having this immigration debate. These are important things our government needs to do. But if you give it too much power, it leads to these abuses.

This is why the Constitution was so wise to limit the power of the Federal Government to its enumerated powers and leave to the government closest to the people most of the powers.

I think we should re-examine all these decisions that have been made that have expanded the scope and power of our government.

I do not know how many people are aware of this, but early next year every single one of you is going to have to buy insurance, health insurance that the government says is good enough—maybe not the insurance you are getting today that you are happy with—and if you do not buy that insurance, you are going to owe the IRS some money. That is a tax to me. The same IRS that has shown a propensity to target people based on their political leanings—this is who we have empowered through ObamaCare.

This is what is going on here. It is not just one scandal at the IRS. It is about a culture of hardball politics. I think in the days to come we are going to learn a lot more about it, and we are not going to like what we learn.

For example, you think about some of our most precious freedoms—the First Amendment right to free speech. Think about if you are a reporter at the Associated Press. Think about if you are a source—unrelated to national security—to the Associated Press. Think about if you are a whistleblower, someone who is blowing the whistle on government activity because you work in the government and you think what the government is doing is wrong. Think about that for a second.

Now, all of a sudden, what are you afraid of? I am not calling that reporter back because their phone might be tapped, my number might show up on their records, because the Justice Department has just shown they are willing to do that. Think about the chilling effect that sends up and down the government.

If there is wrongdoing somewhere in the government right now, people are probably afraid to blow the whistle because they are afraid they are being surveilled by the Justice Department or that the person they are talking to is being surveilled. That is how outrageous this is.

Think about people who are thinking about getting involved in the political process, contributing to a group or speaking out, donating to a campaign or a candidate, as they are allowed to do under the Constitution. They do not want to be the next VanderSloot. They do not want to be the next guy being targeted. They do not want to be the next person being smeared on a Web site.

This is unacceptable. This is outrage. And every single Member of this body should be outraged by this behavior. This culture of intimidation, these hardball politics tactics we cannot stand for. I hope we will be united in condemning this and ensuring we get to the bottom of this with significant investigations and hearings from the committees in the Senate that have jurisdiction on the matter.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEINRICH). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mrs. BOXER. I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. ORRICK, III, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOMINATION OF MARILYN B. TAVENNER TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES

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

The legislative clerk read the nominations of William H. Orrick, III, of the District of Columbia, to be United States District Judge for the Northern District of California; and Department of Health and Human Services, Marilyn B. Tavenner, of Virginia, to be Administrator of the Centers for Medicare and Medicaid Services.

Mrs. BOXER. Mr. President, what is the order in terms of the time for the votes?

The PRESIDING OFFICER. Time is held until 4:30 and is equally divided.

Mrs. BOXER. Will there be a vote at 4:30?

The PRESIDING OFFICER. There will.

Mrs. BOXER. Thank you very much. There will be two votes, I understand.

Mr. LEAHY. Mr. President, I noted last week that Senate Republicans who have taken such pride in the number of judicial nominees being confirmed this year ignore how many were needlessly delayed from confirmation last year. There were 11 nominees left pending on the Senate floor, and another four nominees who had had hearings and could have been expedited, as we had done for many of President Bush's nominees, and all could and should have been confirmed before the end of last year. Instead, all had to be renominated, and we are still working through the resulting backlog. We are halfway through May, and the Senate has still not completed action on 4 of the 15 nominees who could and should have been confirmed last year.

William Orrick, who the Senate will finally consider today, is one of those nominees. He has now been reported twice with bipartisan support, and he has spent over 225 days waiting for his final, Senate confirmation vote. He was first reported last August. There was no reason he could not have been confirmed last year, especially considering that he is nominated to fill a judicial emergency vacancy.

William Orrick is currently Special Counsel at the law firm Coblentz, Patch, Duffy & Bass, LLP, where he previously served as a partner for over two decades. From 2009 to 2012, he served in the Department of Justice's Civil Division, first as Counselor, and subsequently, as Deputy Assistant Attorney General. The ABA Standing Committee on the Federal Judiciary unanimously rated William Orrick ''well qualified,'' its highest rating. He has the strong support of his home State Senators, Senator FEINSTEIN and Senator BOXER.

Regretably, Senate Republicans have broken from our traditions and have taken to opposing judicial nominees based on those nominees' efforts on behalf of clients. They did this when opposing nominees like Jeffrey Helmick, Paul Watford, and, most recently, Caitlin Halligan, and they are doing it, again, with William Orrick. They are opposing William Orrick because he worked on behalf of his client—the United States Government—on cases dealing with Federal preemption in immigration.

The criticisms of his supervision and advocacy on these immigration cases on behalf of the United States are unwarranted and, again, reflect a fundamental misunderstanding of our legal system. I have repeatedly noted that from John Adams to Chief Justice Roberts, that has never before been the standard by which we consider judicial nominees. Senate Republicans have adopted another double standard when it comes to President Obama's nominees.

Further, having reviewed his responses, I believe that the nominee has more than adequately responded to the questions presented to him. It is time to vote on his nomination and allow him to work on behalf of the American people in a judicial emergency district where the judges have been overwhelmed with cases.

Because Senate Republicans have delayed the confirmations of well-qualified nominees like William Orrick, we remain 20 confirmations behind the pace we set for President Bush's circuit and district nominees, and vacancies remain nearly twice as high as they were at this point during President Bush's second term. For all their self-congratulatory statements, they cannot refute the following: We are not even keeping up with attrition. Vacancies have increased, not decreased, since the start of this year.

President Obama's judicial nominees have faced unprecedented delays and obstruction by Senate Republicans. We have yet to finish the work that could and should have been completed last year. There are still 10 judicial nominees with bipartisan support being denied confirmation.

It is true that some vacancies do not have nominees. I wish Republican home State Senators would work with President Obama to fill these vacancies. As I stated last week when this issue arose in the Judiciary Committee, I am more than willing to work with Republican Senators and the administration to consider nominees for these vacancies. But it is disingenuous of Republican Senators not to work with President Obama to pick nominees and then blame the President for the lack of nominees. If Senators want new judgeships in their States, they should be working especially hard to ensure that all existing ones are filled. I take very seriously my responsibility to make recommendations when we have vacancies in Vermont, whether the President is a Democrat or a Republican, and I would hope that other Senators would do the same. After all, if there are not enough judges in our home States, it is our own constituents who suffer.

It is not enough for Senators to say that they are working on getting recommendations or they have appointed a commission to give them recommendations. Senators have to lead this effort in their home States, set firm deadlines, and get the President recommendations to fill these vacancies. In some places Federal judgeships have been vacant for 500 days or 1000 days or more without a recommendation.

I was interested to hear Senate Republicans argue that if Senators do not get recommendations in ''expeditiously enough,'' the President ''has the prerogative to nominate someone and then we have the responsibility to act on it.'' Before President Obama had made a single judicial nomination, all Senate Republicans sent him a letter threatening to filibuster his nominees if he did not consult Republican home State Senators. So the recent statement was a either complete reversal in position, or baiting a trap to then filibuster any nominees the President sends to us.

Moreover, the failure of some Republican Senators to help fill vacancies in their own States does not excuse their unwillingness to complete action on the consensus judicial nominees who are ready to be confirmed but whose confirmations are being needlessly delayed. Mark Barnett, Claire Kelly, William Orrick, Sheri Chappell, Michael McShane, Nitza Quinones Alejandro, Luis Restrepo, Jeffrey Schmehl, Kenneth Gonzales, and Gregory Phillips are awaiting confirmation and Sri Srinivasan, Ray Chen, and Jennifer Dorsey could have been reported to the Senate last week. So long as there is a backlog of nominees before the Senate, the fault for failing to confirm these nominees lies with Senate Republicans.

The Judicial Conference recently released their judgeship recommendations. Based upon the caseloads of our Federal courts, the Conference recommended the creation of 91 new judgeships. That is in addition to the 85 judgeships that are currently vacant. This means that the effective vacancy rate on the Federal bench is over 18 percent. A vacancy rate this high is harmful to the individuals and businesses that depend on our courts for speedy justice. The damage is even more acute in the busiest district courts, such as those in border states that have heavy immigration-related caseloads. Unfortunately, several of those district courts also have significant numbers of judicial vacancies, and I hope that Senators are working to find good nominees to fill those vacancies.

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. After today's votes, 9 more judicial nominees remain pending, and all were reported unanimously. All Senate Democrats are ready to vote to allow them all to get to work for the American people without further delay. We can make real progress if Senate Republicans would join us.

Mrs. FEINSTEIN. Mr. President, I rise today to strongly support the nomination of Bill Orrick to the Northern District of California.

Bill Orrick was raised in San Francisco, where his family has a long and distinguished pedigree in the legal community. I happen to have known the nominee's father, William Orrick, Jr., who was a highly-respected Federal judge in San Francisco. The firm Orrick, Herrington, & Sutcliffe—which his grandfather founded—is pristine in San Francisco. I strongly urge my colleagues to support Bill Orrick's nomination. He has proven throughout his career that he has the intellect, skill, and temperament to do an outstanding job on the Federal bench in San Francisco.

Mr. Orrick earned his bachelor's degree from Yale and his law degree from Boston College. He then represented low-income clients in Georgia for five years. After that, he came home to San Francisco, where he practiced commercial litigation for 25 years at Coblentz, Patch, Duffy, & Bass. He primarily practiced in the field of employment defense.

In 2009, he joined the Justice Department, where he worked in the Civil Division and oversaw the Office of Immigration Litigation. As an attorney at the Justice Department, Mr. Orrick's job has been to represent his client zealously and professionally—and he has done so.

The Office of Immigration Litigation is in the business of defending the government's position in cases in which an alien is seeking to prevent removal from this country. The office also defends the government in cases when an alien brings a challenge to the length or conditions of detention. That means that Orrick's primary task was to litigate against aliens in Federal court.

Mr. Orrick has also been called upon to represent the Department of Justice in other cases, including those challenging state immigration laws like those in Arizona and Alabama on Federal preemption grounds. In these cases and others, Mr. Orrick dutifully and faithfully executed his duty to advance the position of the United States Government.

Mr. Orrick's record speaks for itself. He is seasoned. He has over three decades of experience in legal practice, faithfully representing his private and governmental clients. He has been rated ''well qualified'' by the American Bar Association.

I will close with a few remarks on the confirmation process. Mr. Orrick's confirmation is a long time coming. He was first nominated nearly a year ago, and first approved by the Judiciary Committee on August 2, 2012 with the support of Senators KYL and GRAHAM.

When the 112th Congress recessed, other nominees who were reported by the Judiciary Committee before the August recess were confirmed. Not Mr. Orrick. He had to be renominated. His nomination had to be reported by the Judiciary Committee again. His nomination has only now come to the floor—nearly a year after his first nomination.

This is a real shame. The Northern District of California is in a judicial emergency, as declared by the Judiciary Conference of the United States, as are all judicial districts in California. The Northern District has 675 weighted filings per judgeship, making its caseload 30 percent above the national average. A civil case takes nearly 3 years to get to trial—up nearly 50 percent from a year ago.

When well-qualified nominees like Bill Orrick are held up, judicial emergencies like those California continues to face year after year are only exacerbated.

I am very pleased Bill Orrick will be confirmed, and I thank my colleagues on the Republican side for agreeing to schedule a vote on his nomination. I simply believe—strongly—that he could and should have been confirmed sooner by this body.

I yield the floor.

Mrs. BOXER. This is a very good day for me because we not only had a great vote on our water resources bill, which is so important to this economy, to jobs, and businesses all across this great Nation, but finally we are getting a vote on an excellent nominee to be the U.S. district judge for the Northern District of California, William H. Orrick, III.

Mr. Orrick was approved by the Senate Judiciary Committee with bipartisan support, and his appointment to

the Northern District would fill a seat in an emergency district. We need to move on this nomination, and I am most grateful for getting this opportunity today.

The caseload in the Northern District is 24 percent above the national average, at 631 weighted filings per judgeship. Civil cases that go to trial in the Northern District now take over 34 months to get to trial, up from 21 months just a year ago. We know justice delayed is justice denied, so this is justice delayed. It is not good for our country. That is why I am so excited we are finally getting to this vote.

This is such a good nominee. He brings a depth of legal experience in both the public and private sectors, which will make him a tremendous asset to the Northern District Court.

Mr. Orrick received his bachelor's degree from Yale University, and he earned his law degree from Boston College. He graduated cum laude from both schools. After law school, he spent 5 years providing pro bono legal services for low-income clients in the State of Georgia.

Then Mr. Orrick returned home to the Bay Area, and he joined a very prominent San Francisco firm—Coblentz, Patch, Duffy, and Bass, where he spent 25 years as an associate partner and then the head of the firm's employment litigation practice.

In 2009 Mr. Orrick joined the Department of Justice as Deputy Assistant Attorney General in the Civil Division. His primary duty at the Justice Department was to oversee the Office of Immigration Litigation, representing the United States in all manners of immigration law.

Last year he returned to private practice in San Francisco. Mr. Orrick considers service to the community to be a hallmark of his legal career. He spent 11 years as chancellor and legal advisor to the Episcopal Diocese of California and 13 years working with the Good Samaritan Family Resource Center, a low-income housing nonprofit in San Francisco. This is a man who has given back over and over again.

At his law firm he supervised much of the firm's pro bono work, for which he received the San Francisco Bar Association's ''Outstanding Lawyer in Public Service'' Award.

The American Bar Association found that Mr. Orrick is ''unanimously well-qualified'' to be a Federal judge. Today is Bill Orrick's 60th birthday. I can think of no better gift than for us to finally act on this nomination.

I urge my colleagues to cast an ''aye'' vote. I think it is a vote you will be proud of in the future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. KAINE. Mr. President, I rise today in support of a nomination as well. One of the other votes we will be casting at 4 o'clock is on the nomination of Marilyn Tavenner of Virginia to be the head of the Centers for Medicare and Medicaid Services, CMS.

I am so excited that we are voting on this matter today. CMS is the largest line item in the Federal budget. It is larger than the Department of Defense because both Medicare and Medicaid are such significant budgetary items.

We have not had a confirmed Administrator of CMS in the United States since 2006. We have been operating this program on which tens of millions of vulnerable Americans rely on a daily basis with a succession of part-time, acting, interim Administrators. It will be good for the country and for the mission of CMS to confirm an Administrator. I am excited that we are taking that vote today.

A few words about the nominee Marilyn Tavenner. First is her experience: Marilyn is from a rural community in Southside, VA. She grew up and wanted to be a nurse. She started her career as a nurse and served at hospitals, first rural and then urban hospitals, in Virginia for many years.

Her leadership skills and traits were recognized, and she became a nursing supervisor, obtaining greater education along the way. At one point, she was working at a hospital in Virginia that lost their CEO, and as the board wrestled with who should be an interim CEO, whether they should do a search or bring someone in from the outside, it was suggested Marilyn might be the person to do it. She wasn't interim CEO for long before the board decided she was, in fact, the person who should run the hospital.

She then had a career of running that hospital, then multiple hospitals and eventually worked for the HCA hospital chain running an entire region of hospitals and eventually became a vice president for HCA running all of their outpatient surgery centers for all of the United States.

At that point, I reached out to Marilyn—I had been elected Governor of Virginia in 2005—and asked her to be my secretary of Health and Human Services. Marilyn performed in an exemplary way as a cabinet secretary in my administration from 2006 to 2010 and helped me tackle all manner of Health and Human Services challenges, some of which she had significant background in—nursing education, for example—and others that might have been new—cessation of youth smoking—and some that were not even on the health side but were in the human services portfolio that had not been her work—foster care and mental health reform. In all those areas, Marilyn proved herself to be very able.

She has been essentially the chief operating deputy at CMS since early 2010. She was the No. 2 at CMS to the Administrator nominee Donald Berwick—a nominee who was never confirmed by the Senate—and in that role she worked closely with Donald Berwick and did wonderful work within CMS through the very challenging time of drafting, passing, and now the implementation of the Affordable Care Act.

Marilyn is the right person for the job for three reasons: First, if you care about patients, then Marilyn is your person. Marilyn, through all of her work, whether as a nurse, a hospital administrator, a regional health care executive, a cabinet secretary or a CMS administrator, has never forgotten it is fundamentally about patients and that before we get to health care we have to care about health. Marilyn brings a nurse's attitude, and what a great thing it would be for the nursing profession to have a nurse as the agency director of the Centers for Medicaid and Medicare Services. She brings a nurse's mentality, and she will do that every day on the job. That is her first priority.

The second reason Marilyn would be a strong CMS Administrator is that she is an expert, frankly, at finding savings and finding ways to reduce and control costs. We all know in the country we spend too high a percentage of GDP on health care—18 to 19 percent of our GDP on health care. Other nations in the world—Switzerland and others—spend 11 or 12 percent. We have a system that produces some spectacular professionals and some procedures that are second to none in the world, but we don't live as healthy as other nations and some of our outcomes are not quite as strong and we spend too much. So one of the subjects we talk about on this floor all the time is budgetary issues and what are the right ways the Federal Government can find savings in our own programs.

But also if we do innovative things in Medicaid and Medicare that would save money, those also become examples that can be learned throughout the health care industry to help us find appropriate savings. When I was Governor and we were dealing with the national recession and we were having to make cuts, there was no one in my cabinet or no other senior official whom I had who worked with me who was more creative and compassionate about trying to find targeted ways to achieve savings as Marilyn Tavenner. She is a whiz at this and yet never sacrifices her focus on patient care, which was the primary attribute of hers I mentioned. So as we wrestle with Medicaid and Medicare and the growth of those budgetary items, and we need to find ways to try to deal with them, I couldn't think of a better person than Marilyn Tavenner to be in that position.

The last attribute of hers that I think is truly an amazing one and a reason I support her is that she is a creative person and is always driven by finding true results. I could tell numerous stories from my time as Governor of her efforts to successfully help us ban smoking in restaurants and bars to improve our health, her efforts to help us improve our foster care system outcomes, to train more nurses, and expand the number of physicians in the State, but the story I will tell is one that was a shame for Virginia, but Marilyn helped us solve it by being creative and helping us focus on results,

which is what we need at the national level.

Here is a conundrum about Virginia. When I was elected Governor, we were in the top 10 in the Nation in per capita income, but in infant mortality we were about 35th in the Nation. It just didn't seem like those two things matched up; a high-income State with a successful economy and a low unemployment rate should be doing better in infant mortality. That had occurred to Governors before me; that this just didn't make sense. Why would we not be a better State when it comes to the health of our newborns?

I gave Marilyn the challenge—because I didn't know the answer and I didn't know what to do—as my Health and Human Services secretary, to dramatically reduce our infant mortality rate. You can do everything else you want, but the No. 1 thing I want you to do during my single 4-year term as Governor is help us figure out a way to dramatically reduce our infant mortality rate.

Others had made the effort, and the other efforts hadn't produced any results. But largely through a creative and exhaustive analysis of data—why did we have a problem—Marilyn approached the challenge and figured out why we had the problem. She figured out the myths and the facts and separated the myths and put them aside. She devised a very targeted strategy for dealing with the particular reasons we had a problem and, lo and behold, within a very few years, this intractable challenge we had in Virginia of an unacceptably high infant mortality rate began to dramatically change, and the changes continue because the changes Marilyn put into the system are what no one would ever want to undo.

Marilyn's experience, her focus on patients from her background as a nurse, her spectacular success at smart cost cutting but then especially her proven capacity to be creative and innovative in reaching results merit our support for her. I am excited we will be casting this vote today. I think the fact the United States will have a confirmed CMS Administrator who can then take that confirmation and plow forward on important initiatives will be for the good of this country.

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

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

Mr. KAINE. Mr. President, I ask unanimous consent that the time during all quorums before the votes be charged equally to both sides.

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

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

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

Mr. GRASSLEY. Mr. President, I rise in opposition to Mr. Orrick's nomination to be a District Judge for the Northern District of California and I would like to take a few moments to explain to my colleagues why I will be voting no.

Before I discuss the nominee, however, I will update my colleagues on where we stand with judicial confirmations. Thus far, the Senate has confirmed 187 District and Circuit nominees; we have defeated two. That's 187–2, which is a .989 batting average. That is an outstanding record.

So far this year, the Senate has confirmed 16 nominees. Today, if Mr. Orrick is confirmed, we will have confirmed the 17th nominee. At this stage in President Bush's second term only four were confirmed. That's a record of 17 to 4. This President is being treated exceptionally fairly.

The President has recently submitted a few new nominations. I know I have been reminding him that we can't do anything about vacancies without him first sending up nominees. But again, even with the recent nominations 61 of 85 nominations still have no nominee. That's nearly three out of four vacancies, and for judicial emergencies, only 8 of 35 vacancies have a nominee. So I just wanted to set the record straight before we vote on this nominee.

Again, I will be voting ''no'' on Mr. Orrick's nomination. I was troubled by his intervention in Utah, Arizona, South Carolina, and Alabama. In those States he led the effort to strike down the statutes in those States addressing the Federal Government's failure to enforce immigration laws. We are in the middle of marking up a comprehensive immigration bill. It is clear that enforcement is a problem.

I, and some of my colleagues, would like to strengthen enforcement, but Mr. Orrick was out there leading the effort to maintain the weak status quo. I don't know why that should lead to a lifetime appointment on the Federal bench.

I was also disappointed by Mr. Orrick's responses to many of my questions at his hearing and in follow-up questions for the record. At his hearing, I asked him a number of questions that he said he could not answer at the hearing, but that he would familiarize himself with the issues. I offered to submit those questions in writing to provide Mr. Orrick the opportunity to answer them—a courtesy this Committee commonly extends to nominees in these circumstances.

After granting Mr. Orrick this courtesy, I was disappointed that he still failed to answer many of my questions. So I extended the courtesy a second time, offering Mr. Orrick the opportunity to provide a responsive answer to my earlier questions. Unfortunately, the ''answers'' he provided to my second set of questions were as non-responsive as the first.

Now, I understand that it is not unusual for nominees to claim they are unable to answer a particular question, but I must say that the degree of Mr. Orrick's non-responsiveness rose to a level well above what we typically see from nominees.

Moreover, just because a particular answer might be awkward for the administration that does not justify refusing to provide that answer.

Now, although there were a host of questions Mr. Orrick would not answer, I will provide just one example. In the hearing, I asked Mr. Orrick about a particular Ninth Circuit case and asked if it was controlling. This was in connection with a brief he filed opposing the Defense of Marriage Act. I thought he mischaracterized the precedent and wanted an explanation. At a minimum, I wanted to know if he had a basic knowledge of the precedent and recognized it as current law. He answered, ''I will follow controlling precedent wherever it exists.''

That is a clever answer, but of course, it doesn't answer the question. So in my written questions, I asked again if the Adams case was controlling precedent. He responded that he was reluctant to answer because a similar case could come before him.

This struck me as odd for two reasons. First, if confirmed, he would likely recuse himself from any case where he crafted a part of the Justice Department's policy or stance. And second, I wasn't asking for his personal views on the Adams case. I was trying to assess his legal ability. I want to know whether he will recognize that a particular case is controlling—even if he, or the administration for that matter, may not agree with it. That is what serving as a district court judge is all about: Applying controlling case law, whether or not you agree with the holding.

So I sent him a second set of questions for the record, and asked him again if Adams was controlling precedent. He still would not answer. The second time, Mr. Orrick agreed that he should recuse himself from such cases, but then reserved the right not to recuse himself. And, I still don't have an answer to my original question raised in the hearing: Does Mr. Orrick recognize Adams as controlling precedent in the Ninth Circuit?

Unfortunately, based on this and other aspects of Mr. Orrick's record that I find troubling, I cannot support his nomination.

Following graduation from Boston College Law School in 1979, Mr. Orrick began practicing law in Savannah, GA, at Georgia Legal Services, a general legal practice representing low-income individuals in litigation. In 1984, Mr.

Orrick moved to California to join the law firm of Coblentz, Patch, Duffy, & Bass, LLP. His practice with the firm initially focused on complex commercial litigation. After making partner in 1998, his practice broadened to include employment litigation. His clientele included both individuals and corporations.

During this same period, Mr. Orrick also served the Episcopal Bishop of California, essentially acting as outside general counsel. This included advising the Diocese on interpretation of church canons, the various rights of congregations leaving the Diocese, and clergy's duties to report child abuse. He received compensation for these services.

In June 2009, Mr. Orrick joined the Department of Justice as a counselor to the assistant attorney general for the Civil Division in Washington, DC. His responsibilities included ''matters related to the Freedom of Information Act, tobacco litigation, increasing affirmative consumer litigation brought by the Civil Division, analysis of amendments to the False Claims Act, litigation reports, national security cases, and efforts to increase access to justice, including expansion of the Civil Division's pro bono efforts.'' In September 2009, he started supervising immigration litigation within the Division.

In June 2010, Mr. Orrick was appointed deputy assistant attorney general in the Civil Division, Department of Justice. In this role, he oversees the Office of Immigration Litigation, which is comprised of over 300 lawyers. This office handles ''all federal appellate litigation arising from petitions for review from the immigration courts and roughly 50% of the civil United States District Court immigration matters, primarily class actions, habeas and mandamus petitions, and certain Bivens actions.'' He also participates on several coordinating task forces that oversee immigration and national security related issues.

Mr. Orrick reports that throughout his career he has represented private individuals, small businesses, and large corporations in litigation matters before State and Federal courts. He estimates that approximately 97 percent of his practice has been in the area of litigation and has tried 16 cases to verdict, judgment, or final decision as either sole or lead counsel.

The American Bar Association's Standing Committee on the Federal Judiciary gave him a Unanimous ''Well Qualified'' rating.

PEREZ NOMINATION

Mr. GRASSLEY. Mr. President, at this time I would like to discuss the President's nominee for Secretary of Labor, Tom Perez.

Mr. Perez is not unknown to the Senate or even to the country as a whole now that he has been Assistant Attorney General for a long time. His tenure at the Civil Rights Commission has been marked with controversy, and that is putting it mildly. He was confirmed to his current post as Civil Rights Division Assistant Attorney General by a vote of 72 to 22. I was among those who supported his nomination to lead the Civil Rights Division, but unfortunately, based on reasons I will outline, I have come to regret that vote.

There are a number of issues regarding Mr. Perez's record that should give my colleagues pause. Today I wish to focus on the investigation I have been conducting with my colleague in the House Mr. ISSA, chairman of the Oversight and Government Reform Committee, as well as Mr. GOODLATTE, chairman of the House Judiciary Committee.

I would like to share with my colleagues the role Mr. Perez played in the quid pro quo between the City of St. Paul, MN, and the Department of Justice here in Washington where the Department agreed not to join two False Claims Act cases in exchange for the City of St. Paul withdrawing its case from the Supreme Court in a case called Magner v. Gallagher. Mr. Perez's actions in this case are extremely troubling for a number of reasons. In other words, if an individual takes extraordinary action to get a city to withdraw a case that is already on the docket of the Supreme Court, that is pretty serious intervention.

First and foremost, at this point no one disputes the fact that Mr. Perez orchestrated the entire arrangement. He manipulated the Supreme Court docket so that his favored legal theory, called the disparate impact theory, would evade review by the High Court. In the process, Mr. Perez left a whistleblower twisting in the wind. Those are the facts, and even Mr. Perez doesn't dispute those facts.

The fact that Mr. Perez struck a deal that potentially squandered up to $200 million from taxpayers in order to preserve the disparate impact theory is, of course, extremely troubling in and of itself. In addition to the underlying quid pro quo, however, the evidence uncovered in our investigation revealed that Mr. Perez sought to cover up the fact that the exchange even took place.

Finally—and let me emphasize that this should concern all of my colleagues—when Mr. Perez testified under oath about this case both to congressional investigators and during his confirmation hearing, Mr. Perez told a different story.

The simple but unavoidable conclusion is that the story Mr. Perez told is simply not supported by the evidence, so I will start by reviewing the underlying quid pro quo.

In the fall of 2011, the Department of Justice was poised to join a False Claims Act lawsuit against the city of St. Paul. The career lawyers—when I use the words ''career lawyers,'' I mean these folks who are not political appointees. The career lawyers in the U.S. attorney's office of Minnesota were recommending the Department of Justice join this false claims case. The career lawyers, even in the civil division at main Justice, were recommending that Justice join the case. The career lawyers in the Department of Housing and Urban Development were also recommending the Department of Justice join in this false claims case. Why is that important? Because the government participating in a false claims case makes it a much stronger case than when the individual pursues it by themselves.

What I just described to my colleagues was all before Mr. Perez got involved. At about the same time the Supreme Court agreed to hear a case called Magner v. Gallagher. In Magner, the City of St. Paul was challenging the use of the ''disparate impact'' theory under the FAIR Housing Act. The disparate impact theory is a mechanism Mr. Perez and the civil rights division have been using in lawsuits against banks for their lending practices. If that theory were undermined by the Supreme Court, it would likely spell trouble for Mr. Perez's lawsuits against the banks.

So Mr. Perez approached the lawyers handling the Magner case and he cut a deal. The Department of Justice agreed not to join two false claims cases in exchange for the City of St. Paul withdrawing Magner from the Supreme Court. In early February 2012, Mr. Perez even flew to St. Paul to finalize the deal. The next week the Department of Justice declined the first false claims case, called the Newell case. The next day, the City of St. Paul withdrew the Magner case from the Supreme Court.

Now, there are a couple of aspects about this deal I wish to emphasize. First, as I mentioned, the evidence makes clear Mr. Perez took steps to cover up the fact that he had bartered away the false claims cases. Cover-ups aren't good in government. On January 10, 2012, Mr. Perez called the line attorney in the U.S. attorney's office regarding the declination memo in the Newell case. To remind my colleagues, Newell was the case the same career attorneys were strongly recommending the United States join before Mr. Perez got involved. By the time of this phone call in January 2012, Mr. Perez was well on his way toward orchestrating this quid pro quo I have described.

Mr. Perez then called the line attorney, Mr. Greg Brooker, and instructed him not to discuss the Magner case in the memo he prepared outlining the reasons for the decision not to join that false claims case. Here is what he said. This is a quote:

> Hey, Greg. This is Tom Perez calling you—excuse me, calling you at 9 o'clock on Tuesday. I got your message. The main thing I wanted to ask you, I spoke to some folks in the Civil Division yesterday and wanted to make sure that the declination memo that you sent to the Civil Division—and I am sure it probably already does this—but it doesn't make any mention of the Magner case. It is just a memo on the merits of the two cases that are under review in the qui tam context.

End of that voicemail.

Approximately 1 hour later, Mr. Perez sent Mr. Brooker a follow-up e-mail, writing:

I left you a detailed voice message. Call me if you can after you have a chance to review [the] voice mail.

Several hours later Mr. Perez sent another follow-up e-mail, writing:

Were you able to listen to my message?

Mr. Perez's voice mail was quite clear and obvious. He told Mr. Brooker:

Make sure that the declination memo . . . doesn't make any mention of the Magner case. It is just a memo on the merits of the two cases.

What could be more clear than that?

In fact, Mr. Perez himself sent an e-mail less than an hour later explaining that he had left a detailed voice mail for Mr. Brooker. Yet when congressional investigators asked Mr. Perez why he left a voice mail, he told an entirely different story. Here is what he told the investigators:

What I meant to communicate was, it is time to bring this to closure, and if the only issue that is standing in the way is how you talk about Magner, then don't talk about it.

Well, I hope my colleagues are listening and they say to themselves: Give me a break. This is plainly not what he said in his voice mail. Mr. Perez, I was born at night, but I wasn't born last night. He didn't say anything about being concerned with the delay. He said:

Make sure you don't mention Magner. It is just a memo on the merits.

His intent was crystal clear.

Mr. Perez also testified Mr. Brooker called him back the next day and refused to omit the discussion of the Magner case that was being withdrawn from the Supreme Court. According to Mr. Perez, he told Mr. Brooker during this call to ''follow the normal process.''

But, again, this story is not supported by the evidence.

One month later, after Mr. Perez flew to Minneapolis to personally seal the deal with the city, a line attorney in the civil division e-mailed his superior to outline ''additional facts'' about the deal.

Point 6 read:

USA-MN—

U.S. Attorney Minnesota. That is abbreviated here.

U.S. Attorney Minnesota considers it nonnegotiable that its office will include a discussion of the Supreme Court case and the policy issues in its declination memo.

If Mr. Perez's story were true and the issue was resolved on January 11, then why, 1 month later, would the U.S. attorney's office need to emphatically state it would not hide the fact that the exchange took place? Thank God for honest line attorneys, career attorneys.

As I mentioned, Mr. Perez flew to Minneapolis to finalize the deal on February 3, and one would think a deal of this magnitude would be memorialized in a detailed written agreement. After all, you can't even rent a car without signing a detailed agreement. But was this agreement written? No, it wasn't.

After Mr. Perez finalized the deal, the career attorney asked if there was going to be a written agreement. What was Mr. Perez's response? He said:

No, just oral discussions; word was your bond.

Once again, the people listening to this are saying to themselves: Can you believe that? Here is Mr. Perez. He has just orchestrated a deal where the United States declined to join a case worth up to $200 million to the Federal Treasury in exchange for the City of St. Paul withdrawing a case from the Supreme Court. And when the career lawyers asked if this deal will be written down, he says, No. Your word was your bond.

As everyone knows, the reason we make arrangements such as this in writing is so there is no disagreement down the road about what the parties agreed to. As it turns out, there was, in fact, a disagreement about the terms of this unwritten deal. The lawyer for the City of St. Paul, Mr. Lillehaug, told congressional investigators on January 9, approximately 1 month before the deal was finalized, Mr. Perez assured him that ''HUD would be helpful'' if the Newell case proceeded after the Department of Justice declined to intervene. Mr. Lillehaug also told investigators that on February 4, the day after they finalized the deal, Mr. Perez told him HUD had begun assembling information to assist the city in a motion to dismiss the Newell complaint on ''original source'' grounds. But, according to Mr. Lillehaug, this assistance disappeared after the lawyers in the civil division learned about it.

Let me tell my colleagues the significance of that. Mr. Perez represents the United States. Mr. Newell is bringing a case on behalf of the United States. Mr. Perez is talking to lawyers on the other side and he tells them, after the United States declines to join the case we will give you information to help you defeat Mr. Newell, who is bringing the case on behalf of the United States. Mr. Newell, the whistleblower, was left hanging out to dry by Mr. Perez. In effect, Mr. Perez is offering, in that statement, to give the other side information to help defeat his own client.

I recognize this is a significant allegation, and Mr. Perez was asked about it under oath. His response? Mr. Perez said:

No, I don't recall ever suggesting that.

So on the one hand is Mr. Lillehaug, who says Mr. Perez made this offer first in January and then again on February 4, but the assistance disappeared after the lawyers in the civil division caught wind of it.

On the other hand is Mr. Perez, who testified under oath: I don't recall ever having made that offer. Who should we believe? Well, the documents support Mr. Lillehaug's version of events.

On February 7, a line attorney sent an e-mail to the director of the civil fraud section and related a conversation the assistant U.S. attorney in Minnesota had with Mr. Lillehaug. According to Mr. Lillehaug, the line attorney wrote that there were two additional items that were part of the ''deal that is not a deal'' and one of those two items was this:

HUD will provide material to the City in support of their motion to dismiss the original source grounds.

Internal e-mails show that when the career lawyers learned of this promise, they strongly disagreed with it and they conveyed their concerns to Tony West, head of the civil division. During his transcribed interview, Mr. West testified that it would have been inappropriate to provide this material outside of the normal discovery channels. Mr. West said:

I just know that wasn't going to happen and it didn't happen.

In other words, this is simple: When lawyers at the civil division learned of this offer, they shut down that offer. So, the documentary evidence shows the events transpired exactly as Mr. Lillehaug said they did. Mr. Perez offered to provide the other side with information that would help them defeat the whistleblower, Mr. Newell, in his case, and that case was on behalf of the United States and the taxpayers, and possibly $200 million. Well, I imagine this is simply stunning, the lack of common sense exhibited, when the American taxpayers hear about this.

Mr. Perez represents the United States. Any lawyer would tell you it is highly inappropriate to offer to help the other side defeat their own client.

This brings me to my final couple points I want to highlight for my colleagues.

Even though the Department traded away Mr. Newell's case, Mr. Perez has defended his decision, in part, by claiming that Mr. Newell still had his ''day in court.'' What Mr. Perez omits from his story is that Mr. Newell's case was dismissed precisely because the United States was no longer a party to it.

After the United States declined to join the case, the judge dismissed Mr. Newell's case based upon the legal language ''public disclosure bar,'' finding he was not, again, the ''original source'' of the information to the government. I want to remind my colleagues that we recently amended the False Claims Act precisely to prevent an outcome like this. Specifically, that amendment made clear that the Justice Department can contest the ''original source'' dismissal even if it fails to intervene, as it did in this case.

So the Department did not merely decline to intervene, which is bad enough, but, in fact, it affirmatively chose to leave Mr. Newell all alone in this case that Mr. Newell filed for the benefit of the United States. Of course, that is the whole point. That is why it was so important for the City of St.

Paul to make sure the United States did not join the case. That is why the city was willing to trade away a strong case before the Supreme Court. The city knew that if the United States joined the action, the case would almost certainly go forward. Conversely, the city knew that if the United States did not join the case and chose not to contest the original source, it would likely get dismissed.

Think about that—$200 million possibly down the drain. The Department trades away a case worth millions of taxpayer dollars. They did it precisely because of the impact the decision would have on the litigation. They knew that as a result of their decision, the whistleblower would get dismissed based upon ''original source'' grounds, since they did not contest it. And not only that, Mr. Perez went so far as to offer to provide documents to the other side that would help them defeat Mr. Newell in his case on behalf of Mr. Perez's client. Again, that client was the United States. Yet, when the Congress starts asking questions, they have the guts to say: We didn't do anything improper because Mr. Newell still had his day in court. Well, the problem with that is that they cut the limbs out from under him.

This brings me to my last point, and that has to do with the strength of the case. Throughout our investigation, the Department has tried to defend Mr. Perez's actions by claiming the case was ''marginal'' or ''weak.'' Once again, the documents tell a far different story.

Before Mr. Perez got involved, the career lawyers—again, not political appointees but career lawyers—at the Department wrote a memo recommending intervention in the case. In that memo, they describe St. Paul's actions as ''a particularly egregious example of false certifications.'' In fact, the career lawyers in Minnesota felt so strongly about the case that they took the unusual step of flying here to Washington, DC, to meet with HUD officials. HUD, of course, agreed that the United States should intervene, but that was before Mr. Perez got involved in the case.

The documents make clear that career lawyers considered this a strong case, but the Department has claimed that Mike Hertz, the Department's expert on the False Claims Act, considered it a weak case. In fact, 2 weeks ago Mr. Perez testified before my colleagues in the Senate HELP Committee that Mr. Hertz ''had a very immediate and visceral reaction that it was a weak case.'' But what do the documents show? They tell a different story. Mr. Hertz knew about the case in November 2011. Two months later a Department official took notes of a meeting where the quid pro quo was discussed. That official wrote down Mr. Hertz's reaction. This official wrote:

Mike—

Referring to Mr. Hertz—

Mike—Odd—Looks like buying off St. Paul. Should be whether there are legit reasons to decline as to past practice.

The next day that same official emailed the Associate Attorney General here in town and said:

Mike Hertz brought up the St. Paul ''disparate impact'' case in which the SG [Solicitor General] just filed an amicus brief in the Supreme Court. He's concerned about the recommendation that we decline to intervene in two qui tam cases against St. Paul.

So you have these documents appearing to show that Mr. Hertz's primary concern was not the strength of the case, as Mr. Perez led Senate colleagues to believe; Mr. Hertz was concerned that the quid pro quo Mr. Perez ultimately arranged was, in fact, improper. And, again, in his words, it ''looks like buying off St. Paul.''

Just last week the Justice Department sent my staff a critical 33-page slide show about the Department's case against St. Paul. In that document, the career lawyers made their strong case for intervention, for the Justice Department to intervene with Newell to bring this case about. The Department failed to provide this critical document to the committees, and we only learned about this document not from the Department of Justice but from a recent interview we had with a HUD employee. Why do I say this is a critical document? Because this document makes abundantly clear that career lawyers did not view this case as ''marginal,'' where Mr. Perez wants you to believe that other people in the Department, experts on false claims, thought it was a ''marginal'' or ''weak'' case. And obviously he did not view it as a weak case, as Mr. Perez testified before the HELP Committee—far from it.

Here is how the career lawyers summed up the case in one of the final slides of this document. These are quotes:

The City Repeatedly and Knowingly Misrepresented its Compliance with Section 3 to Obtain Federal Funds.

Tentative conclusions:

The City has long been aware of its obligations under section 3;

The City repeatedly told HUD and others that it was in Compliance with Section 3;

The City has failed to substantially comply with Section 3.

Does that sound like career lawyers describing a ''marginal'' or a ''weak'' case? Of course not. Yet that is what Mr. Perez told my colleagues on the HELP Committee. My colleagues are well aware of how I feel about the Whistleblower Protection Act, and my colleagues know how I feel about protecting whistleblowers who have the courage to step forward, often at great risk to their own careers. But this is about much more than the whistleblower who was left dangling by Mr. Perez. This is about the fact that Mr. Perez manipulated the rule of law in order to get a case removed from the Supreme Court docket. But most importantly, this is about the fact that when Congress started asking questions about this case and when Mr. Perez was called upon to offer his testimony under oath, he chose to tell an entirely different story. The unavoidable conclusion is that the story he told is flatly not supported by the facts.

We have to demand more. We have to demand that when individuals are called upon to answer questions before the Senate, that they shoot straight regardless of the consequences.

I do not believe Mr. Perez gave us the straight story when he was called upon to answer questions about this case, and for that reason, I recommend, first of all, that my colleagues study these issues. There is a lot in this that needs to be brought out about this nomination before we vote on it. This evidence I give is just part of the story.

I yield the floor.

The PRESIDING OFFICER (Mr. COONS). The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak in support of the nomination of Marilyn Tavenner to serve as Administrator of the Centers for Medicare and Medicaid Services or CMS, one of the largest agencies ever in the history of the country. For a number of reasons, CMS has been without a confirmed Administrator since the fall of 2006.

CMS is the world's largest health insurer. It processes over a billion Medicare and Medicaid claims a year. It has a budget of nearly $1 trillion. It also provides services to over 100 million of our Nation's most vulnerable citizens receiving Medicare and Medicaid. So clearly this is a critical agency that needs a strong leader at the helm.

Thus far, from what I have seen, Ms. Tavenner has the qualifications to be that kind of a leader I believe her to be. She has clinical experience from being a nurse, executive experience from serving as a hospital administrator, and hands-on operational experience from her time as the secretary of health and human resources for the State of Virginia. That rare combination of skills will be essential when heading an agency as diverse as CMS. There is a reason she was voted out of the Senate Finance Committee on a voice vote and had the House majority leader come testify on her behalf.

Starting in 2010, she was appointed as the Deputy Administrator of CMS. Since November of 2011, she has served as the Acting Administrator. So far, she has shown a willingness to work with Members of both parties, which is a welcome development, particularly under this administration.

At a time when the Secretary of the Department of Health and Human Services is engaging in activities that are less than transparent and potentially illegal, it is even more important that an agency as vital as CMS be headed by someone with strong ethics and integrity.

Make no mistake, this agency's greatest challenges lie ahead. One of the biggest problems facing CMS in the near future is implementation of the

Federal- and State-based health insurance exchanges established under ObamaCare. These exchanges are supposed to be brought online later this year, but there are numerous obstacles that will have to be addressed. By most indications, it would take a miracle for the exchanges to be up and ready on time.

To date CMS has not been able to provide satisfactory answers to a number of questions posed by myself and other Members of Congress regarding the exchanges. For example, we have yet to see a breakdown of the budget for the federally facilitated exchange. Furthermore, we still know very little about the operational details of the exchanges and even less about how people will enroll. These are serious issues. With this system, you are asking American families to entrust the fate of their health care services to the empty words and deeds of an administration that has repeatedly shown a complete inability to be held accountable.

More importantly, with the recent revelations of potentially criminal behavior at the Internal Revenue Service, I am very concerned about trusting that agency's ability to work with CMS and HHS to deliver benefits for Americans through the exchanges.

Almost every day we see new indications that the health law is an unmitigated disaster. We are already seeing evidence that health insurance premium costs are continuing to rise and are projected to be, on average, 32 percent higher in the individual market. At the same time, according to numbers released yesterday by the Congressional Budget Office, by 2019 almost 14 million Americans who would have had employer-provided coverage will no longer have it.

Let me be very clear. ObamaCare is fundamentally flawed. The only real way to fix it is to repeal it and then start again. But until we can accomplish that goal, we need to make sure we are protecting our fellow citizens the best we can from all the negative effects of this law.

In addition to overseeing this massive new expansion of benefits, Ms. Tavenner will also be charged with helping to ensure the longevity and solvency of the existing Medicare trust fund, which is projected to go bankrupt in 2024. All told, between now and 2030, 76 million baby boomers will become eligible for Medicare. Even factoring in deaths over that period, the program will grow from approximately 47 million beneficiaries today to roughly 80 million beneficiaries in 2030.

Maintaining the solvency of the Medicare Program while continuing to provide care for our ever-increasing beneficiary base is going to require courageous solutions. I have had several conversations with Ms. Tavenner about the need for structural entitlement reforms to ensure that these programs are here for future generations. I sincerely hope we will continue to make progress on these critical issues.

Overseeing a massive bureaucracy such as the one at CMS is not a job for the faint of heart. I will be keeping a close eye on Ms. Tavenner as she takes the reins. If she is to be successful, she will have to realize she cannot do it alone. She will have to work with Members of Congress from both parties. I hope she will do so. I believe she will. Thus far I have reason to believe she will be one of the best leaders we can possibly have in the government. However, if it is under her leadership that CMS continues what has become a disappointing pattern in this administration—not responding to legitimate congressional inquiries and throwing promises of transparency by the wayside—I will use the full weight of my position as the ranking member on the Senate Finance Committee to hold her and others fully accountable. I do not think I am going to have to do that. I actually think she is that good.

I appreciate Ms. Tavenner's willingness to serve in this difficult position. While I still have many concerns about the policies of this administration and the direction CMS is heading, I plan to vote in favor of her confirmation because she has the ability and the potential to be a real leader and already has exemplified that in many ways. I encourage my colleagues to vote for her. I think Marilyn Tavenner is the right prescription at the right time to help with HHS and also with CMS which, as I said, is one of the largest agencies ever in the history of the world. She is a good woman. She is dedicated. She has the ability. I believe she will do a great job.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I want to, first of all, commend the Senator from Utah for his comments. We all know the Senator from Utah, like myself, has a real interest in making sure our government is more efficient and more effective in its operations, and know, as well, that the Senator from Utah has not always been necessarily supportive of health care reform, the Affordable Care Act. But I appreciate the comments of the Senator from Utah about Marilyn Tavenner.

I have known Marilyn Tavenner for 25 years. I think while we may disagree about the effectiveness of the Affordable Care Act, we do know one thing: We want CMS to be the most efficient, effective organization possible. I commend the Senator from Utah for his strong endorsement of Marilyn Tavenner. I think he spoke eloquently about her background. I am going to try to add a few comments, but I did not want to let him get away without my thanking him for his comments.

I rise today to join this bipartisan show of support for the President's nominee to lead the Centers for Medicare and Medicaid Services, Marilyn Tavenner. She comes to the floor this afternoon on a fairly unusual circumstance, considering some of the nominees we are considering. She came actually with a unanimous voice vote from the Senate Finance Committee. She is supported by a number of health care organizations, including the American Hospital Association, the SEIU, the American Nurses Association, just to name a few.

As I mentioned already, I have known Marilyn Tavenner for 25 years. She is the real deal. She will be a phenomenal choice to continue to lead CMS. Marilyn grew up in a small town in southside Virginia and worked her way through school. She began her health care career not as a hospital administrator or an executive, but she began on the front lines as an emergency room nurse.

Then through her ability, and her ability to relate to people and care, she rose to become CEO of a hospital and then a senior executive of a leading health care company. I know as Governor I called upon Marilyn on a repeated basis on health care issues that affected Virginia. Marilyn has always been committed to people and public service. She took that private sector knowledge and experience into the public sector even before her tenure with this administration when she joined my good friend, the junior Senator from Virginia TIM KAINE when he became Governor and served with his administration as the Virginia Secretary of Health.

Today, Marilyn has already served at the highest levels of CMS, where she has shown her ability to manage and operate one of the largest and most complex agencies in our whole government. By spending most of her career in the private sector, she knows the impact that regulations and rules have on the real world and understands the importance of not just achieving a policy goal but ensuring that it works in practice.

As we all know, passing a law like the ACA is a complicated process, particularly a law like this that has generated as much controversy. That means the role of the Administrator of CMS to be evenhanded, fact-based, effective, and efficient in implementing the dramatic transformation of the health care market that the ACA is going to provide will require a first class Administrator, somebody who understands how to get things done and somebody who is well-respected by both sides of the aisle. Marilyn Tavenner clearly fits that bill.

She is held in extraordinarily high esteem. We, again, heard the ranking member on the Finance Committee already speak in her support. She received unanimous support from the Finance Committee, but she is also held in extraordinarily high esteem by her peers. In fact, in February all of the previous living Senate-confirmed Administrators of the CMS—Democrats, Republicans, Independents, all of them who have run the agency in the past—sent a letter urging her confirmation,

noting that it was ''hard to imagine a candidate more worthy of bipartisan support.''

I look forward to voting with what I hope will be an overwhelming majority of my colleagues to confirm Marilyn for this very important role a little bit later this afternoon. I know I am about to give up my time and yield to the great new Senator from Massachusetts. I know she is going to be speaking about another nominee, someone with whom I have had the opportunity to visit a couple of times, for a role that may be almost as controversial as being head of CMS, being Administrator of EPA.

I want to say that in my conversations with Gina McCarthy she seems to bring a breadth of background of work at the State level, working under both Democratic and Republican administrations. I know the Senator from Massachusetts is going to speak to her qualifications, but as long as I am here I want to add my voice as well that I think Ms. McCarthy will be a great head of the EPA, and I look forward to joining my friend and colleague, the Senator from Massachusetts, in supporting her.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

GINA MCCARTHY NOMINATION

Ms. WARREN. Mr. President, I want to start by thanking the senior Senator from Virginia both for advancing a nomination that we will vote on this afternoon and for his comments about Gina McCarthy. She is, as the Senator says, a quite remarkable person, and she will be a wonderful director of the Environmental Protection Agency. I very much appreciate the Senator's comments about her, and I know Ms. McCarthy does as well, and the people of Massachusetts do as well.

I rise today to do something very simple. I ask my colleagues to give a simple vote to the President's nominee to head the Environmental Protection Agency. This is not fancy or ambitious, it is just a basic principle of good government in our constitutional system.

When the Founders of our Republic came together to write the Constitution, they knew the President would need help in administering this great and expansive Nation. Without help, without a government that was staffed, justice would not be established, our common defense would be threatened, and the blessings of liberty we hoped to secure through our laws would go unfulfilled.

The Founders of our Republic gave to the President the task of nominating individuals to serve and gave us the responsibility to advise on and consent to these appointments. For more than 200 years this process has worked. Presidents over the years have nominated thousands of qualified men and women who were willing to serve in key executive branch positions.

The Senate has considered nominations in a timely fashion and taken up-or-down votes. Of course, there have been bumps along the way, but we have never seen anything like this. Time and again, Members of this body have resorted to procedural technicalities and flatout obstructionism to block qualified nominees.

At the moment, there are 85 judicial vacancies in the U.S. courts, some of which are classified as ''judicial emergencies.'' That is more than double the number of judicial vacancies at the comparable point during President George W. Bush's second term. Yet right now there are 10 nominees awaiting a vote in the Senate, and they have not gotten one.

But that is not all. The nomination of the Secretary of Defense was held up for weeks and then filibustered. The nominee for the Secretary of Labor, Tom Perez, has been held up on an obscure technical maneuver. Then, of course, there is the determined effort to block Richard Cordray to head the Consumer Financial Protection Bureau—not because he is unqualified; in fact, he has received praise from industry and consumer groups alike. Even the Republicans who blocked him have praised his fairness and his evenhandedness. No, Rich Cordray is blocked because some Members of this body do not like the agency he heads. They know they do not have the votes to get rid of it or to weaken it, so instead they are holding the Director's nomination hostage.

Now we get to Gina McCarthy. This past Thursday, the Senate Environment and Public Works Committee was scheduled to vote on Gina McCarthy's nomination to head the Environmental Protection Agency. Right before the scheduled vote, all the Republicans decided not to show up. Under Senate rules, that meant there was no quorum and thus the vote could not take place.

The President has done his job. He named an outstanding nominee for the Administrator of the Environmental Protection Agency, Gina McCarthy. Gina has dedicated her professional life to the protection of our public health and to the stewardship of our environment. She was confirmed to her previous position at the EPA as Assistant Administrator for Air and Radiation by voice vote without objection.

Just to be clear, this means most of the Members of this Chamber have already voted to approve her once before.

Gina also has a long record of working effectively across party lines. She served under Republican and Democratic Governors alike, including working for Gov. Mitt Romney, the most recent Republican Presidential nominee. Her record in Massachusetts was stellar, and she has done all of us in the Commonwealth proud through her service in Washington.

Gina herself has also done her job and more. She has answered a staggering 1,120 questions from the Environment and Public Works Committee. That is the largest number of questions ever asked of a nominee facing a Senate confirmation. To put this in some perspective, 4 years ago the last confirmed Administrator of the EPA, Lisa Jackson, was asked 157 questions during her nomination process.

When Congress convened in January, many of us, both veterans and newcomers, were concerned that this kind of obstructionism would persist in the new Congress. We pushed hard for changes to the filibuster rules. We understood passions on both sides of the issue, and we listened to our colleagues. Ultimately, the two sides reached a compromise, a compromise that many of us were concerned about, but it included a clear understanding that the Democrats would not make substantial changes to the filibuster and, in return, the Republicans would not abuse its use. But in the past 3 months, abuse has been piled on abuse. Republicans have prevented votes on judges, on agency heads, and on administration Secretaries.

This is wrong. Republicans can vote no on any nominee they choose, but blocking a vote is nothing more than obstructionism. Blocking the business of government, the business of protecting people from cheating credit card companies, from mercury in the water or from unfair labor practices must stop.

The President has done his job. Gina McCarthy has done her job. Now it is time for the Senate to do its job. Gina McCarthy deserves a vote.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from New Hampshire is recognized.

Mrs. SHAHEEN. I am here to join my colleague Senator WARREN to also express my frustration about what is happening with the nominees to these critical agencies that are being held up by our colleagues on the other side of the aisle. As Senator WARREN said very eloquently, last week the Republican members of the Senate Environment and Public Works Committee chose not to appear for the important business of considering the nomination of Gina McCarthy. They made this decision with only a few minutes' notice. As a result, this action prevented an already overdue vote from taking place as scheduled.

The refusal to allow a vote on such fundamental business is unacceptable. The EPA conducts vital work to safeguard public health and protect our environment. Yet the agency has been without permanent leadership for months. It is the Senate's duty to act in a timely manner on these kinds of vacancies, and it is clear from Ms. McCarthy's impressive and expansive record that this nominee has earned and deserves a vote.

I understand and I respect those Senators who feel they have to vote against a nominee for substantive reasons. However, this failure to even appear at last Thursday's meeting and take a vote shows an alarming level of disregard for the importance of permanent leadership at the EPA and for the