

Now, regrettably, this pattern has evolved over the past two decades. During the last 2 years of President Reagan's administration, the Senate was controlled by the opposite party and there was a stall. Then, during the last 2 years of President George H.W. Bush, the first President Bush, again during the last 2 years of his administration, judges were stalled. Republicans retaliated with gusto during the last 6 years of President Clinton's administration and exacerbated the warfare on judges following what the Democrats had done.

And, as we have seen in 2005, this Chamber was virtually cast asunder by the battle on the Democratic filibusters and the threat of a nuclear option or constitutional option to change the filibuster rules. It was open warfare in this Chamber, until it was finally worked out through the so-called Gang of 14. Now we have a desperate situation where judicial emergencies exist in many of these courts, and the Senate is not acting to confirm judges to fill those seats.

The Washington Post has editorialized on the subject to this effect. In December of 2007, the Post said:

[T]he Senate should act in good faith to fill vacancies—not as a favor to the president but out of respect for the residents, businesses, defendants and victims of crime in the region the 4th Circuit covers. Two nominees—Mr. Conrad and Steve A. Matthews—should receive confirmation hearings as soon as possible.

The Post further editorialized about another Fourth Circuit nominee:

[B]locking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.

What we are dealing with is not just politics in the Senate. We are dealing with the rights of residents—as noted by the Washington Post, of businesses, of defendants and victims of crime—who are affected by the failure to move ahead and confirm judges. That, I suggest, is totally unacceptable.

I emphasize the blame rests on both parties, as this pattern has unfolded over the past two decades. Each time it has been exacerbated, it has intensified. I supported qualified judges during the administration of President Clinton because I thought it was inappropriate to tie them up. I thought the Democratic President was correct in seeking confirmation of his judges. Now I believe the Republican caucus is correct in saying it is inappropriate to block the confirmation of Federal judges, especially when no judge has been confirmed yet this year to the Federal courts and only one circuit court nomination hearing has been held in the past 6 months.

It is my hope that we will find a way to declare a truce. We have an election coming up in November. It may well be that there will be a change of parties—or not. It may well be that, unless a truce is declared, the opposite party

will have sufficient votes through filibusters or otherwise to stop judicial nominations. It hurts the country. It hurts the people who are trying to get their cases decided. It hurts litigants.

The judicial process is fundamental in our society, and it is being thwarted by the tactics which have become business as usual in the Senate. I hope we will be able to resolve this matter. I hope we will be able to declare a truce. There is consideration being given to a variety of responses to this kind of conduct by the majority, and we all know any one Senator can tie up this body unilaterally because this place functions on unanimous consent and waivers of a lot of technical rules. That would be, perhaps, even more disastrous. But, we have to find a way out of this, I suggest, because it is totally unacceptable to continue as it is running today.

Mr. President, I now ask that the CONGRESSIONAL RECORD contain a separate caption for what I am about to say, under a resolution which I am about to submit to change the budget process.

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

(The remarks of Mr. SPECTER pertaining to the submission of S. Res. 493 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

#### HOUSING CRISIS

Mr. SPECTER. We are scheduled to have a vote at 2:15 this afternoon on a motion to invoke cloture on the motion to proceed to legislation that has been filed at the desk by the majority leader. This legislation contains a number of proposals, the most important of which is under consideration by the Judiciary Committee at the present time. I have filed alternative legislation, captioned S. 2133, which offered relief to homeowners who have so-called variable rate mortgages and who are facing bankruptcy.

Home buyers who have variable rate mortgages are sometimes surprised to find their payments, after a period of time, jump from—illustratively—\$1,200 a month to \$1,900 a month, an enormous change that they had not expected because they have a variable rate mortgage.

I believe that in these situations, there is a good basis to give bankruptcy courts authority to inquire into the circumstances of such mortgages and to roll back or reduce the interest rates. The rate of foreclosure for these types of mortgages has more than doubled in the past year while foreclosure among homeowners with fixed-rate mortgages has increased only modestly. Frequently, the person taking out a mortgage doesn't understand there is a risk that there will be a large increase in the interest rates on variable rate mortgages. Sometimes there is deception on the part of the lender or mortgage broker. Sometimes it may

even constitute fraud. I believe the best policy would be to allow the bankruptcy courts to consider these matters on an individual basis. The lender is still going to receive, ultimately, the full amount of the principle but not with interest rates that put the home buyer in a precarious position, or even foreclosure.

Senator DURBIN has introduced legislation captioned S. 2136 that goes much further by authorizing the bankruptcy court to reduce the principal amount of the mortgage. I am opposed to that approach because it will increase the risk associated with mortgage lending and discourage lenders from providing capital for home mortgages. The Bankruptcy Code currently does not allow for the modification of mortgages because Congress did not want to discourage lenders from giving mortgages to future homebuyers. There is an excellent statement by Justice Stevens in *Nobelman v. American Savings Bank* in which he gives that precise reason for the provision barring modification of mortgages. Congress must be cautious about making changes to the Bankruptcy Code that will leave consumers worse off in the long run. I believe Senator DURBIN's proposal would have that effect.

I believe we ought to be acting on the issues confronting us on housing, but I am concerned that given the current state of affairs, the procedures to be followed will preclude amendments, such as my interest in offering an amendment with the substance of my bill, S. 2133. The better practice would be to work through the Judiciary Committee, which is now considering the Durbin legislation, with my legislation offered in Committee as a second-degree amendment. We are scheduled to have a markup on that on Thursday. Regular order would suggest that is a better practice to have it come out of the Committee, where we are in the process of having a markup. We will later have a committee report, and it would be much more conducive to appropriate deliberation than having a measure filed under Rule XIV, where it is lodged at the desk, where there has not been analysis and a markup, and there has not been a committee report.

If it is possible to offer amendments, I would consider supporting the cloture motion. However, if the majority leader is going to fill the tree and not allow amendments, then I am opposed to that procedure and would oppose cloture. The practice of so-called filling the tree is highly undesirable. The essence of Senate procedures is to allow Senators to offer amendments.

In February of last year, more than a year ago, I introduced a resolution, S. Res. 83, to change the standing rules so the same person could not offer both a first-degree and a second-degree amendment. This change of the rules would preclude the majority leader, who has priority of recognition, from so-called filling the tree to prevent anyone else from offering amendments.

The Rules Committee has not acted on that resolution, but I think that is an important piece of business, that our rules could not be changed so the majority leader could not be in a position to fill the tree and preclude other Senators from offering amendments.

I am open as to what is going to happen on the cloture vote this afternoon. But certainly, if there is not an opportunity for me to offer my amendment or for others on this side of the aisle to offer amendments, I will oppose it.

I believe I have some time left on my order. How much time do I have remaining? I have been asked to yield some time to my distinguished colleague from Utah. I believe this is Republican time at the moment. Parliamentary inquiry: Are we still on Republican time?

The PRESIDING OFFICER. The time is evenly divided until 12:30, a little less than 23 minutes.

Mr. SPECTER. I don't wish to step in front of the distinguished Senator from Colorado, his having waited on the Senate floor. But at any rate, I will not utilize the last 5 minutes of my time so it will be available to the Senator from Utah, either now or after the Senator from Colorado finishes his time because he has been waiting.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent that I follow the distinguished Senator from Colorado.

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

The Senator from Colorado.

#### ORDER OF PROCEDURE

Mr. SALAZAR. Mr. President, I ask unanimous consent that after I speak for up to 15 minutes, Senator HATCH be recognized for up to 15 minutes, and then following Senator HATCH, Senator DURBIN for 15 minutes, and then Senator REED of Rhode Island for the remainder of the Democratic time; if there is a Republican to speak between Senator DURBIN and Senator REED, that Republican Senator be recognized.

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

Mr. SALAZAR. Mr. President, I come to the floor once again to urge my colleagues to begin serious work that is needed to address the housing crisis. The news keeps getting worse. Home prices continue to decline steeply. Home sales are reaching record lows, and the resulting shock to our broader financial system keeps getting worse. In the 2 weeks since we adjourned, we saw the Federal Reserve act to bail out a major investment bank by facilitating the purchase of Bear Stearns by JPMorgan. This marked the first time in history the Fed had acted to rescue a financial institution of this kind. It did so because of the impact a Bear Stearns collapse would have had on the entire economy.

Last week, it was reported home prices in the 20 largest metropolitan

statistical areas suffered their largest drop in history, over 10 percent in 1 year. In some cities, such as Miami, Las Vegas, and Phoenix, the drop is as high as 18 or 19 percent. Yet because of the Republican filibuster in this Chamber 2 weeks ago, the Senate has failed to act to deliver meaningful solutions to this crisis which is at the center of the economic storm pummeling the middle class.

When we look at the headlines, they keep coming: From USA Today, "Battered Home Prices Keep Toppling;" from the New York Times, "Slump Moves from Wall Street to Main Street;" from the Wall Street Journal, "Housing, Bank Troubles Deepen;" from the Washington Post, "Mortgage Foreclosures Reach All-Time High."

We voted on the Foreclosure Prevention Act several weeks ago. The bad news since then has, in fact, gotten worse. This is a scene all too familiar across the States. All across America families are feeling the pain of the housing crunch. Price-reduced homes are on sale because they have been foreclosed upon. It is not just families who are being foreclosed upon; it is their neighbors whose home values have declined steeply as a result of foreclosures in the neighborhood. Again, it was reported last week that home prices in the 20 major metropolitan areas declined over 10 percent between January of 2007 and January of 2008. Price reduced, price reduced, price reduced—that is not a sign any homeowner wants to see on their lawn or on their neighbor's lawn or on their street. These are not just families who found themselves in financial situations they could not afford to climb out of; these are families who bought houses between 2002 and 2006, stayed current on their payments, and hoped to see the value of their homes continue to appreciate. But through no fault of their own, these families have seen their homes, their single most valuable asset, decline precipitously in value.

The next chart demonstrates how widespread the problem has become in my own State of Colorado. These are figures from the Center for Responsible Lending which has projected that we can expect to see troubles ahead in terms of the continuing tide of foreclosures over the next several years and how these foreclosures will affect not only owners of the foreclosed homes but entire neighborhoods and, in fact, most homeowners across the State of Colorado.

The Center for Responsible Lending projects that in Colorado we will experience nearly 50,000 additional foreclosed homes in 2008 and 2009, as the adjustable rate mortgages reset and as home values continue to plummet.

As stated on this chart, which is a map of my wonderful State of Colorado, we see expected foreclosures are going to be right at about 50,000. The spillover impact for surrounding homes that will suffer decline during that

same period is almost 750,000 homes. That is more than a third of the homes of the State of Colorado are going to see this declining spiral. We are going to see a decline in home values in the aggregate of \$3.2 billion in my State in the loss of home ownership value.

The situation is clearly getting worse. Many middle-class families whose budgets are already stretched thin cannot afford such a steep decline in the value of their most important asset. Congress has a responsibility to act aggressively to help families stay in their homes and to stem the tide of foreclosures that continues to serve as a serious drag on our overall economy. That is why we are here again today, working to move on the Foreclosure Prevention Act of 2008, legislation introduced by Senator REID, in consultation with the chairs of the committees of jurisdiction. That legislation would take several steps to provide meaningful and immediate assistance to families and communities affected by foreclosures and to prevent other families and communities from finding themselves in the same situation in the future.

The legislation does three simple things. First, it seeks to help families facing foreclosure to stay in their homes by expanding State authority to issue tax-exempt mortgage revenue bonds, increasing funding for credit counseling, and allowing bankruptcy judges to restructure mortgages. Second, it provides critical help to communities across the country that have been affected by foreclosure by increasing funding under the Community Development Block Grant program. Third, it takes steps to help families and communities avoid foreclosures in the future by requiring simplicity and transparency on mortgage documents. I am especially glad these provisions are included in the legislation.

The two tax-related provisions reported out of the Finance Committee on a bipartisan basis as part of the bipartisan economic stimulus proposal represent important steps that provide low-interest loans to homeowners seeking to refinance their mortgages and to allow ailing businesses, including those in the home construction industry, to carry back their losses a longer period of time to average out their good and bad years.

I also support funding increases for credit counseling, which will go a long way toward helping families understand the financial burdens associated with taking out a long-term home loan and to avoid foreclosure. In my State of Colorado, we have already seen how beneficial these kinds of services can be. Last fall, a consortium of government, private sector, and nonprofit organizations launched the Colorado foreclosure hotline which connects borrowers with nonprofit housing counselors who can provide information on a borrower's options when facing foreclosure. Counselors can facilitate communications between lenders and borrowers. The hotline itself has already