

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	Burr	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	Voinovich
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	Hutchinson

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 prejudge 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