

of tax legislation, and is to be used solely for informational purposes.

It is time for Congress to build on this process. Dynamic estimates should be routinely requested in both the House and Senate.

Congress should also make greater use of the work of a multitude of economists. I would note for example that in 1997 the Joint Economic Committee published a study by two Florida State University economics professors; James Gwartney and Randall Holcombe that argued that the optimal capital gains rate is 15 percent or less.

These economists predicted accurately prior to last year's rate cut that a reduction in the rate would increase revenues.

While improvements in the revenue estimating process are certainly desirable, the fact remains that estimates are just "estimates", and Congress should recognize that those estimates will often turn out to be way off the mark.

That is why Congress should place greater emphasis on the impact that changes in the taxation will have on the private economy, and less emphasis on projections of government revenue.

Economic growth, job creation, and international competitiveness should be our focus.

Mr. President, when it comes to capital gains taxes I suggest that Congress spend less time gazing into the crystal ball of revenue forecasting, and more time focusing on the real world impact of taxes on capital formation, job creation, and economic growth.

I think it will then be abundantly clear that we should continue to reduce the tax on capital to 14 percent. This will continue the good work that we began last year.

Mr. President, the U.S. level of tax on capital has been among the highest in the world, I am dedicated to seeing that it becomes one of the lowest in the world.

A low rate of tax will encourage capital investment, economic growth and job creation.

This is no time for the United States to sit on its lead; we must continue to ensure that America is the premier location in the world to do business.

A low capital gains tax will help our economy, but it will also help America's families by reducing their tax burden.

I look forward to working with Majority Leader LOTT and with Speaker GINGRICH as we continue to cut the rate of taxation on capital gains.

I yield the balance of my time.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I ask that I be granted 10 minutes to speak in morning business.

The PRESIDING OFFICER. The Senator has 10 minutes under the previous order.

#### NOMINATION OF SONIA SOTOMAYOR TO BE A JUDGE ON THE SECOND CIRCUIT COURT OF APPEALS

Mr. MOYNIHAN. Mr. President, there has been some discussion in the press of late concerning a ruling in Federal District Court of the Southern District of New York involving a business coalition in Manhattan called the Grand Central Partnership. In this case, *Archie v. Grand Central Partnership, Inc.* (1998 WL 122589, 1998 U.S. Dist. Lexis 3599, S.D.N.Y. 1998), the judge agreed with the plaintiffs who had brought suit against the partnership demanding to be paid at minimum wage rates pursuant to the provisions of the Fair Labor Standards Act and the New York State Minimum Wage Act. The language of the decision reads as follows:

Despite the attractive nature of the defendants' program in serving the needs of the homeless, the question of whether such a program should be exempted from the minimum wage laws is a policy decision either Congress or the Executive Branch should make. . . . The Court, however, cannot grant an exemption where one does not exist in law.

Setting aside any personal bias, the judge ruled solely on the basis of law.

In *Bartlett v. New York State Board of Law Examiners* (970 F. Supp. 1094, S.D.N.Y. 1997), this same judge ruled in favor of one Marilyn Bartlett, an applicant with a learning disability similar to dyslexia, who sought admission to the State bar. The Board of Law Examiners had denied Bartlett's special accommodation—in this case, an extension of time limitations in which to take the bar examination. The judge found that the Americans With Disabilities Act clearly required the board to provide the accommodation. Again, this decision was made—as it ought to have been made—on the basis of law. Nothing more.

The district court judge in both of these matters was the Honorable Sonia Sotomayor of the Southern District of New York, who now seeks confirmation from this body for appointment to the Second Circuit of the United States Court of Appeals.

May I take just a moment to thank the distinguished chairman, Senator HATCH, and ranking member, Senator LEAHY, and the members of the Committee on the Judiciary.

With confirmation earlier this year of Robert Sack, Chester Straub, and Rosemary Pooler, the judicial emergency in the Second Circuit declared by Chief Judge Ralph K. Winter on March 23 will soon be over.

It will be over, Mr. President, when Judge Sotomayor is confirmed by the Senate. She has been reported by the Judiciary Committee.

A little over one year ago, President Clinton nominated Judge Sotomayor to fill a vacancy on the Second Circuit Court of Appeals. The Committee on the Judiciary held a hearing on September 30, 1997 and she was reported out by a vote of 16 to 2 on March 5 of this year.

Seven years ago, in March 1991, it was my honor to recommend Sonia Sotomayor to serve on the Southern District Court of New York. President Bush placed her name in nomination shortly thereafter and she was sworn in on October 2, 1992.

The distinguished members of the Committee on the Judiciary were surely impressed with the background and accomplishments of this extraordinary woman. Sonia Sotomayor was raised in the projects of the South Bronx. Her father, Juan Luis, worked in a tool and die factory while her mother, Celina, worked as a nurse. Through discipline and hard work she was graduated summa cum laude from Princeton University in 1976, receiving the university's highest distinction, the M. Taylor Pyne Honor Prize. She went on to graduate from Yale Law School in 1979 where she served as editor of the Yale Law Journal.

After law school, Ms. Sotomayor joined the New York County District Attorney's office. After more than five years there she moved to the firm of Pavia & Harcourt, attaining the position of partner. She is a former member of the New York City Campaign Finance Board and the New York State Mortgage Agency. All of these achievements are detailed in Ms. Sotomayor's résumé which I ask, without objection, be incorporated into my remarks.

Her service on the Southern District Court has been exemplary. In 5½ years, having presided over 500 cases, she has been overturned only six times. Her decisions are scholarly, well-researched, and well-reasoned. She has presided over cases of enormous complexity with skill and confidence.

My colleagues will likely recall that it was Judge Sotomayor who put an end to the baseball strike in 1995. Her ruling in *Silverman v. Major League Baseball Player Relations Committee, Inc.*, 880 F. Supp. 246 (S.D.N.Y. 1995) was upheld by the very court she now seeks to join.

During the course of her confirmation hearing before the Judiciary Committee, some questions were introduced regarding Judge Sotomayor's position on mandatory sentencing and Federal sentencing guidelines. As of October 1997, in the 217 criminal cases over which she presided, she departed downward a total of 58 times. Forty-four of those departures were at the Government's specific request, because of the defendant's substantial assistance. Excluding such departures, the Judge has departed downward in only 6.5 percent of her criminal cases. The judge has upwardly departed in 6 of her 217 criminal cases, an average of 2.7 percent.

A recent New York Law Journal article reports on the 1996 sentencing practices of Federal district judges. Comparing Judge Sotomayor's sentencing record to these statistics, it is apparent that Judge Sotomayor is more conservative in sentencing than many of her colleagues on the Federal bench.

Her 6.5 percent downward departure rate is below the national average of 10.3 percent, and well below the Second Circuit average of 15.2 percent. Her upward departure rate of 2.7 percent is three times the national average of 0.9 percent.

Mr. President, we have before us a candidate who embodies all of the finest qualities we could possibly ask for in a Federal judge. She is brilliant, principled and thoughtful. I can see no reason to prolong the process that will lead to her confirmation any further. Surely the time has come for us to act.

Thank you, Mr. President.

I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

#### MEDICARE COMMISSION FIELD HEARINGS

Mr. BREAUX. Mr. President, I take this time on the floor to inform my colleagues, and others who may have an interest in the fact, that the Medicare Commission will be having a field hearing on Monday coming outside of Washington in Minneapolis, MN.

As always, it is the intention of myself as chairman of the Medicare Commission, along with my colleague from the House, BILL THOMAS, and all of the commission members, that we need to get as much information from outside of Washington about the Medicare problem as we possibly can.

This effort in bringing the commission to the city of Minneapolis, MN, on Monday for a rather very, very full agenda of activities in Minneapolis relating to Medicare is to give all of us an opportunity to gather information, which will be extremely important in helping us make the very difficult but extremely important recommendations that we are required by Congress to make to the President, and also to the Congress by March 1st of this coming year.

Our hearing will consist of a site visit in the morning where commissioners will choose from one of four sites, three of which will have the direct interaction with Medicare beneficiaries. I would like to cover some of the sites that we will be visiting so people will know exactly what this commission is going to be doing.

We will have a chance to visit the Wilder Senior Services Clinic, which is a Minnesota Senior Health Options Clinic, which is really a demonstration program now being run by the Minnesota Department of Human Services. It serves seniors who find themselves in the unique position of being eligible for Medicare, and also being eligible for Medicaid at the same time. These people are so-called dual beneficiaries who can get their health coverage from two separate programs. And how this particular operation is handling it is something that I think we can benefit from seeing.

The second site visit that we are going to take the commission to is a

Fairview University Medicare Center, the Mayo Clinic, the world famous medical institution in Minneapolis, where our commissioners will have the opportunity to really tour an integrated care clinical site and observe telemedicine demonstrations with the Mayo Clinic in a rural facility outside of the city, and also a visit with providers and beneficiaries and also administrators.

Third, the commissioners will be able to also visit Medtronic, which develops and manufactures medical devices to treat cardiovascular and neurological disorders.

The idea is to tour these facilities to look at the impact that new technology, of which the United States is a world leader in producing, has on the future of Medicare.

Clearly, as we are able to produce more sophisticated equipment facilities to treat health care beneficiaries in this country, it is going to have a direct effect on the Medicare Program, and hopefully for the better.

The final site visit opportunity we will be taking is the United Health Care Research Center, an Institute for Health Care Quality, where we will tour their facilities and learn about how United Health Care gathers and analyzes patient data to evaluate medical outcomes and cost-effectiveness as a treatment.

It is very important that we study how various forms of health care affect outcomes, both from a health standpoint, as well as from a cost standpoint.

Then, beginning at noon at the Minneapolis Convention Center, our commissioners will then hear from people who will make presentations to our committee in the form of three panels.

The first panel we will hear from is the Buyers Health Care Action Group, which is interestingly a coalition of 27 large, Twin-Cities-based self-insured employers—companies like 3M, General Mills, and Honeywell.

This panel hopefully will give the commission an opportunity to hear from private companies regarding how they purchase health care for their employees and what the result has been for their employees, as well as what the results have been for their companies.

The second panel will be a panel of managed care plans to talk about their experience in the managed care market in Minneapolis, which has had managed care around longer than most places in the country.

With the debate on Medicare both in the Congress and in the public in general I think it is important that we look at some of them and try to understand better how they are working in providing quality health care and reduced costs for Medicare beneficiaries.

The third and last panel we will hear from is current and future beneficiaries on information that they need and use in making health care decisions. It is really important with the new proposal

coming out of the Health Care Financing Authority, HCFA, coming October 1st. Medicare is not going to be like it used to be. People who are Medicare beneficiaries are going to get some choice options. They are going to have different decisions to make about whether they want to go into managed care.

It is very important for seniors and their families to understand that grandma, grandpa, mom, dad, and others are going to have to make some different decisions about their health care. While this can be a little bit frightening, I think we should look upon it as a real opportunity to give them more choice and ultimately better services than they currently get under Medicare.

We can be very proud of what Medicare has done. Medicare is not that great a plan in the 1990s. It doesn't provide eyeglass coverage; it doesn't provide prescription drugs; it doesn't provide long-term health care. Most beneficiaries think it is a wonderful program, and, indeed, it is. But it is not nearly as good as most health plans in the country today that are private plans which provide generally a lot more benefits to the beneficiaries than Medicare does.

So we are going to be looking at how people get their information and what information they need in order to make these choices.

The rest of the afternoon is going to be devoted to public interest, to really have the commission sit and listen to Mr. and Mrs. America and tell us what they would like to see in Medicare for the future.

We have 2 hours set aside for audience participation. We call this session a "Call for Solutions" where we have invited ordinary citizens from the Minnesota region and area to submit their ideas and recommendations for improving Medicare.

In addition to the field hearing that we will be having in Minneapolis, we will also be continuing to explore other ways to get input from the public. We don't have to visit every city and every State and every county in America to hear from America. In this century, as we move to the 21st century, we are going to be making use of teleconferencing, video conferencing. Commission meetings that we have had so far have been covered in full by C-SPAN. We have a national web site. We have had 13 commission and task force meetings since March 6th, all of which have been open to the public for their information.

I think we have a very ambitious schedule, as I have just outlined, for the Monday field hearings in Minneapolis.

I urge my colleagues to continue to be mindful of what we are attempting to do. If they have suggestions, we are open to receiving those suggestions. Hopefully, we will have their participation as we draft recommendations for the full Congress and for the President,