Nangahar, Afghanistan, in support of Operation Enduring Freedom. According to initial reports, PFC Raver died of injuries sustained on August 28, 2010, when his military vehicle was hit by rocket-propelled grenade fire

My heart goes out to the family of PFC Raver who made the ultimate sacrifice on behalf of our Nation. Along with all Arkansans, I am grateful for his service and for the service and sacrifice of all of our military servicemembers and their families.

More than 11,000 Arkansans on active duty and more than 10,000 Arkansas reservists have served in Iraq or Afghanistan since September 11, 2001. These men and women have shown tremendous courage and perseverance through the most difficult of times. As neighbors, as Arkansans, and as Americans, it is incumbent upon us to do everything we can to honor their service and to provide for them and their families, not only when they are in harm's way but also when they return home. It is the least we can do for those whom we owe so much.

PFC Raver was assigned to the 1st Brigade Special Troops Battalion, 101st Airborne Division, Fort Campbell, KY. He is survived by his wife, who resides at Joint Base Lewis-McChord in Washington; a daughter in Alpena, AR.; and his father of Everton, AR.

50TH ANNIVERSARY OF REAL ESTATE INVESTMENT TRUSTS

Ms. STABENOW. Mr. President, I wish to commemorate the 50th anniversary of the legislation that allowed for the formation of real estate investment trusts, now commonly known as REITs.

On September 14, 1960, President Dwight D. Eisenhower signed into law the Cigar Excise Tax Extension Act. Included in that law were the critical provisions that first enabled investors from all walks of life to benefit from the income generation and diversification advantages of commercial real estate investments. Our predecessors in Congress recognized that without this innovation such investments would continue to be limited to institutions and wealthy individuals.

The law signed by President Eisenhower enabled the creation of the first REITs. However, the groundwork for the modern REIT era was truly laid in the Tax Reform Act of 1986, when REITs were given the ability to operate and manage real estate, rather than simply owning or financing it. As a result, the great majority of today's REITs are owners, operators, and developers of properties in the office, retail, industrial, health care, apartment, lodging and self-storage sectors—properties used by a broad range of tenants from across the economy.

Reflecting the evolving real estate market, Congress and the Treasury have implemented incremental changes to the REIT approach to real estate investing over the years. For example, laws such as the REIT Simplification Act of 1997, the REIT Modernization Act of 1999, the REIT Improvement Act of 2004, and the REIT Investment Diversification and Empowerment Act of 2008 have been enacted with the support of Congresses and Presidents of both parties.

While the REIT model has evolved, the original legislative intent of making large-scale, income-producing commercial real estate investment available to all types of investors remains at the core.

For example, by definition in the Internal Revenue Code, 75 percent of a REIT's assets must be in qualifying real estate, 75 percent of its income must come from rents and other qualifying sources, and 90 percent of its taxable earnings must be distributed to shareholders in the form of dividends. Among active businesses, the requirement to pay out 90 percent of taxable earnings is unique to the REIT industry, which distributed approximately $13.5 billion to shareholders in 2009.

Additionally, the income, asset, and distribution requirements, when combined with the disclosure and other regulations that govern public companies, protect shareholders and provide transparency in a way that other real estate investments do not. With 132 REITs traded on the New York Stock Exchange, ownership of shares in these companies also provides a significant liquidity advantage over alternative real estate investments.

Michigan has played an important role in creating the vibrant REIT industry that exists today. Taubman Centers, Inc., based in Bloomfield Hills, is a leading owner of regional malls. In the 1990s, when they pioneered a new way to take public a portfolio of real estate that had been privately held, they unleashed a wave of initial public offerings by REITs in the 1990s.

Three other REITs—Agree Realty Corporation, Ramco-Gershenson Properties Trust, and Sun Communities, Inc.—also call Michigan home. And, more than 620 properties across my home State are owned by REITs.

Commercial real estate accounts for more than 6 percent of the gross domestic product of the United States, and my colleagues and I are all too aware of the challenges facing this sector. In the face of this challenge, REITs have been well-served by staying true to their core values of careful investment, transparency, and liquidity. While commercial real estate is not yet out of the woods, I believe policymakers and the other participants in the commercial real estate market can learn a great deal from this business model, which has been emulated by more than two dozen countries around the world.

I thank you for this opportunity to commend the REIT industry on its 50th anniversary. Allow me to also commend our predecessors in Congress for having the foresight to enable all Americans to access and benefit from investments in real estate. I look forward to working with my colleagues to continue this work that began more than 50 years ago.

Mr. ISAKSON. Mr. President, 50 years ago today, President Eisenhower signed into law legislation that established real estate investment trusts, commonly known as REITs. His action gave the final stamp of approval to what our colleagues in this Chamber envisioned at that time for the general public: A secure and efficient way to invest in high-quality commercial real estate in the United States. I want to recognize the 50th anniversary of REITs and their significant contribution to the overall economic vitality of our Nation over the past 50 years.

As my colleagues know, REITs allow any investor, no matter their financial resources, to secure all of the advantages of investing in real estate in the United States. Prior to 1960, access to the highly desirable investment returns of commercial real estate assets was limited to institutions and wealthy individuals who had the financial wealth to make direct real estate investments. By creating REITs, Congress recognized that small investors should be afforded the same opportunity to invest in portfolios of large-scale commercial properties and achieve the same investment benefits—diversification, liquidity, performance, transparency—as those able to make direct investments in real estate.

REITs are companies dedicated to the ownership and development of income-producing real estate, such as apartments, regional malls, shopping centers, office buildings, self storage facilities, and industrial warehouses. Federal tax law requires that REITs meet specific tests regarding the composition of their gross income and assets. Specifically, 95 percent of their annual gross income must be from specified sources such as dividends, interests, and rents; and 75 percent of their gross income must be from real estate related sources. Similarly, at the end of each calendar quarter, 75 percent of a REITs assets must consist of specified real estate assets. Consequently, REITs must derive a majority of their gross income from commercial real estate.

While REITs have played a major role in the U.S. economy since 1960, their mark in the investing world has been achieved since passage of the Tax Reform Act of 1986, a time period many refer to as the modern REIT era. This law removed most of the tax-sheltering capability of real estate and emphasized income-producing transactions, allowing REITs to operate and manage

real estate as well as own it. I am pleased that over the years, Congress has adopted legislation to perfect the REIT method of investing in real estate. Among many proposals, these include the REIT Simplification Act of 1997, the REIT Modernization Act of 1999, the REIT Improvement Act of 2004, and the REIT Investment Diversification and Empowerment Act, or RIDEA, passed in 2008.

I am pleased that my home State of Georgia is home to several REIT companies that are engaged in the daily business of creating wealth and employment for many investors across the country and my constituents. These companies include Cousins Properties Incorporated, Gables Residential Trust, Piedmont Office Realty Trust, Incorporated, Post Properties, Incorporated, and Wells Real Estate Investment Trust. In total, there are more than 1,400 REIT properties located in Georgia, with an estimated historical cost in the billions of dollars.

Commercial real estate represents more than 6 percent of this country's gross domestic product and is a key generator of jobs and other economic activities. Today, because of what Congress did five decades ago, anyone can purchase shares of real estate operating companies, and do so in a manner that meets their investments needs by focusing on a particular sector in the commercial real estate world and a specific region of the country. That is the beauty of the REIT method of investing, whose influence has now spread abroad to more than two dozen countries that have adopted a similar model encouraging real estate investment.

In closing, I want to again congratulate the REIT industry on its 50 years of leadership in the real estate investing market. REITs have fulfilled Congress's vision by making investments in large scale, capital intensive commercial real estate available to all investors. I look forward to continuing to work with them on issues of importance to REIT investors.

NOMINATION OF JANE STRANCH

Mr. COBURN. Mr. President, I rise today to speak on the nomination of Ms. Jane Stranch to the United States Court of Appeals for the Sixth Circuit. I am concerned about Ms. Stranch's nomination to the court of appeals because, like many recent judicial nominees, she embraces the use of foreign law by the courts, which is contradictory to the Constitution, the judicial oath, and the intent of our Founders.

I reached this conclusion after carefully reviewing her record, her hearing testimony, and her responses to written questions following her hearing. For example, in response to my question asking her whether it is ever proper for judges to rely on foreign or international laws or decisions in determining the meaning of the Constitution, Ms. Stranch admitted she believes using foreign law in limited circumstances is appropriate.

First, she stated that she is ''aware of only a very few cases in which [the Supreme Court] has referenced non-U.S law in a majority opinion, including Roper [v Simmons],'' but, then she continued: ''In these few cases, references to foreign law were made for such purposes as extrapolating on societal norms and standards of decency, refuting contrary assertions or confirming American views. None of these cases used foreign or international law to interpret a constitutional text. The Supreme Court's restraint on this issue is a model for the lower courts.'' Ms. Stanch's misleading answer fails to recognize that, by looking to foreign law to determine whether the imposition of the death penalty for those under 18 has become ''unusual,'' the Court is allowing foreign law to influence its interpretation of a constitutional text. Her statement that the Court is merely confirming American views or refuting contrary assertions is disturbing because foreign countries' views on the interpretation of the U.S. Constitution are irrelevant to what our Founders wrote and believed. Also, Ms. Stranch commended the Supreme Court for its ''restraint'' in its use of foreign law when an appropriate answer would be to condemn the Court for using foreign law at all. Her answer implies that she believes using foreign law is appropriate in some cases, as long as it is limited use.

Ms. Stranch compounded my concern about her views on the appropriate use of foreign law when she responded to my next question asking under what circumstances she would consider foreign law when interpreting the Constitution. She responded that, as a judge, foreign law ''would be used as confirmatory only'' in her cases. This answer suggests a judicial activist approach where she will use foreign law to confirm whatever result she deems appropriate. Ms. Stranch further states that because ''references [to foreign law] are so rare at the Supreme Court level [it] suggests even rarer usage in the lower courts.'' Allowing that the lower court should use foreign law rarely is deeply concerning. Judges should not be using foreign law at all.

Ms. Stranch's answers to questions relating to the proper interpretation of the eighth amendment are also problematic. In response to a question asking how she would determine what are the ''evolving standards of decency'' with regard to the eighth amendment's prohibition of cruel and unusual punishment, she responded by citing the language in the opinion that the Court has ''established the propriety and affirmed the necessity of referring to the 'evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual.'' But, she then continues stating: ''The Court held that the beginning point of that determination is its review of objective indicia of consensus as expressed by enactments of legislatures. The exercise of the Court's independent judgment regarding the proportionality of the punishment followed.'' While she is merely reciting what the Supreme Court did in the Roper opinion, she fails to acknowledge what is concerning about the Court's opinion.

First, it is concerning that when the Court in Roper was looking to ''objective indicia of consensus as expressed by enactments of legislatures,'' it was not only looking at other States' laws—as opposed to the law of the State in question—but also to foreign legislatures' laws. Rather than look to other legislatures for ''evolving standards,'' the proper analysis in this case would have been to look to the meaning of the text when the Founders wrote it. Thus, the Court should be determining whether capital punishment for persons under 18 was considered ''cruel and unusual'' when the Constitution was written. To do otherwise embraces an evolving and ever changing Constitution. Ms. Stranch fails to acknowledge this concern. Second, Ms. Stranch admits that the ''exercise of the Court's independent judgment regarding the proportionality of the punishment followed,'' but does not acknowledge that a Court should not be making these types of ''independent'' determinations.

Ms. Stranch's answers on foreign law are concerning because she not only misstates how the Supreme Court has used foreign law in its cases, but she also refuses to pledge not to use foreign law herself. In fact, she believes that ''rare'' usage of foreign law by the lower courts is appropriate. For these reasons, I will vote against her nomination and urge my colleagues to do the same.

I also would note that I believe Ms. Stranch is just one of many concerning nominees by this administration who embrace the use of foreign law by judges. This trend first became apparent with the nomination of Judge Sonia Sotomayor last year. Prior to her hearing, Judge Sotomayor stated that outlawing the use of foreign law would mean judges would have to ''close their minds to good ideas'' and that it is her ''hope'' that judges will continue to consult foreign law when interpreting our Constitution and statutes. She also said ''I share more the ideas of Justice Ginsburg in thinking, in believing that unless American courts are more open to discussing the ideas raised by foreign cases, and by international cases, that we are going to lose influence in the world.''