floor to share with me some thoughts about this relationship that is not only historical and one which we take great pride in as a nation, that ability to quickly expand, to turn a manufacturing, an industrial base into an arsenal of democracy.

That hopefully will not happen, as the Senator points out. Maybe it is less likely to happen. But we must be there when it does. That aspect has been focused on by others, the need to be able to have a manufacturing base for our national security and to have a base of suppliers for our national security. I have tried to add another aspect to this argument that points to the relationship between the survival of our big three and our national security by pointing out the ongoing relationship in the area of research and development, which has produced critically important technologies currently in our vehicles and developing today the technologies which will make future vehicles.

Mr. WARNER. Our military vehicles.

Mr. LEVIN. Absolutely.

Mr. WARNER. I wish to make that clear because that technology has been available in the open market to those manufacturers, other than the oil industry, which have, in a remarkable way, taken these up-armored vehicles, that general category we have today, very quickly, to the great credit of the Secretary of Defense, Secretary Gates, he put together a structure of five companies to get into immediate production of those vehicles and into those vehicles has gone the development and technology that our distinguished colleague from Michigan has described.

Mr. LEVIN. Thankfully, we still have a few colleagues, including the great Senator from Virginia, who have a personal connection to that war.

Mr. WARNER. It was very minor, but it was a privilege to have been associated with that generation.

Mr. LEVIN. I thank my friend from Virginia.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3 o'clock.

Thereupon, at 2:17 p.m., the Senate recessed until 3:03 p.m. and reassembled when called to order by the Presiding Officer (Ms. KLOBUCHAR).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Minnesota, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## EXTENSION OF MORNING BUSINESS

Ms. MIKULSKI. Madam President, I ask unanimous consent that the period for the transaction of morning business be extended until 5 p.m., with Senators permitted to speak for up to 10 minutes each.

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

Ms. MIKULSKI. Madam 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.

## SILO TAX SHELTER

Mr. BAUCUS. Madam President, the House bill before us contains a provision that causes me great concern. The provision would make the U.S. Government an active participant in an abusive tax shelter transaction.

In the past, Congress has voted to shut that tax shelter down. And this week, I sought to offer an amendment to strike the provision from this bill. But I have been prevented from offering that amendment. That this provision will remain in the bill makes this bill a far less attractive measure.

Section 18 of the bill requires the United States to serve as a guarantor of obligations incurred by domestic subway and other transportation systems. These obligations arise from the systems' participation in leasing arrangements called lease in/lease out, or LILOs, and sale in/lease out, or SILOs.

LILOs and SILOs are sham transactions. The IRS has designated them as ''listed'' tax shelters. That means that these tax shelters are among the most egregious abuses of the tax law.

LILOs and SILOs are very complicated deals, designed to look like legitimate leasing transactions. But in reality, they are shams.

In a SILO, a tax-exempt entity nominally ''sells'' an asset, like a subway system. The other party to the deal is an investor who is subject to taxation and who needs a tax write-off. The investor nominally ''buys'' the asset. The investor then nominally ''leases'' the asset back to the tax-exempt entity.

In truth, the benefits and burdens of ownership never shift. And the sale and the lease have no economic reality.

These parties purport to make purchase payments and rent payments. But in reality, these payments are just paper entries, facilitated by a bank that is in on the deal. The investor pays the tax exempt entity an up-front fee in exchange for its willingness to participate in the deal. But other than that, no real money changes hands.

There is little, if any, risk to any party to these transactions. That is because the deal is cooked from the beginning. It is planned so as to eliminate any risk.

But there are significant tax benefits to the investor. The investor gets interest and depreciation deductions. And those deductions generate tax losses. Employing these tax losses, the investor pays less tax on income that the investor earns elsewhere.

This chart illustrates how a SILO transaction works. You do not have to understand all the details to see how complicated the transaction is.

As Chairman of the Finance Committee, I have had these deals on my radar screen for quite some time. In 2003, the Finance Committee held a hearing with a confidential informant. The witness risked his professional reputation to tell us how abusive LILO and SILO transactions are.

I pushed for legislation to shut these deals down. The 2004 Jobs Act eliminated the tax benefits for most of the investors who had entered into these transactions.

Since 2005, I have worked to shut down the remaining deals that the Jobs Act failed to address. Unfortunately, our efforts have met with resistance. Some argue that shutting down these transactions would be applying law retroactively. But I believe that these transactions always violated the law, as they lack any economic substance.

In the Tax Increase Prevention and Reconciliation Act of 2005, Congress imposed excise taxes on tax-exempt entities and their managers who entered into tax shelter transactions. That law recognized the role that some tax exempt entities, including transit agencies, played as ''accommodating parties'' to tax shelter deals.

Since 1999, the IRS has devoted considerable resources to shutting down these deals. The IRS has designated both LILOs and SILOs as ''listed'' tax shelter transactions. The IRS has audited every one of these transactions that it could find. The IRS has litigated four cases, and won every time. Recently, the IRS announced a settlement initiative to shut down the remaining cases and reports an 80-percent participation rate.

We have been trying to stop these tax shelters for years. So how does the Government end up guaranteeing this kind of tax shelter? The complicated structure of LILOs and SILOs plays a part.

Under the terms of the agreements, transit agencies are required to obtain a guarantee from an insurer. The insurer guarantees that the agencies will be able to buy back the subway at the end of the lease period. The agreements require that the insurer have a very high credit rating.

The current economic crisis has caused downgrades of insurers' credit ratings. That has put the tax-exempt entities into technical default on their agreements. Under the agreements, when the tax-exempt entities default, the investors have a right to terminate the lease.

The investors are taking advantage of this legal opportunity. They are trying to cash in. The investors are attempting not just to recoup the nominal purchase price of the assets. They are also demanding that the transit agencies pay over the value of the tax benefits that the investor will lose as a result of the premature unwinding of

the deal. The value of the tax benefits can be many times the putative purchase price.

This chart that I referred to earlier is an exhibit from a lawsuit, Hoosier Energy v. John Hancock Life Insurance. In that case, the Monroe County Circuit Court in Indiana issued a temporary injunction barring John Hancock from collecting on the technical default.

Transit agencies do not have lots of excess money just sitting around. So they have come to the Congress asking for a guarantee from the U.S. Government.

Now I do not want our Nation's subway systems to be at risk. I am open to considering ways to help keep them financially sound.

But I am unwilling to do so at the expense of American taxpayers. The bill before us today asks taxpayers to put their tax dollars at risk. The bill asks taxpayers to guarantee transit agencies who knowingly and willfully entered into deals that had no economic substance and were designed for the sole purpose of avoiding taxes.

The Government has come under much criticism for actions it has taken to jump-start our economy. But deliberately involving the U.S. Government in a tax shelter scam would add fuel to that fire.

We must not add legitimacy to an abusive transaction that the Congress, the courts, the Treasury, and the IRS have spent years trying to shut down.

We must not undermine the good efforts of the IRS to prosecute these cases. We need the IRS to accomplish as much work as it can to eliminate these and other scams.

We must not ask American taxpayers who struggle to pay their taxes to underwrite deals set up to help wealthy investors attempting to shelter their income.

The approach in the bill before us today is not a solution. Stepping in to guarantee these deals exposes American taxpayers to ongoing risk. Some event could trigger a requirement that the Government pay the investors. This bill puts taxpayers on the hook for a long time.

In addition, I understand that this proposal applies to only 80 percent of the transit agencies that entered into these tax shelter deals. What about the other 20 percent of the systems who are not covered? What happens to them? We need a fair and balanced approach to resolve this issue.

We would do better to figure out a way to discourage investors from acting on the technical default simply because the insurer's credit rating has been downgraded. A downgrade does not mean that the insurer is not good for the money. I intend to explore options with this goal in mind. We need a solution that protects both the transit agencies and the American taxpayer.

Finally, this is an auto bill. We should not forfeit the opportunity to bolster our automotive industry by cluttering up the bill with unrelated and controversial proposals.

There is a proper time and place for everything. This is neither the time nor the place to divert attention from our immediate task, helping our automakers.

This provision has no business in the auto bill. The Senate should take the provision out. And if the Senate does not take the provision out, it will only add to the burdens that are weighing this bill down.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent to speak for 15 minutes.

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

Mr. GRASSLEY. Madam President, I come to the floor to back up the chairman of the committee, Senator BAUCUS, who has spoken on the very same issue. We have had a close working relationship for 8 years as either chairman and ranking member, and those changed from time to time. Part of our effort of working together has been to close down abusive tax shelters. So I am here to support what he said and to say, in my own words, my reasons for wanting this provision out of the bill. The bottom line of what I am saying is the bottom line of what Senator BAUCUS has already said. This tax provision has no business being in this bill.

There is a provision in this auto bailout bill that deals with a number of transit agencies that assisted corporations in tax shelters. This provision in the auto bailout bill has nothing to do with automakers. It would prop up a tax shelter that Senator BAUCUS and I shut down in the year 2004. Shutting down that tax shelter saved American taxpayers $26.56 billion, according to the nonpartisan Joint Committee on Taxation. That is real money. So we should be very protective of making sure money that by subterfuge was not going to come into the Federal Treasury comes back to the Federal Treasury and is not used in the future. This tax shelter is commonly referred to as sale-in, lease-out, or by the acronym SILO, or another program lease-in, lease-out that we refer to by the acronym LILO. This tax shelter bailout within the automaker bailout bill would have the Federal Government guarantee obligations that public transit agencies now face because they entered into shady deals with corporations, including foreign corporations, where they sold things such as the transit agencies' own train cars and then magically leased them back from these corporations to do what they were doing all the time anyway, hauling people.

This was not done to change the way the transit agency operated but, instead, to collect a fee for assisting the tax shelter, where the corporations could take advantage of the tax deduction for depreciation of things such as these train cars.

As chairman of the Senate Finance Committee in 2004, I worked hard to shut down these tax shelters as a matter of tax fairness, and Senator BAUCUS was there working closely with me to do that. The Internal Revenue Service has been working to recover money from these deals. If this tax shelter bailout were to pass, it would interfere with the working of the IRS in these efforts to collect money that should never have been deducted in the first place.

This tax shelter bailout can change the cost-benefit analysis for those tax shelter corporations that are considering settling their disputes with the IRS over the SILO/LILO tax shelters. It is wrong for the auto bailout bill to bail out transit agencies from participating in these shady tax shelters. The Federal Government should not guarantee the transit agencies' obligations to corporations, including foreign corporations, when doing so allows the tax shelter to continue as it did before 2004, and these corporations, including foreign corporations, to continue taking tax shelter deductions for things such as transit agencies' train cars.

If the Federal Government is called upon to pay the guarantees of the transit agencies' obligations to these tax shelter corporations, including foreign tax shelter corporations, then the hardworking U.S. taxpayer will be sending money directly to these foreign corporations and others. I don't know how many, but we know foreign corporations are very much involved.

These tax shelters were, in fact, set up so corporations were able to take large depreciation deductions. However, the tax shelter needed a nontaxpaying entity that had large amounts of assets that could be depreciated. So that is where the transit agencies come in. The transit agencies were paid millions of dollars to do nothing, simply sign papers and go about business as usual of transiting people within cities or between cities, as they were doing before this tax shelter was ever thought up. The transit agencies are called accommodation parties in tax shelter lingo. They are called this because, in exchange for their fee, they helped make tax shelters work for corporations that were bilking the U.S. taxpayers out of billions of dollars, and those billions of dollars were lost revenue to the Federal Treasury.

This auto bailout bill proposes to bail out the transit agencies from the consequences of their bad judgment of entering into tax shelters. I say ''bad judgment'' because they ought to know this doesn't make sense. Some lawyer might tell you: We can get by with this because we found this loophole in the tax laws. But, in fact, lawyers can find anything. The English language is not so perfect that we write perfect pieces of legislation that somebody who is wise can't find a way around. That is what happened prior to 2004, before Senator BAUCUS and I shut it down.

As the transit agencies have found out—and that is why they are coming to the bailout bill for some help—when

you lie down with dogs, you get fleas. Now that the transit agencies have fleas due to their participation in this tax shelter scheme, they want the Federal Government to be their flea remover. If this provision is enacted and if the Federal Government guarantees the transit agencies' tax shelter obligations, it will actually help these shady tax shelter deals stay alive longer and, who knows, encourage more of this in the future. We are trying to shut down a business I consider illicit, people going through the Tax Code and seeing where they can find a tax loophole and writing a program and go out and sell it. They go out and sell it to somebody else, then flee to the woods, and some corporation or individual has to defend it themselves, and they can't. They get stuck with the tax bill from the IRS. We want to shut down the tax shelter-writing business.

I will not help the transit agencies avoid the consequences of their participation in these tax shelters. I do not want to put U.S. taxpayer money on the line to support tax shelters that have been stealing from these same taxpayers.

I am aware that as early as February 2000, we had a Federal initiative from the executive branch. In the year 2000, the Federal Transit Administration, under the Clinton administration, used to advocate these tax shelter deals to transit agencies as innovative financing. The Federal Transit Administration's promotion of these tax shelters was shameful, and it gave a legitimacy to it. I suppose it even encouraged further tax shelter people to write. But in 2004, Senator BAUCUS and I said: Enough is enough. That is why the legislation was passed in 2004, shutting down these and saving the taxpayers that $25 billion the Joint Committee on Taxation said could be saved; in other words, paid into the Federal Treasury, instead of some sharp lawyer finding a way to keep it out of the Federal Treasury.

Going back to when these were first being instituted by the Federal agency or encouraged by the Federal agency, we did have the IRS responding to that. So you had one agency promoting something. You had the IRS issue a revenue ruling that came out against these tax shelters. But between that 1999 March 1 date and the time Senator BAUCUS and I finally concluded this needed to stop in 2004, we still had a bunch of these deals consummated. Even if the transit agencies were not aware of the IRS's position, the transit agencies should have realized that getting money for essentially doing nothing ought to be too good to be true. If it sounds too good to be true, it probably is not the right thing to do. That is common advocacy to any consumer in America met by some snake oil salesman who comes along to sell a product. If it sounds too good to be true, you ought to raise questions about it.

We even have a situation where every court that has considered these transactions has ruled they are abusive tax shelters and has not allowed the tax breaks claimed by the corporation that engaged in the tax shelters. Three of these court cases are BB&T Corporation, the Fifth Third Bancorp, and AWG Leasing Trust. In a recent court opinion involving John Hancock Life Insurance Company, Chief Judge David Hamilton of the U.S. District Court for the Southern District of Indiana wrote that the SILO deal at issue was ''pure, abusive tax shelter,'' was ''rotten to the core'' and was ''a sham without economic substance.''

Additionally, in February 2004, Senator BAUCUS and this Senator sent letters to Washington, DC, New York City, and Chicago transit agencies asking for their assistance in an investigation of these abusive tax shelters.

I ask unanimous consent that these three letters be printed in the RECORD.

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

FEBRUARY 12, 2004.

RICHARD A. WHITE,
*CEO, Washington Metropolitan Area Transit Authority, 600 Fifth Street, NW., Washington, DC.*

DEAR MR. WHITE: We are writing to enlist the assistance of the Washington Metropolitan Area Transit Authority in our ongoing investigation of abusive tax shelters. On October 21, 2003, the Committee on Finance held a hearing regarding the continuing proliferation of abusive tax shelters. During that hearing, we learned that shelter promoters are engaging in transactions with U.S. municipalities and other state and local governmental units, which allow major U.S. corporations to depreciate state and local infrastructure assets, such as railways, subways, dams, water lines, and air traffic control systems. Our subsequent investigations have disclosed that federal agencies have endorsed these transactions, even though the Department of the Treasury had classified them as abusive tax shelters.

Under this scheme, municipalities are paid an up-front cash fee to enter into a long-term lease of their infrastructure to the tax shelter promoters. The cash received by the municipality, however, pales in comparison to the federal tax benefits received by the corporations, which will be able to depreciate taxpayer-funded bridges, subways, and rail systems as a result of the lease. As part of the same agreement, the promoters will agree to simultaneously lease the assets back to the municipality. The obligations of the promoters and municipalities are prepaid through ''phantom'' debt, and neither the tax promoters nor the municipality assumes any credit or ownership risk. At the end of the lease term, the infrastructure assets revert back to the municipality. In reality, nothing changes regarding the ownership or use of the infrastructure. One municipal manager described these transactions as ''People giving him money which he never had to pay back, for doing something that he was already doing.''

In March 1999, the Department of the Treasury under the Clinton Administration initiated enforcement actions against these transactions, which are called LILOs—an abbreviation of their industry name ''lease-in-lease-out'' transactions. We have further learned that these transactions have continued, albeit in a different form, and that other federal agencies may be approving these transactions. The LILO transactions have now been replicated through service agreement contracts and transactions called SILOs—''sales-in-lease-out.'' Other variations on these transactions have involved qualified technology equipment (QTEs).

We are certain that you share my concern that subway systems, water lines, waste treatment plants, and air traffic control systems constructed with taxpayer dollars are being used by big corporations to shelter billions of dollars in taxes through bogus depreciation deductions. In order to assist us in assessing the scope and scale of this problem, I request that the Washington Metropolitan Transit Authority submit to the Committee on Finance copies of all LILOs, SILOS, QTEs, and similar transactions that have been approved, funded, or otherwise reviewed by the Washington Metropolitan Area Transit Authority from the year 1995 to present. If you have any questions regarding this request, please contact Ed McClellan or Matt Genasci of the Senate Finance Committee at (202) 224–4515.

We appreciate your cooperation in our ongoing efforts to combat abusive tax shelters, and look forward to receiving these materials as soon as possible.

With best personal regards,

CHARLES E. GRASSLEY,
*Chairman.*
MAX BAUCUS,
*Ranking Member.*

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FEBRUARY 12, 2004.

LAWRENCE G. REUTER,
*President, New York City Transit, Jay Street, Brooklyn, NY.*

DEAR MR. REUTER: We are writing to enlist the assistance of New York City Transit in our ongoing investigation of abusive tax shelters. On October 21, 2003, the Committee on Finance held a hearing regarding the continuing proliferation of abusive tax shelters. During that hearing, we learned that shelter promoters are engaging in transactions with U.S. municipalities and other state and local governmental units, which allow major U.S. corporations to depreciate state and local infrastructure assets, such as railways, subways, dams, water lines, and air traffic control systems. Our subsequent investigations have disclosed that federal agencies have endorsed these transactions, even though the Department of the Treasury had classified them as abusive tax shelters.

Under this scheme, municipalities are paid an up-front cash fee to enter into a long-term lease of their infrastructure to the tax shelter promoters. The cash received by the municipality, however, pales in comparison to the federal tax benefits received by the corporations, which will be able to depreciate taxpayer-funded bridges, subways, and rail systems as a result of the lease. As part of the same agreement, the promoters will agree to simultaneously lease the assets back to the municipality. The obligations of the promoters and municipalities are prepaid through ''phantom'' debt, and neither the tax promoters nor the municipality assumes any credit or ownership risk. At the end of the lease term, the infrastructure assets revert back to the municipality. In reality, nothing changes regarding the ownership or use of the infrastructure. One municipal manager described these transactions as ''People giving him money which he never had to pay back, for doing something that he was already doing.''

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other federal agencies may be approving these transactions. The LILO transactions have now been replicated through service agreement contracts and transactions called SILOs—''sales-in-lease-out.'' Other variations on these transactions have involved qualified technology equipment (QTEs).

We are certain that you share my concern that subway systems, water lines, waste treatment plants, and air traffic control systems constructed with taxpayer dollars are being used by big corporations to shelter billions of dollars in taxes through bogus depreciation deductions. In order to assist us in assessing the scope and scale of this problem, I request that New York City Transit submit to the Committee on Finance copies of all LILOs, SILOs, QTEs, and similar transactions that have been approved, funded, or otherwise reviewed by New York City Transit from the year 1995 to present. If you have any questions regarding this request, please contact Ed McClellan or Matt Genasci of the Senate Finance Committee at (202) 224–4515.

We appreciate your cooperation in our ongoing efforts to combat abusive tax shelters, and look forward to receiving these materials as soon as possible.

With best personal regards,

CHARLES E. GRASSLEY,
*Chairman,*
MAX BAUCUS,
*Ranking Member.*

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FEBRUARY 12, 2004.

FRANK KRUESI,
*President, Chicago Transit Authority, Merchandise Mart Plaza, Post Office Box 3555, Chicago, IL.*

DEAR MR. KRUESI: We are writing to enlist the assistance of the Chicago Transit Authority in our ongoing investigation of abusive tax shelters. On October 21, 2003, the Committee on Finance held a hearing regarding the continuing proliferation of abusive tax shelters. During that hearing, we learned that shelter promoters are engaging in transactions with U.S. municipalities and other state and local governmental units, which allow major U.S. corporations to depreciate state and local infrastructure assets, such as railways, subways, dams, water lines, and air traffic control systems. Our subsequent investigations have disclosed that federal agencies have endorsed these transactions, even though the Department of the Treasury had classified them as abusive tax shelters.

Under this scheme, municipalities are paid an up-front cash fee to enter into a long-term lease of their infrastructure to the tax shelter promoters. The cash received by the municipality, however, pales in comparison to the federal tax benefits received by the corporations, which will be able to depreciate taxpayer-funded bridges, subways, and rail systems as a result of the lease. As part of the same agreement, the promoters will agree to simultaneously lease the assets back to the municipality. The obligations of the promoters and municipalities are prepaid through ''phantom'' debt, and neither the tax promoters nor the municipality assumes any credit or ownership risk. At the end of the lease term, the infrastructure assets revert back to the municipality. In reality, nothing changes regarding the ownership or use of the infrastructure. One municipal manager described these transactions as ''People giving him money which he never had to pay back, for doing something that he was already doing.''

In March 1999, the Department of the Treasury under the Clinton Administration initiated enforcement actions against these transactions, which are called LILOs—an abbreviation of their industry name ''lease-in-lease-out'' transactions. We have further learned that these transactions have continued, albeit in a different form, and that other federal agencies may be approving these transactions. The LILO transactions have now been replicated through service agreement contracts and transactions called SILOs—''sales-in-lease-out.'' Other variations on these transactions have involved qualified technology equipment (QTEs).

We are certain that you share my concern that water lines, waste treatment plants, and air traffic control systems constructed with taxpayer dollars are being used by big corporations to shelter billions of dollars in taxes through bogus depreciation deductions. In order to assist us in assessing the scope and scale of this problem, I request that the Chicago Transit Authority submit to the Committee on Finance copies of all LILOs, SILOs, QTEs, and similar transactions that have been approved, funded, or otherwise reviewed by the Chicago Transit Authority from the year 1995 to present. If you have any questions regarding this request, please contact Ed McClellan or Matt Genasci of the Senate Finance Committee at (202) 224–4515.

We appreciate your cooperation in our ongoing efforts to combat abusive tax shelters, and look forward to receiving these materials as soon as possible.

With best personal regards,

CHARLES E. GRASSLEY,
*Chairman.*
MAX BAUCUS,
*Ranking Member.*

Mr. GRASSLEY. I have been fighting against SILO/LILO tax shelters for a long time, as has Senator BAUCUS. In October 2003, the Finance Committee held hearings on the status of abusive tax shelter activities. During that hearing, we received anonymous testimony from a leasing industry executive that used the name Mr. Janet. He described how U.S. corporations were able to take tax deductions for such things as the Paris, France, sewer lines and the New York subway system. Major corporations were claiming tax deductions on taxpayer-funded infrastructure located in the United States and overseas.

Imagine our surprise when we learned that U.S. taxpayers were subsidizing the cost of electric transmission lines in the Australian outback. I find it hard to believe that a corporation was actually taking a tax deduction for the New York City transit car pictured here. However, that is exactly what greedy corporations were doing. Just like the greedy tax shelter promoters who were handing out U.S. taxpayer money to greedy corporations by selling these shady tax shelters to them, the House voted last night to put U.S. taxpayer dollars on the line to bail out tax shelter participants and perpetuate these abusive tax shelters.

If we look at all the key congressional players on this deal, we will find that, perhaps not by coincidence, nearly all of them represent areas where these transit shelter deals were done. These tend to be the biggest cities. They tend to be the areas where the shops that hired the sharpies that manufacture these tax shelters do business. Most of these key congressional players for years, especially when Republicans were in the majority, railed against tax shelters. Now we find that for these key congressional players, the imperatives of the transit lobby decisively outweigh the importance of cracking down on a tax shelter that a Federal judge rightly described as ''rotten to the core.''

This reminds me of the Joker from the 1989 version of ''Batman,'' who says: ''I'm giving out free money.'' You know the Joker, as shown on this chart. You have seen him. ''I'm giving out free money.'' As we all know, money is not free. Unfortunately, the joke here has been—and will again be if we do not do something about it—on the American taxpayer. Literally, the guarantee continues the cruel tax shelter joke on the American taxpayers' dime.

I urge my colleagues in the Senate to not allow this cruel joke to be played on the American taxpayers. I have fought against these tax shelters in the past, and I will continue to fight against them in the future. This provision puts taxpayers' dollars on the line and perpetuates an abusive tax shelter. In fact, it puts the U.S. Government in the position of guaranteeing tax benefits that corporations, including foreign corporations—again, I want to emphasize—hope to reap from engaging in these tax shelters. So as Senator BAUCUS has just done—and I thank him for his leadership—I urge my colleagues to vote against this bill which contains a bailout for tax shelter participants.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Kentucky.

Mr. BUNNING. Mr. President, are we as in morning business?

The PRESIDING OFFICER. We are in morning business, Senator.

Mr. BUNNING. Thank you.

Mr. President, I rise to speak on the auto bailout proposal before the Senate. But before talking about any legislation, I wish to say that I am very concerned, as everybody in the United States is, about the state of the auto industry, not only in Detroit but other States that have a great deal of auto workers and related industries.

As I said at the first Banking Committee hearing on this issue, I am not concerned about any sense of American pride or because of the great history of the American auto industry. What concerns me is the workers—the men and women who assemble our cars and trucks, who sell and service the vehicles, and those who work for the suppliers who keep the industry running.

Auto manufacturing is the largest manufacturing sector in my Commonwealth. That is the Commonwealth of Kentucky. I know Detroit's pain is felt in many towns and cities in Kentucky. In many counties, jobs supplying parts to GM, Ford, or Toyota are some of the best jobs anywhere in Kentucky. Those jobs are in danger, and I am concerned for the workers and their families.

The question facing Congress is what, if anything, we can and should do about the industry's current problems.

As I understand it, one of the two bills that is going to come before the Senate—as soon as this afternoon—one is the bill passed by the House, and the other is a similar Senate proposal. Unfortunately, much like the other bailouts we have passed, those bills rely on hopes and promises of future actions and do not require serious concessions. Those bills do not address the immediate problems facing the industry, which is a lack of funding for car loans and dealer floor plans, and many other related issues.

While the Detroit manufacturers were forced by the economic crisis to come to Congress for aid at this time, their problems are not just the result of problems in our current financial markets. The companies are simply uncompetitive in today's marketplace because of decades of bad business decisions by both the corporate management and the labor unions. What is needed is a serious restructuring of the companies that brings their costs in line with the costs of cars made by manufacturers such as Honda and Toyota and their capacity in line with the true demand for new cars, not the artificially inflated demand of the last few years.

Neither the House bill nor the Senate bill forces these companies and their stakeholders to make the changes necessary to force restructuring. The so-called car czar has no real power to make the companies and stakeholders reach an agreement accomplishing the cost and capacity changes that must be made. Because the companies would not survive in the long term without those changes, they would be back before Congress next year asking for more money to get them through the next few months, and back again and again. That is an irresponsible use of taxpayer dollars and would ultimately lead to the death of the companies and many thousands and thousands of jobs permanently being lost. Because I care too much about the workers, I cannot support either of these bills as they are currently written.

I have previously said I would support Federal assistance for companies if they undertake a chapter 11 bankruptcy restructuring. Federal financing and warranty guarantees would enable the companies to emerge from that restructuring successfully and more quickly than they would otherwise. Senator SHELBY and Senator ENSIGN have an amendment to do just that, and I will be supporting their amendment if they are allowed to have a vote on it on the floor of the Senate.

However, chapter 11 bankruptcy is not the ideal solution, and I know just the word ''bankruptcy'' causes many people whose jobs, retirement, and health care depend on the companies to shudder. A similar restructuring that accomplishes significant changes outside of bankruptcy would work as well. Senator CORKER has an amendment that would require those significant changes as a condition of Federal assistance provided in the majority's bill. If the majority allows a vote on Senator CORKER's amendment, I will support it. If the amendment is adopted to the Senate version of the bill, I will support passage. If the majority blocks any minority amendments, as they have done for nearly the entire Congress, I will oppose the bill and any cloture motions.

I will go ahead and state for the record that if the Corker amendment passes and the bill becomes law, I will oppose any and all attempts to weaken its requirements. Now, I say that knowing full well that I am very concerned that come January 20, the majority might try to rewrite the requirements so that the companies are not forced to make painful changes that are necessary for them to survive in the long term. I hope that will not be the case.

For these companies to survive and thrive, there must be painful changes made, and we all know some jobs will be lost. However, with a successful restructuring, the Corker amendment being included, more jobs will be preserved for the long term than if we just prop up the companies with taxpayers' dollars for a few short months and hope for the best.

Mr. President, I yield the floor.

Mr. President, since no one else is in the Chamber, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I would like to speak for less than 10 minutes as in morning business.

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

Mr. GRASSLEY. I thank the Chair.

## HOLDER NOMINATION HEARING SCHEDULE

Mr. GRASSLEY. Mr. President, I would like to discuss Eric Holder's nomination to be the U.S. Attorney General. While Mr. Holder appears to have the appropriate credentials and work experience, it is important that the Judiciary Committee be able to fully and carefully vet the candidate for this important position because this is the Nation's top law enforcement officer.

I was surprised to hear that the chairman of the Judiciary Committee noticed Mr. Holder's confirmation hearing for January 8, 2009. Mr. Holder was only formally announced as the prospective Attorney General nominee on December 1 of this year. I understand the Judiciary Committee has a large number of boxes of archived documents relating to his employment at the Justice Department, and those materials need to be reviewed. We have not even gotten Mr. Holder's questionnaire, nomination materials, or FBI background investigation yet. Judiciary Committee members just sent a letter to the Justice Department and the Clinton Library requesting documents relating to issues that Mr. Holder was involved in during his tenure in the Clinton Justice Department. Once we get these materials and once these documents come to us, it will take some time for committee members to review them.

While it is not unprecedented for the Judiciary Committee to hold a hearing prior to the inauguration of a President, such as the one held for former Attorney General John Ashcroft, there are significant differences. First, the Ashcroft nomination hearing was held from January 16 to January 19, 2001, obviously giving committee members more breathing room to review his record. Moreover, Attorney General Ashcroft was a well-known quantity to us because he served as our colleague in the U.S. Senate and he was a prominent member of the Judiciary Committee. Of course, this was all prior to his nomination for Attorney General. Even then, my colleagues on the other side of the aisle insisted on 2 days of testimony from the nominee and 2 days of testimony from 23 other outside witnesses, for a total of 4 days of hearings.

The bottom line is that the proposed January 8 hearing timetable doesn't give members a full and fair chance to consider Mr. Holder's background as thoroughly as we should. We must have time to comprehensively examine all of Mr. Holder's information, materials, and documents, most of which we haven't even received yet. There is no need to jump the gun and undermine our oversight responsibilities.

This is all the more important because Mr. Holder is not a nominee free and clear of issues. The fact is Mr. Holder played a very key role in some very controversial matters, and since his nomination, a number of newspapers, including the New York Times, the Washington Post, and the Wall Street Journal, have all published articles reminding the public of those controversies and raising serious questions about Mr. Holder's role in them. These issues need to be fully considered by members of the Judiciary Committee and eventually by the full Senate.

For example, red flags about Mr. Holder's judgment and independence include his role in securing pardons or clemency for an unrepentant billionaire fugitive tax cheat such as Marc Rich or terrorists such as members of the FALN and Weather Underground. A lot of people—including this Senator—have found these facts to be troubling. As I previously mentioned, a number of editorials have been written asking questions about how those facts impact Mr. Holder's ability to serve as U.S. Attorney General. I expect to question Mr. Holder at his confirmation hearing about these and other controversial matters he has been involved with.