was enough, but let's give credit where it is due. He suggested we cut $211 million. We didn't even do that. The Senate could only find $15 million to cut and the House only $20 million. Because of Congress's spending and the administration's lack of willingness to cut spending, President Obama has presided over more new domestic spending in his first 10 months in office than President Clinton did in 8 years.

One of the first bills I supported when I came here was the Budget Enforcement Legislative Tool Act of 2009. It is a long title. It is a proposal I think both Republicans and Democrats should be able to agree upon. The bill requires us in Congress to do an up-or-down vote on the President's recommendation on spending. In this case, we would have cut more than $200 million if we would have adopted the President's recommendation; not enough but better than what we did.

I believe it is time to stop talking about cutting spending and do something about it. I am going to come each week to the floor and talk about the various appropriations bills we have gone over. I will keep a running tally, starting with the $12 billion we could have saved in this appropriation. At the end of the day, hopefully, the comments I make will encourage others in this body and in the House of Representatives to take this spending situation seriously.

I guess all of us wish we were in the situation the Federal Government is in, where we could spend more than we have, in terms of income, and never have to pay it back. But the truth is, the Federal Government isn't in that situation either. One day the chickens are going to come home to roost. One day we are going to be accountable for the money we spend. One day it will impact our standing in the world. I believe that day is very soon. We already know that the banks of the world—the central banks—are starting to shed dollars. They no longer want to hold our currency because they are losing faith in the United States of America as the leading world financial power. We already know we are having to sell more and more debt to countries that don't even have our interests—countries such as China—and we already know we are losing our standing and our ability to move forward because the rest of the world doesn't feel we financially manage our situation well.

While our economy is straining, while countries look at us as suspect for our spending patterns, countries such as Brazil are on fire, American dollars and investments go there, because people think there is a better opportunity to make money in those countries than in the United States.

I want a better future for our children. If we are going to have a better future for our children, we are going to have to restrain our spending and get serious about balancing the budget of the Federal Government, as the States do and as families do across America.

Mr. President, I yield the floor and suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

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

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

TRIALS OF THE 9/11 PERPETRATORS

Mr. WEBB. Mr. President, last night this body voted by a margin of 55 to 45 against an amendment I cosponsored, which had been offered by Senator GRAHAM, the purpose of which would be to prohibit the use of funds from the Commerce, Justice, Science appropriations bill to transfer individuals from Guantanamo and conduct trials of the alleged 9/11 perpetrators in the United States domestic court system.

The key argument in favor of tabling that amendment was that the President should be allowed discretion between using article III Federal courts and the military commissions that had been set up in Guantanamo.

First, I was clear to the President, and to others, that I recognize his constitutional authority to use article III courts in that type of situation. But, again, I want to express my deep concern that, as we proceed forward with examining the cases of those detainees who are at Guantanamo, this issue is actually going to get more complicated, and we should hope that the discretion the President uses is very narrowly applied.

The amendment Senator GRAHAM offered addresses only the six alleged perpetrators in the 9/11 situation. A number of my colleagues came up to me and said: If you have an individual who is conducting an act of terror on American soil, shouldn't the President be authorized the discretion to try them in a Federal court?

My personal view is, it is perhaps constitutionally permissible but inappropriate, in the same sense as on December 7, 1941, when Japanese bombers attacked Pearl Harbor. This was a foreign entity killing Americans, including American civilians, on American soil. It was not considered appropriate at that time, say, if we had a prisoner of war, if we shot a pilot down, that we would have brought them into the American court system and given them all due process rights, tried them for homicides, et cetera. They were combatants. They committed an act of war, and they should have been—and they were in the past—treated in that way.

My belief is, even with the 9/11 perpetrators conducting such acts on our soil, there should be a different way, a more proper way to address these situations that involve enemy combatants.

This issue is only going to get more complicated. We have a second increment of people who are at Guantanamo who are foreign nationals, not American citizens, who were apprehended on foreign soil—Afghanistan being a classic example—for acts of war that were conducted not in this country but, again, on foreign soil. They are in Guantanamo. One would question the logic of whether they should be brought on American soil to be examined by an American court system and then apprehended in American prisons. I strongly believe this is not the appropriate way to deal with these individuals and particularly since, with the national Defense authorization bill that was just signed by the President, we have built in appropriate procedural protections in the Military Commissions Act.

Then we have a third increment of people who are in Guantanamo who, we are told, because of either tainted evidence or the lack of sufficient evidence, may never be tried at all, nor will they be released because they are considered to be threats to our future at a time when we have ongoing, basically, combat relations against the international forces of terrorism, of which they are a part.

This third increment which, as I said, will probably never be tried, is also being considered relevant to move into the United States. Here is the question we are going to have to answer: If you bring these people into the United States, our Constitution provides that individuals tried in article III courts should have a right—or an individual subject to article III courts should be tried in a speedy manner. We all have a right to a speedy trial if you are in the United States. We are not going to do that. So then the question is: What are we going to do with them?

If you read the Supreme Court cases—and, again, as I said yesterday during the debate, I read in detail the Hamdi case which deals in part with this situation—if this individual is deemed an enemy combatant, they can be held for the duration of what we call the hostilities, until hostilities cease. That is a huge conundrum in terms of dealing with people who are not going to be charged, who are not American citizens, who are apprehended for acts outside our country and yet are going to be put into our prison system potentially indefinitely. I don't think it is going to reduce the situation we have had in Guantanamo in terms of the way a lot of people have viewed the processes that were in place there. I think it is only going to transfer that concern into the United States because these people will be detained in U.S. prisons, and I don't think that is going to be mitigated if these U.S. prisons happen to be military prisons.

I wished to come to the floor to express my concern that the President, who has been given the discretion through the vote yesterday which tabled the Graham amendment, should be using it very narrowly, should not be in a rush to shut down the Guantanamo

facility in a manner that brings us the second and third increment of problems.

I ask that the Members of this body join me in expressing their concern about a proper way to address this very complicated situation.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. DORGAN. Mr. President, will the Senator from Virginia yield for a unanimous consent request?

Mr. WARNER. Yes.

Mr. DORGAN. I ask unanimous consent that I be recognized following the presentation by the Senator from Virginia.

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

SYSTEMIC RISK COUNCIL

Mr. WARNER. Mr. President, I rise to address an issue I know this body will be dealing with in much greater detail in the coming weeks and months; that is, financial reregulation.

On Monday, I am introducing legislation to establish a systemic risk council. I have worked with Chairman DODD on this issue and his staff, and I am very grateful that his discussion draft—although I have not seen the specific language—is expected to include a strong systemic oversight council which I have been advocating.

I appreciate Chairman DODD's leadership on this issue and look forward to working with him and the administration on making it a reality.

As I have articulated previously on the floor and in an opinion piece published in the Washington Post, we need to establish a framework for addressing systemic risk in our financial system. Systemic risk is not the only area we need to address but is an area where the current system has unequivocally failed.

Systemic risk is actually a number of risks united by the possibility that, if left uncontrolled, they could have consequences for the entire markets or the entire economy. We saw examples of that a year ago.

Most often, systemic risk comes from the failure of an important financial institution. But because that is not the only source, we should not expect to control systemic risks with a rigid, one-size-fits-all approach.

In order to do this, we need a body that can look across our financial system at all sources of risk, that can spot gaps or opportunities for firms to avoid regulation, and that will not be consumed by other day-to-day responsibilities or protecting its own regulatory turf.

Some have proposed that the Federal Reserve serve as the systemic risk regulator. But its monetary policy responsibilities present potential conflicts, and it has proven incapable of properly regulating large institutions.

The Federal Reserve claims to be the systemic risk regulator at the moment, but it has obviously failed to take on that task, and we need to be careful in balancing its responsibilities and authorities in the coming years.

That is why, if we want to ensure that monetary policy and systemic risk are each managed in the best possible manner, we must recognize that institutional structures and responsibilities do matter. Doubling down on a structure of the past that has not performed well outside of its core function is not how we should confront the challenges of the future.

Our Founding Fathers opposed concentrations of power and favored a system of checks and balances. We have resisted creating an all-powerful central bank, and a council would allow for such a system of checks and balances.

The Federal Reserve is, of course, not the only agency that has not performed well in the crisis over the last year or so. The current system has failed to provide proper checks and balances and has replaced healthy competition where efficient and innovative firms flourish with a system where a handful of firms are too large to fail, can threaten the safety of the entire system, and enjoy an implicit—or maybe even more explicit now—government guarantee that destroys any notion of market competition.

This failure points to another task we must take on in financial regulatory modernization. We must end the notion of too big to fail. That is why I believe we should establish a strong systemic risk oversight council, and I will be introducing legislation, as I mentioned, to do that.

A systemic risk council is not a silver bullet but avoids the pitfalls of entrusting systemic risk responsibility with one single agency that has other missions, and those other missions could serve as a source of conflict of interest.

A council could see across the horizon and have all the information and expertise flow up into it. It addresses our stovepipe problems and avoids the conflicts that come from also conducting monetary policy and helps to stave off regulatory capture.

The systemic risk oversight council I propose would consist of the Treasury Secretary, of course, the Chairman of the Federal Reserve—they would play a valuable role—and the heads of the major financial regulatory agencies, two independent members, including the chair of the council.

This chair of the council would be independently appointed by the President. It would be charged with the responsibility for working to improve our understanding and control of systemic risks. This builds on the model of the President's working group on financial markets. An independent chair, appointed by the President and approved by Congress and supported by a permanent staff, has proven to be relatively effective and ends up resembling the National Transportation Safety Board or the National Security Council.

Critics of this approach have said you cannot convene a committee to put out a fire. But we do convene committees to prepare for and respond to large-scale crises time and again across our whole system. Experience has taught us boards and councils can work in a wide range of contexts, provided they have the right responsibilities, powers, and membership. Even the Federal Reserve and the Federal Deposit Insurance Corporation are run by boards.

In addition, I believe we should leave the real emergency powers with the regulators. The Federal Reserve should retain its 13(3) authority, though it should be tightened up. Bank regulators should retain prompt and corrective action authority, and the FDIC should retain its resolution powers. As a matter of fact, Senator CORKER and I have introduced legislation already that expands the FDIC's resolution powers to include bank holding companies.

In a crisis, however, the council should coordinate all of these regulators and their actions, as police, fire, and emergency response all coordinate in local emergencies. But the systemic risk council cannot just be a debating society, and so it would have real resources and power.

First, in addition to gathering and analyzing data, the council could help to determine how to regulate new products and markets in order to minimize regulatory gaps. Those regulatory gaps often end up with regulatory arbitrage, as we have seen recently. It would first identify gaps in the system and then have the appropriate regulators work together to fill these gaps.

With these tools, we will eliminate the huge blind spots our regulators had last fall when new and unregulated markets tail-spun out of control. We will eliminate the ability of firms to avoid regulation or find the weakest regulator by ensuring consistent treatment of activities across the financial markets.

Second, in order to address the too-big-to-fail issue, the council will work to prevent firms from becoming too large to fail. It would do this in three specific ways.

First, it would have the authority to identify large firms that could pose systemic risk if they failed but did not currently have an end-to-end prudential regulator and would assign them a Federal regulator. This could include hedge funds, insurance companies or other nonbank financial companies. Making sure those companies that have no regulatory oversight, if they fall into this category of too big to fail, have some kind of oversight is terribly important.

Second, the council would establish systemwide prudential standards for large firms, including counterparty exposure limits, increased capital requirements, reduced leverage and strengthened risk management requirements, all to make sure that while we would not set arbitrary caps