with the economic position we are in today. My home State of Nevada has been led by small businesses. We have led the country for many years on the percentage of small businesses creating jobs. We really can't afford to have small business taxes increased in my State, nor in any other State across the country.

Going back to the wise words of Benjamin Franklin, the American people are feeling the pain of this economy. They elected President Obama because he campaigned on a slate of ''change.'' I don't believe this is the change the American people signed up for: reckless and endless spending, higher taxes on small businesses, increased energy costs for all families, fundraising hurdles for charitable groups, and a devastating national debt. The list goes on and on.

Madam President, this is the President's budget, and it is a recipe for disaster. We need to come back to the idea of personal responsibility and letting families and businesses have more of their own money to make the kinds of decisions and investments that will drive prosperity in America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

(The remarks of Mr. KOHL and Mr. GRASSLEY pertaining to the introduction of S. 647 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRASSLEY. I yield the floor.

EXECUTIVE SESSION

NOMINATION OF ELENA KAGAN TO BE SOLICITOR GENERAL OF THE UNITED STATES

The PRESIDING OFFICER (Mr. BROWN). Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Elena Kagan, of Massachusetts, to be Solicitor General of the United States.

The PRESIDING OFFICER. There is now 6 hours of debate on the nomination, equally divided between Senator LEAHY, the Senator from Vermont, and Senator SPECTER, the Senator from Pennsylvania.

Mr. LEAHY. Mr. President, before we begin, I know that a number of people—I see Senator GRASSLEY, Senator KOHL, and Senator CARDIN on the floor—a number of people have asked me—I hope we will not be taking the full 6 hours. I have not discussed this with Senator SPECTER, so I cannot speak for him. A few of us are going to speak briefly. I hope at some point we will be able to yield back the remainder of our time and go to the vote. I know a number of Senators, especially Senators from the west coast of both parties, tell me they want to try to reach planes later today. And with the weather, there is some problem. So I hope we might be able to yield back time.

Today, the Senate considers the nomination of Elena Kagan to be Solicitor General of the United States. It is fitting that we consider this historic nomination this month—and I think of my wife, my daughter, and my three granddaughters—because, of course, this is Women's History Month. When Elena Kagan is confirmed, she is going to become the first woman to serve as Solicitor General of the United States.

Nearly 10 years ago, President Clinton nominated Elena Kagan for a seat on the Court of Appeals for the DC Circuit. At that time, she had served as a clerk for Supreme Court Justice Thurgood Marshall and for Judge Abner Mikva on the DC Circuit, a law professor at the University of Chicago, Special Counsel to the Senate Judiciary Committee, Associate Counsel to the President of the United States, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. Her credentials also included two years at Williams and Connolly and a stellar academic career, graduating with honors from Princeton, Oxford, and Harvard Law School, where she was Supervising Editor of the Harvard Law Review. Despite her outstanding record, the then-Republican majority on the Judiciary Committee refused to consider her nomination. In a move that was unprecedented, she was among the more than 60 highly qualified Clinton nominees that were pocket-filibustered. No Senate majority—Democratic or Republican—has ever done anything like that before or since. Apparently, they felt she wasn't qualified. So she returned to teaching, becoming a professor at Harvard Law School and, in 2003, she became the first woman to be dean of Harvard Law School.

Now, I mention that not just because Elena Kagan reached one of the pinnacles of the legal profession, but in that position, she earned praise from Republicans and Democrats, as well as students and professors, for her consensus-building and inclusive leadership style. She broke the glass ceiling. Now Dean Kagan is poised to break another glass ceiling. Similar to Justice Thurgood Marshall, for whom she clerked, she would make history if confirmed to what Justice Marshall described as ''the best job he ever had.'' I hope that today the Senate will finally confirm her as President Obama's choice to serve the American people as our Solicitor General.

Two weeks ago Dean Kagan's nomination was reported out of the Senate Judiciary Committee, 13 Senators voted in favor, only 3 opposed. Senator KYL, the Assistant Republican Leader, and Senator COBURN voted in favor of the Kagan nomination, and I commend them. Just as I voted for President Bush's nominations of Paul Clement and Gregory Garre to serve as Solicitor General, Senator KYL and Senator COBURN looked past the differences they might have with Dean Kagan's personal views, and recognized her ability to serve as Solicitor General.

I am disappointed that after 2 weeks, with so many critical matters before the Senate, the Republican Senate minority has insisted on 6 hours of debate on a superbly qualified nominee who has bipartisan support. Democrats did not require floor time to debate the nominations of President Bush's last two Solicitors General, Paul Clement and Greg Garre, who were both confirmed by voice vote.

Even the highly controversial nomination of Ted Olson to be Solicitor General, following his role in the Florida recount and years of partisan political activity, was limited in early 2001 to less time. He was eventually confirmed by a narrow margin, 51 to 47. That was the exception. Other than that controversial nomination, every Solicitor General nomination dating back a quarter century has been confirmed by unanimous consent or voice vote with little or no debate.

Just last week, the Republican Senate minority insisted on 7 hours of debate on the Deputy Attorney General nomination before allowing a vote. Of course, after forcing the majority leader to file for cloture to head off a filibuster and then insisting on so much time, the Republican opposition to that nomination consumed barely 1 hour with floor statements.

I wish instead of these efforts to delay and obstruct consideration of the President's nominees, the Republican Senate minority would work with us on matters of critical importance to the American people. I will note just one current example. Two weeks ago the Senate Judiciary Committee reported an antifraud bill to the Senate. The Leahy-Grassley Fraud Enforcement and Recovery Act, S. 386, needs to be considered without delay. It is an important initiative to confront the fraud that has contributed to the economic and financial crisis we face, and to protect against the diversion of Federal efforts to recover from this downturn.

As last week's front page New York Times story and the public's outrage over the AIG bailout remind us, holding those accountable for the mortgage and financial frauds that have contributed to the worst economic crisis since the Great Depression is what the Senate should be spending its time considering. We have a bipartisan bill that has the support of the United States Department of Justice. It can make a difference. In addition to Senator GRASSLEY, Senator KAUFMAN, Senator KLOBUCHAR, Senator SCHUMER and Senator SHELBY have worked with us on that measure. I would much rather be spending these 6 hours debating and passing that strong and effective antifraud legislation.

Our legislation is designed to reinvigorate our capacity to investigate and prosecute the kinds of frauds that have

undermined our economy and hurt so many hardworking Americans. It provides the resources and tools needed for law enforcement to aggressively enforce and prosecute fraud in connection with bailout and recovery efforts. It authorizes $245 million a year over the next few years for fraud prosecutors and investigators. With this funding, the FBI can double the number of mortgage fraud taskforces nationwide and target the hardest hit areas. The bill includes resources for our U.S. attorneys offices as well as the Secret Service, the HUD Inspector General's Office and the U.S. Postal Inspection Service. It includes important improvements to our fraud and money laundering statutes to strengthen prosecutors' ability to confront fraud in mortgage lending practices, to protect TARP funds, and to cover fraudulent schemes involving commodities futures, options and derivatives as well as making sure the government can recover the ill-gotten proceeds from crime.

I have been trying to get a time agreement to consider the measure ever since March 5 when the Judiciary Committee reported it to the Senate. We can help make a difference for all Americans. Instead of wasting our time in quorum calls when no one is speaking, or demanding multiple hours of debates on nominations that can be discussed in much less time before being confirmed, let us work on matters that will help get us out of the economic ditch that we have inherited from the policies of the last administration and let us begin to work together on behalf of the American people.

The Kagan nomination is not controversial. Every Solicitor General who served from 1985 to 2009 has endorsed her nomination—Republicans and Democrats from across the political spectrum. They include: Charles Fried, Ken Starr, Drew Days, Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement and Greg Garre. In their letter of support, they wrote:

> We who have had the honor of serving as Solicitor General over the past quarter century, from 1985 to 2009, in the administrations of Presidents Ronald Reagan, George H..W. Bush, William Clinton, and George W. Bush, write to endorse the nomination of Dean Elena Kagan to be the next Solicitor General of the United States. We are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court.

Prominent lawyers who served in the Office of the Solicitor General in Republican and Democratic administrations have written to praise Dean Kagan's ''great legal and personal skills, intellect, integrity, independence and judgment,'' concluding that ''she has all the attributes that are essential to an outstanding Solicitor General.''

Deans of 11 of some of the most prominent law schools in the country describe Dean Kagan as ''a person of unimpeachable integrity'' who ''has been a superb dean at Harvard where she has managed to forge coalitions, attract excellent faculty, and satisfy demanding students.'' They call her ''superbly qualified to fulfill the role of representing the United States in the Supreme Court.'' If there were an equivalent to the ABA rating for judicial nominees, hers would be well-qualified.

One of the conservative professors Dean Kagan helped bring to Harvard Law School was Professor Jack Goldsmith, who took charge of the Office of Legal Counsel after the disastrous tenures of Jay Bybee and John Yoo. Professor Goldsmith, a conservative, praised Dean Kagan as someone who will ''take to the Solicitor General's Office a better understanding of the Congress and the Executive branch that she will represent before the Court than perhaps any prior Solicitor General.''

Iraq war veterans wrote a letter to the editor of the Washington Times stating that Dean Kagan ''has created an environment that is highly supportive of students who have served in the military,'' describing the annual Veterans Day dinner for former service members and spouses that she hosts, and the focus she has placed on veterans at Harvard Law School and the military experience of students.

Dean Kagan has taken every conceivable step to meet with Republican Senators and to respond to their supplemental questions to her. Just this week she responded to a letter from the ranking Republican Senator on the committee with extensive written materials. Her answers during her hearing, in her written follow-up questions and then, again, in response to Senator SPECTER's letter, were more thorough than any Solicitor General nominee in my memory. They are light years better than those provided by Ted Olson or other nominees of Republican Presidents. I hope that we will not see Senators applying a double standard to her and her answers. Those who voted for Ted Olson and Paul Clement and Greg Garre based on their answers can hardly criticize Dean Kagan.

Dean Kagan went above and beyond to provide more information than previous nominees. She did not draw the line as Senator SPECTER has previously complained, at saying only as much as needed to get confirmed by a majority vote. Instead, she went well beyond that to disclose as much about her personal views as she thought she could consistent with her duties. As she explained in her March 18, 2009, letter to Senator SPECTER:

> [T]he Solicitor General is acting not as policymaker, but as a lawyer representing the long-term interests of the United States. The Solicitor General would make decisions . . . based not on personal views, but on determinate federal interests. And the Solicitor General's office has longstanding and rigorous processes in place, usually involving numerous client agencies and components, to identify and evaluate the nature and extent of these interests.

Dean Kagan has shown that she has a deep understanding of the role of the Solicitor General and her exemplary record makes her well qualified to fulfill those important duties. Last week, when establishing the White House Council on Women and Girls, President Obama noted: ''[T]oday, women are serving at the highest levels in all branches of our Government.'' Let us not take a step backward to the days when women were not allowed to be lawyers or hold the top jobs. I think of the history of when Sandra Day O'Connor graduated from Stanford Law School with a stellar academic record and was told she could only have a secretarial job because, after all, she was a woman. Some woman. She became one of the most prominent members of the U.S. Supreme Court.

It is time for breaking through barriers. It is interesting when you look at the quality of these people. When Sandra Day O'Connor was nominated, one of my close friends in the Senate, who was her primary supporter, Senator Barry Goldwater of Arizona, brought her to my office. He said:

> You know, sometimes she will probably vote ways I will disagree with; sometimes I will agree with her. I am not asking her how she is going to vote on issues, I am just asking her to be honest and fair and use her great talent. That is all anybody can ask for.

She was confirmed, of course, unanimously.

Barry Goldwater was right. I believe I am, too, when I say it is time for breaking through barriers for this highly qualified person. It is also a time for our daughters and granddaughters to see a woman serving as a chief legal advocate on behalf of the United States.

I urge all Senators to support President Obama's nomination and vote to confirm Elena Kagan to be Solicitor General of the United States.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARDIN. 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. CARDIN. Mr. President, when President Obama nominated Elena Kagan to be the Solicitor General of the United States, I must tell you, I was extremely pleased because I knew of her reputation, I knew of her background, and I thought she would be an excellent choice to be the Solicitor General of the United States.

Chairman LEAHY allowed me to chair the hearing on her confirmation. At that hearing, there were spirited questions asked by many members of the Judiciary Committee. We had a chance to review the background record we go through in the confirmation process. Ms. Kagan responded to the questions of the committee members.

I must tell you, I was even more impressed with this individual to be Solicitor General of the United States. I

thought she did an excellent job in responding to the questions of the committee and answering them with candor and giving great confidence that she will represent the United States well before the courts of this country.

The Solicitor General has to appear before the Supreme Court. The Supreme Court Justices can be very difficult in their questioning, as can Members of the Senate during confirmation. I think Elena Kagan demonstrated her ability to represent our Nation well as the Solicitor General of the United States.

She comes to this position very well qualified, as far as her experience is concerned. I know Chairman LEAHY has spoken frequently about the need to continue to restore the morale and integrity of the Department of Justice which has been battered in recent years. I think Elena Kagan will help us restore the reputation of the Department of Justice and help us because of her dedication—and experience—to public service.

She brings a wide range of service, having served as dean of a law school, a law professor, a senior official at the White House, a lawyer in private practice, a legal clerk for a Justice of the Supreme Court.

A graduate from Princeton University and Harvard Law School, Ms. Kagan clerked for Justice Thurgood Marshall on the Supreme Court and then worked as an associate at the Washington law firm of Williams & Connolly. While teaching law at the University of Chicago, she took on another special assignment as special counsel to Senator JOE BIDEN who was then chairman of the Judiciary Committee. Ms. Kagan assisted in the confirmation hearings of Supreme Court Justice Ruth Bader Ginsburg.

Then in 1995, Ms. Kagan returned to public service to serve as President Clinton's associate White House counsel, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. So she has a combined academic background as well as public service.

In 1999, Ms. Kagan left Government and began serving as a professor at Harvard Law School, teaching administrative law, constitutional law, civil procedures, and a seminar on legal issues and the Presidency.

In 2003, she was appointed to serve as the dean of the Harvard Law School, becoming the first woman ever to be dean in that school's history.

We have a lot of information that we gather during the confirmation process. One of the most impressive letters was a letter we received from the deans of 11 major law schools in support of the nomination. These are your colleagues. They know you best. They know your qualifications.

The letter states in part that the Office of Solicitor General is a job that ''requires administrative and negotiation skills as well as legal acumen, and Elena Kagan excels along all relevant dimensions. Her skills in legal analysis are first rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy. . . . Ms. Kagan is also an excellent manager. She has been a superb dean at Harvard . . . Finally, Elena Kagan is known to us as a person of unimpeachable integrity.''

The Solicitor General of the United States holds a unique position in our Government. The Solicitor General is charged with conducting all litigation on behalf of the United States in the Supreme Court and is often referred to as the ''10th Justice.'' Indeed, the Supreme Court expects the Solicitor General to provide the Court with candid advice during oral argument and the filing of briefs on behalf of the United States. The office participates in about two-thirds of all the cases the Court decides on the merits each year.

So it is indeed high praise for Dean Kagan that former Solicitors General Walter Dellinger and Ted Olson joined with six other Solicitors General from both parties—Democrats and Republicans—to write a letter endorsing her nomination. If I might, I would like to quote from the letter from the former Solicitors General who endorse Ms. Kagan's nomination to be Solicitor General of the United States. The letter states, in part:

> We are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court. Elena Kagan would bring to the position of Solicitor General a breadth of experience and a history of great accomplishment in the law. We believe she will excel at this important job of melding the views of various agencies and departments into coherent positions that advance the best interests of our national government. She will be a strong voice for the United States before the Supreme Court. Her brilliant intellect will be respected by the Justices, and her directness, candor and frank analysis will make her an especially effective advocate.

At the same time, we want the Solicitor General to be independent. That person must exercise independent judgment in representing the best interests of the United States before the Court. Ms. Kagan has shown that independence throughout her career, but she also understands she must follow the law. Let me cite one final letter in support of Ms. Kagan's nomination. The letter is from former Deputy Attorney General Jamie Gorelick and former Attorney General Janet Reno. The letter notes that Elena Kagan would be the first woman to hold this office and that the confirmation will:

> . . . represent an important milestone for the Department of Justice and for women in the legal profession. We have no hesitation in concluding that Kagan possesses the skills and character to excel in the position for which she has been nominated.

Tomorrow will mark President Obama's 60th day in office, and I think it is fitting that today we are on the verge of confirming Elena Kagan's nomination so she can join with the Attorney General in helping to restore the competence of the Department of Justice for the American people. I am certain she will make an excellent Solicitor General, and I hope we will promptly confirm her nomination.

With that, I yield the floor.

Mr. LEAHY. I wish to thank the distinguished Senator from Maryland, who is a valuable member of the Senate Judiciary Committee, for stepping in on such short notice when I had to step off the floor.

I have asked my colleagues on the other side—and I know this is something that is being looked at because we have both Republicans and Democrats, as I said earlier, trying on a rainy day to move around airplane schedules—if we might be able to have the vote very soon but to reserve the time for Senators who have asked to speak on this subsequent to the vote.

There are no Republicans on the floor at the moment, so I am obviously not going to make a unanimous consent request, but were I to make a unanimous consent request, it would be after consultation with the Republican side that we go ahead and have the rollcall vote and then continue whatever time is necessary for debate.

So I mention that is a request I will make at some point, when there is somebody to represent the Republican leader on the floor.

Until then, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged to both sides equally.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

MORTGAGE CRAM-DOWN

Mr. DURBIN. Mr. President, you are from the State of Ohio; I am from the State of Illinois. We face similar circumstances when it comes to mortgage foreclosures. Lots of the best and strongest cities in my State, large and small, are being inundated with mortgage foreclosures.

Now, this started off with this predatory trap where a lot of people were lured into mortgages they could not afford. But there was a mortgage broker telling them: It will all work out. The price of your home is going to go up, and it is going to be a good source for you to borrow money in the future. So stretch a little. Trust me. You can make these payments, and a year from now, or when the mortgage readjusts, everything is going to be just fine.

It did not work that way. Some people went into these mortgage agreements and negotiations without the equipment to understand what they were getting into.

I am a lawyer by training. I have been through a lot of closings for real estate. We all know what it is about. They sit you in a room, your wife by your side, and put a stack of papers in front of you. They start turning the corners, talking faster than any salesman you have ever run into, telling you: Do not worry about this one, sign it. Do not worry about this one, sign it. It is routine, required by Federal law—on and on and on. Pretty soon, with your hand weary at the end of half an hour or so, you have signed 30 or 40 documents. They hand you the paper and say: The first payment is due in 60 days. I know you are going to love this place.

That is what most closings are all about. Not many lawyers and very few purchasers stop them and say: I want to read this document. Can you tell me what paragraph 6 means? Are you sure I am understanding everything this means?

Most of the time, the average people in America are at the mercy of the folks sitting around them. They are bankers, they are lawyers, real estate agents. They are at their mercy and, unfortunately, under some circumstances, some people were misled into mortgage arrangements which were just plain wrong.

For the longest time we went through something called no-doc mortgages. Do you know what that means? No documentation.

How much money do you make?

Oh, I don't know, $50,000.

How much debt do you have?

Oh, I don't know, maybe $10,000.

You qualify.

Do you need some documentation?

No, we have to move this through fast. We need to capture an interest rate.

This sort of thing was the height of irresponsibility. At the end of the day, people ended up with these subprime mortgages for homes they, frankly, could not afford, and the day quickly came when this house of cards literally collapsed, and mortgages started being foreclosed across America.

Well, it is not just your neighbor's problem when a house is foreclosed upon. It is your problem too. Even if you are making your mortgage payment, that neighbor's misfortune just affected the value of the home you hold near and dear. That neighbor's inability or failure to pay the mortgage payment is going to affect the value of your home where you just made the mortgage payment and continue to. That is the reality.

The Chicago Sun Times recently reported on the situation of Chris and Marcia Parker. They are in the south suburb of Thornton just outside Chicago. They live in a small brick home that Marcia's father built in the early 1950s. She grew up in the house. The couple moved back home to take care of her elderly mother.

At the time they took out a mortgage to pay for a new roof and a new furnace. They ran a small business, but the business failed, causing them to file for bankruptcy. They both landed new jobs with the same company, but were then laid off at the same time last July because of the recession.

Chris, the husband, found a new job; Marcia has not. Now they are falling behind on their mortgage. They put up for sale the house Marcia's father built. They could not find a buyer. They have now received a foreclosure notice. The foreclosure could happen as early as a week from now. They are trying to reach the lender and work out an arrangement to stay in the home her parents built. Worse, they cannot find a place to rent because their previous bankruptcy, based on the failing small business, they have no idea where they are going to live and whether they will lose their home.

Does this sound like a deadbeat couple to you? It does not to me. It sounds like a couple that has fallen on misfortune, tried their best, tried to get back on their feet, and they keep stumbling and falling again despite their best efforts. This family was not reckless. They were not speculators in the market. We are talking about a house her parents built. They did not buy too much house.

This is a story of a family who has tried to do the right thing and is facing the very real possibility of losing their family home and having nowhere to turn. It is happening over and over again.

In Chicago, there were nearly 20,000 homes last year which entered the foreclosure process. This map tells the story. It looks like this great city of Chicago with the measles. Well, it turns out to be this great city of Chicago with a reflection on the 2008 foreclosure filings.

Get down here around Midway Airport where I travel a lot—I go to O'Hare a lot, too, I might add—and take a look at what is going on in these neighborhoods, in these plots. I took a look at one specific Zip Code right around Midway Airport, and I looked at it visually closely. I could only find five blocks in that Zip Code that did not have at least one home in mortgage foreclosure.

Now, if you traveled to these homes, you might notice them when you are flying in and out of the city. These are neat little brick bungalow homes, not lavish homes, basic two- and three-bedroom homes where folks spend the extra dollars to finish the basement, put in an above-ground pool in the backyard, or try to put something in the attic where the kids can sleep over if they want to. These are basic middle-class family homes, and folks are losing them right and left.

Now, 2 weeks ago I went to Albany Park. That is on the north side of the city of Chicago—again, neighborhood after neighborhood of neat little family homes where people care, where the homes are well taken care of, little garden plots and flowers and decorative efforts by them to make sure their home looks special. Smack dab in the middle of that area was a building, a three-story building that had been, I guess, developed originally as a condo. When they could not sell the condos, they developed it into apartments, and then mortgage foreclosure. That is now boarded up. It has been vandalized by gangs that go in and rip out the copper piping and everything they can get their hands on. The drug gangs hang out there.

I stood around that neighborhood with the neighbors, many of whom were elderly people, folks who have accents because they came to this country and worked hard and now want to retire. They looked at me and said: Senator, what are you going to do about this? This mortgage foreclosure on our block is changing our lives. We put all of our lives in that home, and now this monstrosity of a foreclosure is destroying our property value.

Well, I have been involved in an effort for 2 years to do something about this, 2 straight years. I am still trying. And here is what it is. If you go into bankruptcy, if you have more debts than you have assets, the court right now can take a look at your debts. In some instances, they can try to restructure the debt so you can pay it off.

If you have a vacation home in Florida, the bankruptcy judge can say: Well, rather than foreclose your vacation home in Florida, we think you have enough income coming in that we will work with the lender and try to make the mortgage terms work. If you own a farm, we can work with the lender to make the mortgage terms work. If you own a ranch, same situation. Same thing on that boat, on that car, on that motorcycle; we can do it—with one exception.

Do you know what the exception is? Your private residence. Your personal home. The bankruptcy court is prohibited by law from looking at that mortgage and saving your home. They can save your vacation condo, your ranch, your farm, all of these other things. They cannot save your home.

It makes no sense. If your home means as much to you as it does to my family and most families, you would think that would be a high priority. Who resists this? The banks do and the mortgage bankers do. They have given it this nice, negative name: cram-down. We are going to let the bankruptcy court cram down that mortgage on your home.

Boy, they sure did not use cram-down when it came to vacation homes or farms or ranches, but now they want to stop it. Why? Because many of them do not want to negotiate a new mortgage. It makes no sense.

A bank, when a mortgage goes into foreclosure, will lose at least $50,000 on

that mortgage foreclosure—at least, with legal fees and other expenses. And in 99 percent of the cases in mortgage foreclosure, the house ends up on the inventory of the bank. That banker who sits behind the desk at your local bank now has to worry about who is going to cut the grass, who is going to drive by to make sure the home is not being vandalized, how in the world they are going to sell it.

What we are trying to do is set up a process so these homes facing foreclosure, thousands and thousands of homes in the city of Chicago which I am honored to represent, and millions of people across America have a fighting chance.

Now, I have made concessions. I have worked on compromises over the 2 years. Some of the financial institutions are finally saying: All right, we will talk to you. When I started working on this problem 2 years ago, they predicted as many as 2 million families in America could lose their homes. They predicted 2 million. We were told by the lending industry that those estimates were grossly exaggerated: 2 years ago, 2 million.

Goldman Sachs now estimates as many as 13 million homes could be lost to foreclosure in the next 5 years. That is one out of every four private residences in America lost to foreclosure, a foreclosed home on every block in every city in every State in America, on average. That is the reality and the truth of this crisis.

Last year when I called up this bill, they said: DURBIN, there you go again. You are exaggerating it. It is not going to be that bad. We will take care of the problem. Well, we gave them all of the help to take care of it, the voluntary programs, and at the end of the day, where are we? We are in a desperate position in this country where we have to step up and finally break this cycle of mortgage foreclosures.

Both sides have to give. I have been willing to compromise, some of the banking institutions have been, to make sure people go into the bank before they go into bankruptcy court, to give them a chance to work out the terms of a mortgage they can afford so they can stay in their homes and neighborhoods can be stabilized.

That is why I fully support President Obama's plan to help 3 to 4 million homeowners save their homes by modifying their mortgages to make them more affordable. The plan creates incentives that we need so that banks will finally do what has not been done for 2 years: aggressively modify loans so foreclosures can be avoided. That is in the best interests of homeowners and banks.

But this plan is voluntary. Voluntary plans have successively failed. Every time we have said to the financial institutions: We will leave it up to you, you decide whether you want to do something, nothing is done of any major consequence. If the lenders don't want to participate in the President's plan or previous plans, they don't have to.

The program pays servicers taxpayer money to offer loan modifications that may not be enough. We need to have at the end the possibility—not the probability but the possibility—that the bankruptcy court will have the last word. That is why the administration has included my plan in their proposal. The President supports my change in the Bankruptcy Code to allow mortgages on primary residences to be modified in bankruptcy just as other debts. If banks don't want judges to modify mortgages for them, they will be far more likely to do it themselves. How would it work? Only families living in the home would qualify. This isn't for speculation. This isn't for that extra condo you bought somewhere in hopes that you could turn a buck. It is your primary residence, the one you live in. Only mortgages for which the foreclosure process has started are eligible. No one who can pay their current mortgage can have a judge change those terms. Judges would be limited in how they can modify the mortgages. They could never create a mortgage that would create a worse result for the bank than foreclosure.

If this bill passes, taxpayers don't lose a buck, and we could have a positive result where many people could win. The mortgages that are modified in bankruptcy will provide far more value to lenders and investors than foreclosure.

Best of all, there is no expense to taxpayers.

This is expensive to taxpayers. Why? Because if the home next door to you goes into foreclosure, the value of your home goes down, property tax revenues go down, and the local unit of government loses the revenue it could receive from those property taxes, for starters.

If you can't buy and sell a home in your neighborhood, do you know what that means to the realtor, to the people who build homes, to those who sell carpeting for new homes, right on down the line?

I will return to the floor next week to talk about this bill. I know opponents hate it. I can't persuade some of them no matter what I do, no matter what concessions I make. But I will not give up. For 2 years, we have been fighting to pass a strong housing bill to turn away this tide of foreclosures in Chicago and across America. I hope that on a bipartisan basis we can do that starting very soon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. What is the business pending before the Senate at the moment?

The PRESIDING OFFICER. The nomination of Elena Kagan to be Solicitor General.

Mr. SPECTER. Mr. President, I came at 2 o'clock, when this nomination was listed for argument, and another Senator was speaking on another subject. We have just heard another Senator speaking on still another subject. Only two Senators have spoken so far in favor of the nomination. I say to my colleagues on both sides of the aisle, if they have anything to say about the nominee, they ought to come to the floor and speak.

The chairman has raised a proposal about voting on the nomination and speaking afterward. Part of our deliberative process is to have Senators speak with the prospect—maybe unrealistic, maybe foolish—of influencing some other votes. We are not going to influence any votes if we speak after the vote is taken. But it may be that we are not going to have speakers. I urge my colleagues to come to the floor. This is Thursday afternoon. In the Senate, that is a code word. It means we are about to leave. There are no votes tomorrow, so there will be some interest in departure not too long from now. I think we ought to conclude at a reasonable time.

In advance, I had been advised that quite a number of people want to speak for quite a long time. We got an allocation of 3 hours for the Republican side. That means 6 hours equally divided. Now it appears that some who had wanted extensive time will now not be asking for that extensive time. We ought to make the determination as soon as we can as to who wants to speak and for how long so that we can figure out when is a reasonable time to have the vote and conclude the debate so Senators may go on their way.

Turning to the subject matter at hand, the nomination of Dean Elena Kagan for Solicitor General of the United States. I begin by noting Dean Kagan's excellent academic and professional record. I call her Dean Kagan because she has been the dean of the Harvard Law School since 2003.

She has excellent academic credentials: summa cum laude from Princeton in 1981, and magna cum laude from the Harvard Law School in 1986, where she was on the Harvard Law Review. She clerked for Circuit Judge Mikva and Supreme Court Justice Marshall and she has had government service.

I ask unanimous consent that her resume be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. SPECTER. The office of Solicitor General is a very important office. That is the person who makes arguments to the Supreme Court of the United States on behalf of the United States government. In addition to making arguments, the Court frequently asks the Solicitor General for the Solicitor General's opinion on whether a writ of certiorari should be granted in pending cases. So the Solicitor General is sometimes referred to as the 10th Supreme Court Justice—a pretty important position.

I have gone to substantial length, really great length, to find out about

Dean Kagan's approach to the law and approach to the job of Solicitor General and to get some of her ideas on the law because she is nominated to a critical public policymaking position. I had the so-called courtesy visit with her in my office, which was extensive, as ranking member on the Judiciary Committee. We had an extensive hearing, where I questioned her at some length. Written questions were submitted, and she responded. I was not satisfied with the answers that were given, and when her name came before the committee for a vote, I passed. That means I didn't say yea or nay. I wanted to have her nomination reported to the floor so we could proceed, and I wanted an opportunity to talk to her further. I did so earlier this month. I then wrote her a letter asking more questions and got some more replies. I use the word ''replies'' carefully because I didn't get too many answers as to where she stood on some critical issues.

During the course of the hearing, we discussed extensively some of her very deeply held positions. The question was raised by me, given those positions, would she be able to take a contrary position on some statute that she is obligated to uphold in arguments before the Supreme Court. She said she would. But the question remains, when you feel so strongly—and the record will show what she had to say—whether you can really make a forceful argument as an advocate. Theoretically, you can. Lawyers are not supposed to necessarily believe in their positions; they are supposed to advocate. The clash and clamor of opposing views in our adversarial system is supposed to produce truth. Lawyers advocate more so than state their own positions. But there is a degree of concern when the views are as strongly held as Dean Kagan's have been.

After the long process I have described, I still don't know very much about Dean Kagan. It is frequently hard, in our separation of powers, for the legislative branch to get much information from the executive branch. We look for information, and frequently we are told it is executive privilege. We are told it is part of the deliberative process or we are simply not told anything, with long delays and no responses.

The legislative branch has two critical pressure points. One pressure point is the appropriations process, to withhold appropriations, which, candidly, is not done very often. It is pretty tough to do that. Another point is the confirmation process where nominations are submitted to us to be confirmed, which the Constitution requires. So there the executive branch has no choice. They can't talk about executive privilege or deliberative process or anything else. But there is a question as to how thorough nominees answers to questions should be.

In discussing what answers we can reasonably expect from Dean Kagan, the issue of the questioning of judicial nominees is implicated to the extent that the tides have shifted as to how many questions Supreme Court nominees are asked. Not too long ago, there weren't even hearings for Supreme Court nominees. Then the generalized view was that nominations were a question of academic and professional qualifications. Then the view was to find out a little bit about the philosophy or ideology of a nominee but not to tread close to asking how specific cases would be decided. The President is customarily afforded great latitude with nominations. Then Senators look for qualifications, with the generalized view that they don't want to substitute their own philosophy or own approach to the law for the discretion of the President. Some Senators do. There is no rule on it. We may be in a period of transition where some have said the Senate ought to do more by way of utilizing Senators' own philosophical positions in evaluating the President's nominees, that we have as much standing on that front as the President. That is an open question, but I don't propose to suggest the answer to it today or to take a position on it. But it bears on how far we can go in asking Dean Kagan questions.

I don't know very much more about her now than I did when we started the process. From the many questions that I asked her on cases, I have picked out a few to illustrate the problem I am having with figuring out where she stands and the problem I am having with her confirmation. One case of substance and notoriety is a case involving insurance for Holocaust survivors.

The Southern District of New York Federal court held that plaintiffs' monetary claims were preempted by executive policy. The Second Circuit wrote to the Secretary of State and asked for the administration's position on the adjudication of these suits with respect to U.S. foreign policy.

Dean Kagan was asked the question of what was her view on this case. This was a pretty highly publicized case, and it is pretty hard to see how an insurance company ought to be preempted or protected by foreign policy considerations. Well, Dean Kagan didn't tell us very much in her answer. The answer takes up two-thirds of a page, and most of it is about the consultative process, which I am, frankly, not much interested in. I want to know what she thinks about the policy.

She said:

> At the end of this process, the decision of the Solicitor General on seeking certiorari is likely to reflect in large measure the views of the State Department as to the magnitude of the foreign policy interests involved.

It does not say very much. I want to know what foreign policy interests she is concerned about.

Another case involving the terrorist attacks captioned ''In re Terrorist Attacks on September 11, 2001'' where people who were victimized on that day sought damages from Saudi Arabia, Saudi princes, and a banker, who were alleged to have funded Muslim charities that had provided material support for al-Qaida. The Southern District of New York Federal Court dismissed the plaintiffs' claims on the grounds that the defendants were immune from suit. The Second Circuit affirmed, and the Supreme Court then asked the Solicitor General's Office for its recommendation as to whether to grant the petition for certiorari. There, you have the ''tenth'' Supreme Court Justice, the Solicitor General, coming into the picture.

Well, when I questioned Dean Kagan on this case, her response was: ''I am unfamiliar with this case. . . . A critically important part of this process would be to'' work with the clients, the Department of State, and the Department of Justice. And the ''inquiry would involve exploration of the purposes, scope, and effect of the Foreign Sovereign Immunities Act, as well as consideration of the role private suits might play in combating terrorism and providing support to its victims.''

Well, we do not know very much about her views from that answer. There has been a lot of information in the public domain that Saudi charities were involved. Fifteen of the nineteen hijackers were from Saudi Arabia. People were murdered. There are claims pending in court. The question is whether the Supreme Court is going to take the case. Well, I wish to know what the nominee for the position of Solicitor General thinks about it.

I had calls from people in high positions—I do not want to identify them—saying: Well, don't ask those kinds of questions. Somebody in the executive branch. Well, I am not prepared to relinquish the institutional prerogatives of the Senate to ask questions. The executive branch nominees want confirmation. Well, Senators want information to base their opinions on.

In the case of Republic of Iraq v. Beaty, the question was whether Iraq was amenable to suit under the exception to the foreign sovereign immunity clause. American citizens were taken hostage by Saddam Hussein in the aftermath of the first gulf war. They got more than $10 million in damages. The question, then, is, what would the Solicitor General do? The case is now pending before the Supreme Court. Dean Kagan gives an elongated answer saying very little, virtually nothing:

> I have no knowledge of the case and cannot make an evaluation of its merits, even if this evaluation were appropriate (which I do not believe it would be) while the case is pending before the Court with a brief from the Solicitor General supporting reversal.

Well, Dean Kagan has a point as to how much knowledge she has of the case. But when she says that an evaluation is not appropriate while a brief is pending from the Solicitor General supporting reversal—she is not the Solicitor General. She has not submitted the brief. She is not a party to the action. She is a nominee. She wants to be

confirmed. I wish to know how she would weigh this issue.

Americans taken hostage by Saddam Hussein, and the verdict of $10 million—why not have a judicial determination in a matter of this sort? How much do we defer to foreign governments who have murdered and abused and kidnapped American citizens? I think those are fair questions.

I will discuss one more question because I see my colleague Senator SESSIONS is on the floor.

That is the Kelo case, Kelo v. London, a very famous, widely publicized case on eminent domain. Well, does Dean Kagan have the record in the case? Has she gone through it line by line? No, that has not happened. But the case is pretty well known. It is pretty hard to say you do not know much about that. This is what she said in response to my question regarding the case:

> I have never written about the Takings Clause; nor have I taught the subject. . . .

Well, if that is relevant—I do not know if we would confirm very many people to the Department of Justice Attorney General position or Solicitor General position or to other positions if you had to have written about it or if you had to have taught a class on the subject. Here again, we know very little as to what she thinks about an issue.

In essence, it is difficult to cast a negative vote on someone with the qualifications and background of Dean Kagan, but we have a major problem of institutional standing to find out from a nominee what the nominee thinks on important questions.

The nominee disagrees with what I have said. I have talked to her about it. She thinks she can be an advocate for issues even though she feels very strongly the other way. She feels she does not have to answer questions because it would be inappropriate because the case is pending and the Solicitor General has rendered an opinion. Well, I disagree with that. I have no illusion the issues I have raised will prevail. I think it is pretty plain that Dean Kagan will be confirmed. But I do not articulate this as a protest vote or as a protest position, but one of institutional prerogatives. We ought to know more about these nominees. We ought to take the confirmation process very seriously. I believe the scarcity and paucity of Senators who have come to the floor to debate this nomination does not, candidly, speak too well for this institution. We are all waiting to vote to go home. But this is an important position. For a Supreme Court Justice nominee, television cameras would be present during the hearings, and everybody would be there, and everybody would be on camera.

Well, I think we have to pay a little more attention, and I have gone to some length to try to find out more about Dean Kagan. In the absence of being able to do so and to have a judgment on her qualifications, I am constrained to vote no.

Before I yield the floor, Mr. President, again, I ask my colleagues to come to the floor if they are going to have something to say. I would hope we could wind up our activities. We could go until 8 o'clock. I do not think we ought to do that. My view is, we ought to vote no later than 5. But I am not the leader. That is just my view. But I do think people ought to come if they want to speak. Or maybe we will vote at 5 o'clock, and people can speak afterwards. I do not know how it will work out. But I think it would be very healthy if people spoke before the vote on the assumption that we have debate to try to influence other Senators because we are the world's greatest deliberative body, so it says in all the texts.

I yield the floor.

EXHIBIT 1

ELENA KAGAN

SOLICITOR GENERAL OF THE UNITED STATES

Birth: 1960; New York, New York.

Legal Residence: Cambridge, Massachusetts.

Education: B.A., summa cum laude, Princeton University, 1981; Daniel M. Sachs Graduating Fellow, Princeton University; M.Phil., Worchester College, Oxford, 1983; J.D., magna cum laude, Harvard Law School, 1986; Supervising Editor, Harvard Law Review.

Employment: Judicial Clerk, Judge Abner Mikva, U.S. Court of Appeals for the D.C. Circuit, 1986–1987; Judicial Clerk, Justice Thurgood Marshall, U.S. Supreme Court, 1987–1988; Staff Member, Dukakis for President Campaign, 1988; Associate, Williams & Connolly LLP, 1989–1991; Assistant Professor, University of Chicago Law School, 1991–1994; Tenured Professor, 1995–1997; Special Counsel, Senate Judiciary Committee, 1993 (summer); Associate. Counsel to the President, Executive Office of the President, 1995–1996; Deputy Assistant to the President for Domestic Policy, 1997–1999; Visiting Professor, Harvard Law School, 1999–2001; Professor of Law, 2001–Present; Dean, 2003–Present.

Selected Activities and Honors: Public Member, Administrative Conference of the United States, 1994–1995; Litigation Committee Member, American Association of University Professors, 2002–2003; Recipient, 2003 Annual Scholarship Award of the American Bar Association's Section of Administrative Law and Regulatory Practice, 2003; Board of Trustees, Skadden Fellowship Foundation, 2003–Present; Board of Directors, American Law Deans Association, 2004-Present; Research Advisory Council, Goldman Sachs Global Markets Institute, 2005–2008; Honorary Fellow, Worcester College, Oxford University, 2005–Present; Board of Advisors, National Constitution Center's Peter Jennings Project for Journalists and the Constitution, 2006–Present; Member, New York State Commission on Higher Education, 2007–2008; John R. Kramer Outstanding Law School Dean Award, Equal Justice Works, 2008; Recipient, Arabella Babb Mansfield Award, National Association of Women Lawyers, 2008; Board of Directors, Equal Justice Works, 2008–Present.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I begin by thanking the Senator from Alabama for his courtesy. I appreciate him allowing me to go before him to speak.

I rise today in support of the nomination of Elena Kagan to be Solicitor General of the United States. As we saw from her confirmation hearing in the Judiciary Committee more than a month ago, Elena Kagan has the piercing intellect, superb judgment, and wealth of experience necessary to be an outstanding Solicitor General.

Dean Kagan's academic credentials could not be any more impressive. After graduating summa cum laude and Phi Beta Kappa from Princeton University, she attended the Harvard Law School, served as supervising editor of the Harvard Law Review, and graduated magna cum laude. After law school, she clerked first for Abner Mikva of the District of Columbia Circuit, and then Thurgood Marshall on the U.S. Supreme Court.

That auspicious start to Dean Kagan's legal career was followed by private practice at one of America's leading law firms, and then service in the Office of the Counsel to the President. She has also been a policy adviser to the President, and a legal scholar of the first rank at both the University of Chicago and Harvard.

As others have pointed out, her research and writing in the areas of administrative and constitutional law make her a leading expert on many of the most important issues that come before the Supreme Court.

If that level of experience were not enough, she has spent the last 5 years as the extraordinarily successful dean of the Harvard Law School, which by all accounts is not an easy place to govern.

I note that several of that school's most conservative scholars have voiced their support for this nomination. They praise her vision and judgment, her incredible work habits, and her extraordinary management skills. Just as important, they point to her ability to bridge disagreement, by listening to all sides of an argument, engaging honestly with everyone concerned, and making decisions openly and with good reasons.

No one disputes that Dean Kagan has served Harvard incredibly well. She will do the same for the Office of Solicitor General. Her accomplishments as a scholar and teacher are unmatched. Her skill as a leader and manager are beyond dispute.

In fact, she has the support of every single Solicitor General who has served since 1985, including all three who worked in the previous administration. As they wrote to the Judiciary Committee:

> We are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court.

On a personal note, I want to add that earlier in her career, Dean Kagan spent some time working as an adviser to then-Senator BIDEN. I had the good fortune to get to know her in that context. Based on that experience, and everything I have seen since, I am absolutely convinced not only that she possesses enormous intellect and consummate skill, but also that she is a person

of the highest character and unquestioned integrity.

In short, this is an outstanding nominee, and an outstanding nomination.

On March 5, after thorough consideration, a bipartisan majority of the Judiciary Committee—13 to 3—voted to report Dean Kagan's nomination. I urge my colleagues to confirm her without delay, so she can begin the critical task of representing the United States in the Supreme Court.

Mr. President, I yield the floor to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I wish to share my thoughts about the nomination of Elena Kagan to be Solicitor General.

I have strong concerns about her nomination and will not support her nomination. I do believe the President, like all Presidents, should be entitled to a reasonable degree of deference in selecting executive branch nominees. But for some of the reasons I will set out, and one in particular, I am not able to support this nomination and will not support it.

I believe her record shows a lack of judgment and experience to serve as the Nation's chief legal advocate—a position many have referred to as the Supreme Court's ''tenth Justice.'' It is also a position that has been called the best lawyer job in the world.

Well, so far as I can observe, other than time in the White House Counsel's Office, Dean Kagan has only practiced law for 2 years in a real law firm practicing law. She had very limited experience in the things you would look for in a person of this nature.

But let me discuss one defining moment in her career that I was sort of indirectly involved in because of legislation that was percolating in the Congress, in the Senate and in the House, and it means a lot to me.

During her tenure as dean, Ms. Kagan barred the U.S. military from coming on the Harvard Law School campus to recruit young law graduates to be JAG officers in the U.S. military. That was from November of 2004 through September of 2005. She barred them from coming and recruiting on campus while 150,000 of our finest men and women in this country were serving in combat in Iraq and Afghanistan and during a time in which 938 troops died in combat, preserving the rights of people like law deans, faculty, and students to have all the opinions they want. Her decision to bar the military from her campus during a time of armed conflict represents exceedingly poor judgment and leadership, particularly for someone who wants to lead the Department of Justice, the executive branch, and support the military of the United States.

By refusing to allow military recruiters on the Harvard Law School campus, she placed her own opposition to military policies above the need of our military men and women to receive good legal advice, even from Harvard lawyers. And she did so at a time when the military, serving in conflicts in two foreign countries, was facing a host of complex legal issues. We are still fighting over them, for that matter. Maybe it would have helped if we had some of those graduates participating in them.

I don't believe she ever had a basis to have barred the military from her school's campus, and I believe she should have had the judgment to realize the signal and the impact that was being sent to our military and to the students who want to support and serve in the military. Indeed, President Obama should have realized the signal he was sending by nominating her to this position.

Flagg Youngblood wrote an op-ed in the Washington Times on January 30 and this is what that op-ed stated. I will quote from that article. I think it makes a point. This is a military person:

> Since the Solicitor General serves as the advocate for the interests of the American people to the Supreme Court, we're expected to believe Kagan is the best choice? Her nomination smacks of special interest, aimed at protecting the Ivy League's out-of-touch elitism at the expense of students, taxpayers, and our military alike.
>
> And what about the qualified students who desire to serve our country?

In the military, he is referring to.

> Second-class, back-of-the-bus treatment, that's what they get, typically having to make time-consuming commutes to other schools and, much worse, the ill-deserved disdain of faculty and peers on their own campuses.
>
> The military, nobly and selflessly, stands alert at freedom's edge, ready to defend our Nation in times of crisis, and should therefore be honored, and, as most Americans would argue, given preferential treatment, for guarding the liberties that academics such as Kagan profess to protect.
>
> That's precisely why Congress intervened more than a decade ago, at the behest of a large majority of Americans who recognize and appreciate what our military does, to fulfill the Constitution's call for a common defense among the few, enumerated Federal powers. And, to stop financing those who undermine that fundamental duty. Yet, left-wing views like Kagan's still disparage the sacrifices our military makes and cause real, quantifiable harm to students and to our Nation at taxpayer expense.

Well, Mr. Youngblood's editorial—he felt deeply about that—deserves, I think, extra force and credibility because he was affected by similar policies when he tried to participate in ROTC while attending Yale University during the 1990s. Due to Yale's exclusion of the ROTC from campus, Mr. Youngblood was forced to travel because he wanted to serve his country, 70 miles to commute to the University of Connecticut to attend the military ROTC classes. His ordeal—and many like it—led to the passage of the Solomon amendment, which is the Federal law that requires colleges to allow military recruiters on campus in order to be eligible for Federal funds.

Well, let me say, that amendment didn't order any university to admit anybody or to allow anybody to come on campus; it simply says when you get a bunch of money from the Federal Government, you at least need to let the military come and recruit students if they would like to join the U.S. military and not exclude them.

So the Solomon amendment is critically important here because it shows that Ms. Kagan's decision to block the military from Harvard Law School's campus was not just wrong as a matter of public and military policy. It was also clearly wrong as a matter of law. While dean at Harvard, Ms. Kagan was a vocal critic of the Solomon amendment. She called the law immoral. She wrote a series of e-mails to the Harvard Law School community complaining about the Solomon amendment and its requirement—horrors—that federally funded universities, if they continue to get Federal money, ought to allow military recruiters on campus or lose the Federal money. She thought that was horrible.

I should note that Harvard receives hundreds of millions of dollars in Federal funding: $473 million in 2003, $511 million in 2004, and $517 million in 2005. That is a lot of money. The Federal highway budget that goes to the State of Alabama is about $500 million a year. Harvard University gets that much. By opposing the Solomon amendment, Ms. Kagan wanted Harvard to be able to receive these large amounts of taxpayers' dollars without honoring Congress's and President Clinton's judgment that military recruiters were eligible to come on campus. Under the Solomon amendment, Harvard has always had the option of declining Federal funds and relying on its big endowment—$34 billion—and their tuition to fund the university. Much smaller institutions, such as Hillsdale College, have chosen to decline Federal funds to carry out their full academic independence. Harvard and Dean Kagan were not willing to do so. They wanted both. They wanted money and the right to kick out the military.

I think she showed her legal judgment regarding the Solomon amendment in 2005 when she joined in an amicus brief of Harvard Law School professors to the U.S. Supreme Court in Rumsfeld v. FAIR, opposing the Solomon Amendment's application to Harvard Law School. Unlike the chief litigant—the formal appeal group—in the case, which raised a straightforward first amendment challenge to the Solomon amendment, the brief Ms. Kagan joined with other Harvard Law School professors made a novel argument of statutory interpretation that was too clever for the Supreme Court.

Her brief argued that Harvard Law School did not run afoul of the letter of the Solomon amendment because Harvard law school did not have a policy of expressly barring the military from campus. Harvard, she argued, barred recruiters who discriminate from campus. Her brief reasoned that the Solomon amendment shouldn't apply

where the military wasn't singled out, but just ran afoul of a school's nondiscrimination policy.

Ms. Kagan's argument was considered by the U.S. Supreme Court and the U.S. Supreme Court upheld the Solomon amendment. In specifically addressing Ms. Kagan's amicus brief with the Harvard professors, Chief Justice Roberts, writing for the Court, dismissed Ms. Kagan's novel statutory interpretation theory using these words:

> That is rather clearly not what Congress had in mind in codifying the DOD policy. We refuse to interpret the Solomon amendment in a way that negates its recent revision, and indeed would render it a largely meaningless exercise.

It is telling also to note that the brief she signed on to was unable to convince a single Justice of the Supreme Court to go along with it—not even Justice Ruth Bader Ginsberg who was once general counsel to the American Civil Liberties Union.

Let me mention one more thing people have mentioned about the Kagan decision to bar the military from recruiting on the Harvard campus. Some may have heard that the decision to bar the military was merely honoring a ruling of the Third Circuit, which briefly ruled against the Solomon amendment on a split decision in Rumsfeld v. FAIR. It is critical to note that the Third Circuit's ruling never went into effect because the case was appealed to the U.S. Supreme Court and the Third Circuit stayed enforcement of its decision. In other words, the Third Circuit said: Yes, we have rendered it. We understand our opinion is under appeal. We are not going to issue a mandate or an injunction that our opinion has to be followed. We will allow this case to be decided ultimately by the Supreme Court of the United States.

No injunction was ever entered against enforcement of the Solomon amendment. Any decision by any dean to reject the Solomon amendment and not enforce it was not required by law. The law stayed in effect. In fact, Dean Kagan acknowledged that in an e-mail to the Harvard Law School community in 2005. There was a lot of controversy about this at Harvard. A lot of people weren't happy about it, you can be sure. She admitted in that e-mail that she had barred the military from campus, even though no injunction was in place, saying:

> Although the Supreme Court's action meant that no injunction applied against the Department of Defense, I reinstated the application of our anti-discrimination policy to the military . . . ; as a result, the military did not receive assistance during our spring 2005 recruiting season.

So it is clear that the barring of the military took place while the Solomon amendment was, in effect, the law of the land. Her e-mail indicates she understood that at the time. As a result, students who wanted to consider a military career were not allowed to meet with the recruiters on campus. The military was even forced to threaten Harvard University's Federal funding in order to get the military readmitted to campus as time went on. This was all a big deal. The Congress was talking about it. We had debate on it right here on the floor and in the Judiciary Committee, of which I am a member.

I think a nominee to be the Department of Justice's chief advocate before the Supreme Court, to hold the greatest lawyer job in the world, should have a record of following the law and not flouting it. The nominee should, if anything, be a defender of the U.S. military and not one who condemns them. Ms. Kagan's personal political views, I think, are what led to this criticism of the military, this blocking of the military. She opposed a plain congressional act that was put into place after we went through years of discussion and pleading with some of these universities that were barring the military. They had refused to give in, so we passed a law that said, OK, you don't have to admit the military, but we don't have to give you money, and we are not giving you any if you don't admit them. They didn't like that. So Ms. Kagan's refusal of on-campus military recruiters went against a congressional act. Her actions were an affront to our men and women then in combat and now in combat. The Solicitor General should be a person who is anxious and eager and willing to defend these kinds of statutes and to defend our military's full freedom and right to be admitted to any university, even if some university doesn't agree with the constitutional and lawfully established policies of the Department of Defense.

I would also raise another matter, and I think this is important. If there was some other significant showing, I think, of competence or claim on this position, I would be more willing to consider it. If she were among the most proven practitioners of legal skill before Federal appellate courts or had great experience in these particular positions, maybe I could overcome them. Maybe if she had lots of other cases in her career that could show she had shown wisdom in other areas, but that is not the case. She has zero appellate experience. Dean Kagan has never argued a case before the U.S. Supreme Court, which isn't unusual for most American lawyers, but for somebody who wants to be the Solicitor General whose job it is to argue before the Supreme Court, it is not normal. But for that matter, she has never argued any appellate case before any State supreme court.

In fact, she has never argued a case on appeal before any appellate court, whether Federal, State, local, tribal or military. That is a real lack of experience. When asked about this lack of experience at our hearing, Ms. Kagan tried to compare her record to other nominees saying this:

> And I should say, Senator, that I will, by no means, be the first Solicitor General who has not had extensive or, indeed, any Supreme Court argument experience. So I'll just give you a few names:
>
> Robert Bork, Ken Starr, Charles Fried, Wade McCree. None of those people had appeared before the courts prior to becoming solicitor general.

Well, Ms. Kagan's record hardly compares to the names she cited in her own defense.

Regarding Charles Fried, Ms. Kagan was wrong in stating that he never argued to the Supreme Court. Although Professor Fried did not have much in the way of litigation experience before being nominated, he had argued to the Supreme Court while serving as Deputy Solicitor General in Rex Lee's Solicitor General's Office. Accordingly, Mr. Fried had two things Ms. Kagan lacks—Supreme Court experience and experience within the Solicitor General's Office.

Ms. Kagan also compared herself to Ken Starr and Wade McCree, both of whom had a wealth of appellate experience that she lacks. Prior to his nomination to be Solicitor General, Ken Starr served as a U.S. Court of Appeals judge in the District of Columbia—an appellate court—from 1983 to 1989, a court before which the best lawyers in the country appear and argue cases. He had to control and direct their argument, and as a result he got to see and have tremendous experience in that regard as an appellate judge. Wade McCree had even more experience before his nomination. Mr. McCree served as a U.S. Court of Appeals judge in the Sixth Circuit, from 1966 to 1977, 11 years.

Robert Bork also had a strong litigation background before his nomination. He was one of the most recognized, accomplished antitrust lawyers in private practice in the country.

We should not forget the critically important role the Solicitor General plays in our legal system. As Clinton-era Solicitor General Drew Days wrote in the Kentucky Law Journal, ''the Solicitor General has the power to decide whether to defend the constitutionality of the acts of Congress or even to affirmatively challenge them.'' That is quite a power—the power to defend statutes in the Supreme Court, or even challenge them in the Supreme Court.

This is a very critical job within our Government. I think it deserves a more experienced lawyer, one with a record that shows more balance and good judgment. I think Ms. Kagan's lack of experience is an additional reason I am uncomfortable with the nomination. I think nominees have to be careful about expressing opinions on matters that might come before them in the future. But for a nonjudicial position, and concerning issues which were commented on today, Senator SPECTER believes she has been less than forthcoming. Had she been more forthcoming, I might have been a little more comfortable with the nominee. Her failure to be responsive to many questions, I think, causes me further concern.

To paraphrase a well-known statement of then-Senator BIDEN—now our

Vice President—the job of the Solicitor General does not lend itself to on-the-job training. One time, Rudy Giuliani was arguing about who should be his replacement as U.S. Attorney in Manhattan, and they were discussing people with very little experience. He said: I think it would be nice if they were able to contribute to the discussion every now and then.

I think it is good to have some experience. So I don't see a sense of history here to overcome what I consider to be bad judgment on a very important matter. I supported the nomination of Eric Holder. I like him and I hope he will be a good Attorney General; I think he will. I intend to support most of the other nominees to the Department of Justice. I certainly hope to. But I am not able to support Elena Kagan's nomination in view of her positions concerning the ability of the U.S. military to come on the campus of Harvard and actually recruit the young men and women who might wish to join the military. I think that was wrong. I also believe she has a very significant lack of relevant experience for the position.

I yield the floor.

Mr. INHOFE. I oppose the nomination of Elena Kagan for Solicitor General of the United States. I previously spoke against her on the floor and talked about the reason I was opposed to her as well as David Ogden for his representation of the pornography industry. It is kind of hard for me to understand how someone who is the No. 2 position in the Justice Department has a history of representing the pornography industry. Then, of course, the nominations of Dawn Johnson and Thomas Perrelli I am opposed to because of their strong pro-abortion positions.

But as far as Elena Kagan, it is important for those who are going to vote in favor of her to know some of the things that have happened in her background. Because of its great importance, the office of Solicitor General is often referred to as the 10th Supreme Court Justice.

When serving as a dean of Harvard Law School, she demonstrated poor judgment on a very important issue to me. Ms. Kagan banned the U.S. military from recruiting on campus. She and other law school officials sued to overturn the Solomon amendment. The Solomon amendment originated in the House. Congressman Jerry Solomon had an amendment that said no university could preclude the military from trying to recruit on campus. This was a direct violation of the amendment. She actually was claiming that the Solomon amendment was immoral. She filed an amicus brief with the Supreme Court opposing the amendment. The Court unanimously ruled against her position and affirmed that the Solomon amendment was constitutional.

The Department of Justice needs people who adhere to the law and not to their ideology. While certainly I oppose many of the positions taken by these nominees, I am even more concerned that their records of being ideologically driven will weaken the integrity and neutrality of the Department of Justice.

I oppose the nomination of Elena Kagan.

Mr. HATCH. Mr. President, today I will vote to confirm the nomination of Elena Kagan to be the next Solicitor General of the United States. Because the Constitution gives the appointment power to the President, not to the Senate, I believe the President is owed some deference so long as his nominees are qualified. This standard applies particularly to his executive branch appointments. I will vote for the nomination before us because I believe this standard is satisfied.

Dean Kagan would not be the first Solicitor General to have come from legal academia. Walter Dellinger came to the Clinton administration from Duke, Rex Lee served in the Reagan administration after founding Brigham Young University School of Law.

Nor would Dean Kagan be the first Solicitor general to have come to the post from Harvard. Archibald Cox came from the Harvard law faculty to serve as Solicitor General in the Kennedy administration. Erin Griswold became Solicitor General in 1967 after a dozen years as a Harvard law professor and another 19 as dean. Charles Fried, who taught at Harvard for nearly a quarter century before becoming Solicitor General in 1985, went back to teaching and is now a colleague of Dean Kagan. I was pleased to see him at her confirmation hearing.

I would note two other things about Dean Kagan's qualifications. First, she has no experience arguing before any court. I have long believed that prior judicial experience is not a prerequisite for successful judicial service. Justice Felix Frankfurter taught at Harvard Law School from 1921 until President Franklin D. Roosevelt appointed him to the Supreme Court in 1939. During that time, by the way, he turned down the opportunity to become Solicitor General. But Justice Frankfurter famously wrote in 1957 that the correlation between prior judicial experience and fitness for the Supreme Court is, as he put it, ''precisely zero.''

But courtroom argument, especially appellate advocacy, is a more specific skill that is related more directly to the Solicitor General's job. As such, Dean Kagan's complete lack of such experience is more significant. Which leads me to the second point that, despite her lack of courtroom experience, every living former Solicitor General has endorsed her nomination. They know better than anyone what it takes to succeed in the post and believe she has what it takes.

Speaking of endorsements, Dean Kagan is also supported by a number of lawyers and former government officials who are well known in conservative legal circles. These include Peter Keisler, who served as Assistant Attorney General and Acting Attorney General under President George W. Bush; Miguel Estrada, prominent Supreme Court practitioner and a former nominee to the U.S. Court of Appeals; Jack Goldsmith, who headed the Justice Department's Office of Legal Counsel under the previous President; and Paul Cappuccio, who served in the Justice Department during the first Bush administration and is now general counsel at TimeWarner.

A few other issues have given me pause during the confirmation process. When Dean Kagan served as a law clerk for Justice Thurgood Marshall, she wrote a memo in a case challenging the constitutionality of the Adolescent Family Life Act. That statute provided funds for demonstration projects aimed at reducing teen pregnancy. Dean Kagan objected to including religious groups in such projects, insisting that ''[i]t would be difficult for any religious organization to participate in such projects without injecting some kind of religious teaching.'' She actually argued for excluding all religious organizations from programs or projects that are, in her view, ''so close to the central concerns of religion.'' This is a narrow-minded, I think even ignorant, view of religious groups and her recommendation of discrimination against them comes close, it seems to me, to raising a different kind of constitutional problem. Thankfully, the Supreme Court did not follow her suggestion and instead upheld the statute. When asked about it at her hearing in February, Dean Kagan said that, looking back, she now considers that to be, as she put it, ''the dumbest thing I ever heard.'' With all due respect, I agree.

Dean Kagan took a very strong, very public stand against the so-called Solomon Amendment, which withholds federal funds from schools that deny access to military recruiters. Harvard denied such access in protest of the military's exclusion of openly gay servicemembers. Dena Kagan chose to allow access only under the threat of the entire university losing federal money. But she condemned in the exclusion policy in the strongest terms, calling it repugnant and ''a profound wrong—a moral injustice of the first order.'' In her personal capacity, she joined other law professors on a friend of the court brief in the lawsuit challenging the policy. In 2006, the Supreme Court upheld the Solomon Amendment, specifically rejecting the position Dean Kagan had taken, saying: ''We refuse to interpret the Solomon Amendment in a way that . . . would render it a largely meaningless exercise.'' Dean Kagan is entitled to take that or any other position on that or any other issue she chooses. But it raises the question whether she would be able, as the Solicitor General must, to put aside even such strongly held personal views and vigorously defend only the legal interests of the United States. She assured the Judiciary Committee that she could do that, even

saying that she would have defended this very statute, the Solomon amendment, in the way that Solicitor General Paul Clement did. I note that Paul Clement is one of the former Solicitors General endorsing Dean Kagan's nomination.

When Dean Kagan's nomination came up for a vote in the Judiciary Committee, I joined the ranking member, Senator SPECTER, in passing because of concerns that she had been insufficiently forthcoming in answering questions during her hearing and written questions afterward. I applaud Senator SPECTER for pursuing this, for meeting with Dean Kagan again, and for pushing her for more information and more thorough answers. She has provided some additional insight into her views, though I respect the fact that her additional effort will not satisfy everyone.

All in all, I have concluded that I can support Dean Kagan's nomination. She is qualified to serve as Solicitor General and I have not seen enough to overcome the basic deference that I believe I must give the President. As such, I will vote to confirm her.

Mr. KYL. The nomination of Elena Kagan to be Solicitor General of the United States is not without controversy. She has a stellar academic record which has been discussed. Following law school, Ms. Kagan served as a judicial clerk for Judge Abner Mikva on the U.S. Court of Appeals and for Supreme Court Justice Thurgood Marshall. After her clerkships, Ms. Kagan joined the DC law firm Williams and Connolly.

Ms. Kagan left private practice to join the faculty of the University of Chicago Law School. In 1995, Ms. Kagan began her service in the Clinton administration as associate counsel to the President and later as deputy assistant to the President for Domestic Policy. In 1999, she left the White House and returned to legal academia, joining the faculty at Harvard Law School. In 2003, Ms. Kagan was named Dean of Harvard Law School, a role in which she was charged with overseeing every aspect of the institution, academic and nonacademic alike.

She is well regarded by those who have followed her career.

I am particularly troubled, however, by two matters. First, Dean Kagan's nomination has rightfully received criticism because of her stance on the Solomon amendment. Dean Kagan joined two briefs concerning the legality of the Solomon amendment, one on an amicus brief to the Third Circuit in support of the appellants, FAIR, in the case FAIR v. Rumsfeld, and the other an amicus brief in support of FAIR when the case reached the Supreme Court. By a vote of 9 to 0, the Supreme Court upheld the Solomon Amendment and rejected the argument presented in the brief that Dean Kagan signed. See *Rumsfeld* v. *FAIR*, 547 U.S. 47, 55–57, 2006. Also, I would like to make one comment about Dean Kagan's actions as dean in this case. As Senator SESSIONS pointed out earlier today, because the case was appealed to the Supreme Court, the Third Circuit stayed enforcement of its decision. Therefore, the Solomon amendment stayed in effect. Dean Kagan acknowledged this in a September 20, 2005, email to the Harvard Law School community, where she admitted that she had barred the military from campus even though no injunction was in place: ''Although the Supreme Court's action [granting review] meant that no injunction applied against the Department of Defense, I reinstated the application of our anti-discrimination policy to the military . . . . as a result, the military did not receive [Office of Career Services] assistance during our spring 2005 recruiting season.'' Thus, Ms. Kagan barred the military from recruiting on campus even though the Solomon amendment remained the law of the land.

Second, I am troubled by Dean Kagan's lack of appellate experience. She has not argued even a single case before the Supreme Court or before any federal or state appellate court. I am quite concerned about her complete lack of appellate advocacy. I am, nevertheless, willing to give her the benefit of the doubt, primarily because of the views of seasoned advocates who know her well and who know the Court well.

All three Solicitors General appointed by President Bush—Ted Olson, Paul Clement, and Greg Garre—signed a letter, January 27, 2009, stating that they ''are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court.'' They added, ''[h]er brilliant intellect will be respected by the Justices, and her directness, candor and frank analysis will make her an especially effective advocate.''

Additionally, among her other supporters are two highly respected conservative lawyers who have known Dean Kagan since the beginning of her legal career. The first is Peter Keisler, who served as Acting Attorney General under President Bush and held a number of other top positions in the Bush Justice Department. He clerked on the U.S. Supreme Court with Elena Kagan, and wrote the following in support of her nomination, January 30, 2009: ''[her] combination of strong intellectual capabilities, thoughtful judgment, and her way of dealing respectfully with everybody . . . are . . . among the many reasons she will be a superb Solicitor General, and will represent the government so well before the Court.''

Second, Miguel Estrada has known Elena Kagan since law school. He wrote in support of her nomination, January 23, 2009: ''Having worked as an attorney in the Solicitor General's Office under Solicitors General of both parties, I am also confident that Elena possesses every talent needed to equal the very best among her predecessors.''

I expect a Solicitor General nominated by a President of a different political party to hold views that diverge from my own; but I also expect that nominee to be qualified for the position, able to faithfully execute the responsibilities of the office, and be forthright and honest with members of Congress. She has assured us that her ideology will not interfere with her decisions as Solicitor General. I will closely follow Dean Kagan's tenure as Solicitor General. I will hold her to her commitments.

I would like to make clear that my vote for Dean Kagan is only for the position of Solicitor General, and my vote does not indicate how I would vote for her if she were nominated for any other position, especially a position that is a lifetime appointment. Specifically, according to numerous news accounts, Dean Kagan is expected to be considered for nomination to the Supreme Court if an opening were to occur during the Obama administration. If she were nominated, her performance as Solicitor General would be critical in my evaluation of her suitability for the Supreme Court. My decision whether to support or oppose her would be strongly influenced by the decisions made by her as Solicitor General, such as the cases for which she does and does not seek review, the positions she argues, and the bases for her arguments. If she approaches her job as Solicitor General ideologically or argues inappropriate positions, I will not hesitate to oppose her nomination.

Mr. WHITEHOUSE. Mr. President, I wish to urge my colleagues to support the nomination of Elena Kagan to be the Solicitor General. In doing so, I will make four brief points.

First, Dean Kagan is extraordinarily qualified as a lawyer with a profound understanding of the issues that dominate the Supreme Court's docket. She has received enormous praise for her leadership of Harvard Law School as dean, in which position she reinvigorated one of the premier legal institutions in our country. And of course Dean Kagan is a scholar of the highest order on questions of administrative and constitutional law. She clearly has the intellectual background and sharp intelligence necessary to represent the interests of the United States with the utmost skill and clarity. She testified in her hearing and in numerous followup questions that she will put the interests of the United States ahead of any of her own beliefs and defend congressional statutes with the vigor and force we expect of the office. She has worked in private practice, as a clerk to the Supreme Court, and as a counsel in the White House. I applaud her willingness to return to Government service. Now, some critics have pointed out that she has not argued before the Supreme Court before. As an attorney who has argued before that Court, I can attest that appearing before the Court indeed is a daunting experience. But Solicitors General Ken Starr, Charles Fried, Robert Bork, and Wade McCree similarly had not argued before the

Court. This fact leaves me with no doubt that Dean Kagan will meet the highest expectations of her and that she will excel as Solicitor General.

Second, I would point out that a very large number of leading lawyers have joined me in concluding that Dean Kagan will be an excellent Solicitor General. Dean Kagan's nomination to be Solicitor General has been endorsed by every Solicitor General who served from 1985 to 2009—Charles Fried, Ken Starr, Drew Days, Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement, and Greg Garre. That is not the Solicitors General from every Democratic administration—that is every Solicitor General over the last 24 years, including conservatives Ted Olson and Ken Starr. Surely their expert opinions should provide a strong indication that Dean Kagan will be an excellent Solicitor General.

Third, it is worth noting the historic nature of this nomination. If confirmed, Dean Kagan would become the first woman confirmed by the Senate to hold the Office of Solicitor General of the United States. Dean Kagan has spent her lifetime breaking glass ceilings, and she is poised to break another for the benefit of generations of women to come.

Finally, I would like to commend Chairman LEAHY for his continuing determination to confirm as many Department of Justice nominees as quickly as possible. The United States deserves the best advocate possible before the Supreme Court. We should confirm Dean Kagan and let her get to work. And we should swiftly confirm the remaining nominees to the Department of Justice. I look forward to continuing to work with Chairman LEAHY in that effort.

Mr. BUNNING. Mr. President, I rise today to speak on the nomination of Dean Elena Kagan of the Harvard School of Law to be Solicitor General of the United States. It is with regret that I announce that I will not be able to support this nomination.

My first reason is that it appears that Dean Kagan's nomination process is not yet complete. My colleague, the ranking member of the Senate Judiciary Committee Senator ARLEN SPECTER, has already spoken on this at some length, but I agree with his thoughts. He asked Dean Kagan, in writing, to expand upon responses she supplied to the Judiciary Committee. In the estimation of several committee members and others, such as myself, she did not provide an adequate response to these requests. I find that it is not possible for me to vote to advance the nomination of someone who has not yet completed the nomination process.

However, we do know some things about Dean Kagan's beliefs. For one thing, she has shown a disdain for the policy contained in the Solomon amendment. The Solomon amendment bars federal aid to universities that prevent military recruitment on campus. This is a good policy and fairly supports our military and the men and women that are a part of it. Dean Kagan defends her position by saying that she opposes the recruiters because of the ''Don't Ask, Don't Tell'' policy. Whatever her concerns with that policy, it does not seem wise or fair to shut out our nation's military recruiters. By denying recruiters access to America's colleges and universities, our military is weakened. This is the kind of wrongheaded approach that I thought had died out years ago. Unfortunately, it is still alive in the person of the President's nominee to head one of the top positions in the Department of Justice.

Dean Kagan has also expressed an unsettling attitude towards religion and religious organizations. In a memo as a law clerk on the subject of which organizations should receive funding to counsel teenagers on pregnancy, she wrote ''It would be difficult for any religious organization to participate in such projects without injecting some kind of religious teaching.'' She added ''When government funding is to be used for projects so close to the central concerns of religion, all religious organizations should be off limits.'' This seems like an incredibly insensitive, insulting, and impractical view to hold. Does Dean Kagan feel that only atheists are fit to handle government funds? Would she support some sort of a ''religious commitment'' litmus test? This seems like an attitude that would be unfit for a high ranking member of our government.

It is for these reasons that I cannot support this nomination. I urge my colleagues to join me in opposition.

Mr. CORNYN. Mr. President, I rise to share my views on the nomination of Elena Kagan, who has been nominated by President Obama to serve as Solicitor General of the United States.

As my colleagues know, I have supported several of President Obama's executive nominees and opposed a few others. I believe that it is my constitutional duty to carefully review the record and qualifications of each nominee, while giving an appropriate amount of deference to the President when a nominee is objectively qualified for the position to which they are nominated, regardless of political orientation.

For example, I voted to confirm Secretary of State Hillary Clinton. I likewise voted to confirm Ambassador Ron Kirk to be U.S. Trade Representative.

Unfortunately, I could not reach the same conclusion with Attorney General Eric Holder regarding his fitness to serve as the Nation's top law enforcement official.

And, for the reasons outlined below, I cannot support Elena Kagan's nomination to be Solicitor General. My primary concern with Ms. Kagan's nomination is her continued failure to respond to legitimate and relevant questions posed by me and others.

As I explained when the Judiciary Committee approved Ms. Kagan's nomination on March 5:

> Ms. Kagan notes how much she respects the Senate and its institutional role in the nominations process. Regrettably, her refusal to answer legitimate and relevant questions posed by me and others belies this claimed respect. For this reason, I will be voting 'no' this morning and do not believe that her nomination should be advanced. I hope that Ms. Kagan reconsiders her position because I believe that she is otherwise qualified to serve as Solicitor General.

In response to Senator SPECTER's subsequent request to supplement her answers in writing, Ms. Kagan returned a 22-page letter purporting to do just that. But I concur with Senator SPECTER, the ranking member on the Judiciary Committee, who has determined that too many of Ms. Kagan's answers to relevant and legitimate questions remain incomplete and unresponsive. As Senator SPECTER correctly notes, this is about the Senate's institutional prerogatives.

In sum, I do not believe that Ms. Kagan has provided the basic level of responsiveness that the Senate's constitutional advice and consent function demands. And for that reason I am forced to vote against her.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I don't know if there are other Members are coming. While the Senator from Alabama is on the floor, let me note that I heard there may be one or two more Members coming over. I hope they will come soon. I am going to be here, as I have a series of meetings until well after 6, but I know a number on both sides have flights to catch.

Once everybody has spoken, I will suggest that we yield back all time and have a vote. I know the Senator from Alabama had specific time set aside and didn't use all of it. I hope he might join me in calling for other Senators who wish to speak to come over. If they are to speak, it would be better to do it sooner rather than later. It would be a great help to a number of Senators on both sides of the aisle.

Mr. SESSIONS. If the Senator will yield, the chairman of the Judiciary Committee has set up ample time for this to be discussed today. I thank him for that. Senator SPECTER, a little while ago, indicated that he thought the time should be yielded back and we could vote as early as 5. He hoped that would be acceptable, and he urged people to come down if they have comments. I will join him and you in urging people to come down if they have remarks to make. It would be more convenient, I think, for people to have an early vote.

Mr. LEAHY. Mr. President, I thank my friend from Alabama. I urge Members—if there are others—not to wait until 5. And I ask those on the other side of the aisle, if you wish to speak, please do so as soon as possible, because at some point—and we will do this only with notice to the Republican

side—I am going to ask unanimous consent to yield back all time and go to a vote.

In the meantime, I suggest the absence of a quorum and ask that the time be equally divided.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REED. 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. REED. Mr. President, it is a distinct honor for me to rise in support of Dean Elena Kagan and her nomination to be Solicitor General of the United States. As most of my colleagues are aware, she has had an illustrious legal career that includes clerking for Judge Abner Mikva on the U.S. Court of Appeals for the District of Columbia and also Justice Thurgood Marshall on the U.S. Supreme Court. She has obtained tenure in two of the most distinguished law schools in the country: the University of Chicago and Harvard Law School. She served as Special Counsel in the Clinton administration, and now she is dean of the Harvard Law School.

I had the privilege of getting to know Dean Kagan through alumni activities at Harvard Law School. She is much younger than I, obviously much smarter than I, but we still are alumni of the same law school. She is extraordinarily qualified to be the Solicitor General based on her intellectual gifts but also in terms of her temperament, her professionalism, her experience, and her innate sense of fairness and decency. She will represent the United States well, not only with her legal analysis but with her commitment to the principles that sustain this country based on the Constitution of the United States. There are many qualities that make her ideally suited for this job—her temperament, her maturity, her judgment, her success in leading one of the most complicated faculties in the country.

Most lawyers have opinions, so when you put 100 or so of them together, you have a lot of different viewpoints. She has led Harvard Law School with great skill and with great success. I think it will be an indication of her ability to lead the Solicitor General's office and to harmonize in principle, reaching substantive agreements, the critical issues that are debated within the this important office and going forward.

In the 5 years she has been dean of the law school, she also received great acclaim for bridging the differences in approaches and viewpoints at the school, with hiring new faculty members with diverse viewpoints, different from hers, recognizing that the heart and soul of an academic institution is debate, vigorous debate, not orthodoxy but vigorous debate, and she has done that.

She has been very attentive to the needs of the students there. I was particularly impressed when I visited the law school and had a chance to meet some veterans of the U.S. military who had served in Iraq and Afghanistan and who were then current law students at Harvard. Their praise for the dean, both her personal qualities and her leadership qualities, was unstinted. They saw her as someone who deeply appreciated their sacrifice as soldiers, marines, sailors, and airmen in the service of this Nation. They understood this not just from what she said, but from her attitude, her deep and profound respect for their service. I thought that was a particularly telling point, commending her to me in a very real and very immediate sense.

What is also particularly striking about Dean Kagan is that her entire life's work as a legal scholar shows a deep and profound commitment to the Constitution of the United States which governs us all. She has committed herself to giving it meaning, to making it a force to advance the ideals of this country. She brings not only great respect for the Constitution, great knowledge of the Constitution, but also the understanding that this is a document that unites us—our aspirations, our ideals, our hopes, our wishes for the future—it links us to the past and it unites us to go forward into the future.

She was asked by officials at my other alma mater, West Point, in October 2007 to speak to the cadets because they recognize that this is a woman of rare talent as a lawyer and rare judgment, someone who understands that we live in a government of laws, not of men and women. That is a fundamental lesson that must be imparted to those who take an oath to protect with their lives the Constitution of the United States, to recognize that we are a nation of laws, and soldiers, more than anyone else, have to recognize that because it is their lives that give us the opportunity to live under this Constitution of laws.

She used as a touchstone for this speech a place on campus at West Point called Constitution Corner. It was the gift of the West Point class of 1943. It was to recognize that, in fact, soldiers in this great country are servants to the Constitution.

One of the five plaques at this site is entitled ''Loyalty to the Constitution,'' which basically states what all of us who have been in the military are keenly aware, that the United States broke with an ancient tradition. Instead of swearing loyalty to a military leader, American soldiers swear their loyalty to the Constitution of the United States. I had that rare privilege on July 3, 1967, when I took the oath as a cadet at West Point.

The rest of her speech explored the fundamental rule of law, giving purpose and context to what these young men and women, soldiers in our Nation, will do when they lead other soldiers to defend—not territory, not business enterprises, but the foundation of our country—the Constitution of the United States.

She mentioned examples of people who have put the Constitution before their own personal comfort and privilege—President Nixon's Attorney General Archibald Cox, who refused to go along with summary firings in the wake of the Watergate scandal, and President George W. Bush's Attorney General John Ashcroft, our former colleague, both of whom did their best to uphold the rule of law in very trying circumstances. These are examples that I think resonated very well with the cadets.

I believe the dean is someone who has not just the skill, not just the mind, but the heart to serve with distinction as Solicitor General of the United States. She will be a forceful and powerful advocate, not for the administration, not for any small, narrow cause, but for the Constitution of the United States. I believe that is the fundamental role of the Solicitor General, one she will perform admirably.

I recommend without reservation Dean Kagan to this body. I hope we all rise to support her. If confirmed as the first female Solicitor General of the United States, we will be extremely fortunate to have her representing the people of the United States before the Supreme Court of the United States.

Mr. President, I yield the floor. I suggest the absence of a quorum and ask that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. TESTER). Without objection, it is so ordered.

GUN VIOLENCE

Mr. BURRIS. Mr. President, I stand today to discuss a matter of great importance and great sadness to every community across this country. From our biggest cities to our smallest towns, gun violence is stealing the lives of innocent victims. It is tearing apart families, communities, and our own sense of security. Gun violence in our communities must end, and it must end now.

In just the last 2 weeks we have had too many grim reminders of what can happen when there are too many weapons on the street. From Chicago and Maryville, IL, to Samson, AL, we have seen gun violence mix with devastating results.

Friday was a tragic day in Chicago. Last Friday night, 14-year-old Gregory Robinson was gunned down in a car while driving with his family through Chicago's far south side. This young man's funeral is today. Instead of reaching his dream to become a basketball star at Simeon Career Academy in Chicago, this high school freshman became the 28th Chicago public

school student to be killed just this year. Twenty-eight students, Mr. President. I repeat, 28 young lives are now snuffed out.

Last Tuesday was an equally tragic day in the city. On Tuesday, young Franco Avilla, a tenth grader at Roosevelt High School on Chicago's west side, was shot to death. Instead of being the exception, shooting deaths of our school children have now become the rule. Last school year, 26 Chicago public school students were shot during the full 9-month school year. Well, this year, Chicago public schools have already surpassed this sad milestone, and it is only March.

When Franco left his house last Tuesday afternoon, his last words to his father were: ''Dad, I'll be back.'' He never came home. Gun violence took his life.

We must take action now to get these weapons off our streets and end the senseless slaughter of our young people.

Guns played an equally devastating role in the life of Juan Pitts. Mr. PITTS' son, Kendrick, was a 17-year-old student at Bowen High School when he was shot down last month alongside two other Chicago public school students—15-year-old Raheem Washington and 13-year-old Johnny Edwards.

The deaths of these young men are atrocious. Yet the pain and tragedy of the Pitts family has only doubled since then. Two weeks ago, Kendrick's brother, Carnell, who graduated from Bowen High School last year, was shot to death at a gathering on Chicago's south side.

Gangs and gun violence go hand-in-hand. Our youth should be carrying school books instead of firearms. Yet in so many instances, our failure to invest in the education of our youth on the front end is at the root of the violence and imprisonment, as a result, on the back end. Our failure to enact serious, sensible gun control measures make it much more likely these tragedies are going to occur again and again.

We tend to think of gun violence as a problem of large urban areas—a symptom of America's big cities. Well, the truth is, no community is immune to such senseless behavior. I am from a small town. I was born and raised in Centralia, IL, which is about 100 miles south of our State capital of Springfield. I know how close-knit these small-town families and small towns are. I know how safe these towns seem to be.

Sadly, two recent events proved otherwise.

A recent shooting in Maryville, IL, which is about an hour-and-a-half drive from my hometown of Centralia, reminds us that the dangers associated with guns affect us all, no matter where we live, work, pray or go to school.

Two weeks ago, on a quiet Sunday morning, a 27-year-old gunman walked straight down the aisle of Maryville's First Baptist Church and shot and killed Pastor Winters during the normal weekly service. Just days later, in Samson, AL, we saw the all-too-familiar word flash across our TV screens again—''massacre.'' A 28-year-old gunman killed a total of 10 individuals and injured many more before he finally took his own life during an hour-long rampage.

The 10 individuals who died, whose lives ended on that tragic Tuesday afternoon, were going about their daily routine without the slightest thought that their lives would end that very day. The many more who were wounded by those gunshots surely never thought they, too, would be victims—survivors, nonetheless—of gun violence.

The stark truth is, everybody is a victim of gun violence. Every Senator in this body has constituents who have been touched by this issue, and it is our responsibility as lawmakers and leaders of this great Nation to ensure assault and semiautomatic weapons do not take the lives of so many innocent victims. We must take action to stop the senseless killing on our Nation's streets, in our communities, at our schools, and in our places of worship. We must take action to increase our gun control measures and decrease our gun violence. Ultimately, by doing so, we will be taking action to ensure our children, our families, and our communities live in a safer place in America.

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

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

Mr. BURRIS. I ask unanimous consent the time of the quorum call be equally divided.

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

Mr. BURRIS. 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. BENNETT. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that I be allowed to speak up to 10 minutes as in morning business.

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

THE BUDGET

Mr. BENNETT. Mr. President, President Obama's budget is sending mixed messages to the American people. I know he faces a very difficult time, as do we all. I know he is trying to get the best counsel he can, and I applaud him for that. I do not have a degree in macroeconomics and I know some of the finest macroeconomists in the country are on President Obama's team. I do not know anybody, however, on President Obama's team who has ever run a small business. So, if I may be so presumptuous, I would like to share some of the realities of running a small business with the President's team and see if we can't understand why many of the things that are in the President's budget, in fact, will have directly the opposite effect than he wants.

It is the goal of the administration to increase job creation and spur economic growth. That is a legitimate goal. However, we must understand this about how you increase job creation: You must be sure small businesses are properly taken care of because small businesses provide more than half the jobs Americans hold and small businesses create the new jobs. When large businesses start downsizing, buying people out and laying people off, where do they go? In many instances, those who do not go on unemployment end up in small businesses.

If I may offer my own credentials, I have run businesses that were as small as two people—myself and my secretary. I was recruited to be the CEO—a very high-powered title—of a business that had only four employees. I made number five. We grew that business to the point that there were thousands of employees and the business was ultimately listed on the New York Stock Exchange. So I offer that to the macroeconomists on President Obama's team, to say that if you want to increase jobs and if you want to increase economic growth and thereby increase tax revenue to the Federal Government, you should pay attention to small business.

One of the worst things that can happen to you when you are trying to grow a small business is to make money. That sounds counterintuitive, but it is true. Why? Because you need that money to finance your growth, but the Government shows up and says we want ours in taxes. So you want the tax rate to be as low as possible. The business that I described, that went from four employees to the New York Stock Exchange, was built during what the New York Times and other critics called the decade of greed because the top tax rate was 28 percent, and they thought that was terrible. It was only 28 percent, the top marginal tax rate? That is awful. That only goes for the greedy Americans.

That meant that for every dollar we earned in that business, we got to keep 72 cents of it, which we could use to finance the growth of the business. That business was grown with internally generated funds. Yes, we had a bank line and yes we drew on the bank line, but it was the internally generated funds that made it possible for us to create those thousands of jobs.

Because there were a small number of us in that business, we took the

business income onto our personal tax returns. That is allowed under the Tax Code, under what is known as Chapter S, under the Tax Code. We were an S corporation. So while my tax return showed the amount I was paid while I was the CEO of that company, it also showed my share of the profits of the company. None of that came to me. All of that was reinvested in the company. But for tax purposes, it showed up on my tax return. So I, very quickly, for tax purposes, was an American earning more than $250,000 a year. I was not, but my tax returns showed that I was.

Now, the top tax rate was 28 percent. This was while Ronald Reagan was President. If we were to start that business today and the President's budget were to pass and the President's Tax Code were to be enforced, we would now be paying not 28 percent but 42 percent because you would go to 39.5 percent and then you would have the other add-ons connected with Medicare and the other things that have been changed. I do not believe the business would have survived. I think that tax burden would have been so heavy that we would not be able to make it.

Let me give you the numbers from my own State, to show how important this is. In the State of Utah, we have 68,758 small businesses that employ less than 500 people; we have 65,693 small businesses that employ less than 50 people, and we have 61,057 small businesses that employ less than 20 people.

So the number of people employed by small businesses in Utah—this rules out the farmers, this is not agriculture—is 760,096 in businesses with less than 500 people each. That is 61 percent of Utah's entire employment population.

Now, if you increase the taxes on all of those people on the assumption that they are rich, you increase the taxes on every one of those businesses because they are rich. Look, the owners of the businesses are filing tax returns to show over $250,000 so they must all be Wall Street brokers and traders. Right.

Now, they are people who are struggling to make the business grow, struggling to provide the jobs. Make no mistake, the tax increases proposed by President Obama's budget will hurt Utah's small businesses, hundreds of thousands of our employees, our State's economy, and that means, at large, our national economy. So it is a mixed message. The goal is job creation, but the budget will hurt the greatest engine of job creation which is small businesses.

Second, the administration's goal is to increase service in America and invest in the nonprofit sector. That sounds wonderful. Then they turn around and say: If you invest in the nonprofit sector, you, American citizens, we are going to take away a portion of your tax deduction for the gift you give to charity. This is a double hit.

If I am running my small business I have just described, the tax man shows up and gives me less than I can give to charity, and then if I do give some to charity, the tax man shows up and takes more of that away from me by eliminating part of my tax deduction for charity. That is a mixed message. We want you to do this, but we are creating an economic incentive that makes it difficult for you and will penalize you.

Now, finally, the administration has the goal to protect the majority of Americans from tax increases. The President has said over and over that he will not increase taxes for 95 percent of Americans. That sounds wonderful until you turn around and recognize that he is proposing a new energy tax at the gas pump and on your utility bill that will hit 100 percent of Americans.

So on one side: Well, we are not going to hit you on the income tax side. But we are going to take it away from you on the gas pump and utility side. This is because he wants to create a cap-and-trade program. Other countries have cap-and-trade programs. I was in the United Kingdom. I talked to the people about theirs. As they were outlining how it works, I said to them: Do your ratepayers understand they are paying this? This is not money that is created in Heaven.

The answer I got was: Well, they are beginning to. We all saw the reaction of Americans when gas was $4 a gallon at the pump, and we all felt the heat as our constituents came us to and said: You have got to do something about this; this is far too much for us to pay for gasoline.

Then when the prices came down, that political outrage began to disappear. However, if you do cap and trade in the way the President wants, those prices will start to creep up again. It will be at the gas pump, it will be at the utility. So it is another mixed message.

We have three mixed messages. We want to create jobs, but we are going to tax the greatest engine of creating jobs. We want people to get involved in national service, but we are going to tax them and penalize them if they do. We want Americans, ordinary Americans, to go without tax increases, but we are going to increase their taxes on energy and hit them with a fund that will amount to approximately $650 billion, by virtue of the carbon tax that will come through the cap-and-trade program.

What is the consequence of all of this? My colleagues have talked about the fact that the record spending is going to double the national debt in 5 years, triple it in 10 years. How is the administration going to pay for that? In the ways I have described. They are going to do it through increased taxes.

There is one last thought I want to leave everyone. We can determine here in the Congress how much we spend. We cannot determine here in the Congress how much we take in. We can pass a tax law that will project a certain amount that will come in, but that projection will not come to pass if the economy is not strong. Money does not come from the budget. Money comes from the economy. If the economy is weakened, if the generations of economic growth are weakened in the ways I have described, we will not have the money with which to pay the debt.

So we come back to that which the distinguished Republican leader has said at the beginning of this debate: If you take the President's budget all in all, it spends too much, it taxes too much. And when the taxes do not cover what is being spent, it borrows too much.

I may not be a macroeconomist, but I have a long history of running a business and knowing how devastating the tax man's arrival can be to that business. I have a history of creating jobs, jobs that pay taxes as the employees are compensated. I know this aspect of our economy is one that the Obama administration would be well advised to pay attention to.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that at 5 p.m. today, the Senate proceed to vote on confirmation of the nomination of Elena Kagan, and that all debate time on the nomination be yielded back, except that the chairman and ranking member or their designees have 2 minutes each immediately prior to the vote; further, that all provisions of the previous order governing the nomination continue to be effective.

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

Mr. REID. 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. 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. LEAHY. Mr. President, I have heard a lot of debate here today. I remind Senators of one thing: The Kagan nomination is not controversial. Every Solicitor General who served from 1985 has endorsed her nomination. That is every Democratic one, every Republican one, across the political spectrum.

Let me read some of the names who have endorsed this woman Charles Fried, Ken Starr, Drew Days, Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement, Greg Garre. Here is what they wrote in their letter of support:

We who have had the honor of serving as Solicitor General over the past quarter century in the administrations of Presidents Ronald Reagan, George H.W. Bush, William Clinton and George W. Bush, write to endorse the nomination of Dean Elena Kagan to be the next Solicitor General of the United States. We are confident that Dean

Kagan will bring distinction to the office, continue its highest traditions, and be a forceful advocate for the United States before the Supreme Court.

One of the conservative professors whom Dean Kagan helped bring to Harvard Law School was Professor Jack Goldsmith. You may remember, he took charge of the Office of Legal Counsel after the disastrous tenures of Jay Bybee and John Yoo.

Professor Goldsmith, a conservative, praised Dean Kagan as someone who takes to the Solicitor General's Office a better understanding of the Congress and the executive branch that she will represent before the Court than perhaps any prior Solicitor General.

I ask unanimous consent that a list of these and the dozens of other supporters be printed in the RECORD.

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

LETTERS OF SUPPORT FOR THE NOMINATION OF ELENA KAGAN TO BE SOLICITOR GENERAL OF THE UNITED STATES

CURRENT AND FORMER PUBLIC OFFICIALS

David A. Strauss; Gerald Ratner Distinguished Service Professor of Law, The University of Chicago; former Attorney-Adviser in the Office of Legal Counsel of the U.S. Department of Justice and former Assistant to the Solicitor General of the United States.

Charles Fried; Beneficial Professor of Law, Harvard Law School; former Solicitor General.

Clifford M. Sloan; Skadden, Arps, Slate, Meagher & Flom, LLP; former Assistant to the Solicitor General of the United States.

Jack Goldsmith; Professor, Harvard Law School; former Assistant Attorney General, Office of Legal Counsel.

Joint Letter from Former Department of Justice Officials; Janet Reno, former Attorney General;

Jamie S. Gorelick, former Deputy Attorney General; Patricia Wald, former Assistant Attorney General for Legislative Affairs; Eleanor D. Acheson, former Assistant Attorney General for the Office of Policy Development; Loretta C. Argrett, former Assistant Attorney General for the Tax Division; Jo Ann Harris, former Assistant Attorney General for the Criminal Division; Lois Schiffer, former Assistant Attorney General for the Environment and Natural Resources Division.

Joint Letter from Former Solicitors General; Walter Dellinger, Theodore B. Olson, on behalf of: Charles Fried, Kenneth W. Starr, Drew S. Days III, Seth P. Waxman, Paul Clement, Gregory G. Garre.

Judith A. Miller; former General Counsel, Department of Defense.

Miguel A. Estrada; Gibson, Dunn & Crutcher, LLP; former Assistant to the Solicitor General.

Paul T. Cappuccio; Executive Vice President and General Counsel of Time Warner; former Associate Deputy Attorney General.

Peter Kiesler; former Assistant Attorney General for the Civil Division.

Roberta Cooper Ramo; former President, American Bar Association.

LAW ENFORCEMENT AND CRIMINAL JUSTICE ORGANIZATIONS.

Women in Federal Law Enforcement.

CIVIL RIGHTS ORGANIZATIONS

John Payton; President and Director-Counsel, NAACP Legal Defense Fund, Inc.

National Association of Women Lawyers.

National Women's Law Center.

OTHER SUPPORTERS

Brackett B. Denniston, III; Senior Vice President and General Counsel, General Electric.

Bradford A. Berenson; Sidley Austin, LLP.

Jeffrey B. Kindler; Chairman of the Board, Chief Executive Officer, Pfizer, Inc.

John F. Manning; Bruce Bromley Professor of Law, Harvard Law School.

Joint Letter from former Harvard Law Students; Katie Biber Chen, Class of 2004; Anjan Choudhury, Class of 2004; Justin Driver, Class of 2004; Isaac J. Lidsky, Class of 2004; Meaghan McLaine, Class of 2004; Carrie A. Jablonski, Class of 2004; Jeffrey A. Pojanowski, Class of 2004; Beth A. Williams, Class of 2004; John S. Williams, Class of 2004; David W. Foster, Class of 2005; Courtney Gregoire, Class of 2005; Rebecca Ingber, Class of 2005; Lauren Sudeall Lucas, Class of 2005; Kathryn Grzenczyk Mantoan, Class of 2005; Anton Metlitsky, Class of 2005; Chris Murray, Class of 2005; Rebecca L. O'Brien, Class of 2005; Beth A. Stewart, Class of 2005; Ryan L. VanGrack, Class of 2005; David S. Burd, Class of 2006; Eun Young Choi, Class of 2006; Matt Cooper, Class of 2006; Brian Fletcher, Class of 2006; David S. Flugman, Class of 2006; Adam D. Harber, Class of 2006; Jeffrey E. Jamison, Class of 2006; Nathan P. Kitchens, Class of 2006; Tracy Dodds Larson, Class of 2006; Benjamin S. Litman, Class of 2006; Dana Mulhauser, Class of 2006; Meredith Osborn, Class of 2006; Matthew Price, Class of 2006; John M. Rappaport, Class of 2006; Kimberly J. Ravener, Class of 2006; Rachel Rebouche, Class of 2006; Zoe Segal-Reichlin, Class of 2006; Jeremiah L. Williams, Class of 2006; Tally Zingher, Class of 2006; L. Ashley Aull, Class of 2007; Daniel F. Benavides, Class of 2007; Robert P. Boxie, III, Class of 2007; Damaris M. Diaz, Class of 2007; Gabriel Kuris, Class of 2007; Adam R. Lawton, Class of 2007; John A. Mathews II, Class of 2007; Michele A. Murphy, Class of 2007; Michael A. Negron, Class of 2007; Alexi Nunn, Class of 2007; Josh Paul Riley, Class of 2007; Jasmin Sethi, Class of 2007; Jane Shvets, Class of 2007; Jason M. Spitalnick, Class of 2007; James Weingarten, Class of 2007; Amy C. Barker, Class of 2008; Kathryn Baugher, Class of 2008; Margaux Hall, Class of 2008; Rochelle Lee, Class of 2008; Daniel P. Pierce, Class of 2008; Elizabeth Russo, Class of 2008; Megan Ryan, Class of 2008; Andrew M. Woods, Class of 2008.

Joint Letter from Former Lawyers in the Solicitor General's Office; Andrew L. Frey, Assistant to the Solicitor General, Deputy Solicitor General; Kenneth S. Geller, Assistant to the Solicitor General, Deputy Solicitor General; Philip Allen Lacovara, Assistant to the Solicitor General, Deputy Solicitor General; Andrew J. Pincus, Assistant to the Solicitor General; Charles A. Rothfeld, Assistant to the Solicitor General; Stephen M. Shapiro, Assistant to the Solicitor General, Deputy Solicitor General.

Joint Letter from Iraq War Veterans and Harvard Law Students; Geoff Orazem, Hagan Scotten, and Erik Swabb.

Joint Letter from Law School Deans; Larry D. Kramer, Dean and Richard E. Lang Professor of Law, Stanford Law School; T. Alexander Aleinikoff, Dean, Georgetown University Law Center; Evan H. Caminker, Dean, The University of Michigan Law School; Michael A. Fitts, Dean, University of Pennsylvania Law School; Harold H. Koh, Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School; David F. Levi, Dean, Duke University School of Law; Saul Levmore, Dean and William B. Graham Professor of Law, The University of Chicago Law School; Paul G. Mahoney, Dean, University of Virginia School of Law; Richard L. Revesz, Dean and Lawrence King Professor of Law, New York University School of Law; David M. Schizer, Dean, Columbia University School of Law; David van Zandt, Dean, Northwestern University School of Law.

Joseph H. Flom; Skadden, Arps, Slate, Meagher & Flom, LLP.

Judith Lichtman; Senior Advisor, National Partnership for Women & Families.

Laurence H. Tribe; Carl M. Loeb University Professor, Harvard University.

Martin Lipton; Wachtell, Lipton, Rosen & Katz.

Robert D. Joffe; Cravath, Swaine & Moore, LLP.

Robert Katz; The Goldman Sachs Group, Inc.

William F. Lee; Co-Managing Partner, Wilmer-Hale; former Member, Board of Overseers of Harvard College and the Visiting Committee to Harvard Law School.

Mr. LEAHY. It is time for our daughters and granddaughters to see a woman serving as the chief legal advocate on behalf of the United States. I urge all Senators, just as the Republican and Democratic former Solicitors have supported her, to support President Obama's nomination.

Vote to confirm Elena Kagan to be Solicitor General of the United States.

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. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Without objection, it is so ordered.

Under the previous order, there will now be 4 minutes of debate, equally divided, prior to a vote on the Kagan nomination.

Mr. LEAHY. Parliamentary inquiry: I thought the vote was going to be at 5 o'clock.

The PRESIDING OFFICER. After the 4 minutes of debate.

Mr. LEAHY. Mr. President, I ask unanimous consent that all time for both sides be yielded back.

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

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

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 Elena Kagan, of Massachusetts, to be Solicitor General of the United States?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Ms. KLOBUCHAR), and the Senator from Washington (Mrs. MURRAY) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Nevada (Mr. ENSIGN), the Senator from South Carolina (Mr. GRAHAM), and the

Senator from Mississippi (Mr. COCHRAN).

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

The result was announced—yeas 61, nays 31, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—61

Akaka	Gillibrand	Mikulski
Baucus	Gregg	Nelson (FL)
Bayh	Hagan	Nelson (NE)
Begich	Harkin	Pryor
Bennet	Hatch	Reed
Bingaman	Inouye	Reid
Brown	Johnson	Rockefeller
Burris	Kaufman	Sanders
Byrd	Kerry	Schumer
Cantwell	Kohl	Shaheen
Cardin	Kyl	Snowe
Carper	Landrieu	Stabenow
Casey	Lautenberg	Tester
Coburn	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lieberman	Warner
Dodd	Lincoln	Webb
Dorgan	Lugar	Whitehouse
Durbin	McCaskill	Wyden
Feingold	Menendez	
Feinstein	Merkley	

NAYS—31

Alexander	DeMint	Risch
Barrasso	Enzi	Roberts
Bennett	Grassley	Sessions
Bond	Hutchison	Shelby
Brownback	Inhofe	Specter
Bunning	Isakson	Thune
Burr	Johanns	Vitter
Chambliss	Martinez	Voinovich
Corker	McCain	Wicker
Cornyn	McConnell	
Crapo	Murkowski	

NOT VOTING—7

Boxer	Graham	Murray
Cochran	Kennedy	
Ensign	Klobuchar	

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.

Mr. MCCAIN. The President nominated Elena Kagan, currently dean of Harvard Law School, for Solicitor-General of the United States. While I do not share many of Dean Kagan's views, I especially disagree with Dean Kagan on the constitutionality of the Solomon amendment.

In 2005, Dean Kagan and 53 other law school faculty members filed an amicus brief to declare the Solomon amendment unconstitutional. The Solomon amendment, named for former Congressman Jerry Solomon, alloys military recruiters to meet with students on college campuses and allows the Reserve Officers' Training Corps, ROTC, to train on college campuses. The Supreme Court found Dean Kagan's arguments to be unpersuasive and declared the Solomon Amendment to be constitutional. I believe the Supreme Court was absolutely correct in its decision.

It is my hope that as Solicitor General, Dean Kagan will not allow her personal viewpoint on this important issue to prohibit the implementation of the Solomon amendment and that our military recruiters continue to recruit the best and brightest at our Nation's colleges to serve in our military.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader is recognized.

UNANIMOUS CONSENT REQUEST—H.R. 1586

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 1586, an act to impose an additional tax on bonuses received from certain TARP recipients, just received from the House and at the desk; that the Baucus-Grassley amendment, which is the text of S. 651, which was introduced today by Senators BAUCUS, GRASSLEY, and others, be considered and agreed to, the motions to reconsider be laid upon the table, the bill, as amended, be read three times, passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, reserving the right to object, I don't believe Congress should rush to pass yet another piece of hastily crafted legislation in this very toxic atmosphere, at least without understanding the facts and the potential unintended consequences. Frankly, I think that is how we got into the current mess.

As the chairman of the Finance Committee said last week:

> Frankly it was such a rush—we're talking about the stimulus bill now—to get it passed, I didn't have time and other conferees didn't have time to address the provisions that were modified significantly.

I don't know what is in this legislation. Nobody else knows what is in this legislation. There have been no hearings. It seems to me the Banking Committee should have a hearing. The Finance Committee should have a hearing. Obviously, any tax legislation should be vetted through the Finance Committee. I am a member of that committee. We haven't had any meetings to talk about this. Other Senators need time to consider the bill and offer amendments through the regular order through the committee process. More importantly, because of the public interest, the public ought to have the right to review this legislation to make sure it doesn't have any additional loopholes or unintended consequences.

The Baucus bill, as I understand it, is retroactive, not something we ordinarily do with tax policy. It seems to me we ought to have these hearings before we let this legislation come to the body. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, before my friend leaves, I appreciate the statement of my friend from Arizona. At least he is willing to look at it and study it, and I appreciate that very much. The Republican leader in the House, of course, was opposed to it, so we are glad the Republican assistant leader, the Republican whip, as a member of the Finance Committee, will look at it. The bill has been filed on our side and, hopefully, we can work toward getting something done. I appreciate the statement of the Senator from Arizona.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. 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. KAUFMAN. Mr. President, I ask unanimous consent to proceed as in morning business.

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

FAIRNESS OF FINANCIAL MARKETS

Mr. KAUFMAN. Mr. President, I wish to spend a few minutes talking about action that needs to be taken to restore the credibility of the fairness of the American financial markets.

On Monday, Senators ISAKSON, TESTER, and I introduced S. 605, which directs the Securities and Exchange Commission to write regulations that will deal effectively with abusive short selling.

One of the abusive techniques addressed in the bill is so-called ''naked short selling.'' Naked short selling is when traders sell shares they don't own and have no ability to deliver at the time of sale—which dilutes the value of a company's shares and can drive prices down artificially.

Before the ink on our bill was even dry, we received a profoundly disappointing report from the SEC's inspector general entitled ''Practices Related to Naked Short Selling Complaints and Referrals,'' a report detailing the results of an audit on the SEC Division of Enforcement's policies, procedures and practices for processing complaints about naked short selling.

An astounding 5,000 complaints about abusive short selling were sent to the SEC's Enforcement Division between January 1, 2007 and June 1, 2008. There could be no mistaking the scale of the potential problem that that number of complaints reflected. Incredibly, a mere 123 complaints were referred for further investigation. Worse, and I quote: ''none of the forwarded complaints resulted in enforcement actions . . .'' five thousand complaints, zero enforcement actions.

Not surprisingly, the SEC inspector general has concluded that the processes for dealing with such complaints need a fundamental overhaul.

Accordingly, the IG made 11 suggestions for improvements. And how did the Enforcement Division respond? It agreed to one of the IG's recommendations, and declined to move on the rest.

I have been around Washington and the Senate for 36 years, but rarely have