Senator FRANKEN worked hard on compounding legislation.

Let me end where I began. The FDA Commissioner challenged us. She said that if we don't act, this tragedy will happen again. We have an opportunity to act tonight. I hope we do. The families who were devastated by this tragedy because of contaminated sterile injections that caused fungal meningitis in many of our States, especially in Tennessee, expect us to act. If we do, it will not be as well advertised as the differences of opinion we can have in the Senate, but it will demonstrate how, when we work together over a period of a couple of years, we can take a very big piece of complex legislation—in fact, two—that affects the health and safety of every American and come to a consensus that takes a large step forward.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NOMINATIONS

Mr. CORNYN. Mr. President, back in 2005, before some of the current membership of the Senate was even here, we had a very important development when it came to judicial nominations and the advice-and-consent function of the Senate. Never, before the Presidency of George W. Bush, had nominees to the Federal court been filibustered; that is, a 60-vote threshold been imposed as opposed to a 51-vote threshold, which is, of course, what the Constitution says—requiring a majority of the Senate. But there was an impasse. A number of judges at the circuit court level and district court level were locked down in this impasse. But, as so often happens around the Senate, a gang broke out. A gang was created. Seven Republicans and seven Democrats got together and helped us work through this impasse, and they did so by adopting a new Senate precedent which says, in essence, there will be no filibusters of Federal judges absent ''extraordinary circumstances.'' Yes, you may say that is a broad standard, and it is somewhat subjective, admittedly so, but the point was that the default position would be that Federal judges would get up-or-down votes and there would not be the resort to the 60-vote threshold absent extraordinary circumstances. But the point is that has now become the precedent, basically the rule by which the Senate operates when it comes to Federal judicial nominations, and it is a precedent that has been upheld and respected by both sides of the aisle ever since President Obama took office.

This afternoon we will be voting on a second nominee to the DC Circuit Court of Appeals, a court some have called the second most important court in the Nation because, situated as it is in the District of Columbia, here in Washington, most of the judicial review of administrative decisions goes through this court at the appellate level, and because the Supreme Court only considers roughly 80 cases a year, for all practical purposes the DC Circuit Court becomes the last word on judicial review on many important decisions, particularly those involving agencies such as the Environmental Protection Agency or matters of national security or reviewing the regulations associated with the financial services industry, such as Dodd-Frank and the like—a pretty important court.

Well, unfortunately, the majority leader and the President have determined that they are going to try to jam through three new judges on the DC Circuit Court of Appeals even though these judges are clearly not needed and there is demand elsewhere around the country where the workload is far heavier. But because of the special significance of the DC Circuit Court of Appeals, there is a conscious effort being made to pack that court with three additional judges it does not need in order to change the current division—four to four—in a court where Republican Presidents appointed four, Democratic Presidents appointed four. So it is an evenly balanced court.

As I said, the DC Circuit Court of Appeals does not need any more judges. So why in the world, in a time when we are looking to make sure every penny goes as far as it can and we are not spending money we do not have, would you want to appoint three new judges to a court that does not need any new judges?

Well, here is the number: Since 2005 the total number of written decisions per active judge actually has gone down. As of September 2012 both the total number of appeals filed in the DC Circuit and the total number of appeals ended in the DC Circuit per active judge were 61 percent below the national average.

So you might ask yourself, if it carries a 61-percent reduced caseload compared to the rest of the country, why don't we put the judges where President Obama can nominate them and the Senate can confirm them in places where they are actually needed rather than this court?

Well, because of the reduced caseload and the lack of work for the judges to do on the DC Circuit, one DC Circuit judge recently told Senator GRASSLEY, the ranking member on the Senate Judiciary Committee, ''If any more judges were added now, there wouldn't be enough work to go around.'' Again, why in the world would President Obama insist and Majority Leader REID insist on us confirming judges who are not needed when there is not enough work to go around if they were?

Well, my friends across the aisle continue to say that all they care about is filling judicial vacancies, but the majority leader has made it clear that his real objective is to switch the majority when the court sits en banc. For example, ordinarily, circuit courts sit on a three-judge panel, but in important decisions you may have the entire court sit en banc or all together. And the objective is clear that the majority leader wants to stack it in favor of President Obama's nominees, to transform it into a rubberstamp for the President's big-government, overregulatory agenda.

Indeed, despite all the victories the administration has won before this court, it is apparently not good enough. This administration has won several high-profile victories—in environmental cases, for example—but they are still upset with the court because it actually ruled against President Obama on cases related to corporate governance, emissions controls, recess appointments, and nuclear waste. So our colleagues are not content to have a court that is balanced and decides cases on a case-by-case basis they want to stack the court in a way that is a rubberstamp for the President's agenda.

But here are some examples of the cases the court has decided recently. In 2011 the DC Circuit told the Securities and Exchange Commission to follow the law—believe that or not—to follow the law and conduct a proper cost-benefit analysis before adopting its regulations. That is what the law required. The Securities and Exchange Commission ignored the law, and the DC Circuit said ''follow the law'' and reversed the Securities and Exchange Commission.

In 2012 the court rejected an Environmental Protection Agency rule that went far beyond the limits of the Clean Air Act. These regulatory agencies have a lot of power and a lot of authority, but it all springs from a legislative enactment by Congress. That is the source of their power and their authority, and in this case it was the Clean Air Act. The court said the Environmental Protection Agency exceeded the limits of its authority based on the law that Congress wrote and the President signed into law.

Then, in 2013, President Obama violated the Constitution, the court said, by making recess appointments when the Senate was not actually in recess. This is a very important power that goes back to President Washington that makes sure that when Congress is in recess there is still a way for the President to fill vacancies. But that was in the old days when Congress would basically leave town for months at a time. In this case, President Obama essentially decided he did not want to wait around for the advice-

and-consent function or the confirmation function that is given in the Constitution to the Senate, and he jammed these nominees through using what he called his ''recess appointment'' power.

Well, the DC Circuit Court of Appeals said: That is unconstitutional. Mr. President, you cannot do that. The law does not allow it.

But that is another reason why, I suggest, the President is eager to stack this court with people he believes will be more ideologically aligned with his big-government agenda.

Then there was one more decision this past August that I will mention. The court reminded the Nuclear Regulatory Commission of its legal requirement to make a final decision on whether to use Yucca Mountain as a nuclear waste repository. That sounds kind of arcane, but it is very important—certainly to the people of Nevada and to the U.S. national security interests when you talk about a safe and secure location to put nuclear waste.

I would submit that all of these were commonsense rulings for which there is a very sound and broad legal basis, and the court was doing what all courts are supposed to do; that is, uphold the law. Apparently, the administration does not think this court should be in a position to do that, and they do not think they should have to be in a position to follow the law. They do not seem to care that the DC Circuit Court has ruled in favor of the administration on things such as stem cell research, health care, greenhouse gas regulation, and other hot-button issues. They do not seem to care that the court's eight active judges are evenly split between Republican and Democratic appointees. In their view, by upholding the law the DC Circuit has been insufficiently supportive of the Obama agenda, so now they are attempting to pack the court with three unneeded judges in order to stack it in the administration's favor.

I said last week that my colleague from Iowa, Senator GRASSLEY, has offered a commonsense alternative. It is a good compromise, and we have done it before. It would actually reallocate two of these seats on the DC Circuit that are unneeded to other courts in the country where they are needed. What makes more sense than that? We have done that once before. We took one of these positions from the DC Circuit and reallocated it to the Ninth Circuit, where they needed judges before. We ought to be putting the resources where they are actually needed, not stacking them in a court where the resources are not needed in order to pursue an ideological end.

Unfortunately, our friends across the aisle—the majority leader and others—have rejected the Grassley compromise and pushed ahead with their court-packing maneuver. Given their stated desire to make the DC Circuit a liberal rubberstamp, Democrats have created an extraordinary circumstance that justifies the filibuster under the 2005 precedent brought about by the Gang of 14 that I started off with. I wish we had resolved this sooner. I wish my friends across the aisle would give serious consideration to the Grassley proposal. But for now, I am afraid we have reached an impasse, and so we will be voting on this nomination this afternoon.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONDOLENCES TO INHOFE FAMILY

Mr. DURBIN. Mr. President, the Senate family was stunned yesterday with the news that our colleague JIM INHOFE lost his son Perry in a plane crash in Oklahoma. I extend my condolences to JIM, the senior Senator from Oklahoma, and his wife Kay and their family on the loss of their son.

Each year, I always look forward to their Christmas card. It is an amazing gathering which grows by the year. Clearly, it is a strong, large family which takes great comfort in one another's strength. At this moment they will need it having lost one of their own.

I extend my condolences along with those of the Senate family to all of their extended family. I pray that they will have the strength—and I am confident they will—to face this personal and family tragedy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF CORNELIA T.L. PILLARD TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

The legislative clerk read the nomination of Cornelia T.L. Pillard, of the District of Columbia, to be United States Circuit Judge for the District of Columbia.

The PRESIDING OFFICER. Under the previous order, the time until 5:30 p.m. will be equally divided and controlled in the usual form.

Mr. DURBIN. A few moments ago the Republican whip, Senator CORNYN of Texas, came to the floor to oppose the nomination of Nina Pillard to the DC Circuit Court. Sadly, this did not come as a surprise. It is now clearly a political strategy on the other side to block President Obama's nominees for this important court. There are three vacancies on the DC Circuit. Most people view it as the second most important court in the land, next to the U.S. Supreme Court.

The court has eight active judges. It is authorized to have 11. When there are vacancies in our Federal judiciary, the President has a duty to fill them. President George W. Bush made six nominations for the DC Circuit during his Presidency. Of those six nominees, four were confirmed. President Obama, by contrast, has made five nominations for the DC Circuit and so far only one has been confirmed, a well-qualified gentleman, Sri Srinivasan. Two of President Obama's nominees have been filibustered by the Senate Republicans: Caitlin Halligan and Patricia Millett, two exceptionally well-qualified women.

My colleagues on the other side of the aisle have made it clear they intend to filibuster two more equally well-qualified nominees: Georgetown law professor Nina Pillard and DC District Court Judge Robert Wilkins.

This disparity is very obvious for anyone who cares to compare. President Bush: Six DC Circuit Court nominees; four of them confirmed. President Obama: Five DC Circuit Court nominees; four of them likely filibustered by the Republicans.

This is a troubling contrast. There is no question President Obama's nominees have the qualifications and integrity to serve on this important court. There are absolutely no—underline no—extraordinary circumstances that justify filibustering these nominees. Just a few days ago when the Senate Republicans filibustered Patricia Millett, one of the most distinguished nominees to ever come before the Senate, they ignored the obvious: She has argued 32 cases before the U.S. Supreme Court. Is someone literally going to come and say, oh, but she is not qualified to serve in a Federal court.

Not only that, she had the overwhelming endorsement of Solicitors General of both political parties. Clearly, she is well qualified and has bipartisan support for the job. But it was not good enough for the other side of the aisle. They filibustered her, stopping her nomination.

For those who are new to the Senate, the filibuster is an old trick, an old procedural gambit. What happens is that well-qualified people, and many times substantive legislation, are held up indefinitely or stopped with the use of a filibuster. To do it to an amendment or a bill is bad enough, to do it to a human being is something we should think long and hard about. Her nomination, the nomination of Patricia Millett, was supported by Democratic and Republican Solicitors General. They characterized her as ''brilliant'' and ''unfailingly fair-minded.''