end of the year so you can get it next year.

I would change that incentive. I would give that civil servant a significant bonus if they will keep money at the end of the year and turn it back in to the Treasury. Can you imagine the savings from top to bottom throughout government if we did that? But if we were to do that, to ask civil servants to do that and look for these savings—and right now, with the sequester, people throughout government are looking for savings—why shouldn't we start with the Senate?

Why would we continue to fund a group where the work they supposedly do is also done officially by another group which has many employees, a large staff, and it is the constitutional mandate of the Foreign Relations Committee to discuss treaties.

So while this is a small bit of money, it is symbolic of what needs to go on in this country in order to rectify a problem that is truly bankrupting the American people.

AMENDMENT NO. 25

Mr. President, I ask unanimous consent to call up amendment No. 25.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Kentucky [Mr. PAUL] proposes an amendment numbered 25.

Mr. PAUL. Mr. President, I ask unanimous consent that the reading of the amendment be waived.

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

The amendment is as follows:

(Purpose: To strike supplemental staff funding available only to a limited number of Senators in a time of sequestration)

On page 31, line 22, strike ''IN GENERAL.—The Senate National'' and insert the following: ''RECONSTITUTION.—

(A) IN GENERAL.—The Senate National

On page 32, between lines 2 and 3, insert the following:

(B) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as extending or providing funding authority to the Working Group.

On page 35, strike line 2 and all that follows through page 36, line 3, and insert the following:

(1) DESIGNATION OF PROFESSIONAL STAFF.—

On page 36, strike line 14 and all that follows through page 37, line 2.

On page 37, line 3, strike ''(C)'' and insert ''(B)''.

On page 37, line 8, strike ''(D)'' and insert ''(C)''.

On page 37, line 10, strike ''(4)'' and insert ''(3)''.

On page 37, strike lines 13 through 22 and insert the following:

(2) LEADERSHIP STAFF.—The majority leader of the Senate and the minority leader of the Senate may each designate 2 staff members who shall be responsible to the respective leader.

On page 37, line 23, strike ''(4)'' and insert ''(3)''.

On page 39, strike line 3 and all that follows through page 40, line 2.

On page 40, line 3, strike ''(d)'' and insert ''(c)''.

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

Mr. PAUL. Mr. President, I ask for the yeas and nays when appropriate.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is not a sufficient second.

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

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

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I ask unanimous consent that the call of the quorum be rescinded.

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

Mr. REID. Madam President, we yield back the remainder of all time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment offered by the Senator from Kentucky, Mr. PAUL.

The yeas and nays have been requested.

Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from New Jersey (Mr. LAUGENBERG),and the Senator from Colorado (Mr. UDALL) are necessarily absent.

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

The result was announced—yeas 44, nays 53, as follows:

[Rollcall Vote No. 29 Leg.]

YEAS—44

Alexander	Donnelly	Moran
Ayotte	Enzi	Murkowski
Barrasso	Fischer	Paul
Baucus	Flake	Portman
Bennet	Grassley	Pryor
Boozman	Hagan	Risch
Boxer	Heller	Scott
Burr	Inhofe	Sessions
Coats	Johanns	Shaheen
Coburn	Johnson (WI)	Shelby
Collins	Landrieu	Thune
Coons	Lee	Toomey
Corker	McCain	Udall (NM)
Crapo	McCaskill	Vitter
Cruz	Merkley	

NAYS—53

Baldwin	Hatch	Murray
Blumenthal	Heinrich	Nelson
Blunt	Heitkamp	Reed
Brown	Hirono	Reid
Cantwell	Hoeven	Roberts
Cardin	Isakson	Rockefeller
Carper	Johnson (SD)	Rubio
Casey	Kaine	Sanders
Chambliss	King	Schatz
Cochran	Kirk	Schumer
Cornyn	Klobuchar	Stabenow
Cowan	Leahy	Tester
Durbin	Levin	Warner
Feinstein	Manchin	Warren
Franken	McConnell	Whitehouse
Gillibrand	Menendez	Wicker
Graham	Mikulski	Wyden
Harkin	Murphy	

NOT VOTING—3

Begich	Lautenberg	Udall (CO)

The amendment (No. 25) was rejected.

Mrs. MURRAY. Madam President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the resolution.

The resolution (S. Res. 64) was agreed to.

(The resolution is printed in the RECORD of Thursday, February 28, 2013, under ''Submitted Resolutions.'')

RECESS

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

Thereupon the Senate, at 12:52 p.m. recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

EXECUTIVE SESSION

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

Mr. LEAHY. Madam President, I ask unanimous consent that the Senate proceed to executive session to resume consideration of Executive Calendar No. 13, the nomination of Caitlin Halligan.

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

The clerk will report the nomination.

The 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 PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, tomorrow the Senate will have an opportunity to correct itself and complete action on the nomination of Caitlin Halligan to the DC Circuit. She was first nominated to a vacancy on the court in September 2010, almost 30 months ago. No one who knows her, no one who is familiar with her outstanding legal career can be anything but impressed by her experience, her intelligence, and her integrity. Hers is a legal career which rivals that of the DC Circuit judge she was nominated to succeed.

I might mention that the judge she was nominated to succeed was John Roberts, who served on the DC Circuit. He is now Chief Justice of the United States. I voted for the confirmation of John Roberts to the DC Circuit. I voted for the confirmation of John Roberts to the Supreme Court. He and I do not share the same judicial philosophy or

political party, but I voted for him because he was well qualified. I did not agree with every position he had taken or argument he made as a high-level lawyer in several Republican administrations, but I supported his nomination to the DC Circuit because of his legal excellence. Caitlin Halligan is also well qualified. Caitlin Halligan is as well qualified as John Roberts, whom I voted for, and her nomination deserves a vote. John Roberts was confirmed unanimously to the DC Circuit on the day the Judiciary Committee completed consideration of his nomination and reported it to the Senate. It is time for the Senate to consider Caitlin Halligan's nomination on her merits and end the filibuster that has extended over 2 years.

What I am saying is that if we want to be honest in the Senate, we have to apply the same standard to her that we applied to the nomination of John Roberts. After being nominated and renominated four times over the course of the last 3 years, it is time for the Senate to accord this outstanding woman debate and vote on the merits she deserves.

Caitlin Halligan is a highly regarded appellate advocate, with the kind of impeccable credentials in both public service and private practice that make her unquestionably qualified to serve on the DC Circuit. In fact, the ABA Standing Committee on the Federal Judiciary reviewed her nomination and gave her their highest possible rating. The judge for whom she clerked on the DC Circuit, former chief judge Pat Wald, urges her confirmation. Those who have worked with her all praise her. We have not heard a single negative comment on her legal ability, judgment, character, ethics, or her temperament. By the standard we have used for nominees of Republican Presidents, there is no question that Caitlin Halligan should be confirmed and this ill-advised filibuster should end. Earlier this month the Senate ended a filibuster against the nomination of Robert Bacharach and he was confirmed unanimously to the Tenth Circuit. We finally were allowed to complete action on the nomination of William Kayatta to the First Circuit. So, too, the Senate should now reconsider its prior treatment of Caitlin Halligan and confirm her nomination.

She is a stellar candidate with broad bipartisan support. She is supported by law enforcement, with whom she worked closely while serving as a chief appellate lawyer in the State of New York and as general counsel for the Manhattan district attorney. That includes the support of New York City police commissioner, Ray Kelly; the New York Association of Chiefs of Police; and the National District Attorneys Association.

Carter Phillips, who served as an assistant to the Solicitor General during the Reagan administration, describes her as one of those extremely smart, thoughtful, measured, and effective advocates and concluded that she would be a first-rate judge. She has the strong support of the New York Women in Law Enforcement, the National Center for Women and Policing, the National Conference of Women's Bar Associations, the Women's Bar Association of the District of Columbia, and the U.S. Women's Chamber of Commerce.

I ask unanimous consent to have printed in the RECORD a list of letters in support for Ms. Halligan at the conclusion of my remarks.

I have been here 38 years and occasionally see things that really disappoint me. This is one where I see that narrow special interest groups seek to misrepresent her as a partisan or ideological crusader. She is not. Everybody who knows her, everybody who has dealt with her, Republican and Democratic alike, says she is not. What they do say is that she is a brilliant lawyer who knows the difference between the roles of legal advocate and judge. She will be a fair, impartial, and outstanding judge.

To oppose her for her work as an advocate would be like saying: We can't have this particular nominee be a judge because the nominee was appointed to defend a murderer and we are against murder. No. We are against the rule of law. We are against everybody who appears before a court having good representation whether we agree with their position or not. These kinds of arguments undermine our whole legal system.

While serving as the solicitor general for the State of New York, she was an advocate, representing the interests of her client. How often have we heard Republican Senators say that what lawyers do and say in legal proceedings should not be used to undermine their judicial nominations? Chief Justice Roberts himself has made that point. As an attorney, Chief Justice Roberts advocated for positions where I disagreed with him, but he was supporting the position of the people for whom he was an advocate. At his confirmation hearing to join the United States Supreme Court, Judge Roberts said:

> [I]t'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. The most famous example probably was John Adams, who represented the British soldiers charged in the Boston Massacre. He did that for a reason, because he wanted to show that the Revolution in which he was involved was not about overturning the rule of law, it was about vindicating the rule of law.
>
> Our Founders thought that they were not being given their rights under the British system to which they were entitled, and by representing the British soldiers, he helped show that what they were about was defending the rule of law, not undermining it, and that principle, that you don't identify the lawyer with the particular views of the client, or the views that the lawyer advances on behalf of the client, is critical to the fair administration of justice.

That has always been our tradition—at least until now. This litmus test that would disqualify nominees because as lawyers they represented a legal position in a case is dangerous and wrong. Almost every nominee who had been a practicing lawyer would be disqualified by such a test. By the standard that is being applied to Caitlin Halligan, John Roberts could not have been confirmed to serve as a Federal judge let alone as the Chief Justice of the United States.

Yet some have justified their filibuster because she was directed by the New York attorney general to draft an amicus brief challenging a Federal law that protected gun manufacturers from liability for crimes committed with their products. As New York's solicitor general she filed a brief in support of a class action lawsuit against anti-choice clinic protestors under the Hobbs Act. She filed a brief on behalf of New York in support of a lower court's decision to permit back pay to undocumented employees whose employers were violating Federal law. She filed a brief on behalf of New York and other States in support of the University of Michigan's affirmative action program. In all of these cases, she was representing her client, the State of New York.

Note that her critics are not arguing that she was a bad lawyer. In essence, what they are contending is that because they disagree with the legal positions taken on behalf of her client, she should not get an up-or-down vote. That is wrong.

When I voted for Chief Justice Roberts, I remember a number of Republicans told me, of course, that is the only thing you should do because you think he is qualified. Now I have Republicans who tell me they feel she is well qualified, but this special interest group or that special interest group is opposed to her. She took positions with which they disagree. That is not the issue. Is she qualified? Did she stand up for her clients the way an attorney should in our adversarial system?

Her public service in the State of New York is commendable, and no reason to filibuster this nomination. Vote yes or vote no on this nomination. Voting to block it from coming to a vote is saying: I don't have the courage to stand up and vote yes or no; I want to vote maybe. It never comes to a vote if we filibuster it. I may vote maybe so I don't have to explain to people that she is far more qualified than people we voted for who were nominated by Republican Presidents. I didn't vote against her; I didn't vote for her; I voted maybe.

That is not the way it should be. Our legal system is an adversarial system, predicated upon legal advocacy for both sides. There is a difference between serving as a legal advocate and as an impartial judge. She knows that. She is a woman of integrity. No one who fairly reviews her nomination has any reason to doubt her commitment to serve as an impartial judge.

I always said when I practiced law that I didn't want to walk into a courtroom and say the case is going be determined by whether I was plaintiff or defendant, Republican or Democratic, but that the case would be determined on the facts and the law.

We have been fortunate in Vermont that we have had many judges like this, judges who were appointed by Republican Governors, judges appointed by Democratic Governors, Federal judges appointed by Republican Presidents, Federal judges appointed by Democratic Presidents. In Vermont, we have been fortunate because no matter what their positions have been before, they turned out to be impartial judges, which is what this good woman will be.

In fact, it is not only wrong but dangerous to attribute the legal position she took in representing her client, the State of New York, to her personally and then take the additional leap—and it is a huge leap—to contend that her personal views will override her commitment to evenhandedly apply the law.

John Adams, one of our most revered Founders, wrote that his representation of the British soldiers in the controversial case regarding the Boston Massacre was ''one of the most gallant, generous, manly and disinterested actions of my whole life, and one of the best pieces of service I ever rendered my country.'' That is our tradition. The Senate should end this filibuster and vote to confirm a woman who has ably served as a public official representing the State of New York and the district attorney of Manhattan.

The other justification Republican Senators used 2 years ago to justify their filibuster is gone. Some contended that the caseload in the DC Circuit was not sufficiently heavy to justify the appointment. There are now four vacancies on the DC Circuit. The vacancies have doubled during the last 2 years. The bench is more than one-third empty. This is reason enough for Senators to reconsider their earlier votes and end this filibuster.

The Senate responded to this caseload concern in 2008 when we agreed to decrease the number of DC Circuit judgeships from 12 to 11. Caitlin Halligan is nominated to fill the 8th seat on the DC Circuit, not the 11th. Just a few years ago when the DC Circuit caseload per active judge was lower than it is now, all the Republican Senators voted to confirm nominees to fill the 9th seat, the 10th seat twice, and the 11th seat on this court. In fact, the DC Circuit caseload for active judges increased 50 percent from 2005—50 percent from when the Senate confirmed the nominee to fill the 11th seat on the DC Circuit bench. The caseload on the DC Circuit is also greater than the caseload on the Tenth Circuit, to which the Senate just confirmed Judge Robert Bacharach of Oklahoma last week.

In her recent column in The Washington Post, Judge Wald explains why the work of the DC Circuit, with its unique jurisdiction over complex regulatory cases is different and more onerous than in other circuits and why the court needs to have its vacancies filled. She wrote:

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, health-care reform, 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.

She also notes: ''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.'' I ask that a copy of her article be included in the RECORD at this point.

I urge all those who have said filibusters on judicial nominations are unconstitutional to end this filibuster. I urge those who have said here on this floor that they would never support a filibuster of a judicial nomination to end this filibuster. I urge those who said they would filibuster only in extraordinary circumstances to end this filibuster. I urge all those who care about the judiciary and the administration of justice, the Senate, and the American people to come forward and end this filibuster.

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

LETTERS OF SUPPORT FOR HALLIGAN

February 14, 2011—Derek Champagne, Franklin County District Attorney

February 16, 2011—William Fitzpatrick, Onondaga County District Attorney

February 22, 2011—Randy Mastro, Gibson Dunn

February 25, 2011—Daniel Donovan, Jr., Richmond County District Attorney

February 28, 2011—Chauncy Parker, Director of New York/New Jersey High Intensity Drug Trafficking Area program

February 28, 2011—23 Former United States Supreme Court Clerkship Colleagues

March 4, 2011—Cyrus Vance, Jr., New York County District Attorney

March 4, 2011—Joint Letter from 21 lawyers (Clifford Sloan, Sri Srinivasan, Miguel Estrada, Carter Phillips, Seth Waxman, Walter Dillinger, David Frederick, Andrew Levander, Richard Davis, Michele Hirshman, Dietrich Snell, Paul Smith, Patricia Ann Millet, Kathleen Sullivan, Thomas Brunner, Mier Feder, Evan Tager, Philip Howard, Ira Millstein, Roy Reardon, Michael H. Gottesman)

March 4, 2011—Judith S. Kaye, former Chief Judge of the New York State Court of Appeals

March 23, 2011—Robert Morgenthau, Wachtell, Lipton, Rosen & Katz

April 22, 2011—Derek Champagne, President, District Attorney's Association of the State of New York

April 27, 2011—John Grebert, New York Association of Chiefs of Police

May 2, 2011—Peter Kehoe, Executive Director, New York State Sheriff's Association

May 26, 2011—Raymond Kelly, Police Commissioner, City of New York

May 31, 2011—New York Women in Law Enforcement

June 2, 2011—James Reams and Scott Burns, National District Attorneys Association

June 8, 2011—National Center for Women and Policing

June 16, 2011—Monica Parham, Women's Bar Association of the District of Columbia

June 23, 2011—Mary E. Sharp, National Conference of Women's Bar Associations

June 28, 2011—Margot Dorfman, U.S. Women's Chamber of Commerce

November 15, 2011—Joint letter from 107 women law professors (Kerry Abrams, Michelle Adams, Jane Aiken, Adjoa Aiyetoro, Judith Areen, Barbara Black, Barbara Atwood, Barbara Babcock, Heather Baxter, Vivian Berger, Francesca Bignami, Tamar Birckhead, Catherine Brooks, Stacy Brustin, Sherri Burr, Stacy Caplow, Caroline Davidson, Elizabeth DeCoux, Christine Desan, Laura Dickinson, Ariela Dubler, Heather Elliott, Lyn Entzeroth, Cynthia Estlund, Christine Galbraith, Abbe Gluck, Emily Waldman, Suzanne Goldberg, Risa Goluboff, Sara Gordon, Sarah Gotschall, Cynthia Bowman, Ariela Gross, Phoebe Haddon, Valerie Hans, Rachel Harmon, Melissa Hart, Nancy Hauserman, Carrie Hempel, Lynne Henderson, Laura Hines, Candice Hoke, Sara Jacobson, Dawn Johnsen, Olatunde Johnson, Deborah Merritt, Anne O'Connell, Pamela Karlan, Ellen Katz, Amalia Kessler, Eleanor Kinney, Heidi Kitrosser, Catherine Kelin, Kristine Knaplund, Maureen Laflin, Mary LaFrance, Robin Lenhardt, Odette Lienau, Nancy Loeb, Joan Heminway, Solangel Maldonado, Sheila Maloney, Maya Manian, Jenny Martinez, Mari Matsuda, Margaret McCormick, Ann McGinley, M. Isabel Medina, Carrie Menkel-Meadow, Gillian Metzger, Binny Miller, Nancy Morawetz, Tamara Packard, Kimani Paul-Emile, Katharina Pistor, Ann Powers, Nancy Rapoport, Kalyani Robbins, Julie O'Sullivan, Shelley Saxer, Erin Ryan, Liz Cole, Carol Sanger, Margaret Satterthwaite, Lisa Schultz Bressman, Diana Sclar, Elizabeth Scott, Ilene Seidman, Laurie Shanks, Katherine Sheehan, Jodi Short, Florence Shu-Acquaye, Jessica Silbey, Michelle Simon, Charlene Smith, Joan Steinman, Drucilla Stender Ramey, Beth Stephens, Nomi Stolzenberg, Maura Strassberg, Nadine Strossen, Ellen Taylor, Penny Venetis, Valerie Vollmar, Rachel Vorspan, Candace Zierdt, Diane Zimmerman)

December 1, 2011—Albert M. Rosenblatt, retired Judge, NY Court of Appeals

December 1, 2011—Linda Slucker, President, National Council of Jewish Women

December 5, 2011—Nancy Duff and Marcia Greenberger, Co-Presidents, National Women's Law Center

December 5, 2011—Wade Henderson, President and CEO, The Leadership Conference on Civil and Human Rights

December 5, 2011—Gregory S. Smith, President, Bar Association of DC

March 1, 2013—Doug Kendall, President, Constitutional Accountability Center

March 4, 2013—Wade Henderson, President and CEO, The Leadership Conference on Civil and Human Rights

March 4, 2013—Sam A. Cabral, International President, International Union of Police Associations.

[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