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 CIRCUIT

NOMINATION OF SYLVIA MATHEWS BURWELL TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT 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 representation 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 Administrative 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

proceed to her confirmation barely a month after it was reported by the Judiciary Committee. I would like to think that this signals a new willingness to abandon their delaying tactics but fear that it is an exception. To expedite this nomination meant skipping over a number of nominees, including some who have been waiting since last year for the Senate to vote on their confirmations.

President Obama's other circuit court nominees have faced filibusters and unprecedented levels of obstruction. Senate Republicans used to insist that the filibustering of judicial nominations was unconstitutional. The Constitution has not changed, but as soon as President Obama was elected they reversed course and filibustered President Obama's very first judicial nomination. Judge David Hamilton of Indiana was a widely-respected 15-year veteran of the Federal bench nominated to the Seventh Circuit and was supported by Senator Dick Lugar, the longest-serving Republican in the Senate. They delayed his confirmation for 7 months. Senate Republicans then proceeded to obstruct and delay just about every circuit court nominee of this President, filibustering 10 of them. They delayed confirmation of Judge Patty Shwartz of New Jersey to the Third Circuit for 13 months. They delayed confirmation of Judge Richard Taranto to the Federal Circuit for 12 months. They delayed confirmation of Judge Albert Diaz of North Carolina to the Fourth Circuit for 11 months. They delayed confirmation of Judge Jane Stranch of Tennessee to the Sixth Circuit and Judge William Kayatta to the First Circuit for 10 months. They delayed confirmation of Judge Robert Bacharach of Oklahoma to the Tenth Circuit for 8 months. They delayed confirmation of Judge Ray Lohier of New York to the Second Circuit for seven months. They delayed confirmation of Judge Scott Matheson of Utah to the Tenth Circuit and Judge James Wynn, Jr. of North Carolina to the Fourth Circuit for 6 months. They delayed confirmation of Judge Andre Davis of Maryland to the Fourth Circuit, Judge Henry Floyd of South Carolina to the Fourth Circuit, Judge Stephanie Thacker of West Virginia to the Fourth Circuit, and Judge Jacqueline Nguyen of California to the Ninth Circuit for 5 months. They delayed confirmation of Judge Adalberto Jordan of Florida to the Eleventh Circuit, Judge Beverly Martin of Georgia to the Eleventh Circuit, Judge Mary Murguia of Arizona to the Ninth Circuit, Judge Bernice Donald of Tennessee to the Sixth Circuit, Judge Barbara Keenan of Virginia to the Fourth Circuit, Judge Thomas Vanaskie of Pennsylvania to the Third Circuit, Judge Joseph Greenaway of New Jersey to the Third Circuit, Judge Denny Chin of New York to the Second Circuit, and Judge Chris Droney of Connecticut to the Second Circuit for 4 months. They delayed confirmation of Judge Paul Watford of California to the Ninth Circuit, Judge Andrew Hurwitz of Arizona to the Ninth Circuit, Judge Morgan Christen of Alaska to the Ninth Circuit, Judge Stephen Higginson of Louisiana to the Fifth Circuit, Judge Gerard Lynch of New York to the Second Circuit, Judge Susan Carney of Connecticut to the Second Circuit, and Judge Kathleen O'Malley of Ohio to the Federal Circuit for 3 months.

The nonpartisan Congressional Research Service has reported that the median time circuit nominees have had to wait before a Senate vote has skyrocketed from 18 days for President Bush's nominees to 132 days for President Obama's. This is the result of Republican obstruction. So while it is good that they have allowed this vote on Jane Kelly from Iowa, if it proves an exception rather than a change in their tactics of obstruction, we will recognize it for what it is. Senate Republicans have a long way to go to match the record of cooperation on consensus nominees that Senate Democrats established during the Bush administration.

Delay has been most extensive with respect to circuit court nominees but not limited to them. Consensus district court nominees are also being needlessly delayed. During President Bush's first term alone, 57 district nominees were confirmed within just 1 week of being reported. By contrast, during his first 4 years only two of President Obama's district nominees have been confirmed within a week of being reported by the Committee.

Just before the Thanksgiving recess in 2009, when Senator SESSIONS of Alabama was the ranking Republican on the Judiciary Committee, we were able to get Republican agreement to confirm Judge Abdul Kallon, a nominee from Alabama, and Judge Christina Reiss, our Chief Judge for the Federal District Court for the District of Vermont. They had their hearing on November 4, were voted on by the Judiciary Committee two weeks later on November 19, and were confirmed by the Senate on November 21. They were not stalled on the Senate Executive Calendar without a vote for weeks and months. They were confirmed two days after the vote by the Judiciary Committee. That should be the standard we follow, not the exception. It should not take being from the ranking Republican's home State to be promptly confirmed as a noncontroversial judicial nominee.

The obstruction of President Obama's nominees by Senate Republicans has contributed to the damagingly high level of judicial vacancies that has persisted for over 4 years. Persistent vacancies force fewer judges to take on growing caseloads, and make it harder for Americans to have access to speedy justice. While Senate Republicans delayed and obstructed, the number of judicial vacancies remained historically high and it has become more difficult for our courts to provide speedy, quality justice for the American people. There are today 83 judicial vacancies across the country. By way of contrast, that is nearly double the number of vacancies that existed at this point in the Bush administration. The circuit and district judges that we have been able to confirm over the last four years fall 20 short of the total for this point in President Bush's second term.

There should be no doubt that these delays, and the vacancies they prolong, have a real impact on the American people. Last week, the president of the American Bar Association wrote in The Hill that:

> Real costs are often borne by businesses whose viability relies on the timely resolution of commercial disputes, by defendants who lose jobs and sometimes family ties while languishing behind bars awaiting trial, and, ultimately, the public that expects courts to deliver on the promise of justice for all. Our economy depends on courts to enforce contracts, protect property and determine liability. Judicial vacancies increase caseloads per judge, creating delays that jeopardize the ability of courts to expeditiously deliver judgments. Delay translates into costs for litigants. Delay results in uncertainty that discourages growth and investment.

She concluded that ''vacancies are potential job-killers.'' I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

Today the Senate will vote on the nomination of Jane Kelly to the U.S. Court of Appeals for the Eighth Circuit. She has a distinguished career in the Federal Defender's Office, first as an assistant federal public defender and then as a supervising attorney. In addition to working in the Federal Defender's Office, Jane Kelly has also served as a visiting instructor at the University of Illinois College of Law and taught at the University of Iowa College of Law. After law school, she served as a law clerk to two Federal judges: the Honorable Donald J. Porter of the U.S. District Court for the District of South Dakota and the Honorable David R. Hansen of the U.S. Court of Appeals for the Eighth Circuit. Jane Kelly was reported unanimously by the Judiciary Committee one month ago. I am especially pleased that her nomination is not being blocked the way Senate Republicans blocked the nomination of Bonnie Campell, the former Attorney General of Iowa and first head of the Justice Department's Violence Against Women Office. In part because that nomination was blocked, Jane Kelly will be just the second woman ever to serve on the Eighth Circuit.

After today's vote, a dozen judicial nominees remain pending on the Executive Calendar, including four who could and should have been confirmed last year. Like Jane Kelly, they deserve swift consideration and an up-or-down vote.

Finally, over the last several months, I have continued to speak out about the damaging effects of sequestration

on our Federal courts and our system of justice. The harmful effects continue. As a result of sequestration, Federal prosecutors and Federal public defenders continue to be furloughed. In a column dated April 18, 2013, distinguished Federal Judges Paul Friedman and Reggie Walton from the United States District Court for the District of Columbia spoke out against the harmful impact of sequestration. They wrote:

[S]equestration poses an existential threat to the right of indigent defendants to have publicly funded legal representation—a right that the Supreme Court recognized 50 years ago in its landmark decision in Gideon v. Wainwright. . . .

[T]the effect of sequestration on the courts severely threatens the rights guaranteed by the Sixth Amendment to those accused of crimes and, in the process, threatens our federal judiciary's reputation as one of the world's premier legal systems. This is a price we cannot afford to pay.

I ask unanimous consent that this column be printed in the RECORD at the conclusion of my remarks.

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

[From The Hill, Apr. 17, 2013]

PRESIDENT AND CONGRESS MUST ACT TO FILL JUDICIAL VACANCIES

(By Laurel Bellows)

The judicial appointment process has been broken for two decades. Through the first two centuries of our republic, the Senate was renowned as the world's greatest deliberative body, the home of lawmakers and statespeople who understood not only the impact of soaring rhetoric but also the value of collaboration and compromise. Senators assiduously exercised their authority to provide advice and consent on judicial nominations. The judicial appointment process was divisive at times, but presidents and senators have historically recognized that stonewalling judicial nominees undermines the independence of the judiciary as a coequal branch of government. With 86 (one in 10) vacancies on our federal bench and with 37 vacant judgeships qualifying as judicial emergencies, the time for collaboration and compromise is now.

Successive presidents and Senate majority and minority leaders have pointed at each other and claimed with exasperation that their political opponents are responsible for stalling judicial nominees. Neither side is willing to end a process that has degenerated into Beltway gridlock. There are many losers in this stalemate. One is the judicial nominee, whose law practice and family suffer during the extended limbo of the pending nomination. Real costs are often borne by businesses whose viability relies on the timely resolution of commercial disputes, by defendants who lose jobs and sometimes family ties while languishing behind bars awaiting trial, and, ultimately, the public that expects courts to deliver on the promise of justice for all. Our economy depends on courts to enforce contracts, protect property and determine liability. Judicial vacancies increase caseloads per judge, creating delays that jeopardize the ability of courts to expeditiously deliver judgments. Delay translates into costs for litigants. Delay results in uncertainty that discourages growth and investment. With 60 percent more judicial vacancies at present than in January 2009 and pending civil cases in U.S. District Courts 7 percent higher than in 2005, vacancies are potential job-killers.

The U.S. District Court for the Northern District of Georgia has had one open judge's position for more than 1,500 days and another for more than 1,100 days. Federal courts in Arizona, North Carolina, Texas and Wisconsin have similarly long-lived vacancies. In the U.S. District Court for the Central District of California, a venue that recently considered a $1 billion case, a seat on the Ninth Circuit U.S. Court of Appeals has been open for more than 3,000 days, since 2004.

Vacancies affect our criminal justice system. Major crimes like terrorism, bank robbery and kidnapping are tried in federal courts that are understaffed. Plus, the number of defendants pending in criminal cases before U.S. district courts has increased 33 percent since 2003. The constitutional rights of defendants to a speedy trial are not waived because senators cannot agree on judges. To meet those constitutional obligations, criminal trials receive precedence over civil matters, further adding to the civil backlog. Exacerbating slowdowns caused by vacancies, the courts have announced that sequestration will require staff furloughs. Some courts will not accept civil filings on certain days.

Progress can be made with small steps and collaborative leadership. As a first step, Democrats and Republicans should schedule up-or-down floor votes for those 13 nominees favorably reported out of the Senate Judiciary Committee with little or no opposition.

Second, the 11 nominees who were pending on the floor when the 112th Congress adjourned should be fast-tracked. These women and men nominees already have endured the laborious review process and Judiciary Committee approval. The technicality of adjournment should not stall their consideration.

Next, the Senate majority and minority leaders should agree to prioritize filling judicial emergencies and shorten the period of time between nomination and votes. A nominee for Majority Leader HARRY REID's home state of Nevada has waited more than 200 days without a floor vote. Minority Leader MITCH MCCONNELL's home state has fared even worse. A seat has been vacant in the Western District of Kentucky for more than 500 days.

Finally, the White House should offer a nominee for every open seat on the bench. The many vacancies and anticipated vacancies warrant making judicial vacancies a priority this year. Additional nominations from President Obama will emphasize the responsibility of the Senate to end decades of escalating retaliation against qualified judicial nominees.

Bellows is president of the American Bar Association.

[From the Washington Post, Apr. 18, 2013]

PUBLIC DEFENDERS OFFICES SHOULDN'T SUFFER UNDER SEQUESTRATION

(By Paul L. Friedman and Reggie B. Walton)

Paul L. Friedman and Reggie B. Walton are federal judges on the U.S. District Court for the District of Columbia.

Generally, federal judges should not become embroiled in political disputes. But we feel compelled to speak out because sequestration poses an existential threat to the right of indigent defendants to have publicly funded legal representation—a right that the Supreme Court recognized 50 years ago in its landmark decision in Gideon v. Wainwright.

Before becoming judges, we served as federal prosecutors and as defense lawyers. As the former, we vigorously pursued the prosecution of individuals accused of violating the law. And upon securing convictions, we aggressively sought incarceration when the circumstances warranted. Our ethical obligation as prosecutors was not only to secure convictions but also to ensure that the results we obtained were just. Confidence in the justice of an outcome—especially when the accused loses his or her freedom—is maximized only if the defendant has had competent legal representation.

Our adversarial system works best with competent lawyers on both sides. In federal court in the District of Columbia, where we serve as judges, 90 percent of criminal defendants cannot afford to pay for lawyers. Of those defendants, 60 percent are represented by attorneys employed by the Office of the Federal Public Defender for the District of Columbia; the others are represented by private attorneys approved by the court, provided training by the federal public defender and paid from public funds under the Criminal Justice Act. Because of the demanding selection criteria for defense attorneys, the caliber of representation provided to indigent defendants in D.C. federal courts is outstanding. So when a person represented by one of these attorneys is convicted in our courtrooms, we can impose sentences with a high degree of confidence that the defendant's best arguments and defenses were explored or presented.

Sequestration has the potential to alter this reality. Federal public defender offices throughout the country stand to have their already tight budgets reduced significantly. The District's office is poised to furlough each of its lawyers for at least 15 days before the end of the fiscal year on Sept. 30. Also impaired will be its ability to assist private attorneys appointed to represent indigent defendants. Already, we judges are seeing court dates pushed back because lawyers at the federal public defender's office and the U.S. attorney's office are being furloughed.

Lawyers in the federal public defender's office in the District—public servants who earn much less than their private-sector counterparts—must also endure a roughly 12 percent reduction in salary. (The furloughs and salary cuts were poised to be worse, but the executive committee of the Judicial Conference announced efforts this week to help make up the shortfall.) ''It's tremendously demoralizing, even for people who are used to fighting against extraordinary odds,'' noted one federal public defender.

This all seems a heavy price, given that cutting the judiciary's budget will do little to redress the country's economic crisis. The federal courts' budget nationwide comprises only 0.2 percent, or about $7 billion, of the $3.7 trillion federal budget, and funding of federal public defenders and Criminal Justice Act attorneys must come from that small share.

''Lawyers in criminal cases are necessities, not luxuries,'' the Supreme Court said 50 years ago in Gideon. A federal public defender in Ohio echoed the sentiment this month: ''These are not luxury services that we're providing. These are constitutionally mandated services, and because they're mandated, someone has to do it.'' When it comes to the constitutional right to the effective assistance of counsel, can we really say, ''We don't have the money''

Alexander Hamilton observed in the Federalist Papers that unlike the legislative branch, which ''not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated,'' and the executive branch, which ''not only dispenses the honors, but holds the sword of the community,'' the judiciary ''is beyond comparison the weakest of the three departments of power.'' Because it has ''neither force nor will, but merely judgment,'' Hamilton explained, the judicial branch depends on the other branches to fulfill its constitutional mandate.

Particularly as concerns grow about wrongful convictions, it is distressing to see resources so dramatically diminished for those who protect the rights of the poor in the criminal justice system. And the judiciary is virtually powerless to do anything about it. We appreciate that the country's fiscal problems must be addressed. But the effect of sequestration on the courts severely threatens the rights guaranteed by the Sixth Amendment to those accused of crimes and, in the process, threatens our federal judiciary's reputation as one of the world's premier legal systems. This is a price we cannot afford to pay.

Mr. GRASSLEY. Madam President, I come to the floor to speak about the nomination of Jane Kelly. I compliment the chairman for speaking on immigration. I am not going to speak on immigration today, probably, but I hope to be able to speak several times before the bill actually gets to the floor of the Senate, to inform my colleagues about my point of view on the whole issue of immigration. But I can say generally that we all know the immigration system is broken and legislation has to pass. I hope we can get something that has broad bipartisan agreement. Already the product before us is a product of bipartisanship because four Democrats and four Republicans have submitted a proposal for our committee to consider.

I rise today, as I have said, in support of the nomination of Jane Kelly to be U.S. Circuit Judge for the Eighth Circuit. The nominee before us today, Ms. Kelly, presently serves as an assistant public defender for the Federal Public Defender's Office for the Northern District of Iowa. She does that work in the Cedar Rapids office.

She is well regarded in my home State of Iowa, so I am pleased to support Senator HARKIN's recommendation that he made to the President, and subsequently the President's nomination of Ms. Kelly.

She received her BA summa cum laude from Duke University in 1987. After spending a few months in New Zealand as a Fulbright scholar, she went on to Harvard Law School, graduated there cum laude, earning her J.D. degree in 1991.

Upon graduation, she served as a law clerk, first for Judge Donald J. Porter, U.S. District Court, South Dakota, and then for Judge David R. Hansen of the Eighth Circuit. Judge Hansen sent us a letter in support of Ms. Kelly. Before I quote from it, I have confidence in Judge Hansen's words because he was a person I suggested to Republican Presidents, both for district judge and then his long tenure on the Eighth Circuit, and he has been a friend of mine as well.

This is what now-retired Judge Hansen said in support of Ms. Kelly: ''She is a forthright woman of high integrity and honest character.''

Then he went on to say she has an ''exceptionally keen intellect.''

Then Judge Hansen concludes by saying: ''She will be a welcome addition to the Court if confirmed.''

I have no doubt that she will be confirmed.

Beginning in 1994, she has served as an assistant Federal public defender in the Northern District of Iowa. She handled criminal matters for indigent defendants, has been responsible for trying a wide range of crimes. She became the supervising attorney in that Cedar Rapids office starting in 1999.

Ms. Kelly is active in the bar and in district court matters. She presently serves on the Criminal Justice Act Panel Selection Committee, the blue-ribbon panel for criminal cases. She also serves on the Facilities Security Committee of the district court.

In 2004, her peers honored her with the John Adams Award from the Iowa Association of Criminal Defense Lawyers and Drake University Law School. She was unanimously chosen for this award, which recognizes individuals who show a commitment to the constitutional rights of criminal defendants.

The American Bar Association's Standing Committee on the Federal Judiciary gave her a unanimous ''qualified'' rating.

I congratulate Ms. Kelly on her accomplishments and wish her well in her duties. I am pleased to support her confirmation and urge my colleagues to join me.

This brings us to a point where, as of today, prior to this supposed approval of Ms. Kelly, we have a record in the Senate of approving 185 judges throughout the 4½ years of this Presidency, and the Senate has only rejected 2. That would be a .989 batting average for the President of the United States with his nominees here in the Senate.

As I stated last week, a .989 batting average is a record any President would be thrilled with. Yet this President, without justification, complains about obstruction and delay.

Today's confirmation is the 14th so far this year including 5 Circuit Judges and 9 District Judges.

Let me put that in perspective for my colleagues. At this point in the second term of the Bush presidency, only one judicial nomination had been confirmed. A comparative record of 14–1 is nothing to cry about.

As I said, this is the fifth nominee to be confirmed as a Circuit Judge this year, and the 35th overall. Over 76 percent of his Circuit nominees have been confirmed. President Clinton ended up at 73 percent; President Bush at 71 percent. So President Obama is doing better than the previous two Presidents.

So again, this President and Senate Democrats should have no complaints on the judicial confirmation process. The fact of the matter is that President Obama is doing quite well.

I yield the floor and 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. DURBIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SEQUESTRATION

Mr. DURBIN. Madam President, this morning our Democratic leader, Senator REID, and the Republican leader, Senator MCCONNELL, came to the floor and talked about sequestration. Sequestration had an overwhelmingly bipartisan vote of 74 to 26. What it said was if Congress, on a bipartisan basis, could not reach an agreement on budget reduction, then automatic spending cuts would go into place.

Unfortunately, we did not reach that agreement. The spending cuts, known as sequestration, went into place, and for the last month or so there has been speculation as to whether anybody would notice.

People are starting to notice because across this country changes are taking place. For example, the Federal Aviation Administration has been asked to cut about 5 percent from their operating budget, such as salaries for employees. Because it is being done in a 6-month period, it turns out to be a 10-percent cut.

What that means, for example, is one of the largest groups of employees in the FAA, the air traffic controllers, is going to go without pay 1 day out of every 10 working days. So with fewer air traffic controllers on the job and fewer people able to direct flights, we have noticed this week that flights are starting to slow down across the country. The FAA estimates that some 6,800 flights a day will be delayed. We have already started feeling that because air traffic controllers are being laid off due to the sequestration plan.

Putting that into perspective, on the worst day of last year, because of weather, 3,000 flights were delayed. Now, on a regular daily basis more than twice that number will be delayed because of the reduction in force of air traffic controllers due to the sequestration passed by Congress.

Senators are coming to the floor and looking for relief from that. Some on the other side are arguing if the Secretary of Transportation just had the power to pick and choose within his Department, he might be able to avoid these layoffs. I don't know if that is true, but I will say that making these cuts at the end of a fiscal year is going to create hardship in a lot of different departments and agencies.

I heard one of my colleagues from Indiana come to the floor and say families face this all the time, and they have to make cutbacks. That is true. I have had that happen with my own family. They also want to make certain, if they can, to get through tough periods without cutting into the essentials of life, such as prescription drugs, paying the mortgage, and paying the utility bills. We need to make this a thoughtful effort to avoid sequestration.

The Democratic leader, Senator REID, has proposed that we, in fact, defer this sequestration through the remainder of this fiscal year, until October 1. To make up the costs, he uses the overseas contingency fund. This was a fund created to pay for our wars overseas, and thank goodness Iraq has been closed down as an act of war and Afghanistan is in the process. So there will be a surplus of money in this fund—some $600 billion—that otherwise had been anticipated to be spent.

What the majority leader suggested is that we take a small part of that and use it so we can avoid the impact of sequestration and go back to business as usual for the remainder of this year.

I happen to think sequestration is not a good policy. We need a better approach and more thoughtful approach, and this will give us a chance. We can take the funds that otherwise would be spent overseas—on a war that, thank goodness, will not be there—and instead use them at home to avoid some hardships which have just been described.

So now we hear from the Republican side that they don't think this is a viable alternative. They question whether there is an overseas contingency account. The irony is that Congressman PAUL RYAN, chairman of the House Budget Committee, included the same money in his Republican budget. Senator MCCONNELL, who was critical of it today, said back in April 2011:

Today, the Chairman of the House Budget Committee, Congressman PAUL RYAN, is releasing a serious and detailed plan for getting our nation's fiscal house in order.

That serious plan, I might remind Senator MCCONNELL, included just the funding that Senator REID is asking for. So we are not asking for something the Republicans have not already stood up and embraced. Instead, we are saying let's deal with the national challenges and national emergencies and let's deal with them with the money that would otherwise be spent overseas.

MARKETPLACE FAIRNESS ACT

After we have finished the vote on the judge, I am hoping this important issue will leave us in a position to move to proceed to the underlying bill, the Marketplace Fairness Act. This is a bill that Senator ENZI of Wyoming and I have introduced in an effort to bring some equity and fairness when it comes to the collection of sales tax.

Currently, in the United States, Internet retailers are not required by law to collect sales tax from sales in States that have a sales tax, and that is about 45 or 46 States. The Supreme Court told us 20 years ago if remote sales—catalog sales and Internet sales—are to collect sales tax, Congress has to pass the law to do it. That is what this is. We have been waiting 20 years. In the meantime, it has created some serious problems.

First, Internet retailers have an advantage over the brick-and-mortar businesses in communities. They have an advantage because the Internet retailers don't collect sales tax, so there is an automatic discount on whatever the State sales tax might be—6, 8, 9, or 10 percent. This has caused many of the stores on Main Street and in shopping malls to face competition that is unfair and sometimes forces them into closing their businesses.

We are trying to level the playing field and say: If you sell into a State such as Illinois, you will collect our sales tax on the sales to Illinoisans buying your products, period.

The debate has come up over the States which have no sales tax. Let me make it clear: There is nothing in the Marketplace Fairness bill which will impose any new Federal tax or any sales tax beyond what is currently in the law in every State in the union.

If a State, such as Oregon, Montana, New Hampshire, Delaware, even Alaska, has no State sales tax, this bill will not change it. The residents of those States will not be compelled to pay a sales tax either over the counter or over the Internet. If a retailer that happens to be located in one of those States sells into a State with a sales tax, we will provide, free of charge, the software for them to collect the sales tax and remit it to the State where the purchase was made.

There have been arguments that this is too complicated; that there are 9,000 different taxing districts. I just have to say that with software available today, what we are suggesting is something that is easily done without great cost. In fact, in this bill we are requiring the States to provide software to the Internet retailers free of charge so they can collect the sales tax as it is charged on each Internet purchase.

There have been suggestions by some that we ought to carve out some States; that we ought to say this new law will apply to some States but not to other States. The States and their businesses have to volunteer to collect a sales tax for another State.

I cannot accept that. It is worse than the current situation.

In the current situation, the store on Main Street is competing with an Internet retailer that doesn't collect a sales tax. This carve-out approach would say not only will we discriminate against those shops on Main Street, other Internet retailers which are not in the State that is carved out have to collect sales tax, but those in the carve-out State don't. So it makes for an even more inequitable situation. I could not accept it.

I might say the Presiding Officer, who has quite a history on this issue, having been one of the parties to the Quill Supreme Court decision, also made the point that we ought to take care; the standard we set for the collection of sales tax is likely to be used in the next trade negotiation with a country that is trying to establish their rules when it comes to competition on Internet commerce.

So if the collection of sales tax is required across the board in America, the same can be asked in our trade agreements with other countries. If we don't do that, we run the risk that the carve-out becomes the exception that makes the rule in the next trade agreement, which is something that would be totally unfair to American companies.

So that is where we stand. What I said yesterday, I will repeat now. At noon today we will move to proceed to this bill. I have urged my colleagues to come forward with amendments if they have them. If they don't, that is fine. But if they do, bring them forward. Let's not delay this issue.

We are in the last week before a recess. Members have plans back in their States for the weekend, and we want to make sure they can keep those plans. Those Members who have an amendment to this bill should step forward with their suggestions immediately after the vote on the motion to proceed.

Members should bring their amendments to the Senate floor. Don't wait. It is important that we do this on a regular basis so we can debate those amendments which need to be debated and vote on them, which is almost how a Senate is supposed to do it. That is what we face.

I urge those who are holding back their amendments and want to wait until Thursday or Friday—if anybody does that, we are likely to be here beyond Thursday and Friday, and that is not fair to our colleagues. If anybody has a good amendment—or any amendment for that matter—bring it to the floor.

Senator ENZI, Senator ALEXANDER, Senator HEITKAMP, and I will work to try to find a way to accommodate amendments that are consistent with the bill—or at least debate them and have a vote on them if they are not. I think that is the best thing we can do. As I said, I think that is why we were elected—to debate these issues, resolve them, and vote.

So this is a fair warning to everyone. There are no excuses left. This bill has been on the calendar and available for amendment since last week, which gave everyone plenty of time to craft their amendment. Bring it to the floor immediately after the vote on the motion to proceed, and let's get down to business. Let's do what we were elected to do and pass this bill—or at least vote on this bill, and I hope pass it—before we break for this recess.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Madam President, I ask unanimous consent to address the Senate for up to 5 minutes on the marketplace fairness legislation.

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

Mr. ISAKSON. Madam President, before he leaves the floor, I would like to thank the distinguished majority whip for his leadership. I also want to thank Senator ENZI, Senator ALEXANDER, and