of law, and a commitment to the betterment of the people we serve, and the world we share.

This afternoon I have the distinct honor of introducing The Honorable Pat Cox, President of the European Parliament. This is an exciting time of growth and change in the European Union, and as President of the European Parliament, Pat Cox has been instrumental in fostering greater European unity and advocating for EU expansion.

As Europe becomes ever more unified, the extension of EU membership to free and democratic nations will be crucial to ensuring that diversity and pluralism accompany unification. In the face of persistent disputes among EU nations and political factions, President Cox has not wavered in his support for expansion, or in his denouncement of far right politicians who do not express the views of most Europeans. For that, we are all grateful.

Mr. President, Mr. Cox will be available to meet our Senate colleagues here on the floor during this vote.

Let me, on behalf of the U.S. Senate, welcome President Cox.

(Applause.)

PUBLIC COMPANY ACCOUNTING REFORM AND INVESTOR PROTECTION ACT OF 2002—Continued

AMENDMENT NO. 4200

The PRESIDING OFFICER (Mr. CARPER). The question is on agreeing to the motion to table amendment No. 4200. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Ohio (Mr. VOINOVICH), and the Senator from Idaho (Mr. CRAPO) are necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote ''no.''

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

The result was announced—yeas 62, nays 35, as follows:

(Rollcall Vote No. 172 Leg.)

YEAS—62

Akaka	Dorgan	McCain
Allen	Durbin	Mikulski
Baucus	Edwards	Miller
Bayh	Enzi	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Boxer	Graham	Reed
Breaux	Hagel	Reid
Byrd	Harkin	Rockefeller
Cantwell	Hollings	Sarbanes
Carnahan	Inouye	Schumer
Carper	Jeffords	Shelby
Chafee	Johnson	Snowe
Cleland	Kennedy	Specter
Clinton	Kerry	Stabenow
Collins	Kohl	Thompson
Conrad	Landrieu	Torricelli
Corzine	Leahy	Warner
Daschle	Levin	Wellstone
Dayton	Lieberman	Wyden
Dodd	Lincoln	

NAYS—35

Allard	Fitzgerald	McConnell
Bennett	Frist	Murkowski
Bond	Gramm	Nickles
Brownback	Grassley	Roberts
Bunning	Gregg	Santorum
Burns	Hatch	Sessions
Campbell	Hutchinson	Smith (NH)
Cochran	Hutchison	Smith (OR)
Craig	Inhofe	Stevens
DeWine	Kyl	Thomas
Domenici	Lott	Thurmond
Ensign	Lugar	

NOT VOTING—3

Crapo	Helms	Voinovich

The motion was agreed to.

Mr. SARBANES. I move to reconsider the vote.

Mr. DASCHLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

AMENDMENT NO. 4269 TO AMENDMENT NO. 4187

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. DASCHLE. Mr. President, I have an amendment I send to the desk on behalf of Senator LEVIN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LEVIN, for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN, proposes an amendment numbered 4269.

Mr. DASCHLE. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, this amendment is offered—and I thank the majority leader—on behalf of myself, Senator BILL NELSON, Senator HARKIN, Senator CORZINE, and Senator BIDEN.

Our amendment would grant the SEC administrative authority to impose civil fines on persons who violate securities laws, regulations, and rules. Now the SEC has to go to court, which is difficult and burdensome.

We, just the other day, decided we wanted to give the SEC the power to remove directors and officers from public companies who violate rules and regulations and laws without having to go to court.

Of course, those decisions administratively by the SEC are subject to an appeal. That is always true and always must be true. The same approach is essential relative to the imposition of civil fines. If the SEC is going to have power, without a lot of cumbersome, costly, and expensive procedures, to really take on those directors and those auditors who violate the law, who violate rules and regulations, the SEC must have the same authority which other regulatory bodies have to impose civil fines.

A few examples: The Commodity Futures Trading Commission has authority to impose civil fines up to three times the monetary gain from a violation plus restitution of customer damages. The Department of Transportation can impose civil fines. The Consumer Product Safety Commission can impose civil fines. The Occupational Safety and Health Administration, OSHA, can impose civil fines. The Federal Communications Commission can impose civil fines.

As a matter of fact, the Securities and Exchange Commission can impose civil fines on some of the people it regulates—brokers. But unless we act today, there will be a great gap in the enforcement power of the SEC, a continuing gap. That gap is, it does not have the power, without legislation, to impose an administrative civil fine on auditors and members of boards of directors who violate rules and regulations in the law of the land.

Our amendment would give the SEC that authority to impose administratively civil fines on those people who violate our securities laws and regulations and rules. That includes officers, directors, and auditors of publicly traded companies.

I emphasize, these fines would be, and must be, subject to judicial review, as are the other SEC administrative determinations which they have authority to answer at this point. That is the first objective of the amendment.

Secondly, our amendment would significantly increase the civil fines the SEC can impose on law violators. I particularly thank Senator NELSON of Florida for highlighting the problem and supporting the inclusion of these provisions in the amendment.

The civil fines that currently can be imposed on broker-dealers administratively have maximum amounts that start at $6,500 per violation. That is the maximum amount under the so-called tier 1 civil fine. If a broker-dealer now violates the securities laws under so-called tier 1 where there is a violation found, not yet proven to be fraudulent but a violation nonetheless, $6,500 is the maximum fine under current law. Tier 2 for individuals is a $60,000 fine. That is where you find fraud, deceit, manipulation, and deliberate or reckless disregard—$60,000 for an individual for that violation.

It is laughable. The current structure of fines which can be imposed on those people who administratively can be subject to a civil action or civil fine by the SEC is so low, these fines are a joke. We are talking about people who frequently are walking away, lining their pockets, violating rules and regulations for millions of dollars, sometimes tens of millions of dollars. To have a system where the maximum fine under tier 1 is $6,500 for an individual and under tier 2 is $60,000 is just simply inadequate.

Here is what the SEC staff said in June of this year: The current maximum penalty amounts may not have the desired deterrent effect on an individual or a corporate violator. For example, an individual who commits a negligent act is subject to a maximum penalty of $6,500 per violation.

This is the conclusion of the SEC staff: The amount is so trivial that it cannot possibly have a deterrent effect on the violator.

I would say that is an understatement: $6,500, given the current amount of money flowing through these violations of rules and regulations, is pitifully trivial. In fact, it is no deterrent at all. It might as well not be there. If we are going to have a deterrent system, we have to have fines which have some bite, which are real, which have an impact on people.

We would, under our amendment, increase the maximum fines from a range of $6,500 to $600,000, which is the current range for tiers 1 through 3, to a range which goes from $100,000 to $5 million in fines per violation.

We are seeing these corporate restatements and misconduct involving $2 billion, $4 billion, and even $12 billion. These new fine amounts are critical if they are to have the desired deterrent and punitive effects on wrongdoers in the corporate world.

Our bill also has language which is similar to the language in the Leahy and Lott amendments that were adopted relative to the removal from office. We do this for the sake of completeness, so that we can lay out the entire structure being proposed in our bill for administratively imposed civil fines. That part of the amendment is the same as the removal from office provisions adopted by the Senate yesterday in the Leahy and Lott amendments.

Finally, our amendment would grant the SEC new administrative authority, when the SEC has opened an official investigation, to subpoena financial records from a financial institution without having to notify the subject that such a records request has been made. This authority would allow the SEC to evaluate financial transactions, to trace funds, to analyze relationships, without having to alert the subject of the investigation to the SEC's action.

Under current law, the SEC either has to give the subject advance notice of the subpoena or to obtain a court order that can delay notification for no longer than 90 days. That is a huge impediment to enforcement by the SEC. We ought to change that.

The staff of the SEC wrote the following relative to this amendment:

This amendment would enhance the Commission's ability to trace money and relationships quickly and effectively. The Commission typically requests bank records when it has reason to suspect possible relationships between persons or entities and that passage of money between those persons or entities may be relevant to violations of the securities laws. Identifying those relationships and quickly identifying assets obtained or transferred in connection with possible unlawful activity is critical to the Commission's ability to obtain orders freezing assets and other appropriate relief.

In many situations, the Commission could proceed much more effectively if it could obtain relevant bank records without providing notice to the persons whose account records are sought.

Under current law, however—

The SEC staff wrote—

the right to the Financial Privacy Act generally requires the commission to provide those persons with notice and a substantial period—10 to 14 days—in which to file a contest to the commission's authority to obtain the records.

Let me continue with the SEC staff analysis of this language that is in our bill:

Because Congress recognized that the notice requirement can, in some cases, compromise important and legitimate commission investigative objectives, Congress provided in section 21(h) of the Exchange Act that the commission may seek court authorization to obtain relevant bank records without notifying the customer for at least 90 days. Unfortunately—

The SEC staff wrote—

those important investigative objectives are also compromised by the inherent delay in obtaining the necessary court order.

The proposed amendment to section 21(h)—

Our language in this amendment—

addresses both the notice and delay problem by allowing the commission the discretion only in those cases in which it has already authorized a formal investigation to proceed without notice to the customer. The proposed amendment also reiterates and strengthens the commission's authority to require that financial institutions not compromise investigations by notifying any persons or entities that their bank records have been subpoenaed.

Mr. NELSON of Florida. Will the Senator yield for a question?

Mr. LEVIN. I will be happy to yield for a question, but I do have an additional thought.

Mr. NELSON of Florida. I am proud to be here today with my colleague from Michigan to offer these reforms aimed at preventing and punishing perpetrators of corporate fraud. The questions I wanted to ask the very distinguished Senator from Michigan, who has the foresight of why we need this at this particular time, are these: Would it not intrigue the Senator from Michigan and other Senators here that all of this is happening in an environment when 17,000 workers at WorldCom have received pink slips and have realized losses of over a billion dollars in their retirement plans; and at the same time they were receiving pink slips, the corporate executives were attending a retreat in Hawaii? That would not surprise the Senator, would it?

Mr. LEVIN. It would not surprise me at all.

Mr. NELSON of Florida. I doubt that it would surprise the Senator that one of those executives, by the way, was putting the finishing touches on a $15 million mansion, derived from that money from WorldCom. Would it surprise the Senator that late last year Global Crossing laid off 1,200 people, giving them no severance package, while the CEO of that company walked away with hundreds of millions of dollars?

Mr. LEVIN. I am afraid very little would surprise me about some of these violations and deceptions these days.

Mr. NELSON of Florida. I know it would not surprise the Senator, but I will ask him this anyway. After what went on with Enron last summer, while Enron executives were selling their shares for hundreds of millions of dollars and protecting their portfolios, their retirees and employees lost more than a billion dollars in retirement savings. Does that surprise the Senator?

Mr. LEVIN. Tragically, it is not a surprise.

Mr. NELSON of Florida. It is unconscionable. One of those we had testify in our Commerce Committee was Janice Farmer, an Enron retiree who lost her entire life savings that she had built up in a retirement plan from Enron. In her case, it was $700,000. She has nothing now.

And then, I suppose it also would not surprise the distinguished Senator that, while we are talking about these excesses of corporate irresponsibility and corporate greed, the Florida pension fund for the Florida retirement system had a loss of $335 million—more losses than any other State—from Enron stock purchases, and that the money managers of that Florida pension fund, which covers all of the public sector retirees in Florida—the money managers kept buying Enron stock, based on the assertions from the company's management that everything was OK, that doesn't surprise us either, does it?

Mr. LEVIN. No surprise. I am afraid that the public, having lost so much of its pension money, is disgusted but no longer surprised.

Mr. NELSON of Florida. The management said everything was OK, but it was not OK. While the stock was dropping like a rock, but not before the company's management had unloaded their shares, the money managers were buying that stock as it dropped like a rock, and it caused to a dozen or so pension funds, retirement systems, public pension funds in this country over a billion dollars in losses. My State had the most losses of $335 million.

So we have seen in the last year and a half corporate abuses of monumental proportions, and it is time for us to stop it. I am grateful to the Senator from Michigan for his leadership in bringing forth the amendment that he has described, which is basically going to give some additional teeth to the Securities and Exchange Commission to cause disclosure and to cause some hurt when these corporate managers, motivated and operated by greed, cross the line.

I thank the Senator for his leadership.

Mr. LEVIN. I very much thank the Senator from Florida for his comments

and his questions, and also for the active role he has taken in shaping this language. He has identified the feeble nature of the fine structure that we have in the current law. We have some ruthless people out there who have lined their own pockets in violation not only of law and regulation, but of any code of morality and fiduciary duty. We have some ruthless people.

We also have some toothless laws. The SEC, when it has to go to court to impose a civil fine, is put through hoops that other regulatory agencies are not put through. They can impose civil fines administratively—always subject to an appeal by the respondent or the defendant. But they have the capability to seek civil fines administratively—these other agencies. I have given examples of some of them. But when it comes to the SEC—outside of the brokers, where the SEC has that power—they have to go through the cumbersome proceedings of going to court.

Now, we have cured some of this already in the bill. When it comes to the removal from office, yesterday we took action to give the SEC the ability to act administratively and to order the removal of directors or executives from office. What we didn't do yet, and what this amendment does, is add a critical component to regulatory effectiveness, which is the ability to impose civil fines administratively.

This is what the administration said in supporting the grant to the SEC of the power to remove directors from office, which we have now already done. It says that if we didn't do that—and now I am quoting the Statement of Administration Policy:

> It would continue to require the SEC to expand significant time and resources in order to attempt to gain similar relief in the Federal courts.

That is what we are talking about now with civil fines.

If we do not adopt this amendment, if we do not give the SEC these enforcement tools that other agencies have relative to directors and auditors, we will be requiring the SEC to be wasting time and wasting resources that they otherwise should be using to chase these corrupt and immoral people.

Mr. NELSON of Florida. Will the Senator yield for another question?

Mr. LEVIN. I will be happy to yield.

Mr. NELSON of Florida. The distinguished Senator from Michigan has laid out how this amendment will give stronger enforcement measures to the Securities and Exchange Commission. We have a saying in the South: It is beyond me. It is beyond me why there are other people in this Chamber, when confronted with such corporate and auditor misconduct, would not want to strengthen the law to prevent and punish such corporate abuse.

Does the senior Senator from Michigan have any idea why people would oppose us trying to strengthen existing law and, indeed, strengthen the underlying bill?

Mr. LEVIN. I am hopeful there will be broad support for this amendment, just for the reason the Senator from Florida gives. There should be. This is not novel. This capability of imposing civil fines administratively belongs to other regulatory agencies. The protection is always an appeal to the court, but without this tool, the SEC has a weaker capability. They are not in a position then to do what other enforcement agencies can do in the face of some of the worst deception this country has ever seen—the deception which is now unfolding in too much of corporate America.

This is of the worst attack on our system we have seen. It is unfolding in front of our eyes, and the SEC should be given the powers to deter it or punish it—all the power.

We want the court to be able to review administrative actions. I think most Members of this body do not want any administrative agency to be able to act without court review if they are excessive or if they are wrong. I think most of us believe in that. I believe in that. But I also believe an administrative agency has to have enforcement tools.

We have given the SEC some additional tools in the last few days. Senator LEAHY and Senator LOTT, for instance, in the criminal law area, toughened the criminal penalties, and the SEC now has the capability to impose fines against the stockbroker, although they are pitifully small.

Our amendment would include directors, corporate executives, and auditors in the purview of the SEC power to act administratively and would toughen the fines so they would be far more realistic and could have some deterrent effect. The current fine structure against a limited class of people is useless; it is toothless.

This is a huge gap in the bill before us. This is a terrific bill, by the way, and I do not want anything I say to suggest otherwise. The Banking Committee has given the Senate, and hopefully the country—if we can get some support for it from the administration and if it can get through conference—the Banking Committee has come up with a very strong law. We have strengthened it so far on the floor.

This amendment will strengthen it further by filling a gap that exists in the toolbox. It is the missing tool in the toolbox of enforcement capabilities that the SEC should have.

Mr. NELSON of Florida. The Senator's timing is just uncanny. We need look back no further than to yesterday when the stock market dropped almost 300 points, all the way down close to 8,800, the stock market being a reflection of the confidence of the American people in their investments in public corporations. Lo and behold, that confidence is sinking, and the American people need some greater sense of confidence that, indeed, they will not be hoodwinked, that they will not be fooled by greedy corporate executives or greedy auditors who blur the lines on what their auditing duties ought to be and instead get in bed with those who would mismanage the finances of a corporation. The people of America who invest their hard-earned dollars ought to have the confidence that when they see the financial reports, those financial reports are accurate. That confidence is not there, and we saw it yesterday in the reaction of the people in their purchases and sales in the stock market.

I thank the Senator from Michigan for his timeliness in trying to put some teeth in the authority of the Securities and Exchange Commission to give greater confidence to the Joe and Jane Citizen of America who invest their money because they want to invest in the future of their country and they need to do it and know they are getting accurate figures. I thank the Senator.

Mr. LEVIN. I thank the Senator from Florida.

Mr. President, I wish to expand for one moment on the question of the notice provision in our amendment.

As I indicated before, where there are allegations that officers, directors of companies are misusing the accounting rules and abusing their powers, the SEC has to be able to look at financial records without giving the account holder an opportunity to move funds or to change accounts or to further muddy the investigative waters. Other agencies have that power, and this agency must have that power.

We have carefully circumscribed that power in a number of ways. We have not just simply said you can subpoena any documents you want. We have criteria for doing that or else they have to give notice.

One of the criteria is that it has to be an official investigation that has been ordered by the Commission. That is an important safeguard. This is not just the beginning of an investigation. This is not during a discovery process. This is where the Securities and Exchange Commission has initiated an official investigation, which is a very formal act on the part of the Securities and Exchange Commission.

At that point, they should be able to subpoena documents under certain circumstances. These are the circumstances that we set forth in the amendment:

If the Commission so directs in its subpoena, no financial institution or officer, director, partner, employee, shareholder, representative or agent can directly or indirectly disclose that records have been requested or provided in accordance with subparagraph (A).

In other words, you cannot disclose to the subject of the investigation that you, as a financial institution, have been subpoenaed for those records if the Commission finds reason to believe that such disclosure may—and then we set forth the rules, and the rules are intended to make sure that the Commission can act after it has announced or

determined there should be an official investigation but does not want to risk that the subject of the investigation is going to remove documents or remove money or hide assets.

So we set forth the protections, and they are: If the Commission finds reason to believe that disclosing the fact of the official investigation to the subject of that investigation by a financial institution would, one, result in the transfer of assets or records outside of the territorial limits of the United States. So if the Commission says, hey, we have reason to believe if that person is notified in advance of those records being obtained by us or if there is a delay in our obtaining records that person may transfer assets or records outside of the United States, there could be nondisclosure.

The second criteria which, if it exists, would permit this to happen is if the disclosure would result in improper conversion of investor assets.

The third cause for the requirement that there be nondisclosure is that if such disclosure would impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction. That speaks for itself.

The fourth way in which nondisclosure would be permitted is that if it endangers the life or physical safety of an individual. If the Commission has reason to believe the life or physical safety of an individual would be compromised by disclosure, surely we ought to not require disclosure.

Fifth, if it results in flight from prosecution, if they have reason to believe that could happen, or if the Commission has reason to believe that the disclosure may result in destruction of or tampering with evidence, or if such disclosure may result in intimidation of potential witnesses or otherwise seriously jeopardize an investigation or unduly delay a trial.

Those are carefully set forth reasons for why disclosure should not be required. These are similar to what other agencies have in terms of powers, and it seems to me with this careful delineation of this subpoena power that we should surely give the Securities and Exchange Commission that power.

Again, staff has given the reasons for the importance of that amendment, and I hope that reasoning of the SEC staff would be persuasive on this body. We have to give the SEC some administrative authority to impose civil fines. It would provide a tool that is now missing from the toolbox. It would add this tool, this weapon, to their arsenal. Without this weapon in their arsenal, they still have one hand tied behind their back. Without this amendment, they do not have the same administrative authority that other agencies have.

Given the environment we are in, that we must use all legitimate means to put an end to the abuses and the deceptions of too many of our corporate leaders, corporate executives, corporate directors, and auditors, we must surely bring our laws up to date in terms of the powers we give to the SEC, and in terms of the civil fines we authorize them to impose, always subject to an appeal to the courts.

I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Texas.

Mr. GRAMM. Mr. President, some of my colleagues change positions on issues like privacy so quickly that it gives me whiplash, and I will get to that point. I do not know how many people have seen the movie ''Minority Report.'' If you have not, I want to tell you the story. I never thought I would see a real-life example of what happens in this movie, but I have found one right here on the floor of the Senate.

In the movie ''Minority Report,'' you have a cop who has almost supernatural powers, and his job is to arrest people before they commit a crime. It starts with three people, two guys who naturally do not have very much ESP, and then you have this lady, who naturally is quite attractive, who has these massive powers of ESP. They visualize crimes that are going to happen, their brain waves activate a computer, and then it prints out what they are seeing. They see crimes happening that have not yet occurred.

The action in the movie begins with a guy finding his wife in bed with another man. The husband is obviously a nice guy—probably an accountant—and he is leaving his house. His wife seems so eager for him to leave, he figures out something is going on. He is sort of an old, balding fellow and as he is leaving, he misses his bus. While he is waiting for the next bus, a young guy comes in and walks in his front door. Needless to say, the husband is upset about it. (Who wouldn't be upset about it? No one would want that to happen to them or anybody they knew.) So the husband goes in and he is sort of in shock. He finds himself in the bedroom, sitting by the bed. He goes crazy, and picks up a pair of scissors.

At this point, the computer system (hooked up to the people with ESP) alerts this superwarrior for law enforcement that there is about to be a murder. He jumps in this sort of minijet that flies fast and stops on a dime. The officer zooms in—have you seen this movie, Senator MCCAIN?—and just as the guy is getting ready to stab his wife, the officer grabs the knife, puts the handcuffs on the husband, takes him off and they put him in prison for murder.

Mr. MCCAIN. Will the Senator yield? That is a better description than the movie was.

Mr. GRAMM. Now, I thought, the whole thing is sort of a moral question: Were these people really going to commit these crimes? They put them in prison for life. They put them in these metal cylinders and wired them up to control their brain waves. It is not very pleasant. So the question is, Do you have a right to do this to people who have not yet committed a crime simply because some person with extrasensory perception said it was going to happen?

That is what the movie is about. It is a big hit movie. It made over $100 million the first week. It sounds silly when I tell it, but they got $100 million and I am giving this speech.

In any case, I thought, what an absurd plot. Who in the world could ever believe—this is the U.S. of A, by the way. This movie is off in the future.

Why would we ever have a law under which people can be punished for what they might do? Is that absurd? Can anybody believe that would happen? If you think not, you are wrong.

Let me read from this amendment. This is in general. It is talking about authority of the Commission to assess monetary penalties. This is from the amendment that is pending.

> In general, in any cease and desist proceedings under subsection A, the commission may impose a civil monetary penalty if it finds on the record, after notice and opportunity of hearing, that a person is violating, has violated, or is about to violate or has been or will be the cause of violation.

Senator LEVIN is going to fine people because we are concluding that they are about to do something before they have done it. Or that they ''will be'' the cause of a violation.

I submit, first of all, this is not from the SEC. The SEC has not asked for this provision. This is from staff at the SEC—maybe ''a'' staff person, for all I know.

The point is, do we really want to say we are going to penalize people because they are about to violate the law or we believe they are going to? How can you tell? How are you going to tell that they will be the cause of a violation? I submit that is a standard I am unaware has ever existed. If so, I didn't know about it or I would have tried to change it.

Let me mention a second problem. The second problem has to do with financial records. Correct me, my colleague on the Banking Committee, if somehow I have fallen into a time warp and am in a different world than last year. Was it not last year we were going to shut down the Internet, we were going to put people in prison for putting out your mailing address or for mailing you a letter where someone could read your address off of it and go murder you? Were we not just in this time warp where privacy was the be-all and end-all of society?

I get whiplash, we change positions so often.

Let me state what the current law is and then read what Senator LEVIN is proposing. The current law is the following: The SEC and other Federal agencies have the power to get your financial records, and they can do it through administrative subpoena or judicial subpoena.

Now, normally there is one little inconvenience. Normally, they have to tell you they have taken your financial

records. Not an unreasonable thing, it would seem to me, if this is still America. But we are talking about business people here, and there is a different standard. Two consenting adults can engage in any activity other than commerce, with full constitutional protection, but if they engage in job creation or wealth creation, they stand naked before the world in terms of any rights whatever.

Under current law, the Government can come in and take your financial records, but they have to tell you they have done it—''except.'' And there are three reasons they can do it without telling you. I think we all would say they make reasonably good sense. They can not tell you if they have reason to believe that there is going to be a flight from prosecution; or if they believe there is going to be destruction of or tampering with evidence; or if telling you would otherwise seriously jeopardize an investigation of official proceedings, or unduly delay a trial of an ongoing official process.

That is the current law. What is unreasonable about that? If the Government believes someone is doing something wrong, they can come in and take their records. Unless they believe there is going to be a flight from prosecution or there will be tampering with evidence or it will jeopardize the investigation, they have to tell you they took the records. That is not unreasonable. But if they believe any of these things to be the case, they can go in and take your records and not tell you.

Now, what does the amendment of the Senator from Michigan do? It says notwithstanding—that is always dangerous—notwithstanding sections 1105 or 1107 of the Right To Financial Privacy Act of 1978—that law has been around here a long time. But notwithstanding it, which means throw it out, the Commission may obtain access to and copies of or information contained in financial records of any person held by a financial institution, including financial records of a customer, without notice to that person.

If you think someone is going to flee prosecution or destroy evidence or that will jeopardize an ongoing investigation, maybe we would accept the limits of our individual liberty. But under the Levin amendment, you don't have to find any of those things. The government doesn't have to find that any of those circumstances is the case to be able to go in and take financial records.

Since this bill is a bill that amends our securities laws and our financial laws, this bill falls under this jurisdiction. So what this literally means is that a government agency, without ever going to the courthouse, could come and take all of your financial records—your banking records, your investment records, any financial records you have or have ever had—and without finding that there is any risk that you are going to flee from justice or destroy evidence or jeopardize an investigation, they can take them and not tell you about it.

There is a limit, it seems to me, to the logic in this case. If the Senator had an amendment that simply raised these fines for people who are criminals, that would be an amendment I could support. It shows how far we have flown from reality when we are talking about penalizing people because they are ''about'' to violate the law; or that ''will be'' the cause of a violation.

It is very hard to know when someone is going to violate the law. I have not yet gotten any kickback, I am not a stockholder even, I don't think I have received a contribution from the PAC of the people who made the movie I've described—though if they had any decency, they would have contributed to my campaign over the years. But if you watch this movie, you are going to see what the problem with the Levin amendment is.

The problem with the Levin amendment, as it turns out, is these psychics are not always right, and they don't always agree. Sometimes there is a ''Minority Report.'' The superwarrior cop discovers this. It turns out they try to frame him for a murder. A good movie. I recommend seeing it.

In any case, I am opposed to this amendment. It is a thick amendment. There are a lot of things in it. There are some things in it that I support. But I do not support penalizing people for what you think they are going to do. I do not support taking people's financial records without telling them about it. It sounds to me as if somebody at the SEC has got the idea that maybe they are living in a different era in a different country and they are saying: Look, if we didn't have to fool with civil liberties, if we could get rid of the Bill of Rights, we could be a more effective law enforcement agency. If we could arrest people we think are going to violate the law, we could be more efficient. We don't live in that country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first let me assure my good friend from Texas that I have seen ''Minority Report.''

Mr. GRAMM. You have?

Mr. LEVIN. I have.

Mr. GRAMM. Then you got the idea from it.

Mr. LEVIN. As a matter of fact, I got the idea for the protections we write in here from ''Minority Report'' just because, as a tribute to the protections and civil liberties that are defended and protected in ''Minority Report,'' I had to be absolutely certain we would put these protections in our bill, to make sure that only if there were reason to believe a transfer of assets was going to go outside of the United States, or there would be conversion of assets, or it would endanger the life or physical safety of an individual, or result in flight from prosecution—those very criteria, carefully delineated, that are a tribute to the civil liberties and protections and privacy rights in this country to which my good friend from Texas just referred.

I can assure my good friend from Texas, the lesson of ''Minority Report'' is carefully reflected in this amendment. I saw that because I knew the Senator from Texas was going to raise that movie. With that kind of foresight, I decided, knowing just how he does this so beautifully on the floor of the Senate, I had better see ''Minority Report.'' That is why I want to assure the Senator from Texas that these very protections which he is so careful to delineate are in fact set forth in this amendment. We have these criteria laid out in this amendment.

Mr. REID. I don't want to take away from the seriousness of the debate, but I haven't seen ''Minority Report.'' I have seen ''Big Fat Greek Wedding,'' and I would recommend that.

(Laughter.)

Mr. LEVIN. It sounds as if I have not been doing too much else, but I have also seen that—since we are giving testimonials to movies here.

The language to which the Senator from Texas objects, about penalizing people for what they are going to do—that is language which the good Senator from Texas, as chairman and ranking member of the Banking Committee, has overseen for years. That is the same language that currently exists in the SEC law. We are not adding anything new here. This is the SEC law, section 77(h)(1): Cease and desist proceeding, authority of the Commission.

If the Commission finds after notice and opportunity for a hearing that any person is violating, has violated or is about to violate any provision—

That is existing law. The Senator from Texas has overseen that for all these years. He has done a brilliant job as chairman and ranking member of the Banking Committee, and we are just simply following the language that exists already in the SEC law and applying it to folks who are not now covered.

Mr. GRAMM. Will the Senator yield?

Mr. LEVIN. For a question, I will be happy to.

Mr. GRAMM. What the Senator saying is they can issue cease and desist orders under these circumstances, but they can't fine somebody. You are not only ceasing and desisting them—I have no problem. In the movie—and that is where you got this idea from. I thought it was.

In the movie, I don't object to them grabbing the guy who is about to stab his poor wife. It is putting him in prison, not for attempted murder—he did that—but for killing her when she is not dead.

Mr. LEVIN. The Senator from Texas raises an issue which, I am afraid, is also addressed in current law. It is not just cease and desist orders, it is the implementation of civil fines. We are

following the same language. But what we are saying is, if the SEC has power to impose a fine on a broker, based on the standards which exist in this law, there is no reason the SEC should not have the same power to impose a fine on an auditor or on a director who violates the regulations and laws of this land. This is the same language. We haven't added anything new.

What is new here is that for the first time there will be the potential, the power in the SEC, subject to an appeal to the court—which is another protection of our civil liberties—subject to an appeal to the court, to impose a civil fine, administratively, on people who are now let off the hook. There is no reason for this gap in the law.

If, in fact, there is a problem that the Senator has raised, with language, that language is in the existing law for SEC. It is in the existing law for FDIC, the Federal Deposit Insurance Corporation:

If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution affiliated party is engaged or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution affiliated party is about to engage—

The words which the Senator from Texas mocks are in existing law, in the FDIC law, in the SEC law.

There may be reasons the Senator wants to maintain this gap in enforcement, but that cannot be used as the reason. That cannot be used.

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO RECOMMIT WITH AMENDMENT NO. 4270

(Purpose: To require publicly traded companies to record and treat stock options as expenses when granted for purposes of their income statements)

Mr. MCCAIN. Mr. President, I move to recommit the bill to the Committee on Banking, Housing, and Urban Affairs with instructions to report the bill back forthwith, with the following amendment that I send to the desk.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Arizona (Mr. MCCAIN) moves to recommit the bill (S. 2673) to the Committee on Banking, Housing and Urban Affairs, with instructions to report back forthwith with the following amendment, numbered 4270:

At the appropriate place, insert the following:

SEC. . STOCK OPTIONS MUST BE BOOKED AS EXPENSE WHEN GRANTED.

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

The PRESIDING OFFICER. The Senator from Nevada.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4271

Mr. REID. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. EDWARDS, for himself, Mr. ENZI, and Mr. CORZINE, proposes an amendment numbered 4271 to the instructions of the motion to recommit S. 2673 to the Committee on Banking.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

Mr. MCCAIN. I object. I would like to hear what the amendment says.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to read the amendment.

Mr. REID. I say to my friend, I will be happy to have it read, but it is the exact same amendment that was pending beforehand.

Mr. MCCAIN. Thank you.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To address rules of professional responsibility for attorneys)

At the end of the instructions add the following:

''(c) RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.—Not later than 180 days after the date of enactment of this section, the Commission shall establish rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of public companies, including a rule requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof) and, if the counsel or officer does not appropriately respond to the evidence (adopting as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors, or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the company, or to the board of directors.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

AMENDMENT NO. 4272 TO AMENDMENT NO. 4271

(Purpose: To address procedures for banning certain individuals from serving as officers or directors of publicly traded companies, civil money penalties, obtaining financial records, broadened enforcement authority, and forfeiture of bonuses and profits)

Mr. REID. Mr. President, I send a second amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. LEVIN, for himself, Mr. NELSON of Florida, Mr. HARKIN, Mr. CORZINE, and Mr. BIDEN, proposes an amendment numbered 4272 to amendment No. 4271.

Mr. REID. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. REID. Mr. President, I appreciate the cooperation of the Senator from Arizona. There are other ways we could have gotten to the point we are now. This just made it a lot easier. I appreciate that very much.

I say this, before I yield the floor, to my friend from Arizona. We are now in the exact same posture we were in prior to the Senator from Arizona offering his amendment—his instructions, I should say.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before the Senator from Nevada leaves the floor, I wonder if he would respond to a question. Do we intend to vote on these pending amendments and the motion to recommit?

Mr. REID. I say to my friend, we have been trying very hard. I have received instructions—it is probably the wrong word, but Senator EDWARDS has been here for 2 days, and he left here for a while this afternoon waiting to vote on his amendment. Senator LEVIN has been here for several days—2 days. We would like very badly to vote on the Levin second-degree amendment and the Edwards first-degree amendment.

I have spoken to the manager of the bill for the minority. It appears very unlikely that we are going to be able to do that. I think that is a disappointment. I think some of these relevant—I shouldn't say some—I think all of these relevant amendments we can get up to prior to the cloture vote, we should try to dispose of.

But I understand the rules of the Senate. I am disappointed to say, my friend from Texas also understands them, so even though I would like votes, it does not appear we are going to be able to have votes.

Mr. MCCAIN. Mr. President, I thank my friend from Nevada for his candor. I think it is pretty obvious. Everybody ought to understand what is happening as we go through these arcane procedures.

The whole purpose of this—the whole purpose of what we just went through—is to not have a vote on anything that has to do with stock options. Let's be very clear what that is all about.

Whatever side you are on on the issue, the fix is in, as we say all too often in the sport of boxing. The fix is in and we will now have cloture invoked and there will not be a vote on stock options.

While my friend from Nevada is still here, I can tell him, I understand the rules of the Senate. I have been through other difficult issues on which I have been blocked from getting votes. I tell my friend from Nevada, and all of my colleagues, we will have a vote on stock options. We will have—sooner or later—a vote on stock options. And I only regret that we cannot do it now, get it over with, and get everybody on record.

I also would make one additional comment. I hope I do not harm the feelings of any of my colleagues. This is an important issue. This is a very important issue, no matter where you stand on the issue of stock options and how they should be accounted. It is a very important issue.

Why is it that this body would not take up the issue and have an up-or-down vote on how stock options are treated? I would ask the manager of the bill, why would we not at least allow a vote up or down?

I will read editorials. In fact, it may be sometime before I give up the floor because I have a lot to say about this issue. I will read from Mr. Greenspan's speech, a fairly widely respected individual, who says—well, I will read his speech in just a minute. He is in favor of treating stock options as an expense.

So is Mr. Stiglitz and Mr. Buffett, and so many others, who are aware of this issue and its impact and the way it has been terribly abused by the same people we are trying to go after, the same people we are after.

Mr. SARBANES. Will the Senator yield for a response to his question?

Mr. MCCAIN. According to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions, which allowed the corporation to severely reduce their payment in taxes. According to reports that I think I have here, over $1 billion in stock options were issued to the senior executives of WorldCom.

This is an important issue. I respect the views of my colleagues who disagree with my position and that of Mr. Greenspan, Mr. Stiglitz, and Mr. Buffett in various op-eds and editorials in newspapers throughout America. But why would we not vote on it? That is the question.

Why would the distinguished Senator and friend from Nevada feel it incumbent upon himself to not allow a vote on stock options? I guess that question can be answered by observers.

But here is the deal. I want to tell my friend from Nevada again, there will be a vote on how stock options are treated. I will repeat the amendment. I will repeat the amendment and will repeat it again several times before I finish discussing this issue. The issue, no matter how you feel, should be addressed. But through the invocation of cloture, everybody knows that the amendment and the motion to recommit will fall.

I want to repeat. The amendment is fairly clear-cut, fairly simple. We deal with a lot of arcane issues in the discussion of this regulatory reform. But I repeat:

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

It is very simple. It does not say anything about the tax treatment of it. It does not say anything about a number of other rather controversial aspects. It just says it will ''record the granting of the option as an expense in that corporation's income statement. . . . ''

Mr. President, it is curious to me—actually, it is not curious to me—why a vote on this amendment is blocked. It is because every lobbyist in this town for the high-tech community has said: Don't do it. Don't do it. The one thing that the folks in Silicon Valley are scared of more than anything else is that they would lose their precious stock options—all of it, of course, in the interest of the employee, only the employees, the secretaries, the workers, those people who are down there toiling in the bowels of the corporation, trying to get some incentive to stay there and have their retirement.

Meanwhile, Mr. Ellison, the CEO of Oracle, last year, cashes in $706 million worth of stock options, $706 million worth of stock options in 1 year. Are we going to vote on it? Yes, we will vote on it. Maybe not now, but unless there is cloture on every single bill that comes before this body, there will be a vote on stock options. I want to assure my friend from Nevada of that.

I will just remind him, there were many who wanted to block a vote on campaign finance reform for a long period of time. Well, we got our vote on campaign finance reform, and we will get a vote on stock options.

We have to end the double standard for stock options. Currently corporations can hide these multimillion-dollar compensation plans from their stockholders or other investors because these plans are not counted as an expense when calculating company earnings.

I want to make it perfectly clear to all, I am not in favor of doing away with stock options. Stock options have a valuable place in American corporate life. What we are addressing here is how they are treated so investors can know exactly what the profit and loss of a corporation is.

I repeat: I am not in favor of eliminating stock options. What I am trying to do is exactly in accordance with Mr. Greenspan's comments from which I will quote. Federal Reserve Chairman Alan Greenspan, New York University, March 26, 2002:

Some changes, however, appear overdue. In principle, stock-option grants, properly constructed, can be highly effective in aligning corporate officers' incentives with those of shareholders. Regrettably, the current accounting for options has created some perverse effects on the quality of corporate disclosures that, arguably, is further complicating the evaluation of earnings and hence diminishing the effectiveness of published income statements in supporting good corporate governance. The failure to include the value of most stock-option grants as employee compensation and, hence, to subtract them from pretax profits has increased reported earnings and presumably stock prices. This would be the case even if offsets for expired, unexercised options were made. The Financial Accounting Standards Board proposed to require expensing in the early to middle 1990s but abandoned the proposal in the face of significant political pressure.

The Federal Reserve staff estimates that the substitution of unexpensed option grants for cash compensation added about 2½ percentage points to reported annual growth in earnings of our larger corporations between 1995 and 2000. Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms.

Especially in high-tech firms? Where is most of the opposition coming from to the proper accounting of stock options? From the high-tech firms. I repeat:

Many argue that this distortion to reported earnings growth contributed to a misallocation of capital investment, especially in high tech firms. If market participants indeed have been misled, that, in itself, should be surprising, for there is little mystery about the effect of stock-option grants on earnings reported to shareholders. Accounting rules require enough data on option grants be reported in footnotes to corporate financial statements to enable analysts to calculate reasonable estimates of their effect on earnings.

Some have argued that Black-Scholes option pricing, the prevailing means of estimating option expense, is approximate. But so is a good deal of other earnings estimates, as I indicated earlier. Moreover, every other corporation does report an implicit estimate of option expense on its income statement. That number for most, of course, is zero. Are option grants truly without any value?

I repeat Mr. Greenspan's question: Are option grants truly without any value?

Critics of option expensing have also argued that expensing will make raising capital more difficult. But expensing is only a bookkeeping transaction. Nothing real is changed in the actual operations or cashflow of the corporation. If investors are dissuaded by lower reported earnings as a result of expensing, it means only that they were less informed than they should have been. Capital employed on the basis of misinformation is likely to be capital misused.

Critics of expensing also argue that the availability of options enables corporations to attract more-productive employees. That may well be true. But option expensing in no way precludes the issuance of options. To be sure, lower reported earnings as a result of expensing could temper stock price increases and thereby exacerbate the effects of share dilution. That, presumably, would inhibit option issuance. But again, that inhibition would be appropriate, because it would reflect the correction of misinformation.

I am not sure this debate is between me and the high-tech community. I think the debate is somewhat different. When you look at the preponderance of opinion, not only that stock options need to be expensed but the incredible effect that it has had on the whole distortion of the market, then it is an important issue.

I ask again: How can we really address the entire issue we are facing without addressing the issue of stock options? That is like playing a baseball game without third base.

Mr. Joseph Stiglitz, noble laureate professor of economics at Columbia University on Tuesday, March 12, 2002:

Some contend that it is difficult to obtain an accurate measure of the value of the options. But this much is clear: zero, the implicit value assigned under current arrangements, is clearly wrong. And leaving it to footnotes, to be sorted out by investors, is not an adequate response, as the Enron case has brought home so clearly. At the Council of Economic Advisers, we devised a formula that represented a far more accurate lower bound estimate of the value of the options than zero. Moreover, many firms use formulae for their own purposes, in valuing stock options (charging them against particular divisions of the firm). However, Treasury, in its opposition to the FASB concerns, was singularly uninterested in these alternatives. I leave it to others to hypothesize why that might have been the case.

If we are to have a stock market in which investors are to have confidence, if we are to have a stock market which avoids the kind of massive misallocation of resources that result when information provided does not accurately report the true condition of firms, we must have accounting and regulatory frameworks that address these issues. As derivatives and other techniques of financial engineering become more common, these problems too will become more pervasive. While headlines and journalistic accounts describe some of the inequities—those who have seen their pensions disappear as corporate executives have stashed away millions for themselves—what is also at stake is the long run well being of our economy. The problems of Enron and Global Crossing are part and parcel of the current downturn.

I was under the impression this legislation was all about trust and transparency—regaining the trust of the American people and investors in the stock market and, frankly, the economic system that drives America and has been so successful, and transparent. Perhaps under this legislation, by beefing up many of the penalties and regulations and many other things—many of which I have recommended and strongly supported and will have in further amendments, but how in the world do we say that we have given transparency when, in the view of most experts, this is one of the greatest hindrances to transparency in the system as it exists today?

I would now like to read the opinion of Mr. Warren Buffett, in the Washington Post, April 9, 2002, Stock Options and Common Sense:

In 1994 seven slim accounting experts, all intelligent and experienced, unanimously decided that stock options granted to a company's employees were a corporate expense.

Six fat CPAs, with similar credentials, unanimously declared these grants were no such thing.

Can it really be that girth, rather than intellect, determines one's accounting principles? Yes indeed, in this case. Obesity—of a monetary sort—almost certainly explained the split vote.

The seven proponents of expense recognition were the members of the Financial Accounting Standards Board, who earned $313,000 annually. Their six adversaries were the managing partners of the (then) Big Six accounting firms, who were raking in multiples of the pay received by their public-interest brethren.

In this duel the Big Six were prodded by corporate CEOs, who fought ferociously to bury the huge and growing cost of options, in order to keep their reported earnings artificially high. And in the pre-Enron world of client-influenced accounting, their auditors were only too happy to lend their support.

The members of Congress decided to adjudicate the fight—who, after all, could be better equipped to evaluate accounting standards?—and then watched as corporate CEOs and their auditors stormed the Capitol. These forces simply blew away the opposition. By an 88–9 vote, U.S. senators made a number of their largest campaign contributors ecstatic by declaring option grants to be expense-free. Darwin could have foreseen this result: It was survival of the fattest.

The argument, it should be emphasized, was not about the use of options. Companies could then, as now, compensate employees in any manner they wished. They could use cash, cars, trips to Hawaii or options as rewards—whatever they felt would be most effective in motivating employees.

But those other forms of compensation had to be recorded as an expense, whereas options—which were, and still are, awarded in wildly disproportionate amounts to the top dogs—simply weren't counted.

The CEOs wanting to keep it that way put forth several arguments. One was that options are hard to value. This is nonsense: I've bought and sold options for 40 years and know their pricing to be highly sophisticated. It's far more problematic to calculate the useful life of machinery, a difficulty that makes the annual depreciation charge merely a guess. No one, however, argues that this imprecision does away with a company's need to record depreciation expense. Likewise, pension expense in corporate America is calculated under widely varying assumptions, and CPAs regularly allow whatever assumption management picks.

Believe me, CEOs know what their option grants are worth. That's why they fight for them.

It's also argued that options should not lead to a corporate expense being recorded because they do not involve a cash outlay by the company. But neither do grants of restricted stock cause cash to be disbursed—and yet the value of such grants is routinely expensed.

Furthermore, there is a hidden, but very real, cash cost to a company when it issues options. If my company, Berkshire, were to give me a 10-year option on 1,000 shares of A stock at today's market price, it would be compensating me with an asset that has a cash value of at least $20 million—an amount the company could receive today if it sold a similar option in the marketplace. Giving an employee something that alternatively could be sold for hard cash has the same consequences for a company as giving him cash. Incidentally, the day an employee receives an option, he can engage in various market maneuvers that will deliver him immediate cash, even if the market price of his company's stock is below the option's exercise price.

Finally, those against expensing of options advance what I would call the ''useful fairytale'' argument. They say that because the country needs young, innovative companies, many of which are large issuers of options, it would harm the national interest to call option compensation as expense and thereby penalize the ''earnings'' of these budding enterprises.

Why, then, require cash compensation to be recorded as an expense given that it, too, penalizes earnings of young, promising companies? Indeed, why not have these companies issue options in place of cash for utility and rent payments—and then pretend that these expenses, as well, don't exist? Berkshire will be happy to received options in lieu of cash for many of the goods and services that we sell corporate America.

At Berkshire we frequently buy companies that awarded options to their employees—and then we do away with the option program. When such a company is negotiating a sale to us, its management rightly expects us to proffer a new performance-based cash program to substitute for the option compensation being lost. These managers—and we—have no trouble calculating the cost to the company of the vanishing program. And in making the substitution, of course, we take on a substantial expense, even though the company that was acquired had never recorded a cost for its option program.

Companies tell their shareholders that options do more to attract, retain and motivate employees than does cash. I believe that's often true. These companies should keep issuing options. But they also should account for this expense just like any other.

A number of senators, led by Carl Levin and John McCain, are now revising the subject of properly accounting for options. They believe that American businesses, large or small, can stand honest reporting, and that after Enron-Andersen, no less will do.

I think it is normally unwise for Congress to meddle with accounting standards. In this case, though, Congress fathered an improper standard—and I cheer its return to the crime scene.

This time Congress should listen to the slim accountants. The logic behind their thinking is simple.

One, if options aren't a form of compensation, what are they?

Two, if compensation isn't an expense, what is it?

Three, and if expenses shouldn't go into the calculation of earnings, where in the world should they go?

Mr. President, I have to admit to you that I stood fifth from the bottom of my class at the Naval Academy. I don't pretend to understand a lot of the nuances and hidden workings of the stock market or many of the issues we are facing today because there were some very imaginative CEOs and corporate officers who have deprived investors of their money and hundreds of thousands of people of their jobs. But even I can understand Mr. Buffett's questions:

If options aren't a form of compensation, what are they?

If compensation isn't an expense, what is it?

And if expenses should not go into the calculation of earnings, where in the world should they go?

Mr. President, that is why this amendment is simple:

Any corporation that grants a stock option to an officer or employee to purchase a publicly traded security in the United States shall record the granting of the option as an expense in that corporation's income statement for the year in which the option is granted.

That is not a complicated issue, and there will be discussion from time to time about what the tax implications are and all those things. I would be glad to have smarter people than I figure it out.

I want to read a letter to the editor of the New York Times by Steven Barr,

senior contributing editor of CFO Magazine, April 5, 2002. Reference: ''Leave Options Alone'' by John Doerr and Frederick W. Smith:

What if, in the mid-1990s, accounting-rule makers had not caved in to lobbyists and instead had forced companies to recognize options as a compensation expense on financial statements?

There would still have been a technology boom, a bear market, and a period of recession. Such cycles are immutable. But there may have been less of the accounting gamesmanship that is now the object of government investigation and investor ire.

Options should count as an expense to the corporation, and the ability to exercise them should be based on stock performance that exceeds an index of peers.

Mr. President, one of the more egregious activities we have seen with some of these really unsavory people has been that while their company stock was declining, they exercised their stock options and sold them, making hundreds of millions of dollars.

As I said earlier, in the case of Enron—I heard WorldCom was $1.8 billion, or Enron, I am not sure which—at the same time in the case of Enron, the employees, in testimony before the Commerce Committee, said they were urged to hang on to the stock, hang on to the Enron stock. Meanwhile, the executives were selling the stock. I do not know of anything quite as egregious as that.

As I mentioned, according to a recent analysis from 1996 to 2000, Enron issued nearly $600 million in stock options, collecting tax deductions which allowed the corporation to severely reduce their payment in taxes.

I repeat, no other type of compensation gets treated as an expense for tax purposes without also being treated as an expense on the company books. This double standard is exactly the kind of inequitable corporate benefit that makes the American people irate and must be eliminated.

If companies do not want to fully disclose on their books how much they are compensating their employees, then they should not be able to claim a tax benefit for it.

The Washington Post, Thursday, April 18, 2000:

Alan Greenspan, perhaps the nation's most revered economist, thinks employee stock options should be counted, like salaries, as a company expense. Warren Buffett, perhaps the nation's foremost investor, has long argued the same line. The Financial Accounting Standards Board, the expert group that writes accounting rules, reached the same conclusion eight years ago. The London-based International Accounting Standards Board recently recommended the same approach. In short, a rather unshort list of experts endorses the common-sense idea that, whether you get paid in cash or company cars or options, the expense should be recorded. Yet today's Senate Finance Committee hearing on the issue is likely to be filled with dissenting voices. There could hardly be a better gauge of money's power in politics.

The Washington Post said:

There could hardly be a better gauge of money's power in politics.

Why does this matter? Because the current rules—which allow companies to grant executives and other employees millions of dollars in stock options without recording a dime of expenses—make a mockery of corporate accounts. Companies that grant stock options lavishly can be reporting large profits when the truth is they are taking a large loss. In 2000, for example, Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profit; the real number was a $2.7 billion loss.

Mr. President, those numbers are staggering. Let me repeat:

Yahoo reported a profit of $71 million, but the real number after adjusting for the cost of employee stock options was a loss of $1.3 billion. Cisco reported $4.6 billion in profits; the real number was a $2.7 billion loss. By reporting make-believe profits, companies may have conned investors into bidding up their stock prices. This is one cause of the Internet bubble, whose bursting helped precipitate last year's economic slowdown.

It is not surprising, therefore, that the expert consensus favors treating options as a corporate expense, which would mean that reported earnings might actually reflect reality. But the dissenters are intimidated by neither experts nor logic. They claim that the value of options is uncertain, so they have no idea what number to put into the accounts. But the price of an option can actually be calculated quite precisely, and managers have no difficulty doing the math for purposes of tax reporting. The dissenters also claim options are crucial to the health of young companies. But nobody wants to ban this form of compensation; the goal is merely to have it counted as an expense. Finally, dissenters say that options need not be so counted because granting them involves no cash outlay. But giving employees something that has cash value amounts to giving them cash.

The dissenters include weighty figures in both parties. Sen. JOE LIEBERMAN (D-Connecticut) is the chief opponent of options sanity in the Senate, and last week President Bush himself declared that Mr. Greenspan is wrong on this issue. What might be behind this? Many of the corporate executives who give generously to politicians are themselves the beneficiaries of options—often to the tune of millions of dollars. High-tech companies, an important source of campaign cash, are fighting options reform with all they've got. But if these lobbyists are allowed to win the argument, they will undermine a key principle of the financial system. Accounting rules are meant to ensure investors get good information. Without good information, they cannot know which companies will best use capital, and the whole economy suffers in the long run.

Mr. President, again, transparency and trust. Transparency and trust. Without transparency, we are not going to have trust.

A Washington Post, April 21, 2002, editorial; byline David S. Broder. Mr. Broder writes:

Thanks to the Enron scandal, the public is getting to know about a scheme that corporate executives have used for years, but that most of us were not smart enough to understand.

I include myself in that group that Mr. Broder describes.

You can call it the have-your-cake-and-eat-it-too ploy.

It involves stock options, the rights to buy company stock some time in the future at the (presumably bargain) price at which it is selling currently. Stock options awarded to senior management by their (usually hand-picked) boards of directors mushroomed from $50 billion in 1997 to $162 billion just three years later. As Business Week pointed out in its April 15 issue, boards have been ''lavishing options on executives'' so profligately ''that they now account for a staggering 15 percent of all shares outstanding.''

This is obviously a good deal for the executives. One of them, Oracle Corporation's Lawrence Ellison, exercised options worth $706 million in one week. A nice mouthful of cake, by any standard.

But here's how his company—and all others like it—can have its cake, too. The value of the stock options granted Ellison is a cost to Oracle for tax purposes, but it doesn't come off the bottom line when Oracle is reporting its earnings for the year.

This would seem to defy common sense—and it does. Almost a decade ago, as the options craze was getting under way, the Federal Accounting Standards Board—the watchdog group—said that when options are granted, they should be treated as an expense in company reports as well as in tax returns. The corporate CEOs and the accounting firms they hire went nuts, and the next thing you knew, the Senate in 1994 was passing a resolution . . . telling the watchdog: forget it.

Mr. GRAMM. Mr. President, will the Senator yield? I do not want to break in, but a key point I would like to make—and I thought the Senator might want a breather——

Mr. MCCAIN. I would appreciate it if the Senator would phrase it in the form of a question, as he is very adept at doing. I will be glad to yield for his question.

Mr. GRAMM. I thought it was very important to make this point. What happened almost a decade ago when we saw this blossoming of stock options? The answer is, in 1993, we passed a law that said that if you paid a corporate executive more than $1 million a year in a plain old paycheck, you could not deduct it as an expense in running the business.

At that time, the largest companies in America—and I am trying to make a point that is in no way contradicting anything the Senator says, though I do not agree with a word of it, but what we said was you could not pay a corporate executive, through their paycheck, more than a million a year, even though the 50 largest companies in America were paying their corporate executives $3 million a year, on average.

When we passed that law, what happened? What happened is that corporate America, being clever—you do not make $3 million a year if you are not pretty smart—figured out ways around the law. Some of the ways around the law were getting loans from the company at low interest rates and getting stock options, which are now criticized as giving corporate leadership a very short-term horizon.

The only point I want to make is that everybody has forgotten that in 1993 Congress, in a demagogic amendment aimed at ''rich people,'' started this whole process.

It struck me when you were saying this group of accountants got together in 1994, what they were doing was responding to a bad law, and the bad law helped trigger this. One of the things—and God knows it is not going to happen in the environment we are in now—but one of the things Congress ought to do is to repeal that law so General Electric could pay its CEO with a paycheck, like everybody else, instead of trying to find all these ways around the law. I just wanted to get in that advertisement.

Mr. MCCAIN. I would like to respond to the Senator's question by saying that I think the Senator makes a very valid point. I think this is probably none of Congress's business as to what salaries should be bestowed on a corporate executive, with truly independent boards of directors and with a voice of the stockholders.

Let me say to the Senator before he leaves, I am not talking about doing away with stock options. I am talking about how they are treated. They may have gotten around that, but it is how they are treated. As we get into the debate further, I would be glad to hear him respond to Mr. Buffett's three questions.

Mr. GRAMM. I would be happy to respond to Mr. Buffett.

Mr. MCCAIN. I ask unanimous consent for Senator GRAMM to respond without me losing my right to the floor.

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

Mr. GRAMM. I would be happy to respond to him. First, I would have been happy to have voted on the Senator's amendment.

Mr. MCCAIN. I thank the Senator.

Mr. GRAMM. Second, this is something I am happy to debate. The only point I wanted to make is that while we are all damning corporate America, our law, which said if you paid somebody more than $1 million a year it could not count as a business expense, really helped trigger all of this. One of the things we ought to be doing in the name of reform is to repeal that law.

When I tried today in Finance—the Senator said this would not be brought up in Finance, but today in the Finance Committee I thought we ought to have one Good Government amendment, and it failed, like logic and truth, for the lack of a second. That is my only point.

Mr. MCCAIN. I thank the Senator. I especially thank him for agreeing because the Senator from Texas—we have had our agreements, mostly agreements and occasional disagreements—has never, in all the years we have known each other, which goes back to our days in the other body, wanted to deprive anybody of a vote on an issue, no matter where he stood on that issue.

I regret deeply that it is clear, as I said earlier, the fix is in; there is not going to be a vote on this issue before cloture is invoked, but I want to again assure my colleagues there will be a vote. There will be a vote on this issue, just like when I was blocked for a long time on the line-item veto, I was blocked for a long time on campaign finance reform, I have been blocked on a lot of other issues but we always got a vote because that is my right as a Senator to get a vote.

It is not my right as a Senator to determine the outcome, but it is my right as a Senator to get a vote on an issue, particularly when, in the view of any observer, stock options are a key issue in this entire debate.

Again, I respect the views of the Senator from Texas who disagrees with my position. I think it is a respectful disagreement that we have. I look forward to debating him. I do so at some disadvantage because he is a trained economist and former professor of economics.

I can also see why he would want to do away with that million-dollar cap because I am sure the Senator from Texas will make more than a million dollars when he leaves this body, and justifiably so given his talent, expertise, and experience. I wish him well. I wish him every success in doing so.

At least the Senator from Texas is in agreement that we should have a vote on this issue.

The question is going to be raised by me and others, time after time: Why did we not have a vote on this issue? If we are truly committed to reforming the system, restoring trust and transparency to the system, why do we not have a vote on it? That is a very legitimate question. There will be a vote.

I will return to Mr. Broder's editorial. He talks about that:

The Federal Accounting Standards Board said that when options are granted, they should be treated as an expense.

And the Senate passed a resolution telling the watchdogs, forget it.

And that has had a truly wondrous effect. On average, the Federal Reserve Board estimates, the ruling has boosted the reported earnings growth of corporations by 3 percentage points from a realistic 6 percent to an inflated 9 percent. Enron, it is estimated, used that same ruling in 2000 to inflate its earnings by more than 10 percent. Overstated earnings, of course, boost stock prices, thus benefiting the executives who have been given stock options.

By the way, I might add, not only stock options but it increases compensation because the stock value is inflated.

But that is not the end of it. Because these stock options are deductible for tax purposes, and their cost can be carried forward for years, they also enable companies that hand out a lot of options to stiff-arm the IRS. In Enron's case, they allowed the company to cut its tax bill by $625 million between 1996 and 2000.

Especially on my side of the aisle, there is this continuous drumbeat: Let us make the tax cuts permanent; let us do away with the death taxes; let us make the tax cuts permanent; let us help the American taxpayer. Should we not try to make a corporation pay its legitimate taxes? In Enron's case, because of the use of stock options, they allowed the company to cut its tax bill by $625 million over a period of 4 years. Amazing.

Thanks to Enron, another push is under way to stop the double-dealing. But it faces tough sledding. The Coalition to Preserve and Protect Stock Options, which includes 32 influential trade associations, is flooding Congress with 'talking points' claiming that 'stock options are a vital tool in the battle for economic growth and job creation . . . (and) to attract, retain and motivate talent.'

The coalition is trying to kill a bill that would not end stock options but simply specify that companies could not use them to reduce their taxes unless they also report them as an expense in their financial statements.

The bill has bipartisan sponsorship: Democratic Senators CARL LEVIN of Michigan, MARK DAYTON of Minnesota and DICK DURBIN of Illinois; Republican Senators JOHN MCCAIN of Arizona and PETER FITZGERALD of Illinois. FITZGERALD is particularly interesting. He is from a wealthy banking family and is a staunch conservative, but Enron has made him almost a raging populist.

It has had no such effect on President Bush. Concerned as always for the deserving rich, he told the Wall Street Journal he opposes this kind of legislation. . . . But Federal Reserve Board Chairman Alan Greenspan testified recently in support of expensing stock options. The only issue, he said, is whether under current rules, ''is income being properly recorded? And I would submit to you that the answer is no.''

That is what Alan Greenspan says: Is income being properly reported? And I would submit to you that the answer is no.

And superinvestor Warren Buffett, who hands out bonuses but not stock options to his employees—

By the way, I have not heard of any bad morale or failure to attract employees out at Berkshire Hathaway out in Omaha, a lovely place to live—for years has been asking three questions: ''If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?''

That is what Mr. Broder has to say.

Paul Krugman, on May 17, 2002:

On Tuesday Standard & Poor's, the private bond rating agency, announced that it would do something unprecedented: It will try to impose accounting standards substantially stricter than those required by the federal government. Instead of taking corporate reports at face value, S.&P. will correct the numbers to eliminate what it considers the inappropriate treatment of ''one-time'' expenses, pension fund earnings and, above all, stock options—a major part of executive compensation that, according to federal standards, somehow isn't a business expense. S.&P.'s estimate of ''core earnings'' for the 500 largest companies slashes reported profits by an astonishing 25 percent.

Why does S.&P.—along with Warren Buffett, Alan Greenspan and just about every serious financial economist—think that current accounting standards require a drastic overhaul? And if such an overhaul is needed, why doesn't the government do it? Why does S.&P. think that it must do the job itself?

To see the absurdity of the current rules, consider stock options. An executive is given

the right to purchase shares of the company's stock, at a fixed price, some time in the future. If the stock rises, he buys at bargain prices. If the stock falls, he doesn't exercise the option. At worst, he loses nothing; at best, he makes a lot of money. Nice work if you can get it.

Yet according to federal accounting standards, such deals don't cost employers anything, as long as the guaranteed price isn't below the market price on the day the option is granted. Of course, this ignores the ''heads I win, tails you lose'' aspect; executives get a share of investors' gains if things go well, but don't share the losses if things go badly. In fact, companies literally apply a double standard: they deduct the cost of options from taxable income, even while denying that they cost anything in their profit statements.

So how could it possibly make sense not to count options as a cost? Defenders of the current system argue that stock options align the interests of executives with those of investors. Even if that were true, however, it wouldn't justify ignoring the cost—no more than it would make sense to deny that wages, which provide incentives to workers, are a business expense. Furthermore, it's now clear that stock options, far from reliably inducing executives to serve shareholders, often create perverse incentives. At worst, they handsomely reward managers who run their companies as pump-and-dump schemes, executives at Enron and many other companies got rich thanks to stock prices that soared before they collapsed.

I hope the opponents of this provision, including my friend from Texas, will put it into the real-world context. It is nice to talk about economic theory. I know of no one better at that than the Senator from Texas. What happened at Enron? What happened at Enron when it cashed in $600 million worth of stock options and the stock tanks and there are 10,000 or so employees out of work? And there was a period of time where the employees were not allowed, because they were undergoing some managerial change of their portfolio, to cash in their stock options. But the executives were not prohibited from doing so. They kept on doing it. They kept on doing it.

So I hope we can have this debate not in the world of theories of economics. I am not a CPA, nor am I a professor of economics, nor am I as smart as most of the Members of this body, but I know what happened to these people. I know of the thousands left penniless. I know of the thousands whose retirement savings were wiped out.

Meanwhile, the very people this whole stock option deal was supposed to be protecting were not protected, and yet somehow the executives all made out like bandits.

Perhaps my colleagues, as they oppose this legislation, can talk about the real-world examples—not the theoretical world of economics, which I will immediately grant them a distinct advantage on. I would like for them to have the opportunity to meet some of these employees, as I have, who were told by the executives of the corporation the stock was in great shape, while they were dumping the stock. I would like for them to talk to the employees or the retirees who invested enormous amounts of their money and their life savings, in some cases in a stock, and were told by their employers and executives that everything was great, things could not be better, estimates of double the stock value over the next few years.

That is the framework of this debate, not the framework of whether certain economic theories are valid or not.

Options are only part of an accounting system in deep trouble. As David Blitzer, S.&P.'s chief investment strategist, recently wrote, ''Financial markets are as much a social contract as is democratic government.'' Yet there is a growing sense that this contract is being broken, undermining the trust that is so essential to the operation of financial markets. Clearly, major reforms are needed. And bear in mind that this isn't a left-right issue; it's about protecting investors—middle-class and wealthy alike from exploitation by self-dealing insiders. So who could possibly be opposed? You'd be surprise.

Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform.

Bear in mind, this is not a left-right issue. It is about protecting investors, middle class and wealthy alike, from exploitation by self-dealing insiders. So who could possibly be opposed? You would be surprised. Harvey Pitt, the accounting industry lawyer who heads the Securities and Exchange Commission, has clearly been dragging his feet on reform. Mr. Blitzer of S&P points out that in previous periods of corporate scandal, legislatures and prosecutors took the lead with public concerns over the market.

It is a sad commentary on our leadership that this time he believes he must do the job himself—referring to Standard and Poors—and announced that it would impose accounting standards substantially stricter than those required by the Federal Government.

Boston Globe, June 10, 2002:

Stock options have become the currency of choice to reward high ranking executives in part because under current rules the company need not count them as an expense with much of their compensation. Depending on the difference between the option price of the stock and the market price, it is no wonder that some executives have used trickery to show quarterly growth and inflate the worth of their companies. Excessive reliance on stock options is a license for some executives to drive their companies along treacherous roads.

I have a number of other views, but I think I have made my point. The point is this: Why should we, in the name of restoring confidence, trust, and transparency to the American people on an issue of this import, not have a vote? That is the first question.

The second question that needs to be answered is Mr. Buffett's question, not mine; not mine because I don't claim to have a corner on expertise and knowledge on this issue. But I believe that Mr. Buffett does. I believe that Mr. Greenspan does. I believe that literally every outside observer and economist does. If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And if expenses shouldn't go into the calculation of earnings, where in the world should they go?

I know what I will hear in response. In fact, most of those have already been responded to so I don't intend to engage in extended debate about it. We all know where the majority stock options have gone—to the executives, not to the workers. Mr. Buffett, and many others, have been able to attract good and talented employees and retain them without having to resort to stock options.

But the real question is not whether stock options are good or bad because the intent of the amendment is not to do away with stock options. The intent of the amendment is simply to give an accurate depiction of what stock options are. And that is clearly compensation. Depreciation is listed as an expense. In the view of many, that is much harder to calculate than a stock option.

Another argument I anticipate will be, how do you treat it taxwise? Frankly, I would be glad to treat it taxwise as to how the smartest people at the SEC would say it should be treated. I would leave that up to the two experts. But to not treat it as an expense, as Mr. Buffett says, of course is just Orwellian. It is Orwellian.

Mr. LEVIN. Will the Senator yield for a question?

Mr. MCCAIN. I am sorry my colleague will not allow a vote. I will be glad to respond to my colleague from Michigan.

Mr. LEVIN. I appreciate the Senator's yielding for a question. I wonder if the Senator would agree that the following individuals and organizations support the change in accounting for stock options, which the Senator has outlined: Alan Greenspan, Paul Volcker, Arthur Levitt, Warren Buffett, as the Senator mentioned, TIAA-CREF, Paul O'Neill, Standard & Poor's, Council for Institutional Investors, Consumer Federation, Consumers Union, AFL/CIO—among others? Would the Senator agree that those organizations support a change in the accounting for stock options?

Mr. MCCAIN. I would say to my friend, yes. I think there is another important organization, the Federal Accounting Standards Board—I believe it is—the international.

Mr. LEVIN. There are some additional organizations.

Mr. MCCAIN. Yes.

Mr. LEVIN. I wanted to give the Financial Accounting Standards Board.

Mr. MCCAIN. Yes.

Mr. LEVIN. Does the Senator remember, as I do very vividly because I appeared before the Federal Financial Standards Board in the middle 1990s to support their independence, when they decided that you had to expense options, that it was compensation, that it had value like all other forms of compensation?

Does the Senator remember what the Financial Accounting Standards Board

decided when they left it optional, as to whether or not to either expense options or to show them as a footnote—just to disclose them without actually expensing them? Because if the Senator does not, I would like to read what the Financial Accounting Standards Board said about the pressure they were put under, the horrendous, horrific pressure they were put under, and how they could have, indeed, been put out of existence if they went forward with what they believed was right, which is what Warren Buffett says.

If the Senator does not remember those words, I wonder if he might yield to me to read them, without losing his right to the floor.

Mr. MCCAIN. Yes.

Mr. LEVIN. This is what the Financial Accounting Standards Board said. They had proposed that stock options be expensed. That was their proposal. This is the board of accountants.

The debate on accounting for stock-based compensation, unfortunately, became so divisive that it threatened the Board's future working relationship with some of its constituents. Eventually the nature of the debate threatened the future of accounting standards setting in the private sector. The Board continues to believe that financial statements would be more relevant and representationally faithful if the estimated fair value of employee stock options was included in determining an entity's net income, just as all other forms of compensation are included. To do so would be consistent with accounting for the cost of all other goods and services received as consideration for equity instruments. However, in December 1994, the Board decided that the extent of improvement in financial reporting that was envisioned when this project was added to its technical agenda and when the Exposure Draft was issued was not attainable because the deliberate, logical consideration of issues that usually leads to improvement in financial reporting was no longer present.

That is the climate that was created for this Board in 1994. And when the accountants, the Board, the Financial Accounting Standards Board of this country, said they have value, these options, they are compensation, they should be accounted for in the financial statement, they were hit upon so hard that even when they said we are throwing in the towel because it could destroy us, even when they said we will allow it to be shown as a footnote, not required to be taken as an expense—even then, they said this is not the right way to proceed.

We are now creating—I should ask a question, I think, given the request I made.

Does the Senator not agree that ideally what we should be allowing here is an independent Financial Accounting Standards Board to determine the rules?

Mr. MCCAIN. I could not agree more with the Senator from Michigan. I think he knows how strongly I believe that options should be expensed because they are compensation and they have value and there is no other form of compensation that is not expensed. It is a stealthy form of compensation and has driven the excesses of the 1990s. These options have driven the deceptions that make these financial statements for corporations look better than those corporations' situations really are because they have created so much value in those options that then executives—mainly executives—were able to cash in on these options and make tens of millions of dollars based on financial accounting which was deceptive.

Would the Senator agree with that and agree that ideally these standards should be set by an independent financial accounting standards board?

Mr. MCCAIN. I say to my friend from Michigan, first of all, it was the Senator from Michigan who first initiated discussion with me on this issue several years ago. We were treated as virtual pariahs for having the audacity to challenge what was then, as we now know, a high-tech bubble in the way stock options were being disbursed.

By the way, let's do away with the myth that these stock options are for the average worker. The fact is the overwhelming majority of the stock options have gone to the chief executives. That is just a matter of record and fact.

But I think the Senator is correct. I think the Senator has also an additional, I think important, corollary to this amendment, that we could have certain direction from FASB, as it is known. But I think it is also a clear-cut, black-and-white issue as to how stock options should be treated.

I would be glad to agree with the Senator from Michigan that some of these aspects of it can be better handled by the experts.

Finally, the Senator from Nevada and the Senator from Maryland are in the Chamber. I hope they will reconsider and allow a vote postcloture at some time on this important amendment. I do not see how you can possibly go to the American people and say: Look, we have discussed and debated all these issues, but we wouldn't allow a vote on the issue of stock options.

There is no observer who does not believe that the issue of stock options is one of significant importance in this entire scenario of returning trust and transparency so we can regain the confidence of the American investor.

Again, I assure my friends, we will have a vote on this issue at some time, whether it be now on this bill or whether it be the next bill or the bill after that. So I hope my colleague from Nevada and my colleague from Maryland will allow an up-or-down vote on this amendment.

Mr. LEVIN. Will the Senator yield for one last question?

Mr. MCCAIN. I am glad to.

Mr. LEVIN. Assuming cloture is invoked, there is still, does my friend agree, the possibility at least of voting on germane amendments relating to this subject? So the amendment which is germane postcloture does not state what the Senator from Arizona and I believe, which is that unless we deal with this, we are missing a huge problem, we are not addressing a huge problem that has driven the situation that we now face in terms of deceptive financial statements. But, in any event, will the Senator from Arizona agree that at least postcloture, if an amendment is germane which says it is determined that FASB or an independent accounting board reviewed this matter, that at least there could be a vote at that time on something which carries out the spirit of what the Senator from Arizona and I have been fighting for, which is that an independent accounting board be allowed to proceed without threatening its very existence to determine what is the proper accounting for stock options?

Mr. MCCAIN. I apologize to my colleagues for taking as much time as I have on this subject. As I said, I believe it is one of transcending importance in the minds of average American citizens. Yes. I would support the Senator's amendment postcloture. But I would also have to add that it doesn't address the issue completely. Here is why.

The Senator from Michigan just talked about how these boards have been intimidated and bullied into backing off of a position they had before. I can't have the confidence that any board that is subject to the kind of intimidation and bullying that has happened in the past would properly carry out what is a pretty simple operation.

I understand the Senator's point. I will support his amendment postcloture. I think it is an important one. But there has to be a clear signal sent. That clear signal is this: As Mr. Buffett says, if it isn't compensation, what is it? If options are not a form of compensation, what are they? If compensation is not an expense, what is it? If expenses shouldn't go into the calculation of earnings, where in the world should they go? This answers Mr. Buffett's question. We know where it should go—as an expense.

Again, I am not trying to do away with stock options but how it is treated so the American people can restore their confidence.

Mr. LEVIN. Will the Senator yield for a couple of questions which his comments have raised?

Mr. SARBANES. Will the Senator yield? The Senator directed a question.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I would be glad to yield to the Senator from Maryland for a comment without yielding my right to the floor.

Mr. SARBANES. I wanted to respond at this point because the Senator just directed a question. We are not trying to prevent a vote on your amendment. We have been trying repeatedly to get votes on these amendments. Senator EDWARDS has had an amendment pending in here for now more than a day.

We can't get a vote on it. Senator LEVIN has had an amendment pending. We have a list of people who want to offer amendments. We have been trying to work through these amendments. Now the Senator has come with his amendment. There are a lot of amendments around here on which people are trying to get votes. I think they are entitled to those votes.

I know you have a problem. But I take some umbrage as sort of having it placed on my shoulders. In fact, I think that is totally inaccurate, and I just want to make sure I put that on the record.

Mr. MCCAIN. Thank you.

I ask unanimous consent that the McCain amendment be allowed postcloture.

Mr. REID. Objection.

Mr. MCCAIN. So you see.

Mr. SARBANES. No. That doesn't approve anything. The Senator wants his amendment——

Mr. MCCAIN. I have the floor.

Mr. SARBANES. And denies everybody else.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I thank the Chair.

I think I have made my point.

Mr. SARBANES. No. You haven't made your point.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I would like to respond to the question of the Senator from Michigan, if he would like.

Mr. SARBANES. Will the Senator yield?

Mr. MCCAIN. I would be glad to yield, if the Senator from Michigan would be glad to yield.

Mr. SARBANES. It is a very clever trick, but you haven't made your point. There are other Members here with amendments that are very important to them which they are trying to have considered. We have been trying to process those amendments in an orderly way. The Senator arrives on the scene and apparently thinks, well, there should be a special set of rules for the Senator to do his amendment. So he just now tried to jump ahead of other people, and a reasonable objection was made. And I think it ought to have been made. The Senator from Arizona comes in, and, all of a sudden, there is going to be a special set of rules to deal with his amendment. The Senator doesn't even recognize what is in the bill, which does try to address to some extent this problem with independent funding and FASB that this legislation provides for—which everyone agrees is long overdue and is an important contribution.

But we have these people lined up here who want to do amendments. We have the Edwards amendment, we have the Levin amendment, and we have a whole list of people with amendments. We have been trying to process those amendments, and we have not been able to do it.

As one who is down here trying to work overtime to get these amendments processed, I want to very strongly register that point.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I still have the floor. I thank the Senator from Maryland. I appreciate his hard work managing the legislation. I have managed bills in my time. I know that sometimes it gets very frustrating and difficult.

I have some suggestions. One is that the Senator oppose cloture so that we can address all of these issues and prevail on his colleagues to do so so that we can have relevant amendments considered.

I also think—it is not just in this Senator's view but in the view of almost everyone, in the view of Alan Greenspan, in the view of Warren Buffett, in the view of the Washington Post and the New York Times, and everybody—that this is a serious and vital issue.

So my suggestion is that we not have a cloture vote, and that we go ahead and take up the amendments in an orderly fashion. The Senator from Nevada, obviously, will not allow my amendment to be considered postcloture.

The Senator from Michigan has a question. Would the Senator from Nevada, the distinguished whip, like to wait until the Senator from Michigan is finished, or would you like to go ahead?

Mr. LEVIN. My question was actually touched upon by the Senator from Arizona relative to the independence of the Financial Accounting Standards Board, and as to whether or not the Senator was aware—at least now in this bill—that we have the source of financing for that board which hopefully will not only allow it to reach its own conclusion, as it did once before, that options have value and should be expensed but also that it carry through with it without threatening their own survival.

I think that is an important part of this. But at least that gives us hope this time that when the Financial Accounting Standards Board reviews this matter—if it does—it will reach a conclusion not only that it believes it, but it can then implement it through an accounting standard.

That was my question about that funding source in this bill.

Mr. MCCAIN. I would like to respond. I understand that. I did know it is part of the bill. I also know what has happened in the past. The fact is that we have not made the changes which are necessary because of enormous pressures that have been brought to bear.

The Senate should be on record on this issue. This is not a minor issue. This is not a small item. The Senate should be on record on this issue, and it apparently will not be at this time.

I thank my colleagues, though I do think that it is an important step forward. But I also believe this is something that we could address in a straightforward fashion.

Mr. LEVIN. Mr. President, will my colleague yield for 60 seconds so I can make a statement on this subject prior to a unanimous consent, or an address on a different part of my amendment?

Mr. MCCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I thank Senator MCCAIN for his steadfast support of the issue which is critically important.

Unless we address the way stock options are dealt with in this country—the fact that it is now a free ride, and stealth compensation which has caused, in large measure, the problems because accepted accounting practices, as we have seen, are significantly driven by the option accounting which allows options to be left off the financial statements as an expense, and, therefore, cashed in when those books of the company show great value, which is not reality, but nonetheless drives up stock prices—I want to say that I agree with the Senator from Arizona. Unless we address this issue, we are leaving a huge gap in our reform efforts.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from Maryland has tried now for several days to figure out a way to have amendments. We have tried to negotiate. We have had those which have been arbitrated. We have had some cajoling. We have had a little bit of begging. We have gotten nowhere. But the rules of the Senate are the rules of the Senate. Therefore, it would be contrary to my beliefs to have a special set of rules for the Senator from Arizona, as well intentioned as his amendment may be.

I have had phone calls. I have had personal visits from at least 15 Democratic Senators saying they have amendments that they believe in very strongly. They and their staffs have worked on some of these amendments for months. They are not going to be able to offer those amendments.

Mr. GRAMM. There are 58 Democratic amendments.

Mr. REID. So it would be totally unfair to have a nongermane amendment that would be available for us postcloture. That is why I object. If I had to do it again, I would do the same thing.

But let me say this. People can complain—and I have no problem with their doing so—that we have not been able to go through the relevant amendments, but this legislation that has been brought to us by the Banking Committee and has now been improved upon by the Judiciary Committee's amendment of Senator LEAHY is a very fine piece of legislation.

Let's not lose track of that. This is a very fine vehicle. Maybe we could do a better job—put some rearview mirrors on both sides of it, maybe improve the upholstery a little bit, but the legislation we have that will be voted on and approved by the Senate is very good.

The Public Company Accounting Reform and Investor Protection Agent would establish the Public Company Accounting Oversight Board to set standards for auditing public companies.

It would inspect accounting firms. It would conduct investigations into possible violations of its rules and impose a full range of sanctions. It would restrict the nonaudit services a public accounting firm may provide to its clients that are public in nature. It would require a public accounting firm to rotate its lead partner and review partner on audits after 5 consecutive years of auditing a public company.

It would require chief executive officers and chief financial officers to certify the accuracy of financial statements and disclosures. It would require CEOs and CFOs to relinquish bonuses and other incentive-based compensation and profit on stock sales in the event of accounting restatements resulting from fraudulent noncompliance with Securities and Exchange Commission financial reporting requirements.

It would prohibit directors and executive officers from trading company stock during blackout periods. It would require scheduled disclosures of adjustment statements. It would establish bright-line boundaries to prohibit stock analyst conflicts of interest.

It would authorize about $300 million more than the President's budget for the SEC next year to enhance its investigation and enforcement capabilities.

I will not go through all the details of the amendment that has been approved by the Senate, offered by Senator LEAHY, making certain things criminal in nature and increasing the penalties.

This is a fine piece of legislation. But I do say this. The Senator from Maryland is in the Chamber. I am confident the Senator from Maryland would agree to a unanimous consent request that on relevant amendments, determined by the Parliamentarian, we have a half hour on each one, and as soon as the half hour is up, vote on them.

I ask the Senator from Maryland, you would agree to that, wouldn't you?

Mr. SARBANES. It would be one way of trying to deal with these amendments and dispose of them. A request of that sort ought to be carefully considered, certainly.

We have this problem. Members have amendments pending. We have been trying to move the amendments forward. We have not been able to do that. I know how frustrated they are. I share their frustration.

(Mrs. CARNAHAN assumed the chair.)

Mr. REID. But in spite of all this, I want the RECORD to be spread with the fact that we have a good piece of legislation. I would like, as I said before, to have some of the fancier upholstery——

Mr. SARBANES. If the Senator will yield, it is interesting, in the debate we just had, until the Senator from Michigan underscored the fact, it was not pointed out that we provide independent funding in this legislation for the Financial Accounting Standards Board, which has the responsibility of setting these accounting standards.

Their problem in the past has been that they are voluntarily funded from the industry. They have to go to them and beg for money in order to carry out their activities. And if the industry thinks they are going to do a ruling that is contrary to what they want, then they are not as willing to support their activity.

We eliminate that in this bill because we have a mandatory fee that must be paid by all issuers, and the Board will be funded out of that money. So that, in itself, is a very important and significant step in establishing the independence of the Accounting Standards Board.

Mr. REID. Madam President, I have spoken with the Presiding Officer and staff on several occasions. Yours is our next amendment in order. You have been waiting 2 days to have that amendment offered, a very important amendment. And you are just one of several. You are fortunate in that you are the next one, if we can ever get to the next one.

I would ask my friend——

Mr. GRAMM. I have the next Republican amendment.

Mr. REID. We know we have to be burdened with a Republican amendment once in a while.

I say to my friend, would the Senator consider my proposal to have relevant amendments debated—and the relevancy would be determined by the Chair—for a half hour on each one of those and, at the end of the half hour, have a vote up-or-down on that amendment?

Mr. GRAMM. The Senator is already in a big fight with Senator MCCAIN. I do not know why he wants to try to pick one with other people.

Where we are is, we are going to cloture. And there are rules in the Senate. And postcloture, for an amendment, the ticket to get into the arena is it has to be germane, which means it must be directly related to a provision in the bill. It cannot amend the bill in more than one place. There is a certain set of rules.

If the Senator would indulge me a second, we have 36 Republicans who want to offer an amendment. My amendment is next on the list. I am the ranking member of this committee, and it appears I am not going to get an opportunity to offer an amendment. Now, I could cry and pout about it, but it would not change anything and would not change the world either. There are 58 Democrat amendments.

The point is, we all agree on one thing: Whether you like this bill or you do not like it, it is an important bill and we need to get on with it. We need to pass it. We need to go to conference. We need to work out an agreement with the House and with the White House. If we sat here and tried to do 36 Republican amendments and 58 Democrat amendments—and some of them having to do with things such as the Ninth Circuit Court of Appeals and bankruptcy law—we would literally spend 3 or 4 months. So there is no other alternative than following the rules of the Senate. And that is exactly what I want to do.

Mr. REID. Reclaiming the floor, I have always enjoyed the Texas drawl of my friend, the senior Senator from Texas. But even through the drawl, I understood that to be a no.

Mr. GRAMM. Yes. Yes, it was a no.

Mr. REID. My friend, the other Senator from Arizona, is on the floor. We are waiting for the Republican leader. I assume that will be soon.

I ask my friend from Wyoming, when the Republican leader does appear, if he would be kind enough to allow us to attempt to enter into an agreement.

I ask the Senator, if you see him come to the floor, would you be so kind as to yield the floor for just a short time? It would be appreciated.

Mr. ENZI. I would be happy to interrupt my remarks at that time. I would hope my remarks would appear as uninterrupted.

Mr. REID. I would agree.

UNANIMOUS CONSENT REQUEST—H.R. 5011

Mr. REID. Madam President, the Republican leader is on the floor. I will propound a unanimous consent request. This relates to H.R. 5011, the military construction appropriations bill.

I ask unanimous consent that a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of Calendar No. 486, H.R. 5011, the military construction appropriations bill; and that it be considered under the following limitations: that immediately after the bill is reported, all after the enacting clause be stricken and the text of Calendar No. 479, S. 2709, the Senate committee-reported bill, be inserted in lieu thereof; that debate time on the bill and substitute amendment be limited to a total of 45 minutes, with an additional 20 minutes under the control of Senator MCCAIN; that the only other amendment in order be an amendment offered by Senators FEINSTEIN and HUTCHISON of Texas which is at the desk, with debate limited to 10 minutes on the Feinstein and Hutchison of Texas amendment; that upon the use or yielding back of time on the amendment, without further intervening action or debate, the Senate proceed to vote on adoption of the amendment; that all debate time not already identified in this agreement be equally divided and controlled between the Chair and ranking member of the subcommittee or their designee; that upon the disposition of the Feinstein-Hutchison amendment and the use or yielding back of the time, the substitute amendment, as amended, be