

Americans have accepted serious ideological differences in Supreme Court nominees over the years. But one thing they will never, ever tolerate is a belief that some groups are more deserving of a fair shake than others. Nothing could be more offensive to the American sensibility than that.

Judge Sotomayor is certainly a fine person with an impressive story and a distinguished background. But a judge must be able to check his or her personal or political agenda at the courtroom door and do justice evenhandedly, as the judicial oath requires. This is the most fundamental test. It is a test that Judge Sotomayor does not pass.

I yield the floor.

RESERVATION OF LEADER TIME

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

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 2997, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2997) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2010, and for other purposes.

Pending:

Kohl/Brownback amendment No. 1908, in the nature of a substitute.

Kohl (for Murray/Baucus) amendment No. 2225 (to amendment No. 1908), to allow State and local governments to participate in the conservation reserve program.

Kohl (for Nelson (FL) amendment No. 2226 (to amendment No. 1908), to prohibit funds made available under this act from being used to enforce a travel or conference policy that prohibits an event from being held in a location based on a perception that the location is a resort or vacation destination.

McCain amendment No. 1912 (to amendment No. 1908), to strike a provision relating to certain watershed and flood prevention operations.

McCain amendment No. 2030 (to amendment No. 1908), to prohibit funding for an earmark.

Johanns/Nelson (NE) amendment No. 2241 (to amendment No. 1908), to provide funding for the tuberculosis program of the Animal and Plant Health Inspection Service.

Brownback (for Barrasso) amendment No. 2240 (to amendment 1908), to require the Secretary of Agriculture to conduct a State-by-State analysis of the impacts on agricultural producers of the American Clean Energy and Security Act of 2009 (H.R. 2452, as passed by the House of Representatives on June 26, 2009).

Coburn amendment No. 2243 (to amendment No. 1908), to eliminate double-dipped stimulus funds for the Rural Business-Cooperative Service account.

Coburn amendment No. 2244 (to amendment No. 1908), to support the proposal of the President to eliminate funding in the bill for digital conversion efforts of the Department

of Agriculture that are duplicative of existing Federal efforts.

Coburn amendment No. 2245 (to amendment No. 1908), to strike a provision providing \$3,000,000 for specialty cheeses in Vermont and Wisconsin.

Coburn amendment No. 2248 (to amendment No. 1908), to prohibit no-bid contracts and grants.

Coburn amendment No. 2246 (to amendment No. 2226), to provide additional transparency and accountability for spending on conferences and meetings of the Department of Agriculture.

Kohl amendment No. 2288 (to amendment No. 2248), to provide requirements regarding the authority of the Secretary of Agriculture and the Commissioner of Food and Drugs to enter into certain contracts.

Sanders amendment No. 2276 (to amendment No. 1908), to modify the amount made available for the Farm Service Agency.

Sanders amendment No. 2271 (to amendment No. 1908), to provide funds for the school community garden pilot program, with an offset.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. will be equally divided and controlled between the managers and the Senator from Arizona, Mr. MCCAIN, or their designees.

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

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MCCAIN. Mr. President, what are the proceedings under the unanimous consent agreement?

The ACTING PRESIDENT pro tempore. The time until 10:30 is equally divided.

Mr. MCCAIN. Following that, there would be a vote on two amendments; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the second rollcall vote be vitiated and replaced by a voice vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1912

Mr. MCCAIN. Mr. President, this vote will be on amendment No. 1912. The amendment eliminates, as recommended by the President of the United States, the USDA Watershed and Flood Prevention Operations Program, also known as the Small Watershed Program.

This program is the perfect example of how reckless earmarking can devastate a well-intentioned government program. Like the previous four Presidents' budgets, this administration has

proposed to terminate this account—four previous Presidents—because “Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.”

According to the Congressional Research Service, the Small Watershed Program was 97 percent earmarked in fiscal year 2009, which severely marginalized the ability of the U.S. Department of Agriculture to evaluate and prioritize projects.

A 2003 Office of Management and Budget study showed this program has a lower economic return than any other Federal flood prevention program, including those in the Army Corps of Engineers and the Federal Emergency Management Agency.

The onslaught of earmarks over the years has most certainly contributed to the current backlog of about 300 unfunded authorized small watershed projects, totaling \$1.2 billion.

As was originally intended, the Small Watershed Program may be a worthwhile program, but by inundating it with so-called “congressionally designated projects,” the program is challenged to function properly to the point where four previous Presidents have recommended its termination. Nevertheless, the Appropriations Committee hasn't given up on plundering it just yet. The bill provides \$24.3 million for this program, including \$16.5 million in earmarks for various unauthorized projects.

I urge my colleagues to support the President's recommendation. Again, I will quote from the President's recommendation—the President of the United States:

The administration proposes to terminate the Watershed and Flood Prevention Operations Program. The Congress has earmarked virtually all of this program in recent years, meaning that the agency is unable to prioritize projects on any merit-based criteria, such as cost-effectiveness.

So it goes on and on. Every analysis is that it has a lower economic return than any other program. Four Presidents have sought to eliminate it. We will probably lose this vote. But if there is ever a graphic example that once a program is established and once you fund it, it acquires a constituency and a powerful special interest and that funding continues on and on—we are proving, and we will continue to prove as we go through the appropriations bills, that there is no program that, once it exists, is going to be eliminated by this body, and that the appropriators continue to defy not only the President of the United States but logic and good sense as we amass deficits of monumental proportions which are mortgaging our children's and grandchildren's futures.

We cannot even stop a program the President wants terminated, that has no value, that the Office of Management and Budget and any objective observer will say deserves termination. It