constitutional challenge is presented, but I think that authority has to be exercised very sparingly and very carefully.

Time and time again she answered similarly with clear and unambiguous answers.

Some of my colleagues have accused Halligan of lacking candor in her answers. Well, I have sat through a lot of hearings for nominees to Federal courts of appeals, and I know evasion when I see it. Halligan was not evasive. Some of the same people who say she lacked candor still defend Miguel Estrada who didn't answer a single question because he might come before them as a judge.

She answered questions thoughtfully and forthrightly and explained the context of any past statements that might have seemed to have contradicted her current views.

This morning, some of my colleagues on the other side of the aisle pointed to two things that she did not write to try to indicate she has activist views. First, she gave a speech in 2003 on behalf of her boss, Elliott Spitzer, that she did not write herself. In fact, she stepped in at the last minute to give the speech when he could not make it. She did not write it, and she clarified at the time that it did not reflect her personal views.

Second, she was a member of a committee that issued a report on Executive power and enemy combatants. She explained in the committee she hadn't seen the report and didn't agree with either its content or its tone. In her hearing she clearly stated her views on Executive power. This should have cleared up any doubt about her ability to recognize and respect the current state of law.

Finally, I wish to say a word about a red herring argument that has been raised today—that the workload of the DC Circuit is too low to confirm Halligan. I have expressed this concern, too, and, in fact, in 2008 we voted to take away one of the seats in the DC Circuit. It now has 11 judges rather than 12; but I, as well as many of my colleagues on both sides of the aisle have in the past reserved our concern for nominees of the 11th seat and what was then the 12th seat. Halligan has been nominated for the 9th seat. There are only 8 members on that court which now has a roster of 11. The 10th and 11th seats remain vacant. No one ever until now, on either side of the aisle, has ever argued that the DC Circuit should have only eight judges.

I wonder, if control of the body changes, which I don't think it will, or we get a Republican President, which I don't think we will, how quickly our colleagues on the other side of the aisle will abandon that foolish and specious argument.

I am concerned that we are hearing it now for the first time because the current makeup of the court happens to have five Republican appointees and three Democratic nominees.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be given 1½ more minutes to finish this point.

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

Mr. SCHUMER. When we confirmed President Bush's nominee to the 11th seat in 2005, Thomas Griffith, his confirmation resulted in there being 121 pending cases per judge. We did not hear a peep out of the other side that that was too low. Yet today there are 161 cases per judge. With Halligan's confirmation, it would go down to 143—far more than the 121 when all my colleagues on the other side of the aisle voted for Mr. Griffith, the Republican nominee of President Bush. So there is no reason to argue about caseload.

The fact is, if we cannot confirm Halligan, this will not go down as a vote about caseload, this will be recorded as a new bar for nominees.

In conclusion, when Caitlin Halligan drove with her father from her home in Kansas City to Harvard or when she was a standout student at Georgetown Law School or when she started her work for the New York Attorney General's Office, I am sure she could not have imagined that someday she would be the topic of a debate in the U.S. Senate about whether she was too radical or lacked the candor to be a judge.

I hope that when we vote and the debate is over, my colleagues recognize the truth here: Halligan is a sterling example of a public servant who has worked hard, earned every honor she has received, and fits squarely within the mainstream of judicial thought. She deserves an up-or-down vote today, and I will be proud to cast my vote for cloture on Caitlin Halligan's nomination.

I thank the Chair.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Charles E. Schumer, Christopher A. Coons, Amy Klobuchar, Al Franken, Richard Blumenthal, Sheldon Whitehouse, Richard J. Durbin, Dianne Feinstein, Herb Kohl, Kirsten E. Gillibrand, Tom Udall, Ron Wyden, Robert P. Casey, Jr., Sherrod Brown, Jeanne Shaheen.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. HATCH (when his name was called). Present.

The yeas and nays resulted—yeas 54, nays 45, as follows:

[Rollcall Vote No. 222 Ex.]

YEAS — 54

Akaka	Hagan	Murray
Baucus	Harkin	Nelson (NE)
Begich	Inouye	Nelson (FL)
Bennet	Johnson (SD)	Pryor
Bingaman	Kerry	Reed
Blumenthal	Klobuchar	Reid
Boxer	Kohl	Rockefeller
Brown (OH)	Landrieu	Sanders
Cantwell	Lautenberg	Schumer
Cardin	Leahy	Shaheen
Carper	Levin	Stabenow
Casey	Lieberman	Tester
Conrad	Manchin	Udall (CO)
Coons	McCaskill	Udall (NM)
Durbin	Menendez	Warner
Feinstein	Merkley	Webb
Franken	Mikulski	Whitehouse
Gillibrand	Murkowski	Wyden

NAYS—45

Alexander	DeMint	McCain
Ayotte	Enzi	McConnell
Barrasso	Graham	Moran
Blunt	Grassley	Paul
Boozman	Heller	Portman
Brown (MA)	Hoeven	Risch
Burr	Hutchison	Roberts
Chambliss	Inhofe	Rubio
Coats	Isakson	Sessions
Coburn	Johanns	Shelby
Cochran	Johnson (WI)	Snowe
Collins	Kirk	Thune
Corker	Kyl	Toomey
Cornyn	Lee	Vitter
Crapo	Lugar	Wicker

ANSWERED ''PRESENT''—1

Hatch

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 45, and 1 Senator responded ''present.''

Three-fifths of the Senators duly chosen and sworn having not voted in the affirmative, the motion is rejected.

LEGISLATIVE SESSION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

MORNING BUSINESS

The PRESIDING OFFICER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business until 6 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

(Whereupon, the Senate, at 12:31 p.m., recessed and reassembled at 2:15 p.m. when called to order by the Presiding Officer (Mr. WEBB)).

The PRESIDING OFFICER. The Senator from Florida.