FINANCIAL REFORM

Mr. CORKER. Mr. President, I thank my friend from North Dakota, because I, too, for what it is worth, have been very distressed about the conversations around financial reform. I don't think either side of the aisle deserves a badge of honor as it relates to the way this has been discussed. I agree with him that this is something way beyond using poll-tested language and should, in fact, be dealt with in a serious manner. So although I didn't hear all the Senator's comments, I agree with him that we ought to deal with this in a serious way.

Mr. President, you and I have had a number of conversations over the last weekend regarding financial reform. We have had a lot of conversations over the last year regarding financial reform. As I have watched the public discussions over the last several days, I have been greatly distressed. As a matter of fact, I spoke this morning to a large number of businessmen in Nashville, TN, and, candidly, became so angry thinking about the way this debate has evolved that I had to think about coming here today and controlling that and using that in a productive way.

I have noticed throughout the day that maybe the rhetoric has changed a little, and I know that my friend and colleague from Virginia and my friend and colleague from Connecticut had a press conference earlier today to talk about some of the issues that are being talked about rhetorically. Let's face it, what is happening right now—and it is unfortunate for the American people—is that both sides of the aisle are trying to herd up folks with language that in many ways I don't think does justice to this issue, which is very important, is very difficult, and something that is very much needed in our country.

There has been a lot of discussion about this funding mechanism—this $50 billion bailout fund, if you will. Those are someone else's words, by the way, not mine. The American people are probably tuning in, and in some cases they are wondering how we are jumping into the middle of this on the Senate floor without a lot of free dialogue.

The fact is, we have a financial reg bill that I hope comes before us soon that will deal with orderly liquidation so that when a large institution fails, it actually fails. I think that is what the American people would like to see happen. So there has to be a mechanism in place.

If a firm is systematically important to our country, there needs to be the tools in place to make sure it actually goes out of business. I don't think people in Tennessee like seeing that when a community bank fails it actually goes out of business, but when a large Wall Street firm fails we prop it up.

I wish the Senator from Virginia, who happens to be presiding, were on the floor so we could have a colloquy on this because the fact is, this is something that needs to be dealt with in legislation. We need to know we have a process where we deal with derivatives and we don't have a lot of people building up a lot of bad money, instead of doing it on a daily basis and they end up in a situation where there are huge obligations. We need to deal with some of the issues of consumer protection.

So, Mr. President, there has been a lot of discussion about how we create something called debtor-in-possession financing, so that when the FDIC comes in and seizes one of these large firms that fails, it has the money to keep the lights on and to make payroll and those kinds of things while it is selling off the assets of the firm.

The fund that has been discussed in this bill—and that is going to be changed, I know, and I am fine with that and think that is perfectly good—but this fund that has been set up is anything but a bailout. It has been set up in essence to provide upfront funding by the industry so that when these companies are seized, there is money available to make payroll and to wind it down while the pieces are being sold off.

Now, a lot of people have said this is a Republican idea. There is no question this is something that Sheila Bair has proposed. The FDIC wants to see a prefund. The Treasury would like to see a postfund; they would like to see it come after the fact.

At this point I want to digress for one second and say I hope the reason that Treasury wants a postfund is not because, in lieu of having a prefund of $50 billion from these large institutions, they want to see a bank taxed. As a matter of fact, I am going to be surprised if after Republicans argue against a prefund and it is changed, and the administration comes back and Chairman DODD comes back and we end up with postfunding—both of which do the same thing, I might add, and both of them work—but it will be interesting to see whether that argument basically leads to Treasury then having the ability to come back and do a bank tax. I think at the end of the day that is something they have been wanting to achieve.

So it is interesting how this debate is evolving. But let me go back to this prefund. At the end of the day, I think what all of us would like to see happen is to see these institutions go out of business. So do we put the money upfront to take them out of business or do we put it up on the back end where, in essence, what is happening is we are borrowing money from the taxpayers?

Would we rather the industry put up the money so the taxpayers are not at risk or would we rather that not happen and during a downtime, when it is procyclical, we actually get the firms to put up the money after the fact?

I think both of those, by the way, are nice arguments to have, and I think they should have been debated in the committee, and we can debate it on the Senate floor. But at the end of the day, to make the total debate about whether it is pre or post—neither of which are central to the argument because both work—it really doesn't matter. Either way we have to have some moneys available as working capital to shut down a firm. We can borrow it from the taxpayers, although I don't know if the taxpayers would like that very much. We can do it after the fact, as I have said, or we can put it in upfront by the industry. Either way it is going to be paid back by industry.

I will say that in the Dodd bill today there is postfunding; that if there are any shortfalls the industry will pay that back. So, again, it is kind of a debate that ends up being silly. The fact is, I know it is going to be changed. The essence of the bill, though, is the fact that we want to make sure these firms unwind and they go out of business.

Let me just talk about some of the arguments that are being made: Prefunding of resolution creates a system where certain participants are effectively designated as a protected class as a result of them paying into the fund.

I think that is ludicrous. That is a ludicrous argument. Now, what we could do, if it would make everybody happy, is instead of getting large firms to pay, we could get community banks to pay too. I don't think there would be many people who would be interested in that, but if we want to get everybody in the country and get the community banks in Tennessee—I am not interested in that, and I don't think the Senator from Virginia is interested in that—but if we want to do that, we can ensure nobody is part of the protected class. So I find that to be a ludicrous argument.

There is another argument: This allows such firms competitive funding advantage over smaller institutions such as community banks.

So, in other words, if we are saying these large firms, if they fail, are going to go out of business, and it is going to be more painful than bankruptcy, that somehow they are protected or have a competitive advantage, I find that to be kind of ludicrous, and I hope that argument is not used again. It probably will be, but I hope it would not.

Here is one I read recently: The fund is a signal to credit markets that the U.S. Government stands ready to prop up, bail out, and insulate large financial firms. Now that is an interesting one. The fact is, we are talking about orderly liquidation.

The existence of the fund allows managers of large financial institutions to conduct riskier practices, therefore counterparties will not feel obliged to perform due diligence because, in the event of stress, there is such a financial slush fund available to bail out unsecured and short-term creditors.

You have to be kidding me. That is absolutely the opposite of what is intended.

Now, let me say this before somebody tunes out. I think this bill has problems, and I think there are issues that need to be resolved around orderly liquidation. The Senator from Virginia and I both know what they are, and there are some flexibilities that have been granted to the FDIC, to the Federal Reserve, and others that need to be tightened. There are some words that instead of saying ''shall'' say ''may.'' That is a very important word when you are telling an agency what they have to do or what they ''may'' do. So there is much in this bill that needs to be fixed.

I want to say that as the Dodd bill sits today, I could not vote for it. I absolutely cannot support the bill. But what concerns me is the rhetoric that is being used to talk about something that is very important to our country, and it is being used on both sides, I might add.

On one side they are saying the Republicans want to protect Wall Street firms. Well, I can tell you this: I think there are very few Republicans who do not want to see financial regulation take place. I think there are very few Republicans who don't want to see it done the right way. Candidly, I think most Republicans and Democrats are listening to community bankers. They are not listening to Wall Street. That would be my guess.

So that rhetoric, to me, is off base. The rhetoric on my side of the aisle saying this orderly liquidation title basically keeps ''too big to fail'' in place, the central pieces of it, is not true. Are there some things around the edges that need to be fixed? Yes. My sense is, as I have said on the Senate floor, we can fix those in about 5 minutes if we just sit down and do it. I do not understand why the rhetoric has gotten to where it is. I would like to see us pass a bill that makes sense.

The kind of thing we should be talking about is not the fact that this is a bailout fund. By the way, whether it is ''pre'' or ''post,'' that debate doesn't matter to me. The fact is, we have to have some debtor-in-possession financing available to wind these firms down, sell off the assets, make sure the stockholders are absolute toast, make sure unsecured creditors are toast, make sure it is so painful that nobody ever wants to go through this. We absolutely need to do that. The American people need to know we in Congress are not going to prop up a failed institution, that they are going to live the same life in capitalism that everybody else has to live. People in Tennessee, when they fail, they fail.

The kind of thing we ought to be talking about and have been talking about and I think can solve is that I think we ought to have more judicial involvement in the process. We ought to improve the bankruptcy process so that these large institutions have a more viable route through bankruptcy.

I think we ought to deal with the disparate treatment of similarly situated creditors. The fact is, the way the ''post'' funding in this bill is now set up, we do not. If a creditor receives more money than they should, that money is not recouped. We know how to fix that. I know the Senator from Virginia and I both know how to fix that.

Those are the kinds of things we need to be talking about.

Creditor prioritization—there is no question that right now in the bill, certain creditors can be treated differently by the FDIC than others.

We need to be looking at bankruptcy stacks so that people understand how much they are going to be paid back, and they are going to be in the same order they anticipate being in.

We need to be tightening the definition of a financial firm. Right now in the bill, the way it reads, an auto company could end up being part of this. Right now, it is not tight enough. An auto company may be a stretch, but something other than a financial firm could be dealt with, the way the language is now reading. And certainly for sure Fannie and Freddie need to be treated the same as any other financial firm.

We need to have a solvency test to make sure regulators—that does not allow regulators the flexibility to protect firms in crisis.

We need to make sure there is a duration. In other words, if the FDIC comes in and has to take over, after due process—three keys being turned—take over one of these firms that has posed systemic risk, we need to know there is an end date. I know the Senator from Virginia and I absolutely agree that conservatorship should not be on the table. This is only a receivership and those firms should go out of business, and that, no doubt, should be language added. It is not in there right now.

There are a number of things like this. I could go on and on. I am probably boring much of the watching audience, if there is any, with some of these technical issues, but those are the kinds of things we in this body ought to be talking about. They are important. They matter. But to use up time with rhetoric that, in essence, is used to sort of brand something in a way that really isn't the way it is, to me, is not productive. I did not come here to do that.

Again, I think both sides of the aisle tried to cast the characters in certain ways. It is this herd process that happens around here. Everybody wants to get everybody on the same team. What we do is we use rhetoric that charges people up and gets everybody on the same team. I do not like that process. I do not want to be a part of that process.

I have joined with other Republicans to try to make sure this bill gets in the middle of the road. I have done that on the basis that both sides are going to deal in good faith.

I know the Senator from Virginia knows we went through a process with this bill where we voted it out of committee in 21 minutes—a 1,336-page bill we voted out of committee in 21 minutes with no amendments. The stated goal was to make sure that both sides did not harden against each other and that we could negotiate a bill before it came to the floor—came to the floor—we would negotiate a bipartisan bill. That is why it was stated that we did that. How can responsible Senators, 23 Senators, all of whom have problems with this bill—how can you vote something out of committee in 21 minutes with no amendments unless you know that a negotiation process is going to take place afterward to create a bipartisan bill? Nobody in their right mind would have agreed to do that.

What I would say to my friends on the other side of the aisle and what I would say to the folks at the other end of Pennsylvania Avenue, who seem to be turning up the rhetoric—I take it as a commitment from my friends on the other side of the aisle that we are going to negotiate a bipartisan bill and we are going to do it in good faith. But I also expect the same on my side of the aisle, that we are going to negotiate in good faith to get a bill and that before it comes to the floor the major template pieces will be worked out, the issues around consumers, the issues around orderly liquidation, and the issues around consumer protection.

As I have mentioned, there are a number of issues we need to debate here on the floor that, to me, are outside the realm of the template itself. I hope this body—I know the Senator from Virginia and I have worked together a great deal. I know we both came from a world that was different from this. I have become greatly distressed. I get distressed at both sides of the aisle when we have an important issue such as this and we turn it into sound bites.

I hope, again, over the next several days—this bill has been through so many iterations. Everybody who has worked on it understands what is in it. Everybody understands what the points are on which we disagree. As a matter of fact, if we do not end up with a bipartisan bill, it is not going to be over philosophical issues, it is going to be over the fact that the two sides just decided they didn't want to do it. It is going to be over the fact that it takes both sides.

The fact is, the White House can make an issue out of this. I know things are not going particularly well in the polling areas. I know my friend from North Dakota talked about polling data and testing things and all that. I realize things are not going particularly well. Maybe this financial reform bill can be something that changes that. Maybe if you push the bill as far to the left as you can and you dare Republicans to vote against it, maybe that is a good thing. That is not what I came here to do. I do not think that is what the Senator from Virginia came here to do. I know that if Republicans brand this bill as prolonging too big to fail—that is what we are doing—then we might be able to keep the bill from passing that way too.

I hope all of us will sit down and do what we came here to do, and that is to create good policy for the American people.

I am very distressed about where we are today. What I hope is happening is that this is just a bunch of buzz and that our committee staffs and the chairman and ranking member are actually sitting down, having serious discussions, and that very soon we are going to come forth with a bill that is bipartisan, where we can debate it on the edges and end up passing legislation that stands the test of time.

I hope that bill will deal with the very core issues that got us into this crisis. And we can castigate all kinds of people. There is enough blame to go around. You almost couldn't find a regulator, a credit rating agency, a firm, management that was not in some way involved in helping create this crisis. There is a lot of blame to go around. But I hope the bill, at the end of the day, will also address, as I have stated every time I have come to the floor on this bill, the whole issue of underwriting; the fact that at the end of the day, at the bottom of this, whether you read what happened supposedly with Goldman on Friday, you read about these synthetic CDOs where they were not even really underwriting mortgages there—in reality, they were just doing something that reflected what certain mortgages would do—at the end of the day, it still was about the fact that in this country, we wrote a bunch of mortgages that couldn't be paid back. You can talk about this all you want, but the underwriting, the bad loans that were written, at the end of the day, are what created much of this crisis. Candidly, I don't think much of this bill addresses that. I hope we will address that more fully before this bill comes to the floor.

With that, I think I have taken up my allotted time. I thank the Members of this body for their patience. I hope we will do the work that needs to be done here. As I mentioned, at this point I don't think either side of the aisle deserves a badge of honor, but I hope over the next several days that will change. I hope our rhetoric will be tempered. I hope our discussions will center around those things that really matter and will not be used to basically get people in the public off on rabbit trails or try to herd our teams together.

Mr. President, I look forward to working with you as we try to complete this bill.

I yield the floor.

Mr. BAUCUS. Mr. President, I would like to return to the nomination of Dr. Lael Brainard.

Today, at long last, the Senate is considering the nomination of Dr. Lael Brainard to be Under Secretary of Treasury for International Affairs.

President Obama nominated Dr. Brainard more than a year ago, in March of 2009. After an extensive vetting process, the Finance Committee held a hearing on her nomination in November of last year. And the Finance Committee favorably reported her nomination with a bipartisan majority in December of last year.

The path to her Senate confirmation has been neither short nor easy. But throughout this process, Dr. Brainard has demonstrated persistence and determination.

These vital qualities supported her well as a nominee. And these qualities will support her well as she assumes her responsibilities as Under Secretary of Treasury.

The world economy is emerging from a deep economic recession. America must lead the way to recovery. And we must do so by creating jobs, reducing unemployment, and encouraging smart, balanced growth here at home.

But the health of the global economy does not rest on our shoulders alone. In fact, the recent financial crisis has demonstrated how interconnected our world is.

The world's many national economies have the potential to rise together. And they have the potential to fall together, as well.

To ensure a stable, prosperous economic future, countries must work together to support balanced economic growth. No country can rely solely on export-driven growth, just as no country can rely solely on its domestic consumption.

But this economic rebalancing will not happen overnight. The global economic downturn has been powerful because of its persistence. And we must be just as persistent and determined in our efforts to overcome the effects of this crisis.

As Under Secretary of Treasury for International Affairs, Dr. Brainard will lead our bilateral and multilateral efforts on these issues. She will work with key trading partners such as China and the European Union. And she must help to guide our country from an economic recovery to economic growth.

Dr. Brainard has demonstrated that she has the knowledge, skills, and abilities to confront the tasks that lie ahead. She is brilliant and hard-working.

She has shown the tenacity and doggedness necessary to be successful as Under Secretary for International Affairs. And she has revealed that she has the persistence and determination to address the vital issues facing America and the global economy today.

I might add, I worked with Dr. Brainard during the Clinton administration. A very key question is, What would the U.S. economic relation be with China? Up to that point, America had annual extensions of MFN for China. They were contentious. They caused more problems than they solved, and I spent some time with the President and others in the Clinton White House and then later worked with Dr. Brainard as we moved away from these annual extensions of MFN and more toward PNTR with China.

It was a hallmark change in United States-China economic relations. I think this worked out very well for our country's best interests. I must say it has also helped China. We pursued that objective, in part, because that meant China could then be a member of the WTO, and once China became a member of the WTO—that is, the World Trade Organization—that would help China live up to world standards that other countries were living up to under WTO.

Again, Dr. Brainard, throughout this confirmation process, has shown her dedication to serving the Treasury Department, the President, and the American people. I am confident—and I am confident because she has had deep experience and she is very talented; she is very good—I am confident she is up to the task for which she has been nominated.

I urge the Senate to approve her nomination.

I now ask unanimous consent that the assistant majority leader, the Senator from Illinois, be recognized to speak on whatever topic he chooses.

The PRESIDING OFFICER (Mr. KAUFMAN). Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. I ask unanimous consent to speak for 10 minutes.

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

Mr. DURBIN. I thank the chairman of the Finance Committee.

This is the Executive Calendar. It contains the names of the nominations the President of the United States has sent to the Senate for confirmation. It is an orderly process, a historic process. It has happened thousands and thousands of times. Very few times do we have a lot of controversy associated with these names. If there is a controversy, ultimately there is a vote—a debate, and then a vote.

But now there is a new approach being used by the minority side. That approach is to basically use one of three options: stall, stop, and kill. What they are trying to do, for the 104 nominations sent by President Obama, is to hold them on the calendar as long as possible so it is difficult for him to organize his administration and move forward.

There are some key positions. The one the Senator from Montana spoke of is the nominee for Under Secretary of the Treasury for International Affairs. We are concerned about the state of the American economy, our competition in the world, how we stack up against countries such as China.

There is an allegation, which I think is valid, that the Chinese are manipulating their currency so they continue to take jobs away from the United States. It gives them too big a competitive advantage. Here is the Under

Secretary for International Affairs who would be tasked with looking into that issue to try to help American businesses, small and large, and to save American jobs and this nomination now sits on the calendar with 103 others.

What you find is that of those 104 nominations, most of them went through the committees on their way to the Senate floor with unanimous votes or overwhelming majority votes. There is no controversy associated with it.

Mr. DORGAN. Would the Senator yield for a question?

Mr. DURBIN. I would be happy to yield.

Mr. DORGAN. Mr. President, I wonder if the Senator from Illinois knows who has a hold on that nomination.

Mr. DURBIN. I do not know. Does the Senator know?

Mr. DORGAN. No, I do not. The reason I asked the question is these holds are, in some cases, anonymous. I spoke earlier today about a hold on a promotion for one of the generals in the Army to be a major general that has now been held up for nearly 6 or 7 months by Senator VITTER.

I use his name because I told him I was going to because he is demanding of this general something the general cannot do. I mean, that is an example. We happen to know where that hold is from.

But of these other 100-plus nominations, they sit here, day after day, month after month, and someone has put a hold on them for some reason. If I might mention one other, the woman who was to head the GSA, that was vacant for nearly a year because of a hold of one Senator, and when we finally got around to voting for her, it was 94 to zero.

The Senator who held her up for a year even voted for her. That is the kind of game that is being played. It is unfair.

Mr. DURBIN. I agree with the Senator from North Dakota. I would say to those Senators who have holds on nominees: Come to the floor and explain to the American people why you believe these people should not be serving in our government. If you think there is something wrong with them, if you think they are unqualified or there is some issue involving their character or integrity, do you not owe it to these nominees to step forward and say so?

I have held some nominees in the past but was open and public about it for a specific purpose. Recently, under the Bush administration, I was looking for a report from the Department of Justice. The report was sent. The hold was lifted as quickly as it was sent. Those things I understand.

But to hold these people indefinitely in anonymous holds, secret holds, and never state the reason why is fundamentally unfair. It is unfair to the nominee who has gone through this process of FBI checks, background checks, poring through income tax returns, questions about their personal and private lives most Americans would not want to face.

They finally get through the nomination process, the President sends their name, and now they are being held up on the calendar indefinitely, 104 different people. I think we owe it to them, we owe it to the President and to the country to do this in an honest, orderly way.

During the course of this week, Members of the Senate are going to come to the floor and ask to move these nominees forward. I hope those on the other side who have the courage to hold them will have the courage to stand and explain why. That, I think, is critical.

FINANCIAL REFORM

There is another issue involving a hold, which goes to a much larger issue. We will have a bill before us soon, reported from the Banking Committee, that is long overdue. This bill is Wall Street reform. Our country has been through one of the toughest economic downturns in modern memory. For 80 years, we have never seen anything like what we are going through now.

Some 8 to 14 million Americans have lost their jobs, $17 trillion in value was taken out of the country. Virtually every one of us with a savings account or retirement account knows what that meant. We lost value in things, our nest eggs, the money we put away for our future.

We know businesses failed, way too many of them. We know a lot of people lost in that process, losing their jobs, losing retirement income, losing their health insurance. Investors lost when the stock market went down to about 6,500 on the Dow Jones average. It is now back up in the 10,900 or 11,000 range. But with all that downturn in the economy, people stood back and said: What happened? What did we do wrong?

Well, mistakes were made. Many mistakes were made in Washington. I will concede that point. But a lot of mistakes were made on Wall Street with the biggest financial institutions. The worst part of it was, when these financial institutions were about to take a dive and go down, where did they turn? The American Treasury, the taxpayers of this country.

They said, under the Bush administration: We need a bailout, $700 billion in taxpayer money to Wall Street to overcome the mistakes we made and keep our banks afloat and insurance companies, in some cases, because of the big problems we have, problems many times of their own creation.

They received the money. Many of us had a stark choice. We were told by the Secretary of the Treasury and the Chairman of the Federal Reserve: If you do not send this money up to Wall Street and these banks and insurance companies go down, the economy will follow them, not just in America but globally.

So we voted for this bailout money. I did not want to do it. But I thought it was a responsible thing to do. Well, it turns out some of these banks and other institutions are paying back the money, with interest. The taxpayers are okay; but, by and large, a lot of others are not. We have to ask ourselves: Do we want to run through this script again? Do we want to see this movie happen next year or the year after?

The obvious answer is no. So the Banking Committee sat down and said: Let's rewrite the rules. If they are going to act like a bank and be protected like a bank, they should have the oversight of a bank. If they want to loan money on a bad loan, and they do not have a reserve, do not ask the taxpayers to stand and make up the difference. That is part of what we are doing with this financial reform bill, to try to create the rules and oversight from organizations and agencies in Washington to make sure the taxpayers do not end up footing the bill again.

Secondly, this whole world of derivatives, which I thought was explained very ably by the Secretary of the Treasury over the weekend, is basically either an insurance policy that someone buys to make sure, if they are entering into a contract on a premise that they are going to make some money and they do not make money, they are protected—or it is a basic bet. They are basically betting on something that is going to occur, even if they do not have a personal interest in it.

Well, these derivatives got out of hand, so out of hand that there was a lot of gaming that went on. We try to clean this up. I, of course, am partial to the Chicago model, where in the Board of Trade and Mercantile Exchange we have had transparency and open-market dealing in derivatives for decades. I think that is the answer. Let's put this all out in front of the public so they know exactly what is going on. Stop the backroom deals on Wall Street.

The third thing is to create a consumer protection agency so average consumers across America have a fighting chance when banks and credit card companies dream up new ways to fleece us. It happens with regularity. We know it does. So this agency would be there to make sure these financial institutions are honest with consumers.

We do have agencies of government that make sure the toasters you buy do not explode in your kitchen. You expect as much, do you not, that some agency is going to make sure that product is safe? What about your mortgage? Should you not have the same peace of mind that when you walk out of the closing, you have not fallen into some trick or trap that is going to catch up with you later on?

Well, that is what we did. The Banking Committee had this financial regulatory reform bill. Senator DODD of Connecticut went to Senator SHELBY of Alabama, the ranking Republican, and