me she supported the conclusions reached by the 2004 report. Again, this issue is particularly troublesome for a nominee to the DC Circuit, where, as I have already said, many of these questions are heard.

There are a number of other aspects of her record that concern me. For instance, she authored an informal opinion on behalf of Attorney General Spitzer regarding New York's domestic relations law. That opinion invoked a theory of an evolving Constitution.

As New York's solicitor general, Ms. Halligan was responsible for recommending to the attorney general that the State intervene in several high-profile Supreme Court cases. She filed amicus briefs that consistently took activist positions on controversial issues, such as abortion, affirmative action, immigration, and federalism.

I will give you some instances. In Scheidler v. National Organization for Women, she supported NOW's claim that pro-life groups had engaged in extortion.

In the twin affirmative action cases of Grutter v. Bollinger and Gratz v. Bollinger, she argued that the use of race in college and law school admissions was not only appropriate but constitutional.

In Hoffman Plastics Compounds v. NLRB, she argued that the NLRB should have the authority to grant backpay to illegal aliens, even though Federal law prohibits illegal aliens from working in the United States.

Ms. Halligan represented New York in Massachusetts v. EPA, where a number of States argued that the Clean Air Act authorized and required the EPA to regulate automobile emissions and other greenhouse gases associated with climate change.

These are just some of my many concerns regarding the nominee's judicial philosophy and her approach to constitutional interpretation.

Based on her record, I do not believe she will be able to put aside her long record of liberal advocacy and be a fair and impartial jurist.

Yesterday, before the votes on the judicial nominations we confirmed, I made a few remarks regarding the history of this seat. So I will briefly review again the approach I have been arguing for more than a decade—and I had the support of other Senators—that there are too many seats and it is an underworked circuit. It may come as a surprise to some, but this seat has been vacant for over 6 years. It became vacant in September 2005, when John Roberts was elevated to Chief Justice of our Supreme Court. But it has not been without a nominee for all that time.

In June of 2006, President Bush nominated an eminently qualified individual for this seat, Peter Keisler. Mr. Keisler was widely lauded as a consensus bipartisan nominee. His distinguished record of public service included service as Acting Attorney General. Despite his broad bipartisan support and qualifications, Mr. Keisler waited 918 days for a committee vote that never came.

But Mr. Keisler was not the only one of President Bush's nominees to the DC Circuit to receive a heightened level of scrutiny. In fact, when President Bush was President, his nominees to the DC Circuit did not simply receive heightened scrutiny but were subjected to every conceivable form of obstruction.

Those of us who were here remember these debates very well: Estrada, Roberts, Griffith, Kavanaugh, Keisler, and Brown. All these nominees had difficult and lengthy processes. This included delays, multiple filibusters, multiple hearings, boycotting markups so we would not have a quorum to vote on their confirmation, including even invoking the 2-hour rule during committee markup and other forms of obstruction.

I have not suggested we repeat all the tactics used by the other side employed during the last Republican administration. I do believe, however, it is important to remind my colleagues of the precedents the other side established for nominees to this circuit.

There is one other relevant fact I would like to briefly discuss in connection with this vote; that is, the workload of the DC Circuit. That gets back to what I have already referred to—that it has been underworked compared to other circuits.

When Peter Keisler was nominated to the same seat, my friends on the other side objected to even holding a hearing for the nominee, based upon concerns about the workload of the DC Circuit. So here is something we tend to agree on, which has gone by the wayside now that we have a nominee from the President of the other party for this same seat. During Mr. Keisler's hearing, one of my Democratic colleagues summarized the threshold concerns. He said:

> Here are the questions that just loom out there: 1) Why are we proceeding so fast here? 2) Is there a genuine need to fill this seat? 3) Has the workload of the DC circuit not gone down? 4) Should taxpayers be burdened with the cost of filling that seat? 5) Does it not make sense, given the passion with which arguments were made only a few years ago, to examine these issues before we proceed?

So we have five very important questions that are applicable today from a Member on the other side of the aisle.

I have not heard these same concerns expressed by my friends on the other side with respect to Ms. Halligan's nomination. But that does not mean these issues have gone away.

Statistics from the Administrative Office of the U.S. Courts show that caseloads on the DC Circuit have decreased markedly over the last several years. This decrease is evident in both the total number of appeals filed and the total number of appeals pending. Specifically, the total number of appeals filed decreased by over 14 percent between 2005, when there were 1,379 appeals filed, and the year 2010, when only 1,178 appeals were filed.

The workload decline is also demonstrated in the per-panel and per-judge statistics. Filings per panel and filings per judge show a decline of nearly 7 percent during this period. Pending appeals per panel dropped over 9 percent.

When you examine the caseload statistics in relationship to other circuit courts, the DC Circuit ranks last in nearly every category. For instance, the DC Circuit has the fewest total appeals filed per panel and only half as many appeals filed per panel as the 10th circuit, which has the second fewest in the country. They have the fewest number of appeals terminated per judge. And again, they have roughly half as many terminations per judge as the second least busy circuit—again, the 10th circuit.

They have the fewest signed written decisions per active judge, with 57. By way of comparison, the second circuit has 5 times as many, with 270 per active judge. The 10th circuit has roughly 4 times as many, with 240 per judge. They have fewest total appeals terminated per panel, with 347.

By way of comparison, the 11th circuit had over 4 times as many total appeals terminated in 2010, with 1,574. The ninth circuit had nearly 4 times as many, with 1,394. And the second and fifth circuits each had 1,329.

Given these statistics, we should be having a discussion on reducing the staffing for this court, not filling a vacancy. This seat is not a judicial emergency. And with our massive debt and deficit, I don't understand why we would be spending our time and resources, particularly on a highly controversial nomination.

Given the concerns I have about Ms. Halligan's record on the second amendment, the war on terror, and other issues, my concerns regarding her activist judicial philosophy and the Court's low workload, I oppose this nomination, and I urge my colleagues to do the same.

I would note in closing the number of organizations expressing their opposition to this nomination: the American Conservative Union, the National Rifle Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Committee for Justice, Concerned Women of America, the American Center for Law and Justice, Heritage Action, Liberty Counsel, Family Research Council, Eagle Forum, and there are others.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I understand morning business will now close.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CAITLIN JOAN HALLIGAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be time for debate until noon, equally divided in the usual form.

Mr. LEAHY. Madam President, some of the people I have heard who oppose Ms. Halligan were also some of the same people who successfully opposed an effort in the Congress to actually protect police officers a few years ago. So I want to put the opposition in context. It is probably why so many law enforcement groups support Ms. Halligan, because she stood up for law enforcement, unlike some of the groups we have heard about who oppose her, who sought to make the life of police officers more dangerous.

Be that as it may, the Senate stands at a crossroads today. Voting to end the partisan filibuster of this judicial nomination is as important as it was when the Senate did so in connection with the nomination of Judge McConnell to the United States District Court of Rhode Island earlier this year. If we allow the partisan filibuster to go forward, then the Senate will be setting a new standard that no nominee can meet if they wish to be confirmed to the DC Circuit.

Republican Senators who just a few years ago argued that filibusters against judicial nominees were unconstitutional and said that they would never support such a filibuster, and those who care about the judiciary in the Senate, need to step forward and do the right thing. You cannot say that filibusters against judicial nominees are unconstitutional when you have a Republican President but suddenly support a filibuster when you have a Democratic President. This goes even beyond the standards that have driven the approval rating of Congress to an all-time low for hypocrisy. We ought to end the filibuster now and proceed to vote on this extraordinarily well-qualified nominee.

Ms. Halligan, nominated to fill one of three vacant seats on the important DC Circuit, is a highly regarded appellate advocate. She has the kind of impeccable credentials in both public service and private practice that have been looked for in the past by both Democratic and Republican Presidents. Her nomination reminds me of John Roberts, when he was confirmed by every single Democrat and every single Republican to the DC Circuit in 2003. I certainly did not agree with every position he had taken or argument he had made as a high-level lawyer in several Republican administrations, but I supported his nomination to the DC Circuit, as I did to the Supreme Court, because of his legal excellence and ability.

It is frustrating to have Senators tell me privately they know Ms. Halligan is just as qualified as John Roberts was, but this lobby and that lobby are against her. Lobbyists come and go. The court is supposed to be the epitome of justice in this country.

I trusted John Roberts' testimony that he would fairly apply the law if confirmed. If the standard we used for him is applied to Ms. Halligan, there is no question this filibuster will end and Caitlin Halligan will be confirmed.

By any traditional standard, Caitlin Halligan is the kind of superbly qualified nominee who should easily be confirmed by the Senate. Yet, the Senate Republican leadership's filibuster of this nomination threatens to set a new standard that could not be met by anyone. It would not have been met by John Roberts. If this is the new standard, it is wrong, it is unjustified and it is dangerous. Overcoming it will take a handful of sensible Senate Republicans willing to buck their leadership and some single-issue lobbyists. They have done it before and they should again now. Those who care about the judiciary—and as important, those who care about the Senate—need to come forward and end this filibuster.

From the beginning of the Obama administration, we have seen too many Senate Republicans shift significantly away from the standards they used to apply to the judicial nominations of a Republican President. During the administration of the last President, a Republican, they insisted that filibusters of judicial nominees were unconstitutional. They threatened the ''nuclear option'' in 2005 to guarantee up-or-down votes for each of President Bush's judicial nominations.

Many Republican Senators declared that they would never support the filibuster of a judicial nomination. Yet, only a few years later, Senate Republicans reversed course and filibustered President Obama's very first judicial nomination, that of Judge David Hamilton of Indiana. They tried to prevent an up or down vote on his nomination even though he was nominated by President Obama after consultation with the most senior and longest-serving Republican in the Senate, Senator DICK LUGAR of Indiana, who strongly supported the nomination. The Senate rejected that unjustified filibuster and Judge Hamilton was confirmed with Senator LUGAR's support.

With their latest filibuster, the Senate Republican leadership seeks to set yet another new standard, one that threatens to make confirmation of any nominee to the DC Circuit virtually impossible for the future. Caitlin Halligan is a well-qualified nominee with a mainstream record as a brilliant advocate on behalf of the State of New York and in private practice. She served for nearly six years as Solicitor General of New York and has been a leading appellate lawyer in private practice, currently serves as General Counsel at the New York County District Attorney's Office, and 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. She clerked for Supreme Court Justice Stephen Breyer and for Judge Patricia Wald on the DC Circuit, the court to which she has been nominated. No Senator has or can question her qualifications. I have reviewed her record carefully in the course of the Judiciary Committee's thorough process, including her response to our extensive questionnaire and her answers to questions at her hearing and in writing following the hearing. In my view, there is no legitimate reason or justification for filibustering her nomination.

Yesterday, I put into the RECORD some of the many letters of support we have received from across the political spectrum for Ms. Halligan's nomination. These letters are a testament to both her exceptional qualifications to serve and to the fact that this should be a consensus nomination, not a source of controversy and contention. They attest to the fact she is not a closed-minded idealogue, but is the kind of nominee who has demonstrated not only legal talent but also a dedication to the rule of law throughout her career. We should encourage nominees with the qualities of Ms. Halligan to engage in public service. We should welcome people like her to serve on the Federal bench, not denigrate them. Concocted controversies and a blatant misreading of Ms. Halligan's record as an advocate are no reason to obstruct this outstanding nomination.

I also demonstrated yesterday that any so-called ''caseload'' concern is no justification for filibustering this nomination. This was not a concern we heard from Republicans when they voted to confirm President Bush's nominees to fill not only the 9th seat, but also the 10th seat and the 11th seat on this court a couple of years ago. They should not now use caseload as an excuse to filibuster President Obama's nomination to fill the ninth seat when the DC Circuit's caseload has increased. There are only two differences today than when President Bush's nominees to the DC Circuit were confirmed in 2005 and 2006: One, the caseload per active judge has increased, not decreased; and we have a Democratic President, not a Republican President.

The DC Circuit is often considered the second most important court in the land because of the complex cases that it handles, cases that have grown in