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

chart their own path without regard to any kind of guidance or legitimacy conferred by Congress in terms of regulation.

Remember, these administrative agencies are very powerful entities. Some say they are the fourth branch of government. There is a lot of concern that I have, that many people have, about overregulation and its damage to our economy. The very least the courts ought to do is make sure that they are operating within their mandate and the limitations imposed upon them by Congress. That is what the court did in this cross-State air pollution rule.

By the way, Texas was caught up in this rulemaking process without even having an opportunity to be heard and to challenge the modeling of the EPA. Due process is a pretty fundamental notion in our laws, in our jurisprudence. Texas, in that instance, was denied any opportunity for basic due process of law, another reason why the court made the right ruling.

The third case that has drawn the ire of some critics across the aisle on the DC Circuit Court of Appeals has to do with two Presidential recess appointments. Every President basically has made recess appointments, but no President has done what this President has done. It violated the Constitution when doing so. In other words, basically President Obama said: Notwithstanding the fact that the Constitution gives advice and consent responsibility to the Senate—that is in the Constitution—the President basically in this instance decided when Congress was going to be in recess, for the purposes of invoking this extraordinary power, basically said the President was going to decide when we were in recess.

Essentially, as some pundits said, basically the President was claiming an authority to be able to appoint judges using the recess appointment power when we are ''taking a lunch break.'' That cannot be the law. It is not the law. That is what the DC Circuit Court said. So the DC Circuit Court said President Obama's legal rationale for appointments and the role of the Senate in advice and consent and the confirmation proceedings would ''eviscerate the Constitution's separation of powers.''

That is what the DC Circuit said about President Obama's claim to have the extraordinary power to make recess appointments and bypass the confirmation of the Senate in the Constitution.

You might wonder if the court has actually been pretty evenhanded in terms of its decisionmaking process, you might wonder if it has the lightest caseload per judge in the Nation and there are other courts that need help a lot more, you might wonder what is going on here. Why does President Obama feel so strongly, why does Senator REID feel so strongly, why does the distinguished chairman of the Senate Judiciary Committee that I serve on feel so strongly that they want to move these three judges through, even though there is no need for these judges on the DC Circuit Court?

Well, I am sorry to reach the conclusion, but I think the evidence is overwhelming that what the President is trying to do by nominating these unneeded judges to this critical court, the second most powerful court in the Nation, is he is trying to pack the court in order to affect the outcomes.

I know my friends across the aisle do not like that term, court packing. Students of history remember when Franklin Delano Roosevelt claimed the power to appoint additional Supreme Court Justices. That was held to be an unconstitutional court packing. But I do not know what else you would call this, if you are going to try to jam three additional judges on this court that are not needed, the second most important court in the Nation, in order to change the outcome of those decisions and to rubberstamp the administration's expansive policies. I do not know what else you would call it other than court packing. I think a fair interpretation or fair definition of court packing is when you add judges to a court for the explicit purpose of securing favorable rulings.

That is exactly what Democrats are trying to do with these nominations.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CORNYN. I ask unanimous consent for an additional 2 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. I wish to quote our friend Senator REID, the majority leader of the Senate. His candor is, again, remarkable and very clear. He said:

> We are focusing very intently on the DC Circuit. We need at least one more.

By that he means one more judge. Continuing:

> There are three vacancies. We need at least one more and that will switch the majority.

When the court sits en banc, when all judges decide to sit on the most important cases, then President Obama will have a majority of nominees on that court. They will be able to outvote the Republican nominees on the court.

Senator SCHUMER is complaining about some of the cases I mentioned a moment ago, and he concludes: ''We will fill up the DC Circuit one way or another.''

I believe that the evidence is overwhelming that the motivation at play here is one to make sure that this court becomes a rubberstamp for the big government policies of this administration. That is why they are ignoring appellate courts that actually need the help, and they are trying to stack the court in the second highest court in the land. That is why they are also threatening—we heard a little bit of that today, rattling that saber once again—the nuclear option to try to confirm judges with a simple majority rather than the 60-vote cloture requirement under the Senate rules.

We have a good-faith solution. This is Senator GRASSLEY's bill, which would allocate these three unneeded judges to places where they are actually needed. This is the kind of idea that our colleagues across the aisle embraced repeatedly when one of the judges from the DC Circuit was reallocated to the Ninth Circuit in 2007.

If our friends across the aisle continue to move ahead with their court-packing gambit, it will make this Chamber even more polarized than it already is. I only hope they choose a different course. This is why we are committed on this side of the aisle to stopping these nominations to these unneeded judges in this court and making sure that judges are placed where they are needed so they can engage in a fair and efficient administration of justice.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Madam President, I wish to enter into a colloquy with my great friend from Missouri, Senator BLUNT.

I wish to make a comment, if my colleague will excuse me. I have to say I am amazed to hear that we are court packing when what we are talking about is trying to fill three vacancies on a court. I hadn't heard that before with other Presidents. Hopefully, we can fill vacancies and try to do it in a bipartisan way.

COMMUNITY MENTAL HEALTH

Ms. STABENOW. Madam President, I very much wish to thank a great friend and colleague, Senator BLUNT, for joining me today on the floor and in leadership on some very important community mental health legislation.

We have an opportunity to get something done with this issue.

I ask unanimous consent to proceed with the colloquy.

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

Ms. STABENOW. We wish to do this today because today marks the 50th anniversary to the day that President John F. Kennedy signed into law the Community Mental Health Act. The good news is he signed this act. The unfortunate news is it was the last act he signed in his life.

Today we want to recognize what that has meant to so many people across the country. This put in place the ability to serve people in the community who have mental health issues, rather than only being in institutions, being able to serve people closer to home, at home or to be able to give them the opportunity to get the help they need and still be active and successful in the community.

I think so many of us have been touched by mental health issues, which is part of physical—it is not mental and physical health. I think it is about time. I know my friend would agree that we start treating illnesses above