[From The Washington Post, Feb. 28, 2013]

SENATE MUST ACT ON APPEALS COURT VACANCIES

(By Patricia M. Wald)

Pending before the Senate are nominations to fill two of the four vacant judgeships on the U. S. Court of Appeals for the District of Columbia Circuit. This court has exclusive jurisdiction over many vital national security challenges and hears the bulk of appeals from the major regulatory agencies of the federal government. Aside from the U.S. Supreme Court, it resolves more constitutional questions involving separation of powers and executive prerogatives than any court in the country.

The D.C. Circuit has 11 judgeships but only seven active judges. There is cause for extreme concern that Congress is systematically denying the court the human resources it needs to carry out its weighty mandates.

The court's vacancies date to 2005, and it has not received a new appointment since 2006. The number of pending cases per judge has grown from 119 in 2005 to 188 today. A great many of these are not easy cases. The D.C. Circuit hears the most complex, time-consuming, labyrinthine disputes over regulations with the greatest impact on ordinary Americans' lives: clean air and water regulations, nuclear plant safety, healthcare reform issues, insider trading and more. These cases can require thousands of hours of preparation by the judges, often consuming days of argument, involving hundreds of parties and interveners, and necessitating dozens of briefs and thousands of pages of record—all of which culminates in lengthy, technically intricate legal opinions.

I served on the D.C. Circuit for more than 20 years and as its chief judge for almost five. My colleagues and I worked as steadily and intensively as judges on other circuits even if they may have heard more cases. The nature of the D.C. Circuit's caseload is what sets it apart from other courts. The U.S. Judicial Conference reviews this caseload periodically and makes recommendations to Congress about the court's structure. In 2009, the conference recommended, based on its review, that the circuit's 12th judgeship be eliminated. This apolitical process is the proper way to determine the circuit's needs, rather than in the more highly charged context of individual confirmations.

During my two-decade tenure, 11 active judges were sitting a majority of the time; today, the court has only 64 percent of its authorized active judges. This precipitous decline manifests in the way the court operates. And while the D.C. Circuit has five senior judges, they may opt out of the most complex regulatory cases and do not sit en banc. They also choose the periods during which they will sit, which can affect the randomization of assignment of judges to cases.

There is, moreover, a subtle constitutional dynamic at work here: The president nominates and the Senate confirms federal judges for life. While some presidents may not encounter any vacancies during their administration, over time the constitutional schemata ensures that the makeup of courts reflects the choices of changing presidents and the ''advise and consent'' of changing Senates. Since the circuit courts' structure was established in 1948, President Obama is the first president not to have a single judge confirmed to the D.C. Circuit during his first full term. The constitutional system of nomination and confirmation can work only if there is good faith on the part of both the president and the Senate to move qualified nominees along, rather than withholding consent for political reasons. I recall my own difficult confirmation 35 years ago as the first female judge on the circuit; eminent senators such as Barry Goldwater, Thad Cochran and Alan Simpson voted to confirm me regardless of differences in party or general political philosophy.

The two D.C. Circuit nominees before the Senate are exceedingly well qualified. Caitlin Halligan served as my law clerk during the 1995–96 term, working on cases involving the Department of Health and Human Services, the Immigration and Naturalization Service, the Federal Communications Commission and diverse other topics. She later clerked for Supreme Court Justice Stephen Breyer. She also served as New York solicitor general and general counsel for the Manhattan district attorney's office, as well as being a partner in a major law firm. The other nominee, Sri Srinivasan, has similarly impressive credentials and a reputation that surely merits prompt and serious consideration of his nomination.

There is a tradition in the D.C. Circuit of spirited differences among judges on the most important legal issues of our time. My experience, however, was that deliberations generally focused on the legal and real-world consequences of decisions and reflected a premium on rational thinking and intellectual prowess, not personal philosophy or policy preferences. It is in that vein that I urge the Senate to confirm the two pending nominations to the D.C. Circuit, so that this eminent court can live up to its full potential in our country's judicial work.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask that the colloquy between the distinguished Senator from Tennessee and myself be as in morning business.

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

HEALTH CARE

Mr. HATCH. Madam President, I rise today, along with my colleague from Tennessee, to discuss two pieces of legislation we introduced to restore liberty and to protect jobs. The first bill, S. 40, the American Liberty Restoration Act, would repeal ObamaCare's unconstitutional individual mandate. The second bill, S. 399, the American Job Protection Act, would repeal Obama's job-killing employer mandate. These two provisions were included in the President's health law for the purpose of raising revenues—an attempt to pay for all of the new spending under ObamaCare—and to garner support from the private insurance industry.

I would ask Senator ALEXANDER, has the so-called Affordable Care Act lived up to the promises President Obama made during the health care reform debate to maintain personal freedom, reduce health care costs, and decrease unemployment?

Mr. ALEXANDER. Madam President, I thank the Senator from Utah for his leadership on these two pieces of legislation, and the answer is: No, the new health care law hasn't lived up to the promises.

Let me cite an example. The President promised in the debates leading up to the health care act that if someone wanted to keep the insurance they had, they would be able to do that. I am afraid it is not working out that way, and here is why.

What happens is that businesses around the country are finding out when the health care law goes into effect fully they will either have to supply a certain type of health care insurance, which in many cases—as many as half the cases according to some studies—is a better policy and more expensive policy than they are now offering their employees, or they will have to pay a $2,000 tax, to the Internal Revenue Service. That means the employee, if the business decides to do that, will go into the exchange and lose the employer insurance they had.

Based on my experience in talking to many businesses, there is going to be a massive rush, by small businesses in particular and by many large businesses, to stop offering employer-sponsored health insurance to their employees and, instead, pay the $2,000 penalty, or tax, which means all of those employees—most of them lower income employees or middle-income employees—will lose the insurance they had and be in the exchanges looking for a new insurance policy.

Mr. HATCH. Madam President, I agree with my colleague and thank him for his comments.

I would also argue the individual mandate is unconstitutional. When the law was being debated here in Congress, and later when it was being litigated in the courts, proponents repeatedly argued the individual mandate was constitutional under the commerce clause. Well, that simply isn't the case. While the Supreme Court ultimately upheld the law on other grounds, the majority of Justices agreed the individual mandate was not a proper exercise of Congress's power to regulate interstate commerce.

I have to say I agree with that conclusion. Indeed, I say it is simply common sense the power to regulate interstate commerce does not include the power to compel individuals to engage in commerce, which is precisely what the individual mandate does.

Despite the Court's overall decision, the American people see the individual mandate for what it is—an affront to individual liberty. Indeed, the vast majority of the American people know it violates our constitutional principles and that it cedes too much power to the Federal Government. That is why, in poll after poll, the majority of Americans support repealing the mandate.

I would also ask the distinguished Senator from Tennessee, Mr. ALEXANDER, to share his views about the individual mandate, if he has any additional views.

Mr. ALEXANDER. I agree with the Senator from Utah. I think he stated clearly what the constitutionality is and he has been a most forceful advocate of that.

As I think about the legislation we are talking about, I am thinking also about the employer mandate and the requirement that, as I mentioned earlier, employers pay $2,000 if they do not

offer insurance or a $3,000 penalty if they offer the wrong kinds of insurance.

I would say to the Senator from Utah that we are making it more difficult to lower the unemployment rate in this country, which has stayed too high, with 12 million people unemployed, when we keep loading up employers with costs that make it more expensive to hire an employee. If we make it more expensive to hire an employee, we don't give the employer an incentive to hire more people. In fact, we discourage the employer from hiring more people.

I wonder if I might ask the Senator, in thinking about the employer mandate, if he agrees that employers across the country are considering reducing their number of employees, having more part-time employees in order to deal with this new cost of the employer mandate which is part of the health care law.

Mr. HATCH. I would say to the distinguished Senator from Tennessee that is certainly the case. There are various reports and analyses of this that indicate a significant number of employers would rather pay the penalty and not have to deal with the particular requirements the Affordable Care Act seems to require.

On top of the unconstitutional individual mandate, this job-killing employer mandate is a real problem. Under the President's health law, employers with more than 50 full-time employees are required to offer coverage, as the distinguished Senator said, that meets a minimum value or pay a penalty of $2,000 per employee. The distinguished Senator from Tennessee explained this well. If the employer does offer coverage but that coverage does not meet the minimum value, employers must pay $3,000 per employee. I have never heard such a ridiculous approach toward business. Not surprisingly, the penalty under this provision costs less than offering coverage. According to the Kaiser Family Foundation annual survey of employer-sponsored health insurance, average annual premiums are $5,615 for single coverage and $15,745 for family coverage. Once again, the penalty for an employer who doesn't offer health insurance is only $2,000 per employee. That being the case, the law does not incentivize employers to offer the employees health insurance. Instead, it does exactly the opposite. Rather than footing the full cost of providing health coverage, many employers are going to take the less expensive route and simply pay the penalty, as the distinguished Senator from Tennessee has mentioned. Even worse, many employers that currently do offer their employees health benefits under current law will likely drop the benefits and, instead, choose to pay the penalty.

Studies are already showing this is the case, and this will be the case. An employer survey done by McKinsey and Company found that ''30 percent of respondents who said their companies offered employer-sponsored health insurance said they would definitely or probably drop coverage in the years following 2014.''

So despite the President's claim to the contrary, ObamaCare has not preserved the employer-sponsored health insurance market. It dismantles it. As a result, the President's promise that those who like their health insurance would be able to keep it falls by the wayside.

I believe Senator ALEXANDER is also concerned about the fact the President's law defines small employers as those with less than 50 employees. In addition, I thought this law was supposed to create jobs. The President claimed it would. So again, I would turn to my colleague from Tennessee and ask: Does he think that has been the case? Does he think the President has been right about that?

Mr. ALEXANDER. No, I would say to my friend from Utah, I am afraid the President was mistaken about that. And we have talked about some specifics, but let me give some very specific examples of why I believe that is true.

Some time ago I met with a large group of chief executive officers of restaurant companies in America. The service and hospitality industries are the largest employers in America. Restaurant companies are the largest employer of low-income, young, usually minority people. These are Americans who are often getting their first job or they are Americans of any age who are trying to work their way up the economic ladder, starting with a lower paying job, a job that doesn't require as many skills, and hoping that instead of having a minimum wage they will end up someday with a maximum wage. But in order to get that maximum wage they have to get on the ladder. They have to start somewhere.

Here is what I was told. The chief executive officer of Ruby Tuesday, Incorporated, which has about 800 restaurants, said to me—and he didn't mind being quoted—that the cost to his company of implementing the new health care law would equal his entire profit for the company last year and that he wouldn't build anymore new restaurants in the United States as a result of that. He said he would look to expand outside.

Another, even larger restaurant company, said because of their analysis of the law, instead of operating their stores with 90 employees, they would try to offer it through stores with 70 employees. So that means fewer employees and it means fewer employees receiving employer health care.

Then almost every other restaurant said they were looking for ways to have more part-time employees so they didn't have to incur the expense of the new health care law.

So at least with that industry and those low-income, usually minority, often young employees, the jobs are going away because of the health care law. And with those jobs goes whatever employer health care insurance was being offered by those companies.

Mr. HATCH. I have heard the same complaints by the restaurant industry, and by a lot of small businesses that are looking to not hire more than 50 people, and also are looking to cut their employees' work hours down to below 30 hours a week in order to avoid these massive costs that would incur to them.

The employer mandate is a drag on our economy, forcing too many of our Nation's job creators to stop hiring and growing their businesses in order to comply with the onerous provision in the President's health law. Instead of letting the Federal Government dictate how employers should allocate resources, we should repeal this job-killing mandate and let businesses freely manage their personnel needs.

Mr. ALEXANDER. I certainly agree with the Senator from Utah, and that is the purpose of our legislation. We could offer more examples. The Wall Street Journal article of February 22 of this year said:

> Many franchisees of Burger King, McDonalds, Red Lobster, KFC, Dunkin' Donuts and Taco Bell have started to cut back on full-time employment, though many are terrified to talk on the record.

These are the kinds of companies I was talking about.

The article also references a 2011 Hudson Institute study that estimates the employer mandate will cost the franchise industry $6.4 billion and put 3.2 million jobs at risk.

Mr. HATCH. I couldn't agree more with the distinguished Senator from Tennessee, and I ask unanimous consent to have printed at this point in the RECORD an article under Politico's banner, titled: ''Under ACA, Employer Mandate Could Mean Fewer Jobs.''

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

[From Politico, Feb. 27, 2013]

UNDER ACA, EMPLOYER MANDATE COULD MEAN FEWER JOBS

(By Dan Danner, Bruce Josten, Matthew Shay, and Dirk Van Dongen)

This March marks the third anniversary of the passage of the president's sweeping health care legislation. But for many in the business community now facing a litany of difficult decisions in the law's wake, this milestone will be met with capitulation rather than celebration.

With the employer mandate, Obamacare puts the nation's job creators between a rock and a hard place. Despite the gentle sounding title, the Shared Responsibility provision actually takes the two parties who should be making decisions about employer-sponsored health coverage (the employer and the employee) completely out of the equation. Beginning in 2014, large employers must provide a prescribed level of health care coverage to all full-time employees or potentially pay a hefty penalty. While this may sound relatively straightforward, it is anything but.

Beyond imposing a costly and non-negotiable mandated benefit, the law also redefines the long-standing definition of a full-

time employee. With the passage of the law, an employee working an average of 30 hours or more per week over a month is a full-time employee. Further, the law sets out a complicated algorithm to determine whether a business is a large employer. Aggregating the hours of all part-time workers and adding in the number of full-time workers are necessary to determine whether a business has the equivalent of 50 or more fulltime employees and is therefore, a large employer.

Under the guise of improving access to coverage, the mandate presents a false choice for owners: provide one-size-fits-all health care coverage at the expense of higher wages and other benefits; or potentially pay a penalty. The unfortunate reality is that, with this devil's choice, everyone ends up paying a penalty—employers, employees and the unemployed. Whatever ''choice'' the employer makes will lead to fewer jobs, lower wages and lost revenue.

For employers near the ''large'' employer threshold, we can expect to see layoffs or dramatically reduced hours. These will be tough decisions, especially for small businesses where employees are like family and benefits options are often discussed and agreed upon collaboratively. The rising cost of the mandated insurance plans will very likely force many businesses to drop coverage entirely and pay the steep penalty, a difficult choice but a necessary one in light of increasingly cost-prohibitive employee coverage. Smaller businesses that might otherwise be eyeing expansion and growth down the road will most likely reduce or cap the number of employees to avoid the expensive mandate in the future.

The options available to job creators are bleak—cut their workforce, stem growth, pay a penalty or go out of business—and whatever choice they are forced to make will ultimately harm employees and the economy. Replacing one full-time position with two part-time positions is a hollow form of job creation—not an efficient way to create good jobs that can support families. Compliance costs—already 36 percent higher for small firms—will soar; those costs, as well as the money that must now go toward increased benefits or nontax deductible penalties, will crowd out wage increases and business investment.

The Commerce Department reported last month that in the fourth quarter of 2012, economic growth contracted for the first time in more than three years. This isn't a surprise, given that the small-business sector has never recovered—and is unlikely to—while Washington continues to penalize small employers for expanding. At a time when our economy is deeply troubled, our government is forcing employers to restructure in ways that repress growth and employment.

Thankfully, Thursday's bicameral introduction of the American Job Protection Act by Sens. Orrin Hatch of Utah and Lamar Alexander of Tennessee and Congressmen John Barrow of Georgia and Charles Boustany of Louisiana comes at a perfect time. Members of both parties recognize the damage this impending mandate will have on our economy, and Congress should repeal it before it's too late.

Mr. HATCH. Again, I thank my colleague from Tennessee for working with me on these two critical issues that impact every American. I will conclude with a quote from a Utah employer. This is a small business owner who is concerned about what the company will do come January 1 if these mandates remain in place. This employer wrote to me saying this about ObamaCare:

We will have to choose who will work 30 or less hours a week, which in turn is bad for our business because we have to train more people to do one job. It is bad for our customers because they will have to interact with different employees who may not know the customer's needs as well, and it is most devastating for the employee because the employee's hours will be cut.

If we want to turn this economy around, government decrees such as the employer mandate must be repealed.

Our job creators cannot grow and innovate with these heavy-handed regulations coming from Washington bureaucrats who have no clue how to run a business.

We must work together on this important issue for the sake of the individuals working three jobs at a time to make ends meet, for employers trying to keep workers on the payroll and contributing to the economy, and for our Nation as a whole to put our economy on the right track and to keep us globally competitive. At least that is my viewpoint, and it is certainly the viewpoint of my small business colleagues there in Utah.

Mr. ALEXANDER. I thank the Senator from Utah for this opportunity to have a colloquy with him, and I ask unanimous consent to have printed in the RECORD following my remarks letters from the National Restaurant Association, Chamber of Commerce of the United States, and the National Retail Federation, each of which strongly supports our legislation and makes the points we have made about the employer mandate.

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

NATIONAL RESTAURANT ASSOCIATION,
Washington, DC, February 27, 2013.

Re Support for repeal of Shared Responsibility for Employers provision.

Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.
Hon. LAMAR ALEXANDER,
U.S. Senate,
Washington, DC.

DEAR SENATORS HATCH AND ALEXANDER: On behalf of the National Restaurant Association members, we write in support of the American Job Protection Act, and to thank you for your leadership on this issue. This legislation would repeal the 2010 health care reform law's harmful employer mandate.

The National Restaurant Association is the leading business association for the restaurant and food service industry. The industry is comprised of 980,000 restaurant and foodservice outlets employing 13.1 million people who serve 130 million guests daily. Although it is predominately comprised of small businesses, the restaurant industry is the nation's second-largest private-sector employer, employing 10 percent of the U.S. workforce.

Regrettably, the employer mandate is expected to significantly increase costs within our industry, threatening entrepreneurs' ability to hire additional employees, or expand operations. The American Job Protection Act would repeal the mandate, thereby providing restaurateurs the flexibility to provide the health care coverage that they can afford, while addressing the varying needs within the diverse workforce.

Again, thank you for introducing the American Job Protection Act. We strongly support the legislation's passage and look forward to working with you toward that end.

Sincerely,

ANGELO I. AMADOR, ESQ.,
Vice President,
Labor & Workforce Policy.
MICHELLE REINKE NEBLETT,
Director,
Labor & Workforce Policy.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, March 1, 2013.

Hon. ORRIN G. HATCH,
U.S. Senate,
Washington, DC.
Hon. LAMAR ALEXANDER,
U.S. Senate,
Washington, DC.

DEAR SENATORS HATCH AND ALEXANDER: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, thanks you for introducing S. 399, the ''American Job Protection Act, '' which would repeal the employer mandate included in the Patient Protection and Affordable Care Act (PPACA). This requirement is already having a negative effect on employment and will continue to discourage small businesses from growing. In fact, the Chamber's most recent quarterly small business survey released in January of 2013 confirmed that 71 percent of small business executives believe that implementation of the health care law will make it harder for them to hire more employees.

The PPACA requires businesses with 50 or more full-time equivalent employees to offer certain health benefits or pay steep penalties. Even businesses that do provide health benefits may still be subjected to draconian fines. Businesses with fewer than 50 full-time equivalent employees are hesitant to grow their businesses or hire what would amount to the fiftieth employee. Repealing this ''shared responsibility'' provision would not only protect existing jobs, but spur the creation of new jobs by removing the fear and uncertainty many small businesses are experiencing in anticipation of these coverage requirements that begin in 2014.

Prior to the enactment of the PPACA, businesses voluntarily offered health insurance to most Americans. According to the Employee Benefits Research Institute, more than 156 million Americans had employer-sponsored health insurance in 2009. But now, the employer mandate requires businesses to provide prescribed coverage, an unprecedented intrusion on employers' freedom to develop employee compensation packages. This requirement is not only unlikely to achieve the objective of forcing all employers to provide federally prescribed coverage, it is also likely to incent employers to drop coverage entirely, limit employees' hours, and restrict job growth.

The requirement would also disproportionately disadvantage low-income workers and the businesses that employ them, since these are the workers that would trigger the penalty provision and subject a business to unpredictable and significant fines. Further, for the first time, the PPACA defines a ''full-time'' employee as someone who works 30 hours per week, rather than the traditional definition of 40 hours per week.

It is critical that the employer mandate be removed before it takes effect in 2014 so that employers can focus on strengthening their

businesses, hiring more workers, and revitalizing the economy. The Chamber looks forward to working with you and your colleagues to enact this vital legislation.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL RETAIL FEDERATION,
Washington, DC, March 4, 2013.

Hon. ORRIN HATCH,
Senate Hart Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I write to lend the support of the National Retail Federation (NRF) to employer mandate repeal legislation you have introduced: S. 399, the American Job Protection Act. We strongly support your bill and urge that it be promptly adopted.

NRF has myriad concerns with and objections to the Affordable Care Act, even as our focus shifted to trying to help our members comply with the new law. Your legislation appropriately would repeal the employer mandate. We strongly supported your legislation in the 112th Congress and proudly do so again now.

Eliminating the employer mandate would greatly aid the greater retail community, which is heavily dependent on labor. One of every four jobs in the American economy is supported by retail, which would be jeopardized by the mandate effective in 2014. The employer mandate is already deterring job growth today at the expense of tomorrow's economy.

NRF commends you for introducing this legislation. We note with appreciation that your bill was introduced with 26 original cosponsors. We strongly support your efforts.

Sincerely,

DAVID FRENCH,
Senior Vice President, Government Relations.

Mr. HATCH. Once again I thank my colleague from Tennessee, and I am hoping that others will hear our call for support and join us in these two crucial efforts to protect individual freedom and to maintain our system of free enterprise which has built this country and made it the best in the world.

So I thank the Senator from Tennessee.

CORRECTING THE RECORD

Mr. ALEXANDER. Madam President, I see the Senator from Maryland is waiting, and I wonder, if we are through with our colloquy, if the Senator would allow me 2 or 3 minutes to correct a mistake I made on the floor of the Senate last week.

Confessing error: I came to the floor following the vote on the Hagel nomination to point out the difference between a vote against a premature motion to cut off debate—which I thought the majority leader made—and an effort to kill a nomination with a filibuster, which are two different things. I pointed out—correctly—that in the history of the Senate, we have never denied to a district judge nominee his or her seat because of a failed cloture vote, and I don't believe we should. I pointed out we have never denied a Cabinet nominee his or her seat because of a filibuster, with the possible exception of John Bolton, whom the Democrats filibustered. Some Presidents count that nomination to the U.N. in their Cabinet and some don't.

I then went on to say—incorrectly—that on appellate judges, the Democratic majority had filibustered and killed 10 of President Bush's nominations, and Republicans had in response denied two appellate judge seats by filibuster. Senator SCHUMER of New York—ever wary of what I might say—corrected me and said it was less than that. So I have consulted with him and his staff, and the score is actually 5 to 2.

The correct result is that before George W. Bush became President—and the Senator from Utah knows this story very well—there were no instances of an appellate Federal judge being denied his or her seat because of a filibuster. Then our friends on the Democratic side invented the idea of filibustering circuit judges and voted against a whole series of President Bush's nominees just as I came to the Senate: Miguel Estrada, Charles Pickering, William Pryor, Priscilla Owen, Carolyn Kuhl, Janice Brown, and then four more in 2004: William Myers, David McKeague, Henry Saad, and Richard Griffin.

But then we had a cooling of tempers and a coming to our senses and a bipartisan Gang of 14 said we don't want to make this a new precedent, and we agreed—there was a consensus, anyway—that only in a case of extraordinary circumstance would there be a denial of a nominee of an appellate judge by a cloture vote. So then 5 of those 10 Bush nominees were approved.

So the Schumer staff and my staff agreed with this—and if anybody thinks it is wrong, I would like to know—that only in five cases have Democrats denied a Republican President an appellate judge nominee by filibuster and only in two cases have Republicans denied a Democratic President's nominee by filibuster in the case of appellate judges. As I said when I began, the answer is never in the case of district judges and never in the case of Cabinet members, with the possible exception of John Bolton.

I am glad to come to the floor and correct the record. I thank Senator SCHUMER for his diligence in noting my error.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I ask unanimous consent that we return to the Halligan nomination.

I also ask further unanimous consent that I be permitted to speak following the distinguished Senator from Maryland.

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

The Senator from Maryland.

Mr. CARDIN. Madam President, I am taking this time on the floor to speak in support of the nomination of Caitlin Halligan to be U.S. Circuit judge for the U.S. Court of Appeals for the District of Columbia Circuit.

I think my comments are at the right time, following Senator ALEXANDER's comments about the difficulty we have had in the past confirming judicial nominees and the use of the filibuster that blocked the consideration of Presidential nominees.

Senator ALEXANDER pointed with pride to an accommodation that was reached a few years ago, before I got to the Senate, that the filibuster would only be used in ''extraordinary circumstances.''

Ms. Halligan was first nominated by President Obama in September 2010, after that accommodation had been reached. I am disappointed that her nomination was filibustered, nearly on a party-line vote, in December of 2011. I urge my colleagues to allow an up-or-down vote on Ms. Halligan's nomination.

I would challenge my colleagues who oppose an up-or-down vote to come to the floor and explain the extraordinary circumstances that would prevent an up-or-down vote on Ms. Halligan's nomination. She is extremely well qualified for this position, and I will support her nomination.

The Senate Judiciary Committee favorably reported her nomination last month. The American Bar Association's Standing Committee on the Federal Judiciary unanimously rated Ms. Halligan ''well qualified'' to serve on the DC Circuit—the highest rating from its nonpartisan peer review.

Ms. Halligan received her A.B. from Princeton University and her J.D. from Georgetown University Law School. After law school, she clerked for Supreme Court Justice Stephen Breyer and for Judge Patricia Wald on the DC Circuit, the court to which she has now been nominated.

After working in private practice, Ms. Halligan joined the New York State attorney general's office. She began working in the office as the first chief of the office's Internet Bureau, where she worked to protect consumers against Internet fraud and safeguard online privacy. She was ultimately promoted to the position of solicitor general, a position she held for 6 years. The solicitor general is basically the top attorney for the State of New York.

In that capacity she managed a staff of nearly 50 appellate attorneys litigating in State and Federal appellate courts. Her responsibility included handling cases of public corruption and judicial misconduct.

She then became a leading appellate lawyer in private practice at a national law firm, serving as counsel of record for a party or amicus curiae in nearly 50 matters before the U.S. Supreme Court.

She is well qualified for the position to which President Obama has nominated her.

She is currently general counsel at the New York County district attorney's office, an office that investigates and prosecutes 100,000 criminal cases annually in Manhattan. In her current position, she is focused on reducing crime, protecting victims of domestic

and sexual violence, and reviewing so-called cold cases that remain unsolved.

Most of Ms. Halligan's career has been dedicated to public service and law enforcement. She has also made time over the years to devote substantial time to pro bono work, including representing the evacuees from Hurricanes Katrina and Rita who were in danger of losing their rental assistance benefits.

She has also served as pro bono counsel to the Board of Lower Manhattan Development Corporation, the entity that is overseeing the rebuilding of Lower Manhattan following the terrorist attacks of September 11, 2001.

She has her priorities straight. She is an outstanding attorney. She has used a lot of her time to help people less fortunate receive free legal services as a result of her participation.

Ms. Halligan has received widespread support from law enforcement and legal professionals across the political spectrum which I understand will be made part of the RECORD, so I will not repeat those statements now.

I have heard only two substantial reasons in opposition to her nomination. Let's review those two points that have been raised to see whether they are extreme circumstances that warrant a vote to support a filibuster. Last time we had over 40 Senators who supported the filibuster basically blocking an up-or-down vote. We had an accommodation that would only be used for extraordinary circumstances. Let's take a look at the two cases that have been made about why those extraordinary circumstances may exist—and, I will submit, they do not exist.

One argument is that Ms. Halligan is a liberal advocate who cannot set aside her personal views on issues, including the second amendment. The other argument is that the D.C. Circuit has too low a caseload to justify additional judges.

Ms. Halligan was questioned about her views on the second amendment issues during her Senate Judicial Committee hearing. She testified, both at her hearing and in response to written questions, that she would faithfully follow and apply the Supreme Court precedent from the District of Columbia v. Heller and McDonald v. Chicago, which held the second amendment protects an individual right to keep and bear arms for self-defense.

When asked by Senator GRASSLEY whether the rights conferred under the second amendment are fundamental, Ms. Halligan answered: ''That is clearly what the Supreme Court held and I will follow that precedent, Senator.''

Some have also criticized her for her position she advocated while solicitor general for the State of New York. In her confirmation hearing, she made it clear she filed these briefs at the direction of the New York attorney general—arguing on behalf of New York State, not her own views. It was her responsibility as solicitor general to represent her client, the State of New York.

Of course, she has worked on controversial issues before the State of New York, such as affirmative action, the death penalty, and same-sex marriage. As New York solicitor general, she argued in support of affirmative action and in defense of the constitutionality of the death penalty because that is what her client's position was and she represented her client. That is what she is supposed to do. That is what a lawyer does, represent her client as best as she can, and she did that well on behalf of her client, the State of New York.

But I will remind my colleagues what Chief Justice Roberts said during his Supreme Court confirmation hearing in terms of attributing the views of a client to an attorney. Chief Justice Roberts testified that:

> It's a tradition of the American Bar that goes back before the founding of the country that lawyers are not identified with the positions of their clients.

We should apply the same standard when considering Ms. Halligan's nomination, as our legal system requires vigorous advocacy by both sides of a dispute.

I quote Chief Justice Roberts here in part because Ms. Halligan, quite remarkably, has been nominated in 2013 to fill Chief Justice Roberts' former seat in the D.C. Circuit, which became vacant in 2005.

This brings me to the second argument that has been used. I urge my colleagues to consider whether this is an extraordinary circumstance that justifies a vote in support of a filibuster.

The second argument is that this court has a low caseload, which is just not the case. Chief Justice Roberts was elevated from the D.C. Circuit to the Supreme Court in 2005. His seat has been vacant for 8 years, one of the longest circuit vacancies in the country. The D.C. Circuit has four vacancies on the 11-member court. That is one-third of the court that is currently unfilled.

Ms. Halligan has been nominated by the President for the seat formerly held by Chief Justice Roberts, so, of course, the Senate should act as quickly as possible to fill this seat.

The D.C. Circuit is often referred to as the second most important court in the land due to the complexity and importance of its caseload. The court regularly reviews highly technical decisions and rulemaking of Federal agencies that are based in Washington, often without a lower court decision of a Federal district court.

The D.C. Circuit proclaims the final law of the land for many environmental, health, labor, financial, civil rights, and terrorist cases. The Supreme Court only accepts a handful of cases each year, so the D.C. Circuit is often the last word in these cases.

According to the Administrative Office of the U.S. Court, the caseload per active judge in the D.C. Circuit has increased 50 percent since 2005, when this vacancy was created. It was also the year the Senate confirmed President Bush's nominee to fill the 11th seat on the court. Let me repeat that. We in 2005 confirmed President Bush's 11th seat of the 12-seat court. Justice delayed is justice denied.

To remind my colleagues, the Senate confirmed President Bush's nominees for the 9th, 10th, and 11th seats on the D.C. Circuit. Ms. Halligan is President Obama's first nominee to the District Circuit to fill the eighth seat. The Senate confirmed four of President Bush's nominations to the D.C. Circuit, twice filling the 10th seat and once filling the 11th seat.

So there is no extraordinary circumstance that exists. Let's be clear about that. A vote against moving forward is filibustering a judicial nominee in an effort to kill the nominee and not allow an up-or-down vote. There are no extraordinary circumstances that would justify the delay and not allowing us to have an up-or-down vote.

I urge my colleagues to vote for us proceeding and not using the filibuster; to adhere to the agreement that was reached. Again, it was before I got to the Senate. It was the right agreement, that there should truly be an extraordinary circumstance that prevents an up-or-down vote on a judge. It does not exist in this case. President Obama's nominee is well qualified. The court is in desperate need of additional judges, being four seats short today, only two-thirds of the bench having been appointed and confirmed to date. I urge my colleagues to vote in favor of proceeding and then, after we have the nominee before us, I hope my colleagues will join me in supporting the confirmation. I think Ms. Halligan will make an outstanding member of the D.C. Circuit.

Mr. HATCH. Madam President, we have before us one of the most activist judicial nominees we have seen in years.

Rather than choose a more consensus nominee, President Obama has chosen to again provoke a political confrontation.

This is unnecessary, divisive, and not in the best interests of either the judicial selection process or the judiciary.

The Constitution gives the power to appoint judges to the President, not to the Senate. I believe, therefore, that the Senate owes the President some deference with respect to nominees who are qualified by both legal experience and, more importantly, judicial philosophy.

A nominee whose record shows that she has an activist judicial philosophy is simply not qualified to sit on the Federal bench, and the Senate owes the President no deference under those circumstances.

That is the kind of nominee we have before us today.

Nothing has changed since a cloture motion failed on this nominee in December 2011.

Well, that might not be quite true.

One thing that has changed is that the need to fill another vacancy on the

D.C. Circuit is even less today than it was then.

Year after year, case filings decrease for the D.C. Circuit while they increase for the rest of the judiciary.

Year after year, the D.C. Circuit ranks last among the 12 geographical circuits in the number of appeals filed per three-judge panel.

The court has even cancelled argument days because of an insufficient docket.

And I would remind my friends on the other side of the aisle that the D.C. Circuit's caseload today is lower than when they used this argument to block President Bush's nominees to this court—which they did.

Looking at the nominee herself, Caitlin Halligan was a member of the New York City Bar's Committee on Federal Courts and signed its March 2004 report titled ''The Indefinite Detention of 'Enemy Combatants': Balancing Due Process and National Security in the Context of the War on Terror.''

Based on policy rather than legal grounds, it makes left-wing arguments that courts and even the Obama administration itself have repudiated.

Although she tried to distance herself from the report's left-wing positions at her confirmation hearing, Halligan signed rather than abstained from the report, as four other committee members had done, and never repudiated it before her hearing.

If she were a Republican nominee, my friends on the Democratic side would call this a confirmation conversion.

Her report argued that the Authorization for the Use of Military Force, or AUMF, does not authorize indefinite detention of enemy combatants.

The Supreme Court rejected this in Hamdi v. Rumsfeld. The Obama administration has sought, and the D.C. Circuit has adopted, a broad construction of the AUMF.

Halligan's report argued that alien terrorists should be tried in Article III courts, with full constitutional protections, rather than in military commissions.

On March 7, 2011, President Obama signed an executive order re-establishing military commissions for enemy combatants held at Guantanamo Bay.

But Halligan's extreme record on these important issues goes beyond that report.

She also authored a legal brief in 2009 arguing that the AUMF does not authorize the seizure and long-term military detention of lawful permanent resident aliens.

This position again disregarded the Supreme Court's holding in Hamdi v. Rumsfeld and appears even to conflict with the Obama administration's justification of assassinating American citizen Anwar al-Awlaki.

She just won't take no for an answer when pushing such extreme views, not even from the D.C. Circuit or the Supreme Court itself.

That is the classic definition of judicial activism, trying to use the courts to advance a political agenda no matter what the law is.

As Solicitor General of New York, Halligan aggressively sought to hold gun manufacturers liable for criminal acts committed with handguns.

In one speech, she said that the Federal Protection of Lawful Commerce in Arms Act ''would nullify lawsuits. . . including one brought by my office. . . that might reduce gun crime or promote greater responsibility among gun dealers.''

The Senate voted overwhelmingly for this legislation in July 2005.

Once again, Halligan turned to the courts to push her personal political views, filing a legal brief challenging the law's constitutionality.

In New York v. Sturm & Ruger, she argued that gun manufacturers maintain a ''public nuisance'' of illegally possessed handguns.

The New York Court of Appeals rejected Halligan's activist approach, concluding that ''the Legislative and Executive branches are better suited to address the societal problems concerning the already heavily regulated commercial activity at issue.''

Attempting to address social problems in the judicial rather than the legislative branch is a hallmark of judicial activism.

Finally, other legal briefs she has filed similarly demonstrate extreme views that the Supreme Court has rejected.

In Scheidler v. NOW, Halligan argued that pro-life protesters should be prosecuted under the Federal racketeering statute because they somehow engage in extortion.

The Supreme Court voted 8–1 to reject that position.

And in Hoffman Plastics Compounds, Inc. v. NLRB, the Supreme Court rejected Halligan's position that the NLRB can grant backpay to illegal aliens.

As I said, the Senate owes the President some deference with regard to his nominees who are qualified by their legal experience and, more importantly, their judicial philosophy.

Republicans have consistently cooperated with the President and will continue to do so. But when a nominee's record clearly shows that she has a politicized view of the courts, I for one have to say no.

The political ends do not justify the judicial means.

I urge my colleagues to oppose this nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. HOEVEN. Madam President, I rise to speak as in morning business.

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

KEYSTONE XL PIPELINE

Mr. HOEVEN. Madam President, last week the U.S. State Department issued its new environmental review for the Keystone XL Pipeline. This is the fourth environmental review in nearly 5 years of study. Unsurprisingly, it said the same thing as all the other reports have said.

The Keystone XL Pipeline will have no significant impact on the environment. Again, the Keystone XL Pipeline will have no significant impact on the environment.

Ironically, the report indicates that there will be more emissions if you do not build the pipeline than if you do build the pipeline. So let's go through that for a minute. The Keystone XL Pipeline project is perhaps the most thoroughly studied and long-delayed project of its kind in U.S. history. The State Department's favorable finding in this, its most recent report, underscores both the good environmental stewardship of this project and the need to begin construction without further delay. But the State Department now indicates it will hold a 45-day comment period and an as-yet-undetermined period of time before it will issue a final environmental impact statement. Then it will conduct an interagency comment period to make its national interest determination.

So while we welcome the finding of no significant impact, for the fourth time now, we have yet another indeterminate delay which runs counter to both public opinion and reasonable due diligence. After four environmental reviews and favorable results, the President needs to approve the Keystone XL Pipeline project without delay because there remains no excuse not to do it.

The argument has been advanced that the oil sands will increase carbon emissions and that failing to build the Keystone XL Pipeline will somehow reduce emissions. But the most recent State Department report makes clear that this contention is false. The report actually indicates just the opposite, that if the pipeline is not built from Alberta, Canada to the United States, the oil will still move to market but it will move to China from Canada's west coast. To get the product to China, the oil will be shipped in tankers across the Pacific Ocean to be refined in overseas facilities with weaker environmental standards and more emissions than facilities in the United States. The United States, moreover, will continue to import oil from the Middle East—again on tankers. Factor in the cost of trucking and railing the product to market over land and the results—contrary to the claims of its opponents—will be more emissions and a less secure distribution system than if in fact we build the Keystone XL Pipeline project.

Let's look at it. This is a commonsense argument. The report indicates less emissions if we build the project. Yet it is being held up by extreme activists on the basis that if we build the pipeline, somehow we get more emissions. That is just not the case.

With the pipeline from up in the Edmonton-Hardisty-Alberta, Canada region, the pipeline brings oil down right

in the North Dakota-Montana area where it picks up 100,000 barrels a day from the Bakken. The oil then goes to refineries in Illinois and Oklahoma, Texas and Louisiana. We have domestic oil, from our country, oil from our closest friend and ally, Canada, that we are using here in our refineries for our customers: more energy, more jobs, more economic activity so we get economic growth, we get revenue to reduce the debt and the deficit without raising taxes, and it is a national security issue. Instead of having tankers coming from the Middle East bringing heavy crude in some cases which in fact has higher emissions than the Canadian oil, we rely on oil from our country and Canada. We get what Americans want; that is, no longer depending on the Middle East for oil.

If we do not build the pipeline, the oil is still produced. This oil will be produced, but it will not come to the United States. It is going—where? It is going to China. And it is going to be sent on tankers over to China so you have not only the emissions of those tankers but it is going to be refined in Chinese refineries which have worse environmental standards than we do, and we continue to bring in oil from the Middle East. That makes no sense and that is why 70 percent of the American people approve the project. Only 17 percent have indicated opposition.

This is about President Obama making a decision for the American people rather than for special-interest groups. In my home State of North Dakota, as I say, we will put 100,000 barrels a day of light sweet Bakken crude into that pipeline. That takes 500 trucks a day off our roads. That is a safety issue. That is an issue for our roads in western North Dakota.

To recount briefly, this is a $7 billion high-tech pipeline project that will bring 830,000 barrels of oil today from Alberta, Canada to refineries in Oklahoma and the Texas gulf coast, as I said, including 100,000 barrels a day of light sweet crude from the Bakken oil fields in North Dakota and Montana.

As the most recent State Department report confirms, it will create tens of thousands of jobs during the construction phase, boost the American economy, raise much needed revenue for State and local governments at a time when they very much need it, and do it without raising taxes. Perhaps most importantly, it will put our country within striking range of a long-sought goal, and that is true energy security.

For the first time in generations, the United States—along with its closest friend and ally Canada—has the capacity to produce more energy than we use, as well as eliminate our reliance on the Middle East and other volatile parts of the world such as Venezuela.

Even after an exhaustive review process, the consent of every State along its route, the backing of a majority of Congress, and the overwhelming support of the American people, the Keystone XL Pipeline project continues to languish at the hands of the President of the United States.

We again ask, as we have before, that President Obama and Secretary of State Kerry provide us with an actual timeline and some certainty as to when this long-delayed project will finally get approved.

The Keystone XL project will provide tens of thousands of jobs and hundreds of millions of dollars in revenue to help us reduce our debt and deficit, and it will do it with good environmental stewardship.

With 70 percent of the American people in support of the Keystone XL Pipeline and 12 million Americans still out of work, there is no reasonable excuse to delay this project any longer.

I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER (Mr. MANCHIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERTS. 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. ROBERTS. Mr. President, I ask unanimous consent that I be recognized for 15 minutes as in morning business.

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

(The remarks of Mr. ROBERTS pertaining to the introduction of S. 458 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. ROBERTS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The Senator from Arizona is recognized.

Mr. MCCAIN. I thank the Chair.

(The remarks of Mr. MCCAIN pertaining to the submission of S. Con. Res. 5 are located in today's RECORD under ''Submitted Resolutions.'')

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COONS. 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. COONS. Mr. President, the Founders of our country, committed to justice and fairness for all its citizens and in establishing a structure that would make this country uniquely strong as a democracy, gave us three coequal branches of our government. Two of those branches have dominated the national news recently as we lurch from crisis to crisis, from fiscal cliff to sequester. The back-and-forth between the President and Congress, between the executive and the legislative branches, has been the headline day after day.

Meanwhile, the third coequal branch, the judicial branch of our Federal Government, has quietly gone about its business, doing its job for the American people, providing fair hearings, equal justice under the law, the basic right to a speedy resolution to any dispute—or has it?

All around this country members of the judicial branch are getting their jobs done but with fewer and fewer resources and support, fewer colleagues on the bench than ever before. Nearly 10 percent of all Federal judgeships—positions for Federal judges that should be filled—are vacant, empty, leaving those judges who are on the bench overwhelmed with steadily increasing caseloads and unable to provide the level of service, certainty, and swift resolution that the American people deserve and upon which our government was predicated.

Particularly when you are the one going into court seeking redress or when you are the one facing legal action, justice delayed is justice denied. As a member of the Delaware bar and a former Federal court clerk myself, as well as a member of the Senate Judiciary Committee, I have seen firsthand the consequences of this ongoing, slow-rolling crisis in our Federal courts.

Right now we have more than double the judicial vacancies we had at the same point in the last administration. The Senate has confirmed 30 fewer of President Obama's nominees than it had of President Bush's at this same time.

One of the most underresourced circuits is right here under our nose in Washington, DC. The DC Circuit is often called the second most important court in the land. Although it may not make the headlines, it may not be as visible to the American people as this ongoing fight between the Congress and the President, the DC Circuit decides issues of national importance, from terrorism and detention to the scope of agency power. It has importance to every American, not just the ones who happen to live in the District of Columbia, and yet its bench is almost half empty.

Congress has set the number of judgeships needed by the DC Circuit Court at 11, and right now they have just 7. President Bush had the opportunity to appoint four judges to the DC Circuit, including the 10th judicial position twice and the 11th judicial position once. Yet President Obama has been denied the opportunity to make even a single appointment to the DC

Circuit Court despite four vacancies. As a result, the per-judge caseload is today 50 percent higher than it was after President Bush had the opportunity to fill that last, the 11th seat. And in terms of our obligation to this coequal branch, our obligation to the citizens of the United States, and our obligation to provide an opportunity for justice, that is an outrage.

Today the Senate has the opportunity to take up and consider a highly qualified nominee to fill one of these vacancies, to start to do our job and bring this vital circuit court closer to full capacity. We can do that by confirming the nomination of a brilliant lawyer and a dedicated public servant named Caitlin Halligan.

Ms. Halligan, with whom I have met, has been nominated to the DC Circuit Court and renominated to the DC Circuit Court and renominated to the DC Circuit Court across three sessions of Congress—the 111th, 112th, and 113th. She has been nominated because of her superb qualifications and her impressive personal background.

She worked in private practice at a respected New York law firm. She served in public service as solicitor general for the State of New York. She is currently the general counsel of the New York County District Attorney's Office—an office that investigates and prosecutes 100,000 criminal cases every year.

Ms. Halligan has earned the support of her colleagues in law enforcement and across the spectrum. Everyone, from New York City police commissioner Raymond Kelly to preeminent conservative lawyer Miguel Estrada, has supported her nomination. The American Bar Association's standing committee unanimously gave her its ranking of highest qualification to serve: ''highly qualified.'' Yet Ms. Halligan has had to face, in my view, outrageous distortions of her record that cause one to wonder if any nominee to this circuit would be acceptable on their merits.

Ms. Halligan has withstood steady and withering political attacks on positions she advocated while solicitor general for the State of New York, positions she argued on behalf of her client—New York State and its attorney general—not positions that represented her own personal views. If you reflect on this, it is, as all practicing attorneys know, inappropriate to disqualify a judicial candidate because she advocated a position for a client with which a certain Senator might disagree or which has been rejected by a court. This fundamental principle that you do not associate an attorney with a position advocated in court has been widely shared, widely supported, and, in fact, Chief Justice Roberts himself said:

> It's a tradition of the American Bar that goes back before the founding of the country that lawyers are not identified with the positions of their clients.

Even so, Ms. Halligan's positions on issues such as, for example, marriage and States rights have hardly been radical. When asked to analyze New York's marriage law, she concluded that the State statute did not provide same-sex couples with the right to marry. When presented with the question of whether a ban on same-sex marriage was legal under the New York Constitution, she merely said that there were arguments for and against and that it should be left to the courts to decide. What could be more modest than deciding that a constitutional question should be decided by the courts and not the executive branch? Yet I have heard on this floor and elsewhere her positions on this and other issues mischaracterized as extreme, as out of the mainstream. In my view, this position demonstrates her great respect for our judicial process and proves that if this body confirms her to the bench, she would fairly and faithfully apply precedent in making important decisions on the DC Circuit.

She told us directly on the Judiciary Committee that she would respect and apply precedent in other important cases—cases that touch on the second amendment, such as the District of Columbia v. Heller and McDonald v. Chicago, cases that held that the second amendment protects an individual's right to keep and bear arms for self-defense. I am confident, despite what we have heard spun in the press about Ms. Halligan's position, that she would faithfully respect precedent in these cases.

So in these two areas, I think we can see that Caitlin Halligan is not a radical or an ideologue. She is an attorney, she is a lawyer—and a good one. In my view, having reviewed her qualifications, having sat through meetings, and having looked at her record, she has earned her nomination to the DC Circuit Court. She deserves this Senate to get out of the way and to stop this endless delay of consideration of qualified candidates for the bench and let her get to work.

Today the Senate has an opportunity, a chance to do the right thing, to stop endless partisan political games, to break through our gridlock and get something done in the interest of the American people and especially those who seek swift and sure justice.

Every individual and business in this country has the fundamental right to a fair and fast trial, to access to the judicial system, and to the hearing of their appeals in an appropriate and timely manner. And judicial vacancies and understaffed courts at the district and the circuit level are denying them that right. This Senate and its dysfunction are denying them that right. So today I urge my colleagues on both sides of the aisle to do our job, to confirm Caitlin Halligan and recommit ourselves to moving forward in a productive and bipartisan way.

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. SCHUMER. 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. SCHUMER. Mr. President, first let me compliment my colleague from Delaware not only for his typically excellent remarks today but also for his vigilance on these issues. He is a relatively newer member of the Judiciary Committee, but he has jumped into these issues with tremendous eagerness, intelligence, balance, and effectiveness. So I thank him for his great remarks.

I too rise today in enthusiastic support of the nominee to the Court of Appeals for the DC Circuit, Caitlin Halligan. Ms. Halligan has been waiting 23 months for an up-or-down vote. More importantly, the entire country has been waiting to fill this position—a judgeship on the second most important court of the Nation—for 23 months.

The question we are going to answer tomorrow is, Can we take some of our bipartisan good will, our desire to legislate and get things done for the country, and apply it to a nominee who is the very picture of moderation and mainstream legal thinking, a nominee who has dedicated her entire career to public service, and a nominee who would be only the sixth woman to join this court in its 212-year history? That is right—there have only been five women to serve on the DC Circuit in 212 years.

The D.C. Circuit is currently one-third vacant. Four of its 11 slots—37 percent—are without active judges. Ms. Halligan is one of the two nominees for these four slots.

Two years ago, when Halligan was first filibustered, many of my colleagues decided they could not support a cloture motion because she would have been the tenth judge on an 11-member court, a court they perceived as understaffed and overworked. I take issue with the fundamental premise. The D.C. Circuit hears many of the most complex and important cases in the country. The court hears appeals from virtually every regulatory agency, reviews statutes, has jurisdiction over numerous terrorism cases, including those from Guantanamo Bay. But even if I were to accept the faulty premise that the court somehow needs fewer judges than it ever had, the court that hears the most complex cases, the court is now near a crisis point. There are only seven active judges currently sitting. What is more, the caseload per judge has risen by 21 percent—21 percent since the last judge was confirmed, and that was under President Bush's administration.

I think there is now more than compelling evidence that the caseload-based argument against Halligan is gone, and you would have thought our colleagues on the other side of the aisle

would say: OK, four vacancies, the last vacancy filled under Bush, we can now move to support her. But they do not.

What else could possibly prevent a vote on Halligan? Is it her ideology? I submit to my colleagues it cannot possibly be her ideology. If zero is extremely liberal and 10 is extremely conservative, Halligan falls right in the sweet spot of judges who both President Obama and President Clinton have generally nominated, 5s and 4s, maybe even a 6 or two. Opposing Halligan on her ideology, opposing even a cloture vote based on her ideology, can mean only one of two things:

First, that some of my colleagues have misread her record. Let me clear up a few things today. Halligan is not anti-gun nor anti-second amendment. She has clearly said at her hearing she fully supports the individual second amendment right to bear arms as the Supreme Court decided in Heller. Her briefs for the State of New York—which were product liability cases, not second amendment cases—were briefs for a client and not her own views, just as Chief Justice Roberts described his work for clients. In fact, Hallligan, like many of my colleagues, enjoys shooting and does so from time to time on weekends. Anyone who accepted a meeting with her would have discovered this.

Halligan is not anti-law enforcement in any way. She spent most of her career in law enforcement. New York Police Department Commissioner Ray Kelly, hardly a shrinking violet, hardly a wallflower—he is a tough-on-crime guy; that is why I like him so much, and he is one of the most respected law chiefs in the country—has written a letter in full support of her.

Specifically, Halligan has lived with the consequences of terrorism. She lives not far from the World Trade Center site, and she represented the Redevelopment Corporation there in its post-9/11 efforts. She has personally handled terrorism cases in the New York Manhattan office. In her hearing she stated her beliefs regarding the executive's power to detain terrorism suspects.

I have heard evasive nominees. She was not evasive. She gave completely clear answers to every single question that was asked.

The second possible reason my colleagues might decide to oppose cloture for such a reasonable candidate and such a gifted lawyer is that they want to put their own judges on the D.C. Circuit and they would rather leave it vacant than move Halligan. In other words, it is not that Halligan is extreme—unacceptably extreme in her views; it is simply that she doesn't share all their views. It is one thing to fight against certain judicial nominees with the sincere belief that they are outside the judicial mainstream. It is another for my colleagues to fight against a nominee because they disagree with him or her.

I always look for judges, when I nominate them, who are moderate. I don't like judges too far right. That is obvious. But I equally do not like judges too far left. My judicial panel will tell you, if I think a judge is too far left I will not nominate them, because judges at the extremes, whichever extreme, tend to want to make law, not interpret law. The best judges are those who see things clearly and fairly, not through an ideological lens, whether that lens is colored red or blue. Those are judges who understand the law, understand the role of each branch of government, understand the proper balance between State and Federal power, and understand the people who come before the bench.

I say one other thing to my colleagues. I just finished working with a bunch, four of us on each side, on coming up with a compromise so we could work together better. I want to let my colleagues know—I have done it personally with a few—that this vote, the desire to actually filibuster Caitlin Halligan, is causing a lot of consternation on our side. Clearly, this is a judge who deserves an up-or-down vote. One of the reasons that many of my colleagues—myself included—thought we ought to change the rules was because a judge such as Caitlin Halligan, a nominee such as Caitlin Halligan, should not be filibustered. I have respect for my friends on the other side of the aisle, but when they say—one of my colleagues I heard say this morning—that this one brief she signed with a bunch of others was extraordinary circumstances, that did not ring true. If that is extraordinary circumstances, wearing the wrong color tie or the wrong color blouse would be extraordinary circumstances.

She has a long record. They can hardly find anything. They come up with this one brief. They may not like it. But to say it is extraordinary circumstances? No.

I say to my colleagues, I plead with them—we are trying to start off on a good foot here. We are working together better than we have worked in a long time. Each side has to give. Part of the deal is amendments. They are going to get a lot of amendments on the other side of the aisle. But part of our deal is not to block things for the sake of blocking them or because there is another agenda. That goes not just for blocking legislation but for blocking nominees.

It is true in the deal we made, the agreement we made, it was only for district court judges. That could go seriatim. But the spirit of our compromise applies to this court of appeals nominee, and I have not heard a single good reason why she should be filibustered.

People disagree with her. I voted against some of George Bush's nominees because I thought their views were not quite mine, even if they were not extreme. And everyone on the other side of the aisle has the right to do the same. But not filibuster.

This court is a very important court. We know it makes lots of decisions about government. But that does not give license to block a nominee on what seem to be trivial grounds, inconsequential grounds, given her long career.

So again I urge, plead with my colleagues, please reconsider this cloture vote. Please give her the 60 votes she needs so she can come to the floor and get the up-or-down vote she has waited 23 months for. It violates fairness. It violates the comity we are trying to restore in this body. It violates simple justice to vote no on cloture and to filibuster Caitlin Halligan.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank the Senator for allowing me to go for 3 minutes here before he has the next turn. I appreciate that.

I come to the floor as some of our colleagues have done already, and we just heard from the great Senator from New York, to discuss the nomination of Caitlin Halligan to the D.C. Circuit Court. Caitlin Halligan is currently the General Counsel at the New York County District Attorney's Office. New York County is just another name for Manhattan, so we are talking about a big county and a big office. In fact, it handles about 100,000 criminal cases each year.

Before that, she was Solicitor General of the State of New York for 6 years and the head of the appellate practice at a major law firm. She also clerked on both the D.C. Circuit and the U.S. Supreme Court and has argued five cases in front of the U.S. Supreme Court. That is a resume.

The nonpartisan American Bar Association committee that reviews every Federal judicial nominee gave Halligan its highest possible rating, and over 100 women law professors and deans wrote a letter saying Halligan is exceptionally qualified to serve on the D.C. Circuit. There is no question that she has the experience, ability, and intellect to sit on the Federal bench.

It is also important to recognize that she is not an ideological or partisan nominee. Well-known lawyer Carter Phillips, who was assistant to the Solicitor General in the Reagan administration, has said that Halligan is ''one of those extremely smart, thoughtful, measured and effective advocates'' and that she would be a ''first-rate judge.''

Phillips is not the only conservative lawyer to endorse Halligan. For example, Miguel Estrada signed a letter from 21 prominent attorneys which stated that Halligan ''brings reason, insight and judgment to all matters'' and ''would serve with distinction and fairness.''

Given support like that from people such as Miguel Estrada, I don't think it can be said that Halligan is an extreme ideologue or that she is outside the mainstream of legal thought. Her nomination should not and cannot be blocked.

This is a great candidate who will make a great judge. As New York City Police Commissioner Ray Kelly said about her, she ''possesses the three qualities important for a nominee: Intelligence, a judicial temperament and personal integrity.''

She must be confirmed without delay. Filibusters are about debating issues. This is an individual. We cannot amend her. We simply have to decide whether she is qualified to be on the bench. There is absolutely no doubt. People may not agree with every single thing she said. I don't think anyone in this Chamber agrees with every single thing that judges have said or that people we put on the Supreme Court have said, but we simply came together and stood up for one principle, that our job is to decide if someone is qualified, if they can do the job, if they can interpret the law. This candidate can do it and she can do it well. If Senators ultimately wish to oppose her nomination, fine, that is their choice. But they should not filibuster an extremely qualified candidate. Let her have an up-or-down vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. LEE. Mr. President, I ask unanimous consent for leave to engage in a colloquy with Senator BARRASSO for a period of time not to exceed 15 minutes.

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

SEQUESTRATION

Mr. LEE. Mr. President, the President of the United States has spent the last few weeks campaigning around our great country at taxpayer expense, telling Americans about what he characterizes as the catastrophic impact of the sequester. He said, for example, that the sequester will visit hardship on a whole lot of people. He said it will jeopardize our military readiness, it will eviscerate job-creating investments in education and energy and medical research. He said the ability of emergency responders to help communities respond to and recover from disasters will be disregarded. Border Patrol agents will see their hours reduced. FBI agents will be furloughed. He said Federal prosecutors will have to close cases and simply let criminals go. Air traffic controllers and airport security will see cutbacks, which means more delays at airports across the country. He said thousands of teachers and educators will be laid off and that tens of thousands of parents will have to scramble to find childcare for their kids. And he also continued: Hundreds of thousands of Americans will lose access to primary care and preventive care such as flu vaccinations and cancer screenings.

Today we see the predictions of doom and gloom have not come to pass. We have seen that many of these statements have been severely exaggerated, if not disproven. People in my home State of Utah have found the effects of the sequester to be not quite what the President predicted. One of our local Utah news stations reported that ''there were no signs of sequester pain'' at the airports. When asked about sequestration, one Utahn responded: ''If they can't handle a 2 percent reduction in spending then I guess we need to get better and brighter,'' meaning we need to get better and brighter people running our government.

Other press reports indicate the administration's doomsday claims have misled the public. The Washington Post reported that the Education Secretary's claims about teacher layoffs turned out simply not to be true. And Politico recently published a story showing the President's claims about some capital staff getting pay cuts to be false.

I ask Senator BARRASSO, after all these scare tactics over the last 2 weeks, does the President have a credibility problem with the American people when it comes to the sequester?

Mr. BARRASSO. I believe my friend from Utah is absolutely correct. There is a creditability gap here. These modest cuts should prompt Washington to take a closer look at how we spend taxpayers' money. I saw today that the White House is now—they claim because of the sequester—canceling White House tours. It is astonishing when they say they will not cut the personnel there in terms of the security, but they will cancel the tours. I would invite people from all around the country who are planning a trip to Washington to come to the Senate, come to the House, and come to the Capitol. We will make sure they receive tours if they would like.

Talk about a loss of credibility. The Washington Post evaluates statements of folks, and over the last week they have given Pinocchios for those who are not telling the truth. There has been a parade of Pinocchios—a dozen of these Pinocchios that were given. One statement is the President's false claim on Friday during his news conference that Capitol janitors will be receiving a pay cut. They gave him four Pinocchios for that. It is not true.

''The threat to free meals for seniors,'' there are Pinocchios there. The false claim of pink slips for teachers by the Secretary of Education, another four Pinocchios. There are two Pinocchios for the claim that ''up to 70,000 children would lose access to Head Start and early Head Start services.''

The Senator from Utah mentioned the concerns about the FAA with furloughs and closed air towers. The verdict is still pending on that. There is a parade of Pinocchios for the administration at a time when the American people know so much of their taxpayer dollars are being wasted.

I traveled around Wyoming this past weekend, and people at home think that at least half of the money they send to Washington is wasted. It is time now to take an opportunity to eliminate wasteful and duplicative spending. We should streamline the Federal bureaucracy. We should make government programs more efficient. We should be more thoughtful in terms of how targeted cuts will work to ensure vital programs continue without interruption.

At the end of the day, we should make sure taxpayers are getting value for their hard-earned dollars. The administration does not see it that way at all. Instead of promoting responsible spending, the administration is promoting panic.

As Senator LEE pointed out, the administration is threatening the American people with pink slips for teachers, cuts to airport security, cuts to the Coast Guard patrols, cutting border patrol and enforcement, closing national parks, cutting food safety inspections, eliminating Head Start, Meals on Wheels, and the list goes on.

We need to be honest with the American people that we are $16.5 trillion in debt. That is not a threat; it is the truth. We can no longer afford to ignore the truth. Washington is burying our children and grandchildren under a mountain of debt, and if we don't treat Washington's spending addiction, the problem is just going to get worse. We must not allow the debt to tie the hands of future generations and prevent them from reaching their dreams.

I believe we have to take responsibility for the reality we are facing and we have to take action to change the course we are on. Of course, that means difficult decisions have to be made, but these decisions don't need to be reckless. They don't need to be dangerous. They don't need to imperil our students, teachers, military, senior citizens or our national security. They need to be smart, they need to be targeted, and they need to maximize the value of each dollar spent and minimize the risks and burdens to taxpayers.

I say to my colleague from Utah that instead of hitting taxpayers where they will feel it the most, the administration has an obligation and a responsibility to work hard to cut spending where the need is the least. I know the leadership the Senator from Utah has shown on ''Cut this, not that'' is something I think Americans would agree with completely.

Mr. LEE. I thank my friend, Senator BARRASSO. I find it interesting that what the Senator has observed on the streets of towns such as Evanston, Cheyenne, and Gillette in Wyoming is backed up by a recent poll conducted by Gallup. That poll shows Americans understand that a lot of money Washington spends is wasted. This Gallup poll shows that the average American believes Washington wastes 51 cents out of every $1 it spends—51 cents. More than half of every dollar that hard-working Americans earn and send to Washington gets wasted.

Congress and the President should be working together to target, reform, reduce, and eliminate wasteful spending

that the American people are noticing. They should be working to get rid of and reform ineffective programs.

Meanwhile, the President is threatening to make cuts to government spending as painful as it can possibly be. Instead of targeting waste, the President is using scare tactics to persuade Americans that cuts have to come first from important services such as law enforcement, national security, border patrol, first responders, and educators.

Just today, the administration announced it was going to furlough schoolteachers who educate the children of military families on U.S. military bases, recognizing, of course, that most school systems are operated at the State and local level. They are funded primarily at the State and local level. The administration started focusing on educators who teach on base to military families, suggesting that those teachers would have to be furloughed.

Republicans have a better idea. The Senate Budget Committee—and in particular the ranking Republican serving on the Senate Budget Committee—has found that the cost of President Obama's recent golf vacation with Tiger Woods cost Americans an amount of money that, if saved, would have allowed us to prevent the furlough of 341 Federal employees. Can the President cancel a vacation or two in order to avoid some of these furloughs? That is the question that has prompted us to start this information campaign that we refer to as ''Cut this, not that,'' as depicted in this graphic.

This graphic shows under ''Cut this,'' golf vacations by the President, and under the ''not that,'' it shows military base teachers. That is what we should be focusing on. That is where we ought to prioritize. We need to identify those areas where there could be a lower priority attached to something we are already spending money on. ''Cut this, not that'' sends a message to the President and the American people that Washington should be setting spending priorities rather than wasting their hard-earned tax dollars.

I ask the Senator—through the Chair—how can it be that this administration chooses to cut border law enforcement, first responders, and educators instead of the fraud and waste that is so rampant in the government?

Mr. BARRASSO. I appreciate the question. My friend is absolutely correct. The cuts threatened by the administration simply defy common sense and logic. Despite claims to the contrary, the President actually does have a choice. He can take a thoughtful, reasoned approach to implementing the sequester by cutting wasteful spending that we all know exists or he can continue to threaten and scare the American people with needless cuts to vital programs and services.

I put together a list of a few places where I would encourage the President to look for reasonable cuts because there are so many programs that are inefficient, ineffective or overlap with other programs. There are over 80 economic development programs that operate out of 4 different Cabinet agencies: the Department of Agriculture, Commerce, Housing and Urban Development, and Small Business.

There are 173 programs promoting science, technology, engineering, and math education across 13 agencies. These are important, but do we need 173 programs when one department of the government doesn't know what the other one is doing?

There are 20 agencies that oversee more than 50 financial literacy programs. There are more than 50 programs supporting entrepreneurs across 4 different departments of government. There are 47 different job training programs. Is job training important? Absolutely. There are 47 different programs, 9 different agencies, and it cost $18 billion in fiscal year 2009. Out of 47 programs, only 5 of them have had an impact study completed since 2004 to see if they actually work and whether participants in the program actually get a job. These have not been reviewed since 2004. Do we know they work? Do we need 47? Could they be improved upon?

We are looking at this sequester. The President proposed this sequester. The President signed the sequester into law, and now he claims he cannot live with the effects. I am here to say he is wrong. Responsibly implementing the cuts from the sequester is not only possible, I believe it is necessary, as we see here: ''Cut this, not that.''

This debate is not about—as we read in the Washington Post—the President trying to force it to an election to the House of Representatives in 2014, it is about the economy and the future of our country. It is not just about smaller government, it is about smarter government. People think they are not getting value for their money.

I believe it is past the time for Washington to take the smarter approach to our Nation's spending addiction, and I appreciate the leadership of the Senator from Utah.

Mr. LEE. I thank the Senator. It is important for us to recognize that all these observations draw back to one central conclusion, which is that the sequester and wasteful spending we see so rampant throughout our Federal Government is the natural product of the failure by the majority leadership in the Senate to work with Republicans to pass a budget.

Last year, in the Senate, Republicans proposed 3 different budgets and received as many as 42 votes. That is 42 more votes than the President's budget received in this body last year or the year before or in the House last year or the year before.

The majority party in the Senate—those in charge of this body and elected to lead in this body—have refused even to propose a budget for the country for more than 1,400 days.

We have spending priorities. I am sure my friends across the aisle have spending priorities as well. It is time we do the right thing for the American people. We need to sit down and have an open and honest dialog with the American people and with each other. We need to hammer out these ideas and come up with a budget that fairly and accurately represents the priorities of the American people. We need to pass a budget, and I urge my colleagues to do so.

I thank the Chair.

I yield the floor.

Mr. BARRASSO. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. WARREN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. COBURN. Madam President, I ask unanimous consent to speak as in morning business for such time as I may consume.

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

Mr. COBURN. Madam President, I also ask unanimous consent to use an oversized poster.

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

GOVERNMENT WASTE AND DUPLICATION

Mr. COBURN. Madam President, there has been a lot made of the sequester and the things that may or may not happen associated with it. Having spent the last 8 years looking at the Federal Government, I wrote the Secretary of Agriculture a letter this week outlining some things they could do that would not put in jeopardy food inspection and other things.

In my 8 years of looking at the Department of Agriculture, there is extensive waste and duplication—the GAO has confirmed that—and those things should be cut first and eliminated and consolidated before staffs that are in critical positions are furloughed.

The USDA currently has 120,000 employees, and they have over 16,000 offices. Just thinking about 16,000 offices ought to give us some pause. Why would any agency, no matter what their requirements, need that number of offices? The agency notes on their Web site that if they were a private company, they would be the sixth largest private company in America. That is how big the USDA is and how diffusive.

Today, there is one USDA employee for every eight farmers—one USDA employee for every eight people employed in the farm area—or, overall, one USDA employee for every 18 farms, primary or otherwise. So weekend farmers have a USDA employee, and for regular farmers—people where it is their primary business—there is an employee for every eight of them.

At the end of 2012, USDA was sitting on $12 billion in unobligated Federal balances. In other words, that is money that is sitting in an account that has not been obligated to any purpose, sitting there waiting to be spent, where we have borrowed money—$12 billion—that they have not obligated.

One of the things my staff has discovered is the USDA has upcoming conferences in terms of food tasting and wine tasting on the west coast. Now, in normal times there would not be anything wrong with Federal employees traveling to the west coast to both encourage and assess where we are in terms of some of our agricultural production. But I would think maybe this is one of the things the U.S. Department of Agriculture ought to cancel, given where we are and the threat that has been put out there in terms of food safety that has been announced in terms of layoffs or time off for Agriculture Department employees.

Two USDA agencies—Rural Development and the Agricultural Marketing Service—are sponsoring the 26th annual California Small Farm Conference next week. In addition to speakers from the USDA agency, the gathering will feature field trips and tasting receptions. ''The Tasting Reception,'' according to their Web site, ''is the most well attended networking event of the conference and showcases the regional bounty from local farms, chefs, wineries, breweries, bakeries and other food purveyors.'' And ''special guest chefs will turn donated local agriculture products into tasty dishes to sample with exceptional local wines [provided].''

There is nothing wrong with that in normal times. There is plenty wrong with sending multiple employees to these types of conferences when we find ourselves in the position we find ourselves in today. These conferences, I am sure, are fun, interesting, and even educational getaways for USDA employees, but food inspecting rather than food tasting should be the USDA's priority at this time.

Not just to pick on them, but the thing is Americans are not aware of how expansive and duplicative many of these programs are. In the domestic food assistance programs, as shown on this chart, this is what GAO shows us we have running: 18 different Federal programs across three Departments that spend $60 billion a year.

According to the GAO, the availability of multiple programs with similar benefits helps ensure that those in need have access to nutritious food, but it also does increase the administrative costs of these programs.

So while our goal is great, with the fact that we have this many programs doing essentially similar work with similar overheads, the GAO's recommendation was to do consolidation. Fifteen of these programs are run by the Department of Agriculture, ranging from SNAP to the Fresh Fruit and Vegetable Program and the Special Milk Program.

According to the GAO, the effectiveness of 11 of these 18 programs is suspect. The reason it is suspect is nobody has done any oversight. No Member of Congress has done oversight on it—not the Budget Committee, not the Appropriations Committee, nor the Agriculture Committee.

We also have inside the USDA research and education activities within the Rural Development programs that duplicate, predominately, existing programs of almost every other agency in the Federal Government. Let me say that again. Almost every one of these programs is duplicated in another agency of the Federal Government. In other words, we are layering. They both have the same goals, the same hope for outcomes. One is run by one agency. Here are the ones that are run just by the USDA.

According to GAO, the Rural Development program administers 40 housing programs, business, community infrastructure and facility programs, as well as energy, health care, telecom programs, most of which duplicate the initiatives of other agencies, yet under the guise of serving exclusively rural citizens. Rural populations are not excluded from the other programs which are run with the same purpose that serve the general population. According to the Congressional Research Service, more than 88 programs administered by 16 different Federal agencies do the exact same thing these programs do. So we have 88 other programs from 16 different Federal agencies that are targeting rural economic development and needs.

It is not hard to see why we are in trouble. The GAO has done the work we have asked them to do. The appropriate committees have not addressed any of these issues. They have not offered any amendments or bills to reduce, consolidate, or at least look at the outcomes and the cost-benefit ratio of having multiple layers of programs doing the same thing.

Let me give you some questionable expenditures of what we have seen in the last year: a $54 million loan to build a casino; $1.6 million in loans for an asbestos removal company. It created hundreds of jobs in Guatemala and eventually went out of business and defaulted on the loan. There is $2.5 million in low-interest loans for the construction of the Smithsonian-style Birthplace of Country Music Cultural Heritage Center; a Tennessee county spent $10,000 of a Federal Rural Development grant to upgrade its tourism Web site; $12,500 went to Milk And Honey Soap, LLC for the marketing of soaps and lotions made from goat's milk and beeswax. These are private businesses, and we are taking taxpayer money, or we are borrowing the money, and we are subsidizing private individual businesses with grants.

We also have within the USDA research and education activities: the National Institute of Food and Agriculture spent $706 million last year on research and education activities through more than 45 different programs. Meanwhile, their Agricultural Research Service has budgeted $1.1 billion annually and is home to an additional eight Federal research and educational activity programs.

So what we have is layer after layer after layer—most of them well-intentioned. I am not denying that some of these are significant roles of Federal Government. But Congress is the problem because we have not addressed any of the recommendations the Government Accountability Office has given us in the two reports thus far, and the final report that will come out this year on overlap and duplication.

Finally, I wish to talk about the USDA's Market Access Program. At the request of Congress, the U.S. Department of Agriculture spent more than $2 billion on the Market Access Program, which has directly subsidized the advertising of some of the most profitable companies and trade associations doing business overseas. So we are subsidizing companies such as Welch's, Sunkist, and Blue Diamond. The combined sales are greater than $2 billion a year, and we gave them $6 million last year to advertise their products.

It is one thing to promote exports, but we do not do that with every other business in America. Not every business that has $2 billion in sales gets $6 million of the Federal taxpayers' money to promote their products overseas.

So we have this disparity. I do not know if this is good policy or bad policy. What I do know is, it is discriminatory in terms of how we treat one group of businesses versus another group of businesses.

Also receiving money from the taxpayers for private overseas advertising are trade groups such as Tyson Foods, Purina, Georgia Pacific, Jack Daniels, Hershey's, the California wine industry. They have domestic sales of $18 billion a year. They took in $7 million to promote their products overseas. The Cotton Council, on behalf of America, received $20 million from the Market Access Program and another $4.7 million from the USDA Foreign Market Development Program.

So I come to the floor so the American people can see that we have plenty of ways to save money. What we have is an intransigence in Congress to do the hard work and also an intransigence by the administration to recognize the need to lead on eliminating these areas of duplication.

Last week on the floor, I put a letter into the RECORD from the mayor of McAlester, OK. The Presiding Officer is a native of Oklahoma. She knows that town. He had a budget shortfall. He outlined the steps he went through with the help of the city manager to meet that. They did it in a way we would all be proud of. He gave us an example.

Today I ask unanimous consent to have printed in the RECORD a letter

from the mayor of the Los Angeles County Board of Supervisors in terms of what they have done.

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

BOARD OF SUPERVISORS,
COUNTY OF LOS ANGELES,
Los Angeles, CA, April 29, 2011.

Hon. TOM COBURN,
Senate Russell Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR COBURN: I commend you and your colleagues with your bipartisan effort to reduce spending, taxes, debt and forge a more streamlined and ''right size'' a cost-effective federal government.

While Los Angeles County's $23.5 billion budget pales in comparison to the United States budget, some of the successful reforms implemented by our County Board of Supervisors could result in similar results for the federal budget.

Since 70–80% of the federal budget consists of personnel compensation, productivity and efficiency can be improved by consolidating and eliminating agencies, programs and personnel with duplicative or overlapping functions. Every federal department and agency should be evaluated, services prioritized, programs streamlined and all waste eliminated.

Many federal agencies and departments have traditionally inflated their budgets with unfilled positions. Those that have been vacant for more than 12 months should be eliminated. Employees who have left their positions due to injury or illness need to be aggressively pursued to ensure that their conditions are legitimate.

It is also vital to reform the civil service process and the public employee pension system. Some states are adopting forward-thinking reforms including reducing pension benefits for new hires and establishing a defined benefits program for current employees.

These common sense solutions have allowed us to consistently balance our County budget and could serve as guidelines in your effort to ''right size'' the federal government.

Best regards,

MICHAEL D. ANTONOVICH,
Mayor, Los Angeles County.

Mr. COBURN. This was a letter I received in 2011 when we started raising the issue of duplication and making tough choices so that we could continue to provide benefits, we could continue to create and support a safety net for those who were truly dependent on it, but we do not waste money we do not have, spending it on things we do not absolutely need.

I would put forward that when we have a multitude of programs and they overlap, we as Members of Congress do not have an excuse for not fixing that, because the things that are critical in people's lives eventually are going to suffer. Every dollar we spend on low-priority duplication, every dollar we spend that does not have a metric to say it is doing what it is should be doing is eventually going to be a dollar that is not there to support a food stamp recipient or a Medicaid recipient or housing for the indigent or care for the homeless or implementing Justice grant programs for policing and tribal courts.

So it is not a matter of just solving the duplication problem, it is a matter of the arithmetic that is going to hit our country and that by delaying the time at which we decide we are going to address this multitude, which is now 1,400 programs through the first 2 years of reports from GAO and $367 billion of expenditures—and that does not count the other $800 billion that goes out of the Federal Government every year for grants that also address some of these same issues. So the time is now. Sequestration gives us a good time to start looking at priorities.

One of the things I am thankful for is that we have tremendous Federal employees. We are starting to hear them speak up now: What can be cut? What is wasteful? They now feel the freedom to not be criticized because they are going to take a critical eye to the way American taxpayer dollars are being spent in their own agency. We are starting to hear from them: Here are things we are doing that we should not be doing. Here are things that are not a priority. Rather than lay off a meat inspector, maybe we ought to do this: ''Cut this, not that.'' You know, we ought to cut out wine tastings for Federal employees and keep the meat inspectors employed.

There is no reason we need to furlough the first—with the waste in the Department of Agriculture, there is no reason that any significant program in the Department of Agriculture ought to suffer a furlough or layoff. There is no reason for it because there are billions of dollars there that are not wisely spent—well intended, not questioning motive, but poorly spent with poor return.

When there are two programs doing the same thing, let me describe what happens on the beneficiary end of that. People do not know where there is a need. What the requirement is in one program is a different requirement in another program. In terms of duplicative grants, what we have is people who apply for a grant and get it from one arm of the Department of Agriculture and then go over here and make the same application from another arm of the Department of Agriculture, get the same grant, and then go to one of the other agencies that is doing the same thing and get another grant for the same thing—all of them not knowing that each has given a grant for the same purpose. So it is just not good business practices, it is not good management, and it is not good stewardship for the future of our country.

So I would ask my colleagues to think about the great work the Government Accountability Office has done. They have done great work for us. We have failed to act on it. It is time we start acting. Come April 1, we will see the final report from the GAO where they now—over 4 years—will have looked at every program in the Federal Government. They are going to be able to give us a list. I have come out here with my big charts and shown the list of duplications. We are going to have three or four more charts that say the same thing. Think about how discouraging it is to the people at GAO who do all of this hard work and to the people who are trying to meet the needs in the individual agencies to know that we are actually duplicating things with poor results.

We are not meeting our requirements under our oath. We are not meeting the moral requirements to be prudent with the American taxpayers' money. In the long run, the people who will suffer for it will be the very people we intend to help because if, in fact, we do not respond in a way that creates a positive vision for our country in terms of growth again and a positive vision in terms of responsible behavior by Congress, ultimately the arithmetic swallows us up.

I will close with this: If you take today's budget, when the Federal Reserve starts unwinding the quantitative easing they have done—these very low, artificially low interest rates—or if something were to happen where the world economy would look at us and say: We do not think you are deserving of our AAA-minus rating—the difference in interest costs historically is about 3 to 4 percent. Let's take a conservative estimate; let's say it is 3. Our historical average is 5.83 percent, what we have borrowed money at historically over the last 50 years. We are borrowing at under 2 percent right now. Three percent times $17 trillion is $510 billion a year. We all lose when that happens. How do we lose? Because the dollar we are going to be spending on that additional interest cost is a dollar that is not going to help someone who is homeless, it is a dollar that is not going to provide food that needs to be provided for those who are depending upon us, and it is a dollar that is not going to go to match the FMAP for Medicaid. Consequently, the cuts we will make then will be much harsher than the cuts if we decide to do it proactively now.

You do not have to have partisan disagreement about the goal of a program, but certainly we should be able to come together and say: We do not want duplication. We want to have good outcomes. We want to put metrics on it to measure it to see if it is working.

There cannot be any disagreement on that. That is plain, good-old common horse sense. Yet there has been no action in 3½ years on any of these recommendations by the Government Accountability Office. Now, the administration has paid attention. I will give them credit. In a lot of areas where they have seen it, they have done what they can do, but we have not. I do not want the heritage of my time in the Senate to be when we were the Congresses that failed to meet the challenge.

I believe our country can cheat history. If you look at history, it is not great for republics. They have all failed. But we have the opportunity to cheat history, and the way we do it is by getting off our rears and starting to

do the job we were sent up here to do, which is oversight and legislate the elimination of waste, abuse, and duplication. We can do that, but it requires leadership. It requires leadership on the part of Senator REID, on the part of Senator MCCONNELL, every committee chair, every ranking member. It requires leadership that we are going to do that.

I am proud to say that TOM CARPER, chairman of Homeland Security—we have a plan to oversight all of homeland security over the next 4 years, the whole thing, and the rest of the government as well because we do not really believe the rest of the committees are going to do it. So we are building our staffs for oversight to grab this information, to make cogent recommendations and legislation, where we can, that will actually address these problems. We are way past the starting point of when we should have begun. It is not too late, but it requires us to make a decision: Are we more interested in the parochial benefits of allowing programs that are not effective or duplicative to continue to run because we will not get any blowback or are we courageous enough to say that we are going to do what is right for the right reasons for the long-term well-being of our country?

I believe that is the feeling of most of the Members of the Senate. I just think we need the leadership to call us back.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. LEE. Madam President, I rise today to speak in opposition to the nomination of Caitlin Halligan to be a circuit judge on the U.S. Court of Appeals for the District of Columbia Circuit.

The D.C. Circuit is arguably the most important Federal appellate court in our country's judicial system, with primary responsibility to review administrative decisions made by many Federal departments and executive branch agencies. It has also served, in many instances, as a stepping stone of sorts for judges later appointed to the U.S. Supreme Court. As a result, the Senate has a longstanding practice of carefully scrutinizing candidates to the D.C. Circuit.

When evaluating particular nominees, we also carefully consider the need for additional judges on that very court. In July 2006 President Bush nominated an eminently qualified individual named Peter Keisler to fill a seat on the D.C. Circuit. Mr. Keisler, whom I know personally, is among the finest attorneys in the country and is also among the finest individuals I know. Because of his nonideological approach to the law, Mr. Keisler enjoys broad bipartisan support throughout the legal profession. Despite these unassailable qualifications, Democratic Senators blocked Mr. Keisler's nomination. He did not receive any floor consideration whatsoever, not even a cloture vote, and his nomination languished in the Judiciary Committee. At the time a number of Democratic Senators sent a letter to the Judiciary Committee chairman arguing that a nominee to the D.C. Circuit ''should under no circumstances be considered—much less confirmed—before we first address the very need for that judgeship.'' These Senators specifically argued that the D.C. Circuit's comparatively modest caseload in 2006 did not justify the confirmation of an additional judge to that Court, even though this was a position that by law already existed.

More than 6 years have passed, and Ms. Halligan has been nominated once again to that very same seat on the D.C. Circuit—the same seat for which Peter Keisler was nominated—but the court's caseload remains just as minimal as it was then. According to the Administrative Office of the U.S. Courts, the D.C. Circuit caseload is so light that the number of appeals pending per judicial panel is 54 percent less than the average for Federal courts of appeal. With just 359 pending appeals per panel, the D.C. Circuit's average workload is less than half that of other similar appellate courts.

The D.C. Circuit caseload has actually decreased since the time Democrats blocked Mr. Keisler. Indeed, since 2005 the total number of appeals filed is down over 13 percent. The total number of appeals pending is down over 10 percent. Some have sought to make much of the fact that since 2005, two of the court's judges have taken senior status, leaving only seven active judges on the D.C. Circuit today. But the court's caseload has declined so much in recent years that even filings per active judge are only slightly higher than they were in 2005. Of course, that does not account for the six senior judges on the D.C. Circuit who continue to hear appeals and offer opinions on a regular basis. Their contribution—the contributions of the senior judges on that court—is such that the actual work for each active judge has declined and the caseload burden for D.C. Circuit judges is less than it was when Democrats blocked Mr. Keisler on the basis of a declining, insufficient caseload.

Indeed, the average filings per panel—perhaps the truest measure of the actual workload per judge in the U.S. Court of Appeals—is down almost 6 percent since that time.

In each of the last several years, the D.C. Circuit has cancelled regularly scheduled argument dates due to the lack of pending cases. Those who work at the courts suggest that in reality the workload isn't any different today than it has been in the past.

According to the Democrats' own standards, and particularly when there are judicial emergencies in other courts across the country, now is not the time to confirm another judge to the D.C. Circuit. It is certainly not the time for us to consider confirming a controversial nominee with a record of extreme views with regard to the law and the Constitution.

Make no mistake, Ms. Halligan is not what we would call a consensus nominee. The Senate has already considered and rejected her nomination. Nothing material has changed since that time.

Many of my colleagues have discussed a wide range of Ms. Halligan's views, so I will limit myself to one example. In 2003, while serving as Solicitor General for the State of New York, Ms. Halligan approved and signed a legal brief arguing that handgun manufacturers, wholesalers, and retailers should be held liable for criminal actions that individuals commit with those guns. Three years later, in 2006, Ms. Halligan filed another brief arguing that handgun manufacturers were guilty of creating a public nuisance.

Such arguments amount to an invitation for the courts to engage in sweeping judicial activism. The positions she took are both bewildering and flatly inconsistent with the original understanding of the second amendment rights all Americans enjoy.

In conclusion, as measured by the Democrats' own standards and their own prior actions, now is not the time to confirm another judge to the D.C. Circuit, and it is certainly not the time to consider such a controversial nominee for that very important court. The Senate has already spoken and rejected Ms. Halligan's nomination. I urge my colleagues once again to oppose her confirmation.

Mrs. BOXER. Mr. President, I rise today to vigorously support the confirmation of Caitlin Halligan to the D.C. Circuit Court of Appeals. Ms. Halligan is an exceptionally qualified nominee, and the D.C. Circuit needs her. I urge all my Senate colleagues to join me in voting for her.

The breadth and depth of Ms. Halligan's legal experience and expertise are very impressive. After law school, she clerked for Supreme Court Justice Stephen Breyer and for Judge Patricia Wald on the D.C. Circuit, the court to which she has been nominated. She continued her public service as the solicitor general of the State of New York for 6 years, spent some time in the private sector, and is currently general counsel at the New York County District attorney's office, an office that investigates and prosecutes 100,000 criminal cases annually in Manhattan. Throughout her career, Ms. Halligan has served as counsel of record in nearly 50 matters before the U.S. Supreme Court, arguing five cases before that court and many cases before Federal and State appellate courts. Her legal and oral advocacy training is as extensive as any nominee that the Senate has confirmed.

One of the reasons I wanted to speak about Ms. Halligan today is because

her reputation precedes her. The American Bar Association's nonpartisan standing committee on the Federal Judiciary unanimously rated Ms. Halligan ''well-qualified'' to serve on the D.C. Circuit, the highest possible rating. Messages of support for her nomination have poured in from hundreds of female law school deans and professors, former U.S. Supreme Court clerks and current judges, preeminent lawyers across the political spectrum from Ronald Reagan's solicitor general to the legendary D.A. Robert Morgenthau, and law enforcement associations. Put simply, this woman has proven herself to be worthy of our vote and the public's trust.

But there is another reason we must confirm Ms. Halligan today: the unacceptable delay in her nomination is causing a growing gap in the D.C. Circuit Court of Appeals. Ms. Halligan was first nominated by President Obama three years ago. Now, this important court in our country—often called ''the second most important court in our land'' because of the high profile, complex cases it handles—is one-third vacant. The caseload for the existing judges is growing, and justice is being held up.

Finally, if confirmed, Caitlin Halligan would become only the sixth female judge in the D.C. Circuit's 120-year history, a change I would certainly welcome for this important court. We need to continue building on the important legacy of diversity and inclusion that President Obama has established by nominating record numbers of women to the Federal bench. Thanks to his leadership, women today make up roughly 30 percent of the Federal judgeships at every level for the first time in history: in trial courts, courts of appeal, and the Supreme Court. This diversity bolsters the legitimacy of our court system, and the public's confidence in it. We should continue this progress by confirming Ms. Halligan.

For all these reasons, I look forward to voting for Caitlin Halligan's nomination to the D.C. Circuit Court of Appeals, and I urge my colleagues to do the same. Let's fulfill our constitutional obligation to keep our judicial system working efficiently and fairly for the American people.

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent the Senate consider the following nominations: Calendar Nos. 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, with the exception of Calendar No. 28 Colonel Scott C. Long, and all nominations placed on the Secretary's desk in the Air Force, Army, and Navy; that the nominations be confirmed en bloc; the motions to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to any of the nominations; that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

IN THE AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brigadier General Arnold W. Bunch, Jr.
Brigadier General Theresa C. Carter
Brigadier General Sandra E. Finan
Brigadier General Jeffrey L. Harrigian
Brigadier General Timothy J. Leahy
Brigadier General Gregory J. Lengyel
Brigadier General Lee K. Levy, II
Brigadier General James F. Martin, Jr.
Brigadier General Jerry P. Martinez
Brigadier General Paul H. McGillicuddy
Brigadier General Robert D. McMurry, Jr.
Brigadier General Edward M. Minahan
Brigadier General Mark C. Nowland
Brigadier General Terrence J. O'Shaughnessy
Brigadier General Michael T. Plehn
Brigadier General Margaret B. Poore
Brigadier General James N. Post, III
Brigadier General Steven M. Shepro
Brigadier General David D. Thompson
Brigadier General Scott A. Vander Hamm
Brigadier General Marshall B. Webb
Brigadier General Burke E. Wilson
Brigadier General Scott J. Zobrist

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Nina M. Armagno
Colonel Sam C. Barrett
Colonel Steven L. Basham
Colonel Ronald D. Buckley
Colonel Carl A. Buhler
Colonel John A. Cherrey
Colonel James C. Dawkins, Jr.
Colonel Patrick J. Doherty
Colonel Dawn M. Dunlop
Colonel Thomas L. Gibson
Colonel James B. Hecker
Colonel Patrick C. Higby
Colonel Mark K. Johnson
Colonel Brian M. Killough
Colonel Robert D. LaBrutta
Colonel Russell L. Mack
Colonel Patrick X. Mordente
Colonel Shaun Q. Morris
Colonel Paul D. Nelson
Colonel John M. Pletcher
Colonel Duke Z. Richardson
Colonel Brian S. Robinson
Colonel Barre R. Seguin
Colonel John S. Shapland
Colonel Robert J. Skinner
Colonel James C. Slife
Colonel Dirk D. Smith
Colonel Jeffrey B. Taliaferro
Colonel Jon T. Thomas
Colonel Glen D. VanHerck
Colonel Stephen N. Whiting
Colonel John M. Wood

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. Robin Rand

IN THE ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lt. Gen. John M. Bednarek

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

General Lloyd J. Austin, III

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Lieutenant General Robert L. Caslen, Jr.

The following named officer for appointment as the Vice Chief of Staff of the Army and appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., sections 601 and 3034:

To be general

Lt. Gen. John F. Campbell

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

to be general

Lt. Gen. Vincent K. Brooks

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be general

Gen. David M. Rodriguez

IN THE MARINE CORPS

The following named officer for appointment in the United States Marine Corps Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. Paul W. Brier

IN THE NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Admiral William H. Hilarides

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Joseph P. Aucoin

NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE AIR FORCE

PN142 AIR FORCE nominations (2) beginning ALAN S. FINE, and ending PAUL R. NEWBOLD, which nominations were received by the Senate and appeared in the Congressional Record of February 7, 2013.