

## EXECUTIVE SESSION

NOMINATION OF CAITLIN JOAN HALLIGAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be time for debate until noon, equally divided in the usual form.

Mr. LEAHY. Madam President, some of the people I have heard who oppose Ms. Halligan were also some of the same people who successfully opposed an effort in the Congress to actually protect police officers a few years ago. So I want to put the opposition in context. It is probably why so many law enforcement groups support Ms. Halligan, because she stood up for law enforcement, unlike some of the groups we have heard about who oppose her, who sought to make the life of police officers more dangerous.

Be that as it may, the Senate stands at a crossroads today. Voting to end the partisan filibuster of this judicial nomination is as important as it was when the Senate did so in connection with the nomination of Judge McConnell to the United States District Court of Rhode Island earlier this year. If we allow the partisan filibuster to go forward, then the Senate will be setting a new standard that no nominee can meet if they wish to be confirmed to the DC Circuit.

Republican Senators who just a few years ago argued that filibusters against judicial nominees were unconstitutional and said that they would never support such a filibuster, and those who care about the judiciary in the Senate, need to step forward and do the right thing. You cannot say that filibusters against judicial nominees are unconstitutional when you have a Republican President but suddenly support a filibuster when you have a Democratic President. This goes even beyond the standards that have driven the approval rating of Congress to an all-time low for hypocrisy. We ought to end the filibuster now and proceed to vote on this extraordinarily well-qualified nominee.

Ms. Halligan, nominated to fill one of three vacant seats on the important DC Circuit, is a highly regarded appellate advocate. She has the kind of impeccable credentials in both public service and private practice that have been looked for in the past by both Democratic and Republican Presidents. Her nomination reminds me of John Roberts, when he was confirmed by

every single Democrat and every single Republican to the DC Circuit in 2003. I certainly did not agree with every position he had taken or argument he had made as a high-level lawyer in several Republican administrations, but I supported his nomination to the DC Circuit, as I did to the Supreme Court, because of his legal excellence and ability.

It is frustrating to have Senators tell me privately they know Ms. Halligan is just as qualified as John Roberts was, but this lobby and that lobby are against her. Lobbyists come and go. The court is supposed to be the epitome of justice in this country.

I trusted John Roberts' testimony that he would fairly apply the law if confirmed. If the standard we used for him is applied to Ms. Halligan, there is no question this filibuster will end and Caitlin Halligan will be confirmed.

By any traditional standard, Caitlin Halligan is the kind of superbly qualified nominee who should easily be confirmed by the Senate. Yet, the Senate Republican leadership's filibuster of this nomination threatens to set a new standard that could not be met by anyone. It would not have been met by John Roberts. If this is the new standard, it is wrong, it is unjustified and it is dangerous. Overcoming it will take a handful of sensible Senate Republicans willing to buck their leadership and some single-issue lobbyists. They have done it before and they should again now. Those who care about the judiciary—and as important, those who care about the Senate—need to come forward and end this filibuster.

From the beginning of the Obama administration, we have seen too many Senate Republicans shift significantly away from the standards they used to apply to the judicial nominations of a Republican President. During the administration of the last President, a Republican, they insisted that filibusters of judicial nominees were unconstitutional. They threatened the "nuclear option" in 2005 to guarantee up-or-down votes for each of President Bush's judicial nominations.

Many Republican Senators declared that they would never support the filibuster of a judicial nomination. Yet, only a few years later, Senate Republicans reversed course and filibustered President Obama's very first judicial nomination, that of Judge David Hamilton of Indiana. They tried to prevent an up or down vote on his nomination even though he was nominated by President Obama after consultation with the most senior and longest-serving Republican in the Senate, Senator DICK LUGAR of Indiana, who strongly supported the nomination. The Senate rejected that unjustified filibuster and Judge Hamilton was confirmed with Senator LUGAR's support.

With their latest filibuster, the Senate Republican leadership seeks to set yet another new standard, one that threatens to make confirmation of any nominee to the DC Circuit virtually

impossible for the future. Caitlin Halligan is a well-qualified nominee with a mainstream record as a brilliant advocate on behalf of the State of New York and in private practice. She served for nearly six years as Solicitor General of New York and has been a leading appellate lawyer in private practice, currently serves as General Counsel at the New York County District Attorney's Office, and has served as counsel of record in nearly 50 matters before the U.S. Supreme Court, arguing five cases before that court and many cases before Federal and state appellate courts. She clerked for Supreme Court Justice Stephen Breyer and for Judge Patricia Wald on the DC Circuit, the court to which she has been nominated. No Senator has or can question her qualifications. I have reviewed her record carefully in the course of the Judiciary Committee's thorough process, including her response to our extensive questionnaire and her answers to questions at her hearing and in writing following the hearing. In my view, there is no legitimate reason or justification for filibustering her nomination.

Yesterday, I put into the RECORD some of the many letters of support we have received from across the political spectrum for Ms. Halligan's nomination. These letters are a testament to both her exceptional qualifications to serve and to the fact that this should be a consensus nomination, not a source of controversy and contention. They attest to the fact she is not a closed-minded ideologue, but is the kind of nominee who has demonstrated not only legal talent but also a dedication to the rule of law throughout her career. We should encourage nominees with the qualities of Ms. Halligan to engage in public service. We should welcome people like her to serve on the Federal bench, not denigrate them. Concocted controversies and a blatant misreading of Ms. Halligan's record as an advocate are no reason to obstruct this outstanding nomination.

I also demonstrated yesterday that any so-called "caseload" concern is no justification for filibustering this nomination. This was not a concern we heard from Republicans when they voted to confirm President Bush's nominees to fill not only the 9th seat, but also the 10th seat and the 11th seat on this court a couple of years ago. They should not now use caseload as an excuse to filibuster President Obama's nomination to fill the ninth seat when the DC Circuit's caseload has increased. There are only two differences today than when President Bush's nominees to the DC Circuit were confirmed in 2005 and 2006: One, the caseload per active judge has increased, not decreased; and we have a Democratic President, not a Republican President.

The DC Circuit is often considered the second most important court in the land because of the complex cases that it handles, cases that have grown in

importance since the attacks of September 11. As noted in a recent Washington Post editorial: “[Caseload numbers do] not take into account the complexity and scope of the cases that land at the court. They include direct appeals involving federal regulatory decisions and national security matters, including cases stemming from the detentions at the U.S. naval base in Guantanamo Bay, Cuba.” I ask unanimous consent that a copy of this editorial and one from today’s Boston Globe be printed in the RECORD at the conclusion of my remarks, along with letters to the editor of the Washington Post in support of Ms. Halligan’s nomination.

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

(See exhibit 1)

Mr. LEAHY: Yet the DC Circuit is now more than one-quarter vacant, with three judicial vacancies. The caseload per active judge has gone up since Republican Senators supported every one of President Bush’s nominations to that court. According to the Administrative Office of U.S. Courts, the caseload per active judge has increased by one third since 2005, when the Senate confirmed President Bush’s nomination of Thomas Griffith to fill the 11th seat on the DC Circuit. That is right—the DC Circuit’s caseload has actually increased. By any objective measure, the work of the DC Circuit has grown, and the multiple vacancies should be filled, not preserved and extended for partisan purposes. The “extraordinary circumstance” that exists here is the more than one-quarter vacancy level on this court, with only eight active judges.

If caseloads were really a concern of Republican Senators, they would not be standing by while their leadership delays Senate consideration of the nominations of Morgan Christen of Alaska and Jacqueline Nguyen of California to the Ninth Circuit, and Judge Adalberto Jordan of Florida to the Eleventh Circuit. These two circuits have the highest number of cases per active judge. The Ninth Circuit is burdened by multiple vacancies and the largest caseload in the nation. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains open after the Republican filibuster of Goodwin Liu. I have repeatedly urged the Senate to take up and consider these nominations, which are supported by home state Senators, yet Republicans have refused to consider them for months. Anyone truly concerned about courts’ caseloads should join with me to consider the other 20 judicial nominations still pending on the Senate calendar and awaiting final action.

Given Caitlin Halligan’s impeccable credentials and widespread support, this should be the kind of consensus nomination supported by Senators of both parties who seek to ensure that the Federal bench continues to attract the best and the brightest. Certainly,

by the standard utilized in 2005 to end filibusters and vote on President Bush’s controversial nominees, this filibuster should be ended and the Senate should vote on the nomination. Those Senators who claim to subscribe to a standard that prohibits filibusters of judicial nominees except in “extraordinary circumstances” should keep their word and not support this filibuster. There are no “extraordinary circumstances” to justify the filibuster.

In 2005, Senator GRAHAM, a member of the “Gang of 14” described his view of what comprises the “extraordinary circumstances” justifying a filibuster. He said: “Ideological attacks are not an ‘extraordinary circumstance.’ To me, it would have to be a character problem, an ethics problem, so allegations about the qualifications of a person, not an ideological bent.” Caitlin Halligan has no character problem, no ethics problem, and there is no justification for this filibuster. Caitlin Halligan is a superbly qualified nominee whose personal integrity, temperament, and abilities have been attested to by the many leading lawyers who have worked with her and against her. They all attest to her integrity and temperament and abilities.

The signers of the 2005 Memorandum of Understanding, and the Senate, demonstrated what they thought that agreement entailed when they proceeded to invoke cloture on a number of controversial nominations. The Senate invoked cloture on the nominations of Janice Rogers Brown and Thomas Griffith to the DC Circuit, the circuit to which Caitlin Halligan has been nominated.

As a Justice on the California Supreme Court, Janice Rogers Brown was a nominee with a consistent and extensive record, both on the bench and off, of using her position as a member of the court to put her views above the law. This was not a question of one case or one issue on which Democrats differed with the nominee—I have voted for hundreds of nominees of Republican and Democratic Presidents which whom I differ on many issues. But this was a nominee with views so extreme she was opposed not just by her home state Senators, but also by more than 200 law school professors from around the Nation who wrote to the Committee expressing their opposition. Her record in numerous decisions as a judge showed that she was willing to put her personal views above the law on issue after issue, including a willingness to roll back the clock 100 years on workers’ and consumers’ rights, to undermine clean air and clean water protections for Americans and their communities, laws providing affordable housing, zoning laws that protect homeowners, and protections against sexual harassment, race discrimination, employment discrimination, and age discrimination. In fact, while serving on the California Supreme Court, Justice Brown had argued that Social

Security was unconstitutional, a position clearly at odds with well established law. She went so far as to say “today’s senior citizens blithely cannibalize their grandchildren.”

Despite her ideological extremism and willingness to implement her radical personal views as a judge without regard to the existing law, she was confirmed to the DC Circuit. Her nomination was judged not to present “extraordinary circumstances” supporting a filibuster. There is no justification under the standard applied to the nomination of Janice Rogers Brown for a filibuster of the nomination of Caitlin Halligan, a widely-respected nominee with a clear devotion to the rule of law and no record of ideological extremism.

The nomination of Thomas Griffith to the DC Circuit was also determined not to present “extraordinary circumstances” despite his decision to practice law without a license for a good part of his career, which I felt should be disqualifying. He was confirmed to fill the 11th seat on the DC Circuit. There is no question that under the standard Republicans applied to the nomination of Thomas Griffith, Caitlin Halligan should be confirmed to fill the ninth judgeship on that court.

I urge Republican and Democratic Senators to come together and end this misguided filibuster of Caitlin Halligan’s nomination to the DC Circuit. There is no basis under any appropriate standard for blocking her nomination from having an up-or-down vote. To the contrary, Caitlin Halligan’s impeccable credentials and record as an accomplished advocate make her nomination worthy of bipartisan support.

#### EXHIBIT 1

[From the Boston Globe, Dec. 6, 2011]

#### OUTRAGE MACHINE GRINDS AWAY (Editorial)

Discrediting perfectly qualified nominees to the federal judiciary is a dreary, familiar business—one whose latest target is Caitlin Halligan, a former New York solicitor general who once clerked for Supreme Court Justice Stephen Breyer. Ever since President Obama nominated her for the DC Circuit Court of Appeals last year, critics have been combing her record for evidence of dangerous radicalism.

They haven’t found any. But in the crude world of judicial-nomination fights, a nuanced discussion of New York’s marriage laws becomes a self-evident slant toward same-sex marriage. Others depict her as anti-gun because she signed a brief in a liability suit against gun manufacturers. The group Gun Owners of America has conveniently pre-written an e-mail, which members can robo-send to their senators, denouncing Halligan’s nomination as “inconceivable.”

Halligan may not be GOP senators’ first choice for an appellate-court seat. And if a Republican president had chosen a former Texas solicitor general who’d clerked for Antonin Scalia, some of the same groups now defending Halligan would surely be scraping around for reasons why the nominee was utterly unsuitable for the job. But the Senate need not dignify these tactics.

In a way, Halligan is lucky; rather than stringing her along endlessly, the Senate has scheduled a vote today to end debate on her

nomination. GOP senators—including Scott Brown—should acknowledge that her views appear to be well within the legal mainstream, and vote to end the filibuster against her. Her nomination deserves, at the least, an up-or-down confirmation vote.

[From the Washington Post, Nov. 22, 2011]

SENATE SHOULD CONFIRM CAITLIN HALLIGAN  
TO THE D.C. CIRCUIT COURT

(Editorial)

When Caitlin J. Halligan was nominated in 2010 to a seat on the U.S. Court of Appeals for the D.C. Circuit, the prestigious 11-member court had two vacancies. Today, there are three, after Judge Douglas H. Ginsburg took senior status this fall.

Yet some Senate Republicans argue that there is no need to install Ms. Halligan because the court's caseload has shrunk. Others look suspiciously on her purported views on antiterrorism policy. GOP senators are grasping at straws to block Ms. Halligan's ascension, perhaps in hopes of preserving the vacancy for a Republican president to fill. These lawmakers rightly objected to such tactics when deployed by Democrats to stall or defeat well-qualified Republican nominees; they should not revert to them now when a Democrat controls the White House.

Ms. Halligan has had a distinguished career and deserves to be confirmed. A graduate of the Georgetown University Law Center, she clerked for D.C. Circuit Judge Patricia M. Wald and later for Supreme Court Justice Stephen Breyer. She has served as head of the appellate practice at a top New York law firm, as solicitor general in that state and now as general counsel for the New York County District Attorney's Office in Manhattan. The American Bar Association gave Ms. Halligan a unanimous well-qualified rating. The Senate Judiciary Committee approved her nomination seven months ago; she has been waiting for a floor vote ever since.

While it is true that caseloads have been inching downward at the D.C. Circuit, the decline does not take into account the complexity and scope of the cases that land at the court. They include direct appeals involving federal regulatory decisions and national security matters, including cases stemming from the detentions at the U.S. naval base in Guantanamo Bay, Cuba.

Critics note that Ms. Halligan's name appears on a 2004 report by the New York City Bar Association that lambasted the Bush administration for asserting the legal authority to hold enemy combatants without trial until the cessation of hostilities; the Supreme Court ultimately endorsed the administration's position. Ms. Halligan acknowledges that she was a member of the committee that wrote the report but testified that she was not involved in its development or writing and said she learned of it only in 2010, while gathering material for the confirmation process. Ms. Halligan testified that she did not agree with the report's conclusions.

Some critics suggest that Ms. Halligan's repudiation is a "confirmation conversion." Yet no evidence to dispute her account has emerged during the eight months since her hearing. The report episode is odd but should not disqualify Ms. Halligan, given the mountain of evidence that she is a smart and well-qualified candidate.

FRANKLIN COUNTY,

Malone, NY, February 14, 2011.

Senator PATRICK J. LEAHY,  
Chairman, U.S. Committee on the Judiciary,  
Dirksen Senate Office Building, Wash-  
ington, DC.

DEAR CHAIRMAN LEAHY: I once discussed on a plane ride to Washington with you your

time as a Prosecutor. Today it is my pleasure and honor to write a letter supporting the nomination of a fellow prosecutor, Caitlin J. Halligan, for the DC Circuit Court of Appeals.

In my service as District Attorney of Franklin County in rural upstate New York and as President of the District Attorneys Association of the State of New York, I have had the distinct privilege of working closely with Ms. Halligan during the past year. In her position as General Counsel to Manhattan District Attorney Cyrus R. Vance, Jr., she has consistently demonstrated her unconditional support of the interests of law enforcement and has lent her exceptional expertise as an advocate for the rule of law to the complex issues that confront our state across its many varied interests.

Having first heard of Ms. Halligan's remarkable legal abilities during her tenure as Solicitor General of New York State under Governor George Pataki, I am delighted now to have learned firsthand that she is a consummate "lawyer's lawyer". She has unparalleled legal reasoning skills and a firm commitment to our constitutional values.

Thank you for this opportunity to express my support for this exceptional judicial candidate.

Very truly yours,

DEREK P. CHAMPAGNE,  
District Attorney.

COUNTY OF ONONDAGA,

Syracuse, NY, February 16, 2011.

Re Caitlin Halligan.

Senator PATRICK J. LEAHY,  
Chairman, U.S. Senate Committee on the Judiciary,  
Dirksen Senate Office Building, Wash-  
ington, DC.

DEAR SENATOR LEAHY: I write this letter in support of the President's nomination of Caitlin Halligan for the United States Court of Appeals for the District of Columbia Circuit.

By way of a brief introduction, I am a career prosecutor, having served twenty years as the elected District Attorney of Onondaga County (just under a half a million population) in Upstate New York and ten years as an assistant district attorney prior to that. I am the New York State representative to the National District Attorneys Association and serve on that body's Executive Committee. I am also co-chairman of the American Bar Association's Criminal Justice Section's Committee on Science and Technology and I have been appointed by Governors Pataki, Spitzer and Cuomo to serve on New York State's Forensic Science Commission. I am a past President of the New York State District Attorneys Association and currently serve on its Board of Directors. I am also a life long Republican, but nobody's perfect.

Cy Vance is the current District Attorney of New York county having succeeded the legendary Bob Morgenthau. Cy is a good friend and has quickly established himself in New York as an outstanding prosecutor and a resource for his sixty-one other colleagues throughout the State. And one of the really great things that Cy does is surround himself with quality people. A perfect example of one of those quality people is Caitlin Halligan, currently Cy's General Counsel at the Manhattan District Attorney's Office.

Caitlin's résumé makes it hard to believe she is only forty-four years old. Educated at Princeton with a law degree from Georgetown, Caitlin served as law clerk to two of America's most illustrious jurists. Her service to my home State of New York has been both distinguished and invaluable. As a member of the Attorney General's Internet Bureau, Caitlin helped develop initiatives to battle on-line fraud and protect individual

privacy. Many of those initiatives are still employed by local offices. Rising through the ranks of the Attorney General's Office, Caitlin for five years served as our State's Solicitor General, arguing cases before all appellate levels, including the United States Supreme Court. Caitlin's reputation was nothing short of outstanding which is one of many reasons my friend Cy Vance was lucky enough to entice her back into public service as his General Counsel.

I fully understand the political give and take of the nomination process, particularly when the position is of such import. Words uttered and position papers written decades earlier take on greater significance. Each party would prefer to have a nominee whose judicial philosophy is most closely attuned to their core beliefs. Ultimately, it is the President's choice and frankly I do not think any President, Democrat or Republican, could find a more qualified, a more honorable or a finer candidate than Caitlin Halligan.

Sincerely,

WILLIAM J. FITZPATRICK,  
District Attorney.

RICHMOND COUNTY,

Staten Island, NY, February 25, 2011.

Re Caitlin J. Halligan.

Hon. PATRICK J. LEAHY,  
Chairman, U.S. Senate Committee on the Judiciary,  
Dirksen Senate Office Building, Wash-  
ington, DC.

DEAR SENATOR LEAHY: I write in support of the nomination of Caitlin J. Halligan for a seat on the United States Court of Appeals for the D.C. Circuit. Ms. Halligan's experience and accomplishments as an appellate lawyer make her an ideal appointee to that Court.

Ms. Halligan, currently employed by the New York County District Attorney's Office as General Counsel, has served as First Deputy Solicitor General, then Solicitor General of the State of New York and as head of the appellate practice section at the New York law firm of Weil, Gotshal and Manges LLP. In her time as First Deputy and then Solicitor General, she was responsible not only for briefing and arguing her own cases, but for supervising the appellate litigation conducted by New York State's Attorney General as well.

In her time in private practice and in the Office of the New York State Solicitor General, Ms. Halligan has briefed and argued cases at all levels of appellate courts in the United States, ranging from the United States Supreme Court to New York State's intermediate appellate court, the Appellate Division and has also supervised briefs filed in those courts. The cases in which she has been involved, either as principal attorney or supervisor, span such diverse areas as prisoner civil rights matters, environmental, voting rights and free speech issues, and commerce clause matters. This breadth of practice areas—both in terms of the courts in which Ms. Halligan has appeared and the nature of the cases in which she has been involved—certainly has provided Ms. Halligan with the background necessary for success as a Circuit Court judge, particularly in view of the wide variety of matters that will come before Ms. Halligan should she be confirmed to a seat on the D.C. Circuit.

In short, Ms. Halligan's experience as an appellate practitioner and the wide variety of issues with which she has dealt will serve her well in her capacity as a Circuit Judge and I am pleased to offer my support for her confirmation.

Sincerely,

DANIEL M. DONOVAN, Jr.,  
District Attorney.

NEW YORK STATE ASSOCIATION OF  
CHIEFS OF POLICE, INC.,  
*Schenectady, NY, April 27, 2011.*

Hon. PATRICK J. LEAHY,  
*Chairman, Senate Judiciary Committee, Dirksen  
Senate Office Building, Washington, DC.*  
Hon. CHARLES E. GRASSLEY,  
*Ranking Member, Senate Judiciary Committee,  
Dirksen Senate Office Building, Wash-  
ington, DC.*

DEAR CHAIRMAN LEAHY AND SENATOR  
GRASSLEY: On behalf of the New York State  
Association of Chiefs of Police, I am writing  
to express our unqualified support for the  
nomination of Caitlin J. Halligan for the  
position of United States Circuit Judge for the  
District of Columbia Circuit.

Our Association was founded in 1901 and  
has almost 600 active members including  
Police Chiefs, Commissioners, Superintendents  
and other command level officers. Our pri-  
mary purpose is to provide training for our  
members and to serve as an information hub  
for them as well. We take great pride in help-  
ing to advance the cause of professional pol-  
icing and take very seriously our obliga-  
tions to support individuals who we believe  
will serve our nation's criminal justice sys-  
tem well.

An examination of Ms. Halligan's creden-  
tials clearly indicates to us that she is one  
of those individuals she has demonstrated an  
understanding of the need for strong law en-  
forcement to protect those in our commu-  
nities least able to protect themselves. She  
has extensive experience as an appellate law-  
yer and has worked on many important cases  
being handled by the most senior courts in  
our judicial system.

Our Board of Governors who represent pol-  
ice agencies across the State from the larg-  
est to the smallest have unanimously voted  
to endorse her nomination. We urge you to  
give her the most serious consideration for  
this most important appointment.

Thank you for your attention to our inter-  
ests and please feel free to contact us if we  
may ever be of assistance.

Respectfully,

JOHN P. GREBERT,  
*Executive Director.*

NEW YORK  
WOMEN IN LAW ENFORCEMENT,  
*Albany, NY, May 31, 2011.*

Hon. PATRICK J. LEAHY,  
*Chairman, Senate Judiciary Committee, Dirksen  
Senate Office Building, Washington, DC.*  
Hon. CHARLES E. GRASSLEY,  
*Ranking Member, Senate Judiciary Committee,  
Dirksen Senate Office Building, Wash-  
ington, DC.*

DEAR CHAIRMAN LEAHY AND SENATOR  
GRASSLEY: On behalf of the New York  
Women in Law Enforcement (NYWLE), I am  
writing to express our support for the nomi-  
nation of Caitlin J. Halligan for the posi-  
tion of United States Circuit Judge for the Dis-  
trict of Columbia Circuit.

The primary mission of NYWLE is to sup-  
port the recruitment, retention and pro-  
motion of women within the criminal justice  
system. It is with enthusiasm that we sup-  
port the appointment of Ms. Halligan, a per-  
son of nobility and integrity to this honor-  
able position.

Her vast experience arguing cases before  
both state and federal appellate courts cou-  
pled with her rapid advancement in her car-  
eer speak to her elevated level of intelli-  
gence and integrity. Her pro bono work on  
the memorial for the World Trade Center  
demonstrates her noble commitment to  
doing what is right for individuals in need.  
She exemplifies all the characteristics of a  
person we would want to serve the people of  
this country in such a crucial judgeship.

In summary, the Board of the NYWLE,  
whose 19 names and positions are outlined on

this letterhead, highly recommends Ms.  
Halligan as a Federal Circuit Judge. We  
thank you for your consideration in this  
matter.

Respectfully,  
DEBORAH J. CAMPBELL,  
*President.*

NATIONAL CENTER FOR  
WOMEN & POLICING,  
*Arlington, VA.*

Hon. PATRICK J. LEAHY,  
*Chairman, Senate Judiciary Committee, Dirksen  
Senate Office Building, Washington, DC.*

Hon. CHARLES E. GRASSLEY,  
*Ranking Member, Senate Judiciary Committee,  
Dirksen Senate Office Building, Wash-  
ington, DC.*

DEAR CHAIRMAN LEAHY AND SENATOR  
GRASSLEY: On behalf of the National Center  
for Women and Policing (NCWP), I am writ-  
ing to express our utmost support for the  
nomination of Caitlin J. Halligan for the  
position of United States Circuit Judge for the  
District of Columbia Circuit.

A division of the Feminist Majority Foun-  
dation, the NCWP has been working since  
1995 to educate criminal justice policy mak-  
ers, the media and the public about the im-  
pacts of increasing the representation of  
women in policing. Our goals include ensur-  
ing that gender is always considered during  
the analysis of contemporary policing issues,  
and that law enforcement agencies strive for  
gender balancing their departments. We take  
great pride in helping to advance the cause  
of professional policing and take very seri-  
ously our obligations to support individuals  
who we believe will serve our nation's crimi-  
nal justice system overall.

Ms. Halligan is clearly an individual we  
would want to support to serve our criminal  
justice system at the national level. Her ex-  
tensive experience either representing cases  
before the Supreme Court or arguing cases  
before the state and federal appellate courts  
whether as the Solicitor General for New  
York State, the Counsel for New York Coun-  
ty's District Attorney Office or for private  
practice is impressive. Her pro bono work on  
the memorial for the World Trade Center is  
honorable. She is clearly a person of solid  
standing and integrity a person we would  
want serving the people at one of our highest  
courts.

We are confident she would provide fair  
and equal justice and therefore respectfully  
request your consideration for Ms. Halligan  
for this critical appointment.

Respectfully,  
MARGARET MOORE,  
*Director.*

NATIONAL CONFERENCE  
OF WOMEN'S BAR ASSOCIATIONS,  
*Portland, OR, June 23, 2011.*

Re Nomination of Caitlin J. Halligan to the  
United States Court of Appeals for the  
District of Columbia Circuit.

Hon. PATRICK J. LEAHY,  
*Chair, Dirksen Senate Office Building, Wash-  
ington, DC.*

Hon. CHARLES GRASSLEY,  
*Ranking Member, Dirksen Senate Office Build-  
ing, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEM-  
BER GRASSLEY: On behalf of the National  
Conference of Women's Bar Associations, we  
write to express our enthusiastic support for  
the nomination of Caitlin J. Halligan to the  
United States Court of Appeals for the Dis-  
trict of Columbia Circuit.

Ms. Halligan's broad experience, public  
service and intellect make her well suited to  
the federal appellate bench, and her appoint-  
ment would add much needed diversity to  
the federal court, where currently only three

women are among the active judges on the  
DC Circuit.

We join with many other organizations  
such as the National District Attorneys As-  
sociation, the New York Women in Law En-  
forcement and the Women's Bar Association  
of the District of Columbia in urging the  
speedy confirmation of this outstanding  
nominee.

Very truly yours,  
MARY E. SHARP,  
*President.*

WOMEN'S BAR ASSOCIATION  
OF THE DISTRICT OF COLUMBIA,  
*Washington, DC, June 16, 2011.*

Re Nomination of Caitlin J. Halligan to the  
United States Court of Appeals for the  
District of Columbia Circuit.

Hon. PATRICK J. LEAHY,  
*Chair, Dirksen Senate Office Building, Wash-  
ington, DC.*

Hon. CHARLES GRASSLEY,  
*Ranking Member, Dirksen Senate Office Build-  
ing, Washington, DC.*

DEAR CHAIRMAN LEAHY AND RANKING MEM-  
BER GRASSLEY: On behalf of the Women's Bar  
Association of the District of Columbia  
(WBA), we write to express the WBA's enthu-  
siastic support for Caitlin J. Halligan's nomi-  
nation to the United States Court of Ap-  
peals for the District of Columbia Circuit.

Ms. Halligan is exceptionally well-qualified  
for the position to which she has been nomi-  
nated. Her confirmation would add not only  
superior intellect, but also much needed di-  
versity to the federal appellate courts.

The WBA's principal goal in supporting ju-  
dicial candidates is to ensure the appoint-  
ment of qualified judges and, consistent with  
that goal, to increase the number of judges  
who support the mission of the WBA. We  
give priority in our recommendations to can-  
didates with extensive litigation experience,  
a demonstrated commitment to the equality  
of all litigants, and an attention to women's  
needs and concerns. The WBA evaluates each  
candidate for endorsement by reviewing his  
or her resume and other supporting docu-  
mentation, and by discussing, with refer-  
ences the candidate's qualifications, integ-  
rity, temperament, experience, and commit-  
ment to the concepts of equal opportunity  
and equal justice under law.

Ms. Halligan is without question emi-  
nently qualified to join the D.C. Circuit  
Court of Appeals. Her academic and legal  
credentials are of the highest caliber. Ms.  
Halligan's legal career began at Georgetown  
University Law Center, where she graduated  
Order of the Coif and was Managing Editor of  
the Georgetown Law Review. She subse-  
quently clerked for Judge Patricia M. Wald  
on the D.C. Circuit Court of Appeals, and  
later for Justice Stephen G. Breyer of the  
United States Supreme Court. The majority  
of her outstanding legal career has been fo-  
cused upon public service. From 2001–2006,  
she served as Solicitor General of the State  
of New York, and she currently serves as  
General Counsel to the New York County  
District Attorney's office. In between, Ms.  
Halligan headed the appellate practice at  
Weil, Gotshal and Manges, LLP. She has  
served as counsel of record for a party or  
amicus at the certiorari or merits stage in  
more than 40 matters in the United States  
Supreme Court. She has also argued five  
cases before the Court, including as recently  
as March 2011, and won awards from the Na-  
tional Association of Attorneys General in  
five consecutive years as New York's Solici-  
tor General.

Ms. Halligan's contributions to the legal  
profession have extended well beyond her  
day job. She has taught as an adjunct pro-  
fessor at Georgetown University Law Center,

and as a Lecturer in Law at Columbia Law School. Ms. Halligan has also made significant pro bono contributions, serving as a member of the Boards of Directors of the National Center for Law and Economic Justice and the Fund for Modern Courts, as pro bono counsel to the Board of Directors of the Lower Manhattan Development Corporation, and as counsel for Hurricane Katrina and Rita evacuees before the Fifth Circuit. Through her activities, Ms. Halligan has demonstrated a commitment to the concepts of equal opportunity and equal justice under law both inside and outside the courtroom.

Given her record of achievement and breadth of experience, it is not surprising that Ms. Halligan has received a unanimous rating of Well-Qualified from the ABA's Standing Committee on the Federal Judiciary, the highest rating available. She has the support of numerous organizations, including the District Attorneys Association of the State of New York, the National District Attorneys Association, the New York State Association of Chiefs of Police, the New York State Sheriffs Association, the New York Women in Law Enforcement, and the National Center for Women & Policing. In addition, a bi-partisan group of prominent appellate practitioners that includes Cliff Sloan, Sri Srinivasan, Miguel Estrada, Carter Phillips and numerous others has submitted an enthusiastic letter praising the abilities and character of Ms. Halligan and expressing their unanimous belief that "Caitlin is an outstanding selection for the D.C. Circuit."

Beyond Ms. Halligan's obvious qualifications, we must note that her confirmation would add much needed diversity to the federal bench. Out of 179 seats on the federal appellate courts, only 50 are currently held by women. The D.C. Circuit has eleven authorized judgeships, with two current vacancies, but only three women are among the active judges. Ms. Halligan possesses impeccable credentials and would be a worthy addition to the DC Circuit.

For all of these reasons, the WBA is proud to support Caitlin Halligan's nomination, and strongly urges the Senate to vote to confirm her to the United States Court of Appeals for the District of Columbia Circuit. She is a superlative lawyer with a broad range of experience, and her commitment to fairness, stellar intellect, judicious temperament, and principled nature make Ms. Halligan a superb nominee. If you have any questions regarding this letter of support, please contact the WBA office.

Sincerely,

MONICA G. PARHAM,  
*President.*

[From the Washington Post, Dec. 5, 2011]

PUT CAITLIN HALLIGAN AND OTHERS ON THE  
D.C. CIRCUIT

The Nov. 23 editorial "Time to Pass Judgment" argued that the Senate should confirm Caitlin J. Halligan to a seat on the U.S. Court of Appeals for the D.C. Circuit. I fully agree. Ms. Halligan has excellent qualifications and appears to be an extremely bright and capable judicial candidate. It seems, however, that Senate Republicans have one major problem with Ms. Halligan: She looks too much like a future Supreme Court nominee. That is the same problem Senate Democrats had with Miguel A. Estrada when they blocked his appointment to the D.C. Circuit.

The Halligan and Estrada nominations are just two examples of the petty and unnecessary charade that is the current Senate judicial confirmation process. Though this problem is decades old, perhaps President Obama could make a bold effort at bilateral disarmament and prove his bipartisan bona fides at the same time.

Assuming Ms. Halligan is confirmed, the D.C. Circuit will still have two open seats, to which Obama should nominate Mr. Estrada and Goodwin Liu. Both Mr. Estrada (a Bush nominee) and Mr. Liu (an Obama nominee) are brilliant lawyers, and both were blocked by tit-for-tat Senate politics. Such a move by Mr. Obama could soften the gridlock that has plagued judicial nominations for so many years.

JEFF LUOMA,  
*North Bethesda.*

In addition to all of the reasons that The Post's editorial cited in urging that the Senate confirm Caitlin J. Halligan, one other important factor is that this outstanding nominee would be only the sixth female judge in the 118-year history of the U.S. Court of Appeals for the D.C. Circuit, thus adding to the court's diversity.

Eight months is far too long to deprive the D.C. Circuit of a nominee of Ms. Halligan's talents; the Senate should vote Tuesday to cut off debate on her nomination and vote immediately afterward to confirm her.

MARCIA D. GREENBERGER,  
*Washington.*

Mr. LEAHY. Madam President, I suggest the absence of a quorum, and I ask unanimous consent that the time during the quorum be equally divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. I see the distinguished Senator from New York on the floor, and I have a feeling that she will have a statement of support of this superb nominee.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mrs. GILLIBRAND. Madam President, I am very proud to support the nomination of Caitlin Halligan to the U.S. Court of Appeals for the District of Columbia.

Caitlin Halligan has distinguished herself through her commitment to fairness, reasoned intellect, personal ethics, and a profound respect for the law. Unfortunately, it appears that some of my colleagues are determined to criticize her, regardless of the facts or her record. The major concern seems to be the workload demands for the DC Circuit. This is not a reason to oppose this candidate's nomination.

In 2008, the Senate acted to reduce the number of seats on the DC Circuit from 12 to 11, increasing the caseload for each of the judges. Currently, there are only eight active judges on the DC Circuit, leaving the bench more than 27 percent vacant. That means the U.S. Circuit Court currently has three vacancies—three vacancies on a court that is currently handling more than 1,200 cases; three vacancies on a court that handles some of the most complicated decisions, including terrorism cases.

Today we have the opportunity to fill one of these vacancies on the DC Circuit, often called the second most important court in the entire United States. The caseload of the DC Circuit has remained consistent since 2005, while the number of cases per judge has increased by 33 percent. If Ms. Halligan is confirmed, it will reduce that caseload from its current level of approximately 161 pending cases to approximately 143 per judge, still substantially higher than during the previous administration.

The DC Circuit Court of Appeals reviews complicated decisions and rule-making of many Federal agencies and in recent years has handled some of the most important terrorism and detention cases since the horrific attacks on September 11. These cases are complex, requiring additional time to allow for the consideration they demand.

Many of my colleagues have raised concerns with positions Ms. Halligan advocated while solicitor general of New York. She filed briefs at the direction of the Attorney General. She was not promoting her own personal views. Many of these cases focused explicitly on New York State's rights to govern in traditional State law areas.

Caitlin Halligan is a woman of superb intellect, a history of laudable achievements, and a record of outstanding public service. Not only does she deserve an up-or-down vote, but on the merits she deserves the full support of the Senate. I ask my colleagues to allow for an up-or-down vote on Caitlin Halligan's nomination. Let's debate Ms. Halligan on her merits. She deserves nothing less.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. LEE. Madam President, I rise to speak today in opposition to the nomination of Caitlin Halligan to be a judge in the U.S. Court of Appeals for the DC Circuit.

The DC Circuit is arguably the most important Federal appellate court in our Federal judicial system, with primary responsibility to review administrative decisions made by countless Federal departments and agencies. It has also served in many instances as a steppingstone for judges who are later appointed to the U.S. Supreme Court. As a result, the Senate has historically very closely scrutinized nominees to the DC Circuit.

When evaluating particular nominees, we have also carefully considered the need for additional judges on that court.

In July 2006, President Bush nominated an eminently qualified lawyer, Peter Keisler, to fill a seat on the DC Circuit. Mr. Keisler is among the very finest attorneys in the country. Because of his nonideological approach to the law, Mr. Keisler enjoys broad bipartisan support throughout the legal profession. Despite these unassailable legal qualifications, Democratic Senators blocked his nomination. He did

not receive any floor consideration whatsoever, not even a cloture vote, and his nomination languished in the Judiciary Committee. At the time, a number of Democratic Senators sent a letter to the Judiciary Committee chairman arguing that a nominee to the DC Circuit “should under no circumstances be considered, much less confirmed, before we first address the very need for that judgeship”—the judgeship he would occupy. These Senators specifically argued that a DC Circuit’s comparatively moderate caseload in 2006 simply did not justify the confirmation of an additional judge to that court.

Five years have now passed and Ms. Halligan has been nominated to that very same seat on the DC Circuit. But the court’s caseload remains as minimal as it did then. According to the Administrative Office of U.S. Courts, the DC Circuit caseload per judge is approximately one-fourth that of most other Federal courts of appeals. In each of the past 2 years, the DC Circuit has cancelled regularly scheduled argument dates due to lack of pending cases. For several years the court has experienced a decline in workload in terms of total filings, actions per active judge, and pending appeals. Almost every metric indicates the same direction. Indeed, since 2006, when Democrats blocked Mr. Keisler’s nomination, the total number of appeals filed in the DC Circuit has decreased—decreased—by 12 percent.

According to the Democrats’ own standards, and particularly when there are judicial emergencies in other courts across the country, now is not the time to confirm another judge to the DC Circuit. It is most certainly not the time for us to consider confirming a controversial nominee with a record of extreme views of the law and the Constitution. Many of my colleagues have discussed these views, so I will limit myself this morning to one example.

In 2003, while serving as solicitor general of New York, Ms. Halligan approved and signed a legal brief arguing that handgun manufacturers, wholesalers, and retailers should be held liable for criminal actions that individuals commit with those guns. Three years later, in 2006, Ms. Halligan filed a brief alleging that handgun manufacturers were guilty of creating a public nuisance—that they, themselves, were guilty of creating a public nuisance. Such an activist approach is both bewildering and inconsistent with the original understanding of the second amendment and the rights under the second amendment that American citizens enjoy.

In conclusion, as measured by the Democrats’ own standards and their prior actions, now is not the time to confirm another judge to the DC Circuit, and it is certainly not the time to consider such a controversial nominee for that important court.

For these reasons, I cannot support Ms. Halligan’s nomination, and urge

my colleagues to oppose her confirmation.

Madam President, I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEE. I ask unanimous consent that the quorum call be divided equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEE. I note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. TESTER). Without objection, it is so ordered.

Mr. SCHUMER. Reserving the right to object, Mr. President, I believe we have a set number of minutes left to discuss the nominee, Caitlin Joan Halligan, which is the subject here?

The PRESIDING OFFICER. The Senator is correct.

Mr. SCHUMER. How much time does the majority have?

The PRESIDING OFFICER. Eight minutes.

Mr. SCHUMER. Mr. President, I ask that the final 8 minutes before we vote be reserved for that and that the Senator from Illinois be allowed to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Illinois.

#### SOCIAL SECURITY

Mr. KIRK. Mr. President, I wish to speak as in morning business to talk about the big issue pending before the Senate, which is the potential legislation by Republicans or Democrats to cut contributions to Social Security. I am very worried because in the legislation we considered last week, we had proposals to cut contributions to Social Security by \$250 billion. This was legislation proposed by Democratic leaders and then a separate piece of legislation by Republican leaders. I think that legislation was a mistake on both sides.

We have precious few bipartisan institutions or contacts in this Senate. Senator MANCHIN and I—one Democratic and one Republican Senator, both freshmen—meet every Thursday for lunch. At our Thursday lunch last week, Senator MANCHIN initially said: I am having difficulty. I don’t think I am going to be able to vote for the Democratic bill to cut Social Security contributions.

I said: I join you in that because I am not going to be able to vote for the Republican bill that cuts Social Security contributions.

So the two of us voted pro-Social Security and against the legislation before us.

I am very worried that we are forgetting the lessons that are currently playing out in Europe on this subject. As Margaret Thatcher said, “Eventually socialists run out of other people’s money.” The collapse of European socialism underscores the lesson that you cannot run a retirement system without contributions.

We know already that the Social Security system is running slightly in the red. Contributions into the system are going to run \$10 billion behind the cost of honoring benefits to seniors. But under this legislation we would underfund Social Security by \$250 billion. We would increase the tide of red ink to Social Security by 20 times. I think that is a mistake.

AARP tells us that Social Security is not a welfare program, it is a retirement security program paid by the contributions of workers and we should run this program with the contribution of workers.

Remember, if we make this decision to cut contributions to Social Security, we replace those contributions with government bonds, but the government bonds we would ask seniors to trust no longer have a triple-A credit rating from Standard & Poor’s. It is basically asking seniors to trust us.

When you look at the details of the Democratic bill and the Republican bill, you see another disturbing trend. The Democratic and Republican bills both depend on revenue streams that take many years to repay what is lost to Social Security. Under the Republican bill, there are promised cuts which could be reversed by a future administration or Congress. It takes until 2018 to repay the senior citizens what has been lost in Social Security contributions under the trust fund. Under the Democratic bill, there was a political tax on millionaires, and it takes until 2021 to repay seniors.

The message that Senator MANCHIN and I had, as one Democrat and one Republican, is, how about not charging seniors? How about not causing a tide of red ink to Social Security? How about making sure we maintain contributions to that program? Seniors have enough to worry about right now. They should not have to worry about the future solvency of Social Security.

One analyst described how, under the legislation, it requires temporary borrowing of an additional \$240 billion for the Federal budget. I am worried that kind of borrowing could trigger an earlier loss of the debt limit of the United States, so we could trigger the battle we all expect for next January to actually happen—ominously for the President, prior to the election—if this legislation would pass.

Common sense should prevail, that we should run a retirement security

system with adequate contributions to maintain benefits, that we should agree on a bipartisan basis that Social Security is one of the most successful Federal programs ever signed, that we should say to seniors: Among all the other worries you have, you should not worry about Congress underfunding the trust fund for Social Security. We should say to seniors: We are not replacing solid contributions coming in from workers with bonds that no longer have a AAA credit rating from Standard & Poor's.

I urge members of AARP to reach out to their leaders and say: We urge you to forcefully advocate for maintaining adequate contributions to Social Security; that we don't think promises of a millionaire's tax that repays the debts until 2021 or spending cuts that repay the debts until 2018 are something we can fully trust.

So I urge Members of this body to maintain adequate contributions to Social Security, to defeat both the Republican and Democratic bills, to learn the lessons of Europe that we need to maintain a retirement security system with adequate contributions, and that we should not sink the Social Security trust fund in a wave of red ink on gimmick legislation which already would impinge the credit of the United States to a degree that it should not be impinged any further.

With that I yield the floor, and I thank my senior colleague from New York.

Ms. COLLINS. Mr. President, I rise today to speak on the nomination of Caitlin Halligan to be a judge of the U.S. Circuit Court for the District of Columbia.

I have carefully considered the background of this nominee and undertaken a full review of her public record as well as the records of the Judiciary Committee hearings. I have also looked closely at the actual staffing needs of the court to which she has been nominated. While my review leads me to conclude that Ms. Halligan is well qualified, I am not convinced that the workload of the court justifies filling the seat, and on that basis, I oppose the nomination.

This vacancy has existed since 2005 when then-Judge John Roberts was elevated to the Supreme Court. In June 2006, President Bush nominated Peter Keisler to fill the seat. Despite Mr. Keisler's strong qualifications, Democrats held up his nomination for a total of 918 days; it eventually had to be withdrawn.

Central to their objection to Mr. Keisler's nomination was their contention that the court's caseload did not justify filling the vacancy. As expressed by a Democratic Judiciary Committee member during Mr. Keisler's confirmation hearing and later reiterated by all eight committee Democrats in a letter to the chairman urging the nomination be put on hold:

We are putting the cart before the horse here. . . . Here are the questions that just

loom out there. Is there a genuine need to fill this seat? Has not the workload of the D.C. Circuit gone down? Should taxpayers be burdened with the cost of filling that seat? . . . We have been told repeatedly that to fill this seat would be a waste of taxpayer money and a shameful triumph of big government. Why then are we speeding towards confirmation here?

Since that statement, even with this seat still vacant, statistics from the Administrative Office of the U.S. Courts show that the caseload of the DC Circuit has actually continued to decrease markedly over the last several years and that, with a smaller court, more appeals were terminated during this same period

This decrease is evident in both the total number of appeals filed and the total number of appeals pending. Specifically, the total number of appeals filed in the DC Circuit decreased by more than 14 percent between 2005, when 1,379 appeals were filed, and 2010—the latest complete year for which statistics are available—when 1,178 appeals were filed. Meanwhile, with a smaller court, more appeals were terminated during this period. The total number of appeals pending was reduced from 1,463 appeals to 1,293 appeals. This is a decrease of nearly 12 percent.

The shrinking workload is also demonstrated in the per-panel and per-judge statistics. Filings per panel and filings per judge show a decline of nearly 7 percent during this period as well. Pending appeals per panel dropped over 9 percent. Interestingly, the DC Circuit ranks last among the circuit courts in 2010 in this category. That means it has the lightest workload per panel.

Given the declining workloads, the Senate should be debating reducing the staffing for this court, not filling a vacancy. With our massive deficit, belts being tightened everywhere, and critical vacancies existing on other Federal courts, why should we spend the resources—estimated at over \$1 million a year—to fill this seat? Why are we eating up legislative time debating a nominee we likely don't need, instead of moving forward to nominees for vacancies that have become judicial emergencies and demand more immediate attention?

It is discouraging to note that now that the candidate for this seat is a Democratic nominee and not a Republican, all of my friends on the other side of the aisle seem to have forgotten their concerns about the caseload, even though the court's own statistics show it has markedly declined. In fact, when the Senator from Iowa, Mr. GRASSLEY, recently sought to amend a judicial staffing bill before the Judiciary Committee this last October to cut a seat on the DC Circuit, Committee Democrats voted it down.

Mr. President, given the facts, I firmly believe that filling this vacancy before we determine whether the position is or is not superfluous to the court's needs, is indeed, as Judiciary Committee Democrats noted in 2006, "put-

ting the cart before the horse." Until that determination is made, I cannot support filling this vacancy regardless of the nominee's qualifications. Consequently, I will oppose cloture on the nomination.

Mr. HATCH. I rise today in opposition to the nomination of Caitlin Halligan to the U.S. Court of Appeals for the DC Circuit. I reached this conclusion after applying the same standard I use for all judicial nominations. The Senate owes some deference to the President regarding judicial nominees who are qualified by virtue of their legal experience and, more importantly, their judicial philosophy. I want to briefly mention a few of the reasons why this controversial nominee fails to meet this standard.

One hallmark of an activist judicial philosophy is trying to use the courts to solve problems or address issues that properly belong in the legislative branch. Both as solicitor general of New York and in private practice, Ms. Halligan argued that gun manufacturers should be held liable for the illegal use of their products. She argued that illegally possessed handguns are a so-called public nuisance for which manufacturers should be held responsible. The New York Court of Appeals rejected this radical theory and properly concluded that such social problems should be addressed by the legislative or executive branches rather than the judicial branch.

Undeterred, Ms. Halligan next went to Federal court to challenge the constitutionality of the Protection of Lawful Commerce in Arms Act. Congress enacted that statute so that manufacturers would not be held liable for the illegal use of their products. That measure passed the House and the Senate by at least a 2-to-1 margin. In this body, 14 Democrats voted for the bill, including 10 who still serve today. As had the New York Court of Appeals, the U.S. Court of Appeals for the Second Circuit rejected Ms. Halligan's position, upholding the statute and dismissing the litigation.

Ms. Halligan has also taken extreme positions regarding the war on terrorism. I know that liberals do not even want to call it that today, but the reality is that we remain at war against foreign terrorists bent on murdering American civilians. Ms. Halligan would give captured terrorists, who are making war on the United States, access to civilian courts, a right never before recognized in American history. Ms. Halligan was a member of a New York City bar committee that issued a report on the indefinite detention of enemy combatants. This is particularly important because the DC Circuit, to which Ms. Halligan has been nominated, is the most important lower court for terrorism cases. She did not abstain from signing the report, as four other committee members did, and so its content and conclusions can be attributed to her.

She argued in that report that the authorization for use of military force,

or AUMF, does not authorize long-term detention of enemy combatants and that alien terrorists should be tried in civilian courts rather than in military commissions. The Supreme Court and the Obama administration have since rejected or abandoned such positions. After the Supreme Court held, in *Hamdi v. Rumsfeld*, that the AUMF does authorize military detention of resident aliens, Ms. Halligan coauthored a brief arguing otherwise. Not until her Judiciary Committee hearing this year did Ms. Halligan even try to distance herself from these extreme positions, something that my friends on the other side of the aisle would call a confirmation conversion if she were a Republican.

Unfortunately, this was not the only example of Ms. Halligan getting behind novel rights that have no grounding in our Constitution or legal traditions. Ms. Halligan filed a brief in *Roper v. Simmons* arguing that evolving standards of decency today forbid the execution of individuals who committed murder before the age of 18. This is judicial activism at its worst, giving judges complete control of the Constitution that they are supposed to follow. America's Founders insisted that the meaning of the Constitution does not change until the people change it and that even judges are bound to follow that meaning. Today, in contrast, the Supreme Court says that the meaning of the Constitution is evolving and that judges are in charge of that evolution.

The fact that Ms. Halligan appears to be solidly in that judicial activist camp is bad enough and is alone grounds to oppose her nomination. Perhaps sensing that such activism is deeply unpopular among the American people and their elected representatives, she did an about-face at her confirmation hearing and said that the Constitution should be interpreted based on the people's original meaning rather than on judges' evolving understandings. So it is legitimate to ask which Ms. Halligan is the real Ms. Halligan—the Ms. Halligan who would create new rights, while ignoring the clear language of the Constitution that protects the right to bear arms, or the Ms. Halligan who at the last minute has become a convert to originalism?

I think her record speaks for itself.

Ms. Halligan also filed a brief in *Scheidler v. National Organization for Women* arguing that pro-life protesters should be prosecuted under the Federal racketeering statute because they somehow commit extortion. Her argument would require the courts literally to rewrite both the racketeering statute and the extortion statute and is another example of Ms. Halligan seeking to pursue her political agenda in the judicial rather than in the legislative branch. I believe instead that the political ends do not justify the judicial means and, thankfully, the Supreme Court voted 8 to 1 to reject her position.

In addition to her troubling record, it is worth noting that the position to which Ms. Halligan has been nominated hardly fits the category of a judicial emergency. The Senate has this year already confirmed nearly 20 percent more judges than the annual average over the past couple of decades, with, I am sure, more to come. We have paid particular attention to filling long-term vacancies in jurisdictions with heavy caseloads. Yet, between 1993 and 2010, annual case filings in the DC Circuit decreased by twice the percentage that filings increased in other circuits. The DC Circuit's caseload per judge is literally one-fourth what it is for other circuits. It has ranked last for years among all circuits in the number of appeals filed per three-judge panel, even after one of its seats was transferred to the Ninth Circuit and even with multiple vacancies. The DC Circuit's caseload is lower today than when Democrats used this caseload argument to block the nomination to this court of Peter Keisler, who waited more than 900 days without a committee vote.

As my colleagues know, I do not oppose judicial nominees often or lightly. While Ms. Halligan appears to be an experienced lawyer and I am sure is a fine person, those are insufficient qualifications for judicial service. The most important qualification is her judicial philosophy, or the kind of judge she would be. The record shows that she embraces the activist judicial approach that I believe is incompatible with the power and proper role of judges in our system of government under a written Constitution. For these and for additional reasons that my colleagues will discuss further, I cannot support her appointment.

Mrs. BOXER. Mr. President, I wish to express my support for Caitlin Halligan, who has been nominated to the Court of Appeals for the DC Circuit. Ms. Halligan has an impressive background and broad support, and I urge my colleagues to vote for cloture and allow this nominee to receive an up-or-down confirmation vote.

Ms. Halligan has had a distinguished career in both the private and public sectors. She has served as the solicitor general of New York and as general counsel of the New York County District Attorney's Office. She has also been a senior appellate lawyer at the nationally recognized law firm of Weil Gotshal. She has argued five cases before the Supreme Court, where she also clerked after law school. It is no wonder the ABA unanimously rated her "well-qualified"—the highest ranking to serve on the DC Circuit.

In addition to impressive credentials, Ms. Halligan has broad support. The National District Attorneys Association and district attorneys from the State of New York, including Republicans Derek Champagne, Daniel Donovan, and William Fitzpatrick, support her nomination. She is also supported by the New York Association of Chiefs of Police and the New York State Sheriff's Association.

Confirming a well-qualified nominee like Ms. Halligan would also be another step toward expanding the diversity of our Federal bench. Today, women hold 30 percent of Federal judicial seats—from district courts to the Supreme Court—the most at any time in this Nation's history. While this progress is to be celebrated, these words from Justice Sandra Day O'Connor remind us there is more to do:

About half of all law graduates today are women, and we have a tremendous number of qualified women in the country who are serving as lawyers. So they ought to be represented on the Court.

I am proud to support the nomination of Ms. Halligan and hope that my colleagues will join me in voting for cloture today.

Mr. REID. Mr. President, today Republicans filibuster a judicial nominee whose colleagues call her a "brilliant legal mind" with an "abiding respect for the law."

This nominee to the U.S. Court of Appeals for the DC Circuit, Caitlin Joan Halligan, has outstanding credentials and strong support from across the political spectrum.

She enjoys the support of a bipartisan group of appellate lawyers, former judges, law enforcement officials, and more than 20 former Supreme Court clerks. And she has been endorsed by the National District Attorneys Association, the New York Association of Police Chiefs and the New York State Sheriffs Association.

She graduated with honors from Princeton and Georgetown University Law, where she was managing editor of the *Georgetown Law Journal*. She served as a law clerk to Judge Patricia Wald on the DC Circuit, the court to which she was nominated, and to Justice Stephen Breyer on the Supreme Court.

She has served New York and this Nation well as a public servant for more than a decade.

Yet Republicans filibustered her nomination.

I ask my colleagues, if this truly exceptional candidate isn't qualified to be a judge in the United States of America, who is?

In 2005, a bipartisan group of Senators came to an agreement to protect the Senate as an institution and the right of the minority to influence debate. Democrats and Republicans averted the so-called nuclear option by agreeing that the minority's right to block judicial nominees would be preserved but it would be exercised only in extraordinary circumstances.

I am concerned that today the Senate is backing away from that agreement. Ms. Halligan's nomination does not meet the standard of an extraordinary circumstance that agreement envisioned.

Republicans, now in the minority, will block a talented, experienced nominee with broad bipartisan support to please a few ideological extremists.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent to be recognized for the remainder of the time if no one from the minority side is here to speak against this nomination.

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

Mr. SCHUMER. Mr. President, I rise this morning in support of the President's first and only nominee to the U.S. Court of Appeals for the District of Columbia Circuit.

Caitlin J. Halligan is a nominee any president of any party would be proud of. I know from speaking to her and from getting to know her over the last year—and it has been over a year since she was nominated—that she has earned this honor. She has earned it through dint of hard work and native intelligence. Importantly, Halligan has dedicated most of her professional life to government service.

I challenge anyone in this Chamber to think hard about what we are looking for in a judge to the second most important court in the land. If they do, they must conclude that Caitlin Halligan deserves an up-or-down vote.

Does the President have to nominate a political conservative to clear the hurdle? Halligan is clearly a moderate—far more moderate than many on my side would choose if they were nominating on their own without an advise-and-consent process. Does the President have to nominate a lawyer who has practiced law in the shadows, never addressing a major legal issue of importance to the Nation in her entire career? Because the only arguments against Caitlin Halligan are “gotcha” arguments that simply take little snippets of what she did in past law practice representing clients, not her own views, and say “gotcha.”

In 2005, 14 of my colleagues formed what was called the Gang of 14. In order to reduce filibusters and overcome the push to change Senate rules to get rid of the filibuster, this bipartisan group agreed not to filibuster any nominees who did not present “extraordinary circumstances.”

Now, “extraordinary circumstances” was not defined. But my colleague, Senator GRAHAM, a leader in that Gang of 14 effort, to his credit, said on the floor at the time—completely reasonably—that it meant no ideological attacks. Senator GRAHAM said:

Ideological attacks are not an extraordinary circumstance. To me, it would have to be a character problem, an ethics problem, so allegations about the qualifications of a person, not an ideological bent.

Caitlin Halligan does not have a character problem or an ethics problem. No one has alleged she does. It is that simple. So if this body cannot invoke cloture on her nomination today, the Gang of 14 agreement, it would seem to me, would be violated.

The approach taken by Senate Republicans will have lasting consequences beyond this one nomination. It seems to me that a vote against this nominee is a vote that declares the

Gang of 14 agreement null and void. I was not a party to that agreement, but it would be impossible to deny that it has guided this body's consideration of judges since 2005 under both Democratic and Republican Presidents. If Republicans are going to suddenly junk that 6-year armistice, it could risk throwing the Senate into chaos on judicial nominees. Senate Republicans seem to want to declare open season for filibusters again—at least at the court of appeals level. Admittedly, and gladly, things as of late have gotten much better at the district court level. But the defeat of Caitlin Halligan would throw into chaos nominations at the circuit court level for a long time to come.

Any attempt to paint Caitlin Halligan as so far out of the mainstream that she presents an “extraordinary circumstance” is twisting her record far beyond recognition. Any attempt to do so would make any nominee, by a Democratic or a Republican President, susceptible to that unfair charge.

I have always said ideology matters, but I have also said candidates need only to be mainstream—not too far right, not too far left. I don't like nominees who are at the extremes, left or right, because they tend to be ideologues who want to make law not interpret and follow law. Well, Halligan fits the bill of a moderate, mainstream nominee precisely, to a “T.”

Halligan has spent her career in government in both political and plenty of nonpolitical positions. She has worked as a lawyer's lawyer and has expressed few views on public issues. She has written virtually nothing, but at her hearing she did answer questions. She acknowledged that Executive power extends to indefinite detention of enemy combatants during time of war—something that might be disputed among mainstream Members of this body, particularly if they were citizens picked up on American soil. We just had that debate.

She acknowledged she would act with fealty to text and original intent in interpreting laws and the Constitution. She acknowledged she believes the second amendment protects an individual's right to bear arms, thereby vindicating the Heller case, and she acknowledged that the eighth amendment protects the constitutionality of the death penalty.

Some of my colleagues have tried to paint Halligan because she has filed briefs on behalf of clients, and they say that somehow indicates she would be an activist judge. First, I wish to point out that she is not the first nominee to come before the Senate and state that the views in the briefs she writes of her clients are not her own. Guess who did it regularly and repeatedly. Now-Chief Justice Roberts.

Did Democrats filibuster Justice Roberts because he did that? Did we say the views he wrote on behalf of cli-

ents had to be attributed to his own views? Of course not.

I wish to rebut some of the things I heard on this floor this morning about particular cases. First, while she did represent the State of New York against gun manufacturers, those cases were made moot by congressional law. In her hearing, Halligan recognized this and said unequivocally that she supports the individual right to bear arms.

Second, it is simply wrong to suggest that Caitlin Halligan is somehow outside the mainstream on immigration because she filed a brief advocating that businesses should not be rewarded for hiring illegal immigrants by getting out of the requirement that back-pay should be awarded when the workers are exploited. Again, this was a brief filed on behalf of a client, not representing her own view.

Third, in the case of al-Marri, there is no argument that Halligan did anything other than make arguments on behalf of a client that were well within the mainstream. The administration abandoned the case and then charged al-Marri in civilian court—no different than the argument Halligan was making.

Why are we arguing about whether she deserves an up-or-down vote? Because, frankly, as with the Supreme Court, this is part of the attempt of the far right to pull the DC Circuit further and further away from the mainstream. Many conservatives tend to decry “liberal judicial activism.” But what they really want is judicial activism of the right. They don't want lawyers to be down the middle and interpret law; they want to change the way the whole government has operated for decades through the one unelected body, the article III body, the judiciary.

A truly moderate judicial philosophy shows respect for Congress, for executive agencies that interpret the law, and for well-settled understandings that the American people commonly hold about democracy. There is not a single question that Halligan adheres to these principles. She has extensive government experience. She understands the demands and rolls of the other branches.

She has been a responsible and rigorous advocate for all of her clients, including the people of New York. I have no doubt that as a judge she will be a responsible and rigorous advocate for the rule of law. Anyone who has listened to her answer an hour of questions in the committee and read her responses to the 150 questions that were submitted for the record cannot doubt but that she has an even and modest temperament and philosophy in her approach to legal questions.

Let me cite one example: When she was asked by Senator GRASSLEY her view of deference to the legislative branch, here is how she responded:

I think that the job of a judge is to examine the constitutionality of a statute when a

constitutional challenge is presented, but I think that authority has to be exercised very sparingly and very carefully.

Time and time again she answered similarly with clear and unambiguous answers.

Some of my colleagues have accused Halligan of lacking candor in her answers. Well, I have sat through a lot of hearings for nominees to Federal courts of appeals, and I know evasion when I see it. Halligan was not evasive. Some of the same people who say she lacked candor still defend Miguel Estrada who didn't answer a single question because he might come before them as a judge.

She answered questions thoughtfully and forthrightly and explained the context of any past statements that might have seemed to have contradicted her current views.

This morning, some of my colleagues on the other side of the aisle pointed to two things that she did not write to try to indicate she has activist views. First, she gave a speech in 2003 on behalf of her boss, Elliott Spitzer, that she did not write herself. In fact, she stepped in at the last minute to give the speech when he could not make it. She did not write it, and she clarified at the time that it did not reflect her personal views.

Second, she was a member of a committee that issued a report on Executive power and enemy combatants. She explained in the committee she hadn't seen the report and didn't agree with either its content or its tone. In her hearing she clearly stated her views on Executive power. This should have cleared up any doubt about her ability to recognize and respect the current state of law.

Finally, I wish to say a word about a red herring argument that has been raised today—that the workload of the DC Circuit is too low to confirm Halligan. I have expressed this concern, too, and, in fact, in 2008 we voted to take away one of the seats in the DC Circuit. It now has 11 judges rather than 12; but I, as well as many of my colleagues on both sides of the aisle have in the past reserved our concern for nominees of the 11th seat and what was then the 12th seat. Halligan has been nominated for the 9th seat. There are only 8 members on that court which now has a roster of 11. The 10th and 11th seats remain vacant. No one ever until now, on either side of the aisle, has ever argued that the DC Circuit should have only eight judges.

I wonder, if control of the body changes, which I don't think it will, or we get a Republican President, which I don't think we will, how quickly our colleagues on the other side of the aisle will abandon that foolish and specious argument.

I am concerned that we are hearing it now for the first time because the current makeup of the court happens to have five Republican appointees and three Democratic nominees.

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

Mr. SCHUMER. Mr. President, I ask unanimous consent that I be given 1½ more minutes to finish this point.

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

Mr. SCHUMER. When we confirmed President Bush's nominee to the 11th seat in 2005, Thomas Griffith, his confirmation resulted in there being 121 pending cases per judge. We did not hear a peep out of the other side that that was too low. Yet today there are 161 cases per judge. With Halligan's confirmation, it would go down to 143—far more than the 121 when all my colleagues on the other side of the aisle voted for Mr. Griffith, the Republican nominee of President Bush. So there is no reason to argue about caseload.

The fact is, if we cannot confirm Halligan, this will not go down as a vote about caseload, this will be recorded as a new bar for nominees.

In conclusion, when Caitlin Halligan drove with her father from her home in Kansas City to Harvard or when she was a standout student at Georgetown Law School or when she started her work for the New York Attorney General's Office, I am sure she could not have imagined that someday she would be the topic of a debate in the U.S. Senate about whether she was too radical or lacked the candor to be a judge.

I hope that when we vote and the debate is over, my colleagues recognize the truth here: Halligan is a sterling example of a public servant who has worked hard, earned every honor she has received, and fits squarely within the mainstream of judicial thought. She deserves an up-or-down vote today, and I will be proud to cast my vote for cloture on Caitlin Halligan's nomination.

I thank the Chair.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Caitlin Joan Halligan, of New York, to be United States Circuit Judge for the District of Columbia Circuit.

Harry Reid, Patrick J. Leahy, Charles E. Schumer, Christopher A. Coons, Amy Klobuchar, Al Franken, Richard Blumenthal, Sheldon Whitehouse, Richard J. Durbin, Dianne Feinstein, Herb Kohl, Kirsten E. Gillibrand, Tom Udall, Ron Wyden, Robert P. Casey, Jr., Sherrod Brown, Jeanne Shaheen.

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 Caitlin Joan Halligan, of New York, 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 bill clerk called the roll.

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

The yeas and nays resulted—yeas 54, nays 45, as follows:

[Rollcall Vote No. 222 Ex.]

#### YEAS—54

Akaka	Hagan	Murray
Baucus	Harkin	Nelson (NE)
Begich	Inouye	Nelson (FL)
Bennet	Johnson (SD)	Pryor
Bingaman	Kerry	Reed
Blumenthal	Klobuchar	Reid
Boxer	Kohl	Rockefeller
Brown (OH)	Landrieu	Sanders
Cantwell	Lautenberg	Schumer
Cardin	Leahy	Shaheen
Carper	Levin	Stabenow
Casey	Lieberman	Tester
Conrad	Manchin	Udall (CO)
Coons	McCaskill	Udall (NM)
Durbin	Menendez	Warner
Feinstein	Merkley	Webb
Franken	Mikulski	Whitehouse
Gillibrand	Murkowski	Wyden

#### NAYS—45

Alexander	DeMint	McCain
Ayotte	Enzi	McConnell
Barrasso	Graham	Moran
Blunt	Grassley	Paul
Boozman	Heller	Portman
Brown (MA)	Hoeben	Risch
Burr	Hutchison	Roberts
Chambliss	Inhofe	Rubio
Coats	Isakson	Sessions
Coburn	Johanns	Shelby
Cochran	Johnson (WI)	Snowe
Collins	Kirk	Thune
Corker	Kyl	Toomey
Cornyn	Lee	Vitter
Crapo	Lugar	Wicker

ANSWERED "PRESENT"—1

Hatch

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 45, and 1 Senator responded "present."

Three-fifths of the Senators duly chosen and sworn having not voted in the affirmative, the motion is rejected.

#### LEGISLATIVE SESSION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

#### MORNING BUSINESS

The PRESIDING OFFICER. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business until 6 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

(Whereupon, the Senate, at 12:31 p.m., recessed and reassembled at 2:15 p.m. when called to order by the Presiding Officer (Mr. WEBB)).

The PRESIDING OFFICER. The Senator from Florida.