His distinguished intelligence career began more than 30 years ago when he joined the CIA as a career trainee straight out of graduate school. Mr. Brennan worked his way up through the agency to serve in senior management roles in the CIA, including as Deputy Executive Director under George Tenant. Years spent working on covert and analytical missions and as chief of station in Saudi Arabia give him a comprehensive understanding of the CIA's capabilities and inner workings. His knowledge of the Middle East will be essential as we continue to work to defeat al-Qaida and other terrorist threats.

Mr. Brennan has distinguished himself outside of government as well. He spent 4 years in the private sector as president and CEO of the Analysis Corporation. His extensive intelligence background and executive experience uniquely qualify him to lead the Central Intelligence Agency.

Just as CIA faces the challenges abroad, it also faces significant decisions about its future. John Brennan must guide the CIA through a series of considerations dealing with the Agency's relationship with our military, how the Agency should respond to the conclusions of a recent Senate Intelligence Committee report on interrogation techniques and practices, and, finally, the Agency's response to demands for transparency. These considerations must not be made lightly, and John Brennan will give them the attention they deserve in his role as Director.

The Senate must also approach its duty to advise and consent with the solemnity it deserves. Unfortunately, the confirmation process has focused too much this year and the last two Congresses on partisan political considerations and not enough on the quality of the nominees.

I am very disappointed that I am forced to file cloture on John Brennan's nomination. What does that accomplish? If someone doesn't like him, come here and give a big speech, wave your arms, scream and shout, and vote against him. But why hold up the entire Senate over a meaningless vote?

My Republican colleagues have already obstructed several critical nominations this year. I hope that pattern of obstructionist behavior will not persist. I do hope for the sake of the country the obstruction of the last two Congresses will vanish. I feel very certain that in Mr. Brennan's case concerns for national security will outweigh the desire to grandstand for the weakened tea party.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, the issue before us is Caitlin Halligan's nomination for the DC Circuit Court. I spoke yesterday in support of her nomination. It is unfortunate she is going to be forced to face a filibuster; in other words, that the Republicans are going to insist on a 60-vote margin for her approval. That is unfortunate because we have tried in the beginning of this Senate session to avoid this kind of filibuster confrontation.

In the last several years, we have had over 400 filibusters, a recordbreaking number of filibusters in the Senate. What that means is the ordinary business of the Senate has been stopped 400 times, when those who were trying to bring up a nomination or bill or amendment faced a filibuster which required literally stretching the vote out over days and sometimes even over 1 week. That is unnecessary. It is frustrating as well.

There are a lot of things we need to do and a lot of issues we need to face. I am not afraid of taking on controversial votes on the floor. I think that was part of the job assignment coming here. I quoted many times my late friend, my colleague in the House, Mike Synar of Oklahoma, who used to get right in the face of his colleagues at the Democratic caucus when they complained about controversial votes on the floor and he said: If you don't want to fight fires, don't be a firefighter. If you don't want to vote on controversial issues, don't run for Congress. That is what this job is about.

I agree with that. As painful as some of these votes have been for me and others, we should never use that as an excuse for not tackling the important issues of our time. But this has become routine now—routine filibusters, trying to stop the Senate time and time again. What is particularly insidious about this strategy on this nominee is she is an extraordinarily well-qualified person. ''Unanimously well qualified,'' that is the rating she received from the American Bar Association. When we look at her resume and the things she has done, she stands out as not only an excellent candidate for DC Circuit but one of the best we have had for any judicial position. She is being stopped by the Republicans.

What is their argument? She was the solicitor general for the State of New York. The solicitor general is the hired attorney for a client known as the State of New York. So many times she was sent into court to argue a position that had been taken by the State or by the Governor, and she did her job as their counsel, to argue their position as convincingly as possible. That is what lawyers do every day in courtrooms all across America.

Back in the day when I practiced law, I didn't measure every client who came through the door to ask: Do I agree with every position my client has taken? Of course not. The belief is in our system of justice both sides deserve a voice in the courtroom and both sides, doing their best, give justice an opportunity. That is what Caitlin Halligan did as the solicitor general for the State of New York.

Listen to this. One of the arguments being made against her was that while she was solicitor general she served on a bar committee that issued a report that favored using article III courts for the prosecution of terrorists. Article III courts are the ordinary criminal courts of the land under our Constitution. The report argued that position. Many Republicans take an opposite position, that anyone accused of terrorism should be tried in a military tribunal, not an ordinary criminal court. They have held that position. They argue that position. They get red in the face saying that is the only way to take care of terrorists and they ignore reality.

The reality is, since 9/11, President Bush, as well as President Obama, had a choice between prosecuting terrorists in article III courts, the criminal courts or in military tribunals. In over 400 cases, they successfully, both Presidents, chose to prosecute accused terrorists in the article III courts—successfully. In only five cases—I believe it is five—have they used military tribunals. The overwhelming evidence is that the article III criminal courts have worked well. Prosecutions have been successful. This argument: Oh, if you have to read Miranda rights to an accused terrorist, we will never be able to prosecute them, they will lawyer up in a hurry. It doesn't quite work that way. In fact, we found the opposite to be true. When many of these folks with connections through terrorism are taken through the ordinary criminal process, they end up being more cooperative than through a military tribunal. That is a fact. A President and the Attorney General have to make that decision. So here is Caitlin Halligan, solicitor general for the State of New York, whose name is on a bar committee report favoring the use of article III courts, which overwhelmingly President Bush and President Obama decided to do, and now the Republicans say that disqualifies her, that disqualifies her from serving on the DC Circuit Court.

It also is ridiculous position to argue that because an attorney argues a point of view in a case, that is her own point of view. I refer my colleagues to the testimony of Justice Roberts when he was up before the Senate Judiciary Committee, when he was asked point blank: You have represented some pretty unsavory clients, some people we might disagree with, does this reflect your point of view? He reminded us what jurisprudence and justice are about in this country, that you will have attorneys arguing their clients' point of view, doing their best for their client, whether they happen to agree with that client's philosophy or not.

Every attorney is bound to stand by the truth when it comes to testimony. You can never ever allow a client to misstate the truth knowingly in a courtroom. That is hard and fast. But when it comes to a point of view, for goodness' sake, good attorneys argue the best case they can for the people they represent, as Caitlin Halligan did. As Justice Roberts reminded us, it is central to the issue of American justice. One of our most famous Presidents, John Adams, you would think ruined his political career because when the Boston Massacre occurred, John Adams, the attorney in Boston, stood and said I will defend the British soldiers. He was defending the British soldiers who had killed American soldiers. He did it. That was his responsibility as an attorney. He went on to be elected President.

This argument against Caitlin Halligan, from this point of view, is as empty as any argument I have heard on the floor of the Senate and the Republicans insist on filibustering again her nomination over such a week reed of an argument. It is embarrassing. It is troubling. It calls into question whether the agreement earlier this year on rules changes in the Senate, a bipartisan effort to try to get this Chamber back on track to solving problems on a bipartisan basis, did the job.

We had the first filibuster in history of a Secretary of Defense—the first. Chuck Hagel was held up for 10 days because of a Republican filibuster, the first time that has ever occurred. Now we follow it with this filibuster of this DC Circuit nominee? I don't think we have achieved much in our rules reform. I don't think our spirit of bipartisanship has shown much in terms of results.

I hate to suggest this, but if this is an indication of where we are headed, we need to revisit the rules again. We need to go back to them again. I am sorry to say it because I was hopeful a bipartisan approach to dealing with these issues would work. It is the best thing for this Chamber—for the people serving and for the history of this institution. But if this Caitlin Halligan nomination is an indication of things to come, we have to revisit the rules. If we are now going to filibuster based on such weak arguments, then I think we need to revisit the rules.

They said in politics when I was growing up—one of the great politicians I worked for, a man named Cecil Partee, used to say for every political position you take there is a good reason—and a real reason. So the good reason, at least in their eyes, on the Republican side, is that Caitlin Halligan argued in court for positions they do not agree with. As I said earlier, I think that is an empty accusation. What is the real reason? There is a real reason why they are opposing Caitlin Halligan time and again. It is because the DC Circuit Court is one of the most important courts in America, some argue as important as the U.S. Supreme Court, because the DC Circuit Court, time and again, considers the rules and regulations and laws which are promulgated in Washington. It is the first court of review and if that bench on the DC Circuit is tipped one way or the other, too conservative or too liberal, it shows.

Right now it has been tipped toward the conservative side. Republicans engineered a deal when we were, years ago, embroiled in controversy over this issue of filibustering judicial nominees. They engineered and brokered a deal to make several appointments to the DC Circuit that tipped the balance toward the conservative side.

Now, out of the 11 positions in the DC Circuit, only 7 are filled. We are trying to fill the 8th, and they are worried that if Caitlin Halligan comes in—and she is not as conservative as they wish—it may be closer to balance. Isn't that what we want, a more balanced court? It is what we should want. It is the real reason the Republicans oppose her nomination.

I am sorry for her that she has to be a victim of this political strategy. It doesn't have much to do with her personally, and I hope a few Republicans who are necessary will step up and give us a chance to vote on her nomination; otherwise, we are back into the doldrums again in terms of the Senate embroiled in controversy, stuck on filibusters.

Since no one else is seeking the floor at this moment, I ask unanimous consent that the time consumed during quorum calls be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, today the Senate will vote on cloture on the nomination of Caitlin Halligan to the U.S. Court of Appeals for the DC Circuit. I will again oppose invoking cloture on the nomination, and I will explain why.

In short, Ms. Halligan's record of advocacy and her activist view of the judiciary lead me to conclude she would bring that activism right to the court. As I have said many times before, the role of a judge in our system is to determine what the law says, not what they or anybody else wants it to be. That is not Ms. Halligan's view of the courts. She views them as a means to ''enable enviable social progress and mobility''—to ''enable enviable social progress and mobility'' with the judges, not the American people, using their office to determine what ''progress'' is ''enviable.'' That is the view of Ms. Halligan.

When she was in a position of authority, she put that activist view into practice time and time again. On the subject of second amendment rights, Ms. Halligan, as solicitor general of New York, advanced the dubious legal theory that those who make firearms should be liable for the criminal acts of third parties who misuse them.

Imposing potentially massive tort liability against the makers of a lawful product because of the criminal acts of someone else did not seem much like ''enviable social progress'' to Randall Casseday, who is with Kahr Arms, which sells firearms to the New York City Police Department. Here is what he said:

> I can't see how Kahr Arms can be responsible for misuse of its product. I don't see how you can do that. One lawsuit would put us out of business.

Fortunately, the State court in New York followed the law and rejected Ms. Halligan's entreaty that it make up new law in order to achieve the so-called social progress she envisioned. The court observed that it had never recognized the novel claim pursued by Ms. Halligan, nor had other courts, for that matter. Moreover, the State court called what she wanted it to do to manufacturers of a legal product ''legally inappropriate'' and said the power she wanted the courts to assert was the responsibility of ''the Legislative and the Executive branches.''

So out of bounds were the types of frivolous lawsuits pursued by Ms. Halligan that Congress did something rare: It actually passed tort reform to stop them, and it passed by a wide bipartisan majority. In her zeal for these frivolous lawsuits, Ms. Halligan then chose to criticize the Congress for having the temerity to exercise its policymaking responsibility to protect a lawful industry. However, she didn't just criticize the Congress for trying to stop the frivolous lawsuits she was pursuing, she chose to exaggerate the scope of the bill by claiming that it would stop State legislatures by ''cutting off at the pass any attempt to find solutions that might reduce gun crime.'' This assertion was false. It strains credulity that nearly half the Senate Democratic Conference who supported the legislation would vote not only for tort reform but would vote for Federal legislation that would block States from passing anything at all related to gun crime. Her mischaracterization of the legislation underscores her zeal for the frivolous lawsuits she was pursuing.

True to the adage ''frequently wrong but never in doubt,'' Ms. Halligan was undeterred. Having had both her State court and the Congress repudiate her novel legal theories, Ms. Halligan then filed an amicus brief in the Second Circuit Court of Appeals in another frivolous case against firearms manufacturers. This time she claimed the new law Congress passed was unconstitutional. Not surprisingly, she lost that case too.

Ms. Halligan's stubborn pursuit of frivolous claims against gun manufacturers is a textbook example of judicial activism—using the courts to achieve a political agenda no matter what the law says.

Her pursuit of losing legal theories in the service of her own personal views

doesn't stop there. On enemy combatants, Ms. Halligan signed a report as a bar association member that asserted that the authorization for use of military force did not authorize long-term detention of enemy combatants. In 2005 the U.S. Supreme Court ruled in Hamdi v. Rumsfeld that the President did, in fact, have this authority. Yet despite this precedent, Ms. Halligan chose to file an amicus brief years later arguing that the President did not possess this legal authority that the Supreme Court had already upheld.

On immigration, Ms. Halligan filed an amicus brief in the Supreme Court arguing that the National Labor Relations Board should have the legal authority to grant back pay to illegal aliens. However, Federal law prohibits illegal aliens from working in the United States in the first place. Fortunately, the Court sided with the law and disagreed with Ms. Halligan on that novel legal theory as well.

The point here is that even in cases where the law is clear or the courts have already spoken—including the Supreme Court—Ms. Halligan chose to get involved anyway by using arguments that had already been rejected either by the courts, the legislature, or, in the case of frivolous claims against the gun manufacturers, by both.

In other words, Ms. Halligan has time and again sought to push her views over and above those of the courts or those of the people as reflected in the law. Ms. Halligan's record strongly suggests she would not view a seat on the U.S. appeals court as an opportunity to adjudicate, evenhandedly, disputes between parties based on the law but instead as an opportunity to put her thumb on the scale in favor of whatever individual or group or cause she happened to believe in.

I have nothing against this nominee personally. I just believe, as I think most other Americans do, that we should be putting people on the bench who are committed to an evenhanded interpretation of the law so that everyone who walks into the courtroom knows he or she will have a fair shake. In my view, Ms. Halligan is not such a nominee.

I will be voting against cloture on this nomination, and I urge my colleagues to do the same.

Our decision to do so is not unprecedented—far from it. Many of our Democratic colleagues who are expressing shock and utter amazement that we denied cloture on Ms. Halligan's nomination for a second time felt no compunction about denying cloture on Miguel Estrada's nomination to the very same court. They denied nomination for him seven times, in fact, even though—unlike Ms. Halligan's record—Mr. Estrada's background did not evidence a penchant for judicial activism.

We have begun this Congress by making progress on filling judicial vacancies. I am happy to resume working with the majority on doing so, but because of her record of activism, giving Ms. Halligan a lifetime appointment to the DC Circuit is a bridge too far.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, I rise in full support of Caitlin Halligan and must strongly disagree with my friend from Kentucky, the Republican leader. The bottom line is very simple: She is a well-qualified nominee, and we know that.

The Republican leader acts as if Ms. Halligan were acting on her own. Whether the Senator from Kentucky agrees or disagrees, the Republican leader cannot cite a single instance where Ms. Halligan was not acting as an attorney representing the views of someone else. The same was true with what John Roberts did, and the same was true for what Sam Alito did. When those issues were brought up, our colleagues on the other side justifiably said we cannot attribute those views to them when they are representing somebody as an attorney. We all know that the obligation of an attorney is to represent his or her client, whether we agree or disagree with those views.

When one works as solicitor general, they represent the State of New York. The State of New York's views on guns were clear, and Ms. Halligan ably represented those views. But nothing she has said about guns that was cited by my good friend the Republican leader was her own view. Similarly on the terrorism cases, she was representing an office that was prosecuting, not her views, so the comparison to Miguel Estrada is like night and day. Miguel Estrada had his own very, very clear views on the law, and he stated them in speeches, in articles, and in other ways. That is not so with Ms. Halligan. In fact, I challenge the other side to give me one instance where they disagree with something Ms. Halligan stated as her own views as opposed to representing someone as a lawyer should.

What is really going on here? What is going on is that our colleagues want to keep the second most important court in the land, the DC Circuit, vacant because right now there are four vacancies and the majority of those on the court have been appointees of Republican Presidents and, in fact, are very conservative. That is what is going on. Let's call it what it is. This has nothing to do with Ms. Halligan. This has to do with keeping a court they care about from having someone who doesn't have those same very conservative views. Ms. Halligan is a moderate, and that bothers people on the other side. It bothers the hard right who use the DC Circuit in their court cases to try to constrict government.

I say this to my good colleagues: We have come to an agreement on district court judges and on other nominees. We have come to a general agreement that there ought to be more comity. The Republican leader, my friend from Tennessee, and so many others have said we should do that. The filibustering of Caitlin Halligan is not, I will admit, against the letter of our agreement because it simply applies to district court judges, but it sure is against the spirit.

All those on our side who said we should change the rules because issues such as the filibuster of Ms. Halligan would occur are being vindicated even though my colleagues on the other side of the aisle would not want that type of option to be on the table.

I say this to my colleagues because I believe and I think most of us believe that this is nothing about Ms. Halligan, but it is about keeping the DC Circuit vacant and not allowing our President to rightfully fill those vacancies. We are going to bring nominee after nominee after nominee up to fill that DC Circuit. Are they going to continue to filibuster every nominee and find some trivial excuse to filibuster him or her? Because that is what is going to happen.

The obstructionist views that some on the other side have held and implemented—which served them so poorly in the election of 2012, in the polls, and in what the American people want, which is for us to come together—will be exposed.

I would urge my colleagues to forgo this charade. Don't vote for Halligan if you don't like her, but don't filibuster her, because we are going to come back time after time after time with nominees to this circuit who are qualified, who are moderate, and who have fine personal ethics. Are they going to ObamaCare each one of them? Because that is the challenge they will face.

I urge and plead with my colleagues, based on the new comity we are desperately seeking in this Chamber, to avoid this filibuster, allow Caitlin Halligan to have an up-or-down vote. She is extremely worthy of the position for which she was nominated. It is only ideology, only a view that this important circuit should not be filled with nominees whom our Democratic President nominates that is motivating, in my judgment, this action.

I think my time has expired, and I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. GRASSLEY. Yes.

Mr. LEAHY. Mr. President, I realize we have not gone in the regular order with the manager of the nomination speaking first. We are having a hearing right now with the Attorney General. So I ask unanimous consent, when the distinguished Senator finishes his

speech, whatever length it is, and all time will have then been used up so there would not be any time reserved for the manager of this nomination, to speak for 2 minutes at the conclusion of Senator GRASSLEY's remarks.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I ask to speak for 15 minutes on this nomination that is before the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise in opposition to the nomination of Caitlin Halligan, the President's nominee for the United States Circuit Court for the District of Columbia. I wish to take a few minutes to explain to my colleagues why we should not change our prior position regarding this nomination. It was previously rejected and should be rejected again.

Before I talk about Ms. Halligan's record, I want to comment on the process. While I recognize the majority leader's right to bring up this nomination, I question why we are spending time on a politically charged and divisive nomination. I wish the Senate instead would focus on the critical fiscal, national security, and domestic issues we face.

The Senate determined more than a year ago that this nomination should not be confirmed. Rather than accepting the Senate's decision, the President has renominated Ms. Halligan. It is time for the President and Senate Democrats to accept the fact that this nomination is not going to be confirmed by the Senate. We need to move on.

It is well understood and accepted that nominations to the DC Circuit deserve special scrutiny. The Court of Appeals for the DC Circuit hears cases affecting all Americans. It is frequently the last stop for cases involving Federal statutes and regulations. Many view this court as second in importance only to the Supreme Court. And as we all know, judges who sit on the DC Circuit are frequently considered for the Supreme Court. So there is a lot at stake with nominations to this court. This is a court where we can least afford to confirm an activist judge.

I have a number of concerns regarding Ms. Halligan's views that indicate she will be an activist judge. There are concerns regarding her judicial philosophy and her approach to interpreting the Constitution. Her stated view that courts seek ''to solve problems and not just to adjudicate them'' indicates a willingness to abuse the role of a judge should she be confirmed. She has advocated for an ''evolving standard'' of the Constitution, indicating a judicial philosophy that embraces the notion of a living Constitution. In adopting the ''living Constitution'' theory of interpretation, judges routinely substitute their own personal views in place of what the Constitution demands.

I wish to share with my colleagues why I have concluded that Ms. Halligan would approach judging with an activist bent. Let me give just a couple examples, beginning with her record on the second amendment.

In 2003, Congress was debating the Protection of Lawful Commerce in Arms Act or, as most of us called it, the Gun Liability bill. At the time, gun manufacturers were facing lawsuits based on meritless legal theories. This frivolous litigation was specifically designed to drive gun manufacturers out of business.

As it turns out, while many of us—both Republicans and Democrats—were fighting here in Congress to stop these lawsuits, Ms. Halligan was pursuing this precise type of litigation in the State of New York.

In New York v. Sturm & Ruger, Ms. Halligan advanced the novel legal theory that gun manufacturers, wholesalers, and retailers contributed to a ''public nuisance'' of illegal handguns in the State. Therefore, she argued, gun manufacturers should be liable for the criminal conduct of third parties.

Some of my colleagues have argued that we should not consider this aspect of Ms. Halligan's record because at the time she was working as the solicitor general of New York. But no one forced Ms. Halligan to approve and sign this brief. No one compelled her to advance a completely frivolous legal theory.

I believe a close examination of Ms. Halligan's record indicates she was more than just an advocate. She was using the full weight of her office to advance and promote a political agenda masked by a legal doctrine that is well outside of the legal mainstream.

In the case I just mentioned, which was the first of two cases Ms. Halligan was involved in regarding gun manufacturers, the New York State appellate court found her argument to be completely meritless and explicitly rejected her theory.

The court went so far as to say that it had ''never recognized [the] common-law public nuisance cause of action'' that Ms. Halligan advanced, and that it would be ''legally inappropriate'' to permit the lawsuit to proceed. Moreover, far from accepting Ms. Halligan's invitation to legislate from the bench, the court properly concluded that ''the Legislative and Executive branches are better suited to address the societal problems concerning the already heavily regulated commercial activity at issue.''

I will remind my colleagues that Ms. Halligan was pursuing this legal theory at the same time we were debating the gun liability bill here in Congress. There is no question that the dubious legal theories she was advancing in court reflected her own personal views, not just a position she was advocating on behalf of a client.

In a speech Ms. Halligan delivered on the subject in May of 2003, she said she opposed the legislation being considered by Congress because, ''[i]f enacted, this legislation would nullify lawsuits brought by nearly 30 cities and counties—including one filed by my office—as well as scores of lawsuits brought by individual victims or groups harmed by gun violence. . . . Such an action would likely cut off at the pass any attempt by States to find solutions—through the legal system or their own legislatures—that might reduce gun crime or promote greater responsibility among gun dealers.''

Later in that same speech, Ms. Halligan expressed her view of the law and legal system. She said, ''Courts are the special friend of liberty. Time and time again we have seen how the dynamics of our rule of law enables enviable social progress and mobility.''

I find this statement troubling, especially as it relates to the nuisance lawsuits against gun manufacturers. Those lawsuits are a prime example of how activists on the far left try to use the courts to affect social policy changes that they are unable to achieve through the ballot box. That is why I believe those lawsuits represented not only bad policy but, more broadly, an activist approach to the law.

Now, as I said, the State appellate court rejected her legal theory, and Congress subsequently passed legislation—by a wide bipartisan margin—to stop those lawsuits. But Ms. Halligan still forged ahead. In 2006, notwithstanding the fact the Congress had passed tort reform in this area, she attempted once again to revive the ability of States to pursue gun manufacturers. Only this time, she advanced her claims in Federal court, arguing the legislation Congress passed was unconstitutional. Fortunately, the Federal appellate court rejected her legal theory as well.

Ms. Halligan's record of taking far left and legally untenable positions is not limited to her legal briefs in gun cases. Another example of how she crossed the line from advocate to activist is Scheidler v. National Organization for Women. In that case she argued for an expansive definition of extortion under the Hobbs Act. Her support of NOW's claim that pro-life groups had engaged in extortion was rejected by eight Justices of the Supreme Court, including Justice Ginsburg—one of the most liberal justices on the Court.

There are a number of other aspects of her record that I find problematic. For instance, Ms. Halligan's views on the war on terror and the detention of enemy combatants are especially troublesome because Ms. Halligan is a nominee for the DC Circuit, where many of these issues are heard.

In 2004, Ms. Halligan was a member of a New York City bar association that published a report entitled: ''The Indefinite Detention of 'Enemy Combatants' and National Security in the Context of the War on Terror.''

That report argued there were constitutional concerns with the detention of terrorists in military custody. It

also argued vigorously against trying enemy combatants in military tribunals. Instead, it argued in favor of trying terrorists in civilian, article III courts.

Ms. Halligan is listed as one of the authors of that report. But when it came time to testify at her hearing, Ms. Halligan tried to distance herself from the report. She testified that she did not become aware of the report until 2010. In a followup letter after her hearing, Ms. Halligan did concede that ''it is quite possible that [a draft of the report] was sent to me,'' but that she could not recall reading the report.

I recognize that memories fade over time. But, as I assess her testimony, I think it is noteworthy that at least four other members of that bar association committee abstained from the final report. Ms. Halligan did not.

I would also point out that several years later she co-authored an amicus brief before the Supreme Court in the 2009 case of Al-Marri v. Spagone. Ms. Halligan's brief in that case took a position similar to the 2004 report with respect to military detention of terrorists. In that case, she argued that the Authorization for Use of Military Force did not authorize the seizure and indefinite military detention of a lawful permanent resident alien who conspired with al-Qaida to execute terror attacks on the United States.

The fact that Ms. Halligan coauthored this brief, pro bono, suggests to me that she supported the conclusions reached by the 2004 report. And again, this issue is particularly troublesome for a nominee to the DC Circuit, where many of these questions are heard.

There are additional aspects of Ms. Halligan's record that concern me.

As New York's Solicitor General, Ms. Halligan was responsible for recommending to Attorney General Spitzer 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.

These are just some of my concerns regarding the nominee's judicial philosophy and her approach to interpreting the Constitution. These are neither trivial nor inconsequential grounds on which to oppose her nomination.

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

Supporters argue that out of a sense of ''fairness'' we should confirm Ms. Halligan. They note that her nomination has been pending for over 2 years.

Let me remind my colleagues that while this seat has been vacant for over 7 years, it has not been without a nominee for all of that time.

Following the elevation of then-Circuit Judge John Roberts in 2005, President George W. 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. There was no clamor from the other side that we needed to fill the vacancy. There was no demand that Mr. Keisler be afforded an up-or-down vote. So it seems to me that too often, with my Democratic colleagues, ''fairness'' is a one-way street.

When the Democrats refused to consider Mr. Keisler's nomination—or even to give him a committee vote—the other side justified their actions based on the DC Circuit caseload. So I would like to make a few comments about how the current caseload of the DC Circuit stacks up against the caseload that existed when Mr. Keisler's nomination was subjected to a pocket filibuster.

Before doing so, I would again emphasize that given Ms. Halligan's record on a host of controversial issues, the case for rejecting her nomination would remain, regardless of the number of vacancies or the court's workload. However, since some of my colleagues are declaring a ''judicial emergency'' on the DC Circuit Court, let me set the record straight. Contrary to assertions we have recently heard regarding the court's workload, since 2005, the DC caseload has actually continued to decline. The total number of appeals filed is down over 13 percent. The total number of appeals pending is down over 10 percent; filings per panel are down almost 6 percent.

Compared to other courts of appeals, the DC Circuit caseload measured by number of appeals pending per panel is 54 percent less than the national average. Filings per judge are also significantly lower than for the rest of the courts. While the national average of filings per active judge is 361, the DC Circuit is less than half, at 170 filings per active judge. And if you take into consideration the fact that the DC Circuit now has six senior judges, all of whom continue to hear cases and write opinions, there is a 26-percent decrease in case filings per judge on the court since 2005. So by any meaningful measure, the DC Circuit's workload pales in comparison to the other circuit courts.

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. I urge my colleagues to do the same.

Finally, I would note a number of organizations have expressed their opposition to this nomination. They are the American Conservative Union, 9/11 Families for a Safe & Strong America, the National Rifle Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Committee for Justice, Concerned Women for America, the American Center for Law and Justice, Heritage Action, Liberty Counsel Action, Family Research Council, Eagle Forum, Center for Judicial Accountability, Republican National Lawyers Association, Judicial Action Group, Susan B. Anthony List, Americans United for Life Action, and the Faith and Freedom Coalition.

Mr. WHITEHOUSE. Mr. President, I rise today in support of the nomination of Caitlin Halligan to the U.S. Court of Appeals for the District of Columbia Circuit.

Ms. Halligan is an outstanding nominee with sterling credentials and broad support among the legal community. By the accounts of everyone who has worked with her or observed her work, she is a first-rate legal mind and a tireless worker, with great personal integrity and a thoughtful temperament that is perfectly suited to the Federal bench. Her nomination deserves prompt confirmation.

Ms. Halligan has spent much of her career as a dedicated and distinguished public servant. She has a strong record in law enforcement, including in her current role as general counsel at the Manhattan District Attorney's Office, an office that investigates and prosecutes 100,000 criminal cases annually.

She is highly esteemed by the New York and national law enforcement communities. Her nomination has been endorsed by New York City police commissioner Raymond Kelly, former Manhattan district attorney Robert Morgenthau, the National District Attorneys Association, several Republican district attorneys from New York, the New York Association of Chiefs of Police, and the New York State Sheriff's Association, among many others.

Ms. Halligan is also widely recognized as one of the finest appellate litigators in the country. As solicitor general for the State of New York, she supervised 45 appellate lawyers and represented the State of New York, then-Governor George Pataki, a Republican, and other State officials in both State and Federal courts. She has been counsel of record on nearly 50 cases before the Supreme Court and has argued before that court 5 times. Twenty-one of the top lawyers from across the political spectrum who have worked with Ms. Halligan, including conservatives Miguel Estrada and Carter Phillips, have endorsed her nomination. She was rated unanimously ''well qualified'' by the American Bar Association.

President Obama first nominated Ms. Halligan in 2010. Despite Ms. Halligan's outstanding qualifications and broad support, our Republican colleagues have refused to grant her an up-or-down vote for over 2 years.

Some have argued, because of positions that she took in litigation at the behest of a client, that she does not have adequate respect for the second amendment. Yet both at her hearing and in response to written questions, she stated unequivocally that she

would faithfully follow and apply the Supreme Court's decision in District of Columbia v. Heller, which held that the second amendment protects an individual right to keep and bear arms for self-defense. When asked whether the rights conferred under the second amendment are fundamental, Ms. Halligan answered, ''That is clearly what the Supreme Court held and I would follow that precedent.'' It doesn't get much clearer than that.

In 2011 Republicans filibustering her nomination claimed that the caseload of the DC Circuit did not warrant filling that seat because the other judges serving on the court had too few cases. At that time, Ms. Halligan was nominated to fill the ninth seat out of 11 on the DC Circuit.

Even at the time, that argument was questionable. Senate Republicans confirmed President Bush's nominees for the 9th, 10th, and 11th seats on the DC Circuit without concerns about caseload. That court's caseload has only gone up in since then. Also, the DC Circuit's caseload is uniquely challenging, as the former chief judge of the DC Circuit, Patricia Wald, has explained:

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.

Even if we accept the argument that the DC Circuit did not need another judge when Ms. Halligan was nominated for the ninth seat, the circumstances have changed. Because an additional vacancy has opened, Ms. Halligan is currently nominated for the eighth seat, meaning there are now four vacant seats on the court. To put it another way, the court is now understaffed by over one-third. At the same time, the Administrative Office of U.S. Courts reports that the caseload per active judge has increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the 11th seat on the DC Circuit.

Thus, there is no basis for debate now about whether an additional judge is needed on the D.C. Circuit. With an extra vacancy and a growing caseload, the court considered by many to be second only to the Supreme Court in its importance in our Federal judiciary desperately needs help.

Luckily, we have the opportunity to send the court an outstanding legal talent in Caitlin Halligan. I urge my colleagues to support her confirmation.

More broadly, I hope that we can come together and return the Senate to its best traditions of holding up-or-down votes on judicial nominations. We have an opportunity this Congress to move past this obstruction and get back to the proper manner of handling judicial nominations. Doing so will bring much needed assistance to the Federal judiciary, which has been forced to contend with unmanageable judicial vacancy rates. It also will do credit to this institution, which is failing in its duty to confirm Federal judges. We do not deserve the moniker of the ''world's greatest deliberative body'' if we cannot do something as simple as confirming judicial nominations.

There have been some encouraging signs that we are making real progress in this regard. For instance, the rules reforms that we voted on in a bipartisan manner earlier this year included a provision to shorten the postcloture debate window on district court nominees from 30 hours to a more reasonable 2. This change could dramatically streamline the nominations process without limiting the minority's ability to filibuster a nominee they do not like. It will expire at the end of this Congress, however. I hope that we can come together in bipartisan agreement to extend it permanently and perhaps even expand it to include circuit court nominees like Ms. Halligan.

Even with this change, there is still much to be done. The nonpartisan Congressional Research Service recently reported that the confirmation percentage for President Obama's nominees is the lowest of any President in the last 36 years. The effects are obvious. The judicial vacancy crisis in this country is real, and it is growing. As Supreme Court Chief Justice John Roberts has said, ''a persistent problem has developed in the process of filling judicial vacancies. . . . This has created acute difficulties for some judicial districts. Sitting judges in those districts have been burdened with extraordinary caseloads.'' As he explained, there is ''an urgent need for the political branches to find a long-term solution to this recurring problem.''

So let's return to the principle that barring ''extraordinary circumstances'' a nominee should receive a prompt up-or-down vote on the floor, and let's confirm the nomination of the outstanding nominee before us today, Caitlin Halligan.

Mr. MCCAIN. Mr. President, I regret that I must oppose cloture on the nomination of Caitlin Halligan to the U.S. Circuit Court of Appeals for the District of Columbia. During the 109th Congress, I joined 13 of my Senate colleagues to negotiate a compromise as part of an effort to avoid use of the so-called nuclear option to break an organized filibuster on judicial nominations. A tenet of that agreement was the right of ''signatories to exercise their responsibilities under the Advice and Consent Clause of the United States Constitution in good faith.'' Further, the agreement went on to state that ''nominees should be filibustered only under extraordinary circumstances, and each signatory must use his or her own discretion and judgment in determining whether such circumstances exist.''

In keeping with the 2005 agreement, I have decided to oppose the President's nomination of Caitlin Halligan to the U.S. Circuit Court of Appeals for the District of Columbia. Ms. Halligan's demonstrated record of judicial activism on issues ranging from holding firearm manufacturers liable for the crimes of third parties, to arguments regarding National Labor Relations Board authorities, to her record on the detention of enemy combatants, indicates to me that her activist record would only continue if granted the privilege of sitting on the U.S. Circuit Court of Appeals for the District of Columbia.

It is for these reasons and others that I believe Ms. Halligan meets the ''extraordinary circumstances'' requirement expressed in the agreement. An important constitutional responsibility of the executive branch and the U.S. Senate is to ensure that the Federal bench is able to handle its caseload expeditiously. In my view, we should only oppose cloture in extraordinary circumstances. Unfortunately, I believe this nominee meets that requirement, and my vote to oppose is consistent with the agreement made in 2005.

Mrs. FEINSTEIN. Mr. President, I rise in strong support of the nomination of Caitlin Halligan to the D.C. Circuit Court of Appeals. As a 20-year veteran of the Judiciary Committee and the first woman to serve on that committee it is my great pleasure to support Ms. Halligan's nomination.

Ms. Halligan has excelled at every turn in her career. She graduated cum laude from Princeton University in 1988. She received her law degree, magna cum laude, from Georgetown, where she was managing editor of the Georgetown Law Journal and inducted into the Order of the Coif.

She began her legal career with a clerkship with Judge Patricia Wald on the U.S. Court of Appeals for the D.C. Circuit, the first woman to serve on the D.C. Circuit.

She then spent a year in private practice at the Washington, DC firm Wiley, Rein, and Fielding, after which she clerked for Justice Stephen Breyer on the U.S. Supreme Court. After another year in private practice, Ms. Halligan entered public service. She went to the Attorney General's Office in the State of New York, first as Chief of the Internet Bureau.

She rose to become First Deputy Solicitor General and ultimately Solicitor General of the State of New York, the State's top appellate lawyer. During nearly all of Ms. Halligan's time as Solicitor General, George Pataki—a Republican—was Governor. Her job was to represent the State of New York zealously, and by all accounts she did so with skill and dignity.

Judith Kaye, the former Chief Judge of New York's highest court, writes on behalf of the court's entire bench that ''it was invariably a treat'' to have Ms. Halligan argue before the court.

In fact, the National Association of Attorneys General awarded her the

''Best Brief Award'' on numerous occasions, including consecutive awards in 2001, 2002, 2003, 2004, and 2005.

In 2007, she went into private practice to lead the appellate practice at the prestigious New York firm Weil, Gotshal, and Manges.

She returned to public service in 2010 as the General Counsel of the New York County District Attorney's Office, where she has served for the past 3 years. This office is one of the most distinguished prosecutorial offices in the Nation, and it handles more than 100,000 criminal prosecutions each year.

Because of her strong background in law enforcement in the State of New York, her nomination enjoys the support of major law enforcement groups, including:

The National District Attorney's Association;

The National Center for Women and Policing;

The New York Association of Chiefs of Police;

The New York State Sheriff's Association; and

New York Women in Law Enforcement.

She also enjoys the support of many law enforcement officials from New York, including New York City Police Commissioner Ray Kelly, New York County District Attorney Cyrus Vance, and numerous other County District Attorneys across the State.

Over the course of her distinguished career, she has served as counsel for a party or amicus in the Supreme Court more than 45 times. She has argued in the Supreme Court herself in five cases, most recently in March 2011. She also has argued or participated in dozens of other appeals in State and Federal courts.

In short, Ms. Halligan is an accomplished woman whose sterling qualifications are unassailable. She clearly deserves the ''well qualified'' rating from the American Bar Association she has received—the ABA's highest rating.

Unfortunately, Ms. Halligan's nomination has been pending for a very long time. She was first nominated to the D.C. Circuit in September 2010, 29 months ago. The seat to which she has been nominated has been vacant since 2005, when Chief Justice Roberts was elevated.

Last Congress, my Republican colleagues filibustered her nomination, something that I found to be without cause or rationale. I am very hopeful that, in this Congress, reasonable minds will prevail, and we will invoke cloture and confirm Ms. Halligan.

I understand that the National Rifle Association is opposed to Ms. Halligan's confirmation. Behind the NRA's opposition is the fact that—while Halligan was New York's Solicitor General, acting at the direction of her superiors—the State pursued public nuisance litigation against gun manufacturers.

Think about that: if this standard prevails, any time a person represents a State or local government, or the Federal Government, and represents that government on a controversial issue at the direction of its duly-elected leaders, that may jeopardize a later confirmation vote.

That is not fair. A government lawyer's job is to pursue the government's interest vigorously and to do justice, and that is what Caitlin Halligan has done. She was appointed by the Attorney General to represent the State of New York, while the State had a Republican Governor, George Pataki. Her job was to advance New York's interest, and she did so with vigor at the direction of her superiors. She should not be penalized for it.

Senator SESSIONS made this point when the Senate was considering the nomination of now-Judge Brett Kavanaugh to the D.C. Circuit. Senator SESSIONS said that ''[s]uggesting that service in an elective branch of Government somehow tarnishes a lawyer's reputation would be a terrible message for this body to send to the legal community and to all citizens.''

My colleagues will recall that Judge Kavanaugh had quite an activist record from our side's perspective: he had worked on the Starr Report, which recommended grounds of impeachment of President Clinton; he had worked for George W. Bush during the Florida recount; he then worked in the White House Counsel's office under President George W. Bush.

In short, while Kavanaugh may have been a fine lawyer, he had an undoubted Republican political pedigree. Yet I carefully considered his background, and I voted to invoke cloture on his nomination, as did many of my Democratic colleagues. Now it is time for our Republican colleagues to do the same on this nomination.

Last Congress, some of my Republican colleagues argued that the D.C. Circuit's caseload does not justify confirming another judge to the Court.

The D.C. Circuit has 11 judgeships. Four of them are vacant now—more than a third of the court—and three other judges are currently eligible to go senior, so the D.C. Circuit could soon have only four of its 11 seats filled.

When my colleagues raised caseload-based objections to Halligan's nomination last Congress, I reminded them that, during the George W. Bush Administration, they voted to fill the 10th seat on the D.C. Circuit twice and the 11th seat once. If confirmed, Halligan would only fill the eighth seat.

In addition, the D.C. Circuit's caseload per judge has grown substantially just in the last few years. The total number of cases terminated per active judge has grown to 280 up from 184 in 2010. That's more than a 50 percent increase. Similarly, the number of appeals at the Court pending per active judge has also spiked. It was 157 in 2008. Today, it is 203 so it is up by a third.

This hurts ordinary Americans. Most of the time, the cases heard by the D.C. Circuit are not partisan or ideological. But they are critical to making sure that Federal regulation in almost every area operates predictably and rationally.

As Former Judge Patricia Wald recently wrote in the Washington Post:

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 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.

Moreover, President Obama has been the only President in nearly four decades not to have a confirmed appointment to the D.C. Circuit. President Ford was the last such President, but there were no vacancies during his Administration, and every other President since Warren Harding, over 90 years ago, had an appointment to this court. I fear my Republican colleagues are treating President Obama differently from other Presidents in this regard.

I will conclude by simply saying that Ms. Halligan is a woman with sterling credentials, an exemplary record, and a wealth of experience. She has been nominated to a vital court that badly needs her service. I believe she should be confirmed, and I urge my colleagues to vote for cloture and for confirmation.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator's time has expired.

Mrs. GILLIBRAND. Madam President, I ask unanimous consent for 2 minutes of debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LEAHY. Madam President, I understand the Senator from New York will speak following my comments.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today the Senate has an opportunity to act in a bipartisan manner to end a filibuster against an outstanding nominee to the D.C. Circuit. Caitlin Halligan is an exceptional attorney with the kind of impeccable credentials in both public service and private practice that make her unquestionably qualified to serve on the D.C. Circuit. No one can seriously question her legal ability, her judgment, her character, her integrity, her ethics or her temperament. Those who seek to misrepresent her as a partisan or ideological crusader are wrong and unfair.

Some have mischaracterized her record and distorted her views on executive authority and terrorism. Here is what she said about the 2004 New York

City Bar report that some are using to inflame the debate:

I was, frankly, taken aback by [this Report], for a couple of reasons. First of all, the Supreme Court has clearly said that indefinite detention is authorized by the AUMF statute. And so the notion that the President lacks that authority, I think, is clearly incorrect. I was also a little bit taken aback by the tone of the report. I think that the issues of indefinite detention and any issues in the national security realm are very serious ones, and I think that approaching those issues as respectfully as possible is the most productive way to proceed. But the bottom line is that the report does not represent my work. It does not reflect my views.

I hope Senators who intend to make this a basis for filibustering this outstanding nominee are listening and understand. Again, she testified: ''[T]he bottom line is that the report does not represent my work. It does not reflect my views.'' This is no basis for opposing the nominee, let alone filibustering her consideration. The report does not represent her views; she flat out rejected them as a statement of law.

During her hearing she testified that she only became aware of the 2004 New York Bar report in 2010 while preparing for her confirmation hearing. She even provided minutes from the City Bar Committee's meetings to show that she was not present and not part of the subcommittee that drafted the report. She rejected the views in the report, saying that it was ''clearly incorrect.'' So while she was one of 37 members of a larger Committee, she was not a member of the subcommittee that drafted the report. She did not participate in the drafting. To filibuster her nomination because of a report she did not write, has not endorsed and has, in fact, rejected, would be a great injustice to this outstanding woman.

New York City's Police Commissioner Ray Kelly wrote in strong support of Caitlin Halligan again this week, saying:

I want to reiterate [my] support, and to stress my confidence in her commitment to the vigorous prosecution of our ongoing fight against the threat of terrorism here in New York City.

Any suggestion that Ms. Halligan would thwart efforts to protect our nation, and our city, against terrorist threats is absurd. For over three years, Ms. Halligan has served as Counsel to the New York County District Attorney. During that time, she has worked extensively on key anti-terrorism cases, including most recently the successful prosecution of Ahmed Ferhani, who pled guilty to very serious charges under New York State's anti-terrorism statute for a 2011 plot to blow up Manhattan synagogues and churches.

I ask unanimous consent that the full letter be printed in the RECORD at the conclusion of my statement. This is not someone soft on terrorism. She has helped bring terrorists to justice. Police Commissioner Kelly is not endorsing someone soft on terrorism. Cyrus Vance, Jr., the New York County District Attorney, is not endorsing someone soft on terrorism.

This is a woman and mother who lives in downtown New York. She was literally blocks away from the twin towers on September 11, 2001. She saw and experienced the devastation of the 9/11 terrorist attack on New York.

By any traditional standard, Caitlin Halligan is the kind of superbly qualified nominee who should be considered and confirmed by the Senate. The Republican leadership's filibuster of this nomination threatens to set a new standard that could not be met by anyone. That is wrong, it is unjustified, and it is dangerous.

It takes only a handful of sensible Senate Republicans to do the right thing. This is not a time to victimize Caitlin Halligan for some sort of political payback or to appeal to narrow special interests. I ask those Republican Senators who care about the judiciary and fairness to come forward, end this filibuster, and ratchet down the partisanship that threatens this institution, our courts and the country.

A Republican Senator, who was a member of the ''Gang of 14'' in 2005, described his view of what comprises the ''extraordinary circumstances'' justifying a filibuster. He said: ''Ideological attacks are not an extraordinary circumstance.' To me, it would have to be a character problem, an ethics problem, so allegations about the qualifications of a person, not an ideological bent.'' Caitlin Halligan has no ''character problem,'' no ''ethics problem,'' and there is no justification for this filibuster. I trust that Senator will apply the standard he articulated and vote to end this filibuster.

Another Republican Senator said just last year in voting to end a filibuster against another circuit court nominee:

[W]hen I became a Senator, Democrats were blocking an up-or-down vote on President Bush's judicial nominees. I said then that I would not do that and did not like doing that. I have held to that in almost every case since then. I believe nominees for circuit judges, in all but extraordinary cases, and district judges in every case ought to have an up-or-down vote by the Senate.

If that Senator remains true to his principles, he will vote to end this filibuster.

Republican Senators who signed that 2005 memorandum of understanding continue to serve here in the Senate. If they follow the standard set in that agreement, they will vote to end this filibuster. They demonstrated what they thought that agreement entailed when they proceeded to invoke cloture on a number of controversial nominations of President Bush to the D.C. Circuit. If that agreement and standard had any meaning, they should all be voting to end this filibuster.

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

I yield the floor.

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

CITY OF NEW YORK,
New York, NY, March 5, 2013.

Hon. CHARLES E. SCHUMER,
Hart Senate Office Building,
Washington, DC.

Hon. KIRSTEN GILLIBRAND,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SCHUMER AND SENATOR GILLIBRAND: In May 2011, I wrote to the Senate Judiciary Committee in strong support of Caitlin Halligan's nomination to the United States Court of Appeals for the District of Columbia Circuit. I want to reiterate that support, and to stress my confidence in her commitment to the vigorous prosecution of our ongoing fight against the threat of terrorism here in New York City.

Any suggestion that Ms. Halligan would thwart efforts to protect our nation, and our city, against terrorist threats is absurd. For over three years, Ms. Halligan has served as Counsel to the New York County District Attorney. During that time, she has worked extensively on key anti-terrorism cases, including most recently the successful prosecution of Ahmed Ferhani, who pled guilty to very serious charges under New York State's anti-terrorism statute for a 2011 plot to blow up Manhattan synagogues and churches.

As I informed the Senate in 2011, I strongly recommend Ms. Halligan for the position to which she has been nominated.

Sincerely,

RAYMOND W. KELLY,
Police Commissioner.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Madam President, so many good things about Caitlin Halligan have already been said. She is a woman of great intellect, has a history of laudable achievements, a record of outstanding public service, and she deserves the full support of the Senate today.

Caitlin has had an exceptional career as an attorney, and I am confident she will make an excellent judge. She is currently the general counsel at the New York City District Attorney's Office, an office that investigates and prosecutes 100,000 criminal cases annually in Manhattan.

She served as our Solicitor General. She was awarded ''Best United States Supreme Court Brief'' while she served there.

She has overwhelming support from law enforcement, from the New York Association of Chiefs of Police, the New York State Sheriffs Association, the National District Attorneys Association, the New York Women in Law Enforcement, along with the support of community leaders, such as the Women's Bar Association of the District of Columbia, the National Conference of Women's Bar Associations, and the U.S. Women's Chamber of Commerce.

The bottom line is, she is a well-qualified judge who would do great service for the United States. Even New York City police commissioner Ray Kelly said Caitlin has the ''three

qualities important for a judicial nominee: intelligence, a judicial temperament, and personal integrity.'' She has a strong record.

As to the debate we have heard on national security, Caitlin lives in the heart of New York City. She saw the Twin Towers fall. In the years that followed, she worked as pro bono counsel to the board of directors of the Lower Manhattan Development Corporation that oversees the rebuilding of Lower Manhattan—helping our city to grow stronger every single day.

Lastly, today, women make up roughly 30 percent of the Federal bench. For the first time in history, that holds true in trial courts, courts of appeals, and the highest court in the land, the Supreme Court.

It is true we have come a long way, but we still have a long way to go on this journey for full equality. I think she is a superbly qualified nominee, and I urge my colleagues to vote in support of her.

CLOTURE MOTION

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

The legislative 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, 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, Barbara Boxer, Benjamin L. Cardin, Robert P. Casey, Jr., Bill Nelson, Barbara A. Mikulski, Amy Klobuchar, Al Franken, Jack Reed, Sheldon Whitehouse, Robert Menendez, Kirsten E. Gillibrand, Richard Blumenthal, Max Baucus, Sherrod Brown, Dianne Feinstein.

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 legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Colorado (Mr. UDALL) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Idaho (Mr. CRAPO), the Senator from Utah (Mr. HATCH), the Senator from Nebraska (Mr. JOHANNS), and the Senator from Louisiana (Mr. VITTER).

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

The yeas and nays resulted—yeas 51, nays 41, as follows:

[Rollcall Vote No. 30 Ex.]

YEAS—51

Baldwin	Gillibrand	Murphy
Baucus	Hagan	Murray
Begich	Harkin	Nelson
Bennet	Heinrich	Pryor
Blumenthal	Heitkamp	Reed
Boxer	Hirono	Rockefeller
Brown	Kaine	Sanders
Cantwell	King	Schatz
Cardin	Klobuchar	Schumer
Carper	Landrieu	Shaheen
Casey	Leahy	Stabenow
Coons	Levin	Tester
Cowan	Manchin	Udall (NM)
Donnelly	McCaskill	Warner
Durbin	Menendez	Warren
Feinstein	Merkley	Whitehouse
Franken	Murkowski	Wyden

NAYS—41

Alexander	Enzi	Moran
Ayotte	Fischer	Paul
Barrasso	Flake	Portman
Blunt	Graham	Reid
Boozman	Grassley	Risch
Burr	Heller	Roberts
Chambliss	Hoeven	Rubio
Coats	Inhofe	Scott
Coburn	Isakson	Sessions
Cochran	Johnson (WI)	Shelby
Collins	Kirk	Thune
Corker	Lee	Toomey
Cornyn	McCain	Wicker
Cruz	McConnell	

NOT VOTING—8

Crapo	Johnson (SD)	Udall (CO)
Hatch	Lautenberg	Vitter
Johanns	Mikulski	

The PRESIDING OFFICER. On this vote the ayes are 51 and the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. I enter a motion to reconsider the vote by which cloture was not invoked on the Halligan nomination.

The PRESIDING OFFICER. The motion is entered.

VOTE EXPLANATION

● Mr. VITTER. Madam President, I could not participate in the vote on the motion to invoke cloture on the nomination of Calendar No. 13, Caitlin Joan Halligan, of New York, to be U.S. circuit judge for the District of Columbia Circuit. Had I voted, I would have voted nay.

Ms. Halligan has consistently espoused extremist positions on well-settled areas of the law including second amendment rights, abortion, and terrorist detention. I believe that Ms. Halligan's demonstrated propensity for judicial activism disqualifies her for the Federal bench where a judge must impartially apply the law.●

ORDER OF BUSINESS

Mr. REID. Madam President, we are now going to move to the Brennan matter. The Republican leader and I are trying to work something out. I have had numerous contacts from everybody about the problems with the weather. We are going to try to reach an agreement to move forward on Brennan and finish it today. I don't know if we can do that, but this is what we are trying to do.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWN. I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. BROWN. Madam President, I ask unanimous consent to speak as in morning business for up to 10 minutes, and Senator INHOFE, the senior Senator from Oklahoma, be given 20 minutes after I speak.

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

DOOLITTLE ''TOKYO RAIDERS''

Mr. BROWN. Madam President, I rise to recognize the lasting contributions of 80 courageous Americans who participated in the Doolittle raid, our Nation's first offensive action on Japan's soil during the Second World War. I am pleased to have Senator BOOZMAN as the lead Republican of an effort to ensure these men have the recognition they deserve. Together, we introduced S. 381, which will award the surviving airmen, known as the Doolittle Raiders, with the Congressional Gold Medal. Senator BOOZMAN's collaboration reiterates that bipartisan support for our veterans endures in this body. Joining us as original cosponsors are Senators MURRAY, TESTER, BAUCUS, NELSON, CANTWELL, and SCHATZ.

As chairman of the Senate Veterans' Affairs Committee during the last session, Senator MURRAY also cosponsored last year's resolution. We are grateful for her leadership. Our colleague Senator LAUTENBERG, the sole World War II veteran serving in the Senate, is also a cosponsor.

Some 16 million Americans served this country during World War II. Today their average age is 92. These survivors have earned the respect of a grateful Nation. Now is the time for us to act to honor them.

On April 18, 1942, 80 American airmen volunteered for an unknown assignment. These sons, fathers, and brothers accepted what they only knew to be ''an extremely hazardous mission.'' They were led by Lt. Col. James ''Jimmy'' Doolittle, a one-time flight instructor at Wright Field in Dayton, OH, in my home State. He also studied at Kelly Field and McCook Field in Ohio.

The Doolittle Raid was the first time the Army Air Corps and the Navy collaborated on a tactical mission. These pilots flew 16 U.S. Army Air Corps B–25 Mitchell bombers from the deck of the USS *Hornet* into combat, a feat that had never been before attempted.

On the morning of the raid, the USS *Hornet* was discovered by Japanese picket ships. Fearing the mission