FISA AMENDMENTS ACT OF 2008—MOTION TO PROCEED

Mr. REID. Mr. President, I now move to proceed to Calendar No. 827, H.R. 6304, the Foreign Intelligence Surveillance Act.

The ACTING PRESIDENT pro tempore. The motion is debatable.

CLOTURE MOTION

Mr. REID. Mr. President, I send to the desk a cloture motion.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to proceed to Calendar No. 827, H.R. 6304, the FISA Amendments Act of 2008.

Sheldon Whitehouse, Patty Murray, Max Baucus, Tim Johnson, Ken Salazar, Barbara A. Mikulski, John D. Rockefeller, IV, Herb Kohl, Robert P. Casey, Jr., Daniel K. Inouye, Mary Landrieu, Blanche L. Lincoln, Mark L. Pryor, Dianne Feinstein, Thomas R. Carper, Joseph Lieberman, Claire McCaskill.

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

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

The legislative clerk proceeded to call the roll.

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

Mr. SPECTER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, I have sought recognition to address the issues on legislation which is coming from the House of Representatives amending the Foreign Intelligence Surveillance Act.

The issues on which the Senate will vote on the House bill involve very fundamental questions of constitutional rights versus the war on terrorism. We have legislation which has come from the House of Representatives which would grant retroactive immunity to the telephone companies on a showing that the companies receive written requests from the Government saying the program was legal.

At the outset, I recognize the telephone companies as good citizens. But the test of whether what has been done is legal is not determined by the assertion by the Government to the telephone companies that the program is legal. That determination can only be made by the courts on evaluation of congressional authority under article I, which has been exercised in the Foreign Intelligence Surveillance Act of 1978, since amended, contrasted with the President's article II powers as Commander in Chief. That test has not been waived.

I submit the historians will look back upon the period of time from 9/11 to the present and beyond as the greatest expansion of executive authority in the history of the country. I believe additional law enforcement tools were necessary. In my capacity as the chairman of the Judiciary Committee, I led the fight for the PATRIOT Act re-authorization on this floor to give law enforcement broader power.

But, at the same time, I have expressed my deep concern that there be a determination by the courts as to whether the warrantless wiretapping is valid under the Constitution. We have seen great stress laid upon the provision in the House measure that the exclusive means for wiretapping will be provided by the statute. But that does not stop the President from asserting his authority under article II of the Constitution.

The Foreign Intelligence Surveillance Act of 1978 has a similar provision of exclusivity, but that did not stop the President from initiating the Terrorist Surveillance Program which was kept secret for years from the Congress. The President has a sound constitutional argument that you cannot amend the Constitution by statute; you cannot take away the President's constitutional authority by a statute, but it is up to the courts to strike the balance and to make that determination.

Regrettably, Congress and the efforts which we have made have, I submit, been totally insufficient. We have had the so-called signing statements as an expansion of executive authority, and Congress has been unable to assert its authority under the Constitution on the legislation we send to the President. The Constitution is plain. Each House passes legislation. There is a conference report, and it is sent to the President and presented. Then the President has the option of either signing or vetoing.

But a practice has arisen in the past, very extensively used by this administration, to put in signing statements which are at material variance—that really directly contradict what is in the legislation. There may be some justification for a signing statement on some minor matters on an administrative level, but in my formal statement I go into a couple of examples on a controversy on enhanced interrogation, or so-called torture, which passed the Senate 90 to 9.

In a celebrated meeting between Senator MCCAIN and President Bush, they reached a compromise. Then when the legislation went to the President, the President issued a signing statement saying that he had the authority to disregard it under his powers as Commander in Chief, article II authority.

In a similar vein on the PATRIOT Act re-authorization, we put in restrictions on what the law enforcement officials could do, negotiated with the administration, signed into law by the President, and again a statement was made that if the President chose to exercise his constitutional authority, article II power, he felt free to do so.

I introduced legislation to give the Congress standing to go to court to challenge these signing statements. The legislation has not gotten very far because of the impossibility of overriding a veto and because of the concern as to whether the constitutional standard of the case and controversy would be met. So here we have the unfettered practice of these signing statements as an example of executive authority.

Second, the Supreme Court review of the Terrorist Surveillance Program and habeas corpus has been inadequate. In the Detroit case, the Federal court finding the Terrorist Surveillance Program unconstitutional was appealed to the Sixth Circuit. After lengthy delays, the Sixth Circuit reversed the Detroit Federal court on the grounds of lack of standing. Then, again, after months of delay, the case went to the Supreme Court of the United States which, again, denied certiorari.

The issue of standing has sufficient flexibility, as demonstrated by the dissent in the Sixth Circuit, that the Supreme Court could have taken up the issue. The question on the Terrorist Surveillance Program presents the sharpest conflict of our era on the clash between the President's authority under article II as Commander in Chief and the authority of Congress to enact statutes, as we did under the Foreign Intelligence Surveillance Act of 1978.

Similarly, on habeas corpus, notwithstanding the Rasul decision, the Court of Appeals for the District of Columbia in Boumediene essentially disregarded the holding of the Supreme Court in Rasul when the Circuit Court for the District of Columbia said the decision by the Supreme Court turned on a statutory interpretation.

Habeas corpus is provided for in two ways under our law: No. 1, it is descended from the Great Writ, the Magna Carta, of 1215, and it is embodied in our constitutional law as made plain by Justice Stevens in Rasul. And there is also a statutory provision for habeas corpus. In the Military Commissions Act, the Congress modified the statutory provision, and the Court of Appeals for the District of Columbia saw fit to say that once the statute was changed, habeas corpus didn't apply—really flying in the face of what the holding was in Rasul.

Finally, a protracted period of time later, in Boumediene, the Supreme Court reinstated habeas corpus as it was bound to do based upon the clear holding of Rasul and the long history of the issue.

Congress has similarly been ineffective in curtailing executive authority in the National Security Act of 1947, which requires the President to notify the intelligence committees of both the House and Senate, and for protracted periods of time the executive branch ignored that requirement. Only when the confirmation of General Hayden as Director of CIA came up was

there some compliance with that requirement.

The Judiciary Committee, during my tenure as chair, sought to bring in the telephone companies, sought to issue subpoenas to find out what the telephone companies were undertaking. On that situation, as I have said on the floor of the Senate, Vice President CHENEY personally went behind my back to talk to Republican members of the Judiciary Committee without talking to me at any stage. That effort was made because the telephone companies, unlike the executive branch, unlike the President—the telephone companies do not have executive privilege.

Similarly, the Senate defeated my amendment on the Foreign Intelligence Surveillance Act which would have substituted the Government for the telephone companies as the parties defendant. There was a way that the telephone companies could have been recognized for their good citizenship and held harmless by having the Government step into their shoes. But that amendment was defeated.

I submit the case for this determination has a very important dimension beyond the customary doctrine of separation of powers because we are asked to give retroactive immunity to something while we don't even know on the record the full import of what is involved. The warrantless wiretapping, the data mining by the telephone companies is known only to some Members of Congress. It is not known to the public. I intend to offer an amendment which will require that the district court—the House bill now lodges jurisdiction in the district court to make the determination on the legality of FISA—my amendment will call for the district court to make the determination as to whether what has been done by the telephone companies is constitutional.

The ultimate vote on this matter is a tough one. There are quite a number of provisions in the House bill which are protective of civil liberties. I have detailed them in my formal written statement. So when I come to a balance as to voting for the bill or not, my inclination is to vote in favor of the bill because of the importance of the ongoing activities of the telephone companies, notwithstanding my deep concern for civil rights. But there is a much better alternative, and that much better alternative would have been to have substituted the Government for the telephone companies as the party defendant or, now, to submit the question of constitutionality to the district court.

My vote was misunderstood on the Military Commissions Act. When I had led the fight to retain habeas corpus in that bill, it was defeated 51 to 48—but we later voted for the bill because of its recognition of the applicability of the Geneva Conventions and other important parts of the bill. I said at the time that because of the severability clause, the Supreme Court of the United States would reinstate habeas corpus—which, of course, in the past couple of weeks, we know the Supreme Court has done.

We are dealing here, essentially, with very subtle and very nuanced provisions. There are very tough judgments to be made in the legislative context. The war on terrorism is still on the front burner. We do not know what is going to come next.

So that any time there is a balance as to what we ought to do, because of the value which I think is present from this data-mining and the work done by the telephone companies, I think it ought to be maintained. But where we have an option of doing it in a constitutional way, either by sunshine or by submitting it to the court, that is the preferable course of conduct.

I ask unanimous consent that the full text of a detailed statement summarizing my position and a draft amendment be printed in the RECORD so my colleagues will have an opportunity to review both my written statement and my oral presentation of the proposal for an amendment which I intend to offer when the bill comes up.

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

FLOOR STATEMENT ON FISA

The Senate is coming to a critical vote on our duty to exercise our most fundamental constitutional obligation on separation of powers: to strike the appropriate balance between the war against terrorism and protecting civil rights. We are asked by the House of Representatives to approve their bill on amending the Foreign Intelligence Surveillance Act, a bill which gives retroactive immunity to the telephone companies that facilitated warrantless surveillance, but does not require a judicial determination that the government's program was constitutional.

It is totally insufficient to confer immunity merely because the companies received written requests from the government saying the program was legal. While it is true that the standard of review has been changed from ''abuse of discretion'' to ''substantial evidence'' in this bill, the real question is ''substantial evidence'' of what? Only that the President authorized the program and the government sent written requests to the companies assuring them it was legal. The court is not required to find that the requests were lawful, or that the surveillance itself was constitutional.

The provision that the legislation will be the exclusive means for the government to wiretap is meaningless because that specific limitation is in the 1978 Act and it didn't stop the government from conducting the warrantless Terrorist Surveillance Program with the telephone companies' assistance. The bill leaves the President with his position that his Article II powers as commander in chief cannot be limited by statute. That is a sound constitutional argument, but only the courts can ultimately decide that issue, and this bill dodges the issue by limiting judicial review.

The constitutional doctrine of separation of powers has been mangled since 9/11. I believe that, decades from now, historians will look at the time between 9/11 and the present as the greatest expansion of unchecked executive power in the history of the country. I believe that much, if not most, of that power was necessary to fight terrorism and I led the fight as Chairman of the Judiciary Committee to expand law enforcement powers under the PATRIOT Act. I also offered numerous pieces of legislation designed to bring the Terrorist Surveillance Program under federal court review and to ensure that vital intelligence gathering could continue with appropriate oversight. In the 109th and 110th Congresses, I introduced several versions of the National Security Surveillance Act (first introduced on March 16, 2006), the Foreign Intelligence Surveillance Improvement and Enhancement Act (with Senator Feinstein, first introduced on May 24, 2006), and the Foreign Intelligence Surveillance Oversight and Resource Enhancement Act (first introduced on November 14, 2006).

There has to be a check and balance. The Congress has been totally ineffective, punting to the courts and then seeking to limit the courts' authority as the House of Representatives is now doing. The problem is compounded by the fact that the Supreme Court had ducked and delayed deciding where the line is between Congressional authority under Article I and presidential authority under Article II.

Let me document the ineffectiveness of Congress:

(1) Signing Statements: The constitution is explicit that Congress sends legislation to the president who has only two options: sign or veto. Instead on key provisions limiting executive authority, including Senator McCain's amendment—adopted 90 to 9 in the Senate—to ban ''cruel, inhuman or degrading'' treatment of any prisoner held by the United States, and the new PATRIOT Act sections requiring audits and Congressional reporting to ensure the FBI does not abuse its terrorism-related powers to secretly demand the production of records, the President has signed the Congressional presentment and then issued a statement asserting his Article II power to ignore those limitations.

My legislation to give Congress standing to challenge the constitutionality of those signing statements has gone nowhere because of three factors: (1) The disinclination of Congress to challenge the president in the context of getting blamed if there were another terrorist attack; (2) the virtual impossibility of overriding a veto; and (3) the doubts by a few that such legislation would satisfy the constitutional requirements of the case and controversy.

(2) Requiring Supreme Court Review of the TSP and Habeas: The efforts to get a Supreme Court ruling on the constitutionality of the Terrorist Surveillance Program were ducked by the Supreme Court. The ruling of the U.S. District Court in Detroit holding the Terrorist Surveillance Program unconstitutional was reversed by the 6th Circuit on a 2–1 vote on lack of standing and the Supreme Court denied certiorari. The doctrine of standing has enough flexibility, as demonstrated by the dissent in the 6th Circuit, to have enabled the Supreme Court to take up the most fundamental clash between Congress and the president in our era, if the Supreme Court had the courage to do so.

The Supreme Court acted almost as badly on the habeas corpus issue in initially denying certiorari on the D.C. Circuit's decision in Boumediene, which ignored the plain language in Rasul confirming that habeas corpus was a constitutional right, not just one based on legislation which Congress had changed. Only when confronted with the overwhelming evidence on the inadequacy of the Combat Status Review Tribunals did the Supreme Court finally grant a petition for reconsideration on certiorari and ordered the District Courts to grant habeas corpus review after a very long delay.

(3) Violation of the National Security Act: The Congress was remedy-less to do anything when the President ignored the National Security Act of 1947 which requires notification of programs like the Terrorist Surveillance Program to the House and Senate Intelligence Committees. It was only when the administration needed the confirmation of General Michael Hayden to be Director of the CIA that any effort at compliance was made.

(4) Subpoenas for Telecoms: My efforts as Chairman of the Judiciary Committee in June 2006 to get information about the telephone companies' warrantless wiretapping were obstructed by an unusual breach of protocol by Vice President DICK CHENEY personally when he went behind my back to urge other Judiciary Committee members to oppose my efforts to subpoena the telephone companies which, unlike the administration, could not plead executive privilege.

(5) Military Commissions Act: Congress has been docile, really inert, in failing to push back on the executive's encroachment on our authority. My amendment to retain habeas corpus in the Military Commissions Act was defeated 48–51. Meanwhile, the Graham-Levin amendment to the National Defense Authorization Act for Fiscal Year 2006 passed by the shocking vote of 84–14 despite the fact that it was drafted overnight, had no hearing and virtually no debate with my having only two minutes to speak in opposition. On its face the amendment stripped the Supreme Court of jurisdiction by vesting exclusive jurisdiction with the District of Columbia Circuit. It would be hard to find an amendment on a more important subject given less scrutiny and passed with less thought and in such haste.

(6) FISA Substitution Amendment: Similarly, the Senate defeated my amendment to the Foreign Intelligence Surveillance Act which would have substituted the government for the telephone companies as the defendants in the pending litigation. That would have protected the telephone companies but left the courts to decide if the program was constitutional.

The Senate now has the opportunity to provide for judicial review by amending the House Foreign Intelligence Surveillance Act bill to authorize the U.S. District Courts to determine the constitutionality of the administration's program before granting immunity to the telephone companies.

The case for that determination has an important extra dimension beyond separation of powers. It involves a repugnant factor; namely, that the government had instigated and maintained for many years a secret practice, the scope of which is unknown to the public and known only to some members of Congress. It smacks of Star Chamber proceedings from old England. Now the administration insists on retroactive immunity and the House has complied. It is time the Senate stood up and earned its reputation as the ''world's greatest deliberative body'' and at least demonstrate some courage, if not a full profile, by insisting on judicial review.

In offering an amendment for judicial review, I am mindful of the importance of what the telephone companies have been doing on the war against terrorism from my classified briefings. It is a difficult decision to vote for retroactive immunity if my amendment fails, but I will do so, just as I voted for it when my substitution amendment failed because I conclude that the threat of terrorism and the other important provisions in the House bill outweigh the invasion of privacy.

I do so with great reluctance because it sets a terrible precedent for the executive to violate the Foreign Intelligence Surveillance Act, the National Security Act of 1947, and the presentment clause of the constitution and then receive a Congressional pardon. It is especially galling since Congress could both protect the telephone companies by substitution and allow the lawsuits to go forward or authorize their continuance by my amendment.

I also intend to vote for the bill regardless of what happens to my amendment because of the other important features of the bill. It requires prior court review of the government's foreign-targeted surveillance procedures, except in exigent circumstances (the 7–day exception). Also, the FISA Court must determine whether—going forward—the foreign targeting and minimization procedures satisfy the Fourth Amendment. The bill also requires prior, individualized court orders based on probable cause for U.S. persons when they are outside the country. And, the bill requires a comprehensive Inspector General review of the Terrorist Surveillance Program.

I know that this nuanced position of fighting retroactive immunity and then voting for the bill will be misunderstood because of the complexity of the issues and the subtleties of my rationale.

I have been similarly misunderstood in my castigation of the provisions eliminating statutory habeas corpus and court-stripping in the Military Commissions Act and then voting for the bill. I did so, and gave my contemporaneous reasons, because the Act contained many important provisions, such as implementing the Geneva Conventions in accordance with the Supreme Court's Hamdan ruling. The Act also brought the military commissions within Congressional authorization and the law—something the current bill seeks to do for vital intelligence gathering. I said at the time that the Supreme Court would strike the exclusion of habeas corpus, leaving the rest of the Act intact under the severability clause, and that did happen in Boumediene.

It is my hope that my colleagues in the Senate and House too would give a little extra consideration to this issue because it is past time for Congress to assert itself and at least leave the courts free to determine constitutional rights and separation of powers.

DRAFT AMENDMENT

In section 802(b) of the Foreign Intelligence Surveillance Act of 1978, as added by section 201 of the Act, strike paragraph (1) and insert the following:

''(1) REVIEW OF CERTIFICATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

''(B) COVERED CIVIL ACTIONS.—In a covered civil action relating to assistance alleged to have been provided in connection with an intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, a certification under subsection (a) shall be given effect unless the court—

''(i) finds that such certification is not supported by substantial evidence provided to the court pursuant to this section; or

''(ii) determines that the assistance provided by the applicable electronic communication service provider was unconstitutional.

Mr. NELSON of Florida. Mr. President, Floridians are hurting—foreclosures are skyrocketing. According to one estimate, at the end of March 2008, Florida had nearly 200,000 properties in foreclosure. In the first quarter of 2008, Florida had the second highest total of foreclosures, nationwide—up 17 percent from the previous quarter and 178 percent from last year. Statewide, one in every 97 households received a foreclosure filing. In May, Cape Coral Ft. Myers, Florida, had the second highest foreclosure rate in the Nation, with one in every 79 homes receiving a foreclosure filing. This crisis isn't limited to subprime mortgages or risky borrowers—it destroys the value of entire communities. The ripple effect translates into big losses for the State's economy—an estimated $35.9 billion decrease in home value and tax base in Florida.

I rise to discuss a bipartisan amendment that have filed with my colleague from Minnesota, Senator COLEMAN. This amendment provides common-sense relief to homeowners trying to stay in their homes and avoid foreclosure.

Current law imposes a 10 percent penalty for individuals choosing to make an early withdrawal from their retirement savings. There are exceptions to this penalty: years ago, we allowed first time homeowners to use their retirement savings to help purchase a home. Surely, we can agree that in 2008 we should allow homeowners to use a small portion of their savings to save their home.

Our amendment waives the 10 percent penalty for folks wishing to make an early-withdrawal to help avoid foreclosure. To be eligible for this waiver, homeowners must have proof that they are participating in a Government or industry sponsored foreclosure prevention program, like HOPE NOW, or the HOPE for Homeowners Program established in the bill we are considering today. This benefit is limited to 2 years, and the withdrawal amount is capped at $25,000. Taxpayers will also have 2 years to repay what they borrowed from their retirement savings. This amendment is fully offset.

I received an email from Wayne, who lives in Stuart, FL. Wayne is an Air Force Veteran who recently lost his job, and in order to try to keep his home, he liquidated his 401(k) savings and paid the 10 percent penalty. The housing bill we are considering today gives tax credits for first time homebuyers to purchase homes, but current tax law penalizes folks like Wayne, who are trying their best to save their home, using their own money.

In many instances, a home is the greatest single source of wealth for Americans. It makes sense to make a limited exception to allow homeowners to use every tool available to stay in that home, and save their greatest investment. I encourage my colleagues to support this amendment.

Mr. COLEMAN. Mr. President, I rise with my colleague from Florida to speak on behalf of our amendment to allow homeowners penalty-free use of up to $25,000 in retirement funds to keep their house.

Before I speak to the amendment, I would like to thank, first, the chairman of the Banking Committee Senator DODD and ranking member Senator SHELBY, as well as the chairman of the Finance Committee, Senator BAUCUS and ranking member Senator GRASSLEY for their leadership in putting this important bipartisan housing bill together. And, I have special thanks for Senators BAUCUS and GRASSLEY for working with us one this important amendment.

The need to act to address the housing crisis could not be more urgent. In my travels throughout my State, I have seen how the housing crisis is hurting families, communities and the economy.

Just to underscore how serious this situation really is for the Minnesota economy, we learned last week that more Minnesotans are out of work than since 1983. We are talking about construction workers of which nearly 7,000 have lost a job during the past year.

We are talking about folks like Ron Enter and his wife whose small building materials business is being devastated by the housing crisis. They have already significantly reduced their workforce and warn of more cutbacks if the housing market does not improve in order to keep their business going.

Bottom-line, our housing woes have spilled over into the rest of our economy, and as a result it is a problem that is undercutting entire communities and their families.

This amendment presents a bipartisan solution that's in the spirit of the cooperation demonstrated by Senators DODD, SHELBY, BAUCUS, and GRASSLEY on this housing package.

During my travels and housing town hall forums I have held back home in Minnesota, I have met more and more folks who are tapping into their retirement savings in a desperate effort to keep their homes—average, hard-working folks such as Terri Ross, a nurse, who I met at a housing town hall forum in St. Cloud, where she talked about using her retirement savings to keep her home.

The problem is that as homeowners across Minnesota and the Nation use their retirement savings to save their homes, they are getting hit hard with a 10-percent early withdrawal tax penalty.

As we are on the verge of passing this bipartisan legislation to address the housing crisis, Senator NELSON and I believe that one more way we can responsibly address the housing crisis is to temporarily waive this 10 percent penalty. Given that the Tax Code waives the 10 percent penalty for early withdraw from individual retirement accounts, IRAs, for first-time home purchases, I believe that it is only fair to waive this penalty for those who want to keep their homes.

At the end of the day, we should not penalize homeowners for trying to keep a roof over their heads and wanting to remain a part of the community they have called home.

In an effort to address a point of concern raised by the distinguished Senator from Connecticut when we were on the floor in April, Senators NELSON and I are proposing that this relief be made available only to those homeowners who participate in government or industry sponsored foreclosure prevention programs such as the HOPE for Homeowners Program and FHA Secure. We do agree that it would make good sense to ensure that lenders also do their part to help homeowners keep their homes.

And, that is why in this amendment, homeowners could only use this relief in cases where the lenders also provide relief. We believe that this is fair and right. We believe that this modification to our previous proposal will ensure there is, to quote the chairman ''commensurate responsibility on the part of the lender.''

I urge my colleagues to support this commonsense and much-needed amendment and thank my colleague from Florida for his great work on this amendment.

RESTORE CONFIDENCE IN MORTGAGE SECURITIES

Ms. SNOWE. Mr. President, I wish to speak to an amendment that I will offer which will increase the trustworthiness of the Nation's mortgage security market by creating the Federal Board of Certification for mortgage securities.

The recent collapse of Bear Stearns and the huge losses suffered throughout the financial industry demonstrate a catastrophic failure to accurately assess the dangers of imprudently made subprime mortgages to the American public and our financial markets. In hindsight, it appears that it was the inability to gauge risk in mortgage-backed securities that caused much of this financial turmoil. For markets to operate properly, it is imperative that they have effective metrics for calculating the level of risk securities pose to investors.

The secondary mortgage market has been a largely unregulated playground where poorly underwritten, low-quality loans were sold as high-quality investment products. Although mortgage-backed securities can be a positive market force, which increases the available pool of credit for borrowers, without an accurate picture of the risk involved in each mortgage security, buyers have no idea whether they are buying a high-risk investment or a safe, secure investment. My legislation would work to curb the excesses of the secondary market, combat future attempts at deception, and protect investors by making securitized mortgage investments more reliable and trustworthy.

The inability of major corporations to properly assess the risk of the mortgage securities they were trading is a problem whose effects have not been confined to Wall Street. To put it simply: When big banks sneeze, the rest of America gets a cold. By 2009, more than a trillion dollars of the subprime mortgages originated during the housing boom will reset to higher interest rates. Currently, according to the Mortgage Bankers Association, 43 percent of subprime adjustable rate mortgages are already in foreclosure. In my home State of Maine, we are struggling with falling home prices and a record number of foreclosures. Some Maine borrowers, with rising monthly payments, are unable to refinance out of their predatory loans. Small business owners, many already hurt by the economic downturn, are also finding credit tight. The bad economic climate caused by the subprime credit crunch is roiling the stock market causing Americans to loose billions in their IRAs and retirement funds.

We need to fix this crisis before it gets any worse and make sure it never happens again. Francis Bacon said that ''knowledge is power.'' My amendment would give investors the knowledge to make intelligent calculations of risk and, as a result, it would give them the power to decide how much risk they could collectively handle.

Turning to specifics, my amendment creates the Federal Board of Certification, which would certify that the mortgages within a security instrument meet the underlying standards they claim in regards to documentation, loan-to-value ratios, debt service to income ratios, and borrowers' credit standards. The purpose of the certification process is to increase the transparency, predictability, and reliability of securitized mortgage products. Certification would aid in creating settled investor expectations and increase transparency by ensuring that the mortgages within a mortgage security conform to the claims made by the mortgage product's sellers.

The proposed Federal Board of Certification would not override any current regulations and would not, in any way, stifle any attempts by private business to rate mortgage securities., This legislation would, however, create incentives for improving industry rating practices. Open publication of the board's certification criteria would augment the efforts of private ratings agencies by providing incentives for increased transparency in the ratings process. The board's certification would also serve as a check on the industry to ensure that ratings agencies carefully scrutinize the content of mortgage products before issuing evaluations of mortgage-backed securities.

Significantly, the Federal Board of Certification would also be voluntary and funded by an excise tax. Users could choose to pay the costs for the board to rate their security, or they could elect not to submit their product to the board.

We must quickly restore confidence in the U.S. mortgage securities if we are to stabilize our housing markets