

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

Freudenthal; that the nomination be confirmed, and the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD; and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, for the same reasons as noted earlier, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WHITEHOUSE. Mr. President, I call up Executive Calendar No. 702, the nomination of Judge D. Price Marshall to serve on the U.S. District Court for the Eastern District of Arkansas, a district court nominee who has been held up and filibustered. This district court nominee, Judge Marshall, is currently a judge on the Court of Appeals for the State of Arkansas. He spent 15 years in private practice in Jonesboro, AR. He served as a law clerk to Seventh Circuit Judge Richard S. Arnold. Judge Marshall was reported out of the Judiciary Committee on February 11, 2010, by voice vote and without dissent. He has been held and blockaded on this floor.

I ask unanimous consent that the Senate proceed to executive session, and notwithstanding rule XXII, the Senate proceed to Executive Calendar No. 702; that the nomination be confirmed, and the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD; and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. WHITEHOUSE. Mr. President, let's try another one.

I call up Executive Calendar No. 704. This is the nomination of Judge Timothy Black, again, a district court nominee, a local trial court nominee, to serve on the U.S. district Court for the Southern District of Ohio. Judge Black has served the Southern District of Ohio for 6 years as a Federal magistrate judge. He is currently a Federal magistrate judge in the court for which he is nominated as a district judge. Before that, he spent a decade as a municipal court judge and had a long career as a civil litigator. He was reported out of the Judiciary Committee without dissent after a voice vote on February 11 of this year, February, March, April—more than 2 months ago. He has languished on the Senate floor after clearing the committee without dissent—a judge, a district judge, a trial judge who serves now as the magistrate judge.

I ask unanimous consent that the Senate proceed to executive session, and notwithstanding rule XXII, the Senate proceed to Executive Calendar No. 704, the nomination of Judge Timothy Black; that the nomination be

confirmed, and the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD; and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, for the same reasons stated before, I object.

The PRESIDING OFFICER. Objection is heard.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

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

The PRESIDING OFFICER. 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 Lael Brainard, of the District of Columbia, to be an Under Secretary of the Treasury.

The PRESIDING OFFICER. Under the previous order, the time until 12 noon will be equally divided and controlled between the Senator from Montana, Mr. BAUCUS, and the Senator from Iowa, Mr. GRASSLEY, with the Senator from Kentucky, Mr. BUNNING, controlling 15 minutes of the time controlled by the Senator from Iowa, Mr. GRASSLEY.

The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I probably will not take the 15 minutes but somewhere between 10 and 15 minutes.

I rise in strong opposition to the nomination of Lael Brainard to be Under Secretary of the Treasury for International Affairs.

I do not think it is unreasonable for the American people to expect nominees to important posts in the Treasury Department to have a clean record in the payment of their taxes. After all, Treasury is responsible for collecting taxes. Treasury nominees have a special responsibility to live up to the same high standards the Department demands from ordinary citizens. But the American people deserve much more than just someone with a clean tax record. They deserve a nominee who is honest, trustworthy, and straightforward.

The Finance Committee's bipartisan investigation of Ms. Brainard revealed she does not have a clean tax record. At worst, she refuses to be straightforward and honest about her tax records.

The Finance Committee looks into the tax record of every nominee who comes before the committee. A routine

examination of Ms. Brainard's past few tax returns revealed many problems. When asked if she has paid all her taxes on time, she did not reveal several cases in which she had failed to pay her taxes on time.

When she was asked, on her nomination questionnaire, if she was current with all her taxes at the time she was nominated, she replied yes. But, in fact, that was not true. She was well overdue on paying county property taxes and DC employment insurance taxes at the time.

There were also several problems with the forms she was supposed to file to prove that her household employee was legally able to work in this country. On one form, there was a serious problem with a space that the household employee is required to sign. It appears Ms. Brainard filled in that space with her own signature, and she could not provide an explanation of why she did so.

On another form, dates appear to have been written over to change the year. She could provide no explanation of why this was done.

On two different forms, Ms. Brainard missed the deadline for completing the employer portion of the form. On another form, the employer portion was filled in 1 month before the employee portion, but the law requires the employee portion to be filled in first.

On yet another form, the employee certification section lists her husband's name, but the signature is hers.

On another form, the employee section is filled in, but the required employer certification section was left blank.

There was another problem of the home office deduction which she claimed in the past several years. She could not provide a clear and consistent reason for taking a home office deduction of one-sixth of her household expenses. She was unable to provide a credible reason for the size of the deduction. She reduced her home office deduction to one-twelfth of household expenses on her 2008 tax return. However, she did not reduce the deduction on her 2005, 2006 or 2007 tax return, all of which had the inflated deduction.

Some Senators might come to the conclusion that these tax problems alone should not disqualify the nominee. They may say that, at worst, this is simply a pattern of sloppiness. Do we want someone who is so sloppy in her tax responsibilities to be in charge of international affairs at the Treasury Department?

But this is not just a matter of sloppiness. This is a matter of total lack of candor with the Finance Committee and, by extension, with the Senate and, by extension, with the American people.

Ms. Brainard spent 9 months stonewalling the Finance Committee over all these tax issues. She gave evasive and incomplete answers to the staff of the committee. The level of evasiveness of this nominee appears to