EXECUTIVE SESSION

NOMINATION OF PAMELA KI MAI CHEN TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

NOMINATION OF KATHERINE POLK FAILLA TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations which the clerk will report.

The legislative clerk read the nominations of Pamela Ki Mai Chen, of New York, to be United States District Judge for the Eastern District of New York, and Katherine Polk Failla, of New York, to be United States District Judge for the Southern District of New York.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes for debate equally divided in the usual form.

Mr. LEAHY. Mr. President, last week, Congress failed to act to avoid indiscriminate across-the-board cuts from sequestration. These automatic cuts are in the tens of billions of dollars at a time when our economy is finally recovering but remains fragile. Among those who will have to endure these cuts are the overburdened Federal courts already suffering from longstanding vacancies that number almost 90 and have remained near or above 80 for almost 4 years. Budgetary cuts will mean more difficulty for the American people to get speedy justice from our Federal justice system.

Two senior district judges, one appointed by President Reagan and one appointed by President Clinton, wrote last week in U.S. News and World Report that sequestration will ''devastate the judicial branch.'' They wrote: ''[C]ourts may need to close periodically, furlough employees, and cut security, thereby, delaying proceedings. These realities, combined with a reduction in supervision of persons on bond and convicted felons who are released from prison, compromise public safety.'' They conclude: ''[Our Federal courts provide access to justice, protect against abuses of power, and defend the Constitution. Failure to avert sequestration by March 1 undermines the ability of the Federal courts to fulfill this Constitutional mandate.'' I ask unanimous consent that this article be printed in the RECORD at the conclusion of my statement.

As we hear these warnings from judges and other officials across our three branches of Government, I hope Senators understand that sequestration is bad for the courts, bad for the economy, and bad for the American people.

Over the past 4 years, unprecedented obstruction by Senate Republicans has meant that all judicial nominees have become wrapped around the axle of partisanship. Senators from both sides of the aisle used to agree that Federal courts are supposed to be impartial and outside of politics. Yet, the actions of Senate Republicans over the last 4 years have undermined that principle of our constitutional system and hurt the integrity of the judiciary. I hear this from judges appointed by Republican Presidents and those appointed by Democratic Presidents. They say the unprecedented delays that nominees face politicize the courts and destroy the appearance of impartiality the Federal courts need. Supreme Court Justice Anthony Kennedy said last year that this extreme partisanship erodes the public's confidence in our courts and ''makes the judiciary look politicized when it is not, and it has to stop.''

This obstruction has also contributed to keeping judicial vacancies at a damagingly high level for over 4 years. Persistent vacancies mean that fewer judges have to take on growing caseloads and make it harder for Americans to have access to speedy justice. There are today 89 judicial vacancies across the country. By way of contrast, that is more than double the number of vacancies that existed at this point in the Bush administration.

Senate Republicans chose to depart dramatically from well-established Senate practices from the moment President Obama took office in their efforts to delay and obstruct his judicial nominations.

Until 2009, judicial nominees reported by the Judiciary Committee with bipartisan support were generally confirmed quickly. Until 2009, we observed regular order, we usually confirmed nominees promptly, and we cleared the Senate Executive Calendar before long recesses. Until 2009, if a nominee was filibustered, it was almost always because of a substantive issue with the nominee's record. We know what has happened since 2009. The average district court nominee has been stalled 4.3 times longer and the average circuit court nominee has been stalled 7.3 times as long as it took to confirm them during the Bush administration. No other President's judicial nominees had to wait an average of over 100 days for a Senate vote after being reported by the Judiciary Committee.

Some Republicans have ignored the facts I just cited even though they came from the nonpartisan Congressional Research Service (CRS). No invented statistic can change the fact that no president's nominees have ever waited as long for a vote as President Obama's.

Senate Republicans have also claimed that President Bush had only 74 percent of his nominees confirmed during his first term. This is also not true. President Bush nominated 231 men and women to serve as circuit and district judges; of them, 205 were confirmed. That is a confirmation rate of 89 percent. During President Obama's first term, only 173 district and circuit judges were confirmed, and a much lower percentage. Contrary to the claims of Senate Republicans the Senate has confirmed far fewer of President Obama's nominees and confirmed them at a significantly lower rate at the same points in his and President Bush's administrations. Senate Republicans talk about how much progress we made during the 112th Congress, when we confirmed 113 of President Obama's circuit and district nominees. But they ignore the fact that 19 of those nominees could and should have been confirmed during the 111th Congress, and the fact that the 60 confirmations they allowed in the 111th Congress was the lowest total for a new president in over 30 years. They ignore the fact that in President Obama's first year in office they allowed just 12 of his circuit and district nominees to be confirmed, which, according to CRS, was the lowest one-year confirmation total since the Eisenhower administration when the Federal bench was barely one-third the size it is today. We have yet to make up the ground we lost during those first 2 years. Looking only at the confirmation total from last Congress while ignoring the historic obstruction of nominations that preceded it and the backlog that was created provides an incomplete and misleading picture.

There can be no question about the effect of the unprecedented effort by Senate Republicans to obstruct President Obama's judicial nominations. Despite bipartisan calls to address longstanding judicial vacancies, the delays and obstruction of judicial confirmations have led to judicial vacancies to the remaining near or above 80 for almost 4 years.

During the vote on Judge Bacharach last week, some Senators defending the filibuster that blocked his confirmation for 7 months claimed that it was just the usual Senate practice in a presidential election year. During the filibuster last year of Judge Bacharach, there was not even a pretense of any substantive concern—Senate Republicans just decided to shut down the confirmation process and contorted the ''Thurmond Rule.'' But personal attacks on me, trying to repackage their own actions as if following the Thurmond Rule, do not change the facts. The fact is that in the past six presidential election years, Senate Democrats have never denied an up-or-down vote to a consensus circuit nominee; Senate Republicans cannot say that. Until last year, no circuit nominee with bipartisan Judiciary Committee support had ever been successfully filibustered. Senators claiming to be upholding Senate tradition while engaging in a filibuster that had no precedent in Senate history are not supported by the facts.

After last year's filibuster, Judge Bacharach waited another 7 months before being allowed a vote on the merits.

The outcome of that vote was that he was confirmed unanimously. It is hard to understand why 7 months of delay were necessary. During the 7 months of additional unnecessary delay since his filibuster, Judge Bacharach could have been working on behalf of the people of Oklahoma, Kansas, New Mexico, Colorado, Wyoming, and Utah. Likewise there is no reason to delay further the confirmation of Caitlin Halligan, whose nomination to the D.C. Circuit was first reported nearly 2 years ago. Senate Republicans justified their filibuster of her nomination a year ago by arguing that the Circuit did not need another judge. Since that time, the number of vacancies on that court has doubled, and it is now more than one-third vacant. It needs Caitlin Halligan. She is the kind of moderate, superbly qualified nominee who should easily be able to be confirmed under any standard by which the Senate has considered judicial nominees in the past. It is well past time to walk back from the precipice marked by the wrongheaded filibuster of Ms. Halligan. The continued filibuster of her nomination does harm to the Senate, to the important D.C. Circuit, and to the American people.

At a time when judicial vacancies have again risen to almost 90, we must do more for our overburdened courts. It is past time for the partisan obstruction to end. We have a long way to go. After 4 years of delay and obstruction, we remain far behind the pace of confirmations we set during President Bush's administration, and there remain far too many judicial vacancies that make it harder for Americans to have their day in court. During President Bush's entire second term, the 4 years from 2004 through 2008, vacancies never exceeded 60. Since President Obama's first full month in office, and as far into the future as we can see, there have never been fewer than 60 vacancies, and for much of that time many, many more. The Senate must do much more to fill these vacancies and make real progress.

Senate Republicans claim that we cannot do more because President Obama has not made a sufficient number of nominations. But it is Senate Republicans themselves, and their unwillingness to work with a President who has reached out to them to submit recommendations and to work with him, that has delayed many nominations.

Unlike his predecessor, President Obama has worked hard to solicit recommendations from home State Senators, including those from the other party. This President has consistently selected qualified, mainstream nominees. For the judicial vacancies in States with 2 Republican Senators, just 11 percent have a nominee. I urge Senate Republicans to do a better job providing consensus recommendations and fulfilling their own constitutional responsibility to ''advise'' the President on nominations and work with President Obama to fill these vacancies.

The Senate today will finally vote on the nominations of Pamela Chen and Katherine Failla. Both nominees should have been confirmed last year. Pamela Chen is nominated to fill a judicial emergency vacancy on the U.S. District Court for the Eastern District of New York. She has worked as an Assistant U.S. Attorney for the district to which has now been nominated to be a judge for all but one of the last 14 years, rising from a line prosecutor to serve as chief of Civil Rights Litigation, deputy chief of the Public Integrity Section, and chief of the Civil Rights Section, Criminal Division. Between January and April 2008, she served as the deputy commissioner for enforcement at the New York State Division of Human Rights. Previously, she spent 7 years as a trial attorney and senior trial attorney in the Special Litigation Section of the Civil Rights Division of the U.S. Department of Justice. She began her legal career as an associate in private practice. She earned her B.A., with honors, from the University of Michigan, and her J.D. from Georgetown University Law Center. When confirmed, Pamela Chen will be only the second female Chinese-American in U.S. history to serve on a Federal district court. She will also be one of only a few openly gay Federal judges.

Katherine Failla is nominated to serve on the U.S. District Court for the Southern District of New York. Since 2000, she has served as an Assistant United States Attorney in that division, and since 2008 she has served as the chief of the office's Criminal Appeals Unit. Prior to her government service, she was an associate in the New York office of Morgan Lewis & Bockius LLP. In her career, she has tried 10 trials to verdict. After law school, she clerked for the Honorable Joseph E. Irenas, U.S. District Judge for the District of New Jersey. She graduated with honors from the College of William & Mary, and Harvard Law School.

After today's votes, there are still another 15 judicial nominees pending before the Senate. All of these nominees had to be renominated after being returned at the end of the last Congress. It is unusual to have such a backlog so early in a Congress, and this is the result of Senate Republicans' refusal to allow votes on 11 nominees at the end of last year, almost all of whom had been reported with bipartisan support, and their refusal to consider another 4 who had hearings and could have been expedited. I urge that the Senate act quickly on these long-pending nominations. Further delay does not serve the interests of the American people. Hardworking Americans deserve better.

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

[Feb. 27, 2013]

SEQUESTRATION THREATENS AMERICAN JUSTICE

(By Charles N. Clevert, Joseph H. Rodriguez)

As senior U.S. district judges, we urge members of the House and Senate to act by March 1 to halt sequestration—looming, indiscriminate, 5.1 percent budget cuts for the nation's federal courts. Crippling across-the-board budget cuts would threaten constitutional rights, American justice, and court security. Relatively little light has been shed on the effects that these budget cuts would have on our federal court system.

These cuts would devastate the judicial branch, which receives a mere two 10ths of 1 percent of the federal budget. Federal courts operate on a lean budget and have embraced cost containment by measures including staff reduction below authorized levels. Thus, we urge the House and Senate to act quickly and reach a budget agreement that prevents sequestration and all its attendant harms.

Lawmakers, businesses, and citizens alike must recognize that budget sequestration imperils fundamental constitutional rights and courts that protect those rights. The right to be heard, the right to a speedy and public trial, and the right to effective assistance of counsel in criminal cases are cornerstones of our democracy. Sequestration could dissuade attorneys from accepting appointments to represent indigent defendants because of inadequate funding. Moreover, courts may need to close periodically, furlough employees, and cut security, thereby, delaying proceedings. These realities, combined with a reduction in supervision of persons on bond and convicted felons who are released from prison, compromise public safety. Additionally, offenders with mental health needs or drug and alcohol abuse problems would receive inadequate monitoring and substandard treatment.

Access to justice is not a luxury. If budget cuts slam courthouse doors and postpone trials, some criminal cases may need to be dismissed. Therefore, trust and confidence in our federal courts would be at risk. Additionally, limited funds needed to pay citizen jurors and the priority that must be given to criminal proceedings could delay civil cases as well. At the same time, budget related delays would prevent bankruptcy courts from functioning normally in providing relief to struggling debtors and ailing businesses seeking reorganization. These individuals, businesses, and employees would be harmed and economic recovery will be slowed.

Cuts to courthouse security personnel and programs may be as high as 30 percent. These cuts would compromise the safety of all who visit or work in federal courthouses, including witnesses, jurors, and judges. Recent tragic shootings at or near courthouses in Delaware and South Carolina underscore that concerns about courthouse safety are not theoretical matters; cuts to funding for courthouse safety will only deepen these concerns.

America's courts are the final line of protection for the legal rights of all. They provide access to justice, protect against abuses of power, and defend the Constitution. Failure to avert sequestration by March 1 undermines the ability of the federal courts to fulfill this Constitutional mandate.

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

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

(The remarks of Mr. LEAHY, Ms. COLLINS, Mrs. GILLIBRAND and Mr. KIRK

pertaining to the introduction of S. 443 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. Mr. President, I reserve the remainder of my time.

I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

HALLIGAN NOMINATION

Mr. SESSIONS. Mr. President, I rise to express my opposition to the nomination of Caitlin Halligan to be a judge for the U.S. Circuit Court of Appeals for the D.C. Circuit. That is an important court, one of the most important courts, one step below the Supreme Court.

I would note that the Senate has already once rejected proceeding with consideration of this nomination and, in my opinion, for good reason. We do not do that lightly. We should not do that lightly. But it is an important question, and nominees do have to clear the Senate, and the Senate is not a rubber stamp.

Ms. Halligan has a well-documented record of advocating extreme positions on constitutional issues, pushing legal arguments beyond what I think is reasonable, including in cases involving Second Amendment gun rights, abortion, the death penalty, and others.

But one of the most troubling of her views pertains to the war on terror and the detention of enemy combatants. This is alarming not only because the arguments she has advanced in this regard are contrary to well-settled law, but because the court she seeks to join the D.C. Circuit has a critical role in national security matters, including deciding habeas petitions of terrorist detainees.

As a member of the Association of the Bar of the City of New York's Committee on the Federal Courts, she joined a 2004 report, the self-described purpose of which was specifically to ''address, in particular, the role the federal courts should play in striking [the] balance [between, in this case, national security and civil liberties concerns] with respect to the detention and trial of suspected terrorists or their accomplices designated as 'enemy combatants' by the executive branch.''

The report comes to the untenable conclusion that the congressional Authorization for Use of Military Force does not authorize the indefinite detention of enemy combatants.

These are prisoners of war. Not only did the Supreme Court hold that it does, in fact, authorize indefinite detention in Hamdi v. Rumsfeld, but the Obama administration has argued for a broad construction of that authority itself. And, in a series of rulings joined by judges across the ideological spectrum, the D.C. Circuit has adopted, itself, that broad definition.

The report also adopts—this is the bar association report. And I have to say, lawyers and bar association committees, they sign on reports dealing with the national security of the United States of America. They sign on reports dealing with how prisoners of war are to be determined and handled. At a time of national crisis, when we are in a national debate about that, they should know what they are talking about, and this bar association did not.

The report also adopts the unsupported view that the war on terrorism ''seems closer to a law enforcement effort than to a military campaign.''

But I would say to that, the Congress voted and declared it to be a military effort. Tell that to the soldiers in Afghanistan chasing down al-Qaida operatives, that it was not a war.

The report goes on. But this was part of the attempt at the time to undermine President Bush's ability to effectively manage the war effort. The report argues vigorously against the use of military commissions—that is where you try prisoners of war for violations of the rules of war, in military commissions—and maintains that the preferred place to try them are Article III civilian courts, normal civilian courts, except in ''exceptional circumstances.''

They say, of course, to try them in a civilian court would provide the terrorists—enemies of the United States, participating in a war against the United States—with all the same constitutional rights that a person who defrauded the IRS or robbed a bank would have. But it is a different situation. You do not give those kind of rights to people at war with the United States, whose goal is to destroy the United States and to replace the government. That has never been the position in our country, nor in any other nation in the world that I am aware of. But that is the position she signed on.

While Obama surrogates and supporters during the campaign often attacked Bush and made these kinds of allegations, the Obama administration, after taking office, has been forced to abandon those positions. They are untenable.

One of the report's flawed arguments of why you should try unlawful enemy combatants—that is people at war against the United States in Article III civilian courts is as follows: ''It seems self-evident that the same [constitutional] protections [afforded ordinary criminals] should presumptively extend to those individuals whom the government has seized and proposes to detain for an extended, and perhaps indefinite, period of time because they are suspected of having engaged in conduct intended to further terrorist aims, thus violating applicable criminal laws.''

Well, applicable criminal laws were violated, but it was an attack on the United States, not a normal crime. And the Nation made a very clear decision on which I thought all of us were in agreement that we had moved from a time of criminal activity to a time of war, and we acted in that fashion. So there is nothing self-evident about the position in the report that an unlawful enemy combatant whose only connection with the United States is his acts of war against it should be afforded the constitutional due process rights of an American citizen who committed an crime.

Andy McCarthy, a former longtime Department of Justice veteran prosecutor, who tried the Blind Sheik case, said this:

> The only thing the framers might have found more appalling is the notion that the Constitution licenses lawfare—i.e., that it permits the American people's courts (which, other than the Supreme Court, are creatures of statute not required by the Constitution) to be used by foreign enemies to put on trial the armed forces of the American people over the manner in which they conduct wartime combat operations that have been authorized by the American people's representatives.

I think Andy McCarthy is right about that. I think that is basically what happened. I do not dispute it is fully acceptable for lawyers to defend unpopular clients. However, it is curious to me that while this Nation has hundreds of thousands of fine lawyers and thousands of proven prosecutors, the ones who seem to have a leg up—I am saying this carefully because I have observed this now for 4 years. I think it is significant. The ones who seem to have a leg up in this administration's nomination process are those who have challenged the legal policies of the former President of the United States as he attempted to conduct a war to defend the United States against an enemy dedicated to its destruction.

Time and time again, these are the people who have been nominated for high Department of Justice offices and to the courts. The lifetime appointment to which Ms. Halligan has been nominated demands independence and a commitment to the rule of law and not to a political agenda.

At her hearing, she did attempt to distance herself from the report, variously claiming she had not seen it until just before the hearing and that she had not attended all the meetings at which the report was discussed. She admitted, however, that she could have requested that her name not be on the report, as did four other members of the committee, but she did not. She signed it.

In fact, according to her own testimony, she never took any action to repudiate the report or its contents before her nomination or even before her hearing. The first time she expressed any disagreement with the report, it seems, was at her confirmation hearing. Some call that a confirmation conversion. A serious attorney would have

taken swift action to either remove their name from the report or to repudiate it. No serious attorney would affix their name to a report on such important matters in a time of war without studying it carefully, surely.

It can only be assumed the report represented her views on the role of a civilian Article III court with respect to detention and trial of enemy combatants. It would have done more for her credibility to own up to that fact, rather than paying lip service to what might be more helpful during the confirmation process.

The report continues its irresponsible description of the al-Qaeda supporter and convicted terrorist Ali al-Marri as a ''civilian in this country legally, [who] seems suspected of providing logistical support for al-Qaeda sleeper cells: presumably criminal activity, if proven, but not 'combatant' activity under any likely definition of the term.'' Al-Marri eventually pleaded guilty to providing material support to al-Qaeda and was sentenced to eight years in federal prison. In his guilty plea, he admitted that he attended terrorist training camps in the years prior to the 9/11 terrorist attacks; that he was instructed by Khalid Sheikh Mohammed, the mastermind of 9/11, to enter the U.S. just prior to 9/11 and await further instruction from al-Qaeda; and that while here, he researched chemical weapons and communicated with al-Qaeda members. Investigators also discovered that he had made several phone calls to Mustafa al-Hawasawi who had wired money to the 9/11 hijackers.

When al-Marri's case came before the Supreme Court, Ms. Halligan, as a private practitioner, donated her legal services pro bono to co-author an amicus brief on his behalf. The brief argued the United States lacked the authority to detain al-Marri as an enemy combatant, and that the AUMF did not authorize his seizure and indefinite military detention, without criminal trial. At the hearing, Ms. Halligan claimed—unconvincingly in my view—that the brief did not represent her personal views. But the fact remains that she chose to donate her professional legal services to defend a radical Islamic terrorist instead of the millions of Americans who need legal representation, or victims of terrorism in this country and all over the world, or women in Afghanistan fighting for equal rights, or those suffering from religious persecution in Islamic countries. The fact that she would sign her name to the Bar report, and her decision to co-author and file an amicus brief in the al-Marri case, is a very serious matter. And those actions cast doubt on her testimony that she was not aware of the contents of the Bar report.

Much of Ms. Halligan's testimony did not match up with her record as an attorney both in private practice and public service. During her testimony, she attempted to evade the activist views she spent her career advancing, claiming, for example, that she now embraces original intent as the preferred method of Constitutional interpretation. At the same time, however, she was forced to admit that, prior to her ''confirmation conversion,'' she had never once espoused such views. That is not surprising, given her well-documented record over the course of many years of advocating for the restriction of Second Amendment rights, including in favor of liability for gun manufacturers, for same sex marriage, for limiting the death penalty, for back pay for unauthorized illegal alien workers, and for affirmative action. All positions utterly unsupportable by an original intent approach to constitutional interpretation.

Her attempts to distance herself from her record were simply unconvincing. There is no question where she stands on these issues. She herself has said that the ''courts are the special friend of liberty . . . the dynamics of our rule of law enables enviable social progress and mobility.''

Her testimony did nothing to convince me that her written record does not paint the accurate picture of what her tenure on the bench would look like if she were confirmed. We have judges who follow their oaths to serve under the Constitution and the laws of this country. They are never above it. They are never free to alter the meaning of words to advance a personal agenda.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent for 1 additional minute.

Mr. SCHUMER. Reserving the right to object, I have some remarks I would like to make before 5:30.

I do not object.

Mr. SESSIONS. I will try to not utilize the 30 seconds the Senator used in agreeing to this. But I would point out there are other different complaints that we have about the circumstances of this nomination. I do think it is an extraordinary circumstance. I take that decision seriously. There have not been many that I found that to have occurred.

Therefore, I will oppose the motion for cloture and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank my colleague from Alabama for taking only 30 seconds because of the 30 seconds I took to explain to him. I have three parts to my little statement. I will speak briefly on each.

First, I rise in support of the nominations of Katherine Failla for the Southern District of New York and Pam Chen for the Eastern District. I have enthusiastic support for both of them. They are superb nominees to the Federal bench. Let me talk a little bit about each.

Similar to many proud New Yorkers, Chen was not born in New York City. But she is now a valid and valuable member, not just of the New York Bar but of our entire community. Chen was born in Chicago after her parents came here from China. She came by her zeal for public service honestly because her father worked for the IRS for over 30 years, while her mother was a professor of political science.

When I first met Chen, I do not think it took more than 5 minutes before she talked about how proud she was of her parents, how grateful for the sacrifices they made so she and her brother could excel in later life.

She graduated from the University of Michigan and then Georgetown Law Center. As a young lawyer, she began as a litigator in private practice, and then began her illustrious career in public service by joining the Special Litigation Section of DOJ's Civil Rights Division.

Fortunately for the people of New York, she came to the Office of the U.S. Attorney for the Eastern District of New York—which serves principally Brooklyn and Long Island—in 1998, and has been there ever since.

At one of the premier U.S. Attorney's offices in the Nation, she rose to be chief of the civil rights litigation unit and later the civil rights section in that office.

She has prosecuted all manner of public corruption, gang, narcotics, and terrorism cases.

She is one of those highly intelligent, analytical individuals who was probably born to be a lawyer, and, once a lawyer, was almost certainly destined to be a judge.

Born in Edison, NJ, she earned her B.A. from William & Mary, and her law degree from Harvard. After clerking for the Federal court in New Jersey, she practiced in New York City with the law firm of Morgan, Lewis & Bockius, and 6 years later joined the U.S. Attorney's office.

She has now served as a prosecutor for 12 years. In her work as head of the criminal appeals section, she defends some of the most important criminal convictions in the Nation, including terrorism cases such as the East African bombing case against bin Laden and his associates, complex white-collar cases, and RICO cases.

Her colleagues report to a person that her advice on legal arguments and matters of judgment is the most sought after in the whole * * *

Everyone attests to the fact she is fair, decent, honest, and very smart. I wish to finally add that I look for three qualifications in a nominee: excellence, she clearly has that; moderation, she has that; and all else being present, diversity. Chen will be only the second female Chinese-American article III judge in U.S. history, making this day yet another step forward in our path to making the Judiciary reflect both the talent and depth of experience of our communities.

Katherine Failla is currently U.S. attorney in charge of the important and

prestigious Criminal Appeals Unit in the Southern District of New York. She is one of those highly intelligent, analytical individuals who was probably born to be a lawyer, and once a lawyer, was almost destined to be a judge.

She has served as a prosecutor for 12 years. Her colleagues report to a person that her advice on legal arguments and matters of judgment is the most sought after in the whole office. This is the Southern District of New York. It is an amazing office.

She also came to her dedication to public service through a hard-working family. This is evident through her siblings as well, a school teacher's aide and a submarine commander.

I ask that my colleagues vote for both of them shortly.

HALLIGAN NOMINATION

I also wish to say a few words this evening about the President's longest standing nominee to any office, Caitlin Joan Halligan. The DC Circuit is currently one-third vacant; 4 of the 11 slots are without active judges. What some people call the second most important court in the country is firing only on two-thirds of its cylinders. Halligan is one of the President's nominees for two of these four slots. Her nomination has been pending for 23 months.

Since her name has been sent to the Senate, she has not had an up-or-down vote. She has never had an up-or-down vote despite the fact that her academic and professional credentials are superb: Princeton University, GW Law School, prestigious clerkships on the DC Circuit, including Patricia Wald, the first female member of the court, and then to Justice Steven Breyer.

She has never had an up-or-down vote despite the fact that she has spent most of her career in public service as a prosecutor, first with the Office of the New York Attorney General, now as assistant district attorney who serves as the general counsel for the Manhattan DA's office.

She has never had an up-or-down vote despite the fact that she would be only the sixth woman to serve on the court since its inception in 1801. Two years ago, when her nomination was filibustered, many of my colleagues cited the DC Circuit's relatively low caseload for the reason the Senate did not need to confirm another judge. But now, 2 years later, there are only seven judges hearing cases on the court. The caseload for judges has risen 21 percent since President Bush made his last nomination to the court in 2006.

My colleagues know how difficult and time-consuming these cases are. I have great respect for my friend and colleague and the person I exercise with in the gym every morning, JEFF SESSIONS. But to say this is an extraordinary circumstance based on the smidgen of evidence he has mentioned—please, please, please.

Let's hope there is not a concerted effort by the other side to keep this important DC circuit empty—unfilled. It is unfair and it is not right to this fine women and to the need to proceed with justice in these United States of America.

I yield the floor and 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. WHITEHOUSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

THE PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Pamela Ki Mai Chen, of New York, to be United States District Judge for the Eastern District of New York?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President shall be immediately notified of the Senate's action.

VOTE ON NOMINATION OF KATHERINE POLK FAILLA

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Katherine Polk Failla, of New York, to be United States District Judge for the Southern District of New York?

Mr. WHITEHOUSE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from Ohio (Mr. BROWN), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from West Virginia (Mr. ROCKEFELLER), and the Senator from Colorado (Mr. UDALL) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Indiana (Mr. COATS), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Kentucky (Mr. PAUL), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 91, nays 0, as follows:

[Rollcall Vote No. 28 Ex.]

YEAS—91

Alexander	Cantwell	Cowan
Ayotte	Cardin	Crapo
Baldwin	Carper	Cruz
Barrasso	Casey	Donnelly
Baucus	Chambliss	Durbin
Bennet	Coburn	Enzi
Blumenthal	Cochran	Feinstein
Blunt	Collins	Fischer
Boozman	Coons	Flake
Boxer	Corker	Franken
Burr	Cornyn	Gillibrand
Graham	Leahy	Rubio
Grassley	Lee	Sanders
Hagan	Levin	Schatz
Harkin	Manchin	Schumer
Hatch	McCain	Scott
Heinrich	McCaskill	Sessions
Heitkamp	McConnell	Shaheen
Heller	Menendez	Shelby
Hirono	Merkley	Stabenow
Hoeven	Mikulski	Tester
Inhofe	Moran	Thune
Isakson	Murphy	Toomey
Johanns	Murray	Udall (NM)
Johnson (SD)	Nelson	Warner
Johnson (WI)	Portman	Warren
Kaine	Pryor	Whitehouse
King	Reed	Wicker
Kirk	Reid	Wyden
Klobuchar	Risch	
Landrieu	Roberts	

NOT VOTING—9

Begich	Lautenberg	Rockefeller
Brown	Murkowski	Udall (CO)
Coats	Paul	Vitter

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

MORNING BUSINESS

Mrs. BOXER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each. And I ask unanimous consent that I speak for up to 20 minutes.

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

THE SEQUESTER

Mrs. BOXER. Mr. President, one of the virtues of traveling back home is to hear what the people are saying about us. And it isn't good. The people are on anxiety overload. The purpose of my remarks is not to increase anyone's anxiety but just to tell it the way it is.

How did we get to a place where we are having mindless, across-the-board cuts in spending with absolutely no thought? It came about because the Republicans refused to increase the debt ceiling. We were about to default on our obligations, after raising the debt ceiling many times—18 times under Ronald Reagan. And Ronald Reagan warned us in those times never to play games with the debt ceiling. Well, the Republicans did. They played games with the debt ceiling, and they did it because, if you follow what the Republican leader said, his highest priority was defeating President Obama. I am sure they thought that kind of chaos would lead the way. It didn't happen, clearly. Our President was reelected, and he was reelected with the big vote.

We got into this situation with the sequester because there were games