

amendments. They are going to have to whittle that down to a reasonable number so we can deal with them soon. I hope we can work something out so that we can meet our responsibilities.

We also have a number of nominations that have been held up as a result of the Supreme Court nomination. We hope all of that can be taken care of as soon as she is confirmed.

MEASURE PLACED ON CALENDAR—S. 1572

Mr. REID. Mr. President, I am told that S. 1572 is due for a second reading and is now at the desk.

The ACTING PRESIDENT pro tempore. The majority leader is correct.

The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1572) to provide for a point of order against any legislation that eliminates or reduces the ability of Americans to keep their health plan or their choice of doctor or that decreases the number of Americans enrolled in private health insurance, while increasing the number of Americans enrolled in government-managed health care.

Mr. REID. Mr. President, I object to further proceedings with respect to this legislation.

The ACTING PRESIDENT pro tempore. Objection is heard. The bill will be placed on the calendar.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to a period of morning business until 10 a.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Florida is recognized.

SEARCH FOR CAPTAIN SCOTT SPEICHER

Mr. NELSON of Florida. Mr. President, I want to call to the attention of the Senate, and thank the Pentagon for its dogged pursuit in finding the evidence of CPT Scott Speicher, U.S. Navy, the pilot of the F-18 Hornet who was shot down on the first night of the gulf war back in 1991.

This saga has evolved over the last 18 years. The Pentagon became lax in the 1990s and did not pursue the finding of evidence, and there were all kinds of reports that Captain Speicher may have been alive and held in a prison. You can imagine the trauma, the emotional ups and downs, that occurred to the family, which included the children who were quite young at the time and are now at the age that they are in college. Fortunately, the Pentagon, about 8 or 9 years ago, got serious about the

search. When we invaded Iraq in 2003, they even created a search team. Again, there were all of these false leads that there had been the sighting of a pilot. An Iraqi refugee said he saw an American pilot in a prison. It went on and on.

Of course, the hopes of the family were that CPT Scott Speicher was going to be found alive.

Our Pentagon even went so far—and I commend them—that one of the first sets of questions on the debriefing of any Iraqi detainee—and especially the high-value detainees—the question would be asked, “Do you know about an American pilot?” All of these leads turned out to be false or they led to nothing. So it was that we expected that what would happen to find the final evidence would be a Bedouin tribe that would have been in the area of the Iraqi desert at the time Captain Speicher punched out, or ejected, from his jet that was hit.

The irony was that Scott was not even supposed to fly that first attack wave, but another member of the squadron got sick and he filled in. Either he was hit with a ground-to-air missile or somehow in the aerial combat of the darkness of that night, and he ejected from his airplane. The rest has been a mystery until a Bedouin, thought to have been a younger child at the time, in 1991, remembered a pilot being buried. He could not identify the location, but knew of another Bedouin who was an adult at the time, and that Bedouin ultimately led the marines to the site and an extensive investigation and excavation that occurred on the Iraqi desert floor.

So all who have participated—the Army Reserve, Major Eames, who led the Scott Speicher search party, and who extended his duty voluntarily for an additional 6 weeks way back in 2003, because he was absolutely intent that he was going to find this downed pilot. For all of those, including the Chairman of the Joint Chiefs and the CNO, who have now brought this to closure, because last weekend they found the remains of Captain Speicher, with a positive identification through one of his jawbones with his military dental records, to be confirmed even further by DNA evidence. We know now that Captain Speicher can be brought home and his family can have final closure.

I will conclude by saying that a mistake was made that we never want to repeat. Because of him being mistakenly declared dead at a press conference the next morning after that first night attack in the first gulf war—he was mistakenly declared dead by the Secretary of Defense—we did not send a search and rescue mission. Every military pilot has to have the security of knowing that if he has to eject, a search and rescue mission is coming after him. That is the mistake we will not make again.

For the family, and on behalf of them, I want to say to the Pentagon and to the other Senators who have

participated in this 18-year quest on behalf of Scott's family in Florida, thank you from the bottom of their hearts.

Mr. President, I yield the floor.

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

BANKRUPTCY REFORM

Mr. DURBIN. Mr. President, if you look at the root cause of our economic crisis today, most people would agree that it started in the housing industry. People across America signed up for these new mortgages—adjustable rate mortgages—with terms that some people had never seen before. Sometimes they were terms that turned out to be unrealistic for the person's income and the value of the property; and at the end of a reset period, what was an affordable mortgage became unaffordable. People were then faced with the grim reality that they could not stay in their homes.

Some of the folks who entered into these mortgages signed up for bad mortgages. Others were misled into them. Some signed up for a mortgage and lost their jobs. The net result of it, though, was that we saw foreclosures across America in record numbers.

About 2 years ago, I started a legislative effort to change the Bankruptcy Code. The Bankruptcy Code is a set of laws for those who declare bankruptcy, and those who go into it try to restructure their debts and emerge from bankruptcy in a solid financial position.

When they go to court, virtually any secured asset, that is, a debt which has a security of the thing that is borrowed against, can be restructured by the court. If it is a vacation home, a mortgage on a vacation home, a mortgage on a ranch or a farm, a secured debt on a boat, a car—things such as these can be restructured by the court to try to come down to terms that are affordable based on the reality of the income of the person filing bankruptcy. There is one exception to this: the court cannot restructure the mortgage on a primary residence. Of all of the things we own, maybe the most important thing is our home, and the law specifically precludes the bankruptcy court from restructuring the mortgage. So, facing bankruptcy, you go in with your mortgage in foreclosure, and the court says: There is nothing we can do. We might be able to do something about your vacation home, your farm, or your ranch, but nothing about your home. So people end up having their homes foreclosed upon.

It struck me that we needed to change this because there was a time when people would borrow money for their home, take out a mortgage from a bank down the street, from a banker they knew, and they would make their payments to that bank. That world changed when banks started selling the paper off to other banks and institutions, and then it went wild. It went

beyond another bank or institution into groups of investors who bought a piece of a share of your mortgage. Someone may have bought an interest in the interest payments you were going to make in the fifth year of your mortgage. So what started off as a bank down the street that you knew personally at a closing turned out to be a group of financial institutions you didn't even know and never heard of and may never, ever learn the identity of. So when time came for foreclosure, you had to herd in all of these financial cats and try to get everyone to agree with what would happen next, and it became impossible.

Well, my idea 2 years ago was to change the Bankruptcy Code to allow the bankruptcy court to restructure and rewrite the mortgage terms so that a person could stay in their home just as they could continue to own a vacation home. It seemed to me a modest suggestion but one of value because it gave the court a voice in saying to all of these different lenders that had a piece of your mortgage: You all better come together and gather around the table because we are going to make a decision in this court, and you just can't ignore it.

I introduced this almost 2 years ago. It had staunch opposition from the banking industry. They did not want to give that power to the bankruptcy court, and they said: You anticipate only 2 million foreclosures in America, so we don't see the need for a change in the Bankruptcy Code.

Really? A recent study by the Boston Federal Reserve found that, in 2007 and 2008, just 3 percent of homeowners at risk of foreclosure received modifications that reduced their monthly payments. Just 3 percent of troubled homeowners received any real help.

Another study found that more mortgage modifications increased the mortgage balance than decreased the balance.

I called the bill on the floor, and I lost. Well, today, we are facing over 9 million foreclosures in bankruptcy. The banking industry is still vehemently opposed to any type of change in the bankruptcy law, and when it comes to foreclosures in America, the situation is going from bad to worse.

This morning's New York Times business section has a headline: "U.S. Effort Aids Only 9 Percent of Eligible Homeowners." The article is about the voluntary efforts of mortgagors to renegotiate the terms of mortgages for people facing foreclosure. If a person is facing foreclosure because of a reset in mortgage terms and the foreclosure goes through, it is a disastrous result for the family—they lose their home; it is a disastrous result for the neighborhood because every time a home goes into foreclosure, the neighbors' home values go down—this year alone, foreclosures will drain more than \$500 billion from neighboring home values; and it is a disastrous result for the bank. Banks don't win in foreclosure. I have

heard estimates that they lose up to \$50,000 for every foreclosure. So it would seem to me that the avoidance of foreclosure is a good thing for everyone involved: the homeowner, other people who own property in the neighborhood, as well as the bank. Yet it turns out that when we turn to the banks and say: So do something about it voluntarily, their response to it is meager and disappointing.

The Treasury Department said on Tuesday that only a small number of homeowners—235,247, or 9 percent of those eligible—had been helped by the latest government program created to modify home loans and prevent foreclosures. A report released by Treasury officials identified lenders who had made slow progress in offering more affordable mortgages, naming Bank of America and Wells Fargo as among those failing to reach large numbers of eligible borrowers. While 15 percent of eligible homeowners have been offered help through the mortgage modification program, the low rate of actual mortgage reductions has frustrated administration officials.

In a hearing two weeks ago in the Senate Judiciary Committee, we heard testimony from the National Consumer Law Center that I found troubling. Housing counselors from all over the country have told stories of violations of the Administration plan by the servicers. Homeowners have been asked to pay fees to apply for a trial modification and to waive their legal rights. Servicers have told homeowners that homeowners need to skip payments to become eligible, which puts them even farther behind. Servicers have refused to offer eligible homeowners a modification, and have offered modifications that do not comply with the program guidelines—and that is for the homeowners lucky enough to get someone at the servicers' call centers to answer the phone. Worst of all, servicers continue to pursue foreclosures even as they are supposedly working with homeowners on a mortgage modification.

This has to end. Whether the bankers and mortgage servicers are failing because of intransigence or incompetence doesn't matter. Our economy is hanging in the balance. They have to do much better.

The Times article goes on to note that some banks have done better than others. Where Bank of America has modified only 4 percent of eligible mortgages and Wells Fargo, 6 percent, CitiMortgage, a unit of Citigroup, fared better at 15 percent, and JPMorgan Chase is among the most successful, modifying loans for 20 percent of eligible borrowers.

In the previous administration, the Secretary of the Treasury, Hank Paulson, called me and told me what they were going to do to try to rescue the banks.

I said: Hank, you have to get to the heart of this. It is the foreclosure crisis. What are you going to do about the people losing their homes?

He said that they were not going to do anything except a voluntary program.

The voluntary program of the Bush administration didn't work and now the voluntary program of this administration is not working. There are not enough people who are facing foreclosure who realistically have an option of renegotiating the terms of their mortgages.

I credit President Bush and President Obama with offering the opportunity to lead to the industry. Frankly, they have failed. A few of these banks have done reasonably well, if you consider 20 percent of those eligible being offered mortgage modification something to brag about, but others are terrible.

So yesterday I along with Senator REED and Senator WHITEHOUSE sent a letter to the heads of the 38 banks and mortgage service companies that have signed up for the Administration's Home Affordable Modification Program. We are asking them a series of pointed questions that will help us understand what each servicer is doing to help homeowners avoid preventable foreclosures.

Most importantly, I am asking the servicers to make a commitment that they will avoid scheduling a foreclosure on any homeowner who is actively working in good faith to work out a loan modification that is fair, reasonable, and sustainable.

Let me mention one other element that should be noted here. Two weeks ago in Chicago, a group known as NACA—I believe that stands for the Neighborhood Assistance Corporation of America—held an opportunity at McCormick Place for those facing foreclosure to come in and try to work out new mortgage terms. I was at another meeting, they invited me to come over, and I was stunned as I walked into this huge hall filled with literally thousands of people on a Saturday morning, thousands of people facing mortgage foreclosure. On one side of the room sat a large group, about 1,000 people, and they were from Hispanic families; on the other side of the room, another 1,000 people, by and large African American, with others—Asians, Whites, and others, but primarily African American.

It is clear to me, as you look at the nature of the foreclosure crisis, that many people in lower income and middle-income categories, particularly those who have been the targets of predators in the past, who were preyed upon with these mortgages and now face foreclosure, are also people who are most likely to lose their jobs. They are in marginal employment, and a slowing economy is going to hurt them first, which goes to my point: Not enough is being done. For those who are still working and have a chance to pay on their mortgage, these banks should be stepping up, showing a lot more commitment to renegotiating the terms of their mortgage than they currently are.

When I offered this change in the Bankruptcy Code to try to move this process forward, the banking associations—all of them—opposed it. Only one bank, Citigroup, supported my efforts.

In fact, an interesting thing is that at one point in the negotiations, we said to the independent community bankers, the hometown bankers we all know: We will exempt you. Because you have such a small part of this problem portfolio, we will exempt you and just go after the large banks that are responsible for this.

The so-called independent community banks said: No, we don't want any part of it. We are going to stick with our friends, the large banks.

That leads me to conclude that the independent community banks should drop the word "independent" from their title. They are now part of the larger bank operation when it comes to dealing with this foreclosure crisis.

Much the same can be said for credit unions. Given an opportunity to avoid being even part of this change in bankruptcy modifications, they refused to support us as well.

So the entire financial industry has stood back and said: We are not going to support—with the exception of Citigroup—any change in the Bankruptcy Code, and quite honestly, we are not going to do much when it comes to renegotiating the mortgages.

I don't think this economy is going to get well until we deal with this issue. I can take you to neighborhoods in Chicago and surrounding communities and tell you that they are flat on their backs because of mortgage foreclosures. It is very difficult, if not impossible, for these communities to come back, these neighborhoods to come back.

There are things we need to do.

First, Congress should consider passing legislation to give homeowners who can't afford their mortgage payments the right to remain in their homes for a period of time by paying fair market rent to a bank. Why not let a family stay in a home rather than let it get run down and become a haven for criminal activities and other things when it is vacant? It is certainly no good assignment for a bank to be told: You now have a foreclosed home, cut the grass and take care of the weeds and put plywood on the windows and try to keep the bad guys out. That is what most of them face.

Second, Congress should consider providing matching funds for cities and States to create mandatory arbitration programs. They have done it in Philadelphia with some success; we ought to do it here and across the Nation so that we move this toward arbitration, negotiation, and agreements for new modifications on mortgages.

Third, if these servicers of mortgages, some of which have taken billions of dollars in taxpayer bailouts, refuse to meet the foreclosure reduction standards and goals they have

signed up for under this administration, they should be facing penalties. We gave them taxpayers' money to save the banks. Some of them used it for bonuses for their employees, and now they won't turn around and give a helping hand to people who are about to lose their homes? I am sorry, but if there is any justice in America, that has to change.

Will I come back with bankruptcy modification? Well, let's see what happens in the next few months. I want to be able to come to my colleagues in the next 2 or 3 months and say: Alright, whether you support or oppose bankruptcy changes, when it comes to these mortgage modifications, let's be honest about where we are today and where we need to go. That is absolutely essential.

So I hope this situation starts to resolve itself. I hope some of these banks that hold these mortgages get serious about helping people facing foreclosure. It is the only way we are going to stabilize this economy and get it moving forward.

I might add, the blip in the housing market we saw just a few weeks ago is likely just that. There had been a temporary moratorium on many mortgage foreclosures, leading many people to believe there was a turnaround in the housing industry. But a new wave of mortgage resets is coming. This time it's the so-called "option ARMs" or "pick-a-payment" adjustable rate mortgages.

These are the ultimate exploding mortgages. They gave homebuyers the option of not even covering the interest some months, but after two or three years, the monthly mortgage payment can skyrocket, often by 50 percent or more. An estimated 2.8 million option ARMs are scheduled to reset over the next 2½ years.

So I am looking for a turnaround in the housing industry. I don't think we have quite seen it yet. I hope it comes soon.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. 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.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF SONIA SOTOMAYOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

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

The assistant legislative clerk read the nomination of Sonia Sotomayor, of New York, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be equally divided in 1-hour alternating blocks of time, with the majority controlling the first hour.

The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we began debate yesterday on this historic nomination of Judge Sonia Sotomayor to the Supreme Court. Senator REID, Senator FEINSTEIN, Senator MENENDEZ, Senator WHITEHOUSE, and Senator BROWN gave powerful statements—powerful statements—in support of Judge Sotomayor's long record, a record that makes her a highly qualified nominee and a record that brought about her receiving the highest qualification possible from the American Bar Association. I thank those Senators for their statements.

In the course of my opening statement yesterday, I spoke about the value of real-world judging. Among the cases I discussed were two involving the strip searches of adolescent girls. I spoke about how Judge Sotomayor and Justice Ginsburg properly—properly—approached those decisions in their respective courts.

Judge Sotomayor is certainly not the first nominee to discuss how her background has shaped her character. Many recent Justices have spoken of their life experiences as an influential factor in how they approach cases. Justice Alito, at his confirmation hearings, described his experience as growing up as a child of Italian immigrants saying:

When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account.

He was praised by every single Republican in the Senate for that.

Chief Justice Roberts testified at his confirmation hearing:

Of course, we all bring our life experiences to the bench.

Again, every single Republican voted for him.

Justice O'Connor echoed these statements when she said recently:

We're all creatures of our upbringing. We bring whatever we are as people to a job like the Supreme Court. We have our life experiences . . . So that made me a little more