preventing obesity, diabetes, heart disease, and other very costly conditions and diseases, we have a tremendous opportunity to both improve the health of the American people and to restrain health care spending.

As we can see from the chart I have here, prior to this prevention fund, for every dollar spent on health care, 75 cents went to treating patients with chronic diseases. During 2005, the United States spent almost \$2 trillion on health care. For every \$1 spent, 75 cents went toward "sick care," treating people with chronic diseases. Only 4 pennies went for prevention.

This underinvestment in prevention has had devastating consequences. Chronic diseases are one of the main reasons health care costs have increased so dramatically over the past several decades.

This chart shows what has happened since 1987. From 1987 to today, U.S. health spending has gone up to \$628 billion. But of that increase, two-thirds of the increase, \$211 billion, is due to chronic diseases—two-thirds of the increase. That is an increase of \$211 billion since 1987 because of chronic diseases, most of which are preventable. Our investment in wellness and prevention can save millions of Americans needless suffering and early death. It can save countless billions of dollars in health care costs. Again, let's have a couple of examples here that I have on these charts.

What is our return on investment? For every dollar spent on childhood immunizations, we save \$16.50. For every dollar we spend on smoking cessation for pregnant women, we save \$6. Overall, the return on chronic disease prevention, on community-based prevention interventions is basically about 5.6 to 1 to 6.2 to 1. These are community-based interventions.

I will say it once and I will keep saying it: Not every preventive and wellness measure takes place in a doctor's office. Sometimes they take place in other places—where we work, where we go to school, where we live. We know now, based on the Trust for America's Health, that the return on total savings we would get after 5 years would be \$16.5 billion and 10 to 20 years, \$18.5 billion, or a return on investment of 5.6 dollars for every dollar we put in or 6.2 dollars over 10 to 20 years.

That is why funding these types of programs is crucial if we hope to slow the growth of health care costs in our country. We will not be able to accomplish this if we do not increase our investment in the programs that prevent the development of these costly chronic diseases. To this end, the new health reform law makes significant new investments in wellness, prevention, and public health. For example, it requires insurance companies to cover recommended preventive services with no copayments or deductibles. Think about that. You now go in, get recommended preventive services, no copayments, no deductibles. It also ensures seniors have access to free annual wellness visits and a free personalized prevention plan under Medicare.

A critical feature of the new law we passed that I think is essential to a sustainable push for wellness is the new Prevention and Public Health Fund. As I said earlier, bear in mind that maintaining good health is much more than just visits to the doctor's office. Where Americans live, go to work, and go to school also has a profound impact on our health. That is why, among other things, the fund provides for community transformation grants to enable localities to tailor wellness and prevention programs to their specific needs and environment. In addition, it invests heavily in strengthening the primary care infrastructure, including training for physician assistants and nurse practitioners, who typically practice in small clinics. That is why for fiscal year 2010 the prevention fund dedicated \$64 million to State public health departments to implement evidence-based prevention services.

This is what we did. There is \$64 million just for community and State prevention. We can see the others: primary care and public health workforce, \$273 million; infrastructure, \$70 million; obesity prevention, \$16 million; tobacco prevention, and on and on. That is what we did in 2010. It also allocated, as I mentioned, \$16 million for obesity prevention activities and \$15 million for tobacco control programs. We also invested \$70 million in our public health infrastructure.

For fiscal year 2011, let's see where we go. For fiscal year 2011, here is where the public health fund has gone under the Senate Appropriations Committee: for community prevention, \$270 million; chronic disease State grants, \$140 million; tobacco prevention and

cessation, \$100 million; public health infrastructure for disease surveillance, \$84 million; prevention research, \$50 million; community health worker demonstration project, \$30 million. That is just to name a few of the investments.

Given all the evidence we have—and we have a ton of evidence—prevention saves us money in the long run, not to mention saving us from needless suffering and chronic diseases. Why now would we want to gut all of this? Why would we want to take all that away when we are trying to save money and keep people healthy? Why would we want to take all of that out? But that is exactly what the JOHANNIS amendment does. The JOHANNIS amendment would wipe all of that out—wipe it all out. It would deny any funding at all for prevention and wellness until 2018. For example, it takes away funding that keeps teens from starting smoking and all of the obesity avoidance and reduction programs we have. We know one of the biggest chronic illnesses facing us is the increasing rate of obesity among our young people. We know how to get a handle on that. We have good programs and evidence-based interventions to keep kids from getting obese or by getting them on track to reduce obesity. To gut all these programs is the same old penny wise, pound foolish, sick care system we have been laboring under for so many years. I thought we were going to move away from that. In fact, the prevention and wellness provisions of the health care bill we passed were some of the provisions that got strong support on both sides of the aisle.

I know a lot of my Republican friends did not support the final bill. I understand that. But as we developed the bill in the HELP Committee and on the floor, the Prevention and Public Health Fund was widely supported. No one came after it. There were no amendments to gut it at that time. I think people on both sides of the aisle saw the wisdom, regardless of how one may have felt about other aspects of the health reform bill—I think every one agreed we have to do more in prevention and wellness and public health. For this reason, I say to my colleagues: Do not turn around now after we have done all this and gut the money to prevent chronic illnesses and diseases and keep people healthy. Do not gut that to put the money in the JOHANNIS amendment.

I am not alone in understanding the importance of this fund. Mr. President, I ask unanimous consent to have printed in the RECORD letters from a number of groups—everything from the American Association of People with Disabilities to the American Cancer Society, the American Heart Association, the Campaign for Tobacco-Free Kids, the National Association of Local Boards of Health, and the YMCA. More than 200 organizations signed a letter to us stating that the 241 undersigned organizations “strongly urge you to

oppose the use of the Prevention and Public Health Fund from the Affordable Care Act as an offset for an amendment offered by Senator JOHANNIS. Such an action would virtually eliminate the Fund, and mark a severe blow to this monumental commitment to prevention and public health under the Act. . . . The Fund is a unique opportunity to truly bend the cost curve on health care spending. . . . We must ensure that we capitalize on the unprecedented opportunity to transform our public health system by investing in prevention and public health. We urge you to vote no on the prevention fund offset within the JOHANNIS amendment, or any other such legislative vehicles.”

I ask unanimous consent to have these letters printed in the RECORD.

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

PARTNERSHIP TO FIGHT
CHRONIC DISEASE,
September 13, 2010.

Hon. HARRY REID,

Senate Majority Leader, U.S. Senate, Washington, DC.

Hon. TOM HARKIN,

Chair, Senate Health, Education, Labor and Pensions Committee, U.S. Senate, Washington, DC.

DEAR SENATORS REID AND HARKIN: Good health is more than a result of good medical care. Improvements in primary, secondary, and tertiary prevention in settings outside the medical system—at home, at work, at school, and in the community—are essential to improving health in America and lowering costs. The Affordable Care Act recognizes this and created the Prevention and Public Health Fund (the Fund), which is a key part of our national commitment to creating a healthy America.

Accordingly, we urge you to oppose any legislative proposals that take money from the Fund to pay for the proposal. Regardless of the merit of such proposals, the Fund, its resources, and the commitment to health they represent must remain inviolate.

Chronic diseases—often preventable and highly manageable—drive health care spending and economic losses. Just the top seven chronic conditions cost the U.S. \$1.3 trillion each year. Recently in Health Affairs, Harvard professor David Williams, former CMS Director Mark McClellan, and former CBO Director Alice Rivlin opined that creating a healthy America is attainable. We share their view that attainment requires a “national commitment to the health and wellness of all Americans.”

The Partnership to Fight Chronic Disease is a national coalition of more than 100 partner organizations committed to supporting reforms to better prevent, detect, and manage the nation’s number one cause of death, disability and rising health costs: chronic disease.

Preventing and managing chronic diseases effectively depends upon people engaging in healthy behaviors and having access to preventive health care services, diagnostic services that detect chronic disease early, and coordinated care to manage chronic illness once detected. Assuring that all Americans are empowered to make the changes needed to improve their health—to avoid tobacco use, eat nutritiously, engage in physical activity, get screened and seek care as recommended, and follow through to manage and reduce health risks—requires dedicated efforts.

Unfortunately, we are trending in the other direction. Among adults, one in three is obese. Obesity rates continue to rise among young people, leading many to predict that the next generation of Americans is likely to live shorter lives than their parents. Obesity also drives up costs: the doubling of obesity in the United States since 1987 accounts for nearly 30 percent of the increase in health care spending.

The Fund also presents a tremendous opportunity to reduce health disparities. Not everyone in America has an equal likelihood of living a long and healthy life. Health status varies by geographic location, gender, race/ethnicity, education and income, and disability, among other factors. Disparities are common, and among Americans with chronic diseases, minorities are more likely to suffer poor health outcomes. Disparities exist across the continuum of health status—from preserving health by making healthy behavioral choices to detecting and addressing health risks to managing chronic conditions to avoid costly complications and disability. The annual price tag of racial and ethnic disparities in health alone is an estimated \$309 billion.

The potential returns on health improvement efforts supported by the Fund are substantial. For example, the Robert Wood Johnson Foundation estimates that if all Americans enjoyed the same level of health as college graduates, the benefit would amount to \$1 trillion a year. A model estimating the impact of a modest health status improvement among Medicare beneficiaries projected a savings of \$65.2 billion a year or \$652 billion of over 10 years. Similarly, a study released by Trust for America’s Health, investments in effective community-focused programs to increase physical activity, improve nutrition, and prevent tobacco use have been estimated to generate a return of more than \$5 for each \$1 invested—for an overall savings of \$16 billion a year within five years.

The Fund stands both as means to achieve a healthy America and a symbol of the commitment to do so. We urge you to preserve the resources allocated to the Fund by the Affordable Care Act and oppose any legislative proposals relying on resources from the Fund as pay-fors.

Sincerely the undersigned PFCD partners and other interested organizations:

Alzheimer’s Foundation of America, American Academy of Nursing, American Association of Cardiovascular and Pulmonary Rehabilitation, American College of Preventive Medicine, American Dietetic Association, American Sleep Apnea Association, Association of Maternal & Child Health Programs, Cleveland Clinic, Dialysis Patient Citizens, DMAA: The Care Continuum Alliance, Easter Seals, GlaxoSmithKline, HealthCare Institute of New Jersey, Healthcare Leadership Council, Healthways, Life Science Vendors Alliance, The Milken Institute, National Association of School Nurses, National Association of Chronic Disease Directors, National Business Coalition on Health, National Health Council, National Hispanic Council on Aging, National Hispanic Medical Association, National Latina Health Network, National Patient Advocate Foundation, National Recreation and Park Association, Partnership for Prevention, Prevent Blindness America, South Jersey Pharmaceutical and Medical Technology Industry Alliance, XLHealth, YMCA of the USA.

SEPTEMBER 2, 2010.

DEAR SENATOR: As the Senate considers the Small Business Jobs and Credit Act (H.R. 5297), the 232 undersigned organizations listed below strongly urge you to oppose the use of the Prevention and Public Health Fund

from the Affordable Care Act (ACA) as an offset for an amendment offered by Senator Johanns (No. 4596). Such an action would virtually eliminate the Fund, and mark a severe blow to this monumental commitment to prevention and public health under the Act. We will also oppose any other such efforts to use the Fund as an offset.

ACA included historic reforms that have the potential to transform our health system. For too long, we have focused spending on treating people once they are sick rather than preventing illness in the first place. The Prevention and Public Health Fund (Fund) is urgently needed to address the many emerging health threats our country faces and the persistent chronic disease rates that we must begin to control. The Fund is intended to ensure a coordinated, comprehensive, sustainable, and accountable approach to improving our country's health outcomes through the most effective prevention and public health programs.

ACA clearly states that the money be used "for programs authorized by the Public Health Service Act, for prevention, wellness, and public health activities." The money would be strategically used to support disease prevention by promoting access to vaccines, building the public health workforce, and investing in community-based prevention. Furthermore, the Act specifically states that community-based prevention funding must only support evidence-based prevention programs which have been shown through scientific research to reduce chronic disease, including behavioral health conditions, and address health disparities. Research has shown that effective community level prevention activities focusing on nutrition, physical activity and smoking cessation can reduce chronic disease rates and have a significant return on investment.

Already in Fiscal Year 2010, we have seen these funds invested for programs to promote tobacco control and implement tobacco cessation services and campaigns, as well as obesity prevention, better nutrition and physical activity. The fund has been invested to support state, local and tribal public health efforts to advance health promotion and disease prevention, and to build state and local capacity to prevent, detect and respond to infectious disease outbreaks. The funds are also being used to support the training of current and next generation public health professionals.

The Fund is a unique opportunity to truly bend the cost curve on health care spending. Seventy-five percent of all health care costs in our country are spent on the treatment of chronic diseases, many of which could be prevented. Further, in a public opinion survey conducted just prior to the passage of the Act, Trust for America's Health and the Robert Wood Johnson Foundation (RWJF) found that 71 percent of Americans favored an increased investment in disease prevention and that disease prevention was one of the most popular components of health reform.

We must ensure that we capitalize on the unprecedented opportunity to transform our public health system by investing in prevention and public health. We urge you to vote NO on the prevention fund offset within the Johanns amendment, or on any other such legislative vehicles.

Sincerely,

AARP; ACCESS Women's Health Justice; Advocates for Better Children's Diets; AIDS Action; AIDS Alabama; All Saints Home Care; American Academy of Pediatrics; American Academy of Physician Assistants; American Association for International Aging; American Association of Colleges of Nursing; American Association of Colleges of Osteopathic Medicine; American Association

of Colleges of Pharmacy; American Association of People With Disabilities; American Cancer Society Cancer Action Network; American College of Clinical Pharmacy; American College of Gastroenterology; American Congress of Obstetricians and Gynecologists; American College of Occupational and Environmental Medicine; American College of Preventive Medicine; American Counseling Association.

American Dental Education Association; American Diabetes Association; American Federation of State, County and Municipal Employees; American Foundation for Suicide Prevention; American Heart Association; American Lung Association; American Medical Student Association; American Nurses Association; American Psychological Association; American Public Health Association; American Social Health Association; American Society for Gastrointestinal Endoscopy; American Thoracic Society; Applied Research Center; Arthritis Foundation; Asian and Pacific Islander American Health Forum; Association of American Medical Colleges; Association of Maternal & Child Health Programs; Association for Prevention Teaching and Research; Association of Public Health Laboratories; Association of Schools of Public Health.

Association of State and Territorial Dental Directors; Association of State and Territorial Directors of Nursing; Association of State and Territorial Health Officials; Association of Women's Health, Obstetric and Neonatal Nurses; Atlanta Regional Health Forum; A World Fit for Kids!; Bazelon Center for Mental Health Law; Boston Public Health Commission; Building Healthier America; C3: Colorectal Cancer Coalition; California Association of Alcohol and Drug Abuse Counselors; California Center for Public Health Advocacy; California Conference of Local Health Department Nursing Directors; California Food Policy Advocates; California Foundation for the Advancement of Addiction Professionals; California Immigrant Policy Center; California Pan-Ethnic Health Network; California Partnership; California School Health Centers Association; Campaign for Community Change; Campaign for Public Health.

Campaign for Tobacco-Free Kids; CASA de Maryland; C-Change; Center for Biosecurity; University of Pittsburgh Medical Center; Center for Health Improvement; Center for Science in the Public Interest; Cerebral Palsy Association of Ohio; Children and Adults with Attention-Deficit/Hyperactivity Disorder; Children Now; Children's Dental Health Project; City of Philadelphia Department of Public Health; Coalition for Health Services Research; Coalition for Humane Immigrant Rights of LA; Colon Cancer Alliance; Colorado Progressive Coalition; Commissioned Officers Association of the U.S. Public Health Service; CommonHealth ACTION; Community Action Partnership; Community Catalyst; Community Health Councils.

Community Health Partnership; Oregon's Public Health Institute; Comprehensive Health Education Foundation; Connecticut Certification Board; Connecticut Citizen Action Group; Council of State and Territorial Epidemiologists; County Health Executives Association of California; Crohn's and Colitis Foundation of America; Defeat Diabetes Fund; Digestive Disease National Coalition; Faith Action for Community Equity; Family Voices; Federation of Associations in Behavioral & Brain Sciences; First Five; Friends of AHRQ; Friends of NCHS; Friends of SAMHSA; Georgia AIDS Coalition; Granite State Organizing Project; Grassroots Organizing; Harlem United Community AIDS Center, Inc.

Having Our Say Coalition; Health Care for America Now; Health Law Advocates of Lou-

isiana, Inc.; Health Promotion Advocates; Health Rights Organizing Project; Hepatitis Foundation International; HIV Medicine Association; Home Safety Council; Idaho Community Action Network; Indian People's Action; Infectious Diseases Society of America; Institute for Health and Productivity Studies; Rollins School of Public Health, Emory University; Institute for Public Health Innovation; International Certification and Reciprocity Consortium (IC&RC); International Health, Racquet & Sportsclub Association; Interstitial Cystitis Association; ISAIAH; JWH Institute, Inc.; Korean Resource Center; Libreria del Pueblo Inc.

Louisiana Public Health Institute; Mahoning Valley Organizing Collaborative; Main Street Alliance; Maine People's Alliance; Make the Road New York; March of Dimes Foundation; Maricopa County Dept. of Public Health; Media Policy Center; Mental Health America; Michigan Association for Local Public Health; Montana Organizing Project; National Alliance of State and Territorial AIDS Directors; National Assembly on School-Based Health Care; National Association for Public Health Statistics and Information Systems; National Association of Chain Drug Stores; National Association of Children's Hospitals; National Association of Chronic Disease Directors; National Association of Community Health Centers; National Association of Counties; National Association of County & City Health Officials.

National Association of Local Boards of Health; National Association of Public Hospitals and Health Systems; National Association of School Nurses; National Association of State Alcohol and Drug Abuse Directors; National Association of State Mental Health Program Directors; National Business Coalition on Health; National Coalition for LGBT Health; National Coalition of STD Directors; National Council of Asian Pacific Islander Physicians; National Council of Jewish Women; National Council of La Raza; National Education Association; National Environmental Health Association; National Family Planning & Reproductive Health Association; National Federation of Families for Children's Mental Health; National Forum for Heart Disease and Stroke Prevention; National Health Council; National Indian Project Center; Northeast Ohio Alliance for Hope; National Korean American Service and Education Consortium.

National Network of Public Health Institutes; National Nursing Centers Consortium; National Recreation and Park Association; National Rural Health Association; National WIC Association; Nebraska Appleseed; Nebraska Urban Indian Health Coalition; Nemours; New Hampshire Public Health Association; NYC Department of Health and Mental Hygiene; New York Immigration Coalition; New York Society for Gastrointestinal Endoscopy; North Carolina Fair Share; Northern Illinois Public Health Consortium; Northwest Federation of Community Organizations; Novo Nordisk; NYU Langone Medical Center; Ocean State Action; Ohio Alliance for Retired Americans; Oregon Action.

Out of Many, One; Papa Ola Lokahi; Partners for a Healthy Nevada; Partnership for Prevention; Physician Assistant Education Association; Planned Parenthood Federation of America; Prevention Institute; Progress Ohio; Progressive Leadership Association of Nevada; Project Inform; Public Health Association of Nebraska; Public Health Foundation; Public Health Institute; Public Health Law and Policy; Public Health-Monroe County (MI); Public Health—Seattle and King County; Public Health Solutions; Pulmonary Hypertension Association; Rails-to-Trails Conservancy; REACH U.S. South-Eastern African American Center of Excellence for Elimination of Disparities (REACH U.S. SEA-CEED).

RiverStone Health; Safe States Alliance; Service Employees International Union; Sexuality Information and Education Council of the U.S.; Society for Adolescent Health and Medicine; Society for Healthcare Epidemiology of America; Society for Public Health Education; South Carolina Fair Share; Summit Health Institute for Research and Education, Inc.; TakeAction Minnesota; Tenants and Workers United; Thai Health and Information Services, Inc.; The AIDS Institute; The Amos Project; The Community Heart Health Coalition of Ulster County; The Greenlining Institute; The MetroHealth System; The National Alliance to Advance Adolescent Health; Toledo Area Jobs with Justice; Trust for America's Health.

UHCAN Ohio; United Action Connecticut; United Ostomy Associations of America; Urban Coalition for HIV/AIDS Prevention Services; U.S. PIRG; Virginia Organizing Project; Washington Health Foundation; West South Dakota Native American Organizing Project; WomenHeart; The National Coalition for Women with Heart Disease; YMCA of the USA.

Mr. HARKIN. Mr. President, I am sympathetic, I must admit, to the broader aims of the Johanns amendment. On a bipartisan basis, Senators want to change the information reporting rules for small businesses under the health reform law. But the \$19.2 billion cost of the Johanns amendment is excessive. Moreover, to pay for it by slashing funds from wellness and prevention, by gutting this whole program until 2018, is deeply misguided. It perpetuates the disastrous notion that we can neglect and defund prevention efforts without paying huge long-term costs in terms of unnecessary chronic disease and disability and skyrocketing health insurance premiums.

The purpose of the reporting requirement Senator JOHANNIS is going after is to prevent fraud where many businesses may lie about the income they receive, thereby not paying their taxes. What does that mean? It just shifts taxes to the people who are honest and the businesses that are honest. Where the IRS has complete information on incomes such as salaries, which are covered by W-2 reports, compliance is 99 percent. But where there is no reporting, we see the reporting of income fall in half in some of the business categories.

I support the alternative amendment offered by Senator BILL NELSON. It provides a balance regarding the reporting requirement. His amendment completely eliminates any reporting burden on the great majority of small businesses—those with fewer than 25 employees at any given point in a year. But the most important point is that the Nelson amendment does not take money away from the Prevention and Public Health Fund.

While I appreciate the need to keep paperwork down, I also appreciate the need to prevent tax fraud which results in everyone else paying for the lost tax dollars. The Nelson amendment does preserve the reporting requirement for transactions over \$5,000 for larger companies. I think very sensibly, the Nelson amendment pays for this lost revenue from less rigorous reporting re-

quirements by repealing completely unnecessary tax breaks for the largest five oil companies—much better there than taking the money out of the Prevention and Public Health Fund.

A long time ago, Ben Franklin taught us that an ounce of prevention is worth a pound of cure. The Johanns amendment is an attack on that principle, an attack to turn the clock back to say we are going to continue a sick care system in America rather than truly transforming our system to a health care system.

I ask my colleagues to vote down the Johanns amendment and to vote for the Nelson amendment which accomplishes basically the same thing in a more balanced way. But the Nelson amendment does not do anything to gut the Prevention and Public Health Fund which we labored so hard to put in the health reform bill and which, as I said before, has been so supported on both sides of the aisle.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. 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. HARKIN. Mr. President, I ask unanimous consent that any time used on the Senate floor during quorum calls be divided equally between both sides.

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

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. 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. KYL. Mr. President, I want to speak on the nomination of Jane Stranch—a vote we will be taking here in about 45 minutes—nominated to the Sixth Circuit Court of Appeals.

It is always with a great deal of reluctance that I oppose a nominee for the bench. Most of the people who are nominated are nominally qualified, in that they have records as attorneys or sometimes as judges in lower courts, have recommendations from bar associations and the like. But occasionally it is necessary to oppose a nominee. And while I certainly acknowledge that Jane Stranch has the qualifications one would expect of a nominee for a court of this significance, I oppose her nomination because of a very troubling development that I see in several nominations.

At some point I think it is important to draw the line and say that the President has got to be very careful not to

nominate people who have—and in this case who have not—taken, in my view, a strong enough position against applying foreign law to interpret the American Constitution or to interpret American laws that apply to cases before them. We have seen this before in nominees, in then-Judge Sonia Sotomayor. When she had her Supreme Court hearing, several of us on this side of the aisle raised the question with respect to her position on foreign law. In many respects she said: Don't worry, I won't apply foreign law. Then in one of the cases in her first term as a Supreme Court Justice she did exactly that.

We have raised the same question with regard to people such as Harold Koh and others. I want to quote one statement Ms. Stranch made to illustrate the point I am trying to make. At some point, unless Members vote against nominees who appear to take these positions, I suspect the President will keep on nominating people with these views and then wonder why we oppose them. So I am going to be clear about why I oppose this nominee, even though I am sure many of her other qualifications are fine. She said this regarding cases where foreign law was used:

In these few cases, references to foreign law were made for such purposes as extrapolating on societal norms and standards of decency, refuting contrary assertions, or confirming American views. Roper [a Supreme Court case] specifically noted that the foreign law references were “not controlling” and were presented for the purpose of confirmation of the Court’s conclusions.

The problem with that statement—and while I appreciate the fact that she says foreign law is not controlling—is that the reality is foreign law has no place in the interpretation of the American Constitution and yet the Court continues to do that, with Justices continually saying it isn't controlling. If it is not controlling, why do it? Courts are supposed to look at precedent. What is precedent? Precedent is law that controls the case. There is no point in going outside of that and bringing in extraneous material. If it is not controlling, it is extraneous. If it is extraneous, it is redundant. Why bring it in?

I appreciate her recognition that foreign law is not controlling, but interpreting the Constitution doesn't require the application of foreign law to develop material on societal norms or standards of decency or to refute contrary assertions, and it doesn't have any relevance in even confirming American views, as she said in her statement. If the American view of the Constitution is X, let's say, then it is X. That is the American view. And if it is agreed to by other countries, that is fine. If it is not, it is not the judge's business to inquire into it and wonder why it does agree or does not agree with the American view.

I think that until enough of us register the view that we are not going to vote for judges who subscribe to the

views Jane Stranch has articulated, as I said, I suspect the President will simply continue to nominate those individuals, and that is something I think the majority of us—certainly the majority of Americans—would object to.

Again, I regret having to express my opposition to this nominee, but in order to render my objection to the kind of jurisprudence they mentioned, the only way I can do that, I gather, is to vote no, which is what I intend to do.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mrs. HUTCHISON. I thank the Chair.

(The remarks of Mrs. HUTCHISON pertaining to the introduction of S. 3768 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mrs. HUTCHISON. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. CORNYN. Mr. President, I will vote against the nomination of Jane Stranch to the Sixth Circuit Court of Appeals. While several aspects of Ms. Stranch's record concern me, I will be voting no primarily because of Ms. Stranch's responses during her nomination process that demonstrate that it is proper for American judges to rely on contemporary foreign or international law in interpreting the U.S. Constitution.

Reliance on contemporary foreign law to interpret our Constitution undermines democracy, American sovereignty, and the rule of law. In American democracy, the people are sovereign. The Constitution was "ordained and established" by "We the People of the United States." As Chief Justice Marshall explained in *McCulloch v. Maryland*, "[t]he government proceeds directly from the people" and is established "in the name of the people." When judges look to foreign nations to find new limitations on what laws the American people can enact through their elected representatives, they undermine democracy and make the will of the American people subservient to the opinions of foreign judges. Furthermore, because there are so many sources of foreign law available in the world, judges often pick and choose foreign citations that correspond with their own personal politics, preferences, and feelings in an effort to cre-

ate the illusion that the judges' personal political agenda are somehow mandated by law.

Under our Constitution, the people's right to govern themselves and make laws through their elected representatives is limited only by the Constitution itself, not by the opinions of foreign judges. In recent years, however, some judges have looked to foreign nations to strike down democratically enacted laws. For example, in *Roper v. Simmons*, the Supreme Court ruled that legislatures cannot impose capital punishment for heinous crimes committed by individuals under the age of 18. Justice Kennedy's majority opinion emphasized the "weight of international opinion" and cited the United Nations Convention on the Rights of the Child, among other sources. Just this year, in *Graham v. Florida*, the Supreme Court relied on "the overwhelming weight of international opinion" to find that life sentences are unconstitutional for juvenile criminals who commit crimes other than homicide.

This trend of American judges overruling the will of the American people in favor of the opinions of foreign judges is worrisome. I was therefore disappointed in Ms. Stranch's statements to the Judiciary Committee that seem to endorse this practice. Specifically, Ms. Stranch took the position that American judges may use foreign law in their opinions "for such purposes as extrapolating on societal norms and standards of decency, refuting contrary assertions or confirming American views." She actually praised the Supreme Court for what she called its "restraint" in citing foreign law, and argued that the Supreme Court's recent use of foreign law in cases such as *Roper* and *Graham* should be a "model for the lower courts." This is a very troubling view.

The Supreme Court's increasing reliance on the opinions of contemporary foreign judges has not been restrained, and should not be a model for American judges. Rather, American judges interpreting the U.S. Constitution should constrain themselves to interpreting the text and meaning of that document alone. Because Ms. Stranch's answers indicate that she will rely on foreign law as a pretense for imposing her personal political beliefs on the American people, and because reliance on contemporary foreign law in interpreting the U.S. Constitution threatens democracy, American sovereignty, and the rule of law, I will vote no on this nomination.

Mr. LEAHY. Mr. President, at most there is only a minute remaining so I yield back all time.

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

Mr. LEAHY. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Jane Branstetter Stranch, of Tennessee, to be United States Circuit Judge for the Sixth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from Indiana (Mr. BAYH), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Colorado (Mr. UDALL) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kansas (Mr. BROWNBACK), the Senator from Wyoming (Mr. ENZI), the Senator from New Hampshire (Mr. GREGG), and the Senator from Alaska (Ms. MURKOWSKI).

The PRESIDING OFFICER (Mrs. SHAHEEN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 71, nays 21, as follows:

[Rollcall Vote No. 230 Ex.]

YEAS—71

Akaka	Gillibrand	Merkley
Alexander	Goodwin	Murray
Begich	Graham	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bennett	Harkin	Pryor
Bingaman	Hatch	Reed
Boxer	Inouye	Reid
Brown (MA)	Johanns	Rockefeller
Brown (OH)	Johnson	Sanders
Burris	Kaufman	Schumer
Cantwell	Kerry	Sessions
Cardin	Klobuchar	Shaheen
Carper	Kohl	Shelby
Casey	Landrieu	Snowe
Cochran	Lautenberg	Specter
Collins	Leahy	Stabenow
Conrad	LeMieux	Tester
Corker	Levin	Udall (NM)
Dodd	Lieberman	Voinovich
Dorgan	Lincoln	Warner
Durbin	Lugar	Webb
Feingold	McCain	Whitehouse
Feinstein	McCaskey	Wyden
Franken	Menendez	

NAYS—21

Barrasso	Crapo	Kyl
Bond	DeMint	McConnell
Bunning	Ensign	Risch
Burr	Grassley	Roberts
Chambliss	Hutchinson	Thune
Coburn	Inhofe	Vitter
Cornyn	Isakson	Wicker

NOT VOTING—8

Baucus	Enzi	Murkowski
Bayh	Gregg	Udall (CO)
Brownback	Mikulski	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table. The President will be immediately notified of the Senate's action, and the Senate will resume legislative session.

VOTE EXPLANATION

• Mr. BAUCUS. Madam President, I was necessarily absent from the Senate on Monday, September 13, 2010, because I was holding the Montana Economic Development Summit in Butte, MT. Had I been present, I would have voted yes on the nomination of Jane Stranch, of Tennessee, to be U.S. Circuit Judge for the Sixth Circuit. •

Mr. UDALL of Colorado. Madam President, due to ongoing efforts to address the impacts of one of the most destructive Colorado fires in decades, I was unable to cast a vote for rollcall No. 230, the nomination of Jane Branstetter Stranch to be United States Circuit Judge for the United States Court of Appeals for the Sixth Circuit. Had I been present, I would have voted "yea" to confirm the nominee.

Mr. BROWN of Ohio. Madam President, I ask unanimous consent that the Senate proceed to morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

JOB CREATION

Mr. BROWN of Ohio. Madam President, last Wednesday, September 8, was a great day for Youngstown, OH, for my State, and for our country. On that day, the Chevy Cruze, a new car by General Motors—a high-mileage, medium-priced, lower priced car from Chevrolet—came off the line at the General Motors plant in Lordstown, OH.

To understand the significance of that and to understand how the news is so good, in spite of what the naysayers have said, let's turn the calendar back a little more than a year. Auto sales were down, about a year and a half ago, 40 percent. One million jobs were at risk of being lost on top of the 8 million jobs that had already been lost before President Obama took office. We remember that we were losing 800,000 jobs a month when President Obama took office. The auto industry was similar to the financial industry—about to collapse, including GM, Chrysler especially, and Ford was in some trouble. General Motors and Chrysler were especially in trouble.

Conservative politicians—many in this body and many in the House—said: Let the market work. Let the free marketplace work. If General Motors and Chrysler declare bankruptcy and go under, so be it—so be it for the car dealerships in North Dakota, Louisiana, Washington, Nevada, and Ohio; so be it for all the supply chain that feeds into the auto industry throughout the Midwest and the South and all over the country; and so be it for GM, Ford, and Chrysler and the hundreds of thousands of people who work for those companies—not to mention the retirees who depended on the viability of these companies.

In spite of the naysayers, the conservative politicians who said just let it collapse, let the market work, and let the auto industry collapse, President Obama and the Democrats in the House and Senate stood firm and invested billions of dollars in Chrysler and General Motors and some into the tier 1, the top suppliers—the level 1 suppliers that supply these industries.

Look what happened last Tuesday. Last Wednesday, on September 8, in

Lordstown, OH, some 1,300 people were hired for the third shift. They are now working three shifts. Auto plants and the component manufacturers all over the Midwest are now beginning to hire and beginning to put people back to work.

If we were to let this industry collapse, if we didn't do the right thing and help and invest in these companies, we would have been in a depression. I don't think any serious economist would dispute that. Because we did the right thing—the government—GM is starting to pay back the government for the investment so taxpayers will get most or all of their money back. People are going back to work, retirees are getting mostly what they are entitled to, and the suppliers at tier 1, 2, and others are being made whole.

The week before I was at the Chrysler plant in Toledo. Jeep Wranglers were coming off the line. Jeep Wranglers, 2 years ago, were only 65 percent domestic content. That meant only 65 percent of the components in the Jeep Wrangler were American made. Today, 79 percent—almost four-fifths—of Jeep Wranglers assembled in Toledo are coming from U.S.-made auto parts. That is what our recommitment to manufacturing means.

Thirty years ago, 30 percent of our GDP was in manufacturing, and only 11 percent in financial services. Today, that is almost flipped. We know what that led to—the financial collapse. Senator DORGAN has been on the Senate floor warning us about it for 10 years. It meant a decline in the middle class and in wages because manufacturing creates wealth, and manufacturing pays better wages. When we make the contrast on policies where we care about manufacturing and policies where we care about the middle class versus policies where we simply give tax cuts to the wealthy, we know what happens.

In the 8 years of President Clinton's Presidency, 22 million jobs were created—new jobs—and incomes went up. We had the largest surplus in the history of our country at the end of the Clinton Presidency.

President Bush left us, in 2009, with the largest budget deficit in American history. Some in this body say let the auto industry die and let the market work. Let's give more tax cuts to the wealthy and go back to the Bush philosophy, which got us into this situation.

In closing, I will read two letters from people in that part of Ohio. Brandon, from Poland, OH, wrote:

I am one of hundreds of thousands of auto-workers. But there are millions more Americans among suppliers, dealers, retirees and communities that depend on my industry for their livelihood and well-being.

Our industry is the real economy that runs through Main Street. When we emerged stronger and more competitive, we will have a stronger economy and a more competitive America.

We stood up for Randall, from Warren, OH, who wrote when Congress and

the administration were first considering how to save the auto industry:

I have been employed at General Motors Lordstown for over 31 years. My father, brothers, brother in law and father in law have all been employed by General Motors. My son is pursuing a degree in engineering partly financed by GM.

So many lost jobs would be a huge drain on the resources of government agencies, not to mention how bad it will make our country look in the eyes of the rest of the world.

Randall wrote this while the naysayers were saying let the market work and let GM and Ford collapse. He said:

My father said 30 years ago that "if GM ever goes under, America goes under." My greatest fear is that I will see this come true. Please support the auto industry. Our future [the future of our workers] is in your hands.

It is easy to say no, let the market work and don't do anything. When the cost of inaction is even more job losses than was brought on by the years of deregulation of Wall Street and cutting taxes for the rich and not paying for any of this—a political strategy built on saying no is more than just unproductive, it is unconscionable and simply wrong.

Mr. DORGAN. Will the Senator yield for a question?

Mr. BROWN of Ohio. Yes.

Mr. DORGAN. It is interesting to me that nobody—or very few—would know the statistics and the new jobs that the Senator from Ohio has described, largely because of the old adage that bad news travels halfway around the world before good news gets its shoes on. Nobody talks about the jobs being created, but the Senator from Ohio talks about the consequences of a country that would have lost its automobile industry.

I ask this question: Does anybody here believe we will long remain a world economic power without world-class manufacturing? Isn't that what the Senator is talking about when he talks about the tough decision to try to save this auto industry, when a number of people here said let them go, we don't need them, it is fine if they go under. Does the Senator believe—and I think I know the answer—that we would remain a world economic power if we decided that we didn't need an auto manufacturing capability in America?

Mr. BROWN of Ohio. There is no question if the auto industry had failed and gone under—and it was close to that happening, as we all know—and if the conservative politicians in this body and down the hall had their way, it would have collapsed and it would have meant disaster to our future way of life in terms of manufacturing.

Manufacturing creates wealth more than any other segment of our economy. It is the \$20- and \$30-an-hour jobs. It is the supply component, the suppliers and all the people who serve the industries, including the restaurants and the hardware stores around these companies. It is the truckers bringing