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

Mr. LEAHY. Madam President, I am sure the Senator is concerned about costs. Yet, the same Senators blocking Patricia Millett's confirmation were not concerned when an unnecessary shutdown of the government cost the taxpayers billions of dollars.

I also note that under President Bush, there were 11 judges on the DC Circuit Court of Appeals with a lower caseload. Now there are 8 judges with a higher caseload. The numbers are the numbers.

President Obama is being treated differently than President Bush was. Patricia Millett is being treated differently than John Roberts was. It is not fair, it is not an extraordinary circumstance, and there is no justification for it.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. What that doesn't take into consideration is that there are six senior status judges on this court. Chief Judge Garland told us that their workload is the equivalent of 3¼ judges. So presently there are enough judges to go around and that would equal 11¼ judges. There are 8 judges there now plus the 3¼ that have senior status. There are plenty of reasons not to fill any more seats on this court.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Patricia Ann Millett, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CHAMBLISS (when his name was called). ''Present.''

Mr. HATCH (when his name was called). ''Present.''

Mr. ISAKSON (when his name was called). ''Present.''

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) is necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. INHOFE), the Senator from Texas (Mr. CRUZ), and the Senator from Wyoming (Mr. ENZI).

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

The result was announced—yeas 55, nays 38, as follows:

[Rollcall Vote No. 227 Ex.]

YEAS—55

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

NAYS—38

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

ANSWERED ''PRESENT'' —3

Chambliss	Hatch	Isakson

NOT VOTING—4

Boxer	Enzi
Cruz	Inhofe

The PRESIDING OFFICER. On this vote, the yeas are 55, the nays are 38, and three Senators responded ''Present.'' Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

The majority leader.

Mr. REID. Madam President, I enter a motion to reconsider the vote by which cloture was not invoked on the nomination of Ms. Millet.

The PRESIDING OFFICER. The motion is entered.

VOTE EXPLANATION

● Mrs. BOXER. Madam President, I was unable to attend the rollcall vote on the motion to invoke cloture on the nomination of Patricia Ann Millett, of Virginia, to be U.S. Circuit Judge for the District of Columbia Circuit. Had I been present, I would have voted ''yea.''●

Mr. REID. Madam President, I ask unanimous consent that the Senate recess until 2 p.m., and that at 2 p.m. the Senate proceed to a period of morning business for debate only until 6 p.m. with Senators permitted to speak for up to 10 minutes each.

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

RECESS

The PRESIDING OFFICER. The Senate stands in recess until 2 p.m.

Thereupon, the Senate, at 12:59 p.m., recessed until 2 p.m. and reassembled when called to order by the Presiding Officer (Ms. HEITKAMP).

MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Massachusetts.

CONGRATULATING THE BOSTON RED SOX

Mr. MARKEY. Madam President, I come to the floor to discuss the first policy-focused legislation I am introducing as a Senator. I believe it will be a win for Massachusetts and a win for the Nation. But before I do so, I would like to comment briefly about another win last night for Massachusetts and for Red Sox Nation everywhere.

Behind the mighty bat of Big Papi, the tireless and tough arms of Jon Lester, John Lackey, and Koji Uehara, and the incredible power of the beard, this unlikely Red Sox team took us from last in the division to first in the world.

For many of us in Massachusetts, this was not just about baseball. Because on Patriots' Day, when the Sox play in the morning and New England comes together for a celebration, evil visited our city at the Boston Marathon this year.

While this team cannot bring back the lives we lost or heal the wounds inflicted, it did what no other team besides the Red Sox can do: It reaffirmed our common bond in Massachusetts, in New England, and with Red Sox Nation fans everywhere.

It is often said that baseball is a game of inches. But it is also a game that can span miles, bringing people together across entire communities and cultures, bridging differences and building friendships. That is what Red Sox baseball did for Boston, for Massachusetts, and for New England this year, when we needed it the most. The Red Sox gave us the chance to all raise our hands in triumph once again together as one.

The Red Sox came back to win in dozens of games. They never gave up. They fought to the last pitch in every game, showing the resilience that reflected the response of an entire city and region after the marathon tragedy, and in doing so they gave us so much more than entertainment. They gave us hope, something to cheer for, and something else to talk about at a time of deep sadness in our region.

As the song says: ''Don't worry about a thing, 'cause every little thing gonna be all right.'' Watching the celebrations last night in and around Fenway and especially on Boylston Street, just a brief distance from the marathon finish, reminds me of how proud I am to represent this great city and the Commonwealth of Massachusetts in the Senate.

The Sox team that won the World Series in 2004 allowed us to release 86 years of disappointment. This year's team allowed us to cheer again after months of mourning. For that, we congratulate and thank the 2013 World Series champions, the Boston Red Sox.

(The remarks of Mr. MARKEY pertaining to the introduction of S. 1627 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. MARKEY. I yield back the remainder of my time.

The PRESIDING OFFICER. The Republican whip.

Mr. CORNYN. Madam President, I offer my congratulations to the Senator from Massachusetts for the World

Series victory by the Boston Red Sox, and I know it is a happy day in his State.

DC CIRCUIT COURT OF APPEALS

Mr. CORNYN. Madam President, I wish to return to the issue of the DC Circuit Court of Appeals, because even though we had an earlier cloture vote where the Senate decided to continue debate and not close off debate on this issue, I anticipate the majority leader will bring to the Senate floor the other two nominees which have now cleared the Senate Judiciary Committee for the three seats President Obama has said he wants to fill and is asking for the advice and consent of the Senate.

I wanted to make sure we all understand exactly what this debate is about. At this very moment, there are plenty of U.S. appellate courts that urgently need judges to handle their existing caseload. As my friend, the distinguished Presiding Officer, knows as a former attorney general, there are a lot of district courts around the country, Federal district courts, that could use additional personnel because they are what are called judicial emergencies because they have such heavy caseloads. They need more help. So why in the world would we want to add more judges to a court that does not have enough work for them to do? That is exactly what this debate is all about. It is not about the specific nominees. It is not an ideological battle that we are all familiar with so much as it is one of practical economics.

Between 2005 and 2013, the total number of written decisions per active judge on the DC Circuit declined by 27 percent. From 2005 to 2013, the number of written decisions per active judge went down by almost one-third, 27 percent. The number of appeals filed with the court went down by 18 percent.

As of September 2012, both the total number of appeals filed with the DC Circuit and the total number of appeals decided by the DC Circuit per active judge were 61 percent below the national average. You can see from this chart that has been prepared by the office of the ranking member, Senator GRASSLEY, how the 13 circuit courts of appeals compare when it comes to the number of cases or appeals filed per active judge.

In red is the DC Circuit Court of Appeals, the lowest caseload, the fewest number of cases of any circuit court in the Nation. Conversely, the 11th Circuit out of Atlanta has 778 cases or appeals filed per active judge. So I do not know why you would want to take three new judges and assign them to the court with the lowest caseload per active judge. It makes absolutely no sense.

By the way, the average for the circuit courts, all 13 circuit courts, is 383 cases or appeals filed per active judge; again, the average for the entire Nation being 383 appeals per active judge. The DC Circuit, to which President Obama wants to add 3 additional new judges, is 149, almost one-third.

One other sort of unique thing about the DC Circuit Court of Appeals is while many of these courts are very busy and, indeed, are overworked relative to the other circuit courts, the DC Circuit Court is perhaps the only court in the Nation that literally took a 4-month break between May and September of this year because they could. They did not have enough work to do, so they took a break. They took 4 months off between May and September.

The bottom line is that this court is not one that needs more judges. In fact, one of the current members of the DC Circuit told Senator GRASSLEY, our colleague from Iowa, ''If anymore judges are added now, there won't be enough work to go around.''

So what is this all about? Why are my friends across the aisle ignoring the needs of other appellate courts and other jurisdictions around the country that have, as the judicial administration office terms it, judicial emergencies because they have so much work to do that they need help? Why are my colleagues on the other side of the aisle ignoring those courts where there are needs in favor of a court where there is no demonstrated need?

Here is perhaps one reason why: The DC Circuit Court of Appeals, being located in Washington, DC, does have a unique caseload. I would say the types of cases they consider are not particularly more complicated. I do not buy that argument. Many of them are administrative appeals, which, as the Presiding Officer knows, are highly deferential to the administration. It is usually an abuse-of-discretion standard, which is, as I say, very deferential.

But the reason why the DC Circuit Court of Appeals is the subject of so much focus, whether it is a Republican President or a Democratic President, is because it is often called the second most important court in the Nation by virtue of its docket, the kinds of cases it decides.

Indeed, this was a court that, before the Supreme Court held portions of the Affordable Care Act unconstitutional, actually affirmed the constitutionality of the Affordable Care Act, primarily because they did not feel it was their prerogative to hold it unconstitutional, rather than—and defer to the Supreme Court which ultimately had the ability to overrule old cases and reach that result.

But this court wields tremendous influence over regulatory and constitutional matters. The truth is, I will show you a few quotes here in a moment that Senator REID and the President hope that by adding three more judges to the court, they can transform it into a rubberstamp for the Obama administration agenda.

Right now there is a balance on the court. There are four judges who were nominated by a Republican President, there are four judges on the court nominated by a Democratic President. Yet my friends across the aisle have been condemning the DC Circuit Court without justification, in my view. They have been condemning it as a bastion of partisanship, extreme ideology.

The facts do not bear that out. As I said, remember, this is the same court that actually upheld the President's health care law as constitutional. It is the same court that twice upheld the President's executive order on embryonic stem cell research. It is the same court that has ruled in favor of the Obama administration in the majority of environmental cases that have come before it, including ones related to the regulation of greenhouse gasses, ethanol-blended gasoline, and mountaintop removal coal mining. That does not sound like a radical, ideological court to me. It sounds like it is a court doing its job without fear or favor, in an impartial way, administering justice, not engaging in crass partisanship or tilting at ideological windmills.

Of course, the critics of the court do not mention those decisions I mentioned when they are criticizing the court. Instead, they point to three separate rulings where the Obama administration did not fare so well.

The first one of those was a ruling that struck down the Securities and Exchange Commission proxy access rule which has to do with corporate governance. I know that sounds like a lot of mumbo jumbo, but basically the court found that the agency had failed to conduct a proper cost-benefit analysis. We all understand what that means. The statute actually requires the agency to conduct a cost-benefit analysis, but the agency did not do it. It ignored the letter of the law, and the DC Circuit ordered the administrative agency to follow the law and engage in that kind of cost-benefit analysis.

The second ruling that the critics of the recent court point out came in August of 2012 when the court invalidated the EPA's cross-State air pollution rule, saying it would impose massive emissions reduction requirements on certain States without regard to the limits imposed by the statutory text. In other words, when an administrative agency such as the EPA issues rules and regulations, they do not do so in a vacuum or in a void. They are necessarily guided by the authority given to them and the limitations imposed upon them by the laws that Congress writes. They are free, within that statutory mandate, to write rules and regulations, but they are not free to ignore them or to engage in rulemaking that basically goes counter to the direction of Congress.

So in this case, one that is cited by some of the critics, the court held the Clean Air Act does got give the EPA boundless authority or unlimited authority to regulate emissions. A court requiring an administrative agency to work within its legal authority I think is common sense. Otherwise, you would have administrative agencies free to