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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. WALSH, a Senator from the State of Montana.

PRAYER

The PRESIDING OFFICER. The guest chaplain, Dr. Raphael Warnock, senior pastor of Ebenezer Baptist Church of Atlanta, GA, will lead the Senate in prayer.

The guest Chaplain offered the following prayer:

Let us pray.

God of love and justice, for this new day with its new possibilities, we are grateful. For the holy covenant we have with You and for the sacred covenant we have with one another as an American people, we are grateful. For the precious ideals of freedom, self-government, radical inclusion, and equal protection under the law, we are grateful. These are Your gifts. Grant that when we, the American people, especially those who serve in this the people's house, are weighed by the moral balance of history, we will be found worthy.

God, make us mindful that we might be found worthy; mindful that the moral test of government is how it treats those at the dawn of life, the children; those who are in the twilight of life, the aged; those who are in the shadows of life, the sick, the needy, the handicapped. O God, make us mindful of our inextricable connections to one another and of our sacred obligation as careful stewards of this global neighborhood we are blessed to share.

To the God who loves us into freedom, and frees us into loving, we offer this prayer. Amen.

PLEDGE OF ALLEGIANCE

The Presiding Officer led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. LEAHY).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 10, 2014.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. WALSH, a Senator from the State of Montana, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

Mr. WALSH thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

MINIMUM WAGE FAIRNESS ACT— MOTION TO PROCEED

Mr. REID. I move to proceed to Calendar No. 354, the minimum wage legislation.

The ACTING PRESIDENT pro tempore. The clerk will report the motion.

The assistant legislative clerk read as follows:

Motion to proceed to Calendar No. 354, S. 2223, a bill to provide for an increase in the Federal minimum wage and to amend the Internal Revenue Code of 1986 to extend increased expensing limitations and the treatment of certain real property as section 179 property.

SCHEDULE

Mr. REID. Mr. President, following my remarks and those of the Republican leader, the time until 10:30 a.m. will be equally divided and controlled.

At 10:30 a.m. there will be a vote on the Ninth Circuit judge, whose name is

Michelle Friedland. Until cloture is invoked there will be up to 30 hours of debate prior to vote on the confirmation of the nomination. So we have two votes we need to have before we leave here this week. We can have a vote at 4:00 tomorrow afternoon and the second vote would be around 7:00 or thereabouts tomorrow afternoon or tomorrow evening. We have to finish these two matters before we leave this week.

The schedule is up to—not Republicans but a few Republicans—so I would suggest the Republicans deal with their own, and we can finish this morning if we need to. We certainly could.

Mr. President, I would be happy to yield to my friend, the dignified and really superb Senator from Georgia.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

WELCOMING THE GUEST CHAPLAIN

Mr. ISAKSON. Mr. President, I thank the leader for the introduction and I am very pleased to introduce today the Reverend Raphael Warnock, the senior pastor of Ebenezer Baptist Church in Atlanta. He is a gifted author, a gifted and prolific preacher, and a great citizen of the great State of Georgia and the great city of Atlanta.

Following in the traditions of the King family and the preachers of Ebenezer Baptist Church, he is the fifth pastor in the history of Ebenezer to carry out the mission of Ebenezer with great humility and great ability and great love, and is a great pastor in our eyes. I am pleased to welcome him to the U.S. Senate, and I know we will all be blessed in his presence today.

I yield back.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

46TH ANNIVERSARY OF THE CIVIL RIGHTS ACT OF 1968

Mr. REID. Tomorrow marks the 46th anniversary of the signing into law the Civil Rights Act of 1968, better known as the Fair Housing Act. This landmark legislation took a stand against

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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housing discrimination and gave American families a fair shot at finding housing that was suitable to their needs. It is fitting we recognize this anniversary now, especially in light of the equality legislation we have been trying to pass here in the Senate recently.

THE ECONOMIC LADDER

One of the first well-known billionaires we heard a lot of talk about on the planet was the outspoken oil tycoon J. Paul Getty. He once quipped: "Money is like manure. You have to spread it around or it smells."

Well, Charles and David Koch have certainly spread the money around, but it still stinks. It stinks because of what they do with their money. The Kochs are singlehandedly funding an attack on this Nation's middle class, instead of concerning themselves with narrowing the gap between the rich and the poor.

Remember, in America today the rich are getting richer, the poor are getting poorer, and the middle class is getting squeezed. The Koch brothers have a lot to do with that. They are pumping hundreds of millions of dollars into rightwing organizations. And I didn't make a mistake when I said hundreds of millions of dollars.

Instead of giving Americans a fighting chance to prosperity, the two richest brothers in the world are focused on getting Republicans elected. These Koch-funded organizations and politicians advocate only for what makes the Koch brothers richer. The two richest brothers in the world want to be richer, and it comes at the expense of the average American.

The Kochs are the classic example of two men at the top of the ladder who would pull that ladder up to make sure no one else can join them. That is exactly what the Koch brothers are trying to do to middle-class families. The only difference, of course, is that Charles and David never even scaled the ladder in the first place. They were born at the top rung. But somehow the Kochs have fooled themselves into thinking they rose to the top by their own merits. They didn't.

More importantly, the Koch brothers have decided that they want their inherited wealth, this company now they have at the top—they want to make sure this ladder that should be reachable for everyone is unreachable. They are determined to make that ladder totally unreachable for others. These billionaires do this by rigging the system even more in their favor, making sure the Kochs' interests are being represented at all costs.

As has been reported—and not by me—the Koch brothers have what some journalists are calling secret banks. Organizations serve as middlemen to fund ultraconservative scare campaigns. Through these secret banks, such as Freedom Partners and others, the multibillionaire Koch brothers pump money into radical institutions and all these rightwing organizations

ultimately come to the same conclusion: America's best bet for economic prosperity is to help the Koch brothers get richer.

So what do these groups do with the funds they receive from their billionaire benefactors? Groups such as Americans for Prosperity—try that one on for size, the Americans for Prosperity—lie to the American people about ObamaCare, hoping families will not sign up for affordable health care.

Extreme organizations such as Independent Women's Forum tell women equal pay for equal work is not necessary because they say wage disparity is a myth.

The Koch-backed Manhattan Institute is another one of their shell organizations that tries to convince the country that out-of-work American families don't need unemployment benefits. Why? Because they are out of work because they are lazy.

And, of course, the Heritage Foundation uses Koch dollars to say raising the minimum wage is bad for business and will kill the economy.

It is clear that the Kochs are using these puppet organizations in their proxy war on the middle class. But Charles and David aren't just using radical rightwing groups to keep average Americans from scaling the rungs. They are using Republicans. They are spreading their money around helping Republicans get elected.

Unfortunately, the Republican Congress has shown itself to be in lockstep with the Koch brothers' radical agenda. The Republicans continue to push repeal of the Affordable Care Act. I watched the speech on the House floor yesterday, where one House Member indicated that he tried almost 60 times to repeal the bill—almost 60 times.

What did Albert Einstein say? The definition of insanity is when someone tries to do something over and over again and they get the same result. They are insane. That is Albert Einstein, not me.

They are doing this regardless of the fact that even the Koch brothers; that is, their business, Koch Industries, benefited from ObamaCare.

Remember that ladder. The Kochs already got what they needed from health care reform. They don't want other people to do the same. They have benefited from ObamaCare. I laid that out a few days ago on the Senate floor.

Senate Republicans have blocked the equal pay amendment three times—three separate Congresses. They won't even let us discuss it. All but half of Republican Senators voted against the extension of benefits for the long-term unemployed, and turned their back on their own constituents.

As for the minimum wage, my Republican colleagues have given no indication to help struggling families with the minimum wage.

The Kochs' wealth is being used to squeeze the middle class very much. As long as Charles and David Koch are at the top looking down, who cares about

the little people at the bottom, in their estimation.

It is shameful that Koch money has made its way into our Nation's Capitol, our news, and our homes. It is frustrating that as Senate Democrats look across the aisle, we don't see many willing partners in defending middle-class families in Nevada and across the Nation. But we are not going to be intimidated by these Koch surrogates in the media or here in this very Chamber. We will continue to fight even harder to protect Americans from the greedy grasp of these billionaire oil barons and the wrath of their radical minions. Senate Democrats will continue to pull that ladder out from the Koch brothers' fingers so every American has a fair shot at climbing to the top.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

JOB CREATION

Mr. MCCONNELL. For days now Republicans have been coming to the floor to ask the Democratic majority to work with us on jobs. This is the issue Americans say they care the most about. So it is hard to see why Senate Democrats seem so allergic to various jobs ideas we have been proposing, not to mention dozens of job-creating bills already passed by the House.

Look, our constituents want us to work together to rebuild the middle class, to help create opportunities for the families struggling out there just to pay the bills. In recent days we have given our Democratic colleagues ample opportunity to do that. We have offered one innovative proposal after another, proposals that haven't had much of a problem attracting bipartisan support in the past, ideas such as reducing the tax burden on small businesses, freeing them to grow, to hire, to innovate, ideas such as approving the Keystone Pipeline, which would create thousands of jobs right away; ideas such as repealing the medical device tax which even Democrats acknowledge is killing jobs—although they haven't acted to fix it yet—and ideas such as eliminating ObamaCare's 30-hour workweek mandate, a rule that cuts people's hours against their will, that disproportionately affects women and is forcing too many Americans to look for extra work to get by.

But we go even further than just tackling the causes of joblessness. Our ideas go beyond just helping Americans secure jobs with a steady paycheck and the hope of a better future. Because we have also put forward legislation that offers Americans more choices and greater flexibility in the workforce. This is something a lot of our constituents are asking for, and we are responding to those concerns.

One bill we have proposed would let working moms and dads take more time off to strike a better work-life balance. Another bill would prohibit

union bosses from denying pay increases to an employee who works harder than her coworkers.

These are the kinds of practical, commonsense proposals our constituents sent us here to actually pass. These are the things that would make jobs more plentiful and life a lot easier for men and women across our country. For some reason Senate Democrats are blocking all of these ideas from getting a vote. Maybe it is because they are so single-mindedly focused on an election that is still 7 months away.

I mean, they have already conceded that their “agenda” for the rest of the year was drafted by campaign staffers. It is a stunning admission. It explains their near-total lack of interest in practical solutions to the everyday concerns of our constituents. It also explains why the only jobs that Senate Democrats seem to be interested in these days are their own.

This is a big problem. Not only does it reinforce the widespread belief that Democrats are not serious about jobs, it also reinforces a growing impression that Democrats are simply out of their depth when it comes to our economy. Think about it: Washington Democrats are well into their sixth year of trying to get the economy back on track—6 years.

Yet for many in the middle class things only seem to have gotten worse. Average household income has fallen by nearly \$3,600. The number of Americans actually working in the labor force has dropped to its lowest level since the Carter era. Millions are looking for work and can’t find it, and the new rules and regulations just keep on coming. They have tried all their usual liberal solutions—higher taxes, “stimulus,” and more regulations. They have tried all the standard stuff and it has not worked. Doing more of it won’t work either.

This may be difficult for Washington Democrats to hear, but it is time they switched from their failed ideological approach. It is time for them to shelve their political games and work with us to pass practical legislation for a change—legislation that can finally rescue the middle class from so many years of economic failure.

I have laid out a number of commonsense proposals already. There is more we can do if Democrats are willing to reach across the aisle and help deliver for the American people. My constituents expect us to do that. I am sure theirs do too. Honestly, there is no reason not to do that.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided and controlled between the two leaders or their designees.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The ACTING PRESIDENT pro tempore. The Senator from Washington.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks of Mrs. MURRAY pertaining to the introduction of S. 2243 are printed in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

Mrs. MURRAY. Mr. President, I yield the floor.

Mrs. FEINSTEIN. Mr. President, I rise in support of the nomination of Michelle Friedland to the Ninth Circuit.

This nomination was approved in the Judiciary Committee on a strong bipartisan vote of 14 to 3, including support from four Republican members: Ranking Member GRASSLEY, and Senators HATCH, GRAHAM, and FLAKE. She has earned the American Bar Association’s highest rating of “well qualified.”

If she is confirmed, which I very much hope she is, it would mark the first time ever that the Ninth Circuit, the busiest circuit in the country by some measures, has its full complement of 29 active circuit judges.

Michelle Friedland earned her bachelor’s degree, with honors and distinction, from Stanford University in 1994. She was Phi Beta Kappa, and became a Fulbright Scholar from 1995 to 1996, studying at Oxford.

She earned her law degree from Stanford Law School in 2000, where she was second in her class, graduated with distinction, and inducted into the Order of the Coif.

She then had two prestigious clerkships. The first was with Judge David Tatel on the DC Circuit.

She then clerked for Supreme Court Justice Sandra Day O’Connor, who attended Ms. Friedland’s confirmation hearing this past November.

Although I could not attend that hearing, it said a great deal that Justice O’Connor, the first woman on the Supreme Court and a voice of great moderation and pragmatism on the Court, came to the Judiciary Committee and demonstrated her support in person for this nominee.

Ms. Friedland then served as a lecturer at Stanford Law School from 2002 to 2004 and subsequently joined the law firm Munger Tolles & Olsen, where she is now a partner.

She has represented major clients, including Berkshire Hathaway, Boeing, Abbott Laboratories, the University of California, and Solvay Pharmaceuticals. She has worked on issues including criminal defense, class action defense, tax, patent, copyright, and antitrust.

She has also done pro bono work, devoting time, for example, to the Sil-

icon Valley Campaign for Legal Services and Equality California.

She has won the President’s Pro Bono Service Award and the Wiley W. Manuel Award for Pro Bono Legal Services, both from the State Bar of California.

She also has broad support in the legal community. One letter came from 27 individuals who clerked on the Supreme Court—including for Justices Rehnquist, Scalia, and Thomas—when Ms. Friedland clerked for Justice O’Connor. They said that Friedland is “respectful of colleagues, fair-minded to attorneys and litigants, and sharp as a tack.”

A second letter is from Kathryn Haun, who previously served in the Justice Department under Attorney General Mukasey and in the National Security Division. Today she is a Federal prosecutor in Northern California.

Ms. Haun has known Michelle Friedland since they were classmates in the same small section at Stanford Law School. Ms. Haun’s letter says:

I clerked for Supreme Court Justice Anthony Kennedy, am a member of the Federalist Society, and have always been a registered Republican. Notwithstanding our political differences, I believe [Michelle Friedland] would make an outstanding federal appellate judge if confirmed. This is because Michelle has a deep respect for legal precedent above seeking a particular result in a given case.

A third letter is from the general counsel of Cisco, Edison International, Google, Facebook, Rambus, and other companies. It speaks very highly of this nominee, and says, quote: “All parties appearing before her, from individual litigants to small businesses to the nation’s largest corporations, would be confident that she will adjudicate their cases fairly and in accordance with the law.”

The Ninth Circuit is also the busiest circuit. It has over 1,470 pending appeals per panel. This is two and a half times the average of the other circuits.

It comes as no surprise, then, that it takes much longer to resolve an appeal in the Ninth Circuit than in the other circuits. Specifically, the Ninth Circuit takes 13.3 months to resolve an appeal. This is down from 17.4 months in 2011, but it is still 55 percent greater than the average in the other circuits.

Thus, it is very important for businesses, individuals, and others in all States in the Ninth Circuit that nominees to this court are promptly taken up and confirmed.

I will conclude by remarking upon what I see as a real opportunity for the Senate in the coming months.

When I was first elected to the Senate in 1992, it was called by some the Year of the Woman. Senator BOXER and I were both elected that year, as were Senator MURRAY and former Senator Carol Moseley Braun.

Yet after we were all sworn in, there were still only six women in the Senate. I became the first woman ever to sit on the Senate Judiciary Committee, after some very divisive hearings for

Justice Clarence Thomas, in which the lack of women on the Judiciary Committee became an issue.

At the time, the Federal courts were mainly the province of men appointed by the two most recent Presidents.

About 92 percent of President Reagan's confirmed judicial nominees were men. That number fell under President George H.W. Bush, but only to 81 percent. Overall, only 12.6 percent of active Federal judges were women when I was sworn in to the Senate.

Although women have been close to half of all law students for decades, even today only 53 of 164 active circuit judges—or 32 percent—are women.

Right now, there are female nominees for the Third, Ninth, Tenth, and Eleventh Circuits pending in the Senate—a total of six nominees, with four simply waiting for a floor vote. To put these numbers in perspective, there were only 6 women confirmed to the circuit courts during all 8 years of the Reagan administration.

If all six of these pending nominees are confirmed, the number of active female circuit judges would grow by over 11 percent. That is a big deal, and it is a real opportunity to increase significantly the number of women on the circuit courts.

Michelle Friedland is well qualified, she has bipartisan support, and her confirmation would give the Ninth Circuit—the busiest circuit—a full complement of 29 judges for the first time. I urge my colleagues to support her.

Mr. LEAHY. Mr. President, today, we are again voting to overcome a Republican filibuster of a highly qualified nominee for a judicial emergency vacancy on the busiest circuit court in the country. For what is already the third time this year, the majority leader has had to file cloture on one of President Obama's circuit court nominees in order to move the nomination forward. In stark contrast, the Senate confirmed 18 of President Bush's circuit nominees within a week of being reported by the Judiciary Committee.

Michelle Friedland, nominated to serve on the U.S. Court of Appeals for the Ninth Circuit, is an exceptionally talented attorney, and has an exemplary record of service in the top echelons of the legal profession. She clerked on the United States Supreme Court for Justice Sandra Day O'Connor from 2001 to 2002 and on the U.S. Court of Appeals for the District of Columbia Circuit for Judge David Tatel from 2000 to 2001. Ms. Friedland earned her B.S. with honors and distinction from Stanford University in 1995. She studied at Oxford University from 1995 to 1996 as a Fulbright Scholar and went on to earn her J.D. with distinction from Stanford Law School in 2000.

For over a decade, Ms. Friedland has worked in private practice at Munger, Tolles & Olson LLP, where she was named partner in 2010. She has taught as an adjunct professor at the University of Virginia School Law and as a Lecturer in Law at the Stanford Law

School. Ms. Friedland has experience in both the trial court and appellate levels, including the United States Supreme Court. She manages an active pro bono practice and frequently represents the University of California in constitutional litigation. She received the President's Pro Bono Service Award in 2013 from the State Bar of California, and the LGBT Award from the American Civil Liberties Union of Southern California in 2009. The American Bar Association unanimously awarded her their highest rating of "well qualified."

It comes as no surprise to me that Michelle Friedland's nomination has received significant support. Kathryn Haun, Assistant United States Attorney and Former Counsel to then-Attorney General Michael Mukasey, wrote to the Committee to express her support, saying "Michelle and I fall at opposite ends of the political spectrum . . . Notwithstanding our political differences, I believe she would make an outstanding federal appellate judge . . . Michelle has a deep respect for legal precedent above seeking a particular result in a given case. She has a balance and a willingness to listen to all arguments before formulating a position on a particular issue. She displays, above all else, intellectual honesty and personal modesty that suit her exceptionally well for a federal appellate judgeship."

Eugene Volokh, Professor of Law, at the UCLA School of Law, expressed his strong support for Ms. Friedland to the Committee, writing "Michelle is a brilliant and extremely accomplished lawyer, who will make a superb judge. . . [She] has impressed not just those on her side of the political aisle, but conservatives as . . . well."

General Counsel from multiple fortune 500 companies including Google, Cisco, and Facebook echo their support of Michelle Friedland, noting that "Her career has been marked by energy, integrity, and legal excellence. She has represented a broad spectrum of clients in both the private and public sectors . . . The careful, unbiased approach she would bring to the types of issues that arise before the Ninth Circuit are critical to our nation's values and to its economic health."

In their letter of support, 22 former Supreme Court Law Clerks to Justice O'Connor write, "We have differing political views and differing careers, but we can all agree that Michelle would be an excellent federal appellate judge. We have . . . enjoyed her warm collegiality, her honesty and fairness, and her dedication to law above ideology. Michelle would be a tremendous addition to the Ninth Circuit Court of Appeals, and we urge you to confirm her nomination."

I ask unanimous consent that a list of letters of support be printed in the RECORD at the conclusion of my statement.

If confirmed, Michelle Friedland would increase the gender diversity on

the Ninth Circuit Court of Appeals. She would be the seventeenth female judge to ever sit on the Circuit. In comparison, 83 men have been appointed to the Ninth Circuit over the course of its history. Her confirmation would bring the percentage of active female judges sitting on the Ninth Circuit Court of Appeals to nearly 38 percent. Her confirmation would also mark the first time, since the 29th judgeship was added in 2007, that it has had a full complement of active judges despite having the highest number of appeals filed, the highest pending appeals per panel and the highest pending appeals per active judge of any Circuit in the country.

Yet here we are, again voting to overcome a Republican filibuster of an exceptionally talented nominee to a court that desperately needs to be operating at full strength.

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

LETTERS RECEIVED IN CONNECTION WITH MICHELLE FRIEDLAND

July 26, 2013—Six Supreme Court Co-Clerks

August 26, 2013—Eugene Volokh, Professor of Law at the UCLA School of Law and conservative legal commentator

August 26, 2013—Five fellow partners at Munger, Tolles, & Olson LLP

September 4, 2013—Brian Fitzpatrick, Professor of Law at Vanderbilt Law School

September 9, 2013—Anup Malani, Professor of Law and Medicine at the University of Chicago

September 9, 2013—Edward Morrison, Professor of Law at the University of Chicago and Former Law Clerk to Justice Scalia

September 12, 2013—Kathryn Haun, Assistant United States Attorney and Former Counsel to Former Attorney General Michael Mukasey

September 23, 2013—General Counsels from multiple American companies including Google, Cisco, and Facebook

October 2, 2013—27 Supreme Court Co-Clerks

October 24, 2013—28 Former Law Students and Current Attorneys

November 4, 2013—22 former Supreme Court Law Clerks to Justice O'Connor

April 9, 2014—Nancy Duff Campbell and Marcia Greenberger, Co-Presidents of the National Women's Law Center

April 9, 2014—Wade Henderson, President and CEO, and Nancy Zirkin, Executive Vice President, Leadership Conference on Civil and Human Rights

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Michelle T. Friedland, of California, to be United States Circuit Judge for the Ninth Circuit.

Harry Reid, Patrick J. Leahy, Debbie Stabenow, Jack Reed, Christopher A. Coons, Patty Murray, Elizabeth Warren, Richard J. Durbin, Mazie Hironaka