

and Proper Clause in *McCulloch v. Maryland*.

... [t]his provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.

McCulloch v. Maryland was decided in 1819. So the idea that we should merely consider the state of our society when we interpret the Constitution isn't new, it is old. It is very old. In fact, it is arguably older than the Senate Chamber we are standing in, which first opened in 1859.

Professor Liu's detractors have also accused him of believing that judges may "legitimately invent constitutional rights to a broad range of social 'welfare' goods, including education, shelter, subsistence, and health care." That is the accusation. This argument is based on an article Professor Liu wrote in 2008.

But if you actually read the article, you will find this statement right in the introduction. This is a quote from the article:

[B]ecause the existence of any welfare right depends on Democratic instantiation of our shared understandings, the Judiciary is generally limited to an interstitial role within the context of a legislative program. Courts do not act as 'first movers' in establishing welfare rights. . . .

In other words, Professor Liu is being accused of saying judges can invent welfare rights because of an article he wrote where he said judges cannot invent welfare rights.

The final point I wish to address is the idea that Professor Liu somehow supports "using foreign law to redefine the Constitution." Professor Liu's critics cite an obscure speech he gave at a Japanese law school 5 years ago. According to his critics, he said in this speech that it is "difficult for him to grasp how anyone could resist the use of foreign authority in American constitutional law."

I went and got a copy of the speech. If you read it, you will see that Professor Liu was referring to a series of Supreme Court decisions written by Justice Anthony Kennedy, where Justice Kennedy reviewed the laws of foreign countries on certain issues. Justice Kennedy didn't use the laws of foreign countries to decide the cases before him, he used them to get a sense of how other countries were resolving the legal issues before him.

Professor Liu was basically saying he found it difficult to grasp how people could disagree with Justice Kennedy. He has repeatedly said in his testimony, under oath, that he does not believe that foreign law should be binding in any way on Federal law.

There are other critiques against Professor Liu that I will not go into further, but I urge my colleagues to dig behind these blanket statements. To paraphrase Gertrude Stein, I think you will find there is no there there.

I think what my colleagues will find is an extraordinary intellect, a fundamentally decent man, and someone

who will be a strong and impartial jurist. I urge my colleagues to vote for cloture and to vote to support his nomination.

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

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent we now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

TRIBUTE TO BRIGADIER GENERAL STEPHEN R. HOGAN

Mr. MCCONNELL. Madam President, I rise today to congratulate a friend of mine who is a valued servant to the people of Kentucky, BG Stephen R. Hogan. On March 12 of this year, the former colonel had his promotion ceremony to the rank of brigadier general. This promotion to general is a very special accomplishment, as very few career officers in our Armed Forces ever reach the general rank.

This promotion is well deserved for all that Brigadier General Hogan has done for his country. Serving as the assistant adjutant general for the Kentucky Army National Guard, he is responsible to the adjutant general for balancing the requirements of readiness, modernization, force structure, and sustainment of the National Guard for mobilization and domestic missions.

Brigadier General Hogan's significant duty assignments include tours with the 101st Airborne Division (Air Assault), Fort Campbell, KY; the 6th Infantry Division Light, Fort Richardson, AK; the Army Operations Center, the Pentagon; and with the Multi-National Corps Iraq based in Baghdad, Iraq. When not serving on Federal active duty, he has served in the Kentucky Army National Guard as an active-duty guardsman with the State's Counter-Drug Unit, and \$11 billion worth of illegal marijuana has been eradicated during his service.

Brigadier General Hogan's awards, medals and decorations include the Meritorious Service Medal, with three Bronze Oak Leaf Clusters; the Army Commendation Medal, with one Bronze Oak Leaf Cluster; the Army Reserve Components Achievement Medal, with one Silver Oak Leaf Cluster; the National Defense Service Medal; with one Bronze Service Star; the Iraq Campaign Medal; the Global War on Ter-

rorism Service Medal; the Armed Forces Reserve Medal, with "M" Device and Silver Hourglass; the Army Service Ribbon, the Overseas Service Ribbon; the Master Parachutist Badge; the Pathfinder Badge; the Air Assault Badge; the Kentucky Merit Ribbon; the Kentucky Service Ribbon, with three Oak Leaf Clusters; and the Kentucky Counter Drug Ribbon.

Despite all this accomplishment, at his promotion ceremony, Brigadier General Hogan said, "All I ever wanted to do in life is be a professional soldier." Well, we in Kentucky are certainly glad he got his wish. I want to congratulate him on his promotion, and I know my colleagues in the U.S. Senate will join me in honoring his service and his sacrifice for our country.

An article extolling the virtues of Brigadier General Stephen R. Hogan appeared recently in the *Marion Star*. I ask unanimous consent that the article be printed in the RECORD.

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

[From the *Marion Star*, April 18, 2011]

CONNER HIGH GRAD NAMED BRIG. GENERAL—STEPHEN HOGAN SERVED AT PENTAGON, IN BAGHDAD

(By Stephanie Salmons)

FRANKFORT.—Conner High School graduate Stephen Hogan, of Frankfort, has been promoted to the rank of brigadier general.

A 1981 Conner graduate, Hogan is the son of Paul and Marilyn Hogan of Burlington. He is a 1985 graduate of Morehead State University and a 2008 graduate of the U.S. Army War College.

Hogan received his commission from the Morehead ROTC in 1985 and since 1993 has worked with the Kentucky Army National Guard as an active-duty Guardsman with the state's Counter-Drug Unit, where Paul Hogan says his son works for a marijuana eradication program.

His assignments have included tours with the 101st Airborne Division (Air Assault), Fort Campbell, KY.; 6th Infantry Division Light, Fort Richardson, Alaska; The Army Operations Center, Pentagon; and Multi-National Corps Iraq, Baghdad, Iraq.

Hogan has also received numerous awards during his time in the military.

The Hogans said they're proud of their son. "It's something you don't comprehend—when someone goes that far," Paul Hogan said.

Stephen Hogan has always had an interest in the military and has finally obtained his goal, Paul Hogan said.

"We're very pleased and proud of him. He's worked very hard," Marilyn Hogan said.

HONORING OUR ARMED FORCES

LANCE CORPORAL CHRISTOPHER S. MEIS

Mr. BENNET. Madam President, today I pay tribute to a young Coloradan, LCpl Christopher S. Meis, who died on March 17, 2011, from wounds he received while supporting combat operations in Helmand Province, Afghanistan. He was 20 years old. The loss of Lance Corporal Meis weighs heavily on his hometown of Bennett, CO, where he grew up dreaming of serving his country as a marine.

According to his mother, Lance Corporal Meis set his mind to becoming a soldier in the eighth grade. He always preferred the Marines, she says, because of its distinct reputation for rigor and excellence. Lance Corporal Meis enlisted in January 2010 after graduating from Bennett High School. He served a tour of duty in Afghanistan in support of Operation Enduring Freedom, earning numerous decorations.

He was a machine gunner in the 8th Marine Regiment, 2nd Marine Division, based at Camp Lejeune, NC. This post situated Lance Corporal Meis on the front lines of battle in Afghanistan, which for him meant an opportunity to contribute. His mother said that, when he called home, he spoke of his readiness for action and commitment to "making a difference." He told his family that he ultimately wanted to pursue the Marine Corps as a career.

Lance Corporal Meis's bravery and exemplary service quickly won the recognition of his commanding officers. He earned, among other decorations, the National Defense Service Medal, the Afghanistan Campaign Medal, and the Global War on Terrorism Service Medal. Just 3 weeks before his passing, he received a promotion to lance corporal.

His record as a soldier exhibits America's proudest traditions of valor, commitment to duty, and strength of character. To his family, he will be remembered as a dedicated son and brother. For Lance Corporal Meis, family and duty sometimes took the same form. By putting on the uniform, he followed his two grandfathers in a proud family tradition of service in the Armed Forces. His paternal grandfather served in World War II, and his maternal grandfather retired from the Air Force.

Mark Twain once said, "The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time." Lance Corporal Meis's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

I stand with the citizens of Colorado and across our country in profound gratitude for Lance Corporal Meis's tremendous sacrifice. In Afghanistan, he fought with unwavering courage to protect America and her citizens, and for his service he will forever be remembered as one of our bravest. To honor those who survived him, I ask my colleagues to join me in extending our deepest respects and condolences to Holly, his mother, Chris, his father, Hunter, his brother, and to his entire family.

CARNEY CONFIRMATION

Mr. RUBIO. Madam President, on May 17, 2011, the Senate considered the nomination of Susan Carney to serve as a Judge on the Second Circuit Court of Appeals. I voted against her nomination and want to explain my vote.

The qualifications of a judicial nominee are critically important. Susan Carney received her A.B. in 1973 and her J.D. in 1977 from Harvard, graduating both times with honors. Following law school she clerked on the First Circuit. She then worked in private practice in Washington from 1979 until 1986. After several years of self-employment, she became affiliated with another Washington law firm in 1994 before becoming associate general counsel of the Peace Corps in 1996. Since 1998 she has worked in Yale University's General Counsel's Office; she has been deputy general counsel since 2001.

I question whether Ms. Carney has the proper experience to serve as an appellate judge. She has no litigation experience in the last 15 years. She has never tried any cases to verdict, judgment, or final decision. There is nothing in her background that will provide this body with any information as to how she will view the law and what she may or may not be inclined to do as an appellate court judge.

When examining a nominee, especially a nominee for the circuit court of appeals, I am looking for evidence in the nominee's history that will establish that the nominee is a constitutionalist. Someone who takes the original, public meaning of the text of the Constitution and our laws seriously and does not look for excuses to depart from it and read into it what he or she wants.

In making a determination as to whether to vote for a nominee, I look for evidence that the nominee meets Chief Justice John Roberts' analogy of a baseball umpire, someone who doesn't bend the rules for the game, but just calls them as he sees them; someone who offers no favoritism depending on who is at bat.

All Americans should expect Members of U.S. Senate to carefully explore and guard against judicial nominees who are activists. Judges who interpret the Constitution and laws in light of his or her personal preferences or how he or she thinks they ought to have been written should not be on the bench. We should guard against a nominee who would elevate "empathy" over what the rule of law requires.

The only information that has been produced about Ms. Carney's potential judicial inclinations is that she was a supporter of pro-abortion groups such as NOW, NARAL, and Planned Parenthood. This nominee has little legal and no judicial history to rely upon. The burden of proof to show that the nominee will be a fair and impartial judge falls on the nominee. There is nothing in the record that would allow me to conclude that Ms. Carney will always be fair and impartial or that she will not elevate empathy over the rule of law. What I believe we should seek is a fair judge should be neutral and rule the same way according to the laws as written regardless of who is before the court.

Senators SESSIONS, COBURN, and LEE voted against this nomination in committee. The Republican members of the ABA committee that review nominees found Ms. Carney unqualified.

A review of Ms. Carney's record lacks any indicia as to how she would rule or how she would handle her role in this critical position. In my view, the burden of proof falls to the nominee and despite the support this nomination garnered from my colleagues, I do not believe that Ms. Carney met this burden. Given the higher scrutiny associated with consideration of nominees to the circuit courts of appeal, this nominee's limited record coupled with her history of supporting liberal organizations and because the nominee has the burden of establishing fidelity to constitutional principles, I voted against this nomination.

ADDITIONAL STATEMENTS

MAKOTI, NORTH DAKOTA

• Mr. CONRAD. Madam President, today I wish to recognize a community in North Dakota that will be celebrating its 100th anniversary. On July 8–10, the residents of Makoti will gather to celebrate their community's history and founding.

The vibrant community of Makoti is a Soo Line Railroad townsite. On July 12, 1911, the village of Makoti was platted, and lots at the townsite were sold. Approximately 200 people attended the sale. The name of the town was coined by the townsite promoter, Edward Kamrud, from *maakoti*, a Mandan Indian word meaning largest of the earthen lodges. Edward learned of this word from James Holding Eagle, who was building a replica Mandan-type earthen lodge on the grounds of the State capitol in Bismarck.

Today, the economy of Makoti is largely based on agriculture. There are also eight businesses within the city, three churches, and the Lewis and Clark Makoti High School. Each fall, the town comes together and celebrates the Makoti Threshing Show, which is the largest threshing exhibition in North Dakota. Other recreational opportunities including a city park, swimming pool, baseball diamonds, and nearby lakes with great fishing and hunting.

The citizens of Makoti are proud of all of their accomplishments over the past 100 years and have planned a celebration that will include a golf tournament, 5K walk, arts and craft show, children's activities, a car show, a parade, and fireworks.

I ask the U.S. Senate to join me in congratulating Makoti, ND, and its residents on the first 100 years and in wishing them well through the next century. By honoring Makoti and all the other historic small towns of North Dakota, we keep the great pioneering frontier spirit alive for future generations. It is places such as Makoti that