

Mr. Botticelli has also been very clear about the fact that marijuana remains illegal under the Federal Controlled Substances Act, and has done much to disavow the notion that marijuana is harmless.

As a person in recovery himself, Mr. Botticelli brings a unique perspective to the Office of National Drug Control Policy. I believe this perspective will enable him to successfully implement a national drug control strategy that recognizes the need for both supply and demand reduction and appropriately incorporates an effective public health approach that is coupled with law enforcement efforts.

I look forward to continuing to work with Mr. Botticelli as he leads the Office of National Drug Control Policy in implementing a whole of government approach to combatting illegal and illicit drug use.

I believe Michael Botticelli will serve with distinction as the Director of the Office of National Drug Control Policy, and I urge my colleagues to confirm his nomination.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Under the previous order, the question is, Will the Senate advise and consent to the nomination of Michael P. Botticelli, of the District of Columbia, to be Director of National Drug Control Policy?

Mr. ENZI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Mississippi (Mr. COCHRAN), the Senator from North Dakota (Mr. HOEVEN), the Senator from Arizona (Mr. MCCAIN), the Senator from Kansas (Mr. MORAN), the Senator from Kansas (Mr. ROBERTS), the Senator from Pennsylvania (Mr. TOOMEY), the Senator from Louisiana (Mr. VITTER), and the Senator from Mississippi (Mr. WICKER).

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

The result was announced—yeas 92, nays 0, as follows:

[Rollcall Vote No. 54 Ex.]

YEAS—92

|            |         |          |
|------------|---------|----------|
| Alexander  | Blunt   | Cantwell |
| Ayotte     | Booker  | Capito   |
| Baldwin    | Boozman | Cardin   |
| Barrasso   | Boxer   | Carper   |
| Bennet     | Brown   | Casey    |
| Blumenthal | Burr    | Cassidy  |

|            |           |            |
|------------|-----------|------------|
| Coats      | Hirono    | Portman    |
| Collins    | Inhofe    | Reed       |
| Coons      | Isakson   | Reid       |
| Corker     | Johnson   | Risch      |
| Cornyn     | Kaine     | Rounds     |
| Cotton     | King      | Rubio      |
| Crapo      | Kirk      | Sanders    |
| Cruz       | Klobuchar | Sasse      |
| Daines     | Lankford  | Schatz     |
| Donnelly   | Leahy     | Schumer    |
| Durbin     | Lee       | Scott      |
| Enzi       | Manchin   | Sessions   |
| Ernst      | Markey    | Shaheen    |
| Feinstein  | McCaskill | Shelby     |
| Fischer    | McConnell | Stabenow   |
| Flake      | Menendez  | Sullivan   |
| Franken    | Merkley   | Tester     |
| Gardner    | Mikulski  | Thune      |
| Gillibrand | Murkowski | Tillis     |
| Graham     | Murphy    | Udall      |
| Grassley   | Murray    | Warner     |
| Hatch      | Nelson    | Warren     |
| Heinrich   | Paul      | Whitehouse |
| Heitkamp   | Perdue    | Wyden      |
| Heller     | Peters    |            |

#### NOT VOTING—8

|         |         |        |
|---------|---------|--------|
| Cochran | Moran   | Vitter |
| Hoeven  | Roberts | Wicker |
| McCain  | Toomey  |        |

The nomination was confirmed.

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

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader.

#### MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate be in a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

#### CELEBRATING THE LUNAR NEW YEAR

Mr. REID. Mr. President, I rise today in celebration of the Lunar New Year, an important and festive holiday for people of Asian and Pacific Islander heritage around the world. Lunar New Year celebrations not only sustain important cultural traditions that have been practiced for centuries, but also provide a moment to reflect upon the many contributions made by the Asian and Pacific Islander community in Nevada and across the globe.

In my home State of Nevada, the Asian American community is among the fastest growing in the United States. From 2000 to 2010, the Asian American population in Nevada more than doubled. Chinese Americans, Asian Americans, and Pacific Islanders have greatly enriched Nevada's history and culture, and I am pleased to stand today in recognition of these communities as they prepare for the upcoming festivities.

This year, families and communities in Nevada and across the world will welcome the Year of the Sheep, and I

offer my warmest wishes for peace and prosperity in the coming year.

#### WHO'S THE BOSS? THE "JOINT EMPLOYER" STANDARD, AMERICAN SMALL BUSINESSES AND EMPLOYMENT GROWTH

Mr. ALEXANDER. Mr. President, I ask unanimous consent that a copy of my remarks at the Senate Health, Education, Labor and Pensions Committee hearing last week be printed in the RECORD.

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

#### WHO'S THE BOSS? THE "JOINT EMPLOYER" STANDARD, AMERICAN SMALL BUSINESSES AND EMPLOYMENT GROWTH

This morning we are having a hearing about who qualifies as a joint employer in the National Labor Relations Board's view.

This hearing this morning is about a pending National Labor Relations Board decision that could destroy a small business opportunity for more than 700,000 Americans. These men and women are franchisees. They operate health clubs, barber shops, auto parts shops, child care centers, neighborhood restaurants, music stores, cleaning services, and much more. They use the brand name of companies like Planet Fitness, Merry Maids or Panera Bread. They may work 12 hours a day serving customers, meeting a payroll, dealing with government regulations, paying taxes, and trying to make a profit.

We live at a time when Democrats and Republicans bemoan the fact that it's getting harder and harder to climb the economic ladder of success in our country. Successfully operating a franchise business is today one of the most important ways to do that. Why would the pending decision by the National Labor Relations Board threaten this very American way of life, knocking the ladder out from under hundreds of thousands of Americans? The board and its General Counsel are pursuing a change to what is called the "joint employer" standard. This standard, or test, has since 1984 required that for a business to be considered a joint employer, it must hold direct control over the terms and conditions of a worker's employment—to decide that, the NLRB looks at who hires and fires, sets work hours, picks uniforms, issues directions to employees, determines compensation, handles day to day supervision, and conducts recordkeeping.

Under the changes the NLRB is now considering, it would take just indirect control over the employees' terms and conditions of employment, or even unexercised potential to control working conditions, or where "industrial realities" otherwise made it essential to meaningful collective bargaining.

So what could this mean for these more than 700,000 franchisees and employers? These franchise companies will find it much more practical to own all their stores and restaurants and day care centers themselves. There will be many more company-owned outposts, rather than franchisee-owned small businesses.

Franchisees tell me they expect "franchisors would be compelled to try to establish control over staffing decisions and daily operations. . . . franchisees would lose their independence and become de facto employees of the franchisor."

This case doesn't just affect franchisees, it will affect every business that uses a subcontractor or contracts out for any service.

That includes most of the 5.7 million businesses under NLRB jurisdiction in America—because most businesses contract for some service.

Consider a local bicycle shop that contracts out its cleaning service under a cost plus provision, in which the cleaner is paid for all of its expenses to a certain limit, plus a profit. If this arrangement is interpreted to create “indirect control” or have “unexercised potential” over working conditions—they could trigger joint employer obligations. Same thing with a local restaurant that outsources all of its baked goods under a contract that includes penalties for being late or delivering substandard goods—it could be considered a joint employer of the bakery employees.

What does it mean to be a joint employer?

First, you are required to engage in collective bargaining, and are on the hook for all of the agreements made in collective bargaining, such as salaries, healthcare coverage, and pension obligations. It often takes weeks or months of an employer's time and hefty legal costs to negotiate agreements.

Being considered a joint employer also eliminates protection from what are called “secondary boycotts.” Current law does not allow a union to boycott companies that do business with their employer in an attempt to apply pressure to their employer. If the secondary company is instead deemed a joint employer, the union will be able to picket and boycott.

Imagine being an employer and having these legal, financial and time burdens placed upon you by a union representing employees you have no real control over.

Let me give another example—we have several large auto manufacturing plants in my home state of Tennessee. Let's say one of those plants has a few thousand employees, but thousands of other workers come in and out of the plant's gates every day to provide goods and services the facility needs to operate.

These workers are employed and directly controlled by subcontractors that provide security, supply auto parts, and staff the company lunch room. If the NLRB goes down this road, the plant owner could be forced to sit at dozens of different collective bargaining tables—and be responsible for another employer's obligations.

So the manufacturer would likely take as much “in house” as it can—and if that move comes at the cost of efficiency and innovation the plant could be relocated elsewhere. This example is especially concerning to me because more than 100,000 Tennesseans are employed in the auto manufacturing industry.

As for the subcontractors, they would be losing huge clients, which would in turn jeopardize more jobs and threaten these businesses' futures.

Most business owners are people who wanted to run their own business, be their own boss, and live their dream of providing a much-needed service in their community.

This pending decision would ruin that dream for many.

#### WEST JEFFERSON, NORTH CAROLINA

Mr. BURR. Mr. President, I wish to pay tribute to the town of West Jefferson, NC. Today, February 9 is the 100th anniversary of the charter of this historical town that has become a vibrant community attracting tourists, artists, entrepreneurs, retirees and young families.

Development of rural farmland into a town resulted from extending a rail-

road line into it. Construction of roadbeds and trestles for the steel rails took place in 1914, and depots were created as loading spots. When people of this area learned that the railroad was coming, speculators made investments in villages that would be affected. A new village was also created. The West Jefferson Land Company mapped a farming area in a valley between two mountains and sold lots for commercial and residential uses. Developers and their purchasers were ready when the first train arrived. The West Jefferson depot was central and most prominent. As part of its official recognition by the State Legislature in 1915, the town acquired for its governance a mayor and aldermen.

Passenger service was added by the railroad company and enjoyed by many. Then, as the years went by, personal automobiles, paved roads, freight trucks and passenger buses created new transportation options. There were no more large tracts of virgin timber to be harvested. Railroad operation declined in profitability and the end came in 1977. The rails were taken up and trains became a romantic memory for the people of West Jefferson. Trains remain today as images which we see in the local history museum diorama and in some of the beautiful murals on downtown buildings. Murals, galleries, studios and dynamic programs now identify West Jefferson as an arts community, enhancing its image as a desirable place in which to live.

The town of West Jefferson has received many accolades for its business and family-friendly environment, low cost of living, lively rebirth of its downtown district, and many other aspects. I join the fine people of West Jefferson as its citizens and leaders celebrate this historic 100th anniversary.

#### ADDITIONAL STATEMENTS

#### TRIBUTE TO GENE BESS

• Mr. BLUNT. Mr. President, I wish to honor Coach Gene Bess of Three Rivers College in Poplar Bluff, MO. As a coach for Three Rivers College, Gene has had an amazing career that has spanned four decades. During that time, he has maintained a winning percentage of 78 percent with an average of 27 wins per year. He has not had a losing season since becoming Three Rivers College's head coach in 1971.

Coach Bess has led the Three Rivers College Raiders to 17 tournament appearances in the National Junior College Athletic Association, NJCAA tournament, where his career record is 41-19. The Raiders have reached the Final Four of the NJCAA tournament nine times, while winning national championships in 1979 and 1992.

Gene has been recognized as the NJCAA Coach of the Year twice, the Regional Coach of the Year on 18 occasions, and the Midwest Community College Athletic Conference Coach of

the Year 19 times. He is a member of the Poplar Bluff Sports Hall of Fame, the Missouri Sports Hall of Fame, and the NJCAA Hall of Fame.

Coach Bess is one of the best basketball coaches to ever blow a whistle in college basketball, and this month, he became the first college basketball coach ever to reach 1,200 victories. This is a tremendous feat for a coach in any sport, at any level.

Prior to his record-setting career at Three Rivers College, Coach Bess had a very successful record at the high school level when coaching at Lesterville, Anniston, and Oran. Over a 12-year period, these Bess-era teams won over 250 games, ending in appropriate fashion with his Oran team playing for the Missouri Class M State Championship. Oran lost that game 76-74, yet the Bess legacy was only beginning.

The leadership and dedication that Gene Bess demonstrates as a basketball coach, does not stop on the court. Instead, it translates into his personal and public life. He has been married for nearly 54 years and is a deacon at the First Baptist Church of Poplar Bluff. He and his wife Nelda have two children, Janell Hartmann and Brian, one of the Raiders' assistant coaches, and four grandchildren. Faith and family always come before his work, and this is just one secret to his success.

I ask that all of my colleagues join me in congratulating Coach Bess and the Three Rivers Raiders on this rare milestone of 1,200 victories, a record that is unsurpassed at any level.●

#### TRIBUTE TO HELENE GALEN

• Mrs. BOXER. Mr. President, I wish to take this opportunity to recognize my great friend and an extraordinary philanthropist in my State, Helene Galen, who was honored over the weekend with the Desert AIDS Project's “100 Women Award.” Helene's immense contributions throughout California—especially in her beloved Coachella Valley—have left a legacy that will benefit the people of our State for decades to come.

She has worked tirelessly to fight child abuse through the Barbara Sinatra Children's Center for almost 30 years. Her strong support for Jewish Family Service of the Desert has provided critical social services to seniors, children and families throughout the area. A devoted advocate for people living with HIV and AIDS, she has been a leader of the Desert AIDS Project's “100 Women” program, which supports women and children affected by HIV and AIDS with food, housing and life-saving health care.

Whenever Helene sees an unmet need, she doesn't wait for someone else to step up. She jumps in with all her heart and all her passion. She led the effort to build a new performing arts center and theater at Rancho Mirage High School, which will ensure that generations of young people can pursue