We are a great and good country. But we are also a country that becomes greater and better because of the diversity brought to our shores. That is true from the beginning of this country to today. Let's make it possible.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JANE KELLY TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

NOMINATION OF SYLVIA MATHEWS BURWELL TO BE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

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

The legislative clerk read the nomination of Jane Kelly, of Iowa, to be United States Circuit Judge for the Eighth Circuit.

The legislative clerk read the nomination of Sylvia Mathews Burwell, of West Virginia, to be Director of the Office of Management and Budget.

The PRESIDING OFFICER. Under the previous order, there will be 90 minutes for debate equally divided in the usual form. The time from 10:30 to 11 o'clock a.m. shall be for debate on Calendar No. 60, and the time from 11:30 a.m. until 12 noon shall be for debate on Calendar No. 64.

The Senator from Vermont.

Mr. LEAHY. Madam President, just last month Senate Republicans filibustered the nomination of Caitlin Halligan to fill a vacancy on the D.C. Circuit that arose when Chief Justice Roberts left the D.C. Circuit to join the Supreme Court 8 years ago. Caitlin Halligan is a woman who is extraordinarily well-qualified and amongst the most qualified judicial nominees I have seen from any administration. The smearing of her distinguished record of service was deeply disappointing.

Senate Republicans blocked an up-or-down vote on her confirmation with multiple filibusters of her nomination and procedural objections that required her to be nominated five times over the last 3 years. To do so they turned upside down the standard they had used and urged upon the Senate for nominees of Republican Presidents. In those days they proclaimed that everything President Bush's controversial nominees had done in their legal careers should be viewed as merely legal representation of clients. They abandoned that standard with the Halligan nomination and contorted her legal representation of the State of New York into what they contended was judicial activism. It was not just disappointing but fundamentally unfair to a public servant and well qualified nominee.

Also disconcerting were the comments and tweets by Republican Senators after their filibuster in which they gloated about payback. That, too, is wrong. It does our Nation and our Federal judiciary no good when they place their desire to engage in partisan tit-for-tat over the needs of the American people. I rejected that approach while moving to confirm 100 of President Bush's judicial nominees in just 17 months in 2001 and 2002.

Had Caitlin Halligan received an up-or-down vote, I am certain she would have been confirmed and been an outstanding judge on the United States Court of Appeals for the District of Columbia Circuit. Instead, all Senate Republicans but one supported the filibuster and refused to vote up or down on this highly-qualified woman to fill a needed judgeship on the D.C. Circuit. Now that Senate Republicans have during the last 4 years filibustered more of President Obama's moderate judicial nominees than were filibustered during President Bush's entire 8 years—67 percent more—I urge them to cease their practice of sacrificing outstanding judges based on their misguided sense of partisan payback.

Regrettably, however, Senator Republicans are expanding their efforts through a ''wholesale filibuster'' of nominations to the D.C. Circuit by introducing a legislative proposal to strip three judgeships from the D.C. Circuit. I am tempted to suggest that they amend their bill to make it effective whenever the next Republican President is elected. I say that to point out that they had no concerns with supporting President Bush's four Senate-confirmed nominees to the D.C. Circuit. Those nominees filled the very vacancies for the ninth, tenth, and even the eleventh judgeship on the court that Senate Republicans are demanding be eliminated now that President Obama has been reelected by the American people. The target of this legislation seems apparent when its sponsors emphasize that it is designed to take effect immediately and acknowledge that ''[h]istorically, legislation introduced in the Senate altering the number of judgeships has most often postponed enactment until the beginning of the next President's term'' but that their legislation ''does not do this.'' It is just another of their concerted efforts to block this President from appointing judges to the D.C. Circuit.

In its April 5, 2013 letter, the Judicial Conference of the United States, chaired by Chief Justice John Roberts, sent us recommendations ''based on our current caseload needs.'' They did not recommend stripping judgeships from the D.C. Circuit but state that they should continue at 11. Four are currently vacant. According to the Administrative Office of U.S. Courts, the caseload per active judge for the D.C. Circuit has actually increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the eleventh seat on the D.C. Circuit. When the Senate confirmed Thomas Griffith—President Bush's nominee to the eleventh seat in 2005—the confirmation resulted in there being approximately 119 pending cases per active D.C. Circuit judge. There are currently 188 pending cases for each active judge on the D.C. Circuit, more than 50 percent higher.

Senate Republicans also seek to misuse caseload numbers. The D.C. Circuit Court of Appeals is often considered ''the second most important court in the land'' because of its special jurisdiction and because of the important and complex cases that it decides. The Court reviews complicated decisions and rulemaking of many Federal agencies, and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11. These cases make incredible demands on the time of the judges serving on this Court. It is misleading to cite statistics or contend that hard-working judges have a light or easy workload. All cases are not the same and many of the hardest, most complex and most time-consuming cases in the Nation end up at the D.C. Circuit.

Today's nominee is fortunate to be from Iowa and nominated to a vacancy on the Eighth Circuit Court of Appeals. I fully support confirming her and commend Senator HARKIN for recommending her to the President and Senator GRASSLEY for also supporting her confirmation. The confirmation to fill a vacancy on the Eighth Circuit also demonstrates that the caseload argument that Senate Republicans sought to use as justification for their unfair filibuster of Caitlin Halligan was one of convenience rather than conviction. With the confirmation today, the Eighth Circuit will have the lowest number of pending appeals per active judge of any circuit in the country. Yes, lower than the D.C. Circuit. The sponsors of the partisan bill directed as a wholesale filibuster of the D.C. Circuit do not propose the Eighth Circuit, which covers Iowa, Missouri, Arkansas, Minnesota, Nebraska, North Dakota and South Dakota, be stripped of any judgeships.

Although they unnecessarily delayed the confirmation from last year to this year of Judge Bacharach of Oklahoma to the Tenth Circuit, Senate Republicans all voted in favor of confirming him. They did not object, vote against, filibuster or seek to strip that circuit of judgeships even though its caseload per judge is 139, well below that of the D.C. Circuit.

This Iowa nominee has also proven the exception to the practice of Republicans of holding up confirmations of circuit nominees with no reason for months. The Senate is being allowed to

proceed to her confirmation barely a month after it was reported by the Judiciary Committee. I would like to think that this signals a new willingness to abandon their delaying tactics but fear that it is an exception. To expedite this nomination meant skipping over a number of nominees, including some who have been waiting since last year for the Senate to vote on their confirmations.

President Obama's other circuit court nominees have faced filibusters and unprecedented levels of obstruction. Senate Republicans used to insist that the filibustering of judicial nominations was unconstitutional. The Constitution has not changed, but as soon as President Obama was elected they reversed course and filibustered President Obama's very first judicial nomination. Judge David Hamilton of Indiana was a widely-respected 15-year veteran of the Federal bench nominated to the Seventh Circuit and was supported by Senator Dick Lugar, the longest-serving Republican in the Senate. They delayed his confirmation for 7 months. Senate Republicans then proceeded to obstruct and delay just about every circuit court nominee of this President, filibustering 10 of them. They delayed confirmation of Judge Patty Shwartz of New Jersey to the Third Circuit for 13 months. They delayed confirmation of Judge Richard Taranto to the Federal Circuit for 12 months. They delayed confirmation of Judge Albert Diaz of North Carolina to the Fourth Circuit for 11 months. They delayed confirmation of Judge Jane Stranch of Tennessee to the Sixth Circuit and Judge William Kayatta to the First Circuit for 10 months. They delayed confirmation of Judge Robert Bacharach of Oklahoma to the Tenth Circuit for 8 months. They delayed confirmation of Judge Ray Lohier of New York to the Second Circuit for seven months. They delayed confirmation of Judge Scott Matheson of Utah to the Tenth Circuit and Judge James Wynn, Jr. of North Carolina to the Fourth Circuit for 6 months. They delayed confirmation of Judge Andre Davis of Maryland to the Fourth Circuit, Judge Henry Floyd of South Carolina to the Fourth Circuit, Judge Stephanie Thacker of West Virginia to the Fourth Circuit, and Judge Jacqueline Nguyen of California to the Ninth Circuit for 5 months. They delayed confirmation of Judge Adalberto Jordan of Florida to the Eleventh Circuit, Judge Beverly Martin of Georgia to the Eleventh Circuit, Judge Mary Murguia of Arizona to the Ninth Circuit, Judge Bernice Donald of Tennessee to the Sixth Circuit, Judge Barbara Keenan of Virginia to the Fourth Circuit, Judge Thomas Vanaskie of Pennsylvania to the Third Circuit, Judge Joseph Greenaway of New Jersey to the Third Circuit, Judge Denny Chin of New York to the Second Circuit, and Judge Chris Droney of Connecticut to the Second Circuit for 4 months. They delayed confirmation of Judge Paul Watford of California to the Ninth Circuit, Judge Andrew Hurwitz of Arizona to the Ninth Circuit, Judge Morgan Christen of Alaska to the Ninth Circuit, Judge Stephen Higginson of Louisiana to the Fifth Circuit, Judge Gerard Lynch of New York to the Second Circuit, Judge Susan Carney of Connecticut to the Second Circuit, and Judge Kathleen O'Malley of Ohio to the Federal Circuit for 3 months.

The nonpartisan Congressional Research Service has reported that the median time circuit nominees have had to wait before a Senate vote has skyrocketed from 18 days for President Bush's nominees to 132 days for President Obama's. This is the result of Republican obstruction. So while it is good that they have allowed this vote on Jane Kelly from Iowa, if it proves an exception rather than a change in their tactics of obstruction, we will recognize it for what it is. Senate Republicans have a long way to go to match the record of cooperation on consensus nominees that Senate Democrats established during the Bush administration.

Delay has been most extensive with respect to circuit court nominees but not limited to them. Consensus district court nominees are also being needlessly delayed. During President Bush's first term alone, 57 district nominees were confirmed within just 1 week of being reported. By contrast, during his first 4 years only two of President Obama's district nominees have been confirmed within a week of being reported by the Committee.

Just before the Thanksgiving recess in 2009, when Senator SESSIONS of Alabama was the ranking Republican on the Judiciary Committee, we were able to get Republican agreement to confirm Judge Abdul Kallon, a nominee from Alabama, and Judge Christina Reiss, our Chief Judge for the Federal District Court for the District of Vermont. They had their hearing on November 4, were voted on by the Judiciary Committee two weeks later on November 19, and were confirmed by the Senate on November 21. They were not stalled on the Senate Executive Calendar without a vote for weeks and months. They were confirmed two days after the vote by the Judiciary Committee. That should be the standard we follow, not the exception. It should not take being from the ranking Republican's home State to be promptly confirmed as a noncontroversial judicial nominee.

The obstruction of President Obama's nominees by Senate Republicans has contributed to the damagingly high level of judicial vacancies that has persisted for over 4 years. Persistent vacancies force fewer judges to take on growing caseloads, and make it harder for Americans to have access to speedy justice. While Senate Republicans delayed and obstructed, the number of judicial vacancies remained historically high and it has become more difficult for our courts to provide speedy, quality justice for the American people. There are today 83 judicial vacancies across the country. By way of contrast, that is nearly double the number of vacancies that existed at this point in the Bush administration. The circuit and district judges that we have been able to confirm over the last four years fall 20 short of the total for this point in President Bush's second term.

There should be no doubt that these delays, and the vacancies they prolong, have a real impact on the American people. Last week, the president of the American Bar Association wrote in The Hill that:

> Real costs are often borne by businesses whose viability relies on the timely resolution of commercial disputes, by defendants who lose jobs and sometimes family ties while languishing behind bars awaiting trial, and, ultimately, the public that expects courts to deliver on the promise of justice for all. Our economy depends on courts to enforce contracts, protect property and determine liability. Judicial vacancies increase caseloads per judge, creating delays that jeopardize the ability of courts to expeditiously deliver judgments. Delay translates into costs for litigants. Delay results in uncertainty that discourages growth and investment.

She concluded that ''vacancies are potential job-killers.'' I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

Today the Senate will vote on the nomination of Jane Kelly to the U.S. Court of Appeals for the Eighth Circuit. She has a distinguished career in the Federal Defender's Office, first as an assistant federal public defender and then as a supervising attorney. In addition to working in the Federal Defender's Office, Jane Kelly has also served as a visiting instructor at the University of Illinois College of Law and taught at the University of Iowa College of Law. After law school, she served as a law clerk to two Federal judges: the Honorable Donald J. Porter of the U.S. District Court for the District of South Dakota and the Honorable David R. Hansen of the U.S. Court of Appeals for the Eighth Circuit. Jane Kelly was reported unanimously by the Judiciary Committee one month ago. I am especially pleased that her nomination is not being blocked the way Senate Republicans blocked the nomination of Bonnie Campell, the former Attorney General of Iowa and first head of the Justice Department's Violence Against Women Office. In part because that nomination was blocked, Jane Kelly will be just the second woman ever to serve on the Eighth Circuit.

After today's vote, a dozen judicial nominees remain pending on the Executive Calendar, including four who could and should have been confirmed last year. Like Jane Kelly, they deserve swift consideration and an up-or-down vote.

Finally, over the last several months, I have continued to speak out about the damaging effects of sequestration

on our Federal courts and our system of justice. The harmful effects continue. As a result of sequestration, Federal prosecutors and Federal public defenders continue to be furloughed. In a column dated April 18, 2013, distinguished Federal Judges Paul Friedman and Reggie Walton from the United States District Court for the District of Columbia spoke out against the harmful impact of sequestration. They wrote:

[S]equestration poses an existential threat to the right of indigent defendants to have publicly funded legal representation—a right that the Supreme Court recognized 50 years ago in its landmark decision in Gideon v. Wainwright. . . .

[T]the effect of sequestration on the courts severely threatens the rights guaranteed by the Sixth Amendment to those accused of crimes and, in the process, threatens our federal judiciary's reputation as one of the world's premier legal systems. This is a price we cannot afford to pay.

I ask unanimous consent that this column be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From The Hill, Apr. 17, 2013]

PRESIDENT AND CONGRESS MUST ACT TO FILL JUDICIAL VACANCIES

(By Laurel Bellows)

The judicial appointment process has been broken for two decades. Through the first two centuries of our republic, the Senate was renowned as the world's greatest deliberative body, the home of lawmakers and statespeople who understood not only the impact of soaring rhetoric but also the value of collaboration and compromise. Senators assiduously exercised their authority to provide advice and consent on judicial nominations. The judicial appointment process was divisive at times, but presidents and senators have historically recognized that stonewalling judicial nominees undermines the independence of the judiciary as a coequal branch of government. With 86 (one in 10) vacancies on our federal bench and with 37 vacant judgeships qualifying as judicial emergencies, the time for collaboration and compromise is now.

Successive presidents and Senate majority and minority leaders have pointed at each other and claimed with exasperation that their political opponents are responsible for stalling judicial nominees. Neither side is willing to end a process that has degenerated into Beltway gridlock. There are many losers in this stalemate. One is the judicial nominee, whose law practice and family suffer during the extended limbo of the pending nomination. Real costs are often borne by businesses whose viability relies on the timely resolution of commercial disputes, by defendants who lose jobs and sometimes family ties while languishing behind bars awaiting trial, and, ultimately, the public that expects courts to deliver on the promise of justice for all. Our economy depends on courts to enforce contracts, protect property and determine liability. Judicial vacancies increase caseloads per judge, creating delays that jeopardize the ability of courts to expeditiously deliver judgments. Delay translates into costs for litigants. Delay results in uncertainty that discourages growth and investment. With 60 percent more judicial vacancies at present than in January 2009 and pending civil cases in U.S. District Courts 7 percent higher than in 2005, vacancies are potential job-killers.

The U.S. District Court for the Northern District of Georgia has had one open judge's position for more than 1,500 days and another for more than 1,100 days. Federal courts in Arizona, North Carolina, Texas and Wisconsin have similarly long-lived vacancies. In the U.S. District Court for the Central District of California, a venue that recently considered a $1 billion case, a seat on the Ninth Circuit U.S. Court of Appeals has been open for more than 3,000 days, since 2004.

Vacancies affect our criminal justice system. Major crimes like terrorism, bank robbery and kidnapping are tried in federal courts that are understaffed. Plus, the number of defendants pending in criminal cases before U.S. district courts has increased 33 percent since 2003. The constitutional rights of defendants to a speedy trial are not waived because senators cannot agree on judges. To meet those constitutional obligations, criminal trials receive precedence over civil matters, further adding to the civil backlog. Exacerbating slowdowns caused by vacancies, the courts have announced that sequestration will require staff furloughs. Some courts will not accept civil filings on certain days.

Progress can be made with small steps and collaborative leadership. As a first step, Democrats and Republicans should schedule up-or-down floor votes for those 13 nominees favorably reported out of the Senate Judiciary Committee with little or no opposition.

Second, the 11 nominees who were pending on the floor when the 112th Congress adjourned should be fast-tracked. These women and men nominees already have endured the laborious review process and Judiciary Committee approval. The technicality of adjournment should not stall their consideration.

Next, the Senate majority and minority leaders should agree to prioritize filling judicial emergencies and shorten the period of time between nomination and votes. A nominee for Majority Leader HARRY REID's home state of Nevada has waited more than 200 days without a floor vote. Minority Leader MITCH MCCONNELL's home state has fared even worse. A seat has been vacant in the Western District of Kentucky for more than 500 days.

Finally, the White House should offer a nominee for every open seat on the bench. The many vacancies and anticipated vacancies warrant making judicial vacancies a priority this year. Additional nominations from President Obama will emphasize the responsibility of the Senate to end decades of escalating retaliation against qualified judicial nominees.

Bellows is president of the American Bar Association.

[From the Washington Post, Apr. 18, 2013]

PUBLIC DEFENDERS OFFICES SHOULDN'T SUFFER UNDER SEQUESTRATION

(By Paul L. Friedman and Reggie B. Walton)

Paul L. Friedman and Reggie B. Walton are federal judges on the U.S. District Court for the District of Columbia.

Generally, federal judges should not become embroiled in political disputes. But we feel compelled to speak out because sequestration poses an existential threat to the right of indigent defendants to have publicly funded legal representation—a right that the Supreme Court recognized 50 years ago in its landmark decision in Gideon v. Wainwright.

Before becoming judges, we served as federal prosecutors and as defense lawyers. As the former, we vigorously pursued the prosecution of individuals accused of violating the law. And upon securing convictions, we aggressively sought incarceration when the circumstances warranted. Our ethical obligation as prosecutors was not only to secure convictions but also to ensure that the results we obtained were just. Confidence in the justice of an outcome—especially when the accused loses his or her freedom—is maximized only if the defendant has had competent legal representation.

Our adversarial system works best with competent lawyers on both sides. In federal court in the District of Columbia, where we serve as judges, 90 percent of criminal defendants cannot afford to pay for lawyers. Of those defendants, 60 percent are represented by attorneys employed by the Office of the Federal Public Defender for the District of Columbia; the others are represented by private attorneys approved by the court, provided training by the federal public defender and paid from public funds under the Criminal Justice Act. Because of the demanding selection criteria for defense attorneys, the caliber of representation provided to indigent defendants in D.C. federal courts is outstanding. So when a person represented by one of these attorneys is convicted in our courtrooms, we can impose sentences with a high degree of confidence that the defendant's best arguments and defenses were explored or presented.

Sequestration has the potential to alter this reality. Federal public defender offices throughout the country stand to have their already tight budgets reduced significantly. The District's office is poised to furlough each of its lawyers for at least 15 days before the end of the fiscal year on Sept. 30. Also impaired will be its ability to assist private attorneys appointed to represent indigent defendants. Already, we judges are seeing court dates pushed back because lawyers at the federal public defender's office and the U.S. attorney's office are being furloughed.

Lawyers in the federal public defender's office in the District—public servants who earn much less than their private-sector counterparts—must also endure a roughly 12 percent reduction in salary. (The furloughs and salary cuts were poised to be worse, but the executive committee of the Judicial Conference announced efforts this week to help make up the shortfall.) ''It's tremendously demoralizing, even for people who are used to fighting against extraordinary odds,'' noted one federal public defender.

This all seems a heavy price, given that cutting the judiciary's budget will do little to redress the country's economic crisis. The federal courts' budget nationwide comprises only 0.2 percent, or about $7 billion, of the $3.7 trillion federal budget, and funding of federal public defenders and Criminal Justice Act attorneys must come from that small share.

''Lawyers in criminal cases are necessities, not luxuries,'' the Supreme Court said 50 years ago in Gideon. A federal public defender in Ohio echoed the sentiment this month: ''These are not luxury services that we're providing. These are constitutionally mandated services, and because they're mandated, someone has to do it.'' When it comes to the constitutional right to the effective assistance of counsel, can we really say, ''We don't have the money''

Alexander Hamilton observed in the Federalist Papers that unlike the legislative branch, which ''not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated,'' and the executive branch, which ''not only dispenses the honors, but holds the sword of the community,'' the judiciary ''is beyond comparison the weakest of the three departments of power.'' Because it has ''neither force nor will, but merely judgment,'' Hamilton explained, the judicial branch depends on the other branches to fulfill its constitutional mandate.

Particularly as concerns grow about wrongful convictions, it is distressing to see resources so dramatically diminished for those who protect the rights of the poor in the criminal justice system. And the judiciary is virtually powerless to do anything about it. We appreciate that the country's fiscal problems must be addressed. But the effect of sequestration on the courts severely threatens the rights guaranteed by the Sixth Amendment to those accused of crimes and, in the process, threatens our federal judiciary's reputation as one of the world's premier legal systems. This is a price we cannot afford to pay.

Mr. GRASSLEY. Madam President, I come to the floor to speak about the nomination of Jane Kelly. I compliment the chairman for speaking on immigration. I am not going to speak on immigration today, probably, but I hope to be able to speak several times before the bill actually gets to the floor of the Senate, to inform my colleagues about my point of view on the whole issue of immigration. But I can say generally that we all know the immigration system is broken and legislation has to pass. I hope we can get something that has broad bipartisan agreement. Already the product before us is a product of bipartisanship because four Democrats and four Republicans have submitted a proposal for our committee to consider.

I rise today, as I have said, in support of the nomination of Jane Kelly to be U.S. Circuit Judge for the Eighth Circuit. The nominee before us today, Ms. Kelly, presently serves as an assistant public defender for the Federal Public Defender's Office for the Northern District of Iowa. She does that work in the Cedar Rapids office.

She is well regarded in my home State of Iowa, so I am pleased to support Senator HARKIN's recommendation that he made to the President, and subsequently the President's nomination of Ms. Kelly.

She received her BA summa cum laude from Duke University in 1987. After spending a few months in New Zealand as a Fulbright scholar, she went on to Harvard Law School, graduated there cum laude, earning her J.D. degree in 1991.

Upon graduation, she served as a law clerk, first for Judge Donald J. Porter, U.S. District Court, South Dakota, and then for Judge David R. Hansen of the Eighth Circuit. Judge Hansen sent us a letter in support of Ms. Kelly. Before I quote from it, I have confidence in Judge Hansen's words because he was a person I suggested to Republican Presidents, both for district judge and then his long tenure on the Eighth Circuit, and he has been a friend of mine as well.

This is what now-retired Judge Hansen said in support of Ms. Kelly: ''She is a forthright woman of high integrity and honest character.''

Then he went on to say she has an ''exceptionally keen intellect.''

Then Judge Hansen concludes by saying: ''She will be a welcome addition to the Court if confirmed.''

I have no doubt that she will be confirmed.

Beginning in 1994, she has served as an assistant Federal public defender in the Northern District of Iowa. She handled criminal matters for indigent defendants, has been responsible for trying a wide range of crimes. She became the supervising attorney in that Cedar Rapids office starting in 1999.

Ms. Kelly is active in the bar and in district court matters. She presently serves on the Criminal Justice Act Panel Selection Committee, the blue-ribbon panel for criminal cases. She also serves on the Facilities Security Committee of the district court.

In 2004, her peers honored her with the John Adams Award from the Iowa Association of Criminal Defense Lawyers and Drake University Law School. She was unanimously chosen for this award, which recognizes individuals who show a commitment to the constitutional rights of criminal defendants.

The American Bar Association's Standing Committee on the Federal Judiciary gave her a unanimous ''qualified'' rating.

I congratulate Ms. Kelly on her accomplishments and wish her well in her duties. I am pleased to support her confirmation and urge my colleagues to join me.

This brings us to a point where, as of today, prior to this supposed approval of Ms. Kelly, we have a record in the Senate of approving 185 judges throughout the 4½ years of this Presidency, and the Senate has only rejected 2. That would be a .989 batting average for the President of the United States with his nominees here in the Senate.

As I stated last week, a .989 batting average is a record any President would be thrilled with. Yet this President, without justification, complains about obstruction and delay.

Today's confirmation is the 14th so far this year including 5 Circuit Judges and 9 District Judges.

Let me put that in perspective for my colleagues. At this point in the second term of the Bush presidency, only one judicial nomination had been confirmed. A comparative record of 14–1 is nothing to cry about.

As I said, this is the fifth nominee to be confirmed as a Circuit Judge this year, and the 35th overall. Over 76 percent of his Circuit nominees have been confirmed. President Clinton ended up at 73 percent; President Bush at 71 percent. So President Obama is doing better than the previous two Presidents.

So again, this President and Senate Democrats should have no complaints on the judicial confirmation process. The fact of the matter is that President Obama is doing quite well.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SEQUESTRATION

Mr. DURBIN. Madam President, this morning our Democratic leader, Senator REID, and the Republican leader, Senator MCCONNELL, came to the floor and talked about sequestration. Sequestration had an overwhelmingly bipartisan vote of 74 to 26. What it said was if Congress, on a bipartisan basis, could not reach an agreement on budget reduction, then automatic spending cuts would go into place.

Unfortunately, we did not reach that agreement. The spending cuts, known as sequestration, went into place, and for the last month or so there has been speculation as to whether anybody would notice.

People are starting to notice because across this country changes are taking place. For example, the Federal Aviation Administration has been asked to cut about 5 percent from their operating budget, such as salaries for employees. Because it is being done in a 6-month period, it turns out to be a 10-percent cut.

What that means, for example, is one of the largest groups of employees in the FAA, the air traffic controllers, is going to go without pay 1 day out of every 10 working days. So with fewer air traffic controllers on the job and fewer people able to direct flights, we have noticed this week that flights are starting to slow down across the country. The FAA estimates that some 6,800 flights a day will be delayed. We have already started feeling that because air traffic controllers are being laid off due to the sequestration plan.

Putting that into perspective, on the worst day of last year, because of weather, 3,000 flights were delayed. Now, on a regular daily basis more than twice that number will be delayed because of the reduction in force of air traffic controllers due to the sequestration passed by Congress.

Senators are coming to the floor and looking for relief from that. Some on the other side are arguing if the Secretary of Transportation just had the power to pick and choose within his Department, he might be able to avoid these layoffs. I don't know if that is true, but I will say that making these cuts at the end of a fiscal year is going to create hardship in a lot of different departments and agencies.

I heard one of my colleagues from Indiana come to the floor and say families face this all the time, and they have to make cutbacks. That is true. I have had that happen with my own family. They also want to make certain, if they can, to get through tough periods without cutting into the essentials of life, such as prescription drugs, paying the mortgage, and paying the utility bills. We need to make this a thoughtful effort to avoid sequestration.

The Democratic leader, Senator REID, has proposed that we, in fact, defer this sequestration through the remainder of this fiscal year, until October 1. To make up the costs, he uses the overseas contingency fund. This was a fund created to pay for our wars overseas, and thank goodness Iraq has been closed down as an act of war and Afghanistan is in the process. So there will be a surplus of money in this fund—some $600 billion—that otherwise had been anticipated to be spent.

What the majority leader suggested is that we take a small part of that and use it so we can avoid the impact of sequestration and go back to business as usual for the remainder of this year.

I happen to think sequestration is not a good policy. We need a better approach and more thoughtful approach, and this will give us a chance. We can take the funds that otherwise would be spent overseas—on a war that, thank goodness, will not be there—and instead use them at home to avoid some hardships which have just been described.

So now we hear from the Republican side that they don't think this is a viable alternative. They question whether there is an overseas contingency account. The irony is that Congressman PAUL RYAN, chairman of the House Budget Committee, included the same money in his Republican budget. Senator MCCONNELL, who was critical of it today, said back in April 2011:

Today, the Chairman of the House Budget Committee, Congressman PAUL RYAN, is releasing a serious and detailed plan for getting our nation's fiscal house in order.

That serious plan, I might remind Senator MCCONNELL, included just the funding that Senator REID is asking for. So we are not asking for something the Republicans have not already stood up and embraced. Instead, we are saying let's deal with the national challenges and national emergencies and let's deal with them with the money that would otherwise be spent overseas.

MARKETPLACE FAIRNESS ACT

After we have finished the vote on the judge, I am hoping this important issue will leave us in a position to move to proceed to the underlying bill, the Marketplace Fairness Act. This is a bill that Senator ENZI of Wyoming and I have introduced in an effort to bring some equity and fairness when it comes to the collection of sales tax.

Currently, in the United States, Internet retailers are not required by law to collect sales tax from sales in States that have a sales tax, and that is about 45 or 46 States. The Supreme Court told us 20 years ago if remote sales—catalog sales and Internet sales—are to collect sales tax, Congress has to pass the law to do it. That is what this is. We have been waiting 20 years. In the meantime, it has created some serious problems.

First, Internet retailers have an advantage over the brick-and-mortar businesses in communities. They have an advantage because the Internet retailers don't collect sales tax, so there is an automatic discount on whatever the State sales tax might be—6, 8, 9, or 10 percent. This has caused many of the stores on Main Street and in shopping malls to face competition that is unfair and sometimes forces them into closing their businesses.

We are trying to level the playing field and say: If you sell into a State such as Illinois, you will collect our sales tax on the sales to Illinoisans buying your products, period.

The debate has come up over the States which have no sales tax. Let me make it clear: There is nothing in the Marketplace Fairness bill which will impose any new Federal tax or any sales tax beyond what is currently in the law in every State in the union.

If a State, such as Oregon, Montana, New Hampshire, Delaware, even Alaska, has no State sales tax, this bill will not change it. The residents of those States will not be compelled to pay a sales tax either over the counter or over the Internet. If a retailer that happens to be located in one of those States sells into a State with a sales tax, we will provide, free of charge, the software for them to collect the sales tax and remit it to the State where the purchase was made.

There have been arguments that this is too complicated; that there are 9,000 different taxing districts. I just have to say that with software available today, what we are suggesting is something that is easily done without great cost. In fact, in this bill we are requiring the States to provide software to the Internet retailers free of charge so they can collect the sales tax as it is charged on each Internet purchase.

There have been suggestions by some that we ought to carve out some States; that we ought to say this new law will apply to some States but not to other States. The States and their businesses have to volunteer to collect a sales tax for another State.

I cannot accept that. It is worse than the current situation.

In the current situation, the store on Main Street is competing with an Internet retailer that doesn't collect a sales tax. This carve-out approach would say not only will we discriminate against those shops on Main Street, other Internet retailers which are not in the State that is carved out have to collect sales tax, but those in the carve-out State don't. So it makes for an even more inequitable situation. I could not accept it.

I might say the Presiding Officer, who has quite a history on this issue, having been one of the parties to the Quill Supreme Court decision, also made the point that we ought to take care; the standard we set for the collection of sales tax is likely to be used in the next trade negotiation with a country that is trying to establish their rules when it comes to competition on Internet commerce.

So if the collection of sales tax is required across the board in America, the same can be asked in our trade agreements with other countries. If we don't do that, we run the risk that the carve-out becomes the exception that makes the rule in the next trade agreement, which is something that would be totally unfair to American companies.

So that is where we stand. What I said yesterday, I will repeat now. At noon today we will move to proceed to this bill. I have urged my colleagues to come forward with amendments if they have them. If they don't, that is fine. But if they do, bring them forward. Let's not delay this issue.

We are in the last week before a recess. Members have plans back in their States for the weekend, and we want to make sure they can keep those plans. Those Members who have an amendment to this bill should step forward with their suggestions immediately after the vote on the motion to proceed.

Members should bring their amendments to the Senate floor. Don't wait. It is important that we do this on a regular basis so we can debate those amendments which need to be debated and vote on them, which is almost how a Senate is supposed to do it. That is what we face.

I urge those who are holding back their amendments and want to wait until Thursday or Friday—if anybody does that, we are likely to be here beyond Thursday and Friday, and that is not fair to our colleagues. If anybody has a good amendment—or any amendment for that matter—bring it to the floor.

Senator ENZI, Senator ALEXANDER, Senator HEITKAMP, and I will work to try to find a way to accommodate amendments that are consistent with the bill—or at least debate them and have a vote on them if they are not. I think that is the best thing we can do. As I said, I think that is why we were elected—to debate these issues, resolve them, and vote.

So this is a fair warning to everyone. There are no excuses left. This bill has been on the calendar and available for amendment since last week, which gave everyone plenty of time to craft their amendment. Bring it to the floor immediately after the vote on the motion to proceed, and let's get down to business. Let's do what we were elected to do and pass this bill—or at least vote on this bill, and I hope pass it—before we break for this recess.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Madam President, I ask unanimous consent to address the Senate for up to 5 minutes on the marketplace fairness legislation.

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

Mr. ISAKSON. Madam President, before he leaves the floor, I would like to thank the distinguished majority whip for his leadership. I also want to thank Senator ENZI, Senator ALEXANDER, and

the Presiding Officer for their leadership on what is an important issue to my State, and really to every State.

The marketplace fairness bill is a good idea whose time has finally come. We have been waiting 20 years since the court decision to give direction to our States so they can collect the retail sales tax upon which many of them finance most—if not all in some cases—of their governmental operations. This is not a new tax. It is not a different tax. It is not a tax we are applying to anybody. It is a mechanism for the collection of a tax that has been owed for over 20 years by people making retail purchases in our States from people who sell out of State.

I commend the leadership on the legislation, the way it is drawn. I hope everybody will bring their amendments to the floor, if they have any. I don't know that there is any need for them. I hope we can send a clear message to the House and to our States that we are prepared to let our local governments and our State governments collect the tax that is owed to them and has been owed to them.

The Governor of my State, Nathan Deal, last year led a major tax reform package that passed with only one dissenting vote in our legislature. It reformed taxes on utilities for manufacturing to attract businesses to our State. It reformed our income tax code and it reformed a lot of our taxes, but it also passed legislation consistent with the Marketplace Fairness Act so we can finally collect a tax that has been owed for a long time in our State.

As a real estate guy, as someone who used to lease retail space in shopping centers and on corners in the cities and counties in our State, I know what it has meant to retailers. What has happened is, in many cases, they become showrooms and servicing agents for an offsite seller. Customers in our community will go to the retail store, look at the products, go home and go on the Internet, buy the product on the Internet, and if something goes wrong with it, they will go back to the store and try to get it fixed. But the State never gets the sales tax on that sale because it was an Internet sale made by someone offsite.

Secondly, it has put pressure on the rest of the tax system. Think about this. If a local community gets most of its revenue from a local special purpose sales tax and all of a sudden that tax goes down, not because people aren't paying it but because it is not being collected, what happens? The pressure on the ad valorem tax goes up. So the retailer, who is already burdened with losing business because of Internet sales, becomes further burdened because they have more pressure from the ad valorem tax they pay for the space they lease and occupy. So it has had a compounding effect.

Also, we are famous in Washington for what is known as unfunded mandates to local government, whether it is IDEA in education or whatever it might be. It is time we gave our local governments the chance for a mandate to collect a tax that is owed to them.

Lastly, for my State of Georgia, we have a 4-percent sales and use tax that goes to our State. We have special purpose local option sales taxes that are referendum taxes levied by local communities to finance school construction and other opportunities. We have a Metropolitan Rapid Transit Authority in Atlanta which in 1974 was seeded with a referendum that passed a 1-cent tax in Fulton and Dekalb Counties for the financing of the beginning of that subway system. It is not fair to deny those States and those entities the ability to collect a tax that is owed. It is only right, after 20 years of getting direction from the appellate courts as to what to do, that this Senate and this Congress and our country say to our States we are going to give a mandate for States to collect the taxes owed to them. We are going to take the pressure off the local retailers. We are going to level the playing field. We are not adding a tax to anyone; we are adding opportunity to everyone.

I commend Senator DURBIN, the Presiding Officer, Senator ALEXANDER, and Senator ENZI for their tireless leadership. I urge all Members of the Senate to do what we did on the motion to proceed and what we did on the amendment on the budget. Let's give an overwhelming ratification of the Marketplace Fairness Act.

Mr. CARPER. Madam President, would the Senator yield for a moment?

Mr. ISAKSON. Absolutely.

Mr. CARPER. Madam President, I wish to join with the Senator from Georgia. There are issues we disagree on, but this is a subject we agree on—another one we agree on.

I was privileged to be the Governor of Delaware for 8 years, and now I have served with the Senator from Georgia and other colleagues for the last 12 years. Delaware is one of those States that doesn't have a sales tax. I think most of these States that don't have a sales tax are not supportive of this bill. I am. Either I am out of step or maybe not.

We have all these signs when people come into a State that say ''Welcome to,'' whether it is Georgia or Delaware or North Dakota. We had a sign that said, ''Welcome to Delaware, the Small Wonder, the First State'' and they all had the name of the Governor. When I became Governor, I said why don't we take down the name of the Governor and put something else up, and what we put up is ''Home of Tax-Free Shopping.'' That is what we put up: ''Home of Tax-Free Shopping.''

In our little State, we have borders with New Jersey to the east and Pennsylvania to the north and Maryland to the west. They have sales tax. A lot of people in those States come to Delaware to shop, to buy things, and help to fuel our economy, our retail economy, and to help fuel our tourism economy as well. When people say to me: As a former Governor and a Senator from a State that doesn't have a sales tax, why do you support this bill, one, I think it is an equity issue. The brick-and-mortar merchants are there collecting the sales tax in those 45 or so States that have a sales tax to help support the community, help to support the government and the services that are provided locally in States across America. Then we have folks who are selling things over the Internet to people who live in those States without collecting the sales tax, without being part of the solution.

The other thing—and the Senator from Georgia knows as well as I do—the brick-and-mortar merchants have people come into their stores pretty regularly, and they ask the merchants: How would you like to help support the Little League? How would you like to help support the Boy Scouts and Girl Scouts? How would you like to support this festival or this function? They get asked about those things all the time—and they do. Meanwhile, the folks they are competing with—the Internet sales—they are not supporting those kinds of activities. So there is an equity question here.

For me, why I see value in this—a guy who comes from a State who doesn't have a sales tax—is this: I want more people from other States, including the three around us, to come and buy things in my State. If they can buy things over the Internet and not pay a sales tax, then why would they come to Delaware? But if they have to pay a sales tax that is going to be collected by the Internet provider selling to people in those States with sales taxes, they might come to Delaware and shop.

Mr. ISAKSON. Madam President, I appreciate the leadership of the distinguished former Governor. Knowing him as well as I do, he is a States rights advocate and this is a States rights issue and we are here to protect the rights of our States.

Mr. CARPER. It sure is a States rights issue. I would be remiss if I didn't say this. I know my colleague has to leave. But in my first term as Governor, I had never heard of MIKE ENZI. Who is this MIKE ENZI guy? It turns out he is a great guy. He is one of our colleagues and a former mayor of Gillette, WY, and he has been pushing this as a Senator forever. Mike Leavitt, who succeeded me as chairman of the NGA, has been pushing this forever, a former Governor of Utah. So I give a shout out to both of them for their leadership. If we don't give up, sometimes we can get stuff done, and MIKE ENZI doesn't give up and I know the Senator from Georgia doesn't. So I thank my friend.

NOMINATION OF SYLVIA MATHEWS BURWELL

Madam President, I would like to speak a bit, if I may, on the nomination of Sylvia Mathews Burwell, whose nomination as the Director of the Office of Management and Budget has come through our Committee on Homeland Security and Governmental Affairs as well as through the Budget

Committee. Her nomination was reported out unanimously by voice vote a week or so ago by our committee and unanimously on the same day by the Budget Committee.

The nomination comes at a critical time not just for this administration but I think at a critical time for our country. We are wrestling with this large budget deficit. We know there are management challenges. When a person says OMB, it stands for the Office of Management and Budget, and whoever is confirmed to serve in this position is expected to oversee a great group of people, a good team that will focus on budget issues. The issues include how do we continue to rein in our budget deficit and bring it back to a more sustainable fiscal position for us, also what do we need to do on the management side to help hasten that day.

We have across the Federal Government in this administration, and we had it in the last Bush administration as well, something I call executive branch Swiss cheese. We have too many senior positions in this administration; we had a number of them in the last administration but not to the extent we have them in this administration. We have too many positions that are going wanting. In some cases, the administration has not vetted, nominated, and submitted names to us; in some cases, we are not moving them very quickly once they have, so there is a shared responsibility. The administration—in this case, we haven't had a confirmed Director of OMB for about 1 year, since Jack Lew left to become Chief of Staff, who is now Secretary of the Treasury. We have gone about 1 year without a Senate-confirmed OMB Director. That is not good. Jeff Zients, who has been the Deputy Director and who has basically been responsible for being Acting Director; also, if you will, the ''m'' in OMB, the Management Deputy for OMB. We haven't had anybody running it for a while, which these are the regulations since Cass Sunstein left, who was very good at it.

So the senior leadership team at OMB pretty much has been Jeff Zients, and we are grateful to him for taking on all this responsibility. But he may have other things he wants to do with his life and we need to put somebody in place to head up OMB and to surround that person with a first-rate team and I pledge to do that.

I wish to say to my colleagues, Democratic and Republican in the Senate, on our Committee on Homeland Security and Governmental Affairs, on the Budget Committee, just a big thank-you for getting this nomination, once we had it in hand, to move it quickly, hearings, through the vetting, staff interviews, and to bring that nomination to the floor. Thanks to the leadership, Democratic and Republican, for helping to make that possible.

Who is this person whom the President has nominated? She used to be a Mathews, with one ''t''—a Mathews with one ''t.'' She is now Sylvia Mathews Burwell. She is a pretty remarkable person for someone who was raised and grew up in Hinton, WV, where I lived when I was 4 years old. I was born in Beckley, WV, not far from where Sylvia grew up. I said to her at our confirmation hearing: What is the likelihood that the President would nominate as the Director of OMB, one of the most powerful positions in any administration, a gal who was born in Hinton, WV, on the New River, close to the Bluestone Dam where I learned to fish as a little boy and she would be before our committee at a hearing chaired by a guy who used to live in Hinton, WV, when he was a 4-year-old kid? Pretty amazing. But she is extraordinary, as the Presiding Officer knows.

Sylvia Burwell grew up in West Virginia. She didn't go off to some fancy private school in another State. She went to Hinton High School. She played on the girls' basketball team there. I was kidding her at her confirmation hearing, and I asked her: What was the mascot? She said: We were the Bobcats. So she is a Bobcat. There were at the confirmation hearing a number of her colleagues from Hinton, who were fellow Bobcats and played on the basketball team with her—just a great celebration. She is a real person. She is just a real person. She has wonderful interpersonal skills.

When the President nominated her, I found out she used to work in the Clinton administration. But I asked her after high school what did she do. I like to say she couldn't get into Delaware or North Dakota University, she had to go to Harvard. From there, she became a Rhodes Scholar over in England. She came back and did some work on the Clinton-Gore campaign, I think, in 1992 and ended up working for the administration. What did she do? She was Chief of Staff to Bob Rubin, one of the leaders of the economic development team in the Clinton administration. She was a Deputy to Chief of Staff Erskine Bowles, Deputy Chief of Staff, and I think for the last year or two of the Clinton administration she was Deputy OMB Director and she had a pretty good experience there. She finished there and ended up working for McKinsey & Company, one of the top management consulting firms in the world. She helped stand up the Bill and Melinda Gates Foundation and more recently has helped to run the Wal-Mart Foundation. What great credentials.

I called Erskine Bowles when I found out she worked for and with him, and I said: Tell me about this Sylvia Burwell, who has been nominated to head up the OMB. Here is what he told me. He told me a truly great story. He said: Here is the setting. We are in the Oval Office with the President. Bob Rubin, Sylvia Mathews at the time—for a while—and Erskine, and the President is having a conversation with Bob Rubin, asking him some questions. And Erskine notices Sylvia, who is Rubin's Chief of Staff, slips him a note and Rubin looks at the note, and he answers the President's questions to great effect and very brilliant responses. The President is oohing and aahing at how good that response was, and Erskine says: Mr. President, I have broken the code here on Rubin. He is not that smart. It is Sylvia. She gave him the note to answer the question. If I had Sylvia working for me, people might think I am as smart as they think Rubin is.

Well, she ended up working with Erskine as the Deputy Chief of Staff.

I also talked to Bruce Reed about her. Bruce was President Clinton's former domestic policy adviser. He and I worked with a bunch of other people on welfare reform. He is a great guy. He is Vice President BIDEN's Chief of Staff today. I asked him to tell me some more about Sylvia.

One of the other things I sensed from both of them is this: She is a real person. She is a good person. We have all heard the term ''good guy.'' I do not know how you say that about a woman—if they are a ''good gal'' or whatever—but if she were a man, you would say ''a really good guy.'' She has a great personality. People like her. Around here, that is actually pretty helpful. The other thing they said is that she is incredibly bright and able to juggle a whole lot of things at the same time.

Somehow along the way, she has gotten married to a lucky guy named Stephen. She said she is lucky too. They have these two young kids, and somehow they have managed to keep all the balls in the air and raise a family while having these careers.

But I asked Erskine and Bruce, what is she really like? Great, just a really good person, with good values. I have talked to her about her values, including the one that involves faith, and it is just the kind of thing you are encouraged to hear. She is very bright.

The other thing they said about her is this: She has a great ability to get things done. We all know people who are a good guy or gal, people who are arguably bright, but they are not able to get things done. Well, we need somebody in this position who is able to lead a team that gets things done. We have a huge deficit, about $800 billion. It is coming down, but it is still too big. We have all kinds of GAO issues that they raise to us on their High Risk List—the things that are problematic because we waste money on ineffective spending. GAO, most recently, has given us a whole big report on duplication in the Federal Government. There is a huge to-do list. And part of it is our jurisdiction in our Committee on Homeland Security and Governmental Affairs. That is an obligation and responsibility we share with the administration and with other branches of our government. But we need somebody who is very good at multitasking and who can get things done. And I think if we help put the

right team around here, they will get a lot done and we will do this together.

I will close, if I could, with this: I have never met her parents. Obviously, I think she has at least one sibling. But, boy, when I asked her how she turned out this way, Sylvia really gives the credit to her parents. I think most of us probably do if we have had success in life, although we had a great witness before the Finance Committee at yesterday's hearing—Antwone Fisher, a sort of self-made, up-from-the-roots, amazing, successful guy. You never would have imagined he would have enjoyed the success he has, coming up through the foster care system in his home State.

But she gives a lot of credit to her parents. Obviously, they are doing something right at Hinton High School and maybe even at Harvard and over in Oxford, England. But she has had good mentors. She is a very humble person—a very humble person. She is the real deal, and we are lucky she is willing to take this on.

I commend the President for nominating her. I want to thank her husband and her family for their willingness to share her. I hope she gets a unanimous vote here today. She ought to.

COMMENDING THE PRESIDENT

The other thing I want to say, if I could, is this: The President took some folks out for dinner last night. I do not know if our Presiding Officer was one of them. My guess is she was. I will talk to her later about what they had and how it went. But I commend the President for reaching out to Republicans and Democrats, Senators and Representatives. It is the kind of thing you have to do. It is the kind of thing you have to do if you want to get things done. As President, you have a million people pulling on you—300 million people pulling on you—and folks from around the world pulling on you, and it is hard to focus on building and rebuilding relationships here. It is absolutely necessary.

I was talking with ANGUS KING the other day. ANGUS—now our colleague here in the Senate, a great addition—used to be Governor of Maine. We were comparing notes as to his role as Governor of Maine and mine as Governor of Delaware, how we worked with the legislature. I am sure you could find people who were in the legislature when I was Governor who said: Thank God he is gone. But we actually worked pretty well together.

One of the keys—not my idea but an idea that started with, I think, Pete du Pont, when he was Governor a number of years ago; also done by Mike Castle as Governor and Ruth Ann Minner as Governor and by me in between Governor Castle and Governor Minner—every Tuesday when the legislature was in session in Delaware—every Tuesday; they are usually in session on Tuesdays, Wednesdays, and Thursdays most weeks between January and June—I would host a lunch with the legislative leadership of the house and the senate, Democrats and Republicans from the house and the senate. Occasionally, we had somebody in from my administration, my staff. We would have lunch together. Sometimes we would talk about issues; sometimes we would talk about sports or whatever else was the topic of the day. We always had lunch together, and we did it week after week, month after month, year after year. You get to know people and you develop a sense of trust, and in many cases you kind of like each other.

One of the keys to our success in Delaware is we sort of like each other, Democrats and Republicans. We work together, and we govern from the center.

ANGUS had a similar story, only they did not do lunch together with the legislative leadership. They did breakfast together in Maine. He did it every week, every month, every year for the 8 years or so he was Governor.

The President is doing something like that. He is doing like a DC version of that now. It is just great, and I urge him to keep it up.

DEFICIT REDUCTION

I will close with this: My colleague, the Presiding Officer, has heard me say this before. The President has heard me say this a few times as well, probably more than he wants to remember. But I think there are three things—if we are really serious about deficit reduction—three things we need to do.

I would mention, the first one of those is—go back to the Clinton administration. Erskine Bowles, the Chief of Staff, whom Sylvia helped, and others, put together, with Republican help in the House and Senate—it was then a Republican House and Senate in those years—they put together a deficit reduction plan. It was 50 percent revenues; it was 50 percent spending. They put together a balanced budget plan that led—for the first time since 1968, we ended up not with one balanced budget, not two, not three, but four balanced budgets in the last 4 years of the Clinton administration. It was 50 percent deficit reduction on the spending side and 50 percent on the revenue side.

For those 4 years, if you look at Federal revenue as a percentage of GDP, it ranged anywhere from 19.5 percent to 20.5 percent. That was the range—19.5 percent to 20.5 percent Federal revenues as a percentage of GDP—but the average was about 20 percent.

Look at last year. We had a big budget deficit. Federal revenues as a percentage of GDP were right around 16 percent. I think spending as a percentage of GDP last year was around 23 percent or so. But that gap between 16 percent in revenues as a percentage of GDP and spending at about 23 percent—and spending is coming down and the revenues are going to go up under the fiscal cliff deal, but we will still have a deficit—a substantial deficit, by historical standards—so we need to do something more.

The something more we need to do is, No. 2—after we address revenues, get them up closer to the historic mark of about 20 percent, where we were in the Clinton administration, 20 percent of revenues as a percentage of GDP, the second thing we need to do is entitlement reform.

I will use the President's words, and I think he has been courageous because not everybody in our party agrees with him on this. We need to reform the entitlement programs in ways that save money, do not savage old people or poor people, and preserve these programs for the long haul.

I remember I spoke to—it was back at Ohio State, where I did my undergrad as a Navy ROTC midshipman a million years ago—it was back a month or so ago, and I had a chance to talk to 400 fraternity brothers from different States, including the Presiding Officer's State, who were there for a weekend conference, a leadership conference. I talked to them about leadership. I also talked to them about making tough decisions and how we use our values to make these tough decisions.

I asked the 400 guys from across those eight States: How many of you think you will someday receive a Social Security check?

Not one hand went up.

I asked: How many of you think someday you might be eligible for Medicare when you are 65?

Not one hand went up.

My sons who are 23 and 24, they do not think they will. I want to make sure they do. I will predict that they will need it. I want to make sure that for our sons, our daughters, our grandsons, our granddaughters, our nieces, and our nephews, those programs are going to be there for them.

The President gets that. And we understand we cannot just keep doing business as usual. We are going to run out of money in the Medicare trust fund by—when?—2024, and we will start to run out of money—our inability to pay Social Security checks fully—by about 2030 or so. So we need to do something differently, and we need to be smart to do it so we do not hurt the least of these—the least of these—in our society. I think we can be that smart.

So first, we need some revenues. Second, we need entitlement reform that is true to Matthew 25: the least of these, looking out for the least of these. And the third thing—and this is where we have focused in our Committee on Homeland Security and Governmental Affairs, as the Presiding Officers knows—we have put together more than a dozen Democrats and Republicans in this committee who are—''rabid'' is probably the wrong word, but I will use it—rabid about waste, rabid—r-a-b-i-d—about waste. What we believe—as I do—is that everything we do as human beings, we can do better. I think that is true of all of us. It is true of Federal programs. Everything we do, we can do better.

The challenge for us is to leverage from one committee, working with our colleagues here in the Senate and the House; working with GAO, the Government Accountability Office; working with OMB, the Office of Management and Budget; working with the inspectors general across the Federal Government; working with outside groups, such as Citizens Against Government Waste, and with other groups; with David Walker, a former Comptroller General; and just a bunch of folks, to say this is like an all-hands-on-deck deal and a shared responsibility as well. To the extent we have the ability to work with all those partners I just mentioned, we will get more done and we will leverage the effectiveness of our committee, but most importantly, we will actually continue to reduce the budget deficit.

The three things, in closing: We need some additional revenues. We need to do it in a smart way. We need to reform the entitlement programs in ways that do not savage old people and poor people and would save these programs for the future. And we need to look in every nook and cranny of the Federal Government to say: How do we get a better result for less money? Find out what works and do more of that. Find out what does not work and do less of that. Look wherever we are duplicating responsibilities and activities and see how we can maybe do less of that.

So there you have it, Madam President. I do not usually get to talk this long, but I am wound up today, very excited about this nomination, as the Presiding Officer can tell. Sylvia Mathews Burwell has the potential of being a terrific OMB Director. One of the keys to doing that is we have to get her confirmed today, and I think we will. Then we have to move promptly.

The President has to give us a good name. I think he has given us one good name to be part of her team, if she is confirmed. But the President needs to send us somebody not just for Deputy OMB Director, not just to be deputy at OMB for management, not just to be the person—the new Cass Sunstein, whose job it will be to work the regulation side, but all of the above. When we get good names, we have an obligation to vet them quickly and promptly and, if they are good people with the best credentials, get them confirmed and in place so they can go do their job because with an $800-some-billion deficit, we have work to do and need a good leadership team to do that.

Madam President, I do not see anybody standing around to chew up the rest of this time, which is probably a good thing. I think it signals that maybe we will get a good vote on this nomination.

I am pleased to put in a good word for Sylvia and say to her husband and family, thanks for sharing her, and to her parents, thanks for raising her.

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

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

Mr. MANCHIN. Madam President, I rise to urge the Senate to confirm the nomination of Sylvia Mathews Burwell to be Director of the Office of Management and Budget. I do so with great pride because Sylvia Burwell is from my home State of West Virginia. I have been dear friends with her family for a long time.

Her parents have been community leaders in Hinton, WV, for over half a century. Her father Dr. William Mathews is a longtime optometrist, and her mother the Honorable Cleo Mathews previously served as the mayor of Hinton, as well as in a number of other public service positions. I worked with Sylvia for many years as mayor when I was Governor of the State—she was quite competent—including 8 years on the State Board of Education when she served as president of the board of education.

If you want to know Sylvia, you should look at her small hometown of Hinton, WV, and the surrounding Summers County that she grew up in because that is her grounding. It is pure Americana, a one-time railroad boom town, woven into the mountains of Appalachia. The downtown historic district, 200 buildings, including churches, storefronts, and private residences, is an architectural gem of American Gothic, Classical, Victorian and Greek Revival styles. It is a movie just waiting to happen.

Hinton is the ideal example of smalltown West Virginia and probably smalltown America. It only has 2,600 residents. That is a pretty large town for West Virginia and probably North Dakota. It is nestled into a lush green valley on the banks of the New River, surrounded by the towering, majestic mountains and forests of Summers County, one of the most beautiful counties in West Virginia.

New River is one of the oldest rivers in the world. It flows south to north, which may be due to the fact that it was formed long before the Appalachian Mountains.

This is the special place Sylvia Mathews Burwell calls home, a showcase for the best of West Virginia and America, the beauty, the outdoors, and the people are warm and welcoming. Sylvia is humble, hardworking, has spent most of her life helping hard-working families everywhere achieve the American dream her Greek immigrant grandparents found in this country.

She went off to Harvard, was a Rhodes Scholar, and has traveled the world over. But she has never lost touch with her West Virginia roots and the ties that bind us together. No matter where she is, 1 day each week like clockwork, Sylvia is on the phone with the two best friends she made in the first grade in Hinton. Think about it. That is who we are. That is the heart and soul of West Virginia, friends and family.

But make no mistake, I am supporting Sylvia's nomination not because she is from West Virginia, which makes it all that much sweeter, but because she embodies the best of our State and our country. In West Virginia, we judge people by their deeds as much as their words, and Sylvia has already accomplished so much in her life, the public service and philanthropy she has been involved with.

Sylvia Mathews Burwell is an exceptional choice to lead the Office of Management and Budget, especially in the aftermath of sequestration, which is what we are going through now, and which so many of our colleagues detailed on the Senate floor this past week. We are still discussing it.

I say that because Sylvia served as the Deputy Director of the Office of Management and Budget, which now she will become Director of, from 1998 to 2001, which was our last era—think about the last time of fiscal responsibility, when balanced deficit reduction gave us balanced Federal budgets.

The fiscal plan she and Erskine Bowles, whom she worked with, put together, had we followed it to this day and not changed, would have erased our national debt completely by now. Can you believe that. We would have been totally out of debt as a nation if we had followed the plan that was put forward back in 1996, 1997, 1998, and followed through after 2001.

Sylvia was a key part of the Clinton White House team which reached across the aisle, negotiated those balanced budgets with a Republican Congress. If we look closely at the numbers, we can see what an accomplishment it was to fix our finances in the 1990s. Prior to 1993, when Sylvia joined the Clinton administration, the United States had failed to balance its budget for 23 years—23 years.

By 1992, spending had risen to historic highs—I think we all know that story—and revenues had reached near historic lows. We know that one too. That is exactly the dilemma we are in right now, compared to the size of the economy. In 1992, the Federal budget deficit topped out at $290 billion. I think we are close to $17 trillion in debt right now.

By the time Sylvia left the Clinton White House and went to the Office of Management and Budget in 1998 as a Deputy, the wheels were in motion of sustainable balanced budgets for years to come. She put these wheels on. Spending had shrunk drastically and revenues were soaring to historic highs, thanks to a thriving U.S. economy and reasonable tax policy that ensured both corporations and wealthy individuals paid their fair share.

The PRESIDING OFFICER. The time for the majority has expired.

Mr. MANCHIN. I ask unanimous consent to speak for up to 5 minutes. At

that time, I wish to be able to turn it over to the Senator from Iowa.

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

Mr. MANCHIN. In 1998, Sylvia's last year in the White House and the first year at OMB, the Federal budget had a $69.3 billion surplus, the first surplus in a generation. Sylvia has been out of government for the last 12 years. But I am confident she will bring a fresh perspective to the fiscal debate we will be having over the next few years.

After serving in high-profile leadership positions, she has been well balanced, and she has been with the Bill and Melinda Gates Foundation. She has been their top person. I would hope all my colleagues on the Republican side and my colleagues on the Democratic side will look at Sylvia as part of America, part of this great country, a product of who we are. She will do a great job because she has a track record of already doing it. With that, I would encourage all my colleagues to please vote in support of Sylvia Mathews Burwell.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I was honored to recommend to the President that he nominate Jane Kelly to serve as a judge on the U.S. Court of Appeals for the Eighth Circuit. Today I encourage my colleagues to vote for her confirmation, which will be the first vote at noon.

Let me begin by thanking Senator LEAHY and his staff for their hard work in advancing Ms. Kelly's nomination in such a timely manner. I also thank my senior colleague from Iowa, Senator GRASSLEY, for his invaluable support and assistance. For all the years we have served together, Senator GRASSLEY and I have cooperated in a spirit of good will on judicial nominations in our State. I am grateful that tradition has continued.

Jane Kelly possesses all the qualifications necessary to assume the responsibilities of a Federal appellate judge. Before recommending Ms. Kelly to the President, I reviewed a very strong field of candidates for this position. She stood out as a person of truly outstanding intellect and character, with a reputation as an extremely talented lawyer with a deep sense of compassion and fairness. Not surprisingly, she enjoys wide bipartisan support from the Iowa legal community.

Judge Michael Melloy, who was nominated by President George W. Bush, and whose seat on the Eighth Circuit Ms. Kelly is nominated to fill, said Ms. Kelly ''is very intelligent and thoughtful.''

Judge David Hansen, who was President George H.W. Bush's nominee to serve on the Eighth Circuit and for whom Ms. Kelly clerked, said: ''She is a forthright woman of high integrity and of honest character'' who ''will be a welcome addition to the court.''

I might also point out for the record that both of those nominees under Republican Presidents I was proud to support, under the leadership of Senator GRASSLEY.

Federal District Court Judge Stephanie Rose remembered Ms. Kelly ''has a great blend of personality, skills and common sense to make a great lawyer and judge.''

The American Bar Association gave her a unanimous ''qualified'' rating. Ms. Kelly is a credit to all of us who have chosen to be in public service. She earned her bachelor's degree summa cum laude from Duke, served as a Fulbright Scholar, and received her J.D. cum laude from Harvard Law School. After law school she was a law clerk to Judge Donald Porter of the District Court of South Dakota and to Judge David Hansen on the Iowa Eighth Circuit. She could easily have commanded a big salary with a top law firm, but instead for over 20 years she has opted for public service and long hours as a Federal public defender. We are fortunate she seeks to continue her public service to Iowa and our Nation by serving as a Federal judge.

Let me conclude with two additional notes about Ms. Kelly's nomination. First, if confirmed, Ms. Kelly will only be the second female judge in the history of the Eighth Circuit Court of Appeals, a court established in 1891. While 56 men have sat on that court, to date there has only been one woman, Diana Murphy of Minnesota. President Obama has nominated approximately 100 former prosecutors to the Federal bench, including one I recommended, former U.S. attorney Stephanie Rose, to the Southern District of Iowa. Among recent Presidents that is the highest percentage of former prosecutors to be nominated to the Federal bench. These are all outstanding attorneys and dedicated public servants.

As Judge Melloy recently noted with respect to Ms. Kelly: ''It will be good to have someone from the public defender realm on the bench.''

Ms. Kelly has served for more than 20 years in the Federal defender's office, where she has argued hundreds of cases on behalf of indigent clients. She has fought tirelessly to ensure that the rights of all are protected, and she has worked to give meaning to the phrase above the Supreme Court, ''Equal Justice Under Law.'' This is a critically important perspective that she will bring to the court.

As an aside, it strikes me as especially fitting that Ms. Kelly, a career public defender, has been nominated for the Federal bench this year as we observe the 50th anniversary of Gideon v. Wainwright. As we all know, that landmark decision recognized that every person accused of a crime, no matter how poor, is guaranteed the right to counsel. At its core, Gideon is the promise of justice for all, including our most vulnerable citizens. This is an ideal to which Ms. Kelly has dedicated her entire legal career.

Jane Kelly is superbly qualified to serve as the U.S. Court of Appeals judge for the Eighth Circuit. I urge all of my colleagues to support her nomination and confirmation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SESSIONS. Madam President, I want to share a few remarks on the nomination of Sylvia Mathews Burwell to be the Director of the Office of Management and Budget. I suspect she will be confirmed momentarily. She was raised in a small town in West Virginia and seems to have some good West Virginia values. She is smart, able, and has a winning personality for sure.

This is, perhaps, properly utilized, the toughest, most important job in the U.S. Government. The primary responsibility of OMB is to assist the President in overseeing the preparation of the budget, but also to help formulate spending plans to deal with agency programs, policies, and positions in setting funding priorities to make tough choices that are necessary to keep our financial house in order. It is a tough position.

We could have elected a President such as Governor Romney, who was a manager, a tough, proven executive. That was his strength. President Obama's strength is in message, traveling the country and advocating his positions, leaving it even more critically important than normal, it would seem to me, to have a very strong Office of Management and Budget leader. Ms. Burwell certainly seems to have the integrity to do the job.

I am worried about her lack of experience. She served as the president of the Global Development Program at the Bill & Melinda Gates Foundation. She served as the head of the Walmart Charitable Foundation, she served in the Office of Management and Budget for a time—Chief of Staff, I believe, to the Secretary of Treasury—and at the National Economic Council. Her most recent experience has not been in directly trying to rein in a government that is out of control.

The Web site of OMB says as part of its mission:

> It reports directly to the President and helps a wide range of executive departments and agencies across the Federal Government to implement the commitments and priorities of the President.

It is a big job.

I would say that in failing to nominate someone like a proven executive, a proven Governor, or a former Cabinet member who can look these Cabinet members in the eye and say: No, Secretary, this is not going to be within our budget; this isn't within our plans—you are going to have to see if you can do this. We have a nominee

who will really have to rise to the occasion to be able to defend common sense and spending because our Cabinet people get ideas and visions. They want to do all kinds of things, particularly in this administration. Sometimes you have to say: We don't have the money. We would like to do that, but we do not have the money.

The President's budget that OMB is required to produce and that he has submitted so far has not been impressive. That is an understatement. They have not exemplified the leadership and management that we would expect in a President.

For instance, the 2013 budget, the one that was introduced last year, increased spending by $1.5 trillion above the Budget Control Act spending levels to which we all agreed. That is not good.

The President signed the Budget Control Act. It limited spending from increasing from $37 trillion at current law baseline. He was going to $47 trillion. The Budget Control Act reduced the increase to just $45 trillion instead of going up to $47 trillion. It imposed the 2012 budget limits. Yet the President's budget proposed a deficit of $2.7 trillion above the agreed-upon baseline, so we had a good number of problems with that budget. Of course, the budget, those two budgets, failed in the Senate 99 to 0 and 97 to 0. It got not a single vote, and it didn't get a single vote in the House because it's an irresponsible budget. Ms. Burwell will be replacing the OMB Director who put together those budgets.

I see my colleague and able chair of the Budget Committee here. I thought I would have 10 minutes. What is the agreement at this point?

The PRESIDING OFFICER. All time expires in 30 seconds, all time remaining under Republican control.

Mr. SESSIONS. The Republican time has expired.

I will say I intend to support Ms. Burwell's nomination. We will give her a chance. I hope she will rise to the occasion. I think she has the ability. She certainly is a delightful person with whom to meet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Madam President, I would ask unanimous consent to speak for 5 minutes on the nomination of Sylvia Mathews Burwell.

The PRESIDING OFFICER (Ms. BALDWIN). Without objection, it is so ordered.

Mrs. MURRAY. Madam President, I thank Senator SESSIONS, and I rise today to speak in support of Sylvia Mathews Burwell, whose nomination to be the next Director of the Office of Management and Budget was approved last week with strong bipartisan support by our Senate Budget Committee.

As we all know, our country does face serious fiscal and economic challenges we have to work together to address. The American people are looking to us to end this constant artificial crisis and political brinkmanship that is threatening our fragile economic recovery. They want us to come together around fair solutions that work for our middle class, help the economy grow, and tackle our deficit and debt fairly and responsibly. It is time we stop governing from crisis to crisis and return stability and regular order to our budget process.

That is why I am so pleased we have such an exceptional and qualified nominee in Sylvia Burwell to lead OMB. I know she is the right person to come into this leadership role at this important time for our country. She is no stranger to OMB or to tackling important fiscal issues.

In the 1990s, she was a critical part of President Clinton's economic team. She served as Deputy Director of the Office of Management and Budget, Deputy Chief of Staff to the President, and Chief of Staff to the Secretary of the Treasury. In those roles, she worked very closely with Jack Lew, Erskine Bowles, Robert Rubin, and the rest of President Clinton's economic team to help produce three out of four budget surpluses in a row. During her tenure, our government took a fair, credible, and sustainable approach to our Federal budget. That gave businesses the confidence to hire new workers and invest in their growth.

Her leadership and hard work in the 1990s helped to create broad-based economic growth that worked for the middle class and turned our debt and deficit problems around. Sylvia's firsthand experience creating a balanced and responsible approach to deficit reduction makes her uniquely qualified to lead OMB at this important time for our country.

Since the 1990s, Sylvia has dedicated her life to helping people all over the world. As the president of the Global Development Program and the chief operating officer at the Gates Foundation, she worked to improve the lives of millions across the globe. Under her leadership, the foundation invested in important programs to help combat poverty and produce clean water and improve literacy, and provides emergency relief to those who need it the most.

Most recently, as president of the Wal-Mart Foundation, she led the Foundation's charitable giving and focused on critical issues such as hunger relief and women's economic empowerment.

Not only do Sylvia's achievements in the foundation of philanthropy worlds demonstrate her vast experience managing large global budgets, but they also speak volumes of her values and demonstrate her deep lifelong commitment to serving others.

Sylvia grew up understanding the value of hard work and public service. Her parents have been community leaders in West Virginia for over half a century. Her father is a long-time optometrist and her mother, the Honorable Cleo Mathews, served as the mayor of her hometown of Hinton, and later served on the West Virginia State Board of Education for a decade. As my colleague Senator MANCHIN said when he introduced her to our Budget Committee, it is easy to see public service is a part of Sylvia's DNA.

As the Director of OMB, Sylvia will help set our Nation's priorities and make tough decisions about our Federal spending. So I am glad Sylvia knows budgets are about more than abstract numbers and partisan back and forth. As a second generation Greek American, Sylvia understands the importance of the promise of American opportunity. She knows budgets are a reflection of our values and our priorities, and they are about families across the country whose lives and futures are impacted by the decisions we make.

Not only is Sylvia an expert on domestic economic policy and a dedicated public servant, she has a demonstrated track record of working across the aisle to get things done. During her time in Washington in the 1990s, she reached across the aisle and negotiated the balanced and fair budgets with Republicans in Congress. She knows working to find common ground is the key to solving our fiscal challenge—a point made clear by her during her confirmation hearing in front of our Senate Budget Committee this month.

So I am pleased her nomination passed our committee on a voice vote with strong bipartisan approval. Republicans, including Senator SESSIONS, who here on the floor praised Sylvia as someone who is, by all accounts, well-liked and an able leader committed to public service.

Madam President, I support this nomination, I urge my colleagues to vote yes, and I yield back the remainder of my time.

Mr. MCCAIN. Mr. President, today I come to the floor to speak in support of the nomination of Mrs. Sylvia Mathews Burwell, to be Director of the Office of Management and Budget, OMB. Her previous experience as Deputy Director of OMB during the Clinton administration, as well as her work with the Bill and Melinda Gates Foundation and her current position as president of the Walmart Foundation in my opinion, make her well qualified to be the Director of OMB.

With our country now facing a $16.8 trillion dollar debt, which is more than $53,000 per person, the Director of OMB is perhaps the toughest job in Washington, and I am confident that Mrs. Burwell is up for the challenge. In addition to the unsustainable debt, $85 billion in draconian, across-the-board sequestration cuts to defense and nondefense programs in fiscal year 2013 have now started to hollow out our military. I hope to work with Mrs. Burwell to remedy these cuts that are devastating to our national security.

Although Mrs. Burwell and I will not always agree on how we tackle our

country's urgent fiscal challenges, I am confident that she will commit to finding bipartisan solutions to these real problems. Solutions that will provide greater program efficiency and transparency and will put our country back on a path of fiscal stability so that future generations will not be forced to pay for the irresponsible spending decisions we continue to make here in Congress. Again, I am pleased that the President put forth such a qualified nominee, and I look forward to working with her.

The PRESIDING OFFICER. All time has expired.

The question is, Will the Senate advise and consent to the nomination of Jane Kelly, of Iowa, to be United States Circuit Judge for the Eighth Circuit?

Mr. SESSIONS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from North Dakota (Mr. HOEVEN).

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—96

Alexander	Flake	Moran
Ayotte	Franken	Murkowski
Baldwin	Gillibrand	Murphy
Barrasso	Graham	Murray
Baucus	Grassley	Nelson
Begich	Hagan	Paul
Bennet	Harkin	Portman
Blumenthal	Hatch	Pryor
Blunt	Heinrich	Reed
Boozman	Heitkamp	Reid
Boxer	Heller	Risch
Brown	Hirono	Roberts
Burr	Inhofe	Rockefeller
Cantwell	Isakson	Rubio
Cardin	Johanns	Sanders
Carper	Johnson (SD)	Schatz
Casey	Johnson (WI)	Schumer
Chambliss	Kaine	Scott
Coats	King	Sessions
Coburn	Kirk	Shaheen
Cochran	Klobuchar	Shelby
Collins	Landrieu	Stabenow
Coons	Leahy	Tester
Corker	Lee	Thune
Cornyn	Levin	Toomey
Crapo	Manchin	Udall (CO)
Cruz	McCain	Udall (NM)
Donnelly	McCaskill	Vitter
Durbin	McConnell	Warner
Enzi	Menendez	Whitehouse
Feinstein	Merkley	Wicker
Fischer	Mikulski	Wyden

NOT VOTING—4

Cowan	Lautenberg
Hoeven	Warren

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, there is now 2 minutes, equally divided, prior to a vote on the Burwell nomination.

Who yields time?

Mr. REID. I yield back all time.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Sylvia Matthews Burwell, of West Virginia, to be Director of the Office of Management and Budget?

Mr. REID. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

Mr. CORNYN. The following Senator is necessarily absent: the Senator from Idaho (Mr. CRAPO).

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

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 109 Ex.]

YEAS—96

Alexander	Franken	Moran
Ayotte	Gillibrand	Murkowski
Baldwin	Graham	Murphy
Barrasso	Grassley	Murray
Baucus	Hagan	Nelson
Begich	Harkin	Paul
Bennet	Hatch	Portman
Blumenthal	Heinrich	Pryor
Blunt	Heitkamp	Reed
Boozman	Heller	Reid
Boxer	Hirono	Risch
Brown	Hoeven	Roberts
Burr	Inhofe	Rockefeller
Cantwell	Isakson	Rubio
Cardin	Johanns	Sanders
Carper	Johnson (SD)	Schatz
Casey	Johnson (WI)	Schumer
Chambliss	Kaine	Scott
Coats	King	Sessions
Coburn	Kirk	Shaheen
Cochran	Klobuchar	Shelby
Collins	Landrieu	Stabenow
Coons	Leahy	Tester
Corker	Lee	Thune
Cornyn	Levin	Toomey
Cruz	Manchin	Udall (CO)
Donnelly	McCain	Udall (NM)
Durbin	McCaskill	Vitter
Enzi	McConnell	Warner
Feinstein	Menendez	Whitehouse
Fischer	Merkley	Wicker
Flake	Mikulski	Wyden

NOT VOTING—4

Cowan	Lautenberg
Crapo	Warren

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

The majority leader is recognized.

Mr. REID. Madam President, I ask unanimous consent that the next vote be 10 minutes in duration.

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

MARKETPLACE FAIRNESS ACT OF 2013—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 743, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 743) to restore States' sovereign rights to enforce State and local sales and use tax laws, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the question is on the adoption of the motion to proceed to S. 743.

Mrs. SHAHEEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. COWAN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Massachusetts (Ms. WARREN) are necessarily absent.

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

The result was announced—yeas 74, nays 23, as follows:

[Rollcall Vote No. 110 Leg.]

YEAS—74

Alexander	Feinstein	Menendez
Baldwin	Fischer	Mikulski
Barrasso	Flake	Moran
Begich	Franken	Murphy
Bennet	Gillibrand	Murray
Blumenthal	Graham	Nelson
Blunt	Hagan	Portman
Boozman	Harkin	Pryor
Boxer	Heinrich	Reed
Brown	Heitkamp	Reid
Burr	Hirono	Risch
Cantwell	Hoeven	Rockefeller
Cardin	Isakson	Sanders
Carper	Johanns	Schatz
Casey	Johnson (SD)	Schumer
Chambliss	Johnson (WI)	Sessions
Coats	Kaine	Shelby
Cochran	King	Stabenow
Collins	Klobuchar	Thune
Coons	Landrieu	Udall (CO)
Corker	Leahy	Udall (NM)
Crapo	Levin	Warner
Donnelly	Manchin	Whitehouse
Durbin	McCain	Wicker
Enzi	McCaskill	

NAYS—23

Ayotte	Inhofe	Rubio
Baucus	Kirk	Scott
Coburn	Lee	Shaheen
Cornyn	McConnell	Tester
Cruz	Merkley	Toomey
Grassley	Murkowski	Vitter
Hatch	Paul	Wyden
Heller	Roberts	

NOT VOTING—3

Cowan	Lautenberg	Warren

The motion was agreed to.

CHANGE OF VOTE

Mr. PAUL. On rollcall vote No. 110, I voted ''aye.'' It was my intention to vote ''nay.'' Therefore, I ask unanimous consent that I be permitted to change my vote since it will not affect the outcome.