which Judge Diaz has been nominated. Mr. Matthews had the support of his home state senators and received an ABA rating of Substantial Majority Qualified. He was a graduate of Yale Law School and had a distinguished career in private practice in South Carolina. Despite his exemplary qualifications, Mr. Matthews waited 485 days for a hearing that never came. His nomination was returned on January 2, 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 and received an ABA rating of Unanimous Well-Qualified. Further, Judge Conrad met Chairman LEAHY's standard for a noncontroversial, consensus nominee because he previously received bipartisan approval by the Judiciary Committee and the Senate when he was confirmed by voice vote to be a U.S. Attorney in North Carolina and later to the District Court for the Western District of North Carolina. On October 2, 2007, Senators BURR and Dole sent a letter to Senator LEAHY requesting a hearing for Judge Conrad, and they spoke on his behalf at a press conference on June 19 that featured a number of Judge Conrad's friends and colleagues who had traveled all the way from North Carolina to show their support for his nomination. That request was ignored. On April 15, 2008, Senators BURR, Dole, GRAHAM, and DEMINT sent a letter to Senator LEAHY asking for a hearing for Judge Conrad and Mr. Matthews. Despite overwhelming support and exceptional qualifications, Judge Conrad, who was nominated on July 17, 2007, waited 585 days for a hearing that never came. His nomination was returned on January 2, 2009.

Judge Glen Conrad also had the support of his home State Senators—including Democrat Senator JIM WEBB—and received an ABA rating of Majority Well-Qualified. He too met Chairman LEAHY's standard because he was confirmed to the District Court for the Western District of Virginia by a unanimous, bipartisan vote of 89–0 in September 2003. Despite his extensive qualifications, Judge Conrad, who was nominated on May 8, 2008, waited 240 days for a hearing that never came. His nomination was returned on January 2, 2009.

Earlier this year, we confirmed Judge Andre Davis to the ''Maryland'' seat on the Fourth Circuit. A brief history of that seat bears mention. President Bush nominated Rod Rosenstein to fill this vacancy on November 15, 2007. The ABA rated Mr. Rosenstein Unanimous Well Qualified, and in 2005, he was confirmed by a noncontroversial voice vote to be the United States attorney for the District of Maryland. Prior to his service as U.S. attorney, he held several positions in the Department of Justice under both Republican and Democrat administrations. Despite his stellar qualifications, Mr. Rosenstein waited 414 days for a hearing that never came. His nomination was returned on January 2, 2009. The reason given by his home state senators for why his nomination was blocked was that he was ''doing a good job as the U.S. attorney in Maryland and that's where we need him.'' I think that a 2008 Washington Post editorial painted a more accurate picture: ''blocking Mr. Rosenstein's confirmation hearing . . . would elevate ideology and ego above substance and merit, and it would unfairly penalize a man who people on both sides of this question agree is well qualified for a judgeship.''

It was only when President Obama nominated Judge Davis to this seat that we heard Democrats' outrage over the fact that the seat had been vacant for 9 years. Ironically, however, Judge Davis fared far better than President Bush's nominees to the Fourth Circuit. He received a hearing a mere 27 days after his nomination, a committee vote just 36 days later, and, finally, confirmation earlier this year. There are other examples of Democrats' unreasonable delay and obstruction but I will not detail them here. Suffice it to say that Democrats are now capitalizing on their eight years of obstruction by seeking to pack the Fourth Circuit Court of Appeals.

It has been said that the overall federal judiciary vacancy rate is higher than it was when President Bush was in office and therefore we need to confirm more judicial nominees. But, as the story of the Fourth Circuit obstructionism illustrates, that is a specious argument. During the Bush administration, Democrats held up qualified judicial nominees—for years in some cases—denying them an up-or-down vote even though the majority of Senators were ready and willing to confirm them. And, in any event, the need to fill vacancies should not undercut the responsibility of the Senate to properly vet these lifetime appointments. As the minority party, we have a duty and a right to ask the important questions that may not be asked by those who agree with the President's point of view.

In that regard, we can only process nominees that we have before us. President Obama has nominated only 12 circuit court nominees, all of whom have had hearings; there are currently 20 circuit court vacancies. Similarly, President Obama has nominated only 19 district court nominees, all but 6 of whom have had hearings; there are currently 78 district court vacancies. These numbers stand in stark contrast to the 65 nominees President Bush put forth during his first year in office.

I have said many times that I do not wish to engage in a back and forth on this issue but I will not stand by while some in this body attempt to rewrite history in their favor. Facts are stubborn things and despite the statements by some to the contrary, they cannot alter the state of the facts and the evidence.

NOMINATION HOLDS

Mr. GRASSLEY. Mr. President, I, Senator CHUCK GRASSLEY, intend to object to proceeding to the nominations of Lael Brainard to be Under Secretary of the Treasury, Michael Mundaca to be an Assistant Secretary of the Treasury, Mary Miller to be an Assistant Secretary of the Treasury, and Charles Collyns to be an Assistant Secretary of the Treasury.

My support for the final confirmation of these nominees will rest on the response to concerns I have with respect to Internal Revenue Code section 6707A. A letter outlining these concerns was sent to both Secretary Geithner and Commissioner Shulman on December 22, 2009, and I ask unanimous consent that my letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, December 22, 2009.

Hon. TIMOTHY F. GEITHNER, Secretary,
U.S. Department of Treasury, Pennsylvania Avenue, NW, Washington, DC.

Hon. DOUGLAS SHULMAN, Commissioner,
Internal Revenue Service, Constitution Avenue, NW, Washington, DC.

DEAR SECRETARY GEITHNER AND COMMISSIONER SHULMAN: I am writing to express my disappointment with actions taken by both the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) with respect to Internal Revenue Code (IRC) sections 382 and 6707A.

On November 18, 2008, I wrote to then Secretary Paulson regarding Notice 2008–83, which changed the rules governing the deductibility of losses under IRC section 382(h). The facts and circumstances surrounding the issuance of that Notice raised concerns about the independence and merits of the decision.

Treasury's most recent guidance on this same issue, Notice 2010–2, raises the same concerns. Accordingly, I request that you provide the Finance Committee with all records relating to communications pertaining to the issuance of Notice 2010–2 between Treasury officials, Citigroup, Inc., or other Troubled Asset Relief Program (TARP) participants and/or their representatives. Please also provide a timeline for, and documentation of, Treasury and IRS discussions and approvals for Notice 2010–2 as well as any discussions about the impact this notice would have on the tax gap. In cooperating with the Committee's review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committee.

I understand that Treasury believes that Notice 2010–2 was justified, in part, because it would help protect the government's interest in Citigroup, Inc. Yet, it appears that Notice 2010–2 may generate billions of dollars of tax savings for Citigroup, Inc. Please provide documentation of any discussions of impact on the tax gap resulting from Notice 2010–2.

The quick and immediate relief provided to Citigroup, Inc. stands in stark contrast to Treasury and IRS's position on providing relief to small business owners who have been assessed penalties under IRC section 6707A. As you know, Chairman Baucus and I have been working throughout this year with our counterparts in the House of Representatives

to provide relief that can only be accomplished through legislation and we expect that legislation to be enacted very soon. As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties due and appreciate the IRS's moratorium on collection enforcement activity.

However, according to Commissioner Shulman's letter to Chairman Baucus dated July 17, 2009, 72% of section 6707A penalty assessments were imposed on small businesses and small business owners. The penalty is clearly being assessed disproportionately on small businesses compared to larger taxpayers. In addition, the placement of liens on these taxpayers, even though they are not yet being enforced, is a significant threat to their operations. Many small businesses use business assets or mortgage personal residences to secure lines of credit for the businesses. Imposing liens has significant negative implications for a small business that has limited access to capital.

I discussed this issue with Commissioner Shulman last month. I understand my staff has also discussed this again with IRS staff since then but that the IRS insists that placement of liens is necessary to protect the government's interest. I am troubled and frustrated by this position. It is inconsistent with the administration's publicly expressed concern about the difficulties facing small businesses in accessing capital.

I am also concerned that there is a disconnect between what Treasury and IRS staff in Washington, DC think is happening and what is actually happening in the field. For example, when my staff discussed with your staff the issue of IRC section 6723 being used to justify the placement of liens, your staff denied this was happening. Yet, after providing the name of a specific taxpayer who was subject to such a lien, my staff was informed that there may be a systemic issue in either the Automated Lien System or the Integrated Collection System.

My staff has also informed me that some of the assessments and liens are the result of Treasury and IRS regulations and procedures, such as the decision to disallow disclosures on amended returns and the decision to pursue 6707A assessments while other examination issues remain unresolved. Until Treasury regulations and IRS procedures can be revised to clear up the confusion, I request that IRS remove all liens on small businesses resulting from 6707A assessments unless there is a known risk that the taxpayer will evade payment of the penalties. Since the pending legislation will significantly reduce the 6707A assessment amount, liens may no longer be necessary.

As a supporter of closing the tax gap, I very much appreciate the IRS's difficult position with respect to protecting the government's interest in collecting taxes and penalties. If the IRS believes that removal of a lien would result in the IRS being unable to collect the penalty amount as revised by the pending legislation, please provide a description of these situations. However, I ask you to consider using your discretion as was done for big financial corporate TARP participants who will benefit from Notice 2010–2.

I appreciate your prompt attention to this matter. Please contact my staff with any questions or concerns.

Sincerely,

CHUCK GRASSLEY,
Ranking Member.

Mr. GRASSLEY. Mr. President, I want to explain my position on the nomination of Lael Brainard to be Under Secretary of the Treasury for International Affairs. I voted against Dr. Brainard in the Finance Committee, and I want the record to show that I am opposed to her nomination in the full Senate.

Dr. Brainard was nominated on March 23 of this year, and the Finance Committee's routine vetting began shortly after that. For the past 9 months Dr. Brainard has given evasive, incomplete, and inconsistent answers to questions asked by the Committee minority and majority. I have said this before, but every nominee who passes through the Finance Committee has been treated the same for the nearly 9 years I have been either chairman or ranking member. Dr. Brainard was treated in a manner consistent with how past nominees have been treated, but she did not respond in a consistent manner. On November 18, the Finance Committee released a memo covering three basic issues that arose during the vetting of Dr. Brainard. The nominee had a chance to review and make comments on this memo before it was released.

The first issue covered in the memo involves responses to questions on the Finance Committee questionnaire pertaining to previous late payments of taxes and whether or not the nominee is current on taxes owed. The nominee had to submit four separate responses to one question as the committee came to gradually discover that Rappahannock County, VA, property taxes had been paid late in 2005, 2006, 2007, and 2008. The issue is not that someone forgot to pay their property taxes on time; the issue here is the difficulty the Finance Committee had in getting complete, accurate, and correct answers out of Dr. Brainard. Committee staff spent most of 2009 attempting to get straight answers from Dr. Brainard, and the whole time this was going on the nominee had not paid her 2008 property taxes. The nominee finally disclosed the late payment of the 2008 property taxes on October 12, 2009, though the taxes had actually been paid in September. Answers on this specific issue from the nominee reflect a troubling aspect that is characteristic of many of Dr. Brainard's answers. Though Dr. Brainard owns the Rappahannock County property with her husband, she has consistently avoided taking any responsibility for the payment of taxes owed.

As I said before, the issue is not that someone forgot to pay county property taxes on time. Though a chronic inability to pay taxes timely is a serious concern, the real problem here is the inability of the nominee to be straight with myself, our staff, and the committee as a whole.

The second issue discussed in the November 18 memo involves the completion of several forms I–9, employment eligibility verification, which is required to document that a new employee is authorized to work in the United States. The nominee will tell you that all of her employees are eligible to work in the United States, and I do not dispute that. As before the issue here is the inability of the nominee to respond in a straightforward manner to questions. Additionally, the number of forms I–9 produced by the nominee with significant irregularities was very unusual. The committee released six different forms I–9 with irregularities. The committee memo discusses each of these, but possibly the most problematic is one form where it appears that dates have been written over to change the year. When questioned by committee staff about these forms I–9 in a meeting with the nominee and her accountant, the accountant asked to speak to the nominee alone, without committee staff in the room. The nominee sent a letter to myself and Chairman BAUCUS apologizing for the irregularities but offering no substantive explanation for many of them.

The third issue discussed in the Finance Committee memo involves the nominee's deduction of one-sixth of her household expenses from partnership income as an office-in-home deduction. Committee staff simply asked the nominee to show how she determined that one-sixth was the appropriate percentage, and the nominee has provided many different answers to this question. The Finance Committee memo summarizes Dr. Brainard's attempts to explain her office-in-home deduction with a variety of formulas adding up to a variety of answers. As before, the real issue here is not what percentage the nominee should have used to calculate her office-in-home deduction; the issue is the inability of the nominee to respond to what should be simple questions in a straightforward way.

As the committee memo notes, on her 2008 partnership return, the nominee reduced the size of her office-in-home deduction by half from one-sixth to one-twelth. Dr. Brainard said that this change was made because committee staff had been asking questions regarding her earlier use of the office-in-home deduction. The nominee did not amend her partnership returns for 2005, 2006, and 2007 where an office-in-home deduction of one-sixth was taken. I am not able to say that either number is correct or incorrect because the nominee provided several contradictory answers to this question.

As I have been saying, the larger issue here is not that someone was late in paying county property taxes, or the appropriate size of an office-in-home deduction. The larger issue is the apparent unwillingness or inability of a person, nominated by the President, to answer questions asked by a standing committee of the Senate in a straightforward manner. The reason Dr. Brainard's nomination took a full 9 months to the day to be discharged by the Finance Committee is that she spent 9 months giving evasive, incomplete, and inconsistent answers to committee staff in response to what are generally routine questions.

The only thing that is perhaps even more troubling than a nominee who

doesn't seem to take the vetting done by a Senate Committee seriously is the reaction we have seen by others, including some who serve in this body. Some apparently see the due diligence and vetting done on nominees as an assembly line that produces a guaranteed outcome.

We have seen what I believe to be political operatives from outside the Senate selectively leak information in a effort to target the Finance Committee's process of vetting nominees and even the specific staffers who carry out this work. These political operatives have had a lot of work to do, as Dr. Brainard is the fifth nominee from the current administration to run into significant problems during the Finance Committee vetting process. The Finance Committee vetting process has not changed in the nearly 9 years I have been chairman or ranking member. What has changed are the specific nominees and the apparent willingness of some to tolerate and excuse issues that would have disqualified nominees from the previous administration.

Nominees in the previous administration would have had trouble garnering support if they had these sorts of problems, and I made it clear my job was not to defend a problematic nominee. Most people do not know about these problematic nominees from the past because in some cases they did not get a hearing and in others they were not nominated in the first place.

There is only one person who could tell us why the vetting process for this nominee took so long, and that person is Lael Brainard.

I have been trying to ask her questions for 9 months now without much success, so now my questions are for the critics of the Finance Committee process and those determined to see this nominee confirmed no matter what.

How long should we allow a nominee to provide incomplete and contradictory answers before we simply decide that person ought to be confirmed anyway?

Who is important enough not to be obligated to follow the same rules and obligations as all other nominees?

What high government official is so important that they ought to be exempt from the burden of routine Congressional oversight?

Is knowing the right people a substitute for simple honesty and strength of character?

As for myself, I am going to answers these questions by reiterating my opposition to the nomination.

I, Senator CHUCK GRASSLEY, do not object to proceeding to the nominations of Lael Brainard to be Under Secretary of the Treasury, Michael Mundaca to be an Assistant Secretary of the Treasury, Mary Miller to be an Assistant Secretary of the Treasury, and Charles Collyns to be an Assistant Secretary of the Treasury.

ADDITIONAL STATEMENTS

TRIBUTE TO TARAS G. SZMAGALA

● Mr. VOINOVICH. Mr. President, today I wish to recognize Taras G. ''Tary'' Szmagala, on the occasion of his retirement from the Greater Cleveland Regional Transit Authority in Cleveland, OH. Tary has dedicated his life to public service and has worked tirelessly to improve the quality of life for the citizens of our community. His career demonstrates a commitment to excellence and exemplary leadership, and has earned him the respect and admiration of his friends and associates.

For 23 years, Tary has served the Greater Cleveland Regional Transit Authority, during which time he has held a number of positions, including: director of governmental relations, manager of communications, deputy general manager, interim general manager, and executive director of external affairs. He has made significant contributions towards procuring Federal and State capital improvement funds for the RTA's major projects, including, but not limited to, the Euclid Corridor Project and the extension of the Waterfront Line, and the Walkway from Tower City to Gateway.

Additionally, Tary's distinguished career in public service includes serving as special assistant to U.S. Senator Robert Taft, teacher and administrator for the Parma Board of Education, and public and personnel coordinator for the Cleveland Regional Sewer District. Moreover, he has served numerous governmental leaders and organizations, and has devoted countless hours to civic organizations, including the Stella Maris Board of Directors, the National Highway Safety Advisory Committee, the Ohio Public Transit Association, St. Ignatius High School and several colleges.

Tary has worked tirelessly to provide many Americans with a tangible connection to their Ukrainian heritage by serving on the Ukrainian Museum Archives Board of Directors, the Ukrainian National Association Board of Directors and as a representative of the Ukrainian-American community in many official capacities, including as Member of Presidential Delegation to Ukraine in 1991.

It is my privilege to recognize Tary for his diligent commitment and dedicated service to the Greater Cleveland Regional Transit Authority, and to the community that he has served for over three decades.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Neiman, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a withdrawal which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

NOTIFICATION OF THE PRESIDENT'S INTENTION TO DESIGNATE THE REPUBLIC OF MALDIVES AS A BENEFICIARY DEVELOPING COUNTRY AND TO TERMINATE THE DESIGNATIONS OF CROATIA AND EQUATORIAL NEW GUINEA AS BENEFICIARY DEVELOPING PROGRAMS UNDER THE GENERALIZED SYSTEM OF PREFERENCES PROGRAM—PM 39

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report and papers; which was referred to the Committee on Finance:

To the Congress of the United States:

The Generalized System of Preferences (GSP) offers duty-free treatment to specified products that are imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974, as amended (the ''Act'').

In accordance with sections 502(f)(1)(A) and 502(f)(2) of the Act, I am providing notification of my intent to add the Republic of Maldives to the list of beneficiary developing countries under the GSP program and my intent to terminate the designations of Croatia and Equatorial Guinea as beneficiary developing countries under the GSP program.

In Proclamation 6813 of July 28, 1995, the designation of Maldives as a beneficiary developing country for purposes of the GSP program was suspended. After considering the criteria set forth in sections 501 and 502 of the Act, I have determined that the suspension of the designation of Maldives as a GSP beneficiary developing country should be ended.

In addition, I have determined that Croatia and Equatorial Guinea have each become a ''high income'' country, as defined by the official statistics of the International Bank for Reconstruction and Development. In accordance with section 502(e) of the Act, I have determined that the designations of Croatia and Equatorial Guinea as beneficiary developing countries under the GSP program should be terminated, effective January 1, 2011.

BARACK OBAMA.

THE WHITE HOUSE, *December 23, 2009*.

MESSAGE FROM THE HOUSE

ENROLLED BILL SIGNED

At 1:42 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the Speaker pro tempore (Mr. VAN HOLLEN) has signed the following enrolled bill: