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	Voinovich
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

laude from Dickinson School of Law in 1978, where he was an editor of the law review. After law school, he spent 2 years as a law clerk to the Honorable William J. Nealon, then Chief Judge of the United States District Court for the Middle District of Pennsylvania. Prior to joining the Federal bench, Judge Vanaskie spent 14 years in private practice.

In 1994, Judge Vanaskie was confirmed by voice vote to serve as a United States District Court Judge for the Middle District of Pennsylvania. He served as the Chief Judge of the Middle District from 1999 to 2006, and has sat by designation with the Third Circuit Court of Appeals on several occasions. He has also served as cochair of the Third Circuit Library Resources Task Force and as a member of the Board of Directors of the Federal Judges Association. He is presently the chair of the Third Circuit Judicial Council's Information Technology Committee. His work in the area of technology in the courtroom has won him widespread admiration and appreciation.

I congratulate Judge Vanaskie and his family on what I expect will be strong bipartisan vote in favor of his confirmation to serve on the Third Circuit. It is long overdue.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina.

NOMINEES JIM WYNN AND AL DIAZ

Mrs. HAGAN. Mr. President, there are two judicial nominees on the calendar from North Carolina who I believe would be confirmed by this body overwhelmingly. Judges Jim Wynn and Al Diaz, nominees for the Fourth Circuit Court of Appeals, were both approved by the Senate Judiciary Committee in January. Judge Diaz had the vote of every single member of the committee, and just one Senator opposed Judge Wynn.

The reality of this situation, though, is that North Carolina has been waiting for one of these judges since 1994. That is 1994. Since then, there has been only one judge from North Carolina on the 15-judge panel of the Fourth Circuit Court of Appeals, even though North Carolina is the largest and fastest growing of the five States in the Fourth Circuit. Partisan bickering has continually blocked qualified North Carolinians from confirmation since the court's establishment back in 1891.

But in consultation with both me and Senator BURR, the President has appointed two highly qualified, experienced, and fairminded North Carolina judges: Al Diaz and Jim Wynn. Judge Diaz, of Charlotte, a Business Court judge, handles extremely complex business cases. Before that, he was a State superior court judge. Judge Wynn, of Cary, is a 19-year veteran of the North Carolina Court of Appeals and formerly served on the North Carolina Supreme Court. The American Bar Association has given them both its highest possible rating. They both have served our country in the military. They have the support of Democrats and Republicans, including my North Carolina Senate colleague, Senator RICHARD BURR. They have no real opposition that I am aware of.

Finally, we have not one but two qualified and bipartisan choices to serve North Carolina and our country on the Fourth Circuit. I am hopeful that we are close to confirming these two outstanding nominees for the Fourth Circuit. I will continue working with my colleagues to ensure they are confirmed as swiftly as possible.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. CASEY. Mr. President, I rise today to speak about the nomination we are considering in the next few hours, which is the nomination of Judge Thomas I. Vanaskie.

I can't tell you how proud I am to talk about his nomination. I have known him for a long time. I think it goes without saying that—and I join a lot of people who have spoken about him already and know him—I strongly support his nomination and confirmation for a seat on the United States Court of Appeals for the Third Circuit. Tom Vanaskie is a legal scholar, he is fair minded, and he has unquestioned integrity and ability. He is an experienced Federal judge since his appointment in 1994. On top of all that, he is a decent, compassionate man.

The Standing Committee on the Federal Judiciary of the American Bar Association has unanimously rated Judge Vanaskie well qualified to serve as a judge on the United States Court of Appeals for the Third Circuit.

Judge Vanaskie's biography highlights both his scholarly and professional accomplishments and the highest esteem in which he is held by his colleagues in the legal profession. He graduated magna cum laude from Lycoming College in Williamsport, PA, where he was also an honorable mention all-American football player, a first-team academic all-American, and he was the college's outstanding male student athlete, and the recipient of the highest award given to a graduating student.

Then he went to Dickinson School of Law in Pennsylvania, from which he graduated cum laude in 1978, where Judge Vanaskie served as an editor of the law review and received the M. Vashti Burr award, a scholarship given by the faculty to the student deemed ''most deserving.''

After graduating from law school, Judge Vanaskie served as a law clerk for Judge William J. Nealon, chief judge at the time of the U.S. District Court for the Middle District of Pennsylvania.

Judge Vanaskie practiced law for two highly regarded Pennsylvania law firms before his appointment to the United States District Court for the Middle District of Pennsylvania in 1994. He became the Middle District's chief judge 5 years later, in 1999, and completed his 7-year term in that capacity in 2006.

He was appointed by Chief Justice Rehnquist to the Information Technology Committee of the Judicial Conference of the United States, where he served as chairman for 3 years. He also participated in several working groups at the Administrative Office of the U.S. Courts, most recently on the Future of District CM/ECF Working Group, tasked with determining the design and development of the next generation of the Federal judiciary's electronic case filing program.

Finally, he is an adjunct professor at Dickinson School of Law and has been active in civic and charitable endeavors in northeastern Pennsylvania. Like me, he is a northeastern Pennsylvania native and resident.

Just a few accolades about his service from a wide variety of people. We could read a number of these. I will highlight a few: Lawyers who have appeared before Judge Vanaskie have expressed tremendous respect for his intellectual rigor and the disciplined attention he brings to the matters before him.

One attorney, who tried over a dozen cases before Judge Vanaskie, has described him as ''objective, fair, analytical, dispassionate, extraordinarily careful, and very respectful of appellate authority.'' This same lawyer, the same practitioner, said he had not always agreed with Judge Vanaskie's decisions, but he always felt his rulings reflected what the judge considered to be the most appropriate result and the result that he was obligated to impose under the law.

A U.S. district court judge, William J. Nealon, for whom he clerked, described him as follows:

Superbly qualified. He's outstanding, he's brilliant, he's objective, and he's tireless.

Judge Vanaskie recognizes that for many citizens, his decisions will be the final word on their claims before the court. He treats people with respect and honors their right to be heard. His deep understanding of and respect for the rule of law will serve him well in ruling on cases and authoring opinions that will be influential in the Third Circuit Court of Appeals and beyond.

For all these reasons and many others, I am proud to stand in support of Judge Vanaskie and urge his confirmation today.

With that, I ask unanimous consent that all quorum calls during the controlled time on the Vanaskie nomination be equally divided.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. CASEY. Mr. President, I suggest the absence of a quorum.

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

The assistant bill clerk proceeded to call the roll.

Mr. CASEY. 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.

Mr. CASEY. Mr. President, I ask unanimous consent that I be permitted to speak as in morning business.

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

FINANCIAL REGULATORY REFORM

Mr. CASEY. Mr. President, I rise today to talk about a major issue that will be before the Senate very shortly, and which we have spent some time on in the Agriculture, Nutrition and Forestry Committee over many weeks and days, but most recently today in a markup. I will talk about that in a couple moments.

It is time that the Senate, in the next couple of days and weeks, focuses on passing comprehensive reform measures that will put an end to Wall Street's reckless endangerment of our economic system. For too long—in fact, for many years now—we have allowed this system to be in place, where high-risk deals were cut on Wall Street. Some people made a lot of money, but our economy went into the ditch because of it.

It wasn't always like that. For decades following the Great Depression, we enjoyed a financial system that worked—worked for American families and small businesses. It is pretty simple when you think about it, and it has been successful at the same time. Local banks, operating in communities across the Nation, took deposits and made loans for homes, cars, or businesses. People knew their bankers and their bankers knew them. Each party was invested in the success of the other. During this time, our economy thrived. It experienced prolonged growth and innovation. These benefits were felt across the board by people across our economy and our country.

Let's contrast that period of growth and shared prosperity with what has happened in the last few years, and even over the last 30 years. This most recent period can be characterized by the massive growth of the financial sector.

In 1978, commercial banks held $1.2 trillion in assets, equivalent to 53 percent of gross domestic product. By the end of 2007, that same measurement, what commercial banks held in assets, had grown to $11.8 trillion or 84 percent of gross domestic product. So the percentage went from 53 to 84, and the number went from $1.2 trillion to $11.8 trillion in assets. Unlike the preceding period, this growth was not spread across the real economy to households and businesses. Instead, it was explicitly shifted away from families and communities and concentrated on Wall Street.

The impact of this concentration has been acute. People used to rely on local institutions, but they now face a financial service marketplace dominated by a few banks with retail outposts sprinkled across the country.

Instead of supporting small businesses, little league teams, or families, as did their local predecessors, these megabanks gather deposits from Main Street and then slice and dice them and leverage them to the hilt and use the hard-earned wages and savings of Americans to make a handful of people very rich.

Make no mistake about it, the megabanks profited tremendously from this new model. Over the last 30 years, profits and compensation in the banking industry have skyrocketed. From 1948 to 1979, the average compensation in the banking sector was more or less the same as any other job in the private sector. Today, bankers earn, on average, two times what other private sector employees take home.

Simply stated, American families and small businesses are no longer the customer in this broken system. Instead, these institutions function to make wealth for themselves and their stockholders.

A clear example of this can be found in recent news stories detailing the record profits of these megabanks—record profits in a time of historically high unemployment and a bad economy. These profits were not made through savvy lending to their customers. In fact, in the case of JPMorgan Chase, Citigroup, and Bank of America—three of our largest megabanks—they have cut lending through a key Small Business Administration lending program by between 85 and 90 percent from 1 year to the next.

These multibillion dollar profits have been made through high-risk trading operations with money deposited by families and businesses. The banks are expecting people in our communities to shoulder all of the risk, while getting none of the upside.

Something has to give in this situation. These megabanks, these big companies, are entitled to make profits, but we will no longer allow them to continue to use the federally insured deposits of working people as capital for their money-making schemes. We need commonsense rules that separate conventional commercial banking operations from high-risk financial gambles.

In no area is this need for reform more apparent than in the so-called derivatives market. A derivative is a high-risk bet that the value of another financial instrument, or commodity, or other product will go up or down. It is a bet. For years, Wall Street fought and won the battle to keep derivatives unregulated. In this highly unregulated market, Wall Street could place bets on bets, without backing them up. Therefore, when the underlying weakness of assets became apparent, the derivatives market went bust—along with it, the Wall Street banks playing in the market, causing the need for the massive bailout of these institutions.

To prevent another catastrophe, we need a strong regulation of the derivatives market. Today, the Senate committee of which I am a member, the Committee on Agriculture, Nutrition and Forestry, had a markup session. What we are talking about is members of the committee talking on amendments and then voting for final passage of the bill out of committee. That is a markup. We had that markup session today on the Wall Street Transparency and Accountability Act of 2010.

I applaud our chairwoman, Senator LINCOLN, for her work on putting forth a bill that cracks down on the reckless activities of Wall Street. I also commend her and other members of the committee for reporting it out of committee so we can incorporate it into the Banking Committee bill we will be considering on the floor soon.

The Wall Street Transparency and Accountability Act of 2010 will add those two important words to our financial system, both transparency and accountability. In particular, it will impose it on the derivatives market, No. 1, by requiring that derivative transactions—most of them—be cleared through a central clearinghouse; second, require real-time reporting, similar to a stock exchange, of the transactions that parties are entering into.

Besides a more transparent market, the most important provision in this bill is the requirement that commercial banks that have FDIC-insured accounts can no longer trade on the derivatives market. This provision will force commercial banks to refocus on what should be their No. 1 priority—the customer—instead of just profits and their own stockholders.

Our current financial system is broken and no longer works for families and small businesses. When I travel across the Commonwealth of Pennsylvania, I often hear about the financial difficulties people are experiencing. We have close to record-high unemployment, 582,000 people out of work. A lot of people lost their jobs or their homes or both, and, in so many ways, their hopes and their dreams. Then they read in the paper every day it seems about record profits of these big megabanks.

They think: What about me and my family? Why can't I get a loan? They will ask people like me: Why is the interest rate being raised on my credit card? Questions such as these have persisted for so long now. Did we not bail out these megabanks on Wall Street already so they can continue to lend money to people like me or their customers? Those are the questions I get.

The answers to each of these questions are the same. These institutions have failed the American people. It is that simple. By extension, they have helped to collapse our economy. Thank goodness we are starting to turn, seeing some job growth in our economy. But we need financial institutions that focus on the needs of our families and our small businesses once again.

Senator LINCOLN's bill is a step in the right direction. We are not there yet. With that bill and with the work we will do on the Banking Committee bill,

we can begin to restore not only transparency and accountability and sunlight, but I believe we can restore some measure of confidence in our financial system and make it work better for real people, for families, and for small businesses and also to strengthen our economy.

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

The PRESIDING OFFICER (Mr. MERKLEY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

FINANCIAL REGULATORY REFORM

Mr. DODD. Mr. President, I wish to take a few minutes this afternoon, if I may, to discuss further the efforts in financial regulatory reform.

I would be remiss if I did not note the contribution of the Presiding Officer to this effort. I thank him personally once again. He is a member of the Banking Committee and has expressed strong interest in this legislation and various parts of it, and I thank him for it.

Today I wish to talk about aspects of the bill. I have been talking about this bill on the floor over the last several days, issues such as too big to fail, which we aggressively address in our legislation. I talked about the efforts that have been made to try to forge a comprehensive bill, a strong bill. We have involved, we have invited virtually everyone interested to participate in the product. I am proud to say many did offer their ideas and thoughts as we tried to develop a proposal that was not only strong and broad based but attracted, again, a strong group of our colleagues, both Democrats and Republicans, to this effort.

Over the days, we have spent a lot of time discussing the impact of Wall Street reform on large financial firms, big banks, investment banks, nonbanks, corporate executives, Federal regulators, and other power players in the financial sector—that has been the subject of a great deal of attention—and the complicated subject matters of derivatives—how they work, how they apply—shadow economies, black pools, systemic risk—all this language and discussion that sometimes can leave the average citizen feeling as though we are talking in a foreign language about these matters.

The question they ask is: How does this affect me? I am glad you are going to try to clean this up, but what is happening with all of this that has some positive impact on my life as a taxpayer, as a working American? I would like to know what is being done to see to it that my interests are going to be considered as you are trying to resolve all of these larger questions that somehow seem very distant to my concerns every day.

Today I wish to take a few minutes to talk about the impact of this legislation on millions and millions of our fellow citizens who are not financial wizards—and would be the first to tell you so—they are not big wigs on Wall Street, major players in large banks and financial institutions. They are people just trying to build a nest egg for their families, invest in their futures, maybe take a loan out to buy an automobile, a home, send a child to college because that child has done everything they have asked them to do over the years and now wants to go on to that educational opportunity and needs the resources to do so.

The stories are myriad. There are many. The demands are obviously clear. Unfortunately, as we know and many Americans found out the hard way over the last few years, our current financial system leaves consumers too often vulnerable to being deceived into purchasing risky products, if not outright ripped off by greedy Wall Street firms and others. After all, at the heart of the financial crisis that has cost our Nation so dearly were the subprime mortgages sold by unscrupulous lenders to Americans who did not understand their terms and who never, ever could have afforded them, and the lenders knew it. They knew going into it. Yet they lured them into those arrangements, with great damage done to individuals and to the economy as a whole.

Wall Street's unquenchable thirst for profits and utter disregard for ordinary consumers led to a pattern of greed and recklessness that darn near led to creating a complete collapse of our financial markets and our economy. Millions of Americans lost their jobs, around 8.5 million. Seven million homes have gone into foreclosure, many lost forever. Retirement earnings, as I have said over and over, evaporated in some cases almost instantaneously as a result of the collapse of our economy. Maybe more important than all of that—as hard as it is if you lost your home, your job, your health care—is they lost their faith and sense of optimism and confidence in our financial system in this country, that loss of confidence, that loss of optimism, that loss of belief that while you may make a bad bet on a stock, the system was sound and fair. It would treat you fairly, and you were not going to get hurt because we had a good system in place. That confidence, that faith has been lost. That may be more important than everything else I have mentioned in terms of the future strength of our economy and our country.

To add insult to injury, those same Americans then saw those same firms collecting billion-dollar bailouts at the expense of the taxpayer—and paying million-dollar bonuses to the same executives whose bad decisions put us in the mess in the first place and who would have been out of a job had the bailout not occurred.

The bailout allowed those financial institutions to survive and their expression of gratitude was to write themselves a huge bonus check and being able to do so only because in this Chamber we voted 75 to 24 to stabilize our financial system—a decision I believe was the right one. I think we made the right call in doing it, as difficult as it was. But at the end of all that, major executives in these companies then rewarded themselves as the head of these institutions because we—mostly the taxpayers, by the way—came up with the resources to make it possible for those institutions to survive.

So the American people are angry and with good reason. But they are also wondering: Who is looking out for us? Whose job is it to make sure this doesn't happen again? While our current system pays lip service to consumer protection, those responsibilities are divided among some seven different regulators for whom consumer protection is just an afterthought, in too many cases, to their primary safety and soundness missions that they are responsible for as well. The result is, regulators put the interests of banks and large financial institutions, in too many cases, before the interests of the consumers who rely on those institutions for their long-term economic security.

If this sounds like a recipe for failure, that is because it is. Assistant Secretary of the Treasury Michael Barr testified before our Banking Committee not long ago, and he said:

> Today's consumer protection regime just experienced massive failure. It could not stem a plague of abusive and unaffordable mortgages and exploitative credit cards despite clear warning signs. It cost millions of responsible consumers their homes, their savings, and their dignity. And it contributed to the near collapse of our financial system. We did not have just a financial crisis, we had a consumer crisis.

That massive failure could happen again. Today, we are in no different position than we were in 2007, 2008, and 2009. Nothing has changed. Yet we are on the brink of creating change that could make a difference in this very area. So today those massive failures are still lurking out there, and the same consumers who lost their homes, lost their jobs, lost their retirement, lost their health care are in no different position should another crisis happen tonight or tomorrow. It is exactly the same system, exactly the same structure, exactly the same so-called regulators out there charged with protecting consumers from the kinds of problems that led us to the difficulties we are in today. Again, the financial products and practices being devised on Wall Street, even as we speak, will make it even more difficult in many ways. Are they safe? Are they exploitative? We have no idea, and neither do the American people because no one is looking out for them at this juncture.

Our legislation answers the question of who is looking out for ordinary Americans when they interact with our

financial systems. The bill we will present to our colleagues in just a matter of hours in this Chamber creates an independent Consumer Financial Protection Bureau, a watchdog with bark and with bite. This new bureau will not have any job more important than helping American consumers make smart financial decisions—because protecting, educating, and empowering American consumers will be their only job.

This bureau will have an independent Director, appointed by the President and confirmed by the Senate. It will have a dedicated and independent budget paid by the Federal Reserve Board. It will be empowered to write consumer protection rules governing any institution, whether it is a bank or a payday lender that offers consumer financial services or products. It will have a new Office of Financial Literacy to ensure that consumers are able to understand the products and services they are being offered and a national toll-free consumer complaint line so, for the first time, Americans have somewhere to go when they need to report a problem.

When I talk to people back in my home State, they understand it is their responsibility to make smart decisions about their family finances, and nothing in our bill suggests otherwise. That is the first line of defense, so we all bear responsibility to learn more, to pay attention, and to understand the financial arrangements we are getting into. I am not saying anything different. Unlike Wall Street, they are not looking to shirk that responsibility. They welcome that responsibility, but they would like to understand it better. What they need is clear, accurate information so they can make those good decisions and a cop on the beat to stop abusive practices when they occur. That is what our legislation, which will soon be before this body, does.

Our legislation finally puts consumers in control of their financial lives by requiring large financial institutions and credit card companies to tell them what they are selling in plain English so the purchaser doesn't need a master's in business administration to understand. It will finally put an end to the practices that have become almost standard operating procedure—skyrocketing credit card interest rates, the explosion of overdraft fees, predatory lending by mortgage firms, and more.

This Congress has taken steps to address these abusive practices, passing the Credit CARD Act, which was authored by the members of our committee—again, I thank the Presiding Officer for having been a part of that—and forcing large banks to change their overdraft fee policies.

But credit card companies continue to look for ways around the new rules, and history shows them to be pretty good at getting away with it as well.

Between 1997 and 2007—in that decade—credit card companies engaged a wide variety of, frankly, unethical practices—from so-called double-cycle billing and universal default to retroactive and arbitrary interest rate hikes. In that entire decade—a decade in which literally millions of our fellow citizens were overcharged or outright ripped off by these banks—there were just nine formal enforcement actions taken by the seven regulators in our national government. Let me repeat that. In that entire decade—when nearly every single citizen in this country could talk about one horror story after another, where rates were increased, fees were enlarged, and every gimmick and trick was used to squeeze every last nickel out of a consumer's pocketbook—there were only nine formal enforcement actions taken by the regulators at the national level.

There are stories similar to the one I heard from Mario Livieri of Branford, CT. Mario is a 75-year-old retired homebuilder who accidentally overdrew his account by $2. I am not making this up. Mario is 75 years old and a small business contractor. He overdrew his account by $2 and was charged $35. The bank took several days to notify him that the account was overdrawn. In the meantime, of course, additional minor purchases yielded three additional $35 fees, for a total of $140, which Mario Livieri was charged because he was $2 overdrawn in his banking account.

Unfortunately, that story by this individual in my State can be repeated millions of times all across the country. A $2 mistake made by a conscientious individual, and one that he was unaware of until notified later, and every subsequent purchase he made brought an additional $35 fee until he had a bill—before he discovered the mistake—of $140 because of being $2 overdrawn. That used to go on all the time, and in too many cases it still does. When Mario protested, the bank waived one of the four $35 charges, but they told him there was nothing he could do to fight the fees because the practice was perfectly legal.

Then there are the auto dealers that have been shown to take advantage of military servicemembers, the shady payday lenders that prey on minority communities, and a wide range of malicious actors who look to take advantage of American consumers. This bill that will be before this body, which passed out of our committee, puts an end to those abuses, and that is why it is supported by the Military Coalition, civil rights groups, consumer rights groups, and more. It is also why it is opposed by large financial institutions whose business strategies are based too often on taking advantage of their very own customers.

Let me take a moment to put an end to some of the malarkey we have been hearing from the Wall Street crowd. The large banks are paying for ads now claiming that this legislation will impose new restrictions on dentists and butchers and other Main Street merchants. That is not true. You and I know this. But that kind of falsehood that goes out across the country is exactly the kind of propaganda they are determined to engage in to undermine this legislation.

These rules we have crafted apply only to firms engaged in offering consumer financial services or products, not the butcher, not the laundromat, and not the dentist. An entity must be engaged in financial services or products. Just because your butcher lets you keep a tab or your dentist offers a payment plan doesn't mean these new rules apply.

Moreover, this legislation doesn't seek to strangle innovation in the financial sector. Quite the opposite. That innovation is part of what keeps America prosperous. We are not dictating what products can be offered any more than the Consumer Product Safety Commission directs what toymakers can invent. But just as the Consumer Product Safety Commission watches out for toys that could hurt children, the independent Consumer Financial Protection Bureau will watch out for products that will hurt someone's finances so customers and consumers can make smart decisions.

The large financial institutions have tried to push this notion that this legislation creates an enormous burden on small community banks. Let me address that. How nice of them to look out for their competitors, the ones they have been trying to drum out of business for decades. But the fact is, the small community banks with $10 billion or less in assets will not see any regulatory changes. They will not be charged any fees or assessments. They will follow the same rules they follow today. Even better, these small community banks will be able to operate on a level playing field without the unfair competition from the underregulated or unregulated shadow banks that don't operate with any rules whatsoever.

So this legislation has many important objectives, from ending taxpayer bailouts to establishing an early warning system so future financial crises can be nipped in the bud before they threaten our entire economic system. But for millions of Americans who don't pay much attention to what goes on, on Wall Street, except when they have to write a check to bail out the firms that live there, perhaps nothing in this bill will impact their lives more directly than the new independent Consumer Financial Protection Bureau. Finally, there will be a cop on the beat watching out for them.

The safety and soundness of our financial institutions are critically important. I am not arguing against that at all. But that is not the only consideration. As this real estate bubble was building up, we were told over and over that the system was safe and sound. Why? Because people were making money. It was growing in profits. What we failed to look at and understand

was it may have been safe and sound from that narrow perspective, but for the consumers who were relying on these financial institutions for their economic security, it was anything but safe and sound. With the establishment of this bureau, for the first time in the history of our country, we are saying that financial products ought to be no different than any other product consumers buy. There ought to be a place where someone can go when they have been deceived or defrauded in the use of these financial products.

If your lawnmower breaks or your car malfunctions, we get all sorts of reports, as recently seen with recalls of products because they are unsafe for a consumer to use. Why shouldn't that also exist if someone is out there purchasing a financial product that could put them in great danger—in fact, bankrupt them and ruin their life because they have been deceived and drawn into a financial arrangement because it was a quick profit-making operation for the lender, but it put the consumer at great risk—and ultimately causes, as we have seen in millions of cases, the ultimate financial ruin of individuals, families, and businesses. Thus, we have established a parity between physical products you may buy and financial products you may engage in.

Finally, Americans will be able to rely on clear and accurate information about their family finances. They will know that someone will be looking out for them. There is no better way to restore faith against the loss of homes, the loss of jobs, the loss of retirement—all of which have occurred—and perhaps the greatest tragedy of all being the loss of faith in our financial system. We need to restore that. The absence of that will not make this get better. Every single other thing we do will not achieve its goal if Americans don't have confidence in our financial systems—the faith that it is there, it is safe; that they can be secure in the knowledge that when they deposit a hard-earned paycheck, when they buy an insurance policy, when they buy a stock, when they engage in financial activity, the structure, the system there is not unfair. It is not out there to deceive them, to defraud them, to take advantage of them, but to see to it they are protected. That is our goal in this bill.

My hope is that my colleagues will allow us to get to this debate. If you have objections or ideas, let's have that full-throated debate that has been the history of this Chamber on important matters that have come before us in the past. We ought not be denied that opportunity again on this bill.

But I wanted to take a moment to talk about the consumer protection efforts on this legislation, and I again compliment my colleague in the chair, the Presiding Officer, because he has been a champion in our short service together on this committee on the very issues I have addressed today, and I thank him for his commitment and passion for these issues.

I yield the floor, and I see my colleague and friend from Arizona, so I will not note the absence of a quorum.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, before I begin talking about this bill specifically, I wish to compliment Chairman DODD for the hard work he has put into this matter. I believe it is important for us to reach a bipartisan consensus, and many of the things we just discussed are matters on which we can reach a consensus. That is the goal of Republicans.

I am concerned that there has been some politicization of this issue by many on the other side and, frankly, some in the administration. I know, for example, that Senator CHAMBLISS, a Republican, and Senator LINCOLN, a Democrat, worked very closely together and had virtually, I am told, reached an agreement on the derivative issue as it pertains to the jurisdiction of their Agriculture Committee, only to be told by the White House that was not acceptable and that Chairman LINCOLN needed to go back and redo it the way they wanted it done. As a result, the bill was passed out of the Agriculture Committee on an almost partisan line. The same thing was true of the legislation that came out of the Banking Committee.

While Chairman DODD is here, let me make this point. He suggested this morning that there are Republicans who support this bill, he knows, but that they are being told by Republican leadership that they can't support it. I want to make it clear that our leadership does not operate that way. One reason I know that is because I am one of our leadership. Our members of the Republican caucus think for themselves.

We came to a conclusion unanimously in the Republican conference that the partisan bill that came out of the Banking Committee—and it was partisan; it was written by Democrats, not Republicans, and it was passed on a party-line vote—that bill was not the way to move forward. It was partisan, it was flawed and, among other things, it would provide for perpetual bailouts and therefore didn't achieve the first goal of the legislation, which was to finally end the taxpayer bailouts.

So all 41 of us wrote to the leader and said we will not vote to proceed to that bill because it is a partisan bill. It would be better if we could work together in a bipartisan way to bring a bill to the floor of the Senate that represented not just Republican ideas but a combination of Democratic and Republican ideas that had been negotiated by the members of the Banking Committee, members of the Agriculture Committee, and others. That would ordinarily be the way we would take up a bill here on the Senate floor.

Having said that, I am still confident, based upon what Senator SHELBY and other Republicans on the Banking Committee have said, that it is possible to reach a bipartisan consensus. I know Chairman DODD and Senator SHELBY have been working hard every day on various aspects of the bill to try to reach a conclusion.

The second point I wish to make is that one should not describe the bill that passed out of the Banking Committee as the end of the story, as a successful bill that is going to solve all of these problems. I do not think it will. It does not end taxpayer bailouts, for example, and at a minimum, it seems to me it ought to do that. So in just a few minutes here, I would like to describe some of the things that I think the bill should address and that I hope are being addressed in the bipartisan negotiations.

I am sure it is obvious that it is very difficult—once a bill comes to the floor and you have a chairman and leader supporting the bill, with 59 Senators on their side of the aisle, it is very hard to amend that bill. That is one reason Republicans would like to see a bill brought to the floor that already has bipartisan consensus, and then, yes, we can work our will on the bill and maybe amend it, maybe not, but at least we know it is not going to be a purely partisan proposition.

There has been much attention paid to the $50 billion fund that is created by this bill. While it is true that the financial institutions, of course, pay the money, supply the money that goes into that fund, we all know where the money eventually is paid—the costs are passed on to the consumers. But that is not the real problem because there are other funds, such as the FDIC fund, for example, which the banks obviously pass on to their consumers in order to have an ability to take care of their expenses to creditors should they not be able to do so.

But what this bill does is not just create this $50 billion fund but also continuing government obligations beyond that. It provides not an orderly bankruptcy type of procedure for the resolution of a failed company but, rather, an ad hoc procedure determined by bureaucrats who are not accountable to anybody and who can apply pretty much any rule they want to the winding down of the institution.

What does that do? Today—and frankly, it has been this way for two centuries—we have a series of laws that dictate what happens in the event of the failure of a company. Primarily, these are our bankruptcy laws. You know in advance what happens. If you are a company that cannot make it and you go bankrupt, there are two basic ways you can file bankruptcy, one in which you totally liquidate, the other in which you reorganize. In those two situations, the law provides for what happens to your creditors.

By definition, bankruptcy means you cannot pay all your debts. So who gets paid and who doesn't and how much and in what order—all of that is resolved by the bankruptcy laws and by

the laws built up as precedent applied in the bankruptcy courts. That is why you know—when you either lend money to an institution or you invest in it in equity investments, you have an idea of where you stand, where your loan or equity investment stands in the order of priority should the entity fail. For example, a secured creditor would be very high on the list. Security means you have something to fall back on to take from the company if they can't pay their debt to you. As a result, you can lend the money at a lower rate because you don't have to account for that risk when you lend the money. It is a good way for companies to borrow money. Granted, they have to have something that backs it up. Sometimes it is even the personal guarantee of the CEO of the company. But you get a pretty cheap loan if you do that because the lender knows he or she or it is going to get its money back. By the same token, if you need money pretty badly and don't have any more security, you might ask people to invest in your company or to borrow money on an unsecured basis. Well, you are going to get charged a higher rate of interest on that because there is more risk to the investor or to the lender. But in every case, they know where they stand in the event you can't make it or you fold.

What this bill does is substitute an unknown, untested process for the tried-and-true rules of bankruptcy. Nobody is suggesting there could not be some modification of the bankruptcy process or rules that might govern these particular institutions. They are unique institutions in some respects, and to the extent the rules should be tailored in order to fit these circumstances, they could be. But that is not what is done in this legislation. Instead, new entities are created and bureaucrats are allowed to decide when a company could destabilize the markets and therefore decide what to do about it. Their range of options is essentially unlimited. The bottom line is that taxpayers could end up being on the hook for the bailout. That is true with the FDIC, it is true with the Fed, and this legislation has specific language in it that provides for that.

There are those who say: Why don't we just get rid of this $50 billion fund, and then the problem will go away. No, that problem doesn't go away unless you correct the other language as well.

I will not try to substitute my judgment for that of others who say we need a $50 billion fund. I will say this: Creating that fund makes it more likely than less that risks will be taken and that therefore there will be instability in the market. I also suspect that those who have an implicit guarantee from the fund are more likely to receive credit, for example, at a lower rate because there is much of an assurance on the part of the lender or the equity investor that they will get their money back. So there are some downsides to having this fund.

But those aside, if you want to do away with the fund, OK. If you want to keep the fund, OK. But what you should not do is provide that beyond that, the taxpayers are on the hook. Here is the problem. Lehman Brothers, I am told, had well over $600 billion in liabilities, and a $50 billion fund does not go a long way toward resolving a $600 billion liability. In the case of Fannie Mae and Freddie Mac, which are not even dealt with in this legislation even though they were the prime causes of the problem—and by the way, that is a deficiency in the law that needs to be corrected. I hope these negotiations will provide something in that regard. But they have now created—it is about $6.3 trillion in obligations. Guess who is on the hook for those obligations. Congress never passed a law that said the taxpayers were going to be on the hook, but that is exactly the result of the actions taken by the bureaucrats who decide these matters now.

I do not want to create a perpetual situation where not Congress, not the courts, but bureaucrats—by the way, I do not use that term pejoratively. ''Government officials''—let's use that term. Unelected government officials, to whom we give the power, simply decide who gets bailed out, when, under what circumstances, who gets paid back, who doesn't get paid back, and how much it is going to cost the taxpayers. That, in essence, is what is provided for in this legislation.

So when folks say this is a bill we need to support because it ends too big to fail, that is wrong because it doesn't end too big to fail and taxpayers are still on the hook.

If those things are fixed, then my criticisms in this respect go away. But we have not heard from these negotiations that is being done. So I told my colleagues: Don't come to the floor and say this is a great bill, it solves all these problems, it ends too big to fail, and there is nothing wrong with it. There are some things wrong with it that need to be fixed. Let's do those things. I assume, on a bipartisan basis, if you just ask the abstract question of every 100 of the Senators, do you think we ought to end too big to fail, the answer would be yes. Ask our constituents—yes. Then we can get down to the nitty-gritty.

What about the language in the bill that says the FDIC ''will guarantee the obligations of banks'' under certain circumstances? That is language that has to be carefully either defined, limited, crabbed, or eliminated, or we are going to have taxpayers continuing to be on the hook for these obligations.

As I said, we haven't done anything to Fannie and Freddie in the legislation, and that is going to continue to mean a continuing taxpayer obligation as well.

As I said before, too, those firms, the ones deemed too big to fail, have an advantage over the smaller banks, the community banks. My colleague just mentioned those a moment ago. We just met with the community bank representatives in Arizona, and they fear this kind of provision will make them uncompetitive vis-a-vis the big boys. As a result, what we will eventually end up with is a few really big banks and maybe some that aren't, in kind of a medium-size operation, and almost all of the smaller banks having to go out of business because of this anticompetitiveness that will result from the legislation.

One of the other ways in which what I have been talking about occurs is through section 113, the so-called Financial Stability Oversight Council. This is one of the entities that allow for these backdoor bailouts. It gives the Federal Reserve the authority to prop up any nonbank company that the council, this new council, deems to be a potential threat to systemic stability in our economy. This is a board based in Washington. It decides which institutions get special treatment. It gives these bureaucrats tremendous latitude to pick winners and losers, again resulting in a competitive advantage and disadvantage. What determines whether a nonbank is a threat to stability? What are the criteria? Among other possible considerations, ''any other factors that the council deems appropriate.'' That is pretty much an open book—''any other factors that the council deems appropriate.'' I would think, if Congress is going to try to legislate in this very complex and difficult area, we would try to give pretty specific direction to the Federal authorities, to whom we give great power, as to how we want it exercised, and I don't think this meets the test—''any other factors that the council deems appropriate.'' Take that out of the bill. Let's have a bipartisan negotiation to do that. If somebody can demonstrate to me why that would have to be left in, then great, but these are the kinds of things that lead me to the conclusion that, no, we should not agree to consider the bill that came out of the Banking Committee on a purely partisan basis because there are problems in it.

Today, the Wall Street Journal says:

> The Dodd bill allows too much discretion to federal regulators to determine which firms to regulate and how, which firms to rescue or close down, and which creditors to reward and how. . . .

Exactly what I was just saying. It goes on to conclude:

> The Dodd bill also extends the FDIC's resolution authority (subject to other executive approval) beyond deposit-taking institutions to any financial company deemed to be systemically important. And it gives the FDIC the discretion to discriminate among creditors as it judges who gets paid what as part of a resolution. . . .Recall how the White House exploited its authority under TARP to trash Chrysler's creditors and give unions a better deal.

Now, that is not the only section. Section 1155 of the bill is entitled ''Emergency Financial Stabilization.'' This is another way in which the bill

guarantees bailouts and puts them into the law and leaves the taxpayers on the hook.

Under this section, the FDIC would be allowed to create a new program of unlimited size to guarantee the obligation of depositories and holding companies with depositories.

What does this mean since there is no requirement that a company that receives, guarantees, and defaults on its obligations be taken into an FDIC receivership, bankruptcy, or resolution? The FDIC and Treasury can prop up whatever company they choose. This authority can be exercised without congressional approval.

It is one of the reasons I have said I think there needs to be some element of bankruptcy or other process prior to the instigation of this particular kind of authority. We cannot say this bill ends taxpayer bailouts as long as we have all of those sections in it.

Finally, there is much said about consumer protection. Does anybody know anybody who does not favor consumer protection? I think we all do. There are questions about how to intelligently do it. We can create a lot more cost to consumers if we make the regulations so costly and inefficient that they end up paying more money than they would have otherwise. That is, I fear, what can happen here. It happened with the credit card legislation we passed. I think it is predicted that it can happen here as well.

It could easily happen with businesses we do not even intend to cover. I know I have heard from dental offices and car dealerships. When we think about Wall Street bailouts, we do not think about our next-door neighbor who sells cars, or maybe our neighbor who is a dentist. But if they have an installment plan where it takes 4 months—where you can get up to 4 months to pay your bill to them, boom, you can be covered by provisions here. Then all of the consumer protections apply and so on.

Let's be careful that in an effort to make sure Wall Street handles its affairs properly that we do not impose conditions on Main Street, the folks we would like to see thrive, particularly in times of recession, in a way that would end up either causing them more expenses or, at worst, even making them uncompetitive with these so-called bigger guys.

Restraining credit is a big way to do this, requiring that they have to apply capital not to building their businesses but to somehow backing up their credit issuance, even though that is not the main part of their business.

Just quoting briefly from the New York Post:

> New restrictions on credit . . . are likely to cost our economy tens of thousands of jobs a year.

And:

> Reductions in credit—
>
> Which would result here—
>
> means declines in job creation. Many small business start-ups use home equity debt or credit cards as their source of funding.

There is not a lot of home equity debt to be had these days. A lot of our homes are not mortgageable at the present time, so credit cards are maxed out and so on. Well, that is a difficult way to do it. But we have to make sure if small businesses are doing this that the credit flows are not stopped because of provisions of this bill.

In an op-ed in the New York Post today, Mark Calabria pointed out:

> The bursting of the housing bubble largely eliminated the first option.

That is the mortgaging of your home to get additional credit.

> Now Washington is trying its best to kill the second.

That is the credit card provision.

> [The Dodd bill's] proposed ''consumer protections'' would reach beyond credit cards and restrict the availability of all forms of credit, while raising costs.

Now, nobody intends this result. I do not think anybody in this body wants to impose additional costs, especially on smaller businesses or on startup businesses. It is simply an inevitable result of a policy that is written too broadly. We need to be careful how we do it. We need to ensure we do not write it so broadly that friends we want to protect are not adversely impacted.

They have been coming to my office. Folks you never dream of who would be covered by this act are coming in and saying: Here is how this bill could affect me. Please make sure it does not.

All I urge my colleagues on the other side of the aisle to do is, take these concerns on board—they are not partisan concerns—and make sure when these negotiations figure out how to amend the bill, that we take into consideration the things we are raising. They are not partisan concerns. They are concerns of everyday Americans, and we owe it to our constituents to think these things through and, if need be, change the bill.

I am sure even Senator DODD would say the bill is not perfect. If there are things we need to see changed in it, then let's do that.

The last point has to do with another element of consumer protection. A lot of folks do business in more than one State. In fact, some of the larger companies do business in all States, and it is cost efficient for them if there is one rule, if there is one regulator, so that they do not have to, for example, figure out what every single State requires in terms of different consumer protections or notice or whatever it might be, and then have to comply with all 50 States, some of which may be contradictory, as well as a Federal regulator.

So up to now we have pretty much had a Federal regime that has preempted the State jurisdiction in some of these areas. Well, as I understand it, the legislation does away with a significant component of that and would allow the State regulators to impose individual requirements on these companies that are doing business throughout the United States. So we could have the anomalous situation where we have lots of different requirements.

Some of you have seen ads on TV. It says: Call now to get your $29.95 knife. If you call right now, you will get another one thrown in for free. Then the last 10 seconds of the ad has some guy reading in very fast language: Offer not valid in New Mexico, New York, Arizona, Tennessee, Oregon, and so on and so on. You cannot even follow what he is saying. But the reality is, there are a lot of different requirements.

So what we would like to try to do is have things be as uniform as possible to keep the costs down because the greater the costs, the more the cost to the consumer. Unfortunately, as I said, however, this bill creates a patchwork of regulatory regimes that expand the number of regulators by 50 in certain areas. As a result, it is going to be much more difficult to comply with and much more costly.

If we believe we understand what is necessary in consumer protections, then let's provide for it. If we think we do not, that we need to leave this to a lot of other regulators, then let's not try to make the rules ourselves. Just let them do it. But we should not do both.

In addition to that, the chairman talked about safety and soundness. This is a technical term that essentially has regulators requiring banks and other financial institutions to carry a certain amount of reserves so that if people want their money back out of the bank, the bank has enough money to give to them. No bank believes every day 100 percent of its deposits are going to be called back by its depositors. But they have to have a certain percentage of those funds on deposit so if you go and say: I want my money out of the bank, they have enough money to give it to you or, if they have loans go bad, they have enough to carry those loans, and so on. That is what the safety and soundness requirements of the regulators do. It is a good thing.

Those same people can also provide for consumer protections, and say: Look, we know the bank needs to reserve a certain amount of money, and we also know, consistent with that, they need to ensure the protection of their consumers in a certain way.

What is difficult is when we separate these two functions, as this legislation does, so we have one group saying to the bank here is what you have to do for safety and soundness purposes, and we have another totally independent group saying, we do not care anything about that, but here is what you have to do for consumer protection.

We can end up with duplicative, overlapping, costly, and sometimes even inconsistent requirements, all of which make it more difficult for these institutions to give a cheaper product, a better loan, a credit card with a lower interest rate, or whatever it may be.

I just urge my colleagues, everyone is for consumer protection. Everyone is

for safety and soundness. Let's try to do this in a way that does not impose such great burdens, especially on the smaller folks, that they are not able to be competitive and provide their consumers, about whom, after all, we should be mostly concerned, with the cheapest product that is backed by the safety and soundness of the institutions.

Incidentally, on this last point, some who are a little more cynical have said: Well, maybe this is being done for a more nefarious purpose. If every single attorney general in the country can go out and hire trial lawyers on a special contract to bring class action lawsuits because of a violation of State laws, then we have a brandnew cause of action for the trial lawyers to do even better than they have done in the past.

I am not going to suggest that is the motivation, but I am going to suggest that I see nothing in the bill that will prevent that. As long as that is a potential, then, Katey, bar the door.

So, again, there are many things in this legislation that are not partisan in terms of we all want to protect the same folks. But there are questions that have been raised that need to be dealt with. I think it would be far better to take the time, to have Republicans and Democrats sitting down and going through all of these issues carefully, writing up a bill on which they can agree, bring that bill to the floor so the rest of us can then look at it, and hopefully we would all say: Gee, that is a lot better product than we thought.

It is not exactly as I would have done it. It looks like there are some compromises in there, but after all, that is what the process is when we have little more than half of the body of one party and less than half of the other party. That is how we get things done.

I can assure you this and assure my colleagues on the other side, Republicans want to work with our Democratic friends to get a good bill that all of us can support and that will be good for our country.

I think if we can work in good faith toward that end, we will be much happier with the result than if it is the result of a partisan or a near-partisan vote in this body and likewise in the House of Representatives.

I thank my colleagues for their patience and am happy to yield the floor.

The PRESIDING OFFICER (Mr. FRANKEN.) The Senator from Ohio is recognized.

Mr. BROWN of Ohio. Mr. President, I ask unanimous consent to engage in a colloquy with Senator KAUFMAN for up to 30 minutes as in morning business.

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

Mr. BROWN of Ohio. I want to believe what I just heard. I do. I believe the genuineness and the sincerity of the words from my colleague from Arizona. I also, though—and I agree with him there are things we need to fix in this bill. There always are. And we can work to improve it.

I met only 2 hours ago a dozen manufacturers from Ohio—mostly metalworking companies, stamping, bending metal, all of that—who came to see me to talk about credit. Their frustration with the banking system and Wall Street is pretty deep and pretty intense. Anger, frustration—I will not speak for them, to be sure. But it is pretty clear that Wall Street has not served them well and has not served this country well.

As I said, I know we need to fix some things about this bill. A guy years ago told me: Don't tell me what you believe. Show me what you do; I will tell you what you believe.

When I listen to leadership on the other side, especially to our colleague from Kentucky, I really do watch what he does, not just what he says. I know he says this bill does not work because it will mean more bailouts. That is battle tested, focus group tested, poll tested. That is the right thing to say you are against the bill.

But more than that, I watch what he does, and I watch what Republicans have done on this bill. Back in December 100 bank lobbyists met with Republican leadership in the House to talk about how to defeat any kind of Wall Street reform.

Earlier this month, Senator MCCONNELL and Senator CORNYN—Senator MCCONNELL, the Republican leader; Senator CORNYN is head of the Senate Republican Campaign Committee—went to New York and met with 25 hedge fund and other Wall Street executives to figure out how to defeat the bill and to do what—you know, what you would expect. The best way to beat this bill is elect more Republicans. We need help. All of that.

So when I hear them talk about bipartisan, that they want a bipartisan bill, what they really mean, and I know Senator KAUFMAN and I have talked about this—what they really mean is, we want Wall Street to come to the table and help us write the bill. That is what is bipartisan, in the same way that ''bipartisan'' in the health care bill of the last year was, we want to invite the insurance companies to the table and have them help write the bill.

The public wants bipartisan. They want us to work together. They want us to cooperate. We do that in a lot of things. But on a big bill like this, the public does not want bipartisan if it means: Let's get Wall Street and the five biggest banks in the country to write this bill and then we can all be happy and let's get along and let's have legislation that way.

Then I hear over and over, Senator MCCONNELL, you know, kind of getting a little bit—the leader gets a little upset when he talks about this bill. It is a little bit like when you throw a rock at a pack of dogs, the dog that yelps is the one you hit.

That is kind of what is going on here.

(The remarks of Mr. BROWN and Mr. KAUFMAN pertaining to the introduction of S. 3241 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. BROWN of Ohio. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, I have sought recognition to vigorously, enthusiastically support the nomination of U.S. district court judge Thomas I. Vanaskie for the Court of Appeals for the Third Circuit.

Judge Vanaskie is someone known to me personally for the better part of two, perhaps even three decades as a practicing lawyer in Pennsylvania, as a judge on the Middle District Court. I had the privilege of recommending him, originally, for the district court during the Clinton administration. I have had the privilege of joining with Senator CASEY in recommending him to President Obama for the Court of Appeals for the Third Circuit.

Judge Vanaskie has a spectacular record. He is a graduate of Lycoming College, in 1975, with a BA degree, magna cum laude; Dickinson Law School in 1978, cum laude. He was a law clerk to Judge William Nealon from 1978 through 1980. For those who know Judge Nealon, he is a masterful judge, a paragon, a great person to learn from. Judge Vanaskie was in private practice in Scranton from 1980 to 1994. He was confirmed to the U.S. District Court for the Middle District of Pennsylvania on February 10, 1994.

Judge Vanaskie has been awaiting confirmation for some time now. He has had his hearing. He was reported out of the Judiciary Committee by a vote of 16 to 3. He is an outstanding jurist.

During the course of the discussions on the Judiciary Committee, where I have served during all of my tenure in the Senate, there was nothing really said in any way which was substantive in opposition. The contention was raised that he has cited foreign law, the law of other countries, but that is in keeping with the decisions of the Supreme Court in the United States, which has cited foreign legal precedents—not that they are binding. They are not the U.S. Constitution. They are not decisions in the U.S. Federal judicial system. But they have been recognized by the Supreme Court as worthy of some consideration.

It is regrettable that Judge Vanaskie has been caught up in the partisan battle in the Senate. This is a part of a broader picture of gridlock in the Congress of the United States, as we have seen the popularity and approval rating of Members of the House and Senate fall precipitously because of what America is seeing going on in this body

and across the Rotunda in the House of Representatives. We see a stimulus package where there is very little willingness on the part of people on the other side of the aisle to negotiate with people on this side of the aisle. We have seen a health care package enacted into law without a single vote in the Senate. In the House of Representatives, 176 Republicans said no and 1 said yes. On reconciliation, all 177 said no; all 41 in the Senate said no.

There has been a point reached where there is really an issue of whether there can be governance at all with an obstructive minority standing fast. We have seen a slight break in ranks when the issue came up on the vacation for the payroll tax. One Republican stood up and voted with Democrats. That led a few others to join. And on unemployment compensation, again, one Republican took the lead, and a few others joined. I think it is realistic to conclude that it is the pressure from back home. There are some on the other side of the aisle who may sensibly calculate—I do not fault them for the calculation—but they have to have some flexibility if they want to return to this body.

We have had concerns on Wall Street which are overwhelming with what has gone on in the economy: the precipitous great recession, which has engulfed America and has engulfed the world. And for a lengthy period of time, there has been resistance to any real negotiation by the other side of the aisle.

Finally, within the last day or two, there has been some willingness to consider legislation on the Wall Street issue, but I think that has come about as a result of public pressure. It is, simply stated, impolitic to be against reforming Wall Street, considering what has gone on.

It would be my hope these cracks in the die would lead to some substantial shift in position so we could return to the bipartisanship which was present in this body when I was elected in 1980. At that time, we had Mac Mathias of Maryland, who was willing to cross the aisle, and Mark Hatfield of Oregon similarly and John Danforth of Missouri, Lowell Weicker of Connecticut and Bob Stafford of Vermont and John Heinz of Pennsylvania and John Chafee of Rhode Island and Bill Cohen of Maine, so that when we had the so-called Wednesday club, it was full. That has dwindled so that the moderates can meet in a telephone booth today. We ought to go back to the days of just a little bipartisanship.

We had an enormous problem in 2005 when the shoe was on the other foot and the filibustering was being done on this side of the aisle. Fortunately, we were able to work through that problem. There was a flirtation with the so-called nuclear constitutional option, which would have changed the rules on filibuster. We preserved the procedure of the Senate, the tradition of the Senate, to be the ''saucer which cools the tea'' as the expression was used during the colonial days. I think it is very important to maintain that tradition and that procedure. It was the coolness of the Senate which saved the independence of the Federal judiciary and the impeachment proceeding of Supreme Court Justice Chase of 1805 and preserved the independence of the Presidency and the acquittal on the impeachment proceeding of Andrew Johnson, when a controversy arose with the claim being made that there had to be congressional or senatorial approval to fire a Secretary of War, and he barricaded himself in the office. President Johnson refused to seek Senate consent to fire the Secretary of War. Articles of Impeachment were filed and he was saved by the vote of the Senator from Kansas. Growing up in Kansas, there was great pride in the State about that courageous Senator who stood and later was defeated. Maybe that—I would not make any predictions of the cost of standing up.

So it is important to maintain the traditions of this body, but we have to do it in the context of capacity to govern. Supreme Court Justice Jackson, in a somewhat different context, said the Constitution is not a suicide pact. Whatever rules we have are not substitutes for our capacity to govern.

We have seen this pattern illustrated by the nomination of Barbara Keenan of Virginia for the Fourth Circuit. Judge Keenan's nomination was stalled for 4 months, and after the time-consuming process of cloture, her nomination was approved 99 to nothing. Well, if she can be approved 99 to nothing, why require the filing of cloture? Why tie up this Senate for the better part of 2 days?

May the RECORD show that the distinguished Presiding Officer, the junior Senator from Minnesota, is nodding in agreement with my statements. That is a procedure we lawyers use to perfect the RECORD. But that has been the policy—tying up this body, going to cloture, the delay, and then overwhelming confirmations; not all unanimous but very substantial, and I predict that is what will happen with Judge Vanaskie when the roll is called a little later this afternoon.

One additional note. These proceedings take a very heavy toll on the nominee. Judge Vanaskie is a man devoted to public service. When he was practicing law in Scranton, his paycheck was a great deal bigger than when he became a Federal judge. When he comes into the process of the nominating procedure and he is questioned and his writings are impugned because he follows the Supreme Court of the United States, it is a jolt and it is hard on the Vanaskie family and it is hard on the community. I have had many calls from the people in Judge Vanaskie's community saying: What is going on in the Senate? What is going on? What is happening? Repeated calls. Finally, I decided to write a column for the Scranton Times Tribune, explaining what happens in the Senate as to why the delay has occurred.

So I am glad to see this brought to a close. I hope we will move the appointments of the President. Consideration is being given to limiting the filibuster, not having it apply to members of the administration. We all concede, as a governmental doctrine, the President ought to have the right to name his own team but maintaining the filibuster for judicial nominations where we are talking about lifetime appointments. But this is a good and true man and he has been subjected to a process which is fundamentally unfair. I am glad to see it brought to an end this afternoon.

I ask unanimous consent that the copy of the article which I wrote for the Scranton Times Tribune, dated February 26, 2010, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Scranton Times Tribune, Feb. 26, 2010]

GOP DELAYING VANASKIE APPOINTMENT

(By Arlen Specter)

Republican inaction on nominations is paralyzing the work of the Senate and putting the government's ability to confront the nation's challenges at risk.

We have seen much obstructionism by the minority in this Congress, but nothing compares to the gridlock on nominations. During President Obama's first year, 46 executive nominees waited at least three months to be confirmed, 45 waited at least four months, and nine took six months or longer. Inaction on these qualified nominees, many in defense-related and national security posts, is unacceptable.

This applies to nominations for federal judgeships, many to important or long-vacant jurisdictions. Currently, 14 judicial nominees, who have been approved—in many cases unanimously—by the Senate Judiciary Committee are awaiting confirmation in the face of Republican objections, many of them specious or just plain outlandish. It is time to put partisan politics aside and work to fill these positions as quickly as possible.

Take the case of Judge Thomas I. Vanaskie, nominated by President Obama last August to the U.S. Circuit Court of Appeals for the Third Circuit. The Senate Judiciary Committee voted 16–3 in support of his nomination on Dec. 3. More than two months later the nomination still awaits confirmation.

Judge Vanaskie's appointment, like so many of this administration's, has been stalled by political posturing. The near certainty of his eventual confirmation only adds to the charade. When Senate Majority Leader Harry Reid recently called for a vote on a long-delayed circuit court nomination, the Republicans voted to confirm unanimously. One legitimately wonders whether partisanship is not the only explanation for the delay.

The Senate can force a vote by resorting to the time-consuming step known as cloture, which takes up two days of the Senate's time. If cloture were to be invoked in each of the 67 currently pending nominations that have been approved by committee, it would take most of the year to deal with nominations. This is an intolerable imposition on the Senate's time and business.

Judge Vanaskie is eminently qualified to serve on the Third Circuit, as evidenced by

his 16-year record on the U.S. District Court for the Middle District of Pennsylvania and the overwhelming bipartisan support he received from the Senate Judiciary Committee. He has built a reputation for consistency and judicial restraint, backed by a first-class legal mind and even temperament.

Republican objections to his nomination are specious. One criticism—that Judge Vanaskie inappropriately cites foreign law precedents—was ably explained in his testimony before the Judiciary Committee that he was following Supreme Court decisions when it relied upon foreign sources in Lawrence v. Texas and Roper v. Simmons. In Lawrence, the Supreme Court majority cited the European Court of Human Rights in a decision overruling its own prior precedent on the criminalizing of consensual gay sex. In Roper, the court cited international law to support a ruling striking down the death penalty when applied to individuals who committed murder before they were 18. In short, Judge Vanaskie was merely following the Supreme Court's lead. Following precedent is mandatory, not grounds for rejecting his elevation to the Third Circuit.

There is no reason to further delay the nomination of this highly qualified jurist to the Third Circuit Court of Appeals. The Senate should carry out its constitutional duties promptly and promote this eminently qualified judge.

Mr. SPECTER. I thank the Chair and yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, I ask unanimous consent that the vote on confirmation of the nomination of Judge Thomas Vanaskie occur at 5:30 p.m. today, with the time until then divided as previously ordered and the remaining provisions of the order governing consideration of this nomination still in effect.

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

Mr. SPECTER. In the absence of any Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PRYOR). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I briefly wish to share a few thoughts about Judge Thomas Vanaskie, who has been nominated for the Third Circuit Court of Appeals—a very important position. He currently serves on the U.S. District Court for the Middle District of Pennsylvania. I do intend to support his nomination, giving deference to the President, but I would just like to share a thought or two about his testimony before the Judiciary Committee.

Judge Vanaskie testified he believed American courts should not use foreign law in interpreting the Constitution, but he did believe the Supreme Court properly used foreign law in cases such as Lawrence v. Texas, and I think that is a bit contradictory. He also testified that the Supreme Court properly used foreign law in Roper v. Simmons, where the Court concluded that the Constitution, because of ''evolving standards of decency,'' would now prohibit States from imposing the death penalty on juveniles who commit murder. I think that is a legitimate public policy issue to discuss, but the question is, Does the Constitution say a State is not able to decide at what age people are executed?

Judge Vanaskie said, at another point, that foreign law was relevant to determining fundamental constitutional rights. Well, our Constitution is the one we have, and judges, if they are faithful to their oath, will enforce our Constitution—the one we have. It is difficult for me to comprehend how somebody could conclude that a legal action in the European Union would provide illumination to a judge on how to interpret our Constitution and what the Founders meant and the plain meaning of its words.

So I think this is a bad philosophy, and it evidences a detachment of the judiciary from the limited role they are given. We have limited powers, the President has limited powers, and the courts have limited powers. Courts are not empowered to reinterpret our laws and our Constitution based on some better idea they think they may find in France. They are not. This is not a little bitty matter. It is a trend that is occurring in our courts, and I am disappointed that several of the President's nominees seem to be seduced by these ideas, including speeches made by Justice Sotomayor where she talked about how she favored Justice Ginsburg's views about that.

So I wish to give this judge the benefit of the doubt. He did say he didn't follow this doctrine to the full extent of it, and I will give him the benefit of the doubt. But also, some of his statements indicate that he may yet be seduced by this idea. He had difficulty articulating any limit on the commerce clause. The commerce clause says Congress can regulate commerce. Does that mean everything? Does regulating commerce mean you can reach down into Oklahoma and tell an individual farmer: You have to have insurance? That raises a serious question of constitutional power, and does that impact interstate commerce? Well, you could theoretically conjure up a way that it could, but I want to know that a judge understands there is some limit to the amount of reach the Federal Government can have.

We have had a number of people complaining about the process of confirmation and judges languishing before the Senate. In particular, my friend, Senator WHITEHOUSE, noted the nominations of Judge James Wynn and Judge Albert Diaz to the Fourth Circuit. Senator WHITEHOUSE hasn't been here but since 2006, so maybe he isn't familiar with some of the procedures that have gone on before. Wynn and Diaz's nominations have been pending in the Senate for only 167 days. That is half the time—half the time—that President Bush's circuit court nominees waited—350 days.

In fact, four of President Bush's nominees to the Fourth Circuit never received any hearing, and they were highly qualified nominees. Those nominees—Mr. Steve Matthews, Chief Judge Robert Conrad, Judge Glen Conrad, and former Maryland U.S. attorney Rod Rosenstein were well qualified and had the bipartisan support of their home State Senators. Yet they were blocked steadfastly from ever moving forward. President Bush nominated Steve Matthews in September of 2007 to the same seat on the Fourth Circuit for which Judge Diaz has now been nominated and expects to be confirmed—and will be confirmed, I am sure.

For Senators to be whining about how long it takes Judge Diaz to move along, in a fairly steadfast way, in light of what was done to Mr. Matthews, is a bit much to me, I just have to tell you. We all know this is a robust body. We don't mind speaking our minds. But Mr. Matthews had the support of his home State Senators and received an ABA rating of ''qualified.'' He was a graduate of Yale Law School, had a distinguished career in private practice, and he waited 485 days for a hearing and never got one. So his nomination was returned and expired in January of 2009.

Another of President Bush's nominees, Chief Judge Robert Conrad, was nominated to the seat for which Judge Wynn is now nominated. He had the support of his home State Senators, received an ABA rating of unanimous ''well-qualified,'' which is the highest rating. Judge Conrad met Chairman LEAHY's standard for a noncontroversial consensus nominee. He had received bipartisan approval by the committee when he was confirmed by a voice vote to be U.S. attorney and later district court judge for the District of North Carolina. He was then chief judge. Senators BURR and Dole sent letters in support of that confirmation. Yet he was blocked.

I know he can make decisions because, if I am not mistaken, I used to say he was the point guard for the University of North Carolina basketball team. I think that was incorrect. I think he was point guard for Clemson. Regardless, anybody who can play a point guard in the ACC can make decisions. He was chosen out of all the prosecutors in America by Attorney General Janet Reno to conduct a very sensitive investigation of President Clinton, when he was accused of some

wrongdoing. He conducted that and concluded no charges ought to be brought. This was a highly qualified person. Yet he was blocked.

My time is up, but I know every nominee is not brought up immediately or when some people would want to call up the nomination. It requires unanimous consent to bring up a nominee, to immediately get a vote, and unanimous consent isn't always given, so it does slow down people. I do believe we ought not to unnecessarily delay persons, but I would want to say that the alacrity by which President Obama's nominations are moving far surpasses anything like the difficulties that President Bush's nominees had. I have been here, I have seen it, and I know that to be a fact.

I hope we can create a climate where judges have a reasonable time on the calendar, that they have hearings in the Judiciary Committee, that there is opportunity to raise objections, when they are made, and the nominee comes to the floor and eventually can be brought up for a final confirmation vote. That would be my request.

I see it is time for the vote, and so I yield the floor.

Mr. LEAHY. Mr. President, the Senate just devoted almost 3 hours to the nomination of Thomas Vanaskie. Senate Republicans demanded this extended time for debate. I thank Senator SPECTER and Senator CASEY for their statements. The Senators from Pennsylvania know Judge Vanaskie best, and strongly support him.

I was glad to see Chairman DODD, Senator BROWN of Ohio and Senator KAUFMAN come to use some of the time to talk about Wall Street reform. That is what we should be working on. Wall Street reform, patent reform, and other matters that are important to the American people are what we should be debating. I was glad to see that time not wasted in another extended quorum call because those who demanded this time to debate the nomination did not use it.

I was glad to hear Senator HAGAN talk about the two North Carolina nominees to the Fourth Circuit. They are among the 25 judicial nominees that Republicans have objected to considering even though they were voted out of the Judiciary Committee unanimously or nearly so.

With respect to the President's judicial nominees, as I have said, 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 allowed votes on only 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 confirm only the 19th of President Obama's Federal circuit and district court nominees. I have already noted Judge Vanaskie's qualifications. There is no dispute that he is well qualified. Indeed, the only concern his opponents have raised is their fixation that no Federal judge be aware of foreign law. As Senator SPECTER has explained, the matter on which Judge Vanaskie is criticized was a case involving an international treaty. To those whose ideology clouds their judgment, I remind them that the Constitution of the United States, our Constitution, expressly provides that the judicial power of the United States extends to cases arising under the Constitution, laws of the United States ''and Treaties.'' Treaties are international by their nature. How treaties are interpreted by other courts in other jurisdictions is relevant. In fact, Justice Scalia observed, when writing for the unanimous Court in Zicherman v. Korean Air Lines Co., 516 U.S. 217, 226 (1996):

> Because a treaty ratified by the United States is not only the law of the land, see U.S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history (travaux préparatoires) and postratification understanding of the contracting parties.

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 to consider nominations is a dramatic departure from the Senate's traditional practice of prompt and routine consideration of noncontroversial nominees. The majority leader was required to file five cloture motions to break through the logjam. I, again, urge the Senate Republican leadership to reverse its course and its obstructionist practices. 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. I hope it will now, finally, be abandoned and we will be allowed to make progress after weeks and months of delay.

The vote on the confirmation of Judge Vanaksie'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. These are nominations 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.

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 9 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 as long ago as five months, 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.

I congratulate Judge Vanaskie and his family on what I expect will be strong bipartisan vote in favor of his confirmation to serve on the Third Circuit. His confirmation is long overdue.

The PRESIDING OFFICER (Mr. FRANKEN). Under the previous order, the question is, Will the Senate advise and consent to the nomination of Thomas I. Vanaskie, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

Mr. KYL. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT) and the Senator from Nebraska (Mr. JOHANNS).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 77, nays 20, as follows:

[Rollcall Vote No. 122 Ex.]

YEAS—77

Akaka	Graham	Murkowski
Alexander	Gregg	Murray
Baucus	Hagan	Nelson (NE)
Bayh	Harkin	Nelson (FL)
Begich	Hatch	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Bond	Kaufman	Rockefeller
Boxer	Kerry	Sanders
Brown (MA)	Klobuchar	Schumer
Brown (OH)	Kohl	Sessions
Burris	Kyl	Shaheen
Cantwell	Landrieu	Shelby
Cardin	Lautenberg	Snowe
Carper	Leahy	Specter
Casey	LeMieux	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Corker	Lincoln	Udall (NM)
Dodd	Lugar	Vitter
Dorgan	McCain	Voinovich
Durbin	McCaskill	Warner
Feingold	McConnell	Webb
Feinstein	Menendez	Whitehouse
Franken	Merkley	Wyden
Gillibrand	Mikulski	

NAYS—20

Barrasso	Cornyn	Inhofe
Brownback	Crapo	Isakson
Bunning	DeMint	Risch
Burr	Ensign	Roberts
Chambliss	Enzi	Thune
Coburn	Grassley	Wicker
Cochran	Hutchison	

NOT VOTING—3

Bennett	Byrd	Johanns

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table, and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for 10 or 12 minutes.

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

SECRET HOLDS

Mr. GRASSLEY. Mr. President, I have not listened to every speech on the Senate floor in the last week or so where there has been a lot of talk about secret holds and everything. But since I have been in the Senate working with Senator WYDEN in a bipartisan way over the course of maybe a decade, not to do away with holds but to have a transparency of holds, and seeing those things compromised, and then particularly to see exception taken to what has happened when this side of the aisle has put on holds, and then considering when Senator WYDEN and I did try to do something, that was gutted by people on the other side of the aisle. So I would appreciate it if Democratic Members of the Senate would listen while I explore some of the history so that they know this bipartisan effort, that if it had been done the way Senator WYDEN and I did it before it was gutted, we would not have a lot of problems today that we have.

So I wanted to go into my remarks, but I preface it with what I just said. There has been a lot of talk recently on the Senate floor about secret holds. For a practice with so much bipartisan guilt to go around, it is interesting that the discussion has taken on a partisan tone. Republicans are being accused of being particularly egregious offenders when it comes to circumventing disclosure requirements.

Let me say that if any of my colleagues have holds on either side of the aisle, they ought to have the guts to go public and to go public the minute they put the hold on, not like the mysterious way it is done now, which amounts to nothing. It has been my policy for years to place a brief statement in the CONGRESSIONAL RECORD each time I placed a hold, with a short explanation of why I placed the hold. I did that before there was ever any Wyden-Grassley proposal. The current disclosure requirements for secret holds have been discussed quite a bit lately, as has bipartisan work with Senator WYDEN to address the issue. It is important I give a little background about how we got where we are today.

After many attempts to work with various leaders over the years on policy to make all holds public, Senator WYDEN and I decided the only way to settle this matter once and for all was for the full Senate to adopt a very clear policy. In the 109th Congress, Senator WYDEN and I were successful in passing an amendment to the ethics reform bill by a very wide vote of 84 to 13 to require public disclosure of holds. That bill was never enacted, but the identical provision was included in the ethics bill passed by the full Senate at the very beginning of the 110th Congress. Members may recall the Democrats had just secured a majority in both houses of Congress. Then, in a process that has become all too familiar under the past two Democratic Congresses, there was no conference committee. Instead, in a twist of irony, the so-called Honest Leadership and Open Government Act was rewritten behind closed doors by the Democratic leadership. Lo and behold, the public disclosure provision Senator WYDEN and I had worked so hard on, which the Senate had overwhelmingly adopted on that 84 to 13 vote, had been altered, and altered significantly. Keep in mind, under Article I, section 5 of the Constitution:

> Each House may determine the Rules of its Proceedings . . .

That means that the House of Representatives has no say whatsoever about the Senate rules. When the full Senate speaks on a matter of Senate procedure, that should be the final word, particularly if it is 84 to 13. I want to be clear, the current weak disclosure requirements we now have are not the ones originally proposed by Senator WYDEN and this Senator. In fact, at the time I came to the floor and criticized the specific changes, because I saw they would be ineffective. And ineffective they are.

Let me reiterate some of those criticisms I initially aired to the Senate on two occasions: August 2, 2007, and September 19, 2007. In the version the Senate originally passed, we allowed 3 days for Senators to submit a simple public disclosure form for the record, just like adding oneself as a cosponsor to a bill. This was intended simply to give time to perform administrative functions of getting the disclosure form to the Senate floor, not to legitimize secrecy for the period of 3 days. The rewritten provision gives Senators 6 session days. That might not sound so bad but wait to see how that actually works out in practice. First, it doesn't take a week to send an intern down to the Senate floor with a simple form saying one is putting a hold on a bill. The change I find most troubling is that the 6 days until the disclosure requirement is triggered begins only after a unanimous consent request is made and objected to on the Senate floor. That is too late. I will explain how that is ineffective. By that point, a hold could have existed for quite some time, perhaps without the sponsor of the bill even realizing it. In fact, most holds never get to the point where an objection is made on the floor, because the threat of a hold prevents a unanimous consent request from being made in the first place. So maybe this 6 days is never even triggered.

The original Wyden-Grassley provision required disclosure at the time the hold was placed. That is where it ought to be today. We have heard lately about how the minority party has used the weak disclosure requirements to avoid making holds public. However, this change made it far less likely that majority party holds would ever, in fact, become public. Since the majority leader controls the Senate schedule, he would hardly object to his own request to bring up a bill or nominee. He would simply not bring up a bill or nominee being held up by a member of his own party, and we might never know that there was a hold on it at all.

Why were these provisions changed? Simply, I don't know. I don't know who does know, because I can't be sure who it was who rewrote these provisions in secrecy behind closed doors. The majority party should be careful now, as they complain about Republicans exploiting loopholes in the disclosure requirements for holds. Both parties are guilty of using secret holds. But we can't blame Republicans for the fact that the current disclosure requirements are weak and ineffective. Again, there is plenty of blame to go around when it comes to using secret holds, but I am hopeful this recent attention to the problem can result in a bipartisan consensus to end secret holds once and for all. That is something we