

We are a great and good country. But we are also a country that becomes greater and better because of the diversity brought to our shores. That is true from the beginning of this country to today. Let's make it possible.

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JANE KELLY TO
BE UNITED STATES CIRCUIT
JUDGE FOR THE EIGHTH CIR-
CUIT

NOMINATION OF SYLVIA MAT-
HEWS BURWELL TO BE DIREC-
TOR OF THE OFFICE OF MAN-
AGEMENT AND BUDGET

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

The legislative clerk read the nomination of Jane Kelly, of Iowa, to be United States Circuit Judge for the Eighth Circuit.

The legislative clerk read the nomination of Sylvia Mathews Burwell, of West Virginia, to be Director of the Office of Management and Budget.

The PRESIDING OFFICER. Under the previous order, there will be 90 minutes for debate equally divided in the usual form. The time from 10:30 to 11 o'clock a.m. shall be for debate on Calendar No. 60, and the time from 11:30 a.m. until 12 noon shall be for debate on Calendar No. 64.

The Senator from Vermont.

Mr. LEAHY. Madam President, just last month Senate Republicans filibustered the nomination of Caitlin Halligan to fill a vacancy on the D.C. Circuit that arose when Chief Justice Roberts left the D.C. Circuit to join the Supreme Court 8 years ago. Caitlin Halligan is a woman who is extraordinarily well-qualified and amongst the most qualified judicial nominees I have seen from any administration. The smearing of her distinguished record of service was deeply disappointing.

Senate Republicans blocked an up-or-down vote on her confirmation with multiple filibusters of her nomination and procedural objections that required her to be nominated five times over the last 3 years. To do so they turned upside down the standard they had used and urged upon the Senate for nominees of Republican Presidents. In those days they proclaimed that everything President Bush's controversial nominees had done in their legal careers should be viewed as merely legal representation of clients. They abandoned that standard with the Halligan nomination and contorted her legal rep-

resentation of the State of New York into what they contended was judicial activism. It was not just disappointing but fundamentally unfair to a public servant and well qualified nominee.

Also disconcerting were the comments and tweets by Republican Senators after their filibuster in which they gloated about payback. That, too, is wrong. It does our Nation and our Federal judiciary no good when they place their desire to engage in partisan tit-for-tat over the needs of the American people. I rejected that approach while moving to confirm 100 of President Bush's judicial nominees in just 17 months in 2001 and 2002.

Had Caitlin Halligan received an up-or-down vote, I am certain she would have been confirmed and been an outstanding judge on the United States Court of Appeals for the District of Columbia Circuit. Instead, all Senate Republicans but one supported the filibuster and refused to vote up or down on this highly-qualified woman to fill a needed judgeship on the D.C. Circuit. Now that Senate Republicans have during the last 4 years filibustered more of President Obama's moderate judicial nominees than were filibustered during President Bush's entire 8 years—67 percent more—I urge them to cease their practice of sacrificing outstanding judges based on their misguided sense of partisan payback.

Regrettably, however, Senator Republicans are expanding their efforts through a "wholesale filibuster" of nominations to the D.C. Circuit by introducing a legislative proposal to strip three judgeships from the D.C. Circuit. I am tempted to suggest that they amend their bill to make it effective whenever the next Republican President is elected. I say that to point out that they had no concerns with supporting President Bush's four Senate-confirmed nominees to the D.C. Circuit. Those nominees filled the very vacancies for the ninth, tenth, and even the eleventh judgeship on the court that Senate Republicans are demanding be eliminated now that President Obama has been reelected by the American people. The target of this legislation seems apparent when its sponsors emphasize that it is designed to take effect immediately and acknowledge that "[h]istorically, legislation introduced in the Senate altering the number of judgeships has most often postponed enactment until the beginning of the next President's term" but that their legislation "does not do this." It is just another of their concerted efforts to block this President from appointing judges to the D.C. Circuit.

In its April 5, 2013 letter, the Judicial Conference of the United States, chaired by Chief Justice John Roberts, sent us recommendations "based on our current caseload needs." They did not recommend stripping judgeships from the D.C. Circuit but state that they should continue at 11. Four are currently vacant. According to the Ad-

ministrative Office of U.S. Courts, the caseload per active judge for the D.C. Circuit has actually increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the eleventh seat on the D.C. Circuit. When the Senate confirmed Thomas Griffith—President Bush's nominee to the eleventh seat in 2005—the confirmation resulted in there being approximately 119 pending cases per active D.C. Circuit judge. There are currently 188 pending cases for each active judge on the D.C. Circuit, more than 50 percent higher.

Senate Republicans also seek to misuse caseload numbers. The D.C. Circuit Court of Appeals is often considered "the second most important court in the land" because of its special jurisdiction and because of the important and complex cases that it decides. The Court reviews complicated decisions and rulemaking of many Federal agencies, and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11. These cases make incredible demands on the time of the judges serving on this Court. It is misleading to cite statistics or contend that hard-working judges have a light or easy workload. All cases are not the same and many of the hardest, most complex and most time-consuming cases in the Nation end up at the D.C. Circuit.

Today's nominee is fortunate to be from Iowa and nominated to a vacancy on the Eighth Circuit Court of Appeals. I fully support confirming her and commend Senator HARKIN for recommending her to the President and Senator GRASSLEY for also supporting her confirmation. The confirmation to fill a vacancy on the Eighth Circuit also demonstrates that the caseload argument that Senate Republicans sought to use as justification for their unfair filibuster of Caitlin Halligan was one of convenience rather than conviction. With the confirmation today, the Eighth Circuit will have the lowest number of pending appeals per active judge of any circuit in the country. Yes, lower than the D.C. Circuit. The sponsors of the partisan bill directed as a wholesale filibuster of the D.C. Circuit do not propose the Eighth Circuit, which covers Iowa, Missouri, Arkansas, Minnesota, Nebraska, North Dakota and South Dakota, be stripped of any judgeships.

Although they unnecessarily delayed the confirmation from last year to this year of Judge Bacharach of Oklahoma to the Tenth Circuit, Senate Republicans all voted in favor of confirming him. They did not object, vote against, filibuster or seek to strip that circuit of judgeships even though its caseload per judge is 139, well below that of the D.C. Circuit.

This Iowa nominee has also proven the exception to the practice of Republicans of holding up confirmations of circuit nominees with no reason for months. The Senate is being allowed to