

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

Klobuchar	Merkley	Shaheen
Kohl	Mikulski	Shelby
Kyl	Murkowski	Snowe
Landrieu	Murray	Specter
Lautenberg	Nelson (NE)	Stabenow
Leahy	Nelson (FL)	Tester
LeMieux	Pryor	Udall (CO)
Levin	Reed	Udall (NM)
Lieberman	Reid	Voynovich
Lincoln	Rockefeller	Warner
Lugar	Sanders	Webb
McCaskill	Schumer	Whitehouse
Menendez	Sessions	Wyden

NAYS—24

Barrasso	Cornyn	Isakson
Bond	Crapo	McCain
Brownback	DeMint	McConnell
Bunning	Ensign	Risch
Burr	Enzi	Roberts
Chambliss	Gregg	Thune
Coburn	Hutchison	Vitter
Cochran	Inhofe	Wicker

NOT VOTING—4

Alexander	Byrd
Bennett	Johanns

The nomination was confirmed.

The ACTING PRESIDENT pro tempore. Under the previous order, a motion to consider is considered made and laid upon the table.

The President will be immediately notified of the Senate's action.

THOMAS I. VANASKIE TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The ACTING PRESIDENT pro tempore. The clerk will report the next nomination.

The legislative clerk read the nomination of Thomas I. Vanaskie, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, there will be 3 hours of debate on this nomination. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, the Senate just devoted more than 3 hours to the nomination of Chris Schroeder. I am glad that after many months the Senate has finally been allowed to act on that nomination and gratified that he received a bipartisan confirmation vote. After months of delay no Republican came to the Senate to speak in opposition to the nomination in the 3 hours that Republicans insisted be set aside to debate it. Senator KAUFMAN spoke in favor; I spoke in favor. Not a single opponent came to debate. That wasted more of the Senate's time when we should be considering other matters. We could be debating Wall Street reform, patent reform, or clearing the way for some of the other 100 Presidential nominations being stalled. We should have been.

With respect to the President's judicial nominees, we are well behind the pace I set as chairman when the Senate was considering President Bush's nominees during the second year of his Presidency. By this date in President Bush's second year, the Senate, with a Democratic majority, had moved ahead to confirm 45 of his Federal circuit and district court judges. So far during President Obama's Presidency, Senate

Republicans have only allowed votes on 18 of his Federal circuit and district court nominations. During the first 2 years of President Bush's Presidency we moved forward to confirm 100 of his judicial nominees. Republican obstruction of President Obama's nominations makes it unlikely that the Senate will reach 50 such confirmations. Last year they allowed only 12 Federal circuit and district court nominees to be confirmed, the lowest number in more than 50 years.

Today, thanks to the perseverance of the majority leader and the Senators from Pennsylvania, we will consider and I hope confirm the 19th of President Obama's Federal circuit and district court nominees, Judge Thomas Vanaskie. It has been more than 4 months since Judge Thomas Vanaskie's nomination to fill a judicial emergency on the U.S. Court of Appeals for the Third Circuit was reported favorably by the Judiciary Committee with strong bipartisan support. His nomination has the support of both of his home State Senators, Senator SPECTER and Senator CASEY. He has more than 15 years of Federal judicial experience having served as a district court judge in Pennsylvania since 1994. The American Bar Association Standing Committee on the Federal Judiciary has unanimously rated him well qualified to serve as a circuit judge on third circuit. His nomination is not controversial. Yet, it has taken months to get consent from the other side for an up-or-down vote on Judge Vanaskie's nomination and that did not occur until the majority leader was forced to file cloture to end the stalling. Judge Vanaskie is one of the 25 judicial nominees still being stalled from final Senate consideration.

I appreciate the significant steps taken by the majority leader to address the crisis created by Senate Republican obstruction of the Senate's advice and consent responsibilities. Their refusal to promptly consider even the most noncontroversial nominations is a dramatic departure from the Senate's traditional practice of prompt and routine consideration of noncontroversial nominees. The majority leader's decision to file cloture was an unfortunate but necessary step, resulting from Senate Republicans' refusal month after month to join agreements to consider, debate and vote on this nomination. Those practices have obstructed Senate action and led to the backlog of almost 100 nominations pending before the Senate, awaiting final action. These are all nominations favorably reported by the committees of jurisdiction. Most are nominations that were reported without opposition or with a small minority of negative votes. Regrettably, this has been an ongoing Republican strategy and practice during President Obama's Presidency.

The vote on the confirmation of Judge Vanaskie's nomination is the first vote on judicial nominations that

the Senate will hold in 5 weeks. Despite the dozens of judicial nominations ready for Senate consideration, none has been allowed to move forward for over a month to fill longstanding vacancies in the Federal courts. Of the 25 pending judicial nominations, 18 were reported from the Senate Judiciary Committee without any Republican Senator voting against. I have been urging the Senate Republican leadership for months to allow votes on these noncontroversial nominations and to enter into time agreements to debate the others. We need to clear the backlog of nominations and move forward.

I am pleased that the Senate tomorrow will consider another judicial nomination, that of Judge Denny Chin to the Second Circuit Court of Appeals. His nomination was reported by the Judiciary Committee unanimously, but it has also been stalled from Senate consideration for more than 4 months. Senate Republicans should lift their secret holds and also allow votes on the remaining 23 judicial nominations currently pending final action by the Senate. If we are allowed to act on the judicial nominations reported favorably by the Senate Judiciary Committee but on which Senate Republicans are preventing Senate action, we will more than double the number of judicial nominations confirmed by the Senate this Congress, and bring the number of confirmations in line with the number we confirmed at this point during President Bush's first two years in office.

Judicial vacancies have skyrocketed to over 100, more than 40 of which have been designated "judicial emergencies." Caseloads and backlogs continue to grow while vacancies are left open longer and longer. On this date in President Bush's first term, not only had the Senate confirmed 45 Federal district and circuit court judges but there were just seven judicial nominations on the calendar. All seven were confirmed within 9 days. By the end of this month, which is nine days from now, we should clear the backlog that Republican obstruction has created and vote on the judicial nominations stalled on the Senate Executive Calendar.

By this date during President Bush's first term, circuit court nominations had waited less than a week, on average, before being voted on and confirmed. By contrast, currently stalled by Senate Republicans are circuit court nominees reported by the Judiciary Committee 5 months ago, in November of last year. The seven circuit court nominees the Senate has been allowed to consider so far have waited an average of 124 days after being reported before being allowed to be considered and confirmed.

Judge Vanaskie was born and raised in Shamokin, PA. He is one of seven children raised by two working parents. He graduated magna cum laude from Lycoming College in 1975 and cum