

treated President Bush's nomination to run the Office of Legal Policy. A Democratic majority confirmed President Bush's first nominee to head that division, Viet Dinh, by a vote of 96 to 1 only 1 month after he was nominated and only 1 week after his nomination was reported by the committee. The 3 nominees of that office who succeeded Mr. Dinh—Daniel Bryant, Rachel Brand, and Elisabeth Cook—were each confirmed by a voice vote in a far shorter time than Professor Schroeder's nomination has been pending. None of these nominations were returned to the President without explanation. None of them required cloture to be filed before being considered.

What is going on when a Republican President is treated with fairness but a Democratic President, President Obama, is treated this way? It makes me think of what one of the leaders of the Republican Party said last year: I want this President to fail. If you have an objection to a nomination, vote against it, but none of us should want the President of the United States to fail because if the President fails, America fails and we all suffer, Republicans and Democrats alike. We have to get out of this mindset that if President Obama is for something, everybody has to find ways to block it.

I agree with Senator FRANKEN's observation on the Senate floor earlier this week concerning the Schroeder nomination. He remarked that perhaps Republicans were blocking this nomination because Professor Schroeder has been nominated to lead the office that vets potential judicial nominees. Well, he is right, as is Senator KAUFMAN, who has spoken so eloquently on behalf of Professor Schroeder today.

To deflect criticism for Republican delays and obstruction of judicial nominations that have left 25 judicial nominations languishing on the Executive Calendar, Senate Republicans have tried to place the blame on the administration for sending too few nominees to the Senate. But these same Republicans have held up Professor Schroeder's nomination to lead the division of the Justice Department involved with reviewing and preparing judicial nominations for nearly a year. In other words, they stopped the person who is supposed to do the initial review on judicial nominations and then said: Oh, my goodness, President Obama is not sending up enough nominations. Come on. Come on. This is like a burglar saying: I should be excused for burglarizing this warehouse because you had such nice things in the warehouse to steal. It is your fault for having nice things to steal. How can you blame me for stealing them? What they are saying is: It is President Obama's fault for not moving through judges who have to be vetted by somebody we are blocking from vetting them.

I know the Department and the administration would be grateful to have Professor Schroeder help them prepare judicial nominations. He has shown

that he has a deep understanding of the proper role of a judge tasked with interpreting the Constitution. As he emphasized in a response to a question from Senator SESSIONS:

Any interpretation of the Constitution must begin with the document's text, history, structure, and purpose, as well as judicial precedent . . . [A] fundamental qualification for anyone being considered for a judicial appointment is that he or she understand the Constitution has binding force that must be applied faithfully in cases that come before any court, independent of his or her own policy or preferences.

So, again, I thank Senator KAUFMAN. He is one of the most valued members of the Judiciary Committee and somebody I am going to miss sorely when he retires this year. I thank him for his dogged efforts in support of Professor Schroeder's nomination and for his assistance in managing the debate so well today.

I congratulate Professor Schroeder and his family on his confirmation. I have every confidence he will be an effective and devoted public servant.

I might note—I see the distinguished Senator from North Carolina, who is presiding over the Senate today. Among the 25 judicial nominees stalled before a final Senate vote, there were two courts of appeal nominees for North Carolina. I know the distinguished Presiding Officer took a totally nonpartisan attitude toward recommending these judges and has worked extraordinarily hard, and I hope Judge Wynn and Judge Diaz will soon be allowed by Senate Republicans to be considered and voted on. They are supported by both the distinguished Presiding Officer, Senator HAGAN, and the other distinguished Senator from North Carolina, Senator BURR. So they are supported by a Democrat and a Republican.

Incidentally, Judge Wynn was reported out of the committee 18 to 1. Most of us would love to win elections by that kind of a margin. Judge Diaz was reported unanimously 3 months ago.

So let's stop this unprecedented kind of stalling and clear these 25 judicial nominees.

I see nobody else seeking recognition.

Madam President, I ask unanimous consent that at 2:15 p.m. today, the Senate proceed to vote on confirmation of the nomination of Christopher Schroeder, with the time until then equally divided and controlled as previously ordered; further, that any other provisions of the previous order with respect to the nomination remain in effect.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. LEAHY. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEMIEUX. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. LEMIEUX. I ask to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Florida is recognized.

#### FINANCIAL REGULATORY REFORM

Mr. LEMIEUX. Madam President, I come to the floor of the Senate today to talk about the issue of financial regulatory reform, an issue that is consuming the good efforts and time of many of our colleagues in the Senate. It is an issue that is very important to the future economic health and viability of this country.

As we go about our lives, even in this difficult economy, I think it is easy to forget how bad things were just a couple of years ago, how bad things were in the fall of 2008. It is important for us to remember the situation that we were put in, where our stock market fell precipitously, where our financial institutions were on the verge of collapse, where the Congress was forced to step in to give billions of dollars of taxpayer money to save the financial institutions, to avoid what was perceived at the time to be a situation as dire as that which happened in the late 1920s when the Great Depression started.

It is important for us to remember that terrible, challenging time as we evaluate what we should do now to prevent that time from happening again. We should be looking back to the causes of that crisis in order to figure out the solutions we should impose today.

There has been good work done among Members of both sides of the aisle. Senators DODD, SHELBY, CORKER, and others on the Banking and Finance Committee have been working overtime to come forward with a piece of legislation that will help put us in a situation where we will no longer have companies too big to fail which could have us going back to the American taxpayer to bail out Wall Street to save our financial institutions. We should never be put in that position again, so I commend the work that is being done. I am hopeful we will have a bipartisan product.

There are pieces of this legislation as it is currently constructed which give me concern; that they would cause a bailout to again be a situation that the Congress has to address gives me great concern. There is particular legislation as part of this package which would set up a fund of \$50 billion with certain companies designated as too big to fail. I think that is a wrong strategy. I think, therefore, we are guaranteeing future bailouts. We are saying to these companies: You are too big to fail. The Federal Government is giving you its stamp of approval. We will come in and rescue you with taxpayer dollars—or shareholder dollars, for that case.

I think that creates the wrong incentive. I think it promotes risky behavior

and at the same time creates an unfair playing field for those institutions which have played by the rules, which have had sound financial management. We should not forget in this debate and discussion that the way business is supposed to work in this country is you put together a venture to sell a product or a service. If you succeed, you have a profit. If you fail, you go out of business. The failures of the American economic system are in many ways just as important as the successes.

Where would we be if technologies that proved to be failures were subsidized and preventing better technologies from coming forward? That doesn't make any sense for consumers. It doesn't make any sense for the American way of life. We need to make sure businesses can fail if they do not succeed.

We have a system of bankruptcy in this country that is admired around the world that, in an orderly way, takes companies into its procedures and either reorganizes them or liquidates them. That should be the way the process works. We do not want to continue to support bad businesses with bad practices and bad ideas. We want the good businesses to succeed, and we certainly do not want to create a playing field where the businesses that run the right way are at a disadvantage. So I have problems with that portion of the bill.

There are other portions of the bill with which I have trouble. Certainly, we should not be in a situation of more taxpayer bailouts or even shareholder bailouts.

I wish to talk today about the causes of the prior crisis and what this bill needs to do to make sure that crisis does not happen again. If we go back to 2007–2008, we can see in hindsight what led to this financial meltdown. In a State such as mine, Florida, we have been particularly impacted by the meltdown that occurred because the basis of this meltdown was residential property and the mortgages that went along with that property.

In a State such as mine, in Florida, we have been very fortunate over the past 30 years or so because as we have had slowdowns in our real estate economy—which is a main driver of the economy in Florida, construction of real estate—other parts of the market have been able to step in and succeed when real estate construction fell back. Never before, until this most recent crisis, was the financial market wedded with the real estate market.

Let's look back at the circumstances that occurred. Sometime during the early 2000s, a process started whereby banks and lending institutions would give mortgages to people who did not have the ability, in all honesty, to afford the home they were purchasing. There was a type of loan in Florida, and I am sure in other parts of the country, called the Ninja loan—no income, no job. Why would any lending institution give you a loan if you were

not creditworthy in order to obtain that loan.

I had the opportunity to purchase my first home back in 1995. When I did, I could only put down 15 percent. My bank required me to get mortgage insurance in order to make it to the 20 percent deposit requirement. That was the way it was in this country. There was a time when you tried to obtain a mortgage where the bank was very vested in you being able to pay because they were holding the note.

Sometime in the early 2000s, the process started whereby mortgage brokers and banks could sell off your mortgage into the marketplace because we started to securitize mortgages, make mortgages trading instruments. When that happened and when now the mortgage broker or the bank that generates a fee from the writing of the mortgage of itself can take that mortgage and send it off, sell it off to somebody else, we created a bad incentive.

The bad incentive was, I don't care about the creditworthiness of the person to whom I am loaning the money because I no longer have to hold the mortgage. So the creation of these instruments, these securitized instruments to trade mortgages created that bad incentive, and all of a sudden mortgages were being written to people who otherwise did not have the credit and didn't have the likelihood of repaying them.

What did that do? Easier money meant prices became inflated. Most folks in Florida and all around this country did not look at the price of the home they were purchasing, they looked at their monthly payment. Interest rates were extremely low, money was easy to get, a downpayment was no longer a requirement. This helped the building business, the home construction business to take off—more homes, more mortgages.

The financial markets on Wall Street found that putting together these mortgage-backed securities, these large trading instruments with thousands, tens of thousands of mortgages, was very profitable for them. They could trade these back and forth and they, too, could receive a commission on the sale of these products. That made them money. Guess what. They were not responsible if they went under either.

In order for all of this to work, someone had to vouch for the worthiness of these large mortgage-backed securities, these trading instruments of mortgages. Wall Street looked, as it always has looked, to these rating agencies such as S&P, Moody's, Fitch—and guess what. They came along and allegedly looked at these products and stamped them as being AAA, the highest level of creditworthiness, very unlikely to have any problems with them where the person who purchased some kind of instrument on them would not get paid let alone lose their investment.

The challenge was that the rating agencies did not understand the mortgages that were in these products. They didn't do the due diligence, and we protect them by Federal law from any recourse. They didn't have any skin in the game either.

So now we have the borrower with no skin in the game because they didn't have to put anything down on their house—they are basically renting. We have the bank and mortgage broker with no skin in the game because they don't have to hold the mortgage on their books. We have the financial firms with no skin in the game because they are just trading these large securitized instruments, and worse still they create what they call synthetic agreements where you do not have to hold any of these mortgages yourself. You are just creating sort of a shadow trading instrument that trades off of the same underlying mortgage when, in fact, it doesn't hold them. It is like me betting that your house will burn down without me having an interest in your house.

We created this long chain of people in the marketplace, from the borrower to the mortgage broker bank to the financial institution to the rating agency, who had no skin in the game on these transactions. The sale of these market-backed securities, and later the credit default swaps which was the insurance policies against them, created huge fees for the financial firms.

We did, for the first time in this history, something we had never done before. We put the prime asset of most Americans—their home—in play on Wall Street. Year after year the demand for these mortgages drove the excess. More and more, poorer and poorer mortgages went to feed the beast on Wall Street. At the end of the day, the housing market couldn't sustain itself, and when the mortgages started to fail, when people started to not be able to make their payments, when the increase in property prices could not increase any more because gravity affects everything after a while, the whole system in 2007 and then 2008 began to fall apart, and we found out that companies such as AIG were all entangled in buying and selling insurance products on these products; that they had huge exposures, that Wall Street banks had \$5, \$10, \$15 billion or more in exposure and some of the biggest institutions that we know from Wall Street failed—at first bought up by other companies and then ultimately bailed out by you, the taxpayer. I go through this history and explain it in the best way I know how. It is a very complicated topic, because what we do in this reform bill has to address the skin-in-the-game problem. So to my friends, Senator DODD, Senator SHELBY, Senator CORKER, Senator WARNER, and others, who are in the midst of negotiating the bill that will come to this floor, I have made three suggestions as to what we need to do to make sure we do not replicate this problem again.

First, these rating agencies, which are captive to the investment banks whose products they rate, can no longer be held harmless to not do the due diligence required and stamp AAA on products they do not investigate and do not understand. But for these rating agencies, this crisis probably would not have happened. But for them, but for the imprimatur of their AAA stamp, people would not have slept well at night buying a product they did not understand. It is like Consumer Reports. Consumer Reports says, this is a great car. It is safe. You as a consumer do not understand the modern workings of a car with all of its computer technology, but you buy Consumer Reports, and you read it. It tells you this is the safest car in America, so you feel safe putting your wife and your kids in that car.

But you did not know under this circumstance that the very rating agencies that were rating these products, one, were not doing any due diligence, and, two, were being paid by the investment banks whose products they were rating. That has got to change.

Suggestion No. 2. In terms of residential mortgage underwriting, if a broker or bank is going to write some exotic-type mortgage where there is little to nothing down, then they should be required to maintain a portion of those mortgages on their books. Let them bear the risk. Do not let the bank shift it off so it can become securitized in the marketplace, entangle all of our financial institutions, and put us, the taxpayer, at risk. If we make those banks hold some of these nontraditional mortgages, I guarantee you they will do a better job of making sure the people they are lending money to are good creditworthy investments for them.

The third suggestion is this: The issuers of securitization, including these synthetic—which basically means manufactured, not real—collateralized debt obligations also should be required to retain a substantial stake of the instruments they market. They have to have skin in the game as well, so that if these instruments fail, they are going to lose money.

We have got to understand, not only in this discussion but throughout the problems we address, the incentives we are creating. We cannot have a financial market system whereby there is no exposure to me in any part of the equation, because that is going to encourage bad behavior. It is the same reason why we got it wrong on health care reform. Because as long as we have third-party payers, Medicare and Medicaid insurance companies, we, the consumers, have little interest in the cost we are paying. Therefore, costs do not go down.

It is the same brewing problem we are going to have when a recent statistic says that 47 percent of Americans do not pay taxes. If 47 percent of Americans do not pay taxes, do they

actually care if the U.S. Government does a good job of spending money effectively and efficiently? The incentive is for them not to care, because it is not their money.

We have got to address this issue today in the financial markets, and tomorrow in all of the legislation we pass.

Americans, banks, consumers, in all forms, whether we are buying health care services or financial products, whether we are buying a home or trading on Wall Street, we have to have skin in the game, or we create bad incentives that harm our country.

With that, I conclude my remarks and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BROWN of Ohio. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to speak for up to 5 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### DERIVATIVES

Mr. BROWN of Ohio. I know the Democrats are a bit shorter than that in time. If a Republican comes, I will yield the floor more quickly if they ask.

I only have a couple of things I want to say. I just came earlier from the Agriculture Committee meeting where we passed legislation, bipartisanship, to regulate derivatives. It was a major step in financial reform. The discussion was vigorous, the discussion was not contentious, but there was a good bit of disagreement. But in the end, the committee voted bipartisanship for stronger derivative legislation. It will provide financial stability by requiring banks to put capital behind their trades. It will use transparency and accountability to prevent Wall Street banks from taking advantage of their business customers. It will reduce speculation that fuels bubbles in markets such as natural gas and mortgages.

We understand derivatives can be used responsibly by businesses to hedge commercial risk. But commercial businesses make up a relatively small part of the derivatives business. It used to make up a much larger part. A lot of the synthetics, CDOs, and other derivatives have become way more commonplace and, parenthetically but importantly, put us in the position that we are in as a nation in our economy.

I commend Senator LINCOLN for her advocacy and leadership in voting out a strong derivatives regulation. The reason this is so important is we know what happened because of Wall Street excess. What happened is some homeowners in Bryan, OH, lost their homes. We know that retirees in Ravenna, OH,

lost a good bit of their wealth. We know that workers in Dayton, OH, lost their jobs. That is repeated in Charlotte, and Raleigh, and Asheville, NC. It is true in Marietta and Cleveland and Bedford, OH, that because of Wall Street excesses, too many people lost their homes, lost their wealth, lost their retirement, lost their jobs.

This legislation today, coupled with Senator DODD's legislation coming out of Banking, was bipartisanship passed. It will move us in the right direction. It was bipartisan but not a compromise of Wall Street. When bipartisanship means bring Wall Street to the table to write the legislation, that is not what the American people want. What bipartisanship means is that our committee writes strong language and Republicans and Democrats, at least one Republican and Democrats, come together. That is what we ought to do. That is the direction we should go. That is what responsible governing is all about.

I yield the floor and suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

Mr. BARRASSO. 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.

The question is, Will the Senate advise and consent to the nomination of Christopher H. Schroeder, of North Carolina, to be an Assistant Attorney General?

Mr. BARRASSO. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Utah (Mr. BENNETT), and the Senator from Nebraska (Mr. JOHANNES).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "yea."

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 24, as follows:

[Rollcall Vote No. 121 Ex.]

#### YEAS—72

Akaka	Cardin	Franken
Baucus	Carper	Gillibrand
Bayh	Casey	Graham
Begich	Collins	Grassley
Bennet	Conrad	Hagan
Bingaman	Corker	Harkin
Boxer	Dodd	Hatch
Brown (MA)	Dorgan	Inouye
Brown (OH)	Durbin	Johnson
Burris	Feingold	Kaufman
Cantwell	Feinstein	Kerry