

the entire country as his patient—a patient afflicted by both a virus and an undiagnosed condition that hampers its ability to fight it.

He could spare himself further pain and exhaustion and allow America to see another doctor. He could tag out.

"That's not my character," he says. "I don't do that."

The patient, you see, is not stabilized yet.

Fauci stares out the kitchen window into his small backyard. Right now he sees a crossroads for America. The best-case scenario: increased vaccination, more immunity, antiviral drugs, a virus under control. If we work together. The worst: a new variant, as transmissible as omicron but more deadly, exacerbated by that comorbidity—the deterioration of our minds and politics.

"It's like it's 2 o'clock in the morning, and I'm looking out the window at the East River," Fauci says, "and I got a patient who's bleeding, and another patient has a myocardial infarction, and another patient who has septicemia—"

The sense memory prompts a sort of pep talk for the present.

"There's no time to be exhausted, folks. You got a job to do."

MR. DURBIN. Madam President, I yield the floor.

I suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

MR. TUBERVILLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### TITLE IX

MR. TUBERVILLE. Madam President, in my 40 years as a coach and mentor, I have witnessed the immeasurable value that sports plays in the lives of young adults.

The lessons learned on the field contribute to an athlete's success off the field. For example, there is the value of discipline and hard work, how to deal with success and failure, how to be a leader, and the importance of putting the interests of the team ahead of the individual's. But many of these lessons are only realized when there is a fair and level playing field, and that is why title IX protections have been so transformational for women's and girls' sports.

I began my career as a high school coach, coaching boys' basketball and football, as well as girls' basketball. This was just a few years after Congress expanded title IX, ushering in a new era of opportunities for women and girls in sports.

Title IX provided women and girls the long-denied platform that had always been afforded to men and boys. It ensured female athletes had the same access to funding, facilities, and athletic scholarships. Before title IX, female athletics received less than 2 percent of the college athletic budgets, and athletic scholarships for women were virtually nonexistent. Since it was enacted, I have witnessed firsthand how the expanded provisions in title IX have changed the game for female athletes at every level.

Today, 43 percent of high school girls participate in competitive sports.

Since the 1970s, when I first started coaching, female participation at the college level has risen by more than 600 percent. Additionally, America's female athletes are routinely the best-performing on the world stage in both team and individual sports.

In the 2016 Olympics, we saw the largest number of U.S. female Olympians in history. It is clear we have made important strides. Yet, recently, the adoption of policies for transgender athletes has negatively impacted the rights, privacy, safety, and achievements of women and girls in sports. That is why we need to continue to fight to uphold and preserve title IX protections in women's and girls' sports.

This is a cause I have championed in my role on the Senate Health, Education, Labor, and Pensions Committee. When then-nominee for Under Secretary of the U.S. Department of Education, James Kvaal, testified before the committee, I pressed on the administration's commitment to upholding title IX and protecting the rights of women. As expected, he failed to articulate how title IX would be protected under the Biden administration.

In March of last year, when Senate Democrats were pushing through their so-called COVID relief package, I led the charge here on this floor to prohibit education institutions from receiving Federal stimulus money if they failed to uphold title IX. Not surprisingly, it was rejected.

But this is not just a debate we are having here in Congress; we are seeing it all across the country. To appease the demands of the left, sports organizations—from grade school to professional leagues—are focusing on the concept of being inclusive at the expense of being fair, but by including biological males in women's athletics, fairness is not possible. I can't believe we are even talking about this.

Just last week, I heard from female Olympic gold medalists who reiterated this, and study after study continues to confirm what we already know: Male and female bodies have inherent biological differences that no amount of testosterone suppression can level. Male bodies have larger hearts, bigger bone structure, leaner muscles, and expanded lung capacity.

One study concludes: "On average, males have 40–50 percent greater upper limb strength, 20–40 percent greater lower limb strength, and an average of 12 pounds more skeletal muscle mass than age-matched females at any given body weight."

The latest study published by clinical researchers in Europe finds that "current evidence shows the biological advantage is only minimally reduced when testosterone is suppressed as per current sporting guidelines for transgender athletes."

You can't make a level playing field. It is unquestionably the truth that biological males have a physiological advantage over females, and sports asso-

ciations across the world are starting, finally, to pay attention.

In 2019, USA Powerlifting prohibited transgender women from competing in female powerlifting. In 2020, World Rugby became the first international sports governing body to ban transgender women in global competitions. Just last September, the UK Sports Councils—the national funding bodies for sports across the United Kingdom—issued a report concluding that allowing transgender athletes to compete in women's sports does not allow for a balanced and even playing field—prohibited. These organizations are doing the research and making recommendations in the best interests of their athletes while also maintaining fairness in sports.

But then there is the NCAA, better known as the National Collegiate Athletic Association. After a transgender collegiate swimmer began shattering—and I am talking about shattering—records in swimming just in the last few weeks, the public outcry was so loud that the NCAA said: Well, we will review this policy.

The NCAA met, and the board voted in support of a sport-by-sport policy that they say "preserve opportunity for transgender student-athletes while balancing fairness, inclusion and safety for all who compete."

In effect, this means they will defer the policy to individual national governing bodies and kick the can down the road. These governing bodies, in turn, generally adhere to the standards of the International Olympic Committee, which permits transgender athletes to compete in women's sports.

The Independent Women's Law Center and Independent Women's Forum both have condemned the NCAA for adopting this approach. The NCAA had the perfect opportunity to stand up for women and girls in sports, and they blew it.

The NCAA's lack of true action is disappointing and invites more questions than it provides answers. By punting the responsibility, the NCAA leaves the door open for continued erosion of title IX protections at the expense of women's athletics and continues to chip away at the great unifier that Americans know and love. We need to do better for women athletes all across this country.

So let me be clear. The question here is not should we be inclusive and supportive of all athletes; it is how. There is no pregame speech you can give a woman or a girl who feels like they aren't competing on a fair playing field. No pep talk can touch title IX's 37 words that changed everything for women's sports over 50 years ago. It rightfully afforded women and girls the same athletic opportunities that their male counterparts have always had, and we should continue to fight for all the young girls and the future of this country.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Maryland.

## SUPREME COURT NOMINATION

Mr. CARDIN. Madam President, article II, section 2, clause 2 of the Constitution provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . judges of the Supreme Court.”

One of the most important constitutional responsibilities I have as a Senator is to provide advice and consent on a President’s Supreme Court nominee. A new Justice is someone who could serve for a generation or more and have a profound impact on the lives of all Americans for decades to come.

Recently, Supreme Court Justice Stephen Breyer announced that he would step down once the Senate confirms his successor. In his remarks, while reflecting on what he learned during his nearly three decades on the High Court, he said:

This is a complicated country. There are more than 330 million people, and my mother used to say it’s every race, it’s every religion—and she would emphasize this—and it’s every point of view possible.

Justice Breyer has built a reputation and cemented a legacy as a champion of civil rights and fought to protect American consumers and our very democratic system of government from the attempts to undermine our campaign finance system and weaken the sacred franchise of the right to vote. His thoughtful scholarship on the importance of safeguarding human rights and respecting international law will continue to influence democratic governments around the world for years to come.

When I think about a successor to Justice Breyer, I want to see someone who can serve as a strong and thoughtful presence on a Court that is tasked with some of the most complicated legal problems and questions in our Nation. Each new Justice is someone who could serve for a generation or more and have a profound impact on the lives of all Americans for decades to come.

The Supreme Court will make decisions on a broad range of issues, such as voting rights, healthcare, women’s reproductive freedoms, equal rights for women, climate change policy, gun safety, campaign finance, civil rights issues, and so much more. A nominee should represent the values of our Constitution in such a way that allows us to expand, not restrict, the civil rights of all Americans and keep powerful special interests and corporations in check.

The U.S. Constitution is not a perfect document, but its authors designed a system of government around the rule of law and protection from abuses of power. Abuses could come from special interests or the government itself. Our Constitution created the Supreme Court of the United States as the protector of our constitutional rights.

A Justice should have a healthy respect for the separation of powers and

checks and balances in our constitutional system. A nominee should strive to safeguard the independence of the judiciary and protect the prerogatives of each branch of government, including Congress and its duly-enacted laws. A strong nominee must be respectful of the diversity of the American experience and live up to his or her constitutional oath to uphold the Constitution and laws of the United States, as well as their judicial oath to “administer justice without respect to persons, and do equal right to the poor and to the rich.”

Thus far, 115 Justices have served in our Nation’s history, including Baltimore’s own Thurgood Marshall, who was the first Black Supreme Court Justice. It is long past time to improve diversity on our Nation’s Court, which promises “equal justice under the law” to all those who enter its hollowed chambers. The Supreme Court and its Justices should look more like the America it serves in both its demographic and professional diversity.

Madam President, I know you are aware that of the 115 Justices who have served throughout the history of the United States on the Supreme Court, 108 of those 115 are White males. We need greater diversity in our courts, and we need greater diversity on the Supreme Court of the United States.

In Maryland, for years, I have worked diligently when vacancies arise to recommend highly qualified lawyers to the President who will better diversify our Federal bench. Our Federal district court in Maryland consists of 10 active district court judges who sit in Baltimore and Greenbelt. I am proud that our court reflects the breadth and depth of the demographic and professional diversity in Maryland, including the first Black woman to serve as a Federal judge in Maryland and the first Asian-American Federal judge in Maryland.

Half of the active district judges in our State are now women. I chuckle when I recall the late Supreme Court Justice Ruth Bader Ginsburg’s comment on how many women should be on the Supreme Court, as she was only the second female Justice in the Court’s history. This is her quote:

When I’m sometimes asked ‘When will there be enough [women on the Supreme Court]?’ and I say ‘When there are nine,’ people are shocked. But there’d been nine men, and nobody’s [even] raised a question about that.

Our Federal judges in Maryland come from a wide variety of legal backgrounds, including having served as prosecutors, public defenders, private law firm attorneys, and judges in other courts. Maryland now has its first Black U.S. attorney in our State’s history, whom I was pleased, along with Senator VAN HOLLEN, to recommend to President Biden and who was unanimously confirmed by the Senate.

I believe that a more diverse court and justice system inspires the confidence of Marylanders who seek their

day in court and want to be treated fairly, with dignity and respect.

I am confident that the Senate, under the leadership of Majority Leader SCHUMER and Judiciary Chair DURBIN, will conduct a fair hearing, vetting, and confirmation process for President Biden’s eventual pick to replace Justice Breyer.

I look forward to working with my colleagues in the Senate over the coming months to give full and fair consideration to President Biden’s nominee to replace Justice Breyer in order to fill the upcoming vacancy on the Supreme Court. I am hopeful the American people will be proud of the process that unfolds in the Senate as they watch and learn more about the Constitution and the three branches of government that interact in this unique process to select the next Justice who will dispense justice on the highest Court in our land.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

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

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

## HOUSING

Mr. BROWN. Madam President, before last year, the committee I chair and one of the committees on which the Presiding Officer sits—the Banking, Housing, and Urban Affairs Committee—was far too much about Wall Street and far too little about issues that matter to people’s lives.

We have changed that. Instead of always listening to the biggest banks and their corporate lobbyists, we listen to workers and we listen to their families from all kinds of communities all over the country.

Last year, we held the committee’s first-ever worker listening session where, as hard as it was for all of us, no Senator asked questions. We just heard from witnesses. We heard from workers—about a half-dozen workers—who just told us their story.

We know that workers power our economy. We heard from workers from all kinds of backgrounds, working all kinds of jobs. Some worked for banks, others worked for large tech companies, and some for other corporations. They talked about wage theft. They talked about being laid off during a pandemic with no severance pay. They talked about the danger in their workplaces. They talked about how, in some cases, their companies busted their unions.

Their stories make it clear that the real harm the Wall Street business model does is to workers’ lives.

Yesterday, we held our second listening session, this time with renters from around the country whose homes are owned by deep-pocketed investors like corporate landlords and private equity funds.