

Oklahoma City bombing and add my voice to the others who have remembered the loss of life we suffered on that terrible day. I also extend my sympathy to the survivors and to the families of the lost.

It is impossible for most of us to understand how someone could commit such a terrible act. It is impossible for most of us to appreciate the pain of losing a loved one to such a violent, senseless act. But we can try to console them and we can work tirelessly to prevent other terrorist acts against other innocent men and women, both here and abroad.

So on this solemn anniversary, we resolve once again to fight terrorism wherever we find it and to never forget the people who have suffered from it. We will never forget Oklahoma City or the people who lost their lives on that day.

FINANCIAL REGULATORY REFORM

Mr. President, turning my attention to the financial services bill, as we know, it came out of the Banking Committee on a party-line vote, without any Republican support. So where are we? The debate over financial regulatory reform continues this week, so let me recap where we are, the progress we are making, as well as some of the more unhelpful things we have seen.

Over the past year or so, Democrats and Republicans alike worked long and hard to construct a bill aimed at preventing the kind of financial crisis we saw in the fall of 2008, and, just as crucially, to prevent any future bailouts of the biggest Wall Street firms. That was the goal.

Progress was made. But then, in a rush to get the bill to the floor, these talks stopped. So last week, I came to the floor to point out the flaws that resulted from this partisan approach.

One of the biggest of these was the creation of a \$50 billion bailout fund. It seemed to me and many others that the very existence of this fund would perpetuate the same kind of risky behavior that led to the last crisis.

On this point, there seemed to be fairly broad consensus, from Senate Republicans to Secretary Geithner himself.

So the reaction I got was somewhat amusing.

Some of our friends on the other side raised voices of protest because I had spoken up about flaws in the bill. Others ginned up the press with some inside-Washington line about talking points and pollsters. And over at the White House, the President criticized me in his weekly radio address even as his deputies worked to strip the very provision I had called into question a few days before.

Well, they cannot have it both ways.

So my advice at the beginning of this week is that we focus not on personal attacks or questioning each other's motives but on fixing the problems in this bill, and that means doing everything we can to make sure the final product doesn't allow for future Wall Street bailouts.

Both parties agree on this point: no bailouts. In my view, that is a pretty good start. So let us come together and direct our energies toward making sure we achieve that goal and leave aside all the name-calling and the second-guessing.

What last week showed me is that we have two options as this debate moves forward: either we let the people who know this legislation best get back to the negotiating table and work out a solution that is acceptable to both parties and to the American people, or, I can come down to the floor, identify some of the other flaws in this bill, watch as people come down to scream and yell about my suggestions and my motives, and then wait for the White House to agree with me at the end of the week.

I am perfectly happy to do the latter if it means we get a better bill in the end. But it seems to me that a far more efficient way of proceeding is to just skip the character attacks on anyone who dares to point out flaws with the bill, be they provisions that expose taxpayers to Wall Street bailouts or those that would further worsen the jobs situation, and work out these problems now. Forget the theatrics, and get to work.

Again, I am happy to come down and identify additional problems. I could mention, for instance, my worry that the current bill could dry up credit even more for small businesses and community banks. The experts know that this and other problems exist in the bill. If the administration wants to continue to pretend that it does not, then you will see me down here every day. But my preference would be to let the experts work through these problems on a bipartisan basis.

So let us go back to the negotiating table and work out these problems, and then come together and have a bipartisan vote that will give the American people confidence that this bill is not just one party's way of solving this problem. These problems are not insurmountable. This bill is not unfixable. We can reform Wall Street without making taxpayers pick up the tab. Let us do that, then give the American people a strong bipartisan bill that an issue like this deserves.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

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

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

The legislative clerk proceeded to call the roll.

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

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

(The remarks of Mr. ALEXANDER are printed in today's RECORD under "Morning Business.")

Mr. ALEXANDER. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. UDALL of New Mexico. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. UDALL of New Mexico. I thank the Chair.

(The remarks of Mr. UDALL pertaining to the introduction of S. 3224 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, first, I don't know what the order is for the Senate. I was going to speak on one of the nominations that will be before the Senate shortly. I wish to do that, if that is appropriate.

The ACTING PRESIDENT pro tempore. The Senate is in morning business until 3 o'clock.

Mr. GRASSLEY. Yes, it is 3 o'clock now.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, morning business is closed.

EXECUTIVE SESSION

NOMINATION OF LAEL BRAINARD TO BE AN UNDER SECRETARY OF THE TREASURY

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

The legislative clerk read the nomination of Lael Brainard, of the District of Columbia, to be an Under Secretary of the Treasury.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. DORGAN. If the Senator from Iowa will yield, Mr. President, I ask unanimous consent that I be recognized following the presentation by the Senator from Iowa.

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

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I want to speak on the nomination of the person just announced. In the process, I am going to speak about some other people who have similar issues.

Tax collection is meant to reflect shared benefits and appeal to equality as a fundamental value. However, to paraphrase George Orwell, some people are more equal than others.

More specifically, several recent Presidential nominees have apparently set themselves above the typical American citizen in the lack of importance they place on complying with their tax obligations. This certainly seems to be the case with Dr. Brainard, nominated to be Under Secretary of the Treasury for International Affairs.

As a nominee, Dr. Brainard was treated the same as any other nominee to come through the Finance Committee in the 9 years I have been either chairman or ranking member. For the past 9 years, and likely much longer, the Finance Committee has vetted all Presidential nominees referred to the committee, and that vetting includes a tax review. The tax review of Dr. Brainard uncovered three basic issues. These issues have been described in much detail in a bipartisan Finance Committee memo released November 18, 2009. I also discussed them in a statement that was printed in the CONGRESSIONAL RECORD December 23 of last year.

Those seeking to criticize the Finance Committee's vetting process are quick to mention the length of time Dr. Brainard has been a nominee. She was nominated March 23, 2009, and her hearing was held on November 20, 2009. The reason for the passage of nearly 8 months was that the nominee persisted in being evasive and nonresponsive to very basic questions arising from the routine review of tax returns. There are still questions that were not clearly or consistently answered despite multiple rounds of questions. Other questions necessitated multiple answers as new information came to light.

For example, the committee learned on October 12, 2009, nearly 7 months after the nomination, that the nominee failed to timely pay 2008 property taxes for Rappahannock County, VA, and that the nominee was delinquent while the tax vetting was going on. I have said this before. But the reason the review of Dr. Brainard took several months was that she was not forthcoming in her answers. As the committee memo details, some of her answers contradicted each other.

I ask those who are critical of the committee's treatment of this nominee if there are some things it is okay to be evasive about to the Congress of the United States. Is there a point where Congress should accept vague and unclear statements and decide it is not some sort of big deal?

Supporters of the nominee find themselves in the position of having to dis-

tort the facts in order to make their case. They say Dr. Brainard's tax problems involved small amounts of money and some mistakes, such as late payment of property taxes, and it could happen to anyone. While these statements may be true, they do not deal with the nominee's real problem which, as I have said, is her unwillingness to fully and completely answer questions from the Finance Committee.

The Finance Committee's vetting process has uncovered tax irregularities with many past and current Presidential appointees. What the committee requires is that the nominee acknowledge and fix these irregularities.

Unless these tax issues involve substantial dollar amounts, or there is information suggesting the nominee deliberately avoided fulfilling their tax liabilities, this information is not made public and the nominee is allowed to move forward. The Finance Committee is not trying to embarrass people for making simple mistakes, and neither the committee nor this Senator benefits from a lengthy vetting process.

In the case of nominees where difficulties arise to the point where our committee must release information publicly, the committee completes its review so that all information is released all at once and the nominee is allowed to review information to be released by the committee before the committee ever would release it, so that the nominee would know exactly where we are coming from.

Dr. Brainard was allowed to review the Finance Committee memo before it was released, and if she had withdrawn her nomination, that information would have remained confidential. It would not have been out there for anybody to know anything about. But we are moving forward with this nomination; hence, any sort of information is public.

Dr. Brainard is the third senior Treasury Department nominee either the Finance Committee or this Senator has taken issue with. Secretary Geithner's failure to pay his self-employment taxes as an International Monetary Fund employee is well known.

Just a few weeks ago, Jeffrey Goldstein was recess-appointed to the post of Under Secretary for Domestic Finance. While I do not believe Dr. Goldstein failed to satisfy his tax liabilities, I do have questions regarding off-shore activities a private equity fund engaged in while Dr. Goldstein was a managing director.

I was in the process of asking more questions as to the business purpose of these activities and was prepared to let the nominee advance toward confirmation once these questions were answered. Dr. Goldstein was absolved of the need to respond to my questions by the recess appointment made under law by President Obama. Dr. Brainard and Secretary Geithner both had personal issues the committee released informa-

tion on in a bipartisan way, and I have unresolved questions regarding off-shore activities engaged in by Dr. Goldstein's previous employer.

As concerned as I am with the issues involving this specific nominee, I am even more concerned by the reaction by some to the information released by the Finance Committee on this and other recent nominees.

Dr. Brainard was the fifth nominee of the current administration to run into personal tax issues during the Finance Committee's vetting process. With the exception of one nominee, who voluntarily withdrew his nomination, all of these nominees were confirmed, or will be confirmed, as I expect Dr. Brainard to be confirmed. It is not clear that the Finance Committee vetting of nominees has served a useful purpose and information released by the Finance Committee on problematic issues surrounding nominees doesn't seem to have decreased support for their confirmations.

I am not saying that every nominee who runs into trouble should be automatically rejected. I myself voted for one of the five nominees I just mentioned. However, it does not appear that the information released by the committee on nominees in this current Congress is given much consideration.

The issues involving Dr. Brainard should have no bearing on political parties, issue positions, or who is friends with whom. The only basic issues should be that everyone needs to pay their taxes as required by law, and the nominee should be fully responsive to the Congress. In looking at the first of these issues, the nominee showed that she was deficient in the second. For the reasons I have laid out here and in earlier statements, I will vote against this nominee.

However, I do plan to vote for cloture, and I want to explain that. Despite my own opposition to the nominee, I don't want to prevent other Senators from considering the nominee, and I am not attempting to prevent the nominee from receiving an up-or-down vote.

I hope other Senators consider the information the Finance Committee has released and will consider what I have said and will come to their own decision as to which way to vote.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. DORGAN. We are in executive session, is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. DORGAN. Mr. President, I have the Executive Calendar of the Senate in front of me. It is on every desk. It has the pending nominations that have yet to be acted upon by the Senate.

I note that there are a large number of nominations that have been made on which there are holds. There is delay, there is stalling, and you wonder—here is a May 20, 2009 nomination, reported

out of the Homeland Security Committee of Marisa Dimeo, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia. That was reported out in May of last year.

Here is one for John Sullivan, of Maryland, to be a member of the Federal Elections Commission, which was reported out last June and is still pending.

Here is one for Stuart Gordon, to be an Associate Judge of the Superior Court of the District of Columbia, which was reported out on July 29 of last year and is still pending.

I am going to read a rather lengthy list in a bit. These are nominations that have been stalled, delayed, held up. There are, I think, nearly 100 of them on the Executive Calendar, which is on everyone's desk.

I specifically want to talk about one, and then I am going to propound a unanimous consent request. The one is about GEN Michael Walsh. I know General Walsh. I have known him for a long time. He is the commander of the Mississippi Valley Division of the Corps of Engineers. He has been to war for his country. He is a one-star general. He served 30 years in uniform for this country.

He has been nominated to receive his second star to be a major general. That request to receive a second star for General Walsh went through the relevant committee, the Armed Services Committee of the Senate, chaired by Senator LEVIN, and the ranking member is Senator MCCAIN. The nomination was unanimously reported out by the committee, by all Republicans and all Democrats. It is a nomination supported by Senator LEVIN and Senator MCCAIN, the chairman and the ranking member. Yet that nomination was sent to the floor of the Senate nearly 6 months ago and has yet to be acted upon because there is a hold on it.

I have spoken on this issue before—last week. We have a Member of the Senate who has said to the Corps of Engineers: I am going to stop this general's promotion to major general until the Corps of Engineers does the following things that I demand from the Corps of Engineers in my home State of Louisiana. This is Senator VITTER from Louisiana.

I did say to Senator VITTER—I would not come and speak of another Senator without first telling him I was going to do that. I told Senator VITTER I was going to be critical on the floor of the Senate of what he was doing to General Walsh—a patriot, someone who has served 30 years for his country in the U.S. Army, someone who has gone to war for his country, someone who has had a unanimous vote in the Armed Services Committee to become major general.

After all of these months, his promotion has not yet moved. Why? Because of one U.S. Senator demanding something this general cannot do. This general executes policy; he does not

make policy. The demands by Senator VITTER in two letters that he has sent to the Corps and the response from the Corps of Engineers are four letters I put in the Senate RECORD last week.

It is unbelievable that the career of a distinguished general in the U.S. Army is handled this way by one Member of the Senate. It is unfair to him. It is unfair to the Army, in my judgment. And it is the last thing in the world we ought to be doing—singling out one person and putting their career and their advancement on hold, prohibiting this one-star general from receiving a second star because one person in the Senate is demanding the agency for which this general works do things that the agency says it cannot do in any event.

I am going to ask unanimous consent, and then I want to say a few more words about it.

UNANIMOUS CONSENT REQUEST—NOMINATION OF
BG MICHAEL J. WALSH

I ask unanimous consent—and I have notified the minority—that the Senate proceed to Executive Calendar No. 526, the nomination of BG Michael J. Walsh to be major general; that the nomination be confirmed and the motion to reconsider be laid upon the table; that no further motions be in order; and that the President be immediately notified of the Senate's action.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. GRASSLEY. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I wish to make very clear that I do not oppose this nominee, and I say to Senator DORGAN that I have no problem with what he is doing. I have been asked on the part of Senator VITTER to object, so I must object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DORGAN. Mr. President, I understand the Senator from Iowa is acting on behalf of another Senator. I must say I think it is incumbent on the other Senator to be here and make this objection himself. I know the rules do not require that, but I think the rules at this point are derelict in terms of this circumstance.

We have a general in the U.S. Army who has served this country well whose career is now on hold. It is on hold because one person is demanding that the Corps of Engineers do certain projects for New Orleans and the State of Louisiana. In any event, this general cannot do them.

I chair the subcommittee that funds the energy and the water programs. As the chairman of the subcommittee that funds all of the water programs, I can tell the Presiding Officer that billions and billions of dollars have been sent to Louisiana and to New Orleans. I have supported all of that because they were hit with a devastating hurricane called Katrina. It caused dramatic injury to life and limb. No area of the country has been hit harder.

I include myself among all of those who say we have a responsibility and have begun to meet that responsibility in the most significant way that has been done for any State in this Nation at any time. I have been proud to do that. But what the Senator from Louisiana, Mr. VITTER, is demanding from the Corps of Engineers in a number of cases the Corps cannot legally do and in other cases the Corps will not do because the Appropriations Committee has already voted against it in a recorded vote.

To hold up the nomination to major general of a distinguished Army general for all of these months because one Senator is upset is horribly unfair to this general, Michael Walsh. I know him. I like him. He deserves his second star. The Armed Services Committee unanimously has said he deserves a second star. He does not have it. Now many months later, month after month, one Member of this Senate, Senator VITTER, has decided to extract from the career of this officer some penalty because he will not do something he cannot do. It is unbelievable to me.

I say to my colleague, if he wishes to object, I will come tomorrow. I will set a time. I wish he would come to the floor and object to my request and tell us why he believes this general can do that which the general does not have the authority to do. If he finally understands that this general cannot do what Senator VITTER wishes him to do, I hope Senator VITTER will stand aside and decide not to interrupt the fine career of this great military general.

I will not speak more about this, but I will come to the floor tomorrow, and I will notify his office when I am going to be here. I hope perhaps he will not have others come and object for him. Perhaps he would bother to come to the floor and explain to this general, explain to the U.S. Army and the American people why this general, having served 30 years and served in wartime, is not able to get his second star and has had to wait month after month and more. It is unfair, it is wrong, and it needs to be corrected.

Let me again say that I believe 93 to 100—I am not sure of the number today; last week, it was 93; all of these nominations: Winslow Lorenzo Sargeant to be Chief Counsel for Advocacy of the Small Business Administration, reported out of the committee on September 16 last year, not acted on; Brian Hayes, National Labor Relations Board, reported out October 21 last year—the list goes on and on.

I guess it is a strategy—not just on this but virtually on everything—to object. In fact, there was one person on this list who is coincidentally from my State. That person was a nominee for the General Services Administration. Her name was Martha Johnson. Martha Johnson was nominated to be the head of GSA. GSA is the Federal agency that manages more property than any agency in the world. It manages all of

the Federal property. One Senator put a hold on Martha Johnson's nomination. The result was there was not someone to run the General Services Administration for almost a year; I believe it was 10 months. Then, when we finally invoked cloture after great length, the vote on this nomination was 96 to 0. Not even the person who put the hold on for almost a year voted no. Everybody voted yes. The result was a Federal agency that desperately needed leadership did not have leadership for almost a year. Why? Because one Senator said: I am going to put a hold on this nomination because of some building someplace. They were upset about something. The result is that everybody pays. All the American taxpayers pay because we did not have the leadership in an agency that desperately needed the leadership. That is just an example.

It has been so unbelievably disappointing to see what is going on in the Chamber with all of these issues. I am almost inclined to think we should go through one by one and have 93 unanimous consent requests. Perhaps I will do that tomorrow or the next day. I know others will as well.

I guess if you object to everything, including having government work the way it is supposed to work, effectively and efficiently on behalf of the taxpayers in these agencies that need leadership—I do not quite understand why you come to the Senate if you believe the only answer is no. It does not need to be someone who decides the only answer is no in every circumstance.

Mr. President, I ask unanimous consent to speak for 5 minutes in morning business.

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

FINANCIAL REGULATORY REFORM

Mr. DORGAN. Mr. President, this morning I was looking at something I have had on my desk for a long while. I was thinking about words and words that matter because there have been a lot of words recently about the issue of financial reform or Wall Street reform, how it is done, when it is done, whether it is done. I was thinking about the use of words and that words do not mean what they used to mean.

I went back, because I have kept this on my desk for a long time, to something that was sent out widely across the country. It was from something called GOPAC. It was kind of the start or at least the genesis of the collapse of comity and the use of good language and so on. This was sent out widely around the country to several thousand people. It said: We have heard all these candidates across the country say: I wish I could speak like Newt—meaning Newt Gingrich. I wish I could speak like Newt.

Then it said in the language that it sent out to people: You can speak like Newt Gingrich. It said: We have actually done a lot of work developing poll-

ing on contrasting words, and if you would like to speak like Newt Gingrich, here is some help for you.

Here are words. Then they sent this out. It says:

Apply these words to your opponent, to their record, to their proposals, their party.

They have a long list of words: sick, lie, betray, traitors, pathetic, threaten, corruption, punish, corrupt, cheat, steal, abuse of power. Use these words when you describe your opponents.

They said: Here are the positive words you should use when you talk about yourself: pro-flag, pro-children, pro-environment, liberty, principal, pioneer, truth, moral, courage, family. And the list goes on.

I thought when I received this a long while ago how unbelievably pathetic it was that there were merchants of destructive politics marketing this trash around the country. Yet they were and have for a long time. It is the case that they use pollsters to do this, to tell everyone what kinds of words exist that will motivate both negatively and describe your opponents—sick, pathetic, lie, betray—and what words would positively motivate your supporters. I was thinking about that, and I dug that out just because in recent days and weeks we have seen examples of language that matters and instructions by people of how to use language, even though it does not apply, to describe your position.

I was interested in seeing the results of a pollster who described the way to attack financial reform. Again, it was not in the same way of the GOPAC polling to find the most destructive way you could describe something, but it was similar in the sense of, how would you construct something, notwithstanding the facts—how would you construct something to make an impression about something no matter what the facts might be.

This is from some polling work that was done. It says:

Frankly, the single best way to kill any legislation is to link it to the big bank bailout.

The words that would matter are these: No matter what the circumstances are, the single best way to kill any legislation is to link it to the big bank bailout. Words that work: “taxpayer-funded bailouts,” “reward bad behavior,” “taxpayers should not be held responsible,” “if a business is going to fail, no matter how big, let it fail.” If these words sound familiar, it is because you have heard them all on the floor of the Senate in recent days and you have heard them on television a lot in recent days. It is the issue of, how do you develop language that motivates people, notwithstanding the set of facts.

“It is not reform”—again quoting from the polling work—“it’s the stop big bank bailout bill.” That is important. This is not a reform bill; it is to stop the big bank bailout.

What we have here is the battle of polling. How can you describe words

that work, language that works, notwithstanding the set of facts you might be discussing?

Ultimately, if we are going to effectively deal with Wall Street reform, reforming our financial system, it is not going to be with a battle of pollsters; it is not going to be regurgitating what one reads—here is how you motivate someone using these words. It is going to be that we think through what happened and then understand what do we do to make sure this cannot and does not happen again.

We hear a lot of talk about the need for bipartisanship. I would love to see that. I would love to see bipartisanship on specifically the kinds of remedies that have teeth, that are effective, and that are going to prohibit that which has happened to this country from ever happening again. That will not be done, in my judgment, by deciding to step back a ways and use a light touch. I am for the right touch; I am not for a light touch. I have seen the light touch for a decade now, or at least a substantial portion of the last decade.

We have had agencies, the SEC, and others in a deep Rip Van Winkle sleep. In fact, we had people come to the SEC who noticed what some folks were doing to bilk taxpayers and investors and nobody did anything. I was here when new regulators came to town and said: You know what. We are going to be willfully blind for a while. It is a new day.

The fact is, regulation is not a four-letter word. The free market system works, but it works when there is a referee. The referees with the striped shirts and whistles are needed to call the fouls because there are fouls from time to time in the free market system. That is why we have regulatory capability and authority.

So the question of what kind of financial reform or Wall Street reform is developed is not going to be about the language of financial reform—which is what this is about, a document that has been distributed and that I heard quoted many times now in recent days. It is not going to be about the language but about the specific set of policies that will prevent what happened to this country from ever happening again.

I will come and talk about some of that, but I did want to say I was thinking about the issue of the use of words, and I find it pretty interesting to listen to the use of specific words and to listen to the menu of the language of financial reform that comes from the pollsters and then comes straight out of the mouths of others very quickly.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. CORKER. Mr. President, I ask unanimous consent to speak as in morning business.

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

FINANCIAL REFORM

Mr. CORKER. Mr. President, I thank my friend from North Dakota, because I, too, for what it is worth, have been very distressed about the conversations around financial reform. I don't think either side of the aisle deserves a badge of honor as it relates to the way this has been discussed. I agree with him that this is something way beyond using poll-tested language and should, in fact, be dealt with in a serious manner. So although I didn't hear all the Senator's comments, I agree with him that we ought to deal with this in a serious way.

Mr. President, you and I have had a number of conversations over the last weekend regarding financial reform. We have had a lot of conversations over the last year regarding financial reform. As I have watched the public discussions over the last several days, I have been greatly distressed. As a matter of fact, I spoke this morning to a large number of businessmen in Nashville, TN, and, candidly, became so angry thinking about the way this debate has evolved that I had to think about coming here today and controlling that and using that in a productive way.

I have noticed throughout the day that maybe the rhetoric has changed a little, and I know that my friend and colleague from Virginia and my friend and colleague from Connecticut had a press conference earlier today to talk about some of the issues that are being talked about rhetorically. Let's face it, what is happening right now—and it is unfortunate for the American people—is that both sides of the aisle are trying to herd up folks with language that in many ways I don't think does justice to this issue, which is very important, is very difficult, and something that is very much needed in our country.

There has been a lot of discussion about this funding mechanism—this \$50 billion bailout fund, if you will. Those are someone else's words, by the way, not mine. The American people are probably tuning in, and in some cases they are wondering how we are jumping into the middle of this on the Senate floor without a lot of free dialogue.

The fact is, we have a financial reform bill that I hope comes before us soon that will deal with orderly liquidation so that when a large institution fails, it actually fails. I think that is what the American people would like to see happen. So there has to be a mechanism in place.

If a firm is systematically important to our country, there needs to be the tools in place to make sure it actually goes out of business. I don't think people in Tennessee like seeing that when a community bank fails it actually goes out of business, but when a large Wall Street firm fails we prop it up.

I wish the Senator from Virginia, who happens to be presiding, were on the floor so we could have a colloquy on this because the fact is, this is something that needs to be dealt with

in legislation. We need to know we have a process where we deal with derivatives and we don't have a lot of people building up a lot of bad money, instead of doing it on a daily basis and they end up in a situation where there are huge obligations. We need to deal with some of the issues of consumer protection.

So, Mr. President, there has been a lot of discussion about how we create something called debtor-in-possession financing, so that when the FDIC comes in and seizes one of these large firms that fails, it has the money to keep the lights on and to make payroll and those kinds of things while it is selling off the assets of the firm.

The fund that has been discussed in this bill—and that is going to be changed, I know, and I am fine with that and think that is perfectly good—but this fund that has been set up is anything but a bailout. It has been set up in essence to provide upfront funding by the industry so that when these companies are seized, there is money available to make payroll and to wind it down while the pieces are being sold off.

Now, a lot of people have said this is a Republican idea. There is no question this is something that Sheila Bair has proposed. The FDIC wants to see a prefund. The Treasury would like to see a postfund; they would like to see it come after the fact.

At this point I want to digress for one second and say I hope the reason that Treasury wants a postfund is not because, in lieu of having a prefund of \$50 billion from these large institutions, they want to see a bank taxed. As a matter of fact, I am going to be surprised if after Republicans argue against a prefund and it is changed, and the administration comes back and Chairman DODD comes back and we end up with postfunding—both of which do the same thing, I might add, and both of them work—but it will be interesting to see whether that argument basically leads to Treasury then having the ability to come back and do a bank tax. I think at the end of the day that is something they have been wanting to achieve.

So it is interesting how this debate is evolving. But let me go back to this prefund. At the end of the day, I think what all of us would like to see happen is to see these institutions go out of business. So do we put the money upfront to take them out of business or do we put it up on the back end where, in essence, what is happening is we are borrowing money from the taxpayers?

Would we rather the industry put up the money so the taxpayers are not at risk or would we rather that not happen and during a downtime, when it is procyclical, we actually get the firms to put up the money after the fact?

I think both of those, by the way, are nice arguments to have, and I think they should have been debated in the committee, and we can debate it on the Senate floor. But at the end of the day,

to make the total debate about whether it is pre or post—neither of which are central to the argument because both work—it really doesn't matter. Either way we have to have some monies available as working capital to shut down a firm. We can borrow it from the taxpayers, although I don't know if the taxpayers would like that very much. We can do it after the fact, as I have said, or we can put it in upfront by the industry. Either way it is going to be paid back by industry.

I will say that in the Dodd bill today there is postfunding; that if there are any shortfalls the industry will pay that back. So, again, it is kind of a debate that ends up being silly. The fact is, I know it is going to be changed. The essence of the bill, though, is the fact that we want to make sure these firms unwind and they go out of business.

Let me just talk about some of the arguments that are being made: Prefunding of resolution creates a system where certain participants are effectively designated as a protected class as a result of them paying into the fund.

I think that is ludicrous. That is a ludicrous argument. Now, what we could do, if it would make everybody happy, is instead of getting large firms to pay, we could get community banks to pay too. I don't think there would be many people who would be interested in that, but if we want to get everybody in the country and get the community banks in Tennessee—I am not interested in that, and I don't think the Senator from Virginia is interested in that—but if we want to do that, we can ensure nobody is part of the protected class. So I find that to be a ludicrous argument.

There is another argument: This allows such firms competitive funding advantage over smaller institutions such as community banks.

So, in other words, if we are saying these large firms, if they fail, are going to go out of business, and it is going to be more painful than bankruptcy, that somehow they are protected or have a competitive advantage, I find that to be kind of ludicrous, and I hope that argument is not used again. It probably will be, but I hope it would not.

Here is one I read recently: The fund is a signal to credit markets that the U.S. Government stands ready to prop up, bail out, and insulate large financial firms. Now that is an interesting one. The fact is, we are talking about orderly liquidation.

The existence of the fund allows managers of large financial institutions to conduct riskier practices, therefore counterparties will not feel obliged to perform due diligence because, in the event of stress, there is such a financial slush fund available to bail out unsecured and short-term creditors.

You have to be kidding me. That is absolutely the opposite of what is intended.

Now, let me say this before somebody tunes out. I think this bill has problems, and I think there are issues that need to be resolved around orderly liquidation. The Senator from Virginia and I both know what they are, and there are some flexibilities that have been granted to the FDIC, to the Federal Reserve, and others that need to be tightened. There are some words that instead of saying “shall” say “may.” That is a very important word when you are telling an agency what they have to do or what they “may” do. So there is much in this bill that needs to be fixed.

I want to say that as the Dodd bill sits today, I could not vote for it. I absolutely cannot support the bill. But what concerns me is the rhetoric that is being used to talk about something that is very important to our country, and it is being used on both sides, I might add.

On one side they are saying the Republicans want to protect Wall Street firms. Well, I can tell you this: I think there are very few Republicans who do not want to see financial regulation take place. I think there are very few Republicans who don't want to see it done the right way. Candidly, I think most Republicans and Democrats are listening to community bankers. They are not listening to Wall Street. That would be my guess.

So that rhetoric, to me, is off base. The rhetoric on my side of the aisle saying this orderly liquidation title basically keeps “too big to fail” in place, the central pieces of it, is not true. Are there some things around the edges that need to be fixed? Yes. My sense is, as I have said on the Senate floor, we can fix those in about 5 minutes if we just sit down and do it. I do not understand why the rhetoric has gotten to where it is. I would like to see us pass a bill that makes sense.

The kind of thing we should be talking about is not the fact that this is a bailout fund. By the way, whether it is “pre” or “post,” that debate doesn't matter to me. The fact is, we have to have some debtor-in-possession financing available to wind these firms down, sell off the assets, make sure the stockholders are absolute toast, make sure unsecured creditors are toast, make sure it is so painful that nobody ever wants to go through this. We absolutely need to do that. The American people need to know we in Congress are not going to prop up a failed institution, that they are going to live the same life in capitalism that everybody else has to live. People in Tennessee, when they fail, they fail.

The kind of thing we ought to be talking about and have been talking about and I think can solve is that I think we ought to have more judicial involvement in the process. We ought to improve the bankruptcy process so that these large institutions have a more viable route through bankruptcy.

I think we ought to deal with the disparate treatment of similarly situated

creditors. The fact is, the way the “post” funding in this bill is now set up, we do not. If a creditor receives more money than they should, that money is not recouped. We know how to fix that. I know the Senator from Virginia and I both know how to fix that.

Those are the kinds of things we need to be talking about.

Creditor prioritization—there is no question that right now in the bill, certain creditors can be treated differently by the FDIC than others.

We need to be looking at bankruptcy stacks so that people understand how much they are going to be paid back, and they are going to be in the same order they anticipate being in.

We need to be tightening the definition of a financial firm. Right now in the bill, the way it reads, an auto company could end up being part of this. Right now, it is not tight enough. An auto company may be a stretch, but something other than a financial firm could be dealt with, the way the language is now reading. And certainly for sure Fannie and Freddie need to be treated the same as any other financial firm.

We need to have a solvency test to make sure regulators—that does not allow regulators the flexibility to protect firms in crisis.

We need to make sure there is a duration. In other words, if the FDIC comes in and has to take over, after due process—three keys being turned—take over one of these firms that has posed systemic risk, we need to know there is an end date. I know the Senator from Virginia and I absolutely agree that conservatorship should not be on the table. This is only a receivership and those firms should go out of business, and that, no doubt, should be language added. It is not in there right now.

There are a number of things like this. I could go on and on. I am probably boring much of the watching audience, if there is any, with some of these technical issues, but those are the kinds of things we in this body ought to be talking about. They are important. They matter. But to use up time with rhetoric that, in essence, is used to sort of brand something in a way that really isn't the way it is, to me, is not productive. I did not come here to do that.

Again, I think both sides of the aisle tried to cast the characters in certain ways. It is this herd process that happens around here. Everybody wants to get everybody on the same team. What we do is we use rhetoric that charges people up and gets everybody on the same team. I do not like that process. I do not want to be a part of that process.

I have joined with other Republicans to try to make sure this bill gets in the middle of the road. I have done that on the basis that both sides are going to deal in good faith.

I know the Senator from Virginia knows we went through a process with

this bill where we voted it out of committee in 21 minutes—a 1,336-page bill we voted out of committee in 21 minutes with no amendments. The stated goal was to make sure that both sides did not harden against each other and that we could negotiate a bill before it came to the floor—came to the floor—we would negotiate a bipartisan bill. That is why it was stated that we did that. How can responsible Senators, 23 Senators, all of whom have problems with this bill—how can you vote something out of committee in 21 minutes with no amendments unless you know that a negotiation process is going to take place afterward to create a bipartisan bill? Nobody in their right mind would have agreed to do that.

What I would say to my friends on the other side of the aisle and what I would say to the folks at the other end of Pennsylvania Avenue, who seem to be turning up the rhetoric—I take it as a commitment from my friends on the other side of the aisle that we are going to negotiate a bipartisan bill and we are going to do it in good faith. But I also expect the same on my side of the aisle, that we are going to negotiate in good faith to get a bill and that before it comes to the floor the major template pieces will be worked out, the issues around consumers, the issues around orderly liquidation, and the issues around consumer protection.

As I have mentioned, there are a number of issues we need to debate here on the floor that, to me, are outside the realm of the template itself. I hope this body—I know the Senator from Virginia and I have worked together a great deal. I know we both came from a world that was different from this. I have become greatly distressed. I get distressed at both sides of the aisle when we have an important issue such as this and we turn it into sound bites.

I hope, again, over the next several days—this bill has been through so many iterations. Everybody who has worked on it understands what is in it. Everybody understands what the points are on which we disagree. As a matter of fact, if we do not end up with a bipartisan bill, it is not going to be over philosophical issues, it is going to be over the fact that the two sides just decided they didn't want to do it. It is going to be over the fact that it takes both sides.

The fact is, the White House can make an issue out of this. I know things are not going particularly well in the polling areas. I know my friend from North Dakota talked about polling data and testing things and all that. I realize things are not going particularly well. Maybe this financial reform bill can be something that changes that. Maybe if you push the bill as far to the left as you can and you dare Republicans to vote against it, maybe that is a good thing. That is not what I came here to do. I do not think that is what the Senator from Virginia came here to do. I know that

if Republicans brand this bill as prolonging too big to fail—that is what we are doing—then we might be able to keep the bill from passing that way too.

I hope all of us will sit down and do what we came here to do, and that is to create good policy for the American people.

I am very distressed about where we are today. What I hope is happening is that this is just a bunch of buzz and that our committee staffs and the chairman and ranking member are actually sitting down, having serious discussions, and that very soon we are going to come forth with a bill that is bipartisan, where we can debate it on the edges and end up passing legislation that stands the test of time.

I hope that bill will deal with the very core issues that got us into this crisis. And we can castigate all kinds of people. There is enough blame to go around. You almost couldn't find a regulator, a credit rating agency, a firm, management that was not in some way involved in helping create this crisis. There is a lot of blame to go around. But I hope the bill, at the end of the day, will also address, as I have stated every time I have come to the floor on this bill, the whole issue of underwriting; the fact that at the end of the day, at the bottom of this, whether you read what happened supposedly with Goldman on Friday, you read about these synthetic CDOs where they were not even really underwriting mortgages there—in reality, they were just doing something that reflected what certain mortgages would do—at the end of the day, it still was about the fact that in this country, we wrote a bunch of mortgages that couldn't be paid back. You can talk about this all you want, but the underwriting, the bad loans that were written, at the end of the day, are what created much of this crisis. Candidly, I don't think much of this bill addresses that. I hope we will address that more fully before this bill comes to the floor.

With that, I think I have taken up my allotted time. I thank the Members of this body for their patience. I hope we will do the work that needs to be done here. As I mentioned, at this point I don't think either side of the aisle deserves a badge of honor, but I hope over the next several days that will change. I hope our rhetoric will be tempered. I hope our discussions will center around those things that really matter and will not be used to basically get people in the public off on rabbit trails or try to herd our teams together.

Mr. President, I look forward to working with you as we try to complete this bill.

I yield the floor.

Mr. BAUCUS. Mr. President, I would like to return to the nomination of Dr. Lael Brainard.

Today, at long last, the Senate is considering the nomination of Dr. Lael Brainard to be Under Secretary of Treasury for International Affairs.

President Obama nominated Dr. Brainard more than a year ago, in March of 2009. After an extensive vetting process, the Finance Committee held a hearing on her nomination in November of last year. And the Finance Committee favorably reported her nomination with a bipartisan majority in December of last year.

The path to her Senate confirmation has been neither short nor easy. But throughout this process, Dr. Brainard has demonstrated persistence and determination.

These vital qualities supported her well as a nominee. And these qualities will support her well as she assumes her responsibilities as Under Secretary of Treasury.

The world economy is emerging from a deep economic recession. America must lead the way to recovery. And we must do so by creating jobs, reducing unemployment, and encouraging smart, balanced growth here at home.

But the health of the global economy does not rest on our shoulders alone. In fact, the recent financial crisis has demonstrated how interconnected our world is.

The world's many national economies have the potential to rise together. And they have the potential to fall together, as well.

To ensure a stable, prosperous economic future, countries must work together to support balanced economic growth. No country can rely solely on export-driven growth, just as no country can rely solely on its domestic consumption.

But this economic rebalancing will not happen overnight. The global economic downturn has been powerful because of its persistence. And we must be just as persistent and determined in our efforts to overcome the effects of this crisis.

As Under Secretary of Treasury for International Affairs, Dr. Brainard will lead our bilateral and multilateral efforts on these issues. She will work with key trading partners such as China and the European Union. And she must help to guide our country from an economic recovery to economic growth.

Dr. Brainard has demonstrated that she has the knowledge, skills, and abilities to confront the tasks that lie ahead. She is brilliant and hard-working.

She has shown the tenacity and doggedness necessary to be successful as Under Secretary for International Affairs. And she has revealed that she has the persistence and determination to address the vital issues facing America and the global economy today.

I might add, I worked with Dr. Brainard during the Clinton administration. A very key question is, What would the U.S. economic relation be with China? Up to that point, America had annual extensions of MFN for China. They were contentious. They caused more problems than they solved, and I spent some time with the

President and others in the Clinton White House and then later worked with Dr. Brainard as we moved away from these annual extensions of MFN and more toward PNTR with China.

It was a hallmark change in United States-China economic relations. I think this worked out very well for our country's best interests. I must say it has also helped China. We pursued that objective, in part, because that meant China could then be a member of the WTO, and once China became a member of the WTO—that is, the World Trade Organization—that would help China live up to world standards that other countries were living up to under WTO.

Again, Dr. Brainard, throughout this confirmation process, has shown her dedication to serving the Treasury Department, the President, and the American people. I am confident—and I am confident because she has had deep experience and she is very talented; she is very good—I am confident she is up to the task for which she has been nominated.

I urge the Senate to approve her nomination.

I now ask unanimous consent that the assistant majority leader, the Senator from Illinois, be recognized to speak on whatever topic he chooses.

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

The Senator from Illinois.

Mr. DURBIN. I ask unanimous consent to speak for 10 minutes.

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

Mr. DURBIN. I thank the chairman of the Finance Committee.

This is the Executive Calendar. It contains the names of the nominations the President of the United States has sent to the Senate for confirmation. It is an orderly process, a historic process. It has happened thousands and thousands of times. Very few times do we have a lot of controversy associated with these names. If there is a controversy, ultimately there is a vote—a debate, and then a vote.

But now there is a new approach being used by the minority side. That approach is to basically use one of three options: stall, stop, and kill. What they are trying to do, for the 104 nominations sent by President Obama, is to hold them on the calendar as long as possible so it is difficult for him to organize his administration and move forward.

There are some key positions. The one the Senator from Montana spoke of is the nominee for Under Secretary of the Treasury for International Affairs. We are concerned about the state of the American economy, our competition in the world, how we stack up against countries such as China.

There is an allegation, which I think is valid, that the Chinese are manipulating their currency so they continue to take jobs away from the United States. It gives them too big a competitive advantage. Here is the Under

Secretary for International Affairs who would be tasked with looking into that issue to try to help American businesses, small and large, and to save American jobs and this nomination now sits on the calendar with 103 others.

What you find is that of those 104 nominations, most of them went through the committees on their way to the Senate floor with unanimous votes or overwhelming majority votes. There is no controversy associated with it.

Mr. DORGAN. Would the Senator yield for a question?

Mr. DURBIN. I would be happy to yield.

Mr. DORGAN. Mr. President, I wonder if the Senator from Illinois knows who has a hold on that nomination.

Mr. DURBIN. I do not know. Does the Senator know?

Mr. DORGAN. No, I do not. The reason I asked the question is these holds are, in some cases, anonymous. I spoke earlier today about a hold on a promotion for one of the generals in the Army to be a major general that has now been held up for nearly 6 or 7 months by Senator VITTER.

I use his name because I told him I was going to because he is demanding of this general something the general cannot do. I mean, that is an example. We happen to know where that hold is from.

But of these other 100-plus nominations, they sit here, day after day, month after month, and someone has put a hold on them for some reason. If I might mention one other, the woman who was to head the GSA, that was vacant for nearly a year because of a hold of one Senator, and when we finally got around to voting for her, it was 94 to zero.

The Senator who held her up for a year even voted for her. That is the kind of game that is being played. It is unfair.

Mr. DURBIN. I agree with the Senator from North Dakota. I would say to those Senators who have holds on nominees: Come to the floor and explain to the American people why you believe these people should not be serving in our government. If you think there is something wrong with them, if you think they are unqualified or there is some issue involving their character or integrity, do you not owe it to these nominees to step forward and say so?

I have held some nominees in the past but was open and public about it for a specific purpose. Recently, under the Bush administration, I was looking for a report from the Department of Justice. The report was sent. The hold was lifted as quickly as it was sent. Those things I understand.

But to hold these people indefinitely in anonymous holds, secret holds, and never state the reason why is fundamentally unfair. It is unfair to the nominee who has gone through this process of FBI checks, background checks, poring through income tax re-

turns, questions about their personal and private lives most Americans would not want to face.

They finally get through the nomination process, the President sends their name, and now they are being held up on the calendar indefinitely, 104 different people. I think we owe it to them, we owe it to the President and to the country to do this in an honest, orderly way.

During the course of this week, Members of the Senate are going to come to the floor and ask to move these nominees forward. I hope those on the other side who have the courage to hold them will have the courage to stand and explain why. That, I think, is critical.

FINANCIAL REFORM

There is another issue involving a hold, which goes to a much larger issue. We will have a bill before us soon, reported from the Banking Committee, that is long overdue. This bill is Wall Street reform. Our country has been through one of the toughest economic downturns in modern memory. For 80 years, we have never seen anything like what we are going through now.

Some 8 to 14 million Americans have lost their jobs, \$17 trillion in value was taken out of the country. Virtually every one of us with a savings account or retirement account knows what that meant. We lost value in things, our nest eggs, the money we put away for our future.

We know businesses failed, way too many of them. We know a lot of people lost in that process, losing their jobs, losing retirement income, losing their health insurance. Investors lost when the stock market went down to about 6,500 on the Dow Jones average. It is now back up in the 10,900 or 11,000 range. But with all that downturn in the economy, people stood back and said: What happened? What did we do wrong?

Well, mistakes were made. Many mistakes were made in Washington. I will concede that point. But a lot of mistakes were made on Wall Street with the biggest financial institutions. The worst part of it was, when these financial institutions were about to take a dive and go down, where did they turn? The American Treasury, the taxpayers of this country.

They said, under the Bush administration: We need a bailout, \$700 billion in taxpayer money to Wall Street to overcome the mistakes we made and keep our banks afloat and insurance companies, in some cases, because of the big problems we have, problems many times of their own creation.

They received the money. Many of us had a stark choice. We were told by the Secretary of the Treasury and the Chairman of the Federal Reserve: If you do not send this money up to Wall Street and these banks and insurance companies go down, the economy will follow them, not just in America but globally.

So we voted for this bailout money. I did not want to do it. But I thought it

was a responsible thing to do. Well, it turns out some of these banks and other institutions are paying back the money, with interest. The taxpayers are okay; but, by and large, a lot of others are not. We have to ask ourselves: Do we want to run through this script again? Do we want to see this movie happen next year or the year after?

The obvious answer is no. So the Banking Committee sat down and said: Let's rewrite the rules. If they are going to act like a bank and be protected like a bank, they should have the oversight of a bank. If they want to loan money on a bad loan, and they do not have a reserve, do not ask the taxpayers to stand and make up the difference. That is part of what we are doing with this financial reform bill, to try to create the rules and oversight from organizations and agencies in Washington to make sure the taxpayers do not end up footing the bill again.

Secondly, this whole world of derivatives, which I thought was explained very ably by the Secretary of the Treasury over the weekend, is basically either an insurance policy that someone buys to make sure, if they are entering into a contract on a premise that they are going to make some money and they do not make money, they are protected—or it is a basic bet. They are basically betting on something that is going to occur, even if they do not have a personal interest in it.

Well, these derivatives got out of hand, so out of hand that there was a lot of gaming that went on. We try to clean this up. I, of course, am partial to the Chicago model, where in the Board of Trade and Mercantile Exchange we have had transparency and open-market dealing in derivatives for decades. I think that is the answer. Let's put this all out in front of the public so they know exactly what is going on. Stop the backroom deals on Wall Street.

The third thing is to create a consumer protection agency so average consumers across America have a fighting chance when banks and credit card companies dream up new ways to fleece us. It happens with regularity. We know it does. So this agency would be there to make sure these financial institutions are honest with consumers.

We do have agencies of government that make sure the toasters you buy do not explode in your kitchen. You expect as much, do you not, that some agency is going to make sure that product is safe? What about your mortgage? Should you not have the same peace of mind that when you walk out of the closing, you have not fallen into some trick or trap that is going to catch up with you later on?

Well, that is what we did. The Banking Committee had this financial regulatory reform bill. Senator DODD of Connecticut went to Senator SHELBY of Alabama, the ranking Republican, and

said: Let's make it bipartisan. He worked with Senator SHELBY for several months, and ultimately Senator SHELBY said: We cannot reach an agreement.

Then he sat down, Senator DODD did, with Senator CORKER of Tennessee, who just spoke. Senator CORKER is a man I respect very much. They tried to work together. They spent about a month at it. It led to nothing. So Senator DODD said: Well, at this point, we ought to move it to committee. Let's have the amendment process. Let's find out what this bill is going to look like. Let's have a debate. It was brought to the Banking Committee with over 400 amendments pending. The Republicans decided, at the committee, they would not offer one amendment to the bill.

Instead, the Republican ranking member said: Just vote it in or out. They voted, partisan rollcall. Democrats voted it out. It is now on the floor and will be up next in consideration.

The Republican minority leader, Senator MCCONNELL of Kentucky, comes to the floor last week and says: We are going to oppose the bill because it is another taxpayer bailout. He fails to mention that what has been built into the bill, with Republican input, is not a taxpayer bailout at all. It is says to the banks, which would be protected: You have to create your own liquidation fund so if you get in trouble, the taxpayers do not end up holding the bag.

This has to be bankers' money, not taxpayers' money. So if there is any bailout, it is a bailout of, by, and for bankers, for their institutions, so the taxpayers do not end up holding the bag, again.

So Senator MCCONNELL's characterization of what this bill does is not accurate. It charges up people to hear about another bailout, as we would expect. But it does not tell the story. Then comes a decision by the Republicans, 41 of them, to sign a letter to say they oppose this bill. They did not participate in creating it, they oppose it.

One of the Republican Senators said: That means we are going to vote against your even bringing it up. We are going to start a filibuster against this bill to try to stop it.

Well, I would ask my Republican colleagues, all 41 of them, to pause and reflect for a moment. When Senator MCCONNELL was selling to his Republican caucus tickets on this "pleasure cruise" to end financial reform, to end this reform of Wall Street, there were pretty calm seas. But last Friday something happened that changed the picture.

The Securities and Exchange Commission filed a civil action against Goldman Sachs and said they had been engaged in conduct which was literally reprehensible. They were basically misleading the people who were investing in their investment products and steering the business for an outcome.

It truly was the worst, at least the allegations of the complaint, are the worst in corporate greed at the Wall Street level. I would urge my colleagues on the Republican side to think twice about the letter you signed that said you do not want to be part of a reform effort. Most of America is fed up with what is going on, on Wall Street.

This latest action by the SEC is clear evidence of the problems. Those who signed the letter for this pleasure cruise trip have come onto some rough seas now with this SEC action. I would think, if they look closely at that ticket that they have for this pleasure cruise with Wall Street, they will find they are on the SS Titanic. They are about to hit an iceberg because the American people are fed up with what has happened on Wall Street: Taking taxpayers' money for a bailout, using the money for bonuses for CEOs who made these boneheaded mistakes, taking it out on investors and savers across America, and then saying to Congress: Whatever you do, our friends in Congress, do not let them change the laws and make it more difficult.

Well, the American people want us to have laws that will protect them in their investments, in their savings, that will guarantee transparency. They do not want us to continue down this path where we are allowing the financial institutions on Wall Street to engage in practices that are ultimately going to harm the economy. We do not want to see a rerun of this recession.

We need to move to this financial regulatory reform bill after we consider nominations, and I hope—I hope—a few of the Republican Senators who are genuinely committed to reform will not get on a pleasure cruise with Wall Street. We would rather have them roll up their sleeves and join us, going to work to bring real reform.

Mr. President, I yield the floor.

Mr. NELSON of Florida. Mr. President, will the Senator yield for a question?

Mr. DURBIN. I would be happy to yield.

Mr. NELSON of Florida. Would the Senator believe the latest iteration of objection by the other side to this Wall Street reform effort is what I heard this morning: that they now say this legislation should not be rushed through the Senate?

My question to the distinguished assistant majority leader is, How many months have we been working, and working in a bipartisan fashion, on this legislation?

Mr. DURBIN. I can say, to my knowledge, 6, 8 months—maybe longer—this has been in the process. It passed over in the House of Representatives. It came over here, and I know it has been under active consideration. We did have health care reform going. But I know Senator DODD and the Banking Committee, at least for the last several months, have been working with the Republicans trying to engage them in this process. So to say this is being

sprung on them without notice I do not think is accurate.

Mr. NELSON of Florida. Does it seem to the Senator—Mr. President, if I may continue a question—does it seem to the Senator there is something eerily symmetrical here in the way there is always the cry that it is being rushed through the Senate Chamber? Did we hear echoes of that over the course of the last year with regard to health care legislation?

Mr. DURBIN. In response through the Chair to the Senator from Florida, after the Senate in the HELP Committee adopted 150 Republican amendments to the health care bill, every single Republican on the committee voted against it. And you know what happened—the same, of course—in the Senate Finance Committee. And then the complaints were made that after 14 months of active consideration of this measure, we were somehow rushing it through.

It is the same story. It is the same script being played over and over. As I said—I do not know if the Senator from Florida was on the floor—the basic policy on the other side of the aisle is stall, stop, and kill. And this approach—saying no to everything, refusing to engage in even writing a bill—is not serving our Nation. There are things we need to do, and this is one of them.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent to speak for up to 15 minutes.

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

Mr. NELSON of Florida. Mr. President, I want to speak on this legislation as well, this legislation we are finding is strongly opposed by the Wall Street banks, which have fared so very well at taxpayers' expense and now do not want any kind of legislation that will call on them to have any kind of transparency and checks and balances on what has been an intolerable situation.

If this motion to proceed to the financial reform bill fails, obviously, it is going to be the American taxpayer who is going to suffer. When we get around to considering the motion to proceed, if it is denied, it will be a vote in favor of keeping the status quo. It will be a vote in favor of \$700 billion bailouts, reckless financial risk taking, and all the other problems that come with our current financial regulatory system.

Is anybody satisfied with what we have been through over the past couple of years? I do not think a vast majority of the American people are satisfied. To the contrary, I think they are outraged as to what they have seen on Wall Street and thus the need for Wall Street regulatory reform.

Last week, I had spoken on the need to reform compensation practices on Wall Street. I have put forth a specific proposal that would tie future tax deductions for huge executive compensation at big financial institutions to the

adoption of responsible performance-oriented compensation standards. What I have suggested are standards that have been developed already by the Federal Reserve System and the Financial Stability Board, which is the council of major central banks.

Some financial institutions have already begun to implement these standards. But we need them to apply to all those major financial institutions. It only takes one reckless and irresponsible institution to wreak havoc on our financial system. So by requiring the very largest banks to tie the pay of their highest paid executives to the long-term performance of that financial institution is sound, responsible reform we should be able to agree on. Remember, it has already been adopted by the Federal Reserve Board and the Financial Stability Board, which is the council of major central banks.

But today I want to address another important aspect of financial reform that is related to this complicated thing called derivatives regulation and energy speculation. Let's take derivatives. It is arcane. It is abstract. It is something folks do not understand. It is very difficult to understand. In essence, some of the examples I am going to give are—you can think of it as an insurance policy, a derivative. It is a derivation of normal financial instruments. Some derivatives provide companies with legitimate backup insurance. It is a way to hedge against the risk in the marketplace.

But the market for derivatives has gotten out of control. Many of those derivatives today are simply bets—basically gambling bets—between banks that do little if anything to benefit the Nation's economy. They help create financially speculative bubbles that increase prices, whether it is the prices at the gas pump or in the checkout line in the supermarket, but also the experience we have had that increases the prices in our housing market.

In the area of derivatives regulation, the Banking Committee bill creates some commonsense safeguards to improve accountability and transparency. Over the last two decades, much of the activity on Wall Street has moved away from traditional investment banking and asset management and into this speculation on derivatives trading. For example, in the 10-year period between 1998 and 2008, the value of outstanding derivatives grew from less than \$100 trillion to nearly \$600 trillion.

They can play an important function in managing risk, whether it is an interest rate, foreign exchange, or energy price risks. But when you allow investors to leverage all of their investment, derivatives allow speculators to take on much more risk with much less capital.

Because the trading of derivatives is largely conducted in unregulated, over-the-counter markets, the reckless speculative positions taken by companies such as AIG and others nearly brought

down the financial system. Because derivatives are used to speculate on all types of goods—not just securities—they can have significant consequences in other parts of the economy.

In early 2008, we saw the price of oil hit stratospheric heights, largely because of excessive speculation in oil and energy derivatives. There are a number of us in the Senate who have worked to close the so-called Enron loophole and clarify that energy derivatives should be traded on a regulated exchange and treated like other commodity derivatives.

The financial reform bill that is coming to the floor addresses problems in the derivatives marketplace by requiring that derivatives be traded through clearinghouses and public exchanges. It authorizes the Commodity Futures Trading Commission to establish speculative position limits on the amount of exposure that any one investor can take. For example, if you are going to be buying and selling these things on the exchanges, the person buying it—instead of turning right around and trading it—is going to have to buy and keep and hold a certain percentage of the acquisition.

These are important first steps. But the bill coming here from the committee should do more to protect the taxpayers, and it should do more to stop the excessive speculation that can drive up prices. Take, for example, gas prices. I am going to be offering an amendment to do just that. It is going to require that regulators set hard caps on the positions taken by energy traders. In other words, there would be only a certain amount they could buy of all that particular speculative product.

My amendment would eliminate the loopholes in the bill that will come to the floor that would allow these unwarranted exemptions from those limits. The amendment would require these limits be put in place by a date later this year.

I am concerned the committee bill coming to the floor retains current rules in the Bankruptcy Code that give the so-called counterparties in derivative contracts special, preferred treatment when a firm becomes insolvent. This special treatment ensures that Wall Street banks and other large traders are put at the front of the line over an insolvent firm's customers.

I want to give you an example. It was most apparent in late 2008 when billions of taxpayer dollars were given to AIG, which was deemed too large to fail. Then those taxpayer dollars in the bailout, through the TARP funds, actually flowed through to counterparties, which were people who had bought these derivatives like insurance policies, and they paid them off.

Goldman Sachs received \$13 billion from the taxpayers through the Federal bailout of AIG. Do you think that goes over well on American Main Street, when they see Wall Street having the Federal Government saving a firm like AIG and then it turns around

and pays off on those speculative derivatives—in this case, to Goldman Sachs for \$13 billion? That does not go over very well, and it is not fair.

We simply need to eliminate the special treatment Wall Street banks and other financial firms that hold large derivative positions receive in the bankruptcy and liquidation process.

I am going to offer an amendment to clarify that those derivative counterparties—such as that insurance policy for which I gave the example where AIG paid off Goldman Sachs—those kinds of speculative ventures are never again going to jump to the front of the line in the bankruptcy process—ahead of whom? Ahead of taxpayers and customers and other creditors.

It is time for us to move ahead with financial reform. So when we get around to whether we are even going to take up this bill, a vote against the motion to proceed to get to the bill is a vote against reform. It is a vote in favor of continued bailouts. The Banking Committee has produced a strong committee bill, and I hope here on the floor, with amendments, we will make it even stronger. I hope our colleagues will join us in this effort.

Mr. President, 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.

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

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

Mrs. FEINSTEIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. We are in executive session.

Mrs. FEINSTEIN. I will speak on the nominee at this time.

I come to the floor to support the nomination of Dr. Lael Brainard to be the next Under Secretary of the Treasury for International Affairs.

Before I proceed, let me say I have known Lael Brainard for some time. We participated together in a strategy group held by the Aspen Institute, I think, for more than a decade now. I found her to be very incisive and bright. Additionally, in the course of her work at the Brookings Institution's Global Economy and Development Program she has worked with my husband over a period of some 6 years now. He has gotten to know her well as well.

On March 23, 2009, President Obama nominated Dr. Brainard to be the Under Secretary of the Treasury for International Affairs. This is an especially important position in the executive branch, and never more so than during this very critical time for the domestic and global economies. Yet her nomination has languished for more than a year—another casualty of obstructionist behavior, I believe, from our colleagues across the aisle.

The Under Secretary position for which Dr. Brainard has been nominated

focuses on three primary objectives: First, fostering U.S. economic prosperity by pursuing international policies and programs that help strengthen and grow our very own economy, create job opportunities for Americans, and keep global markets open for American exports; second, ensuring U.S. economic stability by promoting the American economy and working to prevent and mitigate financial instability abroad; third, strengthening U.S. economic security by supporting the administration's foreign engagement through the multilateral development banks to manage global challenges.

The Treasury Department needs a qualified person such as Dr. Brainard in this vital leadership position—especially at a time when the Department is continuing its efforts to ensure economic growth, engage China on economic issues, and advance our global recovery agenda following the financial crisis.

As a matter of fact, the Secretary of the Treasury himself has called about this position simply to say how important it is that she get confirmed at this time. I had the privilege to talk to Senator KYL about it yesterday by phone, and I am hopeful this confirmation will take place this evening without further delay.

Let me speak for a few moments on her track record of service. I see her as a devoted public servant, someone who has spent most of her career serving our people. She has held several senior positions in the administration and in the nonprofit and academic sectors, including Deputy National Economic Adviser for President Clinton; Vice President and Founding Director of the Brookings Institution's Global Economy and Development Program, which is where my husband has worked with her for the 6 years, as I mentioned; and associate professor of applied economics at MIT's Sloan School.

She has also served as a White House fellow and a National Science Foundation fellow, among numerous other professional achievements.

In short, she is eminently qualified for this senior administration position for which she has been nominated.

Despite these excellent qualifications and her impressive resume, however, her nomination has languished in the Senate for more than a year. It is time to get it done this afternoon.

Dr. Brainard was nominated by President Obama on March 23 of last year. She was favorably reported by our colleagues in the Senate Finance Committee in December of last year. However, a hold was placed on her nomination, as well as that of two other senior Treasury nominees.

Many questions have been raised about her personal income tax returns, business partnerships, and the hiring of household employees, all of which are done jointly with her husband, Kurt Campbell. Mr. Campbell—whom I have also known because he participated in the same Aspen Strategy Group for

more than a decade—is currently the Assistant Secretary of State for East Asian and Pacific Affairs, a position to which he was unanimously confirmed on June 25, 2009. So the same questions were asked of him as were asked of Lael Brainard.

She has responded to questions in multiple rounds from majority and minority staff. She has answered every question asked of her and provided hundreds of pages of submissions in a forthcoming, honest, and direct manner. Clearly, at some point, there were some differences of opinion for some Members, but that has been settled, to the best of my knowledge. She submitted the same paperwork about taxes and the hiring of household employees as Mr. Campbell did during his confirmation, and during that time neither the Foreign Relations Committee nor any Member of the full Senate raised any concerns regarding this information.

As the United States is entering a particularly intense period of international engagements this spring and summer, I believe Dr. Brainard's confirmation is essential to ensuring effective U.S. policy coordination and implementation.

I wish to point out that she has broad bipartisan support, as well as the support of a multitude of nongovernmental organizations and businesses. She is supported by the U.S. Chamber of Commerce, the Business Roundtable, U.S. Council on International Business, Business Council for International Understanding, Council of the Americas, Coalition of Service Industries, the Emergency Committee for American Trade, the National Foreign Trade Council, and the National Association of Manufacturers.

In my opinion, she is a woman of strong common sense, integrity, credibility, and sound judgment. She is exceptionally well qualified, and I urge my colleagues to approve her nomination without further delay.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REED. Mr. President, I rise today in support of the nomination of Lael Brainard to be Under Secretary of the Treasury for International Affairs.

I know Lael personally. She is a renowned expert in international economics, a dedicated public servant, and is highly qualified for this important position. I had the privilege of working with her when she was a member of the Clinton administration as Deputy Assistant to the President for International Economics. Then she went on to be a vice president and founding director of the Brookings Institution's

Global Economy and Development Program and then an associate professor of applied economics at MIT's Sloan School.

She has extraordinary credentials and experience, but she is also, in addition to that, someone who has a wide ranging interest in international economics, international affairs, and international security policy.

She is someone I have known for many years, someone I respect immensely for her judgment, her maturity, and her dedication to not only the country but also to ensuring that our policy reflects our highest ideals, as well as advances our cause around the world.

She has been nominated for a very critical position. International economics is no longer a secondary concern. It is of primary concern, if it ever was a secondary concern. We are now approaching a time when our relationships with the world's economies are no longer one of the strong versus the many smaller economies. We are in a very competitive global economy, and we need this type of representation in the Department of the Treasury. We have to engage China, and no one is more thoughtful and better prepared to do that than Lael.

We have to stabilize this economy through this financial crisis which we are seeing not just in terms of private markets but the situation in Greece, the issues of sovereign debt. All of these cry out for an individual in the Department of Treasury who is not only well versed but also in place to do the work. Again, I can find no higher qualified candidate than Lael.

We have to expand export opportunities. The President has rightly called upon this country not only to begin to grow again but to direct our growth away from domestic consumption to export. We need someone in the international arena fighting for us, the United States. We need an individual who is responsible and accountable for that effort. Again, I cannot think of a more experienced, more dedicated, and more qualified individual than Lael.

We have been waiting, the Department of Treasury has been waiting, Lael Brainard has been waiting, since December 2009 for confirmation. That is a long time to put a high priority issue on the back burner.

What is ironic is it appears no one is challenging her experience, her credentials, her demeanor, her temperament—anything. She is collateral damage, if you will, in another dispute which is not one of the most significant and commendable parts of the process here. We all have issues with individual candidates, but after those issues are well ventilated and since December 2009—that is a long time—we have to take it to a vote up or down. I urge that her nomination move forward this evening. She is extraordinarily qualified, and she is someone who can take on the extraordinary challenges of this job.

Frankly, right now we have wasted months and months through this process where we could have had the very best person available focus on the international competitiveness of the United States, and I think our constituents demand it.

Mr. KERRY. Mr. President, I urge my colleagues to support the nomination of Dr. Lael Brainard to be Under Secretary of the Treasury for International Affairs. This is a vital role and it is important that we fill this position during this time of immense global challenges. The filling of this position is long overdue. Dr. Brainard is highly qualified and we are fortunate that a candidate of her quality is willing to serve.

The Under Secretary for International Affairs is critical to the administration's efforts to engage China on economic issues, stabilize the global economy following the financial crisis, expand export opportunities, and pursue reforms and effective U.S. investments in the multilateral development banks.

Dr. Brainard attended Wesleyan University before receiving a Master's and Doctorate in Economics from Harvard University. She is the recipient of a White House Fellowship and Council on Foreign Relations Fellowship. During the Clinton administration, Dr. Brainard served as Deputy National Economic Adviser and chair of the Deputy Secretaries Committee on International Economics. Prior to joining the Clinton administration, she was an associate professor at the MIT Sloan School. She currently serves as vice president and founding director of the Global Economy and Development Program at the Brookings Institution.

During her tenure with the Clinton administration, Dr. Brainard faced global economic challenges, including the Asian finance crisis, the Mexican financial crisis, and China's entry to the World Trade Organization. She helped shape the 2000 G8 Development Summit that for the first time included leaders of the poorest nations and laid foundations for the Global Fund to fight AIDS, TB, and malaria.

Over the years, Dr. Brainard has written extensively on international economic issues. In recent years, she has focused on the links between U.S. competitiveness and climate change policy. As we address climate change issues, it will be helpful to have someone with her knowledge as part of our team.

President Obama nominated Dr. Brainard back in March and I appreciate her patience with the process. I look forward to working with Dr. Brainard to address the international economic challenges that we face.

Mr. LEAHY. Mr. President, the majority leader has taken a significant step to address the crisis created by Senate Republican obstruction of President Obama's highly qualified nominations and the Senate's advice and consent responsibilities. Regret-

tably, Republican obstruction has made it necessary for the majority leader to file cloture to bring an end to Republican filibusters and allow the Senate to consider at least some of the long-stalled nominations languishing on the Senate's Executive Calendar.

In a dramatic departure from the Senate's traditional practice of prompt and routine consideration of non-controversial nominations, Senate Republicans have refused for month after month to join agreements to consider, debate and vote on nominations. Their practices have obstructed Senate action and led to the backlog of over 80 nominations now stalled before the Senate, awaiting final action. The American people should understand that these are all nominations favorably reported by the committees of jurisdiction. Most are nominations that were reported without opposition or with a small minority of negative votes. Regrettably, this has been an ongoing Republican strategy and practice during President Obama's presidency.

Twenty-five of those stalled nominations are to fill vacancies in the Federal courts. They have been waiting for Senate action since being favorably reported by the Senate Judiciary Committee as long ago as last November. Those 25 judicial nominations are more than the 18 Federal circuit and district court nominees that Republicans have allowed the Senate to consider and act upon during President Obama's administration.

To put this in perspective, by this date during George W. Bush's Presidency, the Senate had confirmed 45 Federal circuit and district court judges. President Obama began sending the Senate judicial nominations 2 months earlier than President Bush did, and still only 18 Federal circuit and district court confirmations have been allowed. If we had acted on the additional 25 judicial nominations reported favorably by the Senate Judiciary Committee but on which Senate Republicans are preventing Senate action, we would have made comparable progress. As it stands we are 60 percent behind what we achieved by this time in President Bush's first term.

Republicans continue to stand in the way of these nominations, despite vacancies that have skyrocketed to over 100, more than 40 of which are "judicial emergencies." Caseloads and backlogs continue to grow while vacancies are left open longer and longer. On this date in President Bush's first term, the Senate had confirmed 45 Federal district and circuit court judges; there were just 7 judicial nominations on the calendar, and all 7 were confirmed within 12 days. That was normal order for the Democratic Senate majority considering President Bush's nominations. Circuit court nominations by this date in his first term waited an average of less than a week to be confirmed. By contrast, currently stalled by Senate Republicans are circuit

court nominees reported back in November and December of last year. The seven circuit court nominees the Senate has been allowed to consider so far have waited an average of 124 days reported to be considered and confirmed after being favorably—more than 4 months compared to less than 1 week for President Bush's nominees—and those delays are increasing.

In the 17 months in 2001 and 2002 that I chaired the Judiciary Committee, the Senate confirmed 100 of President Bush's judicial nominations. In stark contrast, to date, the Senate has only been allowed to act on 18 circuit and district court nominations. Twenty-two of the 25 nominations pending on the calendar have been pending for more than a month. Eighteen were reported by the Judiciary Committee without dissent—without a single negative vote from any Republican member. Still they wait.

Republican obstruction has the Senate on a sorry pace to confirm fewer than 30 judicial nominees during this Congress. Last year, only 12 circuit and district court judges were confirmed. The lowest total in more than 50 years. We have to do far more to address this growing crisis of unfilled judicial vacancies.

It has been almost 5 months since I began publicly urging the Senate Republican leadership to abandon its strategy of obstruction and delay of the President's judicial nominees. But we have not considered a judicial nomination since March 17, when we finally confirmed the nomination of Rogerie Thompson of Rhode Island to the First Circuit. Even though Judge Thompson had two decades of experience on her State's courts, and her nomination was reported by the Senate Judiciary Committee without a single dissenting vote, it stalled on the Senate Executive Calendar for nearly 2 months before she was unanimously confirmed, 98-0. There was no reason or explanation given by Senate Republicans for their unwillingness to proceed earlier.

Before that vote, the majority leader was required to file cloture on the nomination of Barbara Keenan of Virginia to the Fourth Circuit. Judge Keenan's nomination was stalled for 4 months. After the time consuming process of cloture, her nomination was approved 99 to zero. There was no reason or explanation given by Senate Republicans for their unwillingness to proceed earlier or for the filibuster of that nominee either.

Similarly, there has yet to be an explanation for why the majority leader was required to file cloture to consider the nominations of Judge Thomas Vanaskie to the Third Circuit and Judge Denny Chin to the Second Circuit, both widely respected, long-serving district court judges. Judge Vanaskie has served for more than 15 years on the Middle District of Pennsylvania, and Judge Chin has served for 16 years on the Southern District of New York. Both nominees have mainstream records, and both were reported

by the Judiciary Committee last year with bipartisan support. Judge Chin, who was the first Asian Pacific American appointed as a Federal district court judge outside the Ninth Circuit, and who, if confirmed, would be the only active Asian-Pacific American judge to serve on a Federal appellate court, was reported by the committee unanimously.

The majority leader has also filed cloture to end the extended Republican effort to prevent Senate consideration of the nomination of Professor Chris Schroeder to lead the Office of Legal Policy at the Justice Department. Professor Schroeder was first nominated by President Obama on June 4, 2009. He appeared before the Senate Judiciary Committee last June, and was reported favorably in July by voice vote, with no dissent. His nomination then languished on the Senate's Executive Calendar for nearly 5 months, with not a single explanation of the delay. Then, as the year drew to a close, Republican Senators objected to carrying over Professor Schroeder's nomination into the new session, and it was returned to the President without action, forcing the process to begin all over again. President Obama renominated Professor Schroeder early this year, and his nomination was reconsidered and re-reported by the Judiciary Committee with Republican support. A scholar and public servant who has served with distinction on the staff of the Senate Judiciary Committee and in the Justice Department, Professor Schroeder has support across the political spectrum.

Democrats treated President Bush's nominations to run the Office of Legal Policy much more fairly than Republicans are treating President Obama's nominee, confirming all four nominees to lead that office quickly. We confirmed President Bush's first nominee to that post by a vote of 96 to 1 just 1 month after he was nominated, and only a week after his nomination was reported by the Judiciary Committee. In contrast, Professor Schroeder's nomination has been pending since last June and will require cloture to be invoked before the Senate can finally have an up-or-down vote.

The majority leader has also filed cloture to end the obstruction of the longest-pending judicial nomination on the Executive Calendar, that of Marisa Demeo to the District of Columbia Superior Court. Her nomination has been blocked since it was reported by the Homeland Security and Governmental Affairs Committee in May 2009. This sort of obstruction of a DC Superior Court nomination is unprecedented. These nominations for 15-year terms on the District's trial court are not usually controversial. The nomination of Magistrate Judge Demeo, an experienced former prosecutor and Justice Department veteran who is the second Hispanic woman nominated to this court, is one I strongly support. I know Judge Demeo and have known her for years. The chief judge of the Superior

Court, Lee Satterfield, has written several times to the majority and minority leaders about the "dire situation" created by vacancies on that court for administration of justice in Washington, DC, our Nation's Capital. As usual, the cost of Republican obstruction is borne by the American people.

Not long after President Obama was sworn in, Senate Republicans signaled their strategy of obstruction, threatening to filibuster his nominations before he had made a single one, in their letter of March 2, 2009. The stated basis for their threat was to ensure consultation with home State Senators. President Obama has consulted with home state Senators of both parties, yet Senate Republicans filibustered the very first of President Obama's judicial nominations, the nomination of Judge David Hamilton of Indiana to the Seventh Circuit, despite such consultation. The Senate had to invoke cloture to consider Judge Hamilton's nomination, even though he was a well-respected district court judge supported of Senator LUGAR, the longest-serving Republican in the Senate, with whom President Obama consulted before making the nomination.

Senate Republicans have ratcheted up their bad practices from the 1990s when they pocket filibustered more than 60 of President Clinton's judicial nominations, creating a vacancies crisis on the Federal bench.

Democrats did not do the same to President Bush's nominees. I followed through on my commitment to treat them more fairly. I worked hard in 2001 and 2002, even after the 9/11 attacks and the anthrax attacks, holding hearings, including during Senate recess periods, in order to swiftly consider President Bush's nominees. That is why the Senate confirmed 100 of his judicial nominees by the end of 2002. Democrats only refused to rubber stamp a handful of the most extreme, ideological and divisive of President Bush's nominees.

During the Bush Presidency Senate Republicans contended that filibusters of judicial nominations were "unconstitutional." Now that President Obama is in the White House, Senate Republicans have filibustered the nomination of Judge David Hamilton, and Judge Barbara Keenan, who was then confirmed unanimously. The same Republican Senators who recently threatened to blow up the Senate unless every nominee received an up-or-down vote are now engaged in another attempt to abuse the rules of the Senate and undermine the democratic process. Republican Senators who just a few years ago insisted that "elections have consequences" have now made the use of filibusters, holds, and excessive procedural delays the new normal in the Senate. They seem intent on continuing their destructive practices.

It is regrettable that the majority leader has to file cloture on these mainstream nominations today, just to allow the Senate to hold the up-or-down votes that Republican Senators

once demanded for the most extreme and ideological nominees of a Republican President. I thank him for doing so, and look forward to the confirmation of these nominees.

I yield the floor. 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. INOUE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

CLOTURE MOTION

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Lael Brainard, of the District of Columbia, to be an Under Secretary of the Treasury.

Harry Reid, Patrick J. Leahy, Sheldon Whitehouse, Joseph I. Lieberman, Sherrod Brown, Richard J. Durbin, Daniel K. Inouye, Tom Harkin, Amy Klobuchar, Roland W. Burris, John D. Rockefeller, IV, Jon Tester, Christopher J. Dodd, Byron L. Dorgan, Al Franken, Claire McCaskill, Benjamin L. Cardin.

The PRESIDING OFFICER. By unanimous consent the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the nomination of Lael Brainard, of the District of Columbia, to be an Under Secretary of the Treasury shall be brought to close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) and the Senator from Iowa (Mr. HARKIN) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Oklahoma (Mr. COBURN), and the Senator from Texas (Mrs. HUTCHISON).

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

The yeas and nays resulted—yeas 84, nays 10, as follows:

[Rollcall Vote No. 118 Ex.]

YEAS—84

Akaka	Burris	Dodd
Alexander	Byrd	Dorgan
Baucus	Cantwell	Durbin
Bayh	Cardin	Feingold
Begich	Carper	Feinstein
Bennet	Casey	Franken
Bingaman	Cochran	Gillibrand
Bond	Collins	Graham
Brown (MA)	Conrad	Grassley
Brown (OH)	Corker	Gregg
Burr	Crapo	Hagan

Hatch	Lugar	Schumer
Inouye	McCain	Sessions
Isakson	McCaskill	Shaheen
Johanns	McConnell	Shelby
Johnson	Menendez	Snowe
Kaufman	Merkley	Specter
Kerry	Mikulski	Stabenow
Klobuchar	Murkowski	Tester
Kohl	Murray	Thune
Kyl	Nelson (NE)	Udall (CO)
Landrieu	Nelson (FL)	Udall (NM)
Lautenberg	Pryor	Voivovich
Leahy	Reed	Warner
LeMieux	Reid	Webb
Levin	Risch	Whitehouse
Lieberman	Rockefeller	Wicker
Lincoln	Sanders	Wyden

NAYS—10

Barrasso	DeMint	Roberts
Brownback	Ensign	Vitter
Bunning	Enzi	
Cornyn	Inhofe	

NOT VOTING—6

Bennett	Chambliss	Harkin
Boxer	Coburn	Hutchison

The PRESIDING OFFICER. On this vote, the yeas are 84, the nays are 10. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. NELSON of Florida. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KAUFMAN. 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. KAUFMAN. Madam President, I ask unanimous consent to speak as in morning business.

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

RULE OF LAW AND WALL STREET

Mr. KAUFMAN. Madam President, as we continue to learn more facts from various investigations into the 2008 financial meltdown, a certain picture is becoming increasingly clear. Like a jigsaw puzzle slowly taking shape, we can begin to see the outlines of many of the causes of the crisis—and the solutions they demand. In my view, it is a picture of Wall Street banks and institutions that have grown too large and complex and that suffer from irreconcilable conflicts between the services they provide for their customers and the transactions they engage in for themselves. It is also a picture of management that either knew about the lack of financial controls and outright fraud at the very core of these institutions or was grossly incompetent because it did not. And the picture includes regulators who failed miserably as well, due to malfeasance or incompetence or some combination of both.

Until Congress breaks these gigantic institutions into manageably sized banks and draws hard, clear lines for regulators to ensure that effective controls remain in place, we will have done neither that which is necessary to restore the rule of law on Wall Street nor that which will ensure that another financial crisis does not soon happen again.

What have we learned in just the past 5 weeks?

On March 15, I came to the Senate floor to discuss the bankruptcy examiner's report on Lehman Brothers and said, as many of us have suspected all along, that there was fraud—fraud—at the heart of the financial crisis. The examiner's report exposed the so-called Repo 105 transactions and what appears to have been outright fraud by Lehman Brothers, its management, and its accounting firm, which all conspired to hide \$50 billion in liabilities at quarter's end to "window dress" its balance sheet and mislead investors. And this practice does not appear to be unique to Lehman Brothers.

I went further and noted that questions were being raised in Europe about whether Goldman Sachs had an improper conflict of interest when it underwrote billions of Euros in bonds for Greece. The questions being raised include whether some of these bond-offering documents disclosed the true nature of these swaps to investors and, if not, whether the failure to do so was material.

Last week, we learned about more alleged fraud at the heart of the financial crisis. On Friday, the Securities and Exchange Commission filed charges against Goldman Sachs and one of its traders for alleged fraud in the structuring and marketing of collateralized debt obligations tied to subprime mortgages. Goldman allegedly defrauded investors by failing to disclose conflicts of interest in the design and structure of these collateralized debt obligations. The SEC says this alleged fraud cost investors more than \$1 billion.

While I will not prejudice the merits of the case, the SEC's complaint alleges that Goldman Sachs failed to disclose to investors vital information about the CDO, in particular the role that a major hedge fund played in the portfolio selection process and that the hedge fund had taken a short position against the CDO.

Robert Khuzami, Director of the SEC Division of Enforcement, said:

Goldman wrongly permitted a client that was betting against the mortgage market to heavily influence which mortgage securities to include in an investment portfolio, while telling other investors that the securities were selected by an independent, objective third party.

Kenneth Lench, chief of the SEC's Structured and New Products Unit, added:

The SEC continues to investigate the practices of investment banks and others involved in the securitization of complex financial products tied to the U.S. housing market as it was beginning to show signs of distress.

Goldman Sachs has denied any wrongdoing and has said it will defend the transaction.

This particular case involving Goldman Sachs was almost certainly not unique. Instead, it was emblematic of problems that occurred throughout the securitization market.

Late last month, Bob Ivry and Jody Shenn of Bloomberg News wrote about

the conflicts of interest present in the management of CDOs, a topic also discussed at length in Michael Lewis's book "The Big Short." The SEC should pursue other instances of conflicts of interest in the CDO market that led to a failure to disclose material information.

Last year, Senators LEAHY, GRASSLEY, and I, along with many others in the Congress, worked to pass the bipartisan Fraud Enforcement and Recovery Act so that our law enforcement officials would have additional resources to target and uncover any financial fraud that was a cause of the great financial crisis. However long it takes, whatever resources the SEC needs, Congress should continue to back the SEC and the Justice Department in their efforts to uncover and prosecute wrongdoing.

I applaud SEC Chairman Mary Schapiro and especially Rob Khuzami and the team he has reshaped in the Enforcement Division. They deserve our steadfast support as the leadership of the SEC continues its historic mission of revitalizing that institution and making it clear to all on Wall Street that there is a new cop on the beat.

Also last week, our colleague, chairman CARL LEVIN, ranking member TOM COBURN, and the staff of the Permanent Subcommittee on Investigations began a series of hearings on the causes of the financial crisis. It is a testament to the professionalism and dedication of Chairman LEVIN that he has brought the subcommittee's resources to bear in such an effective and thorough manner. I also commend ranking member TOM COBURN for his dedication and effort as a partner in this effort. Chairman LEVIN and the subcommittee staff deserve credit and our deep appreciation for the work they have put into this series of hearings on Wall Street and the financial crisis.

Since November 2008, subcommittee investigators have gathered millions—millions—of pages of documents, conducted over 100 interviews and depositions, and consulted with dozens of experts. It is truly a mammoth undertaking, and the fruits of their labor were evident in last week's two hearings on Washington Mutual Bank. I look forward to the subcommittee's remaining two hearings on this subject, including this Friday's hearing on the role of the credit rating agencies. I commend this hearing to all my colleagues.

The Levin hearings deserve comparison to the legendary Pecora investigations of the 1930s, which were held by the Senate Committee on Banking and Currency to investigate the causes of the Wall Street crash of 1929. The name refers to the fourth and final chief counsel for the investigation, Ferdinand Pecora, an assistant district attorney for New York County. As chief counsel, Pecora personally examined many high-profile witnesses who included some of the Nation's most influential bankers and stockbrokers. The

investigation uncovered a wide range of abusive practices on the part of banks and bank affiliates. These included a variety of conflicts of interest, such as the underwriting of unsound securities in order to pay off bad bank loans as well as “pool operations” to support the price of bank stocks.

The Pecora hearings galvanized broad public support for new banking and securities laws. As a result of the Pecora investigation’s findings, the Congress passed the Glass-Steagall Banking Act of 1933 to separate commercial and investment banking; the Securities Act of 1933 to set penalties for filing false information about stock offerings; and the Securities Exchange Act of 1934, which formed the Securities and Exchange Commission, to regulate the stock exchanges. Thanks to the legacy of the Pecora Commission hearings and subsequent legislation, the American financial institution rested on a sound regulatory foundation for over half a century; that is, until we began the folly of dismantling it.

The Levin hearings have shined a much needed spotlight on the role of potential outright fraud by financial actors as well as the incompetence and complicity of bank regulators in the financial crisis. There is no better example of the danger that fraud and lax regulation poses to our financial system than the collapse of Washington Mutual Bank, known as WaMu.

Far too often, the failure of institutions such as Washington Mutual is blamed on high-risk business strategies. It kind of sounds all right, doesn’t it? While such strategies are clearly part of the problem, they should not be used to mask other causes such as fraud and malfeasance which played a significant role in the collapse of WaMu. Evidence developed by the subcommittee demonstrates that WaMu officials tolerated, if not outright encouraged, fraud as a byproduct of promoting a dramatic expansion of loan volume.

The most blatant example of WaMu’s culture of fraud was its widespread use of what are called stated income loans. Stated income loans is a practice of lending qualified borrowers loans without independent verification of what they state their income is. Listen to this. This is unbelievable. Approximately 90 percent of WaMu’s home equity loans, 73 percent of its option ARMs, and 50 percent of its subprime loans were stated income loans. You go to the bank, you walk in, they say: Ted, what is your income? You say what it is, and that is it. Based on that, you can get 90 percent of WaMu’s home equity loans, 73 percent of its option ARMs, and 50 percent of its subprime loans—stated income loans. As Treasury Department inspector general Eric Thorson said last week, WaMu’s predominant mix of stated income loans created a “target rich environment” for fraud.

Because WaMu made these stated income loans with the intent to resell

them into the secondary market, there was less concern whether borrowers would ever be able to repay them. WaMu created a compensation system that rewarded employees with higher commissions for selling the very riskiest of loans. In 2005, WaMu adopted what it called its high-risk lending strategy because those loans were so profitable. In order to implement this strategy, it coached its sales branch to embrace “the power of yes.” The message was clear. As one industry analyst has said: “If you were alive, they would give you a loan . . . if you were dead, they would give you a loan.”

That this culture led to fraud on a massive scale should have surprised no one. An internal review by one southern California loan officer revealed that 83 percent of loans contained instances of confirmed fraud. In another office, 58 percent of loans were considered to be fraudulent. What did WaMu management do when it became clear that fraud rates were rising as house prices began to fall? What did they do? Rather than curb its reckless business practices, it decided to try to sell a higher proportion of these risky, fraud-tainted mortgages into the secondary market, thereby locking in a profit for itself even as it spread further contagion into our capital markets.

In order for WaMu and institutions similar to it to sell these low-quality loans to the secondary market, they need a AAA rating from credit rating agencies. So what did these institutions do? They gamed the system and manipulated the agencies by engaging in a practice called barbell. Apparently, the credit rating agencies did not examine individual FICO scores when rating mortgage-backed securities and instead relied on average FICO scores. As revealed at the hearing by a WaMu risk officer and detailed in Michael Lewis’s book “The Big Short,” lenders could create the requisite average score by pairing loans whose borrowers had relatively high scores with borrowers whose scores were far lower and would normally warrant a loan, which is the reason why it is called barbell. So if the raters wanted an average FICO score of 615, a lender could compare scores of 680 with scores of 550, even though borrowers with scores of 550 were almost certain to default on the loan. This barbell effect satisfied the rating agencies, even though half the loans, in many cases, had little chance of success. At the hearing, WaMu’s CEO, Kerry Killinger, effectively admitted to barbell by saying “I don’t have the barbell numbers in front of me.”

To make matters worse, WaMu scored high FICO scores by seeking out borrowers with short credit histories. Such borrowers often have high FICO scores, even though they have not demonstrated the ability to take on and pay off large debts over time. These borrowers are called “thin file” borrowers. According to a report in the New York Times, WaMu encouraged

thin file loans, even circulating a flier to sales agents that said “a thin file is a good file.” The book “The Big Short” even discusses a Mexican strawberry picker with an income of \$14,000 and no English who was ostensibly given a \$724,000 mortgage on the basis of his thin file.

Plainly, the Office of Thrift Supervision failed miserably in its responsibility to regulate WaMu and to protect the public from the consequences of WaMu’s excessive and unwarranted risk-taking, including the toleration of widespread fraud. Although WaMu comprised fully 25 percent of OTS’s regulatory portfolio, OTS adopted a laissez faire regulatory attitude at WaMu. Although line bank examiners identified the high prevalence of fraud and weak internal controls at WaMu, OTS did virtually nothing to address the situation. In fact, OTS advocated for WaMu, among other regulators, and even actively thwarted an FDIC investigation into WaMu during 2007 and 2008. The complete abdication of regulatory responsibility by OTS may find sad explanation in the fact that OTS was dependent on WaMu’s user fees for 12 to 15 percent of its budget.

The regulatory failures at OTS were not unique. The overall regulatory environment at the time was extremely deferential to the market based on the widespread but faulty assumption that markets can and will effectively self-regulate. Self-regulate. At last Friday’s hearing, the testimony of the inspector general at the Department of the Treasury was particularly noteworthy. He said bank regulators:

. . . hesitate to take any action, whether it’s because they get too close after so many years or they’re just hesitant or maybe the amount of fees enter into it . . . I don’t know. But whatever it is, this is not unique to WaMu and it is not unique to OTS.

Let me repeat. It was the conclusion of our Treasury Department’s inspector general that the failure of regulators to harness the lawless nature of conflicted institutions was not unique to Washington Mutual or to the Office of Thrift Supervision.

I have said it before and I will say it again: It is time we return the rule of law to Wall Street, where it has been seriously eroded by the deregulatory mindset that captured our regulatory agencies over the past 30 years. We became enamored of the view that self-regulation was adequate, that enlightened self-interest would motivate counterparties to undertake stronger and better forms of due diligence than any regulator could perform, and that market fundamentalism would lead to the best outcomes for the most people. Some people even say that today. They say transparency and vigorous oversight by outside accountants is supposed to help our financial system—keep our financial system credible and sound. The allure of deregulation led us instead to the biggest financial crisis since 1929 and to former Federal Reserve Chairman Alan Greenspan’s

frank admission that he was “deeply dismayed” that the premise of enlightened self-interest had failed to work. Now we are learning, not surprisingly, that fraud and lawlessness were key ingredients in the collapse as well.

As we turn to financial regulatory reform, we must remember that effective regulation requires not only motivated and competent regulators but also clear lines drawn by Congress. Based on what we have learned, what must we do?

First, we must undo the damage done by decades of deregulation. That damage includes financial institutions that are too big to manage and too big to regulate—as former FDIC Chairman Bill Isaac has called them: too big to manage, too big to regulate. It also includes a Wild West attitude on Wall Street, in which conflict of interests are rampant and lead to fraudulent behavior as well as colossal failures by accountants and lawyers who misunderstand or disregard their role as gatekeepers. The rule of law depends, in part, on having manageably sized institutions, participants interested in following the law, and gatekeepers motivated by more than a paycheck from their clients.

That is why I believe we must separate commercial banking from investment banking activities, restoring a modern version of the Glass-Steagall Act to end the conflicts of interest at the heart of the financial speculation undertaken by mega banks that are too big to fail. We further should limit the size of bank and nonbank institutions, something Senator SHERROD BROWN and I proposed in legislation we intend to introduce this Wednesday. Otherwise, we will continue to bear these mega banks’ claims that they are merely market makers and no one who deals with them should trust whether the very creator of a financial product they sell is secretly betting against its success.

Second, we must help regulators and other gatekeepers not only by demanding transparency but also by providing clear, enforceable rules of the road wherever possible. One clear lesson of the Goldman allegations is, we need greater transparency and disclosure of counterparty positions in the over-the-counter derivatives market. We should mandate that derivatives are traded on an exchange or at least essentially cleared. The rare exemption should carry with it a reporting requirement so that all counterparties understand the positions being taken by other clients of the dealer firm.

Clearly, we need to fix a broken securitization market. No market, regardless of how sophisticated its participants, can function without proper transparency and disclosure. While I am pleased that the current reform bill would direct the SEC to issue rules requiring greater disclosure regarding the underlying loans in an asset-backed security, I believe we must go further still. Requirements for disclo-

sure should not merely begin and end at issuance. Instead, disclosure should be automated, standardized, and updated on a timely basis. This will provide investors with relevant information on the performance of the loans, their compliance with relevant laws—fraudulent origination, for example, is generally uncovered after the fact—and the replacement of new collateral. This information should empower investors and countervail the malfeasance of issuers looking to adversely select dodgy collateral that they are also shorting on the side. Moreover, such real-time monitoring by investors would also have beneficial effects further up the securitization supply chain. If originators know they can’t get away with selling fraudulent or poorly underwritten loans, they will also be forced to improve their standards.

While not a silver bullet, I am also generally supportive of requirements that those who originate and securitize loans retain risk by keeping some percentage on their very own balance sheets. WaMu, for example, developed, in Senator LEVIN’s words, a “conveyor belt” that originated, packaged, and dumped toxic mortgage products downstream to unsuspecting investors. Their lack of “skin in the game” allowed them to make a mockery of the originate-to-distribute model. While Bear Stearns, Lehman Brothers, and other firms faltered due to their excessive retention of risk, this basic requirement will better align the interests of originators and securitizers with those of investors.

Moreover, a clear lesson of the Levin hearings is that Congress must ban the widespread issuance of stated income loans.

I understand Senator LEVIN is developing further reform proposals based on his conclusions from the hearings.

Third, we must concentrate law enforcement and regulatory resources on restoring the rule of law to Wall Street. We must treat financial crimes with the same gravity as other crimes because the price of inaction and a failure to deter future misconduct is enormous. That is why I’m pleased the SEC is turning the page on its recent history and sending a message throughout Wall Street: fraud will not pay.

Madam President, last week’s revelations about Washington Mutual and Goldman Sachs reinforce what I’ve been saying for some time. Deregulation was based on the view that rational actors would operate in their own self-interest within a framework of law. But even with the most rigorous regulators, it is impossible to trace the financial self-interest of convoluted financial conglomerates, much less constrict their behavior before it runs afoul of the law. WaMu made loans they knew could not be paid back. Goldman Sachs allegedly permitted clients to take secret positions against the very financial products that it had created.

The picture being revealed by the jigsaw puzzle of multiple investigations is

now emerging clearly in my eyes. These financial institutions are too big and conflicted to manage, too big and conflicted to regulate, and too big to fail. Even Alan Greenspan has said about our current predicament: “If they’re too big to fail, they’re too big.”

Our country took a giant step backwards during the last financial crisis, upending the dream of home ownership for millions of Americans, and throwing millions of people out of work as well. The credibility of our markets, one of the pillars of our economic success, was badly damaged. It must be restored. There must be structural and substantive change to Wall Street, where bankers must resume their central role of efficiently allocating capital, not taking bets in opaque markets that no one can understand.

The solution is clear. We must split up our largest financial institutions into more manageable entities; we must separate their component parts so they are no longer inherently conflicted and so they can be properly regulated. Only then, if necessary, can they be allowed to fail without sending our entire economy to the precipice of disaster.

I yield the floor and 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.

Mr. DURBIN. Madam President, I ask unanimous consent that any recess, adjournment, or period of morning business count postcloture; that following a period of morning business on Tuesday, April 20, the Senate resume executive session, and that the time until 12 noon be equally divided and controlled between Senators BAUCUS and GRASSLEY or their designees, with Senator BUNNING controlling 15 minutes of the time under the control of Senator GRASSLEY; that at 12 noon, all postcloture time be considered expired, and the Senate then proceed to a vote on confirmation of the nomination of Lael Brainard to be Under Secretary of the Treasury; that upon confirmation, the motion to reconsider be considered made and laid upon the table, and no further motions be in order; that the President be immediately notified of the Senate’s action; that the Senate then stand in recess until 2:15 p.m.; that upon reconvening at 2:15 p.m., the Senate proceed to Calendar No. 165, the nomination of Marisa Demeo, to be associate judge of the DC Superior Court; that there be up to 6 hours of debate with respect to the nomination, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nomination; that upon confirmation the motion to reconsider be considered made and laid

upon the table; no further motions to be in order and the President be immediately notified of the Senate's action; that the cloture motion with respect to the nomination be withdrawn; that upon confirmation of the Demeo nomination, the Senate then proceed to Calendar No. 333, the nomination of Stuart Nash to be an associate judge of the DC Superior Court, and immediately vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be considered made and laid upon the table, and the President be immediately notified of the Senate's action with respect to Calendar No. 333.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MORNING BUSINESS

Mr. DURBIN. Madam President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

TRIBUTE TO FLORENCE McCLURE

Mr. REID. Madam President, I rise today to honor one of Nevada's greatest champions and advocates for victims throughout my home State. In her living room in Las Vegas, NV, in 1974, Florence McClure cofounded Community Action Against Rape, CAAR, with Sandi Petta. Thirty-five years later, CAAR has become the Rape Crisis Center, the largest sexual assault center in Nevada, serving all of Nevada.

Florence McClure moved to Las Vegas, NV, in 1966. She was instrumental in the opening of the Frontier Hotel. While making the hotel into a major resort on the Las Vegas Strip, Florence made history as a female executive in the casino industry. She also joined the Las Vegas Chapter of the League of Women Voters and other women's groups in 1967. She returned to college and obtained her bachelor's degree from UNLV in 1971.

Florence became a tireless advocate for victims of sexual assault. As the director of CAAR for 12 years, she was instrumental in forcing improvements and system changes in the way sexual assault victims were treated. Not one to shy away from confrontation, Florence worked most often one-on-one with judges, law enforcement officers, and medical personnel to increase the ability of a victim to recover and to be successful in court by providing better care, counseling, evidence collection, support, and privacy for victims.

Florence McClure did not stop there. In the 1980s she turned her energy to advocating for a women's prison in Las Vegas instead of in a rural setting, so the incarcerated women could be closer to their children for visitation. She lobbied for improved programs within the prisons. Today that facility carries her name.

On April 30, 2010, we honor "Hurricane" Florence McClure for her outspoken, courageous, life-changing advocacy for the rights of victims of rape and sexual assault. Her efforts have made Nevada a better, stronger home for women and children.

HONORING OUR ARMED FORCES

LANCE CORPORAL TYLER GRIFFIN

Mr. DODD. Madam President, I rise with a heavy heart today to mark the passing of Marine LCpl Tyler Griffin.

Lance Corporal Griffin was just 19 years old when he died serving our country in Afghanistan. He was born and raised in Voluntown, a small, close-knit community of just 2,600 in eastern Connecticut that today is struggling with the loss of one of its finest young citizens.

He graduated from Griswold High School, where he played on the football team, and attended the Voluntown Baptist Church. Athletic and intelligent, he could have devoted himself to any career, but chose to serve his country with great pride.

Neighbors recall him as a community fixture who always had time for younger kids. One says that they always knew when Tyler was home on leave, because a Marine Corps flag would fly proudly at his house. His friends and neighbors remember him not only for the example he provided through his selfless service, but also for his kind manner and friendly demeanor.

He was the product of a community that took great pride in their courageous marine. Bill Martin lives next door to Lance Corporal Griffin's mother and stepfather. He told the New London Day that he would often see Lance Corporal Griffin running around the neighborhood, getting in shape for basic training. "We'd see him out there on Route 49," Martin said. "He'd always wave."

In short, Lance Corporal Griffin was everything you would raise your son to be. I join his family, his neighbors in Voluntown, and all Americans in deep appreciation for his service and mourning for his loss.

REMEMBRANCE OF VICTIMS AND SURVIVORS OF TERRORISM

Mr. AKAKA. Madam President, I rise today in honor of National Day of Service and Remembrance for Victims and Survivors of Terrorism. Today marks the 15th anniversary of the Oklahoma City bombing, one of the deadliest acts of domestic terrorism on American soil. This cowardly act of terrorism killed 168 people, 19 of them children. The victims were mothers, fathers, sons, daughters, grandparents, grandchildren, friends, and coworkers. Today we pause to reflect on their lives and accomplishments, and offer our thoughts and prayers to their families and loved ones.

The bombing in Oklahoma City was a direct attack against the dedicated

men and women of the Federal Civil Service. The Alfred P. Murrah Federal Building housed 14 Federal agencies, and nearly 100 Federal employees lost their lives that morning.

We must honor their sacrifice by remaining steadfast in our commitment to prevent future attacks on the Federal government, Federal employees, and other acts of domestic terror. I am deeply troubled by recent threats of violence against government employees. This February, an attack on Federal offices threatened the lives of 200 IRS workers and took the life of Vernon Hunter, a 20-year Army veteran who served two tours in Vietnam, a loving husband, father, grandfather, and mentor to coworkers at the IRS. The Oklahoma City bombing anniversary and this recent attack serve as stark reminders that threats against Federal employees may pose real dangers. They remind us of our solemn duty to protect our public servants.

After the Oklahoma City bombing, President Bill Clinton directed the Department of Justice to assess the vulnerability of Federal office buildings. Prior to this study, no formal government-wide standards existed for Federal buildings. With the creation of the Department of Homeland Security, the responsibility to protect our Federal facilities was transferred to the Federal Protective Service, FPS.

FPS is full of dedicated men and women who work hard to keep our Federal buildings secure and those of us who work in them safe. However, critical reforms are needed to improve their effectiveness. The Government Accountability Office has repeatedly highlighted troubling shortfalls in FPS training, staffing, contract guard oversight, and many other facets of the Federal building security structure. It is long past time to address these critical gaps. We must make sure that all Federal employees and members of the public are safe and secure in any Federal building.

As we remember the victims and survivors of the Oklahoma City bombing and other acts of terrorism, let us all take a moment to reflect upon the dedication and sacrifices of our Nation's public servants. These are honorable men and women who provide critical services to the American people, including policing our streets, ensuring our food and drugs are safe, caring for our wounded warriors, and responding to natural disasters. America's public servants deserve our gratitude and respect. I thank them for their dedication.

RESPECTING THE RIGHTS OF HOSPITAL PATIENTS

Mr. LEAHY. Madam President, last week, the country took another important step toward a more just and perfect union when President Obama issued a Presidential Memorandum on Respecting the Rights of Hospital Patients to Receive Visitors and to Designate Surrogate Decision Makers for