

when they can bet \$40 for every dollar they hold, but they crash in a spectacular fashion when the market goes down in that situation.

Then, again, we had the Fed. The Fed puts monetary policy in the penthouse and safety and soundness on the upper floors. But what do they do with their responsibility for consumer protection? They put it down in the basement and they seal the doors. They let no daylight in and they let little communication occur between the consumer protection side and the safety and soundness and the monetary side.

They did absolutely nothing when a new product was invented in 2003, a new form of subprime that had a 2-year teaser rate, a prepayment penalty that locked the family into that loan and prevented the family from escaping from that loan, and that had exploding interest rates that would destroy the family. The Fed did absolutely nothing. Then Wall Street said: You know what. These loans are worth so much because we can pull so much money out of families with these loans, so we are going to pay a bonus to a broker if the broker ties a family into one of these loans. And those steering payments resulted in tons of families who qualified for prime mortgages being steered into subprime mortgages. By a Wall Street Journal study, 60 percent of families who were in subprime mortgages qualified for prime mortgages, but their broker persuaded them that the best mortgage was one that was not in their best interests.

Then we had the rating agencies. The rating agencies had magic all their own. They didn't develop their own models to evaluate BBB bonds that were mixed and sliced and diced into new packages of bonds. No. They took their models from Wall Street, and based on those models they said: If you take BBB bonds from over here and BBB bonds from over here and you mix them together, we will rate 80 percent of the resulting bonds as AAA. Well, that is a money-making machine, but it also undermined one of the key instruments the financial world depends on; that is, accurate credit ratings.

Then we had lots of tricks and traps buried in the small print, stripping families of their capital. Things were happening in the credit card industry such as sitting on a person's payment for 10 days even though it had arrived on time, sitting on it for 10 days and then posting it as late and charging a late fee. As a constituent from Salem said to me, where is the fairness in that? American citizens are saying time and time again, when clauses written in the fine print defy fundamental fairness, where is the fairness in this?

So at every level we had a breakdown in our financial system. We know what happened. The deck was stacked against the ordinary citizen. It turned a banking system that is designed to help families, strengthen families, strengthen small businesses into a ca-

sino for Wall Street's big bets. When those bets went bad, the taxpayers—you and I—were left holding the bag.

Now, as the effort to restore fair rules of the road to Wall Street heats up here on the floor of the Senate, there are those on Wall Street and those on this floor who want to block reform. They don't want to fix any of these things I have been describing. Indeed, recently the minority leader met with more than two dozen Wall Street executives and hedge fund managers and urged them to elect members of his party who would stop these reforms that serve the American people. Then he came back down here and he whipped out his talking points from Frank Luntz and he said: This bill won't work. Why did he say that? Because he doesn't want a bill to reform Wall Street and fix these rules and restore prosperity to our economy. He wants to take this election year instead and serve a powerful constituency that doesn't want any rules restored to the road.

Folks, that is just wrong. We have a responsibility. Just as our ancestors not so long ago fixed the problems of the Great Depression, fixed the banking system, and restored a banking system that would take us forward in an orderly fashion and allow business to thrive in America, to be the envy of the world in America, we have the responsibility to do that today.

There are some who have said: Well, we want a free market. Let me tell my colleagues, a free market thrives with rules that allow orderly conduct because those rules create the integrity that gives people the faith to utilize those markets. We saw with the stock market reforms that people believe stocks are traded fairly in America, and therefore they are willing to invest and, by investing, power up the companies that are issuing public stock. It works when there is integrity in the market. Foreign investors will come and put their dollars in America if they believe there is integrity in our system.

That is what these rules are about—rules that create a free market with integrity so that it can power up the economy of America. That is what this is about. We are not talking about what some of my colleagues across the aisle are talking about: preserving the status quo, which means freedom from oversight, freedom from accountability, freedom to translate BBB bonds and AAA bonds with a magic evaluation system; free to blow up the economy, which destroyed families' savings, families' retirements, families' jobs, often families' health care, and pretty much tore the foundation out from under the American working family.

This bill creates a consumer financial agency that will say: No more trips and traps on basic financial products. We need to have that mission no longer locked in the basement. We need to have that mission in an agency that

says we will not allow those tricks and traps and scams that have been perpetuated over the last decade, so that Americans will not say: Where is the fairness in that? Instead, they will say: Thank goodness these contracts are fair and serving our families and our economy.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator has spoken for 10 minutes.

Mr. MERKLEY. Is that my full allocation of time?

The PRESIDING OFFICER. Yes.

Mr. MERKLEY. Thank you. I will close by saying this bill must get done because we have a responsibility to restore the foundations for our Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. WHITEHOUSE. Mr. President, let me first thank the Senator from Oregon for his remarks. He has brought great passion for this issue to the Senate. He serves with distinction on the Banking Committee. I couldn't agree with him more that the spectacle of colleagues scampering up to Wall Street to offer their services, and interfering with, obstructing, watering down, and impeding, of all things financial regulatory reform, after all we have been through, is not a spectacle that is salutary.

I appreciate his remarks.

#### NOMINATIONS AND HOLDS

Mr. WHITEHOUSE. Mr. President, I wish to talk for a minute about nominations and holds. The Senate's Executive Calendar contains the names of those individuals whom President Obama has nominated to serve in his administration, and those positions require Senate confirmation. The Executive Calendar also contains the names of those the President has nominated to be Federal judges—it is called the Executive Calendar, but judicial offices are on it as well—at the district court level and the appellate level.

Since President Obama took office, this Senate has voted on 44 nominees. Some others have been approved by unanimous consent, but we have had 44 votes on nominations. Of those 44 votes, 31 of them—that is 70 percent of the nominees we have confirmed—have been held over, filibustered, and delayed by days, weeks, and months. The average length of time these nominations have languished in the Senate has been over 106 days. That is 15 weeks—3½ months—from the time they were nominated to the time they were confirmed. That is just the average delay. Some have spent 1 full year in Senate limbo as a result of holds by our colleagues.

If it has taken this long to confirm them, these must have been controversial nominees, and these must have been tough votes and close votes for the Senate, one would think. Well, let's take a look—bearing in mind that it takes 51 votes to be confirmed by the Senate.

Sixteen of these nominees who have been held over, filibustered, or delayed were subsequently approved when they came to a vote by more than 90 votes in the Senate. Again, sixteen of the filibustered nominees passed the Senate with votes of more than 90. Another 10 have been approved with more than 80 votes—bear in mind that it only takes 51 to get confirmed—and 3 more with more than 70 votes. That is 29 out of those 31 nominees who, when they finally came to their vote, were approved overwhelmingly, by enormous bipartisan majorities, in the Senate. They have spent 106.6 days, on average, waiting to be confirmed by those vast majorities—waiting to be confirmed overwhelmingly.

The only conclusion that a rational mind can draw from this is that this is not about controversial nominees; this is about politics, plain and simple—the bare knuckles politics of obstruction, the kind of politics that says I don't care if you are qualified for the job for which you were nominated. I don't care that the Department of State or the Department of Homeland Security needs you for a critical job. I don't care. You are going to sit on the Senate calendar for months and months and months so that I can score political points against the President, so that I can inhibit the deployment of this elected President's administration into the office of the government.

Well, that is wrong and it needs to stop.

As of Monday, the Executive Calendar contained the names of 101 nominees—101 individuals for critical jobs in agencies all across the government that are now sitting on the Senate's Executive Calendar waiting and waiting. I want to address some of the judges who have been waiting for a long time, and I will ask that their nominations be called up and approved.

Mr. President, I will start with Judge Albert Diaz and Judge James Wynn, a pair of judges who are Fourth Circuit Court of Appeals nominees. So I will call up Executive Calendar Nos. 656 and 657, the nominations of Judges Albert Diaz and James Wynn, nominees to the U.S. Court of Appeals for the Fourth Circuit.

Let me tell you who they are. Judge Diaz currently serves on North Carolina's Special Superior Court for Complex Business Cases. He was reported out of the Judiciary Committee on January 28, 2010, by a vote of 19 to 0. He has served in the Marine Corps and has 9 years of State court judicial experience.

Judge James Wynn was reported out of the Judiciary Committee the same day, January 28, 2010, by a vote of 18 to 1. He currently sits on the North Carolina Court of Appeals, the State's intermediate appellate court. He is a certified military trial judge and a captain in the U.S. Navy Reserve.

#### UNANIMOUS-CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to executive session, and notwithstanding rule XXII, the Senate proceed to Executive Calendar Nos. 656 and 657; that the nominations be confirmed en bloc; that the motions to reconsider be laid upon the table en bloc; that any statements relating to the nominations be printed in the RECORD, as if read, and the President be immediately notified of the Senate's action.

I ask for the regular order on the unanimous-consent request. The unanimous-consent request is pending right now, and there is nobody on the floor to answer it or object to it.

The PRESIDING OFFICER. Is there objection?

Mr. WHITEHOUSE. I am told a Senator is coming to make an objection, so I will withhold.

While we are waiting for a Republican Senator to come and object to these nominees, they came out of the Judiciary Committee back in January. They were voted out of the Judiciary Committee by, in one case, a unanimous, bipartisan vote of 19 to 0.

I am informed that the Senator from Arizona, Mr. KYL, is coming to object. He sits on the Judiciary Committee. He likely was one of those 19 who voted in favor of this nominee at the committee level. I don't know who the one vote against Judge Wynn was, but he cleared the committee by a vote of 18 to 1—again, a strong bipartisan vote of support. Yet I am informed by the floor staff that they are finding somebody to come and object to these nominees who have now been held through all of February, all of March, half of April, despite being, in one case, unanimous votes in the Judiciary Committee, and the other an 18-to-1 overwhelming bipartisan majority.

For the record, I am informed that the minority was aware that I was coming to make these unanimous-consent requests; that they had full knowledge this was going to come. If they are unable to get somebody to the floor to object, as far as I am concerned that is not my concern.

Mr. President, I renew the unanimous-consent request now that there is a Senator on the floor.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mr. KYL. Reserving the right to object, might I ask my colleague to restate the request?

Mr. WHITEHOUSE. Yes. It was to call up Executive Calendar Nos. 656 and 657, which are the nominations of Judge Albert Diaz and Judge James Wynn to the U.S. Court of Appeals for the Fourth Circuit. As the distinguished Senator from Arizona will recall, since he sits with me on the Judiciary Committee, Judge Diaz was voted out by a vote of 19 to 0 back on January 28, 2010. If my math is correct, that means the distinguished Senator from Arizona voted for this nominee in the Judiciary Committee.

Judge James Wynn was reported out the same day, January 28, by a vote of 18 to 1. I don't know if the Senator was the single dissenting vote in that overwhelming vote in support of Judge Wynn's nomination.

Judge Diaz served in the Marine Corps and has 9 years of State court judicial experience. Judge Wynn is a certified military trial judge and a captain in the U.S. Navy Reserves.

My unanimous-consent request was that the Senate proceed to executive session, and notwithstanding rule XXII, the Senate proceed to Executive Calendar Nos. 656 and 657; that nominations be confirmed en bloc; that the motions to reconsider be laid upon the table en bloc; that any statements related to the nominations be printed in the RECORD, as if read, and that the President be immediately notified of the Senate's action.

Mr. KYL. Mr. President, I appreciate my colleague restating the request. Reserving the right to object, and I will object, as I think my colleagues are aware, the two leaders have worked out a process for consideration of at least some of the judicial nominations. My understanding is, there is another agreement on at least one circuit court nomination that they are working out a time agreement on right now and that would occur, I presume, later this week. I think it is important to let the two leaders work out those agreements. As a result, reluctantly, I have to object to my colleague's request.

The PRESIDING OFFICER. Objection is heard.

Mr. WHITEHOUSE. Mr. President, I appreciate the distinguished Senator's objection. We do have 101 nominees on the Executive Calendar. The objections have holds which are secret. They are holding up people, as I said, for an average of 106 days. While it is nice one or two might be given a time agreement by the minority party, it does very little to relieve the blockade that the minority party is engaged in of judicial and Executive nominees.

I will continue forward. I call up Executive Calendar No. 701, the nomination of Nancy Freudenthal to be a judge for the U.S. District Court for the District of Wyoming. She passed out of the committee by voice vote—a voice vote, as the Presiding Officer knows, is a vote without dissent—on February 11, 2010. She has decades of experience as a public servant and as a lawyer in private practice. She currently is Wyoming's First Lady.

If confirmed, she will be that State's first female Federal judge. It is the practice of the Judiciary Committee not to put forward judges unless the consent of the home Senators has been obtained. I point out that both the Senators from Wyoming are Republicans.

I ask unanimous consent that the Senate proceed to executive session, and notwithstanding rule XXII, the Senate proceed to Executive Calendar No. 701, the nomination of Nancy