I cannot imagine that Senator BYRD and Senator STEVENS would have the fire money in the military construction bill. We reported, as the Senator knows, another bill out of the committee, the legislative branch appropriations bill. There are other bills coming up. As the Senators from New Mexico and Arizona said, fire money should be in the supplemental, but it is not. I just do not think it is going to be in the military construction bill. That is why we should get it out of the Senate and get it to the President. There are some significant military needs that will be satisfied.

I say to my friend who is so aware of everything that goes on around here because of his position on the Appropriations Committee and the Budget Committee, I can never ever remember a time when we have not taken care of fire needs and the flood needs of this country, and we will do it this year also. If there needs to be another supplemental, we will do that, or if we have to put the money in the Interior appropriations bill or other bills, we will do that. I just do not think this is the vehicle on which to do it.

Mr. DOMENICI. Madam President, I said yesterday that I do not recall—I have been here a few years longer than the Senator from Nevada—a situation where we would not pay for an emergency of forest fires and the damages and costs that ensued.

Frankly, there are a lot of people in the West, particularly in Nevada and my State, who have seen these fires and now hear on the television that the Forest Service does not have money in its budget to pay for them. They do. They are borrowing from another account.

As the Senator said and I have said, they are going to get reimbursed shortly. The sooner we do it, the sooner we keep faith with the hundreds of thousands of people in Arizona, Nevada, Utah, New Mexico, and Colorado who have been watching. It would be good if it is sooner rather than later. While we are paying for many things, we should pay for their account also. I assume that is what you are going to try to do in the Senate.

Mr. REID. Yes, and I say to my friend, these moneys are so important to the people of our respective States, there is no question about that. I think it is a shame, for lack of a better description, that we do not have it in the supplemental. I repeat that. If there ever was an emergency, this is it. We have not budgeted for these moneys, and the fire that swept Arizona is 400,000 acres.

We had a fire in Nevada at Lake Tahoe—we are so thankful it did not ravage that basin—of only 1,000 acres. In the last 2 years, we have had over 2 million acres burn in Nevada, not forestland but rangeland.

We need to take care of this emergency. It should be done in the supplemental, but the majority leader, myself, and anyone on this side who has jurisdiction will do whatever we can to speed this up as quickly as possible.

Mr. DOMENICI. I thank the Senator. I say to those who want to make sure the supplemental not only passes but is signed, the Senator from New Mexico is on their side. I am with them. I am certainly not going to do anything to delay that, although it does seem strange to this Senator, an urgent supplemental, which is intended for urgent supplemental needs, would have to be isolated from this need because some kind of arrangement has been made. The arrangement comes very late, but it is an effort to get the bill done and to get the important parties to agree.

I yield the floor.

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

Mr. REID. Madam President, I ask unanimous consent that there be a vote immediately on or in relation to the Levin amendment, the second-degree amendment. Following disposition of that amendment, we vote immediately on the Edwards amendment; and following that, we vote on cloture, which motion was filed yesterday.

The PRESIDING OFFICER. Is there objection?

Mr. GRAMM. Reserving the right to object, I noticed the McCain amendment was not listed. Was that an inadvertent error or was it the intention to exclude that amendment which was offered after the two listed?

Mr. REID. The last two amendments offered were the Levin and Edwards amendments.

Mr. GRAMM. Madam President, I have to object.

The PRESIDING OFFICER. Objection is heard. The Senator from Texas.

Mr. GRAMM. Madam President, I ask unanimous consent that the vote on cloture occur immediately; that we proceed with the process of dealing with germane amendments; and that we set the time of 8 o'clock for all debate on the bill to end.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. I object.

The PRESIDING OFFICER. Objection is heard.

AMENDMENT NO. 4269

Mr. ENZI. Madam President, I do have to answer some of the questions. I am sorely disappointed that the Senator from Arizona left the floor. He asked some important questions. He has asked three questions about accounting. I don't get to answer questions about accounting very often. I was very excited about that.

Now, I do warn people who may be watching in their offices, or somewhere else, that accounting questions often put people to sleep. So it might not always be that exciting for them.

But I do have to say, from what we saw, there is no passion like the passion of a repentant sinner. This is not the first time somebody has said we are going to tell FASB what to do.

On May 4, 1994, the Senate said: We do not care what you said in your multiple pages of FASB rules, we are going to tell you what to do. And the vote was 88 to 9 the last time we interfered with FASB. I have to tell you, the Senator from Arizona was in the 88. He was one of the people who said: I know how to do this. I know how to do this better than FASB. So listen to me: I am going to vote my conscience on this and dictate how FASB is going to handle accounting on stock options.

If he and several other people had not voted to tell FASB what to do at that time, we wouldn't be having this discussion at all.

Now we have another amendment. It is very important to pay attention to the wording.

What I am trying to do is—as I mentioned, there is no passion like the passion of a repentant Senator—I am trying to keep people from sinning again. There are some very important reasons. We cannot take a complex situation such as stock options, which I think all of us can spell but for which not all of us can account, and put it into a simple little paragraph on how it should be handled. This amendment, which is just one sentence which makes up the whole paragraph, says:

> Any corporation that grants a stock option to an officer 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.

One of the problems we are having right now is investors are a little bit shaken because there are restatements of income being done. Not all restatements are because something was hidden. Some of those restatements are because of changes in rules. This will be one of the biggest changes in rules we have made in decades, and the way this is written, while it is intended to move to an expense system, does not really say that. It says that you have to expense it in that corporation's income statement for the year in which the option is granted.

There are a lot of options that are already granted. Some of them are outstanding maybe 25 years. It is more common that it be 2 or 3 years. The new stock options are done on a much shorter period of time. Even if it is just 2 or 3 years, what this amendment is saying is, redo your income statements and restate them for the last 3 years for all of your options that are outstanding. We did not make you do that before; now we want you to show a huge change or maybe just a small change, but at any rate a change, and every time a company announces a change—and I have had some call and say: I am going to have to do a restatement and that restatement is going to be upward; you know what it is going to do to my stock; I am showing an increase in profit, and it is going to destroy me. All I can say is, it is the law; you have to restate.

This will cause the biggest restatement in the history of the United States, the way it is done. One cannot dictate in very simple language something that will take multiple pages to be able to explain and to allow reconciliation. If we listened to the explanation earlier, it sounds as if companies are writing this stuff off and nothing ever happens with it. That is not true. Every time there is an exercise, every time somebody trades their option for real stock, there is an accounting for it. At the end of each year there is a reconciliation for it to make sure the taxes are paid on the stock options that are exercised.

We heard something earlier about $625 million that we are losing because of Enron. It is because they went bankrupt. It is not because they are not reconciling, because they are not paying taxes. They do not have anything with which to pay the taxes.

One of the problems with this bill is that we have gotten into a feeding frenzy. I think of Enron as this huge, dead carcass. In Wyoming, we have kind of a pecking order of feeding. There are the grizzly bears, there are the wolves, and there are the coyotes. Each of them come up and take their bite out of the carcass, but not until the previous one has finished, and that is kind of the way that we are handling this bill.

We have this huge carcass of Enron, and we are trying to figure out how to get rid of it and make sure we do not have any more carcasses. We have a bill that has the primary right to feed on it. Then we have the wolves, which are the germane amendments, that have the right to feed on it. Then we have the coyotes, which do not have any right until everything else is finished. Those are the nongermane amendments.

What we are trying to say is let us get this carcass finished off before we have a whole bunch more carcasses, before the stock market has more problems. They are a little bit worried about us working on this stuff at all, and if they see an amendment like this with the oversimplification being thrust on this legislative body to make a massive accounting decision, they ought to panic. We do not want that to happen.

There are a lot of reasons this amendment should not be passed should it ever come to a vote, and I hope everybody would do that. Now, I have an option I had drafted up. I have over 25 cosponsors from both sides of the aisle now. It deals with stock options. What it does is put it back on FASB to come up with a proper solution and gives them some guidelines to look at. That would be the way to handle a massive problem like this with a lot of detail for which none of us, including me, have the expertise.

I am kind of fascinated that Warren Buffett is the main authority on stock options these days. As I look at it, there are several camps of people that are opposed to stock options, not opposed to the accounting of stock options. They are flat out opposed to stock options. Warren Buffett is one of those. And that is because when stock options are exercised, it dilutes his stock. I think he probably has more stock than anybody else in the whole world, and I guess if I had more stock than anybody else in the whole world I would have gotten there by being sure that every single piece of that was accounted for. Unfortunately, that is not the case. But that would give one some compunction to make sure that none of it can be diluted, which is what stock options have the possibility of doing.

It is also based on the premise that the company is going to grow and expand, and that is why all of the people who are employees are willing to take stock options instead of hard cash. I think all of them would love to have hard cash as Berkshire is doing.

I suspect that the hard cash does not come to quite as much as the increase in value of the stock. So given an option between hard cash and potential in a company that you yourself can work in, you yourself believe in, you yourself know can grow, you want to participate in all of that economic growth. So stock options would be something that might lure you from another company, that might lure you into a startup company, that might lure your expertise to where you can make this company grow.

One of the questions that was asked was: If stock options are not a form of compensation, what are they? At the time they are granted, they are not anything. There is no assurance of them being worth anything. They are a potential liability, and there are some models for determining how to calculate that. They are very complicated. I am not even sure an accountant can handle all of those things. I think they have computer models now that are designed by engineers that go through this thing to calculate what that worth would be so they could put down some number on their balance sheet. Or they can use the other option, which is to disclose it in a footnote. If I wanted to devote more time to this, I would bring over a chart that shows the disclosure that is in the footnote.

So if people read the annual report of the corporation, they know what the potential dilution and value of those stock options are.

Then the next two questions are: If compensation is not an expense, then what is it? And if expenses should not go in this calculation, where should they go? Those are two questions built on a false premise. That is why it makes it difficult to answer the last two questions. If you answer the first one, the next two are not answerable.

Like I said, if I were one of those people such as Warren Buffett who wanted to do away with stock options, that is the attack I would take. I would appreciate it if they were a little more honest: We just want to do away with stock options.

There is another group of people who say all the stock options go to the top employees and consequently they do not want stock options either, but the honest part of that is that they do not want stock options either.

I heard all the references to the newspapers that say expense these things. Of course, I know that all the newspapers have all the technical expertise to make that kind of an evaluation. I say that facetiously, of course.

Senator SARBANES and I have been working on this accounting bill for months, and as we went through the hearings that he did with so much care, very carefully picking the people with the most expertise to be able to explain to us what went wrong in the Enron situation and what could be done in the future to prevent that sort of thing from happening again, it was very educational and he did a magnificent job.

While we were going through that process, I was keeping notes and he was keeping notes. I think everybody else in the Banking Committee was keeping notes. From those notes, several of us drafted up a bill. I noticed that an editorial in the Washington Post down near the end said something needed to be done, which all of us agree on, and then down at the end it says Senator ENZI's bill is a sham.

My first reaction was to get ahold of them and say: Can I talk to the accountant that looked at my bill? Well, the newspaper has journalists, not accountants. It might be a small flaw in expertise even on stock option expensing. I have not seen anything in there since I continued to work with Senator SARBANES, and some of the principles I had in mind were some of the same principles that he had, and those were easy to resolve. Some of the other ones that I had wound up in the bill and are in this bill that we have before us now. I have not seen any editorial that recognizes their expertise of that evaluation either.

There were comments about Chairman Greenspan, and I did read the speech he gave. As soon as I read the speech he gave, I wanted a little bit more information. So I asked if I could get together with him, and he was nice enough to come to my office. Through the discussion, which, again, was educational, I keep learning things every day. This is such a marvelous institution for education. One of the things he concluded with was to say: Yes, they should be expensed, but Congress should not decide how that is done. He was not in favor of us passing something that said how to handle stock options. I think he could see the wisdom or the folly, whichever way you want to consider it.

Now, one may have guessed that I am in opposition to the McCain amendment on expensing stock options. I

think there are some other ways of doing it better. I think there are ways that it could actually be voted on by this group if it were done better. I do not think the one that is presented is the one that is votable, and I assume he will work with us and make some changes.

As we all know, Enron's executives and employees were issued numerous stock options. It is now clear that months before Enron filed for bankruptcy, executives were aware of the true condition of the company. They exercised millions of dollars of options. Enron employees kept in the dark on company finances are left with worthless Enron stock, and retirement savings, while some bad Enron executives absconded with stock openings. The financial fraud causing the collapse of Enron had nothing to do with the company's accounting procedures for stock options.

I appreciate my colleagues' effort to try to fix the problems posed by Enron, and perhaps WorldCom and Xerox and Global Crossing as we get into those. Congress must react to what happened with Enron, but it must be careful not to overreact. I have a principle with legislation having watched it for a long time: If it is worth reacting to, it is worth overreacting to. It goes back to the feeding frenzy on the huge carcass that is here—an overreaction, adding things to one up or outbid.

While legislation may be appropriate to ensure employees are protected and prevent future Enrons from occurring, we should not do anything to hamper rank-and-file employees from receiving stock in their company. A couple of years ago we passed a bill that went through both Houses by unanimous consent. That bill was so that the rank-and-file employees could get it without more difficult accounting. We said we want the rank-and-file folks to have it. We passed a bill by unanimous consent. That means everybody who was here at the time said yes, that is good, without any amendments. That is tough to do around here. It was a definite recognition we wanted all employees to have stock options. When properly used, stock options can be a marvelous opportunity for all of the employees.

In addition, as I mentioned, small businesses and startup companies must continue to have an incentive to issue options, which is often their only means to attract qualified employees. I feel so strongly about protecting stock options for rank-and-file employees in small businesses that on April 18 of this year I testified before the Finance Committee against the legislation in this McCain amendment, although it had more detail to it so it made a little bit more sense. This was revised so it could perhaps meet the test of not being blue-slipped by the House because it has the potential for being a revenue issue.

I am against this amendment because it seriously hurts employees, small businesses, startup companies, and in general the high-tech industry and many listed corporations which employ thousands of employees. This legislation will not solve the problem of Enron, that dead carcass I referred to, or WorldCom, which is still out there kicking a little bit, Xerox, and perhaps failing dot-com companies, but instead it will create additional problems for the rank-and-file employees of the small and large corporations because they will no longer get the benefit of stock options. Why? Because companies will no longer have an incentive but, rather, a disincentive to grant them.

We have all heard that Federal Reserve Chairman Alan Greenspan and Warren Buffett support the purpose behind the McCain legislation because they believe stock options should be treated as compensation. Admittedly, they may at some point become compensation, but there is disagreement at what point that is. Even Chairman Greenspan admitted to me, as I mentioned earlier, that Congress should not legislate expensing but that the Federal Accounting Standards Board, or the FASB, should make such a determination.

This is not an easy determination, although in our discussions we make it sound like an easy determination. Concepts are much easier than the detail. That is what makes our legislating so difficult. We can all agree on huge concepts, but when you figure out the details of how you get to that, it becomes very difficult.

Secretary O'Neill disagrees that expensing of stock options is a solution and believes better disclosure provisions would cure the current problem with regard to stock options. The McCain-Levin bill is creating the same debate over expensing stock options on company financial statements that occurred a few years ago. At that time, the solution was to give companies the option of listing the number of stock options issued by a company in a footnote to the financial sheets or directly on its income or financial statements as an expense. Either way, investors and employees have the ability to see how much stock is outstanding before they invest in the company or before they exercise their stock options. These footnotes provide a lot more information to shareholders or investors than you might imagine, or than the supporters of the McCain amendment would like you to believe.

Some would like you to believe the average person out there doesn't have the ability to read a footnote, let alone understand it. I think at any meeting of employees they would have people contesting that. They look at some of those annual reports, probably more so than some of the major investors. Some of it is difficult to understand. Financial literacy is difficult but very important when you are investing.

It was mentioned that Berkshire buys companies and switches to cash bonuses. It does not cause any problem. The problem is, except cash bonus, you lose your job. Now if they had the option between cash bonuses and a stock option, in a growing company, which would they take? It is hard to tell.

Rather than estimate the value of stock options and expense them on the balance sheets, the companies estimate them in a footnote using something called the Black-Scholes model. That is because they don't know what the future value of the stock will be when the option is actually exercised and sold. That is very important because I have seen a number of different proposals on this, and one of them, unless you expensed it and guess exactly what it was at the time you expensed it, you are not allowed to claim any additional expense. But they don't realize these things are reconciled so that there is a running value of actually expensed items.

Again, that gets into a lot of the accounting detail that would put people to sleep. I have some fascinating charts I would love to drag out, but I have already lost most of my audience so I won't do that. They use that model because they don't know what the future value of the stock will be when the stock option is actually exercised and sold. So they attempt to make an educated guess. Their footnote predicts what the expense might be and the diluted earnings per share for the outstanding stock.

Currently, most companies list the outstanding stock options as a note to their financial statements. Unlike Boeing, Microsoft, Winn Dixie, and a few other companies, most companies do not want to list the options as an expense on their financial statement because it creates a perception of a drop in value of the company, even though the stock options have not yet been exercised. In other words, there has been no expense yet and may not be an expense if the options are never exercised. Yet under the McCain amendment, companies must list these stock options as an actual expense to their company when granted. This would mean taking the estimated value in a footnote and making it an expense to the company.

A problem with expensing early on, how do you value stock options which have been granted but not exercised or sold? Almost everyone believes the current practice of using the Black-Scholes method to value stock options as currently used on footnotes is fatally flawed. Under the McCain amendment, companies are going to now have to use this flawed model to make a guess at what the value of the options are to determine an expense to the company.

The tax consequences will also be based on this flawed estimate. But later, when some of the stock options are exercised and the value is different than estimated, this amendment provides no opportunity for a reconciliation of company records or taxes.

That is kind of an accounting principle that there is supposed to be an explanation for how taxes match up with the books of the company. Yes, we do force different kinds of calculations for taxes than we do for the accounting that goes to the stockholders. But the accountants are able to draw the reconciliation, they are able to show how one number goes to another number. That is a requirement, as well.

Currently, when the estimates are placed in the footnote, they appear as what they are, a best guess at their value, with no effects on the company's books and no need for reconciliation of records later. Yet an investor can see what outstanding, possible estimated expense might occur to the company.

Another problem with the McCain amendment is it does not provide for a method of reconciliation if the stock options are never exercised. So what appeared as an expense may never happen, yet the value of that stock actually goes down instead of up. No one would buy the option and have it cost more than just going out and buying stock. So it is not exercised. So what appears as an expense may never happen, yet the financial statement prepared months before reflects an expense and a decrease in company profit that never occurred. Meanwhile, the current footnote method shows this estimate to investors as a worst case scenario of what could occur if all the options were exercised but no reconciliation were required.

As a result, the McCain amendment creates a disincentive for companies to issue stock options to those rank-and-file employees.

If this amendment becomes law, many companies will cut back on giving stock options to rank-and-file employees rather than list those options as an expense, and create a perception of a decrease in the value of a company when the stock options are not yet an expense and may never be exercised. This means employees will lose a valuable means of increasing their income.

But, these companies are not going to cease offering CEOs and senior executives this form of compensation—that is deferred compensation. Big companies will continue to issue stock options to attract the best talent to top levels of their companies, because this is the only way they can get the most talented management personnel. Despite what the media and supporters of this amendment want you to believe, stock options are not issued to just executives. In fact, those who claim only a small percentage of stock options are offered to rank-and-file companies are misguided. For example, Sun Microsystems, which has approximately 40,000 employees, distributed only 9 percent of its stock options to executives in 2000 and 2001. In contrast, distribution of stock options to employees who were not executives was a whopping 91 percent for both those years.

This is not an isolated example. In 1998, over 66 percent of large companies gave options to some portion of their non-executive workforce. Of this group, 26 percent granted options to all their workers and another 15 percent gave options to at least half of their employees. A 2000 survey of Pricewaterhouse-Coopers and the National Association of Stock Plan Professionals reported 44 percent of 345 large domestic companies with stock option plans made grants to all employees, including hourly employees. The San Francisco Chronicle reports that in the technology sector, this percentage is even higher. Of the top 100 e-commerce companies, 97 percent give options to all their employees.

The San Francisco Chronicle also points out that:

> Ten years ago, about a million workers were in a few hundred employee stock programs around the country.

In 2001, that number had grown to 10 millions Americans receiving stock options. The National Center for Employee Ownership confirmed the trend is toward more non-managers receiving stock options. However, the Levin legislation will stop this trend by having a negative effect on companies which offer stock option compensation packages to their rank-and-file employees. The McCain/Levin Amendment will also hurt small businesses and start-up companies which cannot afford to offer the salaries larger companies give, so they offer stock options as an incentive to attract highly-skilled employees. And it works. They do not have the hard cash for bonuses, but they have stock options. In turn, employees that risk working for start-up companies have the ability to make much more money than through traditional methods of payment by salaries or wages.

The National Commission on Entrepreneurship points out that, without stock options, startup companies which are now household names, like Intel, Federal Express, Apple, Dell and Starbuck, would not exist. In addition, the McCain-Levin bill will cause the whole tax structure to dramatically change. Currently, when stock options are granted or issued there is no tax consequence for either the employer or employee. But when stock options are exercised, the employees are taxed as if it is ordinary income. The income amount is based on the difference between the market price and the exercise price.

Of course, if it goes down and there are not stock options exercised, then there is no income tax because there is no gain.

I do have some charts, again, too, that show that the Federal Government does receive the taxes that are due, unless there is a bankruptcy.

At the same time, the employer can take a deduction based on the amount equal to what is considered income to the employees. For example, if the amount is $25,000 worth of income to employees, the company may take a deduction based on the same amount, $25,000, times its marginal tax rate. If the marginal tax rate is 35 percent, the company would have a tax savings of $8,700. This deduction provides a useful incentive for a company to offer options to its rank-and-file employees. Unfortunately, the McCain-Levin bill will force companies to list the numbers of stock options issued as an expense on its financial statement before they can take the current tax deduction. And they way that this particular amendment is written, it will have to be a restatement for all the years for which there are stock options out. As I mentioned, this added expense to the financial statement alone is a disincentive for companies to issue stock options. In addition, under the McCain-Levin amendment, the tax treatment of the deduction totally changes, becoming much more complicated because it involves valuing stock that has never been exercised. The tax complexity created by this amendment is another disincentive for companies to issue stock options to rank-and-file employees.

Add to all of this, the fact that stock options are not all exercised at the same time. But that is the optional part of it. When you are given a stock option, you have the control over when you personally want to take the stock option or not take the stock option.

Then there are some other interesting amendments out there that could deal with stock options and whether lawyers could ever exercise them, or whether they would have to reinvest them—a lot of complications. But even assuming they are exercised at the same time, the McCain amendment imposes much more complexity to the current system.

Again, I have some charts that could show how all that complexity comes about, but it looks as if we are ready to move on to another decision here so I will pass on that.

If I have confused anybody, I know that I have not confused them nearly as much as if I showed them how this actually worked. This is not easy stuff. I guess that is what keeps accountants in business. It really isn't all the taxes that people pay, although a lot of the revenue comes from figuring the taxes.

I do hear from accountants who say: You really need to simplify the system. Yes, I do hear from accountants that way—not just about this system but the tax system as well. There is plenty of work out there for them to do and not enough accountants, and there are less and less every day. However, I think I have made one thing crystal clear—99 Senators with no accounting degree, and 1 Senator with an accounting degree, have no business trying to rewrite the accounting methods of publicly listed companies. In other words, if you or your staff don't understand any of this, then you shouldn't vote for the McCain-Levin amendment. Instead, the Federal Accounting Standards Board, or even the Securities and Exchange Commission, have much more expertise to make these determinations. We can direct them to look at

current accounting methods, rather than passing specific legislation on replacing the current system. We can direct them to look at possibly developing a better pricing model to value stock options than the Black Scholes method. We can ask it to look at possibly improving disclosure provisions to better inform investors, including using plain English and charts and graphs. We should direct them to create rules that continue to promote ownership of company stock by employees, rather than providing disincentives to companies in granting stock options. Let's let the entities with expertise study and recommend what will prevent future Enrons. Otherwise, we may create a remedy that is worse than the disease.

As mentioned before, I worked with Senator LIEBERMAN and Senator ALLEN and Senator BOXER and numerous other Senators to come up with an amendment that would give some direction to FASB. It would show them that we do want them to take a look at this, that it is a priority, and that we would like to have a solution as soon as possible, but not one that will destroy the entire market, not one that will require retroactive restatements for all of the companies to bring them up to a specific present point.

There will be companies that will choose to do that, but in the present atmosphere that could be very detrimental to the entire stock market. So I hope we will not try to go with something oversimplified as the McCain amendment is, and that we will take a look at making sure that options are treated properly, as we are trying to do in this bill, with all accounting. We are trying to set up a mechanism—a mechanism, not specific language on accounting—a mechanism for determining proper accounting, and I think the bill before us does a good job of doing that. It sets up oversight for discipline and ethics. It will be the first time that we have had centralized any profession. But it will solve some problems, and it needs to be done quickly for the sake of the stock market. I am sure we will get to address this at a later time.

I heard the threat of the Senator from Arizona. I hope in the meantime that his threat will include a little rewrite that gives a little bit more latitude and puts the situation in the hands of the people who actually have some expertise on this.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I want to talk briefly today about how America got caught in the current quicksand of corporate scandal and how we can help dig our economy out of it.

Our economy is in trouble today not because we have a shortage of parts, labor, or ingenuity, but because the American people have a shortage of confidence in the basic mechanics of the marketplace. Every new corporate scandal jostles our markets with the force of a jab or an uppercut. If the punches keep coming and we don't react, our economy will get even wobblier. It may even get knocked down.

Investors are shaken. They don't know what's real anymore. Trust has eroded. The stock exchanges are suffering. These are serious problems that demand a serious response, which is why I strongly support Senator SARBANES' legislation to reform accounting oversight and strengthen corporate accountability.

I welcome President Bush's voice to this discussion, and appreciated the principled remarks he made in New York on Tuesday. But the President's substantive proposals were late and they were limited. I regret that he still hasn't committed, and committed forcefully, to the meaningful, systemic reforms in the legislation before the Senate today. This is a responsive bill. It is a responsible bill. A vote for it is a strong vote of confidence in the American economy. And the President's failure to speak out in favor of it, in my view, sends the wrong message to our markets.

In the wake of Enron's collapse, I had hopes that self-regulation could heal many of the wounds inflicted on our markets and on our economy. I have called for the markets to toughen listing standards, and for companies to make ethics a front-burner issue, not a footnote. Many companies have made progress. The stock exchanges and other business groups have worked to root out conflicts of interest and to demand more independent corporate oversight.

But the new revelations, which seem to come daily, have demonstrated that these problems go far beyond a bad company or two or three. We now have to ask not whether there are more scandals lurking in the fine print, but how many more are there? And we have to ask, what is it about the shape of the system that needs to be corrected to prevent similar debacles from happening again?

The system isn't broken, but it is strained. And we all now understand that self-regulation, as critical as it is, will not do enough to fix the damage.

The stakes are high. Over the last two decades we have witnessed an explosion in middle-class participation in the capital markets. A majority of Americans now have a direct stake in stock or mutual funds, usually, through their 401-k plans. Those American investors have discovered, through the painful shock of every new recent revelation, that the basic, traditional ethical values of small businesses, where you respect every dollar, pay back your investors, treat your employees well, and serve your customers honestly, are not always shared in the boardrooms of some large corporations.

Today and tomorrow, the American people deserve every confidence that their government is setting the highest standards of honesty, transparency, and accountability and enforcing those standards without hesitation.

That is why I strongly support Senator SARBANES' bill. It is a potent prescription for the serious ethical ills that ail our economy. The aim here is not just to penalize individuals when fraud happens; it is to prevent future economic catastrophes, to the degree that we can, and re-instill confidence in the marketplace. I regret that after the collapse of Enron and the pretty pathetic parade that has followed of Global Crossings, Tycos, ImClones, and WorldComs, the President still hasn't awakened to the full scope of the problem or the need for a strong solution like that proposed by Senator SARBANES.

Gene Sperling, former Economic Adviser to President Clinton, put it well. After September 11, we all understood what was necessary to get people back in airports and on airplanes. Cracking down on hijackers with tough new criminal penalties wouldn't be enough. We knew that we needed to improve baggage and passenger screening, fortify cabin doors, and make a whole host of other changes that addressed the systemic problems that let the attacks happen in the first place.

The same is true here. If we want Americans to regain confidence in our economy and get back in the market, as they have gotten back in the skies, we need to not only get tough on offenders, but to get tough on the structural problems that enable the offenses. That means closing loopholes and rooting out the endemic conflicts of interest that put even decent people in difficult if not untenable situations.

Senator SARBANES' bill would set up a strong, independent board to oversee accountants—a critical step that will give Americans reason to believe their numbers again. The President hasn't come out clearly in favor of that. The bill would restrict firms from doing both consulting and auditing for the same company in most cases, addressing what is a corrosive conflict in the system today. The President hasn't supported that as a law yet. The bill would also go further than the new NASD or NYSE rules to address the inherent conflicts of interest that currently prevent Wall Street analysts, who make the judgments so many Americans rely upon in making their investment decisions, from thoroughly and independently scrutinizing the companies they cover. In the hearings of the Senate Governmental Affairs Committee I chair, we discovered that those conflicts are real, deep, and widespread. Unfortunately, the President hasn't been strong enough or sharp enough on this issue. And the bill would require disclosure within 7 days anytime a corporate executive takes a loan from the company he is working for.

We in Washington cannot and should not pretend to be able to fix all these problems single-handedly, but we have an essential role to play. We must lead.

And at the same time, we must take care not to let this turn into an anti-business crusade. I believe in American business. My father was a small business owner in Stamford, CT. Through hard work he bought a house, sent his kids to college, prepared for retirement, and bettered his community.

You cannot be pro-jobs and anti-business. You can't be pro-growth and anti-business. You can't be pro-opportunity and anti-business. Business has created our unprecedented prosperity, and business will continue to extend more and more opportunities to more and more Americans and people around the world. But not if we let this erosion of confidence, this rust of distrust, keep eating away at our markets.

American values are better than Enron's values. They're better than Global Crossing's values. They're better than WorldCom's values. And so is the American economy better and stronger than these companies' ethical and economic breaches of trust. This bill will point the way to both better ethics and better economics. It should become law.

Mr. FEINGOLD. Mr. President, I support S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, and I commend Senator SARBANES for his efforts to produce this measure. That it is needed is a sad commentary on the state of corporate finance, but it is also a reminder that free markets do not work well without a set of rules and regulations in which the marketplace can be confident. It is also a reminder that if government is to farm out the task of regulating corporate finance, then those entities that are designated to patrol corporate activities must also have the confidence of the marketplace.

The Enron and WorldCom disasters were notable but not isolated. Observers have noted the increase in corporate financial restatements in recent years. In testimony on this point, Robert Litan of the Brookings Institution reports that the number of American corporations whose earnings have been restated had been modestly rising throughout the 1990s, but then took a big jump in 1998 and hit a peak of over 200 in 1999. Many reasons have been offered for this development. Some point to the tying of executive compensation to stock performance. Others have noted the potential conflict of interest that arises when a firm provides both auditing and consulting services to the same firm. Both explanations have some merit.

And I will add to both of those reasons the enactment of a so-called securities reform measure in December of 1995, a law that made it more difficult for stockholders to hold corporations and accounting firms accountable for bad behavior. One newspaper has characterized that law as expanding ''a climate that invites the kinds of securities and accounting abuses that investors and employees suffered in Enron's colossal collapse.'' In reviewing the history of that bill, the Washington Post reported that ''accountants at what were then the Big Six firms lobbied aggressively for the measure, spending millions of dollars.'' The Post story also adds a foreboding note that ''leaders of Arthur Andersen were so pleased with their efforts they encased the text of the new law in a paperweight and handed it out as a souvenir.''

The reforms we consider today are extremely modest, and I look forward to supporting amendments that will further strengthen this bill, including Senator Leahy's amendment that will strengthen enforcement and sanctions for securities fraud. That amendment passed unanimously out of the Judiciary Committee earlier this year. It creates new criminal laws for altering or shredding documents and provides tough new penalties specifically for securities fraud. It prevents wrongdoers from avoiding those monetary damages by filing for bankruptcy. It provides specific whistleblower protections for employees who provide information to Federal regulators or criminal investigator about corporate wrongdoing. And it increases the statutes of limitation in securities fraud cases, responding to clear evidence that the shorter time limits put in place by the 1995 securities reform law have allowed wrongdoers to escape liability. These are necessary steps, and I applaud the chairman of the Judiciary Committee for bringing this amendment forward on this bill.

We should also consider other steps, if not on this bill then as part of another vehicle, to close down abusive tax shelters that encourage the kind of creative bookkeeping used by Enron, and to address the double standard of allowing certain forms of executive compensation to be deducted from taxes, while remaining hidden from investors.

All of these steps face opposition by interests who are more concerned with their own profits and survival than with the public interest. Unfortunately, these interests have held great sway over the Congress over the last decade, using soft money contributions and lobbying might to smother reform proposals before they could receive a fair hearing and action by the Congress. It is very unfortunate that the measures we are considering today were not enacted years ago. If they had been in place, thousands of employees might not have lost their jobs and millions of investors might not have lost their life savings.

Let us not forget that the central players in the scandals of the past year are not rogue companies operating at the fringe of American economic life. No, they are some of the biggest companies in the country, and they have been central players in a corrupt campaign finance system that this Congress finally started to address by passing the McCain-Feingold/Shays-Meehan bill a few months ago.

We have all heard of how Enron curried favor in Government. It gave a total of nearly $3.7 million in soft money to the political parties from the 1992 election cycle through June 3 of this year according to Democracy 21. Arthur Anderson made about $645,000 in soft money contributions during that period. Global Crossing gave just over $3 million to the parties in soft money from the 1998 election cycle to the present. And WorldCom, whose failure has brought us to the point where we will actually pass these long needed reforms, has given over $4 million in soft money, dating back to the 1992 cycle. Just in this cycle, with all its problems, WorldCom has already made $400,000 in soft money contributions, according to the Center for Responsive Politics.

These are enormous sums. They show, frankly, that our political parties are among those who were unjustly enriched by these companies who cheated their shareholders and employees. I understand that some contributions have been returned, but just as in the case of the employees who lost their jobs or the investors who lost their life savings, the damage has been done. The contributions had their intended effect when they were given.

As I mentioned before, and as we all know, Congress passed and the President signed a bill to ban soft money earlier this year. So these enormous soft money contributions should be a thing of the past starting in the next election cycle. Members of Congress will no longer be allowed to call up the CEOs of Enron, or Arthur Anderson, or Global Crossing or WorldCom, or any other corporation, and ask for enormous contributions for the political parties and then have to come back to this floor and vote on legislation that might affect their activities. At least that is what we intended. But in just the last few weeks, the Federal Election Commission has undermined the law that we passed after so many years of effort. The new regulations on our soft money ban that are about to be promulgated open enormous new loopholes in the law before it even goes into effect. If we want to remove the stain of soft money from the legislation we pass in this Congress, we cannot allow that to happen.

The sponsors of campaign finance reform intend to invoke the Congressional Review Act to overturn these regulations. That will send the FEC back to the drawing board to do the job of implementing the law right. Doing this is part and parcel of addressing the corporate scandals that have led to our work on the floor today on this important bill. Unless we defend the soft money ban, the influence of unscrupulous corporations on the Congress will continue, and we will find ourselves again in the situation of trying to explain to America why we didn't act to prevent further corporate and accounting scandals or other scandals before they happened.

According to Consumers Union, just over half of all U.S. households are investing in the stock market, many through their retirement savings. If the public is to have confidence in the financial markets, they must have a complete and honest accounting of the financial health of the firms in which they invest. This bill is a good starting place, and I look forward to supporting it. And I look forward to maintaining public confidence in the Bipartisan Campaign Reform Act of 2002 by overturning the FEC's loophole-ridden regulations before they take effect.

Mr. KYL. Mr. President, as Congress debates S. 2673, the Public Company Accounting Reform and Investor Protection Act of 2002, it is important to keep in mind certain facts: The United States of America is the most successful country in the world. No other country outworks, outproduces, or economically outperforms the United States. Americans have much to be proud of and it is due to the vigor of our businesses, the entrepreneurial spirit of our citizens, and the willingness of both to take risks. For hundreds of years, people from every corner of the globe have chosen to come to our country and pursue what has become known to the world as the American Dream.

The American Dream can and should be available to all Americans who, with diligence, determination, and a sound moral compass, choose to pursue it. Unquestionably, our government has an important role to play in ensuring its viability. By the passage and enforcement of laws to protect Americans seeking to achieve success, lawmakers reaffirm that America's prosperity rests on the rule of law, on the existence of safeguards, checks, and balances to ensure that all compete fairly in the marketplace. These protections must be transparent and easy to understand. This is not only so that businesses and individuals can readily determine what distinguishes appropriate from inappropriate action, but so that all may have faith in the governmental bodies tasked with enforcing the rules.

The implosion of Enron, Global Crossing, WorldCom, and other public companies has caused widespread concern about the soundness of American businesses. Public confidence in corporate practices has been undermined, and serious questions have been raised about the accuracy of corporate audits and the integrity of auditors. Many Americans have become worried that neither internal corporate safeguards nor the government's financial oversight mechanisms are functioning properly.

I share these concerns and I am glad that the Senate is seeking to address them. All Americans have a stake in a healthy business climate, and we know that health depends on having an ethical business climate. While the past two decades have unleashed a tidal wave of entrepreneurship and successful business growth, we have also witnessed, most notably throughout the late 1990's, an ''anything goes'' relativism that has increasingly penetrated our corporate business and political culture.

We've always taught our children a moral principle well expressed by Macauley: that ''The measure of a man's real character is what he would do if he knew he would never be found out.'' We do so because, as parents, we know that we cannot supervise our children forever. When they face, as they inevitably will, a choice between the easy road of cheating or the tough road of following the rules, we want them to choose right, not wrong.

Sadly, this lesson seems to have been forgotten lately. In the haze of morally gray areas, corporate executives have come right up against the limits of what is acceptable behavior, and in several cases, have gone beyond it. What's worse, these companies' boards of directors have stood by in the face of wrongdoing, either unable to discover it or unwilling to rouse themselves to take corrective action.

I am very troubled by the inability of the markets to see through the phony numbers being generated by these enterprises. As a result, average investors no longer enjoy the protections put in place to ensure accountability and transparency. I agree with President Bush, who said that ''to properly inform shareholders and the investing public we must adopt better standards of disclosure and accounting practices for all of corporate America.''

Yesterday, President Bush outlined an aggressive plan to rejuvenate the mechanisms that ensure corporate responsibility. This plan will expose and punish acts of corruption, make corporate accounting standards more transparent, and protect small investors and pension holders. The President has urged Congress to adopt tough new criminal penalties and enforcement provisions in order to punish those who refuse to play by the rules and who choose to undermine the integrity of our financial markets.

The House of Representatives have already passed legislation addressing this slippage in corporate responsibility, while also permitting enough legal and regulatory flexibility to tackle future problems. Rather than seeking to provide a statutory answer for every current deficiency and every recent transgression, the House bill recognizes that this is a job for experts and gives the Securities and Exchange Commission the authority necessary to prevent future abuses.

By attempting to legislate detailed accounting standards, the bill before us puts Congress in the position of micromanaging details that we know less about than SEC experts. So, the legislation before the Senate represents a less workable approach than the President's proposal. Although I support its goals, particularly the need to improve the quality of independent audits and financial reporting and ensure meaningful accountability by executives of public companies, this bill has other specific problems.

For example, the Public Company Accounting Oversight Board, which would be created by the bill, would be allowed to begin proceedings against accounting firms without affording them the same due-process protections they would have in court. Their livelihood could be at stake. Certainly, bad actors should be held accountable for wrongdoing. But our system of justice has always had safeguards to protect the innocent; checks need to be in placed to prevent the wielding of unbridled government power.

The bill would make accountants liable for not reporting ''any material noncompliance'' with the law that auditors ''should know'' about. What does that mean? That standard is so vague that it is certain to invite a flood of litigation. Unfortunately, we have had some experience with frivolous lawsuits trumped up by trial lawyers over alleged securities violations.

Section 105 of the bill establishes liability for any ''failure to supervise,'' another vague standard that is likely to invite litigation.

Again, let me say that bad actors must be held accountable for wrongdoing. But as we attempt to root out and punish the wrongdoers, we must be mindful of the impact legislation will have on the greater number of people who are acting in good faith. Setting up a system that is too costly to comply with, or one that even good people find too onerous to comply with, will ultimately harm the very people we are trying to protect—employees, retirees, and others who have invested in American corporations. If the liability potential is too great, it will be hard for many businesses to obtain accounting services at a reasonable cost.

Fortunately, we can still improve the bill in conference, before we send it to the President and he must decide whether to sign it.

And while we're at it, the Senate would be wise to look at its own financial practices. We, too, are accountable to the American people. The Budget Enforcement Act of 1974 requires Congress to approve a budget resolution on how much the government can spend each fiscal year. Yet, this year, the Majority has refused to bring a budget to the Senate floor. This is unprecedented and unacceptable. The majority is abrogating its duty to the Senate and the American people. Its stubborn refusal to do what is right, while the whole country watches, is indefensible. Its eagerness to hammer away at what are admittedly acts of wrongdoing in American business, while gliding over its own dereliction of duty in the same general area—is breathtakingly hypocritical.

So while we work to pass these important reforms, we must remember that, like the CEOs of public companies, we, too, have an ethical duty to protect and use wisely other people's

money. I would remind my colleagues that it is thoroughly disingenuous to rise today to demand clean accounting practices by the private sector, while failing to ensure even basic general accounting standards for the federal government.

In closing, consider the thoughts of George Will on capitalism and ethics. Mr. Will wrote that a properly functioning free-market system is ''a complex creation of laws and mores that guarantee, among much else, transparency, meaning a sufficient stream, a torrent, really, of reliable information about the condition and conduct of corporations. By casting a cool eye on Enron's debris and those who made it, government can strengthen an economic system that depends on it.''

I am confident that, despite these recent abuses of the public's trust, our economy and our system remain fundamentally sound and strong. The vast majority of businesspeople respect legal norms and live by them. We will make our free enterprise system better for them, and for all Americans, by penalizing those who did wrong and repairing creaky enforcement mechanisms. The President has acted. The House has acted. Now it is time for the Senate to act, to return trust, accountability and transparency to our financial institutions.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that there be a period for morning business with Senators allowed to speak therein for 10 minutes each.

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

DROUGHT

Mr. DOMENICI. Mr. President, I rise today to discuss the effects of a natural disaster that lingers across much of the west, drought. There is not a segment of the New Mexico population that will not be touched, in some form or fashion, by drought this year.

People in other parts of the country have turned on their television sets over the past few weeks and have seen the blazes of catastrophic wildfires that are again devastating the western United States. This may be the only effect of the drought that many are aware of. Let me tell you, the devastation is even more profound.

Ranchers are being forced to sell off livestock because they can't find enough water for them and can't afford the significant feed costs. Other agricultural businesses are being forced to shut their doors because the agriculture sector as a whole is hurting.

Most of the National Forests in New Mexico are closed to the public. This has added to a decrease in tourism. Let me mention a couple of specific examples. First of all, there is a small railroad, the historic Cumbres and Toltec Railroad, that takes people through a very beautiful part of the State. The railroad contributes to the tourism and economic stability of a very poor part of the State. That railroad has had to close because it runs through National Forest system lands and the fear that the railroad might spark and start a wildfire is a threat to imminent to risk. A second example is the river rafting operations that have been forced to cease operations because of the drought conditions and lack of river flows.

Municipal and private wells are running dry. In the City of Santa Fe, emergency wells for municipal water use are needed because Santa Fe's water storage is at 18 percent capacity, the spring run off is only at 2 percent, and current wells are pumping 24 hours a day. The City of Santa Fe is at a Stage 3 water shortage emergency, which allows outdoor watering once a week, but the City Council is considering going to Stage 4, which would eliminate all outdoor watering. To put this in perspective, the last substantial rain for the area was in late January.

A recent article in the New York Times accurately depicts the dire situation. It talks about how gardening in a desert is challenging, especially during a drought and at a time of mandatory water restrictions. The article went on to talk about people spray painting plastic flowers and artificial turf, while also using freeze dried plants to beautify porches and other areas.

Santa Fe is only one of the numerous municipalities that have imposed restrictions on water use. The article also notes that these restrictions are enforced by ''water police'' and that violators face steep fines ranging from $20 for a first offense to $200 for a fourth offense and stay at $200 for each repeat violation.

A second article appearing in the Albuquerque Journal, referenced a ''drought reduction'' cattle sale. The sale took place last week on the edge of the Navajo reservation. While most livestock sales generally take place on the reservation during September and October, this year emergency sales are being held almost every weekend. Hundreds of cattle, horses and sheep have already died as a result of the severe drought conditions.

The article goes on to describe the severity of the conditions. ''Stock ponds have gone dry, fish have died in evaporating lakes, and grass has disappeared. Sand blows across reservation roads, and the stiff bodies of dead cattle litter the land.''

The seriousness of the water situation in New Mexico becomes more acute every single day. I reiterate that every single New Mexican will feel the impact of this drought in one way or another—whether they are selling off the essence of their livelihood—livestock, or losing daily revenues in other small business, whether they are actually having to refrain from watering their own lawns and washing their cars to looking for alternative recreational opportunities this summer, the drought and its devastation is very real.

There is a need out west and I stand ready to do what I can. It will be a monumental and expensive challenge, but one we cannot avoid. I ask unanimous consent that the two articles referenced in my remarks be printed in the RECORD.

[From the New York Times, July 8, 2002]

IN SANTA FE, IT'S TIME TO PAINT THE PLANTS

Gardening in a desert is challenging. Gardening in a desert in a drought is tough. Gardening in a desert in a drought at a time of mandatory water restrictions is ridiculous.

It's enough to make a hard-core gardener break out the spray paint and feather dusters. Why? To brighten the artificial turf and plastic flowers, of course, and to keep the cobwebs off the freeze-dried evergreens.

''Isn't this a hoot?'' said Kay Hendricks, a 70-year-old interior designer who cheerfully pointed out a now-dead wisteria vine as she stuffed a plastic sprig of purple lavender into a pot of freshly painted silk red flowers. ''A little red paint will make any flower a geranium.''

In a whirlwind tour of her home, Ms. Hendricks showed off a bouquet of what may have once been silk purple zinnias, now painted red to match an American flag hanging on her garage; a potted four-foot-tall plastic cactus with fake thorns; and English ivy with fake dewdrops draped from another pot.

With drought gripping several Western states this summer, Santa Fe is one of a number of municipalities that have instituted mandatory restrictions on lawn watering, car washing and other uses of water. The restrictions are enforced by ''water police,'' who can impose steep fines and even decrease water flows to scofflaws' homes. Phone lines have been set up so people can report wasteful neighbors to city officials.

Fines for illegal watering here start at $20 and go up to $200 after the fourth offense, and then stay at $200 for each repeated violation.

''There is a guilt to watering things,'' said Mary Thomas, manager of the American Country Collection furniture store in downtown Santa Fe. She used to plant colorful annuals in pots outside her store each spring, but now she has 18 freeze-dried miniature evergreens instead.

''They don't have to be watered and we can paint them if they lose their color,'' she said. Ms. Thomas said her parents liked the freeze-dried trees so much that they bought some for their own patio.

The city is at a Stage 3 water shortage emergency, which allows outdoor watering once a week, but the City Council is considering going to Stage 4, which would eliminate all outdoor watering. Reservoirs that the city relies on for water are at 23 percent of normal capacity, and the last substantial rain was in late January, said Chandra Marsh, a water conservation educator and compliance specialist with the City of Santa Fe Water Department.

Not every plant here is fake or dead. Established low-water perennials are surviving, and hollyhocks and lilies can be seen blooming here and there. But, Ms. Marsh said, it is difficult to establish many plants without regular watering.

It seems as if everyone in this town is either adding a few silk and plastic plants to their yards, or knows someone who is doing