

American people we would reduce a year and a half ago when the Budget Control Act was passed and do that in a sensible way. This is what we have consistently said. There is more flexibility in the law right now. We would be happy to give the President even more to achieve the cuts we promised the American people we would achieve. I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Remember, Congressman RYAN, when he came up with one of these budgets, used these overseas contingency funds to balance his budget.

Let's not even worry about that for purposes of this conversation, the overseas contingency fund. Let's just talk about the war in Afghanistan. What my friend is saying is that it is OK to borrow money for the war in Afghanistan but not to use that same money to reduce pains being felt all over America today.

Even Joe Scarborough on "Morning Joe," a former Republican Congressman from Florida, said today that he can't believe that the pain is being felt all over America today and no one is concerned about the war in Afghanistan.

Does anyone think we are going to be fighting a war in Afghanistan 5 years from now, 10 years from now? That is the money people are trying to protect. I hope not. For the sake of my children and grandchildren, I hope we are not still fighting in Afghanistan 5 or 10 years from now.

We are asking to take a few dollars of the \$650 billion that is there—billion dollars—to relieve the pain we are feeling now for 5 months. That is it.

I think it is really unfair that it would be so easy to turn the sequester around and allow us to do something for a long term to take care of this issue, but, no, the Republicans like the pain.

One Republican Senator who came here last night said: Well, why don't we take the money from the construction fund for airports?

Those create jobs.

He said: Why don't we take it from essential air services?

That dog has been here and fought lots of times. That has been stripped bare.

As I indicated in my opening statement, this is supposed to be fair and equal. You can't jimmy things around. It is the same amount of money. The Republicans say: Well, it is the same amount of money, but give more pain to somebody else than the other; just balance it out. The pain is too severe; it can't be balanced out.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Ms. HEITKAMP). Under the previous order, the leadership time is reserved.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will be

in a period of morning business until 10:30 a.m., with Senators permitted to speak therein for up to 10 minutes each, with equal time divided and controlled between the two leaders or their designees, with the Republicans controlling the first half.

The Senator from Indiana.

#### FAA SEQUESTRATION DELAYS

Mr. COATS. Madam President, I rise as a member of both the Senate Appropriations Committee on Transportation and as a member of the Senate Commerce Committee to discuss what I believe is a shocking display of mismanagement and incompetence by the leadership of the Department of Transportation and the Federal Aviation Administration.

The Federal Aviation Administration says the sequester will result in as many as 6,700 delays per day. To put this in context, on the worst weather day in 2012, we had 2,900 flight delays. So the FAA's projected 6,700 delays per day would more than double the worst day in 2012.

To me, this is disturbing evidence of the lack of planning on the part of both the Department of Transportation and the FAA, leading up to what we all knew was going to take place—in fact, since the law was signed by the President. We have known for 1 year this may happen. The President signed it into law, and we are now many months down the line and suddenly the FAA came along just a few days ago and said: Oh, we just need to let you know, by the way, we are going to implement this part of the sequestration.

This across-the-board furlough is especially surprising given the previous announcements their guiding principle when implementing sequestration would be to enact a plan that "maintains safety and minimizes the impact to the highest number of travelers." Announcing 3 days or so before they implement this plan that potentially results in as many as 6,700 delays per day minimizes the impact of the highest number of travelers?

This is disingenuous. It is mismanagement at its worst. It is incompetence at its worst. It is a failure to do what every agency has been required to do; that is, plan for this. Now that it has been in law for several months, there is no excuse for simply saying: Oh, we didn't have time to put this in place, so this is what we are going to do.

I voted against sequestration because it treats every Federal program on an equal basis regardless of its necessity, its effectiveness, or whether it is an essential function of the Federal Government.

Clearly, keeping our skies safe and getting our passengers from point A to point B is an essential function. We need those air traffic controllers. The plan that was put forth by the FAA flies in the face of their own judgment and their own statements in terms of what they needed to do.

Instead of furloughing 47,000 employees and causing significant delays for travelers, they should have been seeking reductions elsewhere. We tried to give these essential agencies additional flexibility necessary to do so. Unfortunately, the President did not support that effort, and the majority party in the Senate did not support that effort. Therefore, they have no reason to point their fingers over here and say: Oh, sequestration is so terrible. We never should have been in this position in the first place.

The FAA, for the record, could have considered cutting back on the \$541 million it spends on consultants—in other words, those who have been hired to work at the FAA because the FAA can't do the job themselves, so they need to spend \$541 million to hire outside consultants—and the \$2.7 billion it spends on non-personnel costs. But instead of looking at how to better manage their own administration, they turned to furloughing up to 10 percent of the air traffic controllers, creating up to 6,700 delays per day on the traveling public.

Then they say they haven't had time to work this out. Haven't had time? They have had months' worth of time since the law was signed. How about the time people now wasted standing at airports for 3 and 4 hours waiting to board their plane and the overall disruption this causes? And this is in good weather. That in itself is a lame excuse the FAA has put forward.

I did not vote for the sequestration, as I said before. I thought it was an inadequate way to deal with the necessary need to cut spending here. But the Federal Government says: We would like to do that, but we can't afford to do that right now and still focus on the essential services and give them the opportunity to manage that. Clearly, the FAA and the Department of Transportation have not managed this well at all. This is incompetence.

As I mentioned, Congress was only informed just days ahead of the time of these furloughs. This decision kicked in to the surprise of the airlines and to the surprise of Congress. But clearly what we have learned, despite 1 year of advance warning and refusals to analyze all possible alternatives to minimize impacts to the traveling public—and it is hard to come to any other conclusion—is this is a politically motivated decision to inflict as much pain on Americans as possible in an effort to make the case that sequestration never should have taken place in the first place; that a 4-percent across-the-board cut to the FAA budget is simply something they can't manage. In other words, we would have asked the FAA to do what they did in 2010 with the money that was allocated to them, but they can't do that now. This is 2012–2013 and they need this extra money and they need these hundreds of billions of dollars to continue to hire consultants. They don't want to be asked to make the kinds of decisions every

business in this country has had to make over the last 4 or 5 years during the malaise of economic growth following the recession that has taken place. We shouldn't ask them to do what every family has had to do? Their thinking is: We are the Federal Government. How dare you impose a 4-percent cut on what we do. We need to increase that every year because we need to keep hiring more and paying more consultants. We are not capable of managing.

It is shocking. I hope the President understands if he wants effective, efficient government, he is going to have to hire effective, efficient management. He is going to have to give them the instructions to do what every business in America has had to do during this difficult economy and slow economic growth.

I think we should take a very close look at the kinds of decisions that have been made at the Department of Transportation, the lack of competent management, and the mismanagement of taxpayer money. This administration needs to step up to the plate and be accountable. The President, as I said, created and signed into law the sequestration policy. His administration has known for more than 12 months this policy was imminent and they have done nothing to prepare for it effectively.

Our country is a long way from getting our spending under control, so it is time the administration stops looking for excuses and starts managing its budget effectively.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. HOEVEN. I thank the Chair.

(The remarks of Mr. HOEVEN pertaining to the introduction of S. 794 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

Mr. LEAHY. Madam President, what is in the parliamentary situation?

The PRESIDING OFFICER. The Senate is in a period of morning business.

#### IMMIGRATION

Mr. LEAHY. Madam President, I will be speaking shortly on matters of immigration. I just wanted to report to the Senate that since February the Senate Judiciary Committee has held six hearings on immigration. We concluded the last one yesterday with the testimony of Secretary Janet Napolitano.

In all, we have had dozens of hearings on immigration in the last couple of years, but these six were especially important for the Senate and for our work in the Judiciary Committee. To-

morrow we will put the immigration bill on the Judiciary Committee's agenda.

Under our normal practice, I have consulted with the ranking member. We both agree. The bill would be held over until the first Thursday we come back from our early May recess. This actually works well because it will give all members of the committee, and those Senators not on the committee, more time to read it.

Once we start marking up the bill and voting on it in committee, it would be my intention to not go Thursday to Thursday, which is normal committee procedure, but to hold markups several days a week. I am told that people do not intend to delay this immigration bill for the sake of delay, and I hope that is so. This is too important an issue.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Madam President, to go back, earlier this morning I spoke of the immigration hearings we have held in the Judiciary Committee and how important they are, not only to the Senate but to the country.

It was an extraordinary series of hearings. Forty-two witnesses spoke about the need for meaningful immigration reform. I believe there is a chance to have real immigration reform this year, the kind of reform that our great and wonderful country deserves. This is a country where every one of us is a child, grandchild, or great grandchild of immigrants; a country where a large percentage of the major Fortune 500 companies were started by immigrants.

We heard from "Dreamers" and farmers, business people, religious leaders, economists, government officials, practitioners, law enforcement advocates, and others. We heard from those opposed to comprehensive immigration reform, and we heard from those who support it.

Since the bipartisan legislation was introduced a week ago, we held 3 days of hearings with live testimony from 26 witnesses. I have accommodated many member requests. I worked with ranking member CHUCK GRASSLEY to ensure that all viewpoints were heard. In fact, no witness he suggested was denied the opportunity to appear and testify. I think we all realize—whether Republican or Democrat—no matter how we may vote, we should have a clear record.

I asked Secretary Napolitano to return to testify, again, even though she just did so in February. She was scheduled last week. But with the horrific circumstances in Boston, of course we

all understood why she had to cancel that appearance. She came yesterday and answered every single question asked of her.

As I said earlier, when we meet tomorrow the right will be exercised under our committee rules to hold over the immigration reform bill for a week. I have discussed this with Senator GRASSLEY, and I think we both agree that this is a wise thing to do, to hold it over and give people that extra time to read the bill. Next week is a recess week, so we will be able to turn to marking up the legislation in May. By that point, the bill will have been publicly available for three weeks before we vote on any aspect of it or consider any amendments offered to it. Everybody will have had a chance to see it. We live-streamed all the hearings. All of this is on the Judiciary Committee Web site.

The legislative proposal we are examining is a result of the significant work on a bipartisan compromise. I do not want to see comprehensive immigration reform fall victim to entrenched or partisan opposition even though it may well exist. In the course of my hearings I quoted my dear friend of many years, Ted Kennedy, one of the lions in this body. In the summer of 2007, he and I had worked very closely with former President George W. Bush to pass comprehensive immigration legislation. But that immigration reform was being blocked in the Senate. He spoke of our disappointment. He said:

But we are in this struggle for the long haul. Today's defeat will not stand. As we continue the battle, we will have ample inspiration in the lives of the immigrants all around us.

From Jamestown, to the Pilgrims, to the Irish, to today's workers, people have come to this country in search of opportunity. They have sought nothing more than a chance to work hard and bring a better life to themselves and their families. They come to our country with their hearts and minds full of hope.

I urge all Senators to consider the recent testimony of Jose Antonio Vargas, Gaby Pacheco, and the families who can be made more secure by enacting comprehensive immigration reform.

The dysfunction in our current immigration system affects all of us. I hope that our history and our decency can inspire us finally to take action to reform our immigration laws. I know this is something my maternal grandparents, who were so proud to come to this country, speaking a different language, beginning a business, raising a family, seeing their grandson become a Member of the Senate, I know that is the way they would feel.

I know my wife's parents, who came to this country speaking a different language, having their children here in the United States and having stood with Marcelle and me and my parents when I was sworn into the Senate, and then watching these children and grandchildren, understand what a wonderful country this is.

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

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

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

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

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

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

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

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

The Senator from Vermont.

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

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

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

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

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

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

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

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

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

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

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

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