these institutions trading on proprietary accounts. The President says it ought to stop. I agree with him.

The President also says we ought to separate, as Paul Volcker suggests, the FDIC-insured commercial banking institutions from the investment banks over here. They were put back together. I said on the floor of this Senate 10 years ago—five, six, eight times—and gave long speeches predicting that if you do this, if you fuse together commercial banks and investment banks, you are headed for trouble. I said on this floor: Within a decade I think you are going to see massive taxpayer bailouts. People have asked me: How did you find the crystal ball? I just guessed. But I worried that if you put this together, this is a bargain for trouble, this is asking for trouble. Ten years later, we have seen this unbelievable collapse.

The President is right; and it takes courage for him to say it—let's decide to separate investment banking from commercial banking. Paul Volcker has talked a lot about that, and he is right about it. So I know what is happening.

I just saw, in CongressDailyPM: ''Banks Kick Off Effort Against Volcker Rule.'' ''A furious lobbying effort among large banks was set off today by President Obama's announcement that he will push a rule forcing them to choose between being a commercial institution or an investment bank that focuses primarily on trading for its own profits.'' The President dubbed this plan the ''Volcker Rule.''

I met with Paul Volcker in my office recently. I have talked with him at some length about this. Paul Volcker is dead right, and so is the President. This is going to provoke an unbelievable battle here. I understand that. There is a lot at stake. The big interests—they want to keep doing what they are doing. The big investment banks, at the moment—you take a look at their balance sheet. They are not, by and large, loaning money to the interests in this country that desperately need it. They are trading on proprietary accounts and making a lot of money trading. The fact is, if they are still too big to fail—and they are—that is called no-fault capitalism, and it is our risk, not theirs.

None of them would be around anymore had the U.S. Government not stepped in to provide a safety net. Now they are telling us: Well, these changes the President and others suggest, they are radical changes. No, they are not. They are changes that go back to the future in many ways. They are changes that go back to a period—1999—before a piece of legislation that was passed by the Congress to decide: Let's put together these big old holding companies and put everything into one. One-stop financial shopping, they said. Compete with the Europeans. We will put up firewalls. It turned out they were made of tissue paper and the whole thing collapsed.

I just say I think the President has made the right call. It is gutsy. It is going to provide a big fight around here. But it is not a secret, perhaps—given my history and what I have said in opposing the kinds of things that were done 10 years ago that set us up for this fall—it is not surprising that I fully intend to support the President's effort. I think it is critically important to get our financial system reformed and done right.

Then, it is important to do one other thing; and that is have regulators who do not brag about being willfully blind. We had a bunch of folks in here for a bunch of the last decade who said: Do you know what? We have decided to take this important government job—in any number of these regulatory areas—and we are proud to say we are probusiness. What does that mean? We are proud to say we are at the SEC, we are at this agency or that agency, and you all do whatever you want. We won't look. We won't watch.

In fact, some of them were so incompetent that even when people—whistleblowers—came and said: Bernie Madoff is running a Ponzi scheme, even when somebody told them what was going on, they did not have the guts or the time or the intelligence to investigate it.

But being willfully blind ought not be something to boast about anymore. Going forward, we want effective regulation. Regulation is not a four-letter word. The lack of regulation caused this crash in many ways and cost trillions of dollars to American families.

I am not suggesting overregulation. I am saying when you have certain areas that are regulatory in this government, to make sure the free market system works, and works well, when people commit fouls in the free market system in this area of competition, you need to have somebody there with a whistle and a striped shirt to blow the whistle and say: That's a foul. If you do not have that, the system does not work and the system gets completely haywire. That is what happened in the last decade. That is not a technical term, that haywire issue. But we have the right and the opportunity to get this right now, and I say to the President, good for you. This proposal is the right proposal.

Then, let's see, in the weeks ahead and the months ahead: Whose side are you on? I say to those in public service on these issues: Whose side are you on? Are you on the side of the big investment bankers who helped steer us into the ditch that involved substantial wagering and gambling here, and then we pick up the tab because it is no-fault capitalism on too-big-to-fail issues? Or are you going to stand up for the American people here and decide you have to put this back in place the right way? I hope we will have enough support to follow the President's lead on this issue.

Let me just make one final comment. I understand the need for a financial system that works. I admire bankers who do banking the old-fashioned way: take deposits and make loans and do underwriting in between, looking in somebody's eyes to say: You want a loan? What is it for? Let me evaluate that. Can you repay this loan? That is underwriting. That is the way it works. The Presiding Officer, I know, ran a bank and understands that.

We need a good financial system. You even need investment banks. I know one of my colleagues once said: Investment banking is to productive enterprise like mud wrestling is to the performing arts. Well, that was tongue in cheek. But we need investment banks to take the riskier investments out there. But our investment banking system went completely off the map. We need good commercial banks that are capitalized. We need investment banks. All of that is important. We need to get it right. I do not mean to denigrate all finance because finance is very important in this system to help this free enterprise system work, to help people who want to start businesses and hire people. That is very important for our country.

So we will have that debate in a longer fashion in the weeks ahead.

Mr. President, I yield the floor and 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. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

CITIZENS UNITED V. FEC

Mr. KAUFMAN. Mr. President, I wish to discuss today's regrettable Supreme Court decision in Citizens United v. the Federal Election Commission.

Despite nearly 100 years of statutes and precedent that establish the authority of Congress to limit the corrupting influence of corporate money in Federal elections, the Court today ruled that corporations are absolutely free to spend shareholder money with the intent to promote the election or defeat of a candidate for political office.

What makes today's decision particularly galling is that it is at odds with the testimony of the most recently confirmed members of the Court's majority, who during their confirmation hearings claimed to have a deep respect for existing precedent. Although claims of ''judicial activism'' are often lobbed, as if by rote, at judicial nominees of Democratic Presidents, including Justice Sotomayor, this case is just

one in a long line of disturbing cases in which purportedly ''conservative'' justices have felt free to disregard settled law on a broad range of issues—equal pay, antitrust, age discrimination, corporate liability, and now the corrupting influence of corporate campaign expenditures—all in ways that favor corporate interests over the rights of American citizens.

The majority opinion in Citizens United should put the nail in the coffin of claims that ''judicial activism'' is a sin committed by judges of only one political stripe. Indeed, as I have said before, charges of judicial activism, while persistent, are almost always unhelpful.

What is especially unhelpful about calling someone a judicial activist is that many times it is an empty epithet, divorced from a real assessment of judicial temperament.

As conservative jurist Frank Easterbrook puts it, the charge is empty:

> Everyone wants to appropriate and apply the word so that his favored approach is sound and its opposite 'activist.' Then 'activism' just means Judges Behaving Badly—and each person fills in a different definition of 'badly'.

In other words, the term ''activist,'' when applied to the decisions of a Supreme Court nominee, is generally nothing more than politically charged shorthand for decisions that the accuser disagrees with.

I don't mean to say that the term ''judicial activism'' is necessarily without content. Indeed, legal academics and political scientists are hard at work trying to shape a set of common definitions. If we want to take the term seriously, it might mean a failure to defer to the elected branches of government, it might mean disregard for long-established precedent, or it might mean deciding cases based on personal policy preferences rather than ''the law.''

I think it is fair to say that, based on any of these definitions, the Supreme Court's current conservative majority has been highly ''activist.''

Let me give just a few examples. In U.S. v. Morrison, decided in 2000, the Rehnquist Court struck down a key provision of the Violence Against Women Act. Congress held extensive hearings, made explicit findings and voted, 95 to 4, in favor of the bill. An activist Court chose to ignore all that and substitute its own constricted view of the proper role of the national government for that shared by both Congress and the States.

That same year, the Court decided Kimel v. Florida Board of Regents. The five-Justice majority concluded that private citizens could not sue States for age discrimination without their consent because of a general principle of sovereign immunity. This is another decision that was, simultaneously, conservative in terms of policy outcome and activist in terms of judging. It was conservative because it expanded States' rights and contracted anti-discrimination rights. It was activist both because it struck down the considered judgment of Congress and because it was based not at all on the text of the Constitution but instead on the policy preferences of five Justices.

In his dissent in Kimel, Justice Stevens said:

> The kind of judicial activism manifested in such cases represents such a radical departure from the proper role of this Court that it should be opposed whenever the opportunity arises.

With the addition of Chief Justice John Roberts, Jr., and Justice Samuel Alito, Jr., the conservative majority of the current Court has continued to be highly activist.

In Leegin v. PSKS, the Court discarded 96 years of precedent in ruling that manufacturers may fix the prices that retailers charge. It elevated big manufacturers' interests over those of the consumer based not on any change in facts or circumstances but, rather, based on the Court's embrace of a particular economic theory.

Then there is Parents Involved in Community Schools v. Seattle School District No. 1, in which the Court rejected local community authority in the area of voluntary integration of public schools. Chief Justice Roberts' plurality opinion for the four-person conservative bloc gave scant respect to a long line of desegregation precedents that afforded local communities discretion in this arena. Remember that this is the same Justice who, during his confirmation hearing, repeatedly professed his allegiance to stare decisis. If not for the opinion concurring in the judgment by Justice Anthony Kennedy, communities that want some modest measure of racial integration in their schools would be virtually powerless to act.

That brings us back to Citizens United. In reviewing what is wrong with the Court's opinion in this case, it is hard to know where to begin. As with the cases listed above, the Court went out of its way to overturn settled precedent. As Justice Stevens said in his dissent, ''The final principle of judicial process that the majority violates is the most transparent: stare decisis.''

Beyond ignoring precedent, the Court could have decided this case on far narrower grounds. Citizens United is a not-for-profit firm that exists to facilitate political advocacy. Those who contribute to that firm do so with full knowledge of the political ideas and candidates that the group is likely to support. As a result, when that group speaks it much more closely resembles an act of collective speech by its benefactors than the independent political views of a fictional corporate ''person.'' During the Supreme Court hearing on this case, the attorney for Citizens United recognized this distinction and admitted that its arguments ''definitely would not be the same'' if his client were a large for-profit enterprise, such as General Motors. But by issuing the broadest possible reading, the majority opinion admits of no differences between Citizens United and General Motors.

Even if we accept that purpose-built political advocacy corporations have a right to direct resources to influence elections, how do we apply this to larger corporations that exist to make a profit? Who determines what candidates General Motors supports or opposes? Is it the board of directors? The CEO or other officers? Employees? All of these groups and individuals serve the corporation for the benefit of the shareholders. Even so, how are we to determine what speech the shareholders favor? And do we care if the shareholders are U.S. citizens or citizens of an economic, political, or military rival to the United States?

These are questions left unresolved by today's reckless, immodest, and activist opinion. As we move forward, my colleagues in Congress and I will do our best to answer them. Boardroom executives must not be permitted to raid the corporate coffers to promote personal political beliefs or to curry personal favor with elected politicians. We must ensure that the corporation speaks with the voice of its shareholders, and we must ensure that those who would utilize the corporate form to magnify their political influence do not do so for improper personal gain or to impose the will of a foreign power on American citizens.

Today's decision does far more than ignore precedent, make bad law, and leave vexing unanswered questions. As noted by Justice Stevens in his dissent, the ''Court's ruling threatens to undermine the integrity of elected institutions across the nation. The path it has taken to reach its outcome will, I fear, do damage to this institution.''

I share Justice Stevens' fear. I am particularly concerned that the decision will erode the public's confidence in its government at precisely the time when so many challenges—climate change, financial regulatory reform, health care, immigration reform, and the need to stimulate job creation—all call for bold congressional action. Our ability to meet our Nation's pressing needs depends on our ability to earn and maintain the public's trust.

Earning that trust will be all the more difficult in a world in which undiluted corporate money is allowed to drown out the voices of individual citizens and corrupt the political process.

ADDITIONAL STATEMENTS

TRIBUTE TO JIM BLASINGAME

• Mr. BEGICH. Mr. President, I congratulate a hard-working Alaskan, Mr. Jim Blasingame, on his well-deserved retirement after many years of dedicated service to the Alaska Railroad Corporation, AKRR.

Thirty-five years ago, Mr. Blasingame commenced his employment with the AKRR. Since then, he