Here was the New York Police Commissioner reminding reporters that no fewer than 11 terrorist plots have been directed at New York City since 9/11 and that, as he put it, nothing has changed with respect to terrorists coming to New York to hurt and kill Americans.

To me, it was jarring, in the face of that kind of cold reality and the repeated pleas of elected officials in New York from both parties, to see the Attorney General still stuck—still stuck—on the notion that holding these trials in downtown Manhattan is anything but a bad idea. Trying KSM in New York City was a bad idea last year. It is a bad idea today. The only thing that has changed is that the American people have just been reminded of how determined terrorists are to carry out their deadly plans.

As I have said repeatedly, Guantanamo is the right place to detain, interrogate, and try terrorists such as KSM. Guantanamo is a safe and secure, state-of-the-art facility where we can detain enemy combatants far from our communities and without fear of onsite retaliation. Some we hold indefinitely. Others we hold until we deem them safe for transfer to another country. Still others we can hold until we try them in military commissions, and we can do that right there at Guantanamo.

Guantanamo was a wise investment. It was built for good reason. Let's use it for the purpose for which it was built, rather than further endangering communities such as New York or burdening them with the disorder and the massive expense that would accompany a terror trial.

It is precisely because of potential dangers and difficulties such as these that we established military commissions in the first place. If we cannot expect the very people who masterminded the 9/11 attacks to fall within the jurisdiction of these military commissions, then who can we?

Americans do not want Guantanamo terrorists brought to the United States, and they do not want the men who planned the 9/11 attacks on America to be tried in civilian courts—risking national security and civic disruption in the process.

(The remarks of Mr. MCCONNELL pertaining to the introduction of S.J. Res. 29 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3217) to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Pending:

Reid (for Dodd/Lincoln) amendment No. 3739, in the nature of a substitute.

Reid (for Boxer) amendment No. 3737 (to amendment No. 3739), to prohibit taxpayers from ever having to bail out the financial sector.

Snowe/Shaheen amendment No. 3755 (to amendment No. 3739), to strike section 1071.

Snowe amendment No. 3757 (to amendment No. 3739), to provide for consideration of seasonal income in mortgage loans.

Mr. DODD. Mr. President, I 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.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

Mr. CHAMBLISS. 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.

Mr. CHAMBLISS. Mr. President, what is the current status of the Senate?

The ACTING PRESIDENT pro tempore. The pending business is S. 3217.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to be recognized for up to 10 minutes.

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

Mr. CHAMBLISS. Mr. President, I come to the Senate floor this morning to talk about the current pending business before this body. This is an issue which obviously raised its ugly head a couple of years ago with the financial meltdown that occurred in this country, and I think all of us in this body agree it is imperative the Senate take action to try to make sure what happened to the financial industry in America never has the opportunity to happen again. I commend Senator DODD and Senator SHELBY for their work on this bill. We have had our disagreements. Yet we have had significant agreement on some areas.

We are now trying to take the base bill and make it a bill that all of us in this body, hopefully, will wind up being able to support because we improve the bill to the point where it addresses the real cause of the problem that arose during 2007, 2008, and on into 2009 and 2010.

There are some provisions in the bill that I have particular objection to, and there are some things that are not in the bill that I think should be in the bill. For example, one of the major causes of the problem—and I think it goes without saying—is the fact that the GSEs, Fannie Mae and Freddie Mac, have been authorized over the years to purchase mortgages from individuals who simply could not make their payments, and those mortgages have been bundled together and sold on the market, which has been one of the root causes of the problem. I am not by myself in thinking that. There are other individuals but, more important, people who know a lot more about the root cause of the problem who think that. Everybody in this body agrees that is a major issue that has to be addressed in any overall financial reform. To leave any reference to the GSEs, Freddie Mac and Fannie Mae, out of any additional regulation I think is a mistake. There are going to be amendments with respect to that, and I look forward to that debate.

Another issue is, there are no mortgage standards that are specifically set forth in the underlying bill. I can remember very well going in and buying my first house, making an application for a mortgage. I was as nervous as I could be. Even though my payment was going to be fairly minimal to the amount of money I was making, I had to pay 20 percent down, and it took me a couple of weeks to be approved by individuals in my hometown whom I knew very well. At the end of the day, they just wanted to make sure I was going to be able to pay that loan back. It is not that we need to go all the way in that direction but certainly we need standards in place that will ensure that people who are buying houses can afford to make the mortgage payments for which they are making application.

With respect to the Consumer Financial Protection Act, it appears that in the underlying bill, there is an umbrella that is cast out that is going to require the inclusion of more non-problem areas of the consumer finance industry than are, in any way, potentially a part of any future financial meltdown.

I hope as we debate these amendments—and I know we will have a spirited debate on them—we can come to some agreement as to what is reasonable. Let's do what we need to do to provide our regulatory agency also with the additional oversight they need to make sure we give them the tools not to allow the situation that occurred in 2007, 2008, and 2009 to recur but that we don't go too far to where we overreach and exercise more control on the part of the regulators than what is absolutely necessary.

I wish to speak for just a minute about the derivatives section and some amendments we are going to have on that particular title. The Agriculture Committee has jurisdiction over swaps and derivatives by virtue of the fact that we have jurisdiction over the Commodity Futures Trading Commission, which in turn has jurisdiction over swaps and derivatives. There are some swaps and derivatives that are secured by securities themselves, and those securities—being regulated by the SEC—give the SEC some jurisdiction here. That has been part of the discussion and will continue to be as we go through the debate.

There are a couple of things I particularly wish to address which I think are faulty in the base bill and need to be corrected as we go through it. We are going to have a substitute amendment for the derivatives title that will do several things that are of primary importance to the industry that, today, is very unregulated, which will bring all the derivatives trades out of the shadows and into a totally transparent matter and make those trades available to the regulators so they can look not only at the trades themselves, to make sure entities that are entering into those trades are the right kind of entities that ought to be trading and that they are not creating systemically risky industries that will have the potential to create situations similar to what we saw in 2007 and 2008 but also that the agencies—the regulators—will have the ability to call into play additional margin requirements or other tools that they will have to ensure that those entities that are engaging in these practices don't ever reach that point of being systemically risky.

There are some specific provisions we need to look at. One of those is an expansion of what we call the end user provision. An end user is an individual—an entity, whether it is a manufacturing company or it could be an individual but, for the most part, it is a financial entity, usually a manufacturer of some sort that doesn't engage in the finance end of the economy of our country but does seek to hedge its own particular financial issues in the more productive, more conventional financial industry itself. For example, manufacturers such as John Deere or Caterpillar or Ford Motor Company or, for that matter, any manufacturer across the country that seeks to have stability in the marketplace with respect to interest rates because they don't look out 90 days or 120 days, they look at years into the marketplace to ensure that there is stability from an interest rate standpoint so they know how to purchase items, know how to purchase what they need to make their widgets or whatever it may be. Those manufacturers engage in the purchase of derivatives by hedging the interest rate that they are going to pay. They also hedge the purchase of metals. Ford Motor Company, for example, may hedge the purchase of steel in the steel market, so they can ensure themselves of stability in that market.

These are the types of derivatives we are going to be talking about and that we need to make sure—because they were not part of the problem that caused the financial meltdown. But if we are not careful, they are going to be overregulated to the point where the cost of an automobile will be increased, and that is an unintended consequence of this bill, I know. The cost of a John Deere tractor to one of my farmers will be increased. Again, that is an unintended consequence.

I wish to take a minute to read a portion of an unsolicited letter I got from a fairly new bank in Atlanta, which is a community bank that began in 2007. According to the chairman of the board, this bank:

> . . . has built an exceptionally strong balance sheet with superior asset quality, solid and stable deposit funding, and robust capital levels. At quarter end, our equity to assets ratio was 14.39 percent.

He also wrote:

> The Bank received regulatory approval to offer and has been offering interest rate derivatives to our middle market and commercial real estate clients who are concerned about the effects of rising interest rates on their businesses. This affords our clients an opportunity to fix interest rates in what would otherwise be a floating rate environment which could work against them. The Bank will not take interest rate risk on these derivative contracts but instead will hedge all trades with one of our correspondent bank counterparties. In other words, the Bank will operate a matched loan-level hedging program. The Bank does not otherwise engage in any derivatives activities.
>
> There are three key problems from our perspective with the regulation as drafted by the Senate Agriculture Committee [which is part of the base bill that we are debating now]:
>
> 1. The Bank would likely be considered a swap dealer (under section 50(A)(iii) of the proposed regulation) and would have to spin off or terminate its swap activity.
>
> 2. There are no practical end user exemptions for our clients, who would be subject to posting margin against their trades with a clearinghouse.
>
> 3. All swap parties have to be an eligible swap participant, so a real estate single project partnership would not qualify.
>
> It makes no sense that community and regional banks that run matched loan-level hedging programs should be subject to the swap dealer provisions, as such programs are fully hedged and are not taking undue risk.

The letter goes on to say they hope that as we go through this debate, we can fix these unintended practical issues or consequences that provide practical issues in the day-to-day operation of commercial and community banks that are not on Wall Street but are in Atlanta and in Moultrie or other communities around my State and in every other community in America.

Just because a bank is big does not mean that bank is risky. We need to remember, as we think about this, that our regulators need to have the right kinds of tools to look at every single trade that comes up. That is why it is important and why we agree on both sides of the aisle that there needs to be 100 percent transparency in these markets. We are going to provide for that in our substitute.

There needs to be a fixing of the definition in the underlying bill of what is a major swap participant. There again, that goes to the issue of whether you are a big bank, you are automatically systemically risky, which is not the case, but you are automatically covered by this provision. Should Wall Street be covered? Yes. Will they be covered in the base bill? Yes. Will they be covered in our amendment? Yes.

Every swap dealer on Wall Street needs to have not just 100 percent transparency but all their transactions with other financial institutions go through a clearinghouse. That is done in the base bill. That is also provided for in our amendment. We wish to make sure these end users who don't deal in these swaps on a daily basis in the kind of volume the banks do are not thrown into a category of all of a sudden having to pay huge fees and costs added to the cost of doing business. At the end of the day, we know who will pay for that: we consumers who buy the automobiles and the widgets or whatever it may be.

Lastly, I wish to talk about the provision in the bill that requires—it is section 106, the 716 provision. What this provision does is require all swaps dealers and financial institutions to be physically moved out of the financial institution and kind of operate on its own. Here is the practical effect of what that will do. Any Wall Street bank that is a dealer in swaps and derivatives today—and every one of them are—will simply take the swaps desk and move it across the street. Under the base bill, they are going to be required to raise huge amounts of capital for that swaps dealer desk. There is no reason for that to happen. If they are going to raise capital, it ought to be in the bank, where they can utilize it and loan that money out to customers.

The other truly unintended consequence of moving the swaps desk out is the fact that the financial institution itself—again, major banks will be included in this—those individual banks are not going to be able to access the discount window at the Fed because they are all of a sudden not going to be able to borrow money from any Federal entity under the language that is in the underlying bill. That doesn't make sense. The reason it doesn't make sense is that all these swaps and derivatives transactions—whether they are interest rates, metals or whatever the transaction may be—have to be cleared every day. The bank needs a huge amount of cash or the swap dealer needs a huge amount of cash in order to clear those trades.

If they do not have access to the Fed discount window, then they are simply not going to be able to access the amount of cash they need to clear these transactions. The reason they need that cash is to ensure the parties to that transaction are going to, in fact, be able to have the assurance that the other party to the transaction is going to be able to live up to its rights and obligations. If they do not have access to the Fed discount window, then they are not going to be able to access that cash they are going to need to make sure these transactions are, in fact, cashed out at the end of every single day.

We are going to have one amendment that will be a substitute, and then we will have a series of additional amendments that will be more in the way of rifle shots to address the specific issues I have talked about.

I talked with the chairman of the Banking Committee about these over a period of time. Obviously, I have talked with my friend Senator LINCOLN about this. As we go through this debate, I want to make sure that at the end of the day, we do exactly what all of us want to do and certainly what the chairman and Senator SHELBY set out to do from the start, which is to protect consumers, to protect people who lost a lot of money in the market because of transactions of greed that took place on Wall Street. We can do that in a bipartisan way because we all agree that has to be done.

The thing we want to make sure of is that umbrella or that reaching out to accomplish that particular part of the problem that exists does not look for other problems that do not exist on Main Street and that we have the ability of our community banks, our Main Street banks, as well as our manufacturing sector, to have access to the swaps and derivatives markets that they have done in a commercially responsible way for decades. They are not part of the problem, but yet it is going to be of significant consequence to every manufacturer. Not every community bank engages in swaps and derivative transactions, but a lot of them do. We need to make sure we take into consideration the continued ability of those banks to operate in a normal commercial banking way. Under the base bill, they are simply not going to be able to do that.

Again, I commend the chairman for his hard work. I know he and Senator SHELBY are still trying to work out some agreements on the too-big-to-fail issue. It is my understanding that some of the provisions in the hopeful agreement they are talking about are going to have a direct impact on some of the things I have talked about today. It will make our job a little bit easier trying to fix the derivatives title to this bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, before my friend leaves the floor, I wish to thank him for his hard work as the ranking member of the Agriculture Committee, with Senator LINCOLN of Arkansas. I will quickly address a few points my friend has raised.

One I think all of us acknowledge—I certainly acknowledge—is that the GSE issue needs to be addressed. We reached the conclusion that it is such a huge issue, and there are only so many issues we can take on in a bill of this magnitude. Clearly, some language that would allow for some studies to be done or other matters that would help address the issue—I am open to some ideas such as those. To me, for us to try to take on the whole issue of how we reform government-sponsored enterprises—we need to do it. It is clearly an issue that must be addressed. I was concerned about how much we can actually take on in one bill dealing with the entire financial reform structure. I assure my colleague that I am prepared to at least support some ideas to get us moving in the right direction on GSE reform.

On the home mortgage area, underwriting standards, again, we are open to ideas. As the Senator may recall, a year or so ago we fought hard to include underwriting standards. The Federal Reserve has now actually written some. We are trying to get responsibility on both sides of that equation. We had lenders out there pushing a lot of stuff out the door, a sector of our economy—the shadow economy, as it is called—luring people in to take no-document loans, securitizing them and moving them along. And we saw the effects of that. I know there are people working on how we can manage to come up with good language that does not so restrain the ability of a lender to have some flexibility in those standards. Clearly, we want standards in place that everybody has to meet—the lender and the borrower—as we move forward to avoid the kinds of pitfalls that have occurred.

On consumer protection, the last thing we want is asking the dentist, the butcher, so forth—I know people have talked about being subjected to what we are talking about in financial products and financial services. Again, not imposing any new laws at all, but how do we make sure the seven agencies today responsible for those laws can be consolidated in a thoughtful manner?

Lastly, on derivatives, this is an area which is predominantly, although not exclusively, in the purview of the Agriculture Committee. As the Senator points out, when we are talking about futures contracts involving securities, there is clearly SEC involvement, and thus our committee has had some strong interest in the subject matter. Senator JUDD GREGG, as well as Senator JACK REED, has worked on that issue. There is work that needs to be done. We all understand that.

My hope is, on the subject matter which the Senator has explained and talked about—and I appreciate his comments this morning that this is a big and important area—that there be an effort to try to develop a bipartisan approach to all of this as we look at it. It is a complicated area of law. It would be to everyone's advantage if there was communication back and forth to come up with some ideas on which we might be able to achieve some strong bipartisan support. I know he is trying to do that. I encourage him to keep that up as we look ahead so we can end up with good answers. I am very grateful for his interest in the subject matter. I am hopeful this morning that we can move along in the amendment process and do our job. I thank the Senator from Georgia very much.

Mr. CHAMBLISS. I thank my colleague.

Mr. DODD. Mr. President, I see our colleague from Wyoming. If he is ready to go, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

HEALTH CARE

Mr. BARRASSO. Mr. President, I first thank the chairman for the acknowledgement and thank him for the opportunity to take the floor.

I come here because of new information that has come to light about the health care bill that has been signed into law. As a physician who has practiced medicine in Wyoming for 25 years, as an orthopedic surgeon, I come to offer a second opinion on this bill and now this law. I went into this focused on the sorts of things the President had talked about—lowering the cost of care, improving the quality of care, increasing the access to care. But I come to the Senate floor today with my second opinion because I think these things have not been accomplished by the bill that has been signed into law.

For many years, I have been the medical director of the Wyoming health fairs—giving low-cost blood screening to people around the Cowboy State, giving them opportunities to learn about themselves, their health, and to focus on getting down the cost of care.

Today, when I come with my second opinion, it is that this bill—this bill now signed into law—is going to be bad for patients, bad for providers—the nurses and doctors who take care of these patients—and bad for payers, the people who are going to be paying the bill for this new law, the taxpayers of the country. I believe fundamentally that in passing this law, this is going to result in higher costs for patients, not lower costs. It will result in less access for patients, not more access. This is going to result in unsustainable spending at a time when we are looking at record unemployment and record debt.

I come today to talk about what I have seen in the new information that has been coming forth since the bill was signed into law. I have an editorial written in the Columbus Dispatch:

> Almost daily the ill effects of the health care overhaul passed by Congress are becoming apparent.

The editorial in the Columbus Dispatch goes on:

> As employees and government bureaucrats analyze the law's effects on the bottom line for the private sector and for government, the alarm bells are ringing. The tragedy is that these ill effects could have been and should have been calculated before the law was passed, not after.

It goes on:

> In fact, many of them were prophesied before passage of the bill, but the prophets were ignored by President Barack Obama and the Democratic majority in Congress. That is because their uppermost goal was

not to pass the best health care bill possible but merely to pass anything that could be called health care reform and could be claimed as a political victory by a President desperate for one.

I come today with my second opinion on the high-risk pool which has been in the headlines the last couple of days. When the President and Democratic Members of Congress were pushing the health care bill, they promised that people with preexisting conditions would receive immediate relief. The bill has been signed into law, and Americans with preexisting conditions remain as confused as ever as to how this new law will impact them, will impact their lives and will impact their pocketbooks.

Unfortunately, hundreds of thousands—that is right, hundreds of thousands—of Americans with preexisting conditions are going to end up getting the short end of the stick. In fact, even USA Today recently reported that the new law is going to trap 200,000 Americans in pricey, State-operated, high-risk plans. Here is the front page of USA Today from last Thursday: ''Health law traps some in pricey state plans; 200,000 hard to insure can't get federal option.'' Mr. President, 200,000 Americans trapped. These are the folks who have been paying for coverage through the State high-risk insurance programs that exist today.

One might say: How can that be? What is the catch? These 200,000 people are not eligible for the brandnew, low-cost, high-risk program that is created by the law. Are these not the people we were trying to help? The law requires that for people to get into this new plan, they have to have been without insurance for the last 6 months. We have 200,000 Americans with preexisting conditions who have been playing by the rules, who have been doing what is right. What happens? They are not going to have any access to the benefit the President and the Democrats in this Congress promised would be available to them.

Don't just take my word for it. Here is what the Kansas insurance commissioner had to say. She said that we have people who have struggled to stay in our existing pool and take care of their existing health needs. And then this new pool comes along, and it is more generous and they are not going to be eligible for it.

What is the difference? With the new pool, the maximum amount someone is going to have to pay for an individual is $5,950; for a family, $11,900. That is 100 percent of the standard market rate. But many of these high-risk pools across the country are at a point where they are charging twice the standard market rate because these people are an increased risk because of their preexisting conditions.

The people who have been playing by the rules, doing it right, and, as the insurance commissioner said, people who have struggled to stay in the existing pool, they are going to be left out, ignored, and rejected by this new law the President has signed into law.

This week, all 50 States were given the opportunity to tell the administration whether they wanted to run their brandnew, high-risk pool for individuals with preexisting conditions. The answer has not been positive.

Just yesterday, Tuesday, May 4, the Washington Post said: ''18 states decline to run 'high-risk' insurance pools.'' Eighteen States said to Washington: No, thank you. Eighteen States have refused to participate. Why? Mainly, they do not know, if and when the Federal money runs out, how it is going to be paid for.

One may say: What do you mean, the Fed money runs out? They just passed this health care bill that is going to cost almost $1 trillion. For this high-risk pool, the amount of money that was put in, $5 billion—in the Chief Actuary report of Medicare and Medicaid, they said the money is likely to run out before 2012, even though it is supposed to last until 2014.

What is going to happen to these States? No one knows, and the administration is not saying.

The Governor of Wyoming, Dave Freudenthal, looked at this as a Governor and asked: What do I want to do? Do I want to participate or not? He is one of the Governors who looked at it very carefully, and he is one of the Governors representing the 18 States that said, ''No, thank you,'' to Washington.

This is what he said in his letter to the Secretary of Health and Human Services, Kathleen Sebelius. He said:

> The State of Wyoming has operated a very successful high risk health insurance pool for nearly 20 years, which has served Wyoming citizens well.

And we have. I was involved with this when I was in the State senate, where I served for 5 years. As he said, a very successful, high-risk health insurance pool for nearly 20 years, which has served the citizens of Wyoming very well. Then he goes on to say:

> . . . necessary requirements have not been set out and key terms have not been defined. Without such guidance, I find it unwise to further consume my staff and Department of Insurance with the guesswork currently necessary to implement this program.

Mr. President, these Governors are just guessing—guessing if it will work, guessing if it would not work—and nobody knows. That is why, in an interview with the Associated Press yesterday, the Governor of Wyoming said:

> . . . the $8 million the federal government offered the state to run the high-risk insurance program until 2014 wouldn't be enough.
>
> He also said he's concerned the state wouldn't have been allowed to administer the federal pool together with its existing state program.

Sorry, States—this is what the Secretary is saying—we in Washington know better than you. You might have a program that has worked for 20 years very successfully in your home State of Wyoming, but we don't want to know about it. We want you to either set up a new program and do it our way or forget about it. And that is what the people of Wyoming have decided because the Governor said: When I looked at it, it just didn't seem to make financial sense.

So, once again, the administration is saying: Trust us. They want to act now and ask questions later. Well, Americans and Governors across our country have serious questions about this new high-risk insurance program—how much it will cost the States, how much it will cost the taxpayers, and why all American patients with preexisting conditions would not have access to the immediate benefits they were promised.

Unfortunately, Washington's lack of answers clearly demonstrates that this administration doesn't have its act together. The administration has not delivered on the President's promise to help all Americans who have preexisting conditions have access to the same affordable health insurance coverage. That is why all across this country people are saying: This bill, rammed through the Congress, with all the sweetheart deals, and signed into law, wasn't passed for somebody like me. It was passed for somebody else.

So I come to the floor of the Senate today to say it is time to repeal this legislation and replace it with legislation that delivers personal responsibility and opportunities for individual patients, that will get down the cost of care, that will improve the quality, and will improve the access to care. We need patient-centered health care—something that will provide individual incentives, such as premium breaks for people by encouraging healthy behavior; that allows people to take their health insurance with them when they move from State to State or when they change jobs; that gives the uninsured and the self-insured the same relief when they buy insurance that the big companies get; that allows people to buy insurance across State lines; that deals with lawsuit abuse; that allows small businesses to join together to get down the cost of their care. These are the things that will work to get down the cost of care, to deliver high-quality care, and improve access to care. Those things are not in the health care bill that was signed into law. They are not in the health care bill that passed this body and passed the House.

So that is why I come to the Senate floor to once again offer my second opinion that it is time to repeal this bill and replace it—replace it with something that will work well for the American people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise this morning to speak about the issue that is before not only the Senate—and, thankfully, we are in the debating process, finally, after many days of discussion about debate—I think this is also an issue that is on the front burner, so to speak, around kitchen tables or wherever families are gathered or small business owners and others. It is about reforming our financial system and making it more accountable.

I want to back up a second and put this in the perspective of where our economy is. We have an economy which has resulted in a job loss that is a record of one kind or another. We have heard it over and over again: The recession we are living through right now—even though we are recovering—is the worst economic climate we have had since the 1930s. There are lots of ways to measure that, but, of course, the most important data point or number is the unemployment rate and the number of Americans who are out of work—some 15 million.

In Pennsylvania, over 582,000 people are out of work. Our rate is 9 percent. A lot of States would rather a 9-percent rate than 11 or 12 or 13 or 14. But in our State, 9 percent means 582,000 people out of work through no fault of their own. That is the reality with which we are living.

One of the ways to dig out of that hole, so to speak, or get the car out of the ditch—pick your image or analogy—is not only to put in place the job creation strategies which we have put in place over the last year—and even more recently in the last couple of months—but also to reform our financial system to prevent the abuses that took place that led to the problems that so many Americans are experiencing right now.

One of the problems we have had is the fact that we have not just big banks—that was always the case in America; we always had large institutions and small institutions—but we have gone beyond big to what you might call a megacategory—megabanks—that have too much power concentrated in them and too much impact on our system. So what developed was this too-big-to-fail problem. It is a big problem we have to make sure we prevent from happening again, where a bank is such a big institution that it has tentacles reaching far into the economy, and the failure of that one institution or the failure of two or three wrecks the economy for so many others. So one thing we are going to do in this legislation is to make sure that doesn't happen.

So how do we hold Wall Street accountable and how do we put consumers in control at long last? Well, first of all, we have to have strict regulations to stop Wall Street from engaging in reckless activities. We have to stop the reckless gambling that Wall Street was engaged in for far too long. We have to end the taxpayer bailouts forever. That is one thing we have to achieve.

I mentioned the too-big-to-fail problem. We have to end too big to fail as a problem for our system. We have to have a new cop on the beat. This isn't just a question of having a couple of tweaks in regulations, we need tough regulations and tough enforcement. Of course, the analogy we use is one of law enforcement and having a new cop, or a number of cops, on the street—on Wall Street in particular. We have to put consumers in control with information about transactions that are in plain English.

One of the problems we are experiencing now is that we got away from the system we had in place. I am not just speaking of strong regulation and mechanisms to control powerful institutions so they can't wreck our economy because of their reckless behavior and the scheming artistry and the fraud that took place over far too many years, but the basic concept that people in a community knew the bankers and the bankers knew the customers, so to speak. So if you went to get a mortgage for your home, you actually knew who you were dealing with. One side was invested in the other. That worked very well for a long period of time. We have gotten away from that.

I am not saying we can replicate the system we had 30 or 40 or 50 years ago, but we have to borrow some of those concepts where there was more accountability and more sense of investment. We know that 15 years ago—not that long ago—the six largest banks in the United States had assets totaling 17 percent of the gross domestic product. Where are those six megabanks today? They control not the equivalent of 17 percent of GDP, they control 63 percent. It changed from 17 percent to 63 percent in 15 years, virtually unchecked.

So instead of supporting a small business in a community or a Little League team or a family trying to borrow money or a small business, these megabanks gathered deposits from Wall Street. They sliced and diced them, they leveraged them to the hilt, and then used the hard-earned wages and savings of Americans to make a handful—a very small, tiny number—of Americans incredibly wealthy. It is the kind of wealth that is staggering, almost incomprehensible and almost incalculable.

Make no mistake about it, these megabanks profited tremendously from this new model. That is an understatement. Over the last 30 years, profits and compensation in the banking industry have skyrocketed. I don't think wages have skyrocketed. At best, they have been flat for a long time. When they have increased, it has been in very small numbers. So we have megabanks and a flawed system leading to megaprofits for a tiny percentage of the American people, even a small percentage of the business community, so to speak.

American families have been living with this problem. The big guys got us in the ditch, and as we are trying to push the economy out of the ditch, the American taxpayers have had to pay the freight. Well, it is time we made some basic changes, and this legislation gives us this chance. Now is not the time to slow down and delay and wait and scratch our heads. We know it is wrong, we know what the problem is, and we know how to fix it.

This morning, we have the continuation of debate on the bill. We had an example last week where Goldman Sachs came before the Senate, not in a situation where the Senate was a prosecutor or a law enforcement agency, but the Senate played an important role as it relates to Goldman Sachs. Chairman Carl Levin, chairman of the relevant investigative committee—said we were focused on policy and ethics, and I think that is an appropriate role for the Senate.

Now, what happened in that Goldman situation? Well, there are a lot of ways to describe it, but one way to look at it is this way: Goldman sold investors a product—in this case a derivative product—and its value was tied to the performance of a big portfolio of subprime mortgages. That is where it started. But it appears that Goldman worked both sides of the deal. They would sell these products to investors on the one hand, while also plotting with a hedge fund manager who was betting against the performance of the very same mortgages. It gives ''conflict of interest'' new meaning, and it is a disturbing, alarming image for a lot of Americans—selling on one side and then going over to the other side and plotting and scheming to make money, not worrying about what is downwind, what is downstream, the horrific consequences, such as a wrecking ball to a building, and just kind of laughing all the way to the bank.

I know I am in overtime, so I will wrap up. I will be back to talk about an amendment I will be offering, but I do want to say how much I appreciate the work that has been done to date. We are at the beginning of the debate on the Restoring American Financial Stability Act of 2010, which will establish an early warning system; enhance those protections for consumers and investors; strengthen the supervision of large, complex financial organizations; and finally regulate, at long last, in a much more aggressive way, the so-called over-the-counter derivatives market.

I see our chairman of the Banking Committee, Chairman DODD, is here. He has done great work in this area not only more recently but for many years, and we are grateful for his leadership. I know the debate is in the early stages, but I think we are going to have a good product by the end of it.

Mr. President, I yield the floor.

Mr. DODD. If the Senator will yield for 30 seconds—I see my friend from Louisiana. I wish to give him time. But I wish to say to Senator CASEY how much I appreciate his work. We worked together on this committee before I moved on to, I wouldn't say greener pastures, but I was a member of the Banking Committee. I am very grateful to him for his involvement. We dealt with the housing issues and credit card issues and the like as well. I appreciate his comments very much, and I look forward to working with him, along with my colleague, the Senator from Louisiana, Mr. VITTER, who is a member of the Banking Committee. I thank Senator CASEY.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

LOUISIANA OILSPILL

Mr. VITTER. Mr. President, representing Louisiana in the Senate, along with my colleague, Senator LANDRIEU, you can image I have been focused exclusively on the ongoing oilspill, the leak, the ongoing flow that we and the country are battling. Because it has been almost a week since I have been in Washington and on the Senate floor, I wish to use the opportunity to briefly give an update from my perspective.

Along with many other officials, industry folks, interested citizens, I have been all through and up and down the coast as well as offshore. I had the pleasure of traveling with several Cabinet Secretaries and other Members of our congressional delegation last Friday, going offshore to look at the site of the former rig, the site of the ongoing spill or leak, very closely. I also took another helicopter tour later that day. I have been in all the effected coastal communities, St. Bernard Parish, Plaquemines Parish, which encompasses the mouth of the Mississippi River and beyond, lower Jefferson. I reached out to folks daily—local elected officials and leaders, the industry, Federal agencies, the Coast Guard and others working on this ongoing crisis and the Governor in the State—who were extremely proactively engaged.

Having done that, again, I wish to give a brief report to my colleagues and my fellow citizens. Obviously, I think we need to start in remembering that this is a great human tragedy and that started with the apparent loss of 11 lives. I think it is very important to start all our discussions and recollections about this incident with that human tragedy and with those families. As the media and others cover the environmental danger which is great, the economic impact which is enormous, I think sometimes those families, that enormous human loss is a little glossed over. So I certainly want to stop and reflect on that again and continue to offer my heartfelt thoughts and prayers to those 11 families who were the most impacted, who have suffered the most. I say a prayer for them every day, as do so many folks in Louisiana. We will continue to lift those families.

Second, this is an ongoing challenge and crisis because, as I said a minute ago, this leak, this flow continues. It has not stopped yet. Of course, priority No. 1 of everyone involved is to stop the leak, to stop the flow. It is a little difficult to estimate exactly what that flow is, but the best guesstimate—and it is an art, not a science—is about 5,000 barrels a day.

To put that in perspective, already, as of 4 or 5 days ago, that meant the product leaked surpassed all the spill, all the events combined from Hurricanes Katrina and Rita. That was a big event, so this has already surpassed it 4 or 5 days ago. If that leak rate is constant and continues, 5,000 barrels a day, then in about another 35 days we will equal the volume leaked from the Exxon Valdez. That is a very real threat to equal or surpass that amount of oil. It is a huge event.

There is lots of activity going on at the wellhead in that area to try to control and stop the leak. There are multiple plans. I guess plan A, if you will, is to close off the valves that should have been shut down automatically through the blowout preventer. Needless to say, there was a massive failure in terms of that automatic closedown, which is supposed to happen at multiple levels. But there is ongoing effort to send underwater robots down to the floor of the gulf and shut down those valves. Unfortunately, that has not worked yet.

Plan B is to put out a large, constructed box or dome to cover the part of the gulf floor where the leak is coming from and then to pipe up the material, to vacuum the material in a controlled way from there to the surface and store it. That box or dome has been constructed. It will be sent out to the site in the next 48 hours. So that attempt will start. This technology has been used before in other spills but never in anything similar to this depth of water, 5,000 feet. It has been used in 400 feet, 500 feet, not 5,000. That is a big difference, which brings up all sorts of engineering challenges because of the enormous pressures at that depth of water.

Plan C, if you will, is to drill a relief well—in fact, two relief wells. That work has already begun, to relieve the pressure on this well and to bottle it, to put mud and cement down there to stop the flow from the existing well. That can work and that will work. The problem is that will take 60-plus days, 60 to even 90 days. That work has begun.

In addition to that work to stop the leak in the immediate area of the leak, the Coast Guard and BP and others in the industry are using dispersants and other methods of trying to mitigate the ongoing flow.

That is one category of very important work. There is a second category of extremely important work; that is, all the work that is underway to protect the Louisiana coastline and marshes, as well as similar work in neighboring States: Mississippi, Alabama, and Florida.

I have to say, last Friday, when I took that plane ride with the Cabinet Secretaries, I was extremely concerned that all that coastal protection planning and execution had to go through BP. It was very evident to me that challenge and that end of the endeavor was bigger than BP, and bigger than any single company. I was concerned that was a bottleneck. I was not arguing in any way that BP is the responsible party under Federal law, that BP had enormous monetary responsibility that flowed from that—nobody is arguing with that. But operationally, I didn't want all that crucial coastal protection, marsh protection activity to be stalled or delayed because it had to fit through that bottleneck.

I think the good news from over the weekend is that old system was blown up and that bottleneck was relieved. I particularly wish to compliment and commend ADM Thad Allen, whom the President appointed on Saturday to be the Federal coordinator of this entire effort. I think he recognized, at my urging and that of many others, that having all that coastal planning and execution flow through BP was a problem and a mistake. So that has been corrected.

As of Friday, detailed planning, in terms of coastal and marsh protection efforts, was not getting done by BP. Frankly, it was not getting done by the Federal authorities—the Coast Guard or anyone else. But local and State leaders stepped in, the folks who know that coastline and that marsh area the best stepped in and they have provided those detailed plans over the last several days. So over that time period, in particular from Friday on, individual parishes, in coordination with the State, in coordination with many experts, have developed parish-by-parish plans to protect the coastline and the marsh. That has been a very strong effort; again, pulling together many resources, many levels of leadership, folks who know the coast, the terrain and the marsh like the back of their hands. So that void has been filled, thanks to that leadership and vision by local leaders in strong coordination with Governor Jindal and the State.

Now those individual parish-by-parish plans are ready. They are being tweaked, they are being improved, but they are ready. The next step is for the Coast Guard to formally approve those plans. That has been done on a preliminary basis, the first version of those plans, but most of those plans now have supplements. The Coast Guard needs to quickly and timely approve those supplemental plans. I talked to the Coast Guard leadership yesterday afternoon and urged them to do that in a very time-sensitive way, and they assured me that was happening. Once that happens, BP automatically is on the hook to pay for implementation of those plans. That takes no additional approval or signature from BP. That is automatic under Federal law. Then the plans need to be executed, either through BP or independently by using fishermen in the area, by using other contractors or otherwise. That is a decision of the locals and the State. I think that process is moving in a very good direction and is well underway.

Let me close by focusing on another big category of concern that I share with so many others; that is, the concern about economic impact starting with the folks who have been hit and affected the most, the fishermen of Louisiana, oystermen, shrimpers, and the fishery industry. Already, as of at least Sunday and Monday, this is having devastating economic impact on those folks. Our hearts go out to them. Our prayers go out to them as well. I have been working with many others to try to get them the help and relief they need, in particular focusing on four categories of activity. First of all, when I talk to local fishermen in Saint Bernard and lower Jefferson and Plaquemines, all through Louisiana, they all say the same thing. They don't want handouts. They don't want a big Federal program. They want a job. They want a paycheck for hard work. That is their lives, that is their tradition, that is their spirit. They just want that to continue. So, first of all, all efforts are being made to hire them, in what is called the Vessels of Opportunity Program, to be the backbone of this coastal and marsh protection response. I have talked to both local and State leaders and BP, and we are all in agreement that a hyperaggressive effort needs to happen to hire as many of those fishermen as possible to man that coastal marsh protection effort.

Second, that is not going to take care of all the immediate need. I am pushing strongly to make sure BP holds to its promises of setting up a hotline and a program of getting quick compensation into the hands of affected families who are suffering economic loss. I talked directly with the CEO of BP yesterday about this. He assured me that was being done. That would mean quick checks to people and families who needed it without any requirement that those folks sign their lives away or cap their claims or sign away future claims. I am going to work very hard to enforce that personal promise. In fact, today, I am setting up a hotline in my office. It will be advertised on my Web site, www.vitter.senate.gov, to ensure that program is developing as promised. If anybody out there, fishermen or others who are applying into that program, is treated differently, I urge them to call this hotline and we will get all over that immediately and try to correct that situation with BP.

Third, in terms of helping that local industry, of course we are looking medium and long term in terms of full economic damages. BP is the responsible party. They are responsible for those economic damages. In addition, we have an OPA trust fund under Federal law which, at present, has a $1.6 billion balance, funded since the Exxon Valdez incident specifically to cover these sorts of direct economic impacts and balances. So I am very focused on that.

Fourth, additionally, there is an outpouring of citizen private support to help these families.

I am not directly involved, but I know several organizations under the umbrella of the United Way are leading fundraising efforts to directly help these families.

But as this ongoing challenge and crisis continues, that will continue to be a prime focus of mine: the families directly impacted, the fishermen, the oystermen, the shrimpers, their families who, after suffering through so much with the Katrina and Rita, were sort of hit below the belt yet again.

I will continue obviously, with Senator LANDRIEU and others, to stay very focused on this ongoing crisis to do all the sort of work I have described. I would ask my colleagues to be sensitive to that and to be aware of that. In particular, there is going to be, and there has to be, enormous discussion about policy, Federal and other policy, coming out of this disaster.

We need to look at mandated technology. We need to look at procedures. We need to look at the current liability cap and the OPA trust fund. All of that is important. But as we begin to do that, my first request would be that we all realize that down in Louisiana off our coast in the gulf, in the real world, there is an ongoing crisis that still continues. The leak is unabated. The flow is unabated.

I would ask all of us to be sensitive to that so we are not diverting attention or resources away from that ongoing crisis. The work needs to be there right now to shut down the flow of oil and to protect our coastline. Many Members, Democrats and Republicans, have offered their support to me and Senator LANDRIEU. We both deeply appreciate that and we look forward to working with everyone in this body on this ongoing situation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I ask unanimous consent to speak as in morning business.

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

PUBLIC SERVICE RECOGNITION WEEK 2010

Mr. KAUFMAN. This week, once again, we celebrate Public Service Recognition Week.

Public Service Recognition Week provides us all a chance to reflect upon the contribution made by those who serve in government.

All throughout the week, the Partnership for Public Service, a leading nonprofit, nonpartisan organization dedicated to honoring those who work in government, will be hosting informative programs across Washington.

One of the most exciting moments during the week is the announcement of this year's finalists for the distinguished Service to America Medals, or ''Sammies.'' This year, once again, the crop of finalists is outstanding, and the winners will be announced at the Partnership's annual Service to America Gala in September.

During last year's Public Service Recognition Week, I delivered the first in a series of weekly speeches from this desk honoring great Federal employees. Now, 1 year later, I am proud to continue this effort today by recognizing my sixtieth great Federal employee, along with a few others who have won Service to America Medals in the past.

Anh Duong has worked for the Naval Surface Warfare Center, in Indian Head, MD, for 27 years. But her relationship with the U.S. Navy goes back farther. She came to this country after escaping Vietnam as a teenager, having fled by helicopter to a Navy vessel offshore. After coming to the United States, Anh obtained a degree in chemical engineering and computer science from the University of Maryland.

After graduation, Anh began working at the Naval Surface Warfare Center as a chemical engineer, and from 1991–1999, she oversaw the Center's advanced development programs in high explosives. From 1999–2002, she worked as the head of its programs to develop undersea weapons.

After the September 11 attacks, when our Armed Forces were given the mission to defeat the Taliban, it was Anh who was asked to develop a thermobaric bomb that could be used to reach deep into Afghanistan's mountain caves, where Taliban fighters were hiding. She and her team were only given 100 days to prepare such a weapon for use. They did it in 67 days.

Since 2006, she has been working with the Naval Criminal Investigative Service to create mobile battlefield forensics labs to help quickly identify those behind terrorist attacks. Anh Duong was awarded the Service to America Medal for National Security in 2007.

Another dedicated Federal employee, who won the Service to America National Security medal in 2005, is Alan Estevez. Alan is the Principle Deputy Assistant Secretary of Defense for Logistics and Military Readiness.

The old adage says that ''an army runs on its stomach.'' In fact, a modern military runs on much more than that. There are thousands of pieces of equipment and supplies that need to be transported in and out of an area of operations. Alan has been working since 1981 to make our military logistics system more efficient.

Over the past several years, Alan has overseen efforts to implement radio frequency identification, or ''RFID'' technology into our military supply chain. He saw that companies like Wal-Mart were using RFID to track products with a high degree of accuracy and to reduce waste.

Alan's work over the past three decades has saved the military, and the taxpayers, countless dollars and has helped ensure that our troops have the supplies they need to fulfill their missions.

Another Service to America medalist I want to highlight today is Riaz Awan. He served as the Energy Department's attaché in the Ukraine when he won a Sammie for his work to secure the site of the 1986 Chernobyl meltdown.

Riaz won the 2003 Service to America Medal for International Affairs, which recognized the several years he spent living near the site of the Chernobyl disaster and working with the local communities to mitigate its social and economic impact. As part of his work, Riaz oversaw the construction of a new concrete shelter over the former Chernobyl reactor, one of the largest and most complex engineering projects in the world at the time.

Additionally, his work on nonproliferation in the Ukraine has helped prevent terrorists from getting their hands on nuclear materials leftover from the fall of the Soviet Union.

In the same year that Riaz won his award, the Service to America Medal for Call to Service, which recognizes new Federal employees, was won by Alyson McFarland of the State Department.

Alyson had only worked at the State Department for 3 years when she found herself in the middle of a tense diplomatic situation. She was working as a program development officer at our consulate in the northern Chinese city of Shenyang, near the North Korean border. One summer day, in 2002, three North Korean refugees jumped over the consulate wall, seeking asylum.

Alyson was one of the only Korean-speakers working in the consulate, and she quickly became instrumental in communicating with the refugees and authorities from the Chinese and South Korean governments. By playing a key role in supporting the negotiations with the refugees and government officials, she helped enable the asylum-seekers to reach freedom in South Korea. At the time of the incident, she was only 28 years old.

The fifth and final story I want to share today is about the winner of the 2002 Service to America Medal for Justice and Law Enforcement. Special Agent Robert Rutherford won it for his work at the U.S. Customs Service, which has since been renamed as U.S. Customs and Border Protection.

Robert served as the Group Supervisor for the Customs Service's Air-Marine Investigations Group in Miami, and his primary job was to keep illegal drugs from reaching American shores.

Starting in 1999, Robert began noticing a sharp rise in the amount of cocaine and other narcotics being smuggled into the country from Haiti, which was contributing to a rise in local crime.

On his own initiative, Robert worked with his colleagues to form Operation River Sweep to block the Miami River as a trafficking route for drugs. As part of the operation, he led a first-of-its-kind intra-agency task force under the direction of the Customs Service. Between 1999 and 2001, Operation River Sweep made over 120 arrests and prevented over 13,000 pounds of cocaine from reaching Florida communities.

As Robert's efforts met with success, the local crime rate dropped. In order to stay afloat, the drug traffickers adapted their methods, hoping to outsmart the Customs Service.

However, in 2001, Robert launched a second task force, Operation River Walk, involving over 300 law enforcement personnel from local, State, and Federal agencies. This second task force arrested over 230 trafficking suspects and seized over 15,000 pounds of cocaine and cannabis.

Though the details are different in each case, all five of these stories about Service to America winners send the same message. It is a message of service above self, of motivation to carry out the people's work.

When I first spoke about Federal employees a year ago, I noted the importance of the oath taken by all those who serve in Federal Government. The spirit of that oath, to ''support and defend the Constitution'' and ''faithfully discharge the duties of the office,'' undergirds the service of every man and woman who has worked as a Federal employee since 1789.

Our work in Congress today is the drafting of a blueprint for recovery, security, and prosperity. The task of building and maintaining these edifices we design will belong to the dedicated and industrious civil servants upon whom all Americans daily rely.

They are the regulators who will restore stability to our financial system.

They are the lawyers who will prosecute terrorists detained overseas.

They are the doctors and nurses who will care for our returning veterans.

They are the aid workers who spread hope and healing around the world.

They are the instruments by which we, the people, secure the ''blessings of liberty.''

As we mark Public Service Recognition Week, let us all make an effort to thank those who have chosen the path of public service. They are all truly great Federal employees.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, the American people are tired. They are tired of the government spending money that it does not have while they are forced to make tough decisions about their own family's budgets.

But more importantly, the American people are tired of the government stepping in, blank check in hand, to bail out giant Wall Street firms that were irresponsible with their money. The American people are sick and tired of seeing their hard-earned taxpayer dollars squandered in the name of too big to fail.

One of the most important lessons that we learned from this financial crisis, hopefully we learned, is that the bailouts were unfair. They allowed the government to manipulate the market by picking winners and losers, and they used taxpayer dollars to do so.

Republicans have made this point repeatedly during this debate. Those on the other side of the aisle have accused us of trying to hold up reform. But what we have been trying to do is to listen to the American people when they demand no more bailouts.

This bill does not address the concerns of the American people. Despite the enormous size of this bill, and its complexity—and believe me, it is truly complex—I do not believe anybody in this Chamber—as a matter of fact, I do not believe anybody on Capitol Hill fully understands this bill.

This bill makes more explicit the ability of the government to continue to pick winners and losers when bailing out irresponsible Wall Street firms. I come from a State where gambling is a big part of our economy. Yet a Las Vegas casino could not get away with half of the gambling that Wall Street does. When people walk into a casino to gamble, they do so knowing that the odds are against them.

But Wall Street takes gambling to a whole new level. They do it because they actually manipulate the odds while someone is playing the game. What is more, Wall Street then asks the government to cover their bets when they can no longer afford to do so on their own.

Can you imagine a casino booking a bad bet and losing money, and then asking the government to bail them out? That is basically what Wall Street did. And this bill continues that ability.

The proof of this is self-evident because we are now debating an amendment that tries to fix that, the Boxer amendment. If this bill did what it claimed to do, we wouldn't be here debating this amendment which, although this amendment sounds very nice, it actually does very little to address the problem of preventing future bailouts. This bill still creates a new government bureaucracy for the purpose of managing bailed-out banks and their creditors. The language of this amendment does nothing to prevent taxpayer money from being used to pay off debts of failed financial institutions. For example, billions of dollars in taxpayer money were used to pay AIG's obligations to Goldman Sachs after the insurance giant collapsed. This amendment does nothing to stop the Federal Reserve from risking even more taxpayer money on these firms in the future. The language of this amendment does not even prevent the government from imposing fees on companies that can be spent to bail out firms.

I regret this flawed bill is on the floor now instead of a bipartisan piece of legislation the American people have been asking for and, quite frankly, deserve. I hope in the process of debate, we can offer amendments that will fix this legislation, that will finally end this too-big-to-fail concept. Instead, the American people are left dealing with the reality that another partisan bill has come to the floor and will probably become law. Another government bureaucracy will be created as a result of this legislation with little regard to the will of the people.

Here we go again. Unfortunately, too much partisanship has gone on in this body. There are several of us working on bipartisan amendments. I hope we can dramatically improve this bill. Both sides have the same objectives. We want to clean up Wall Street. We don't want to do that while hurting Main Street. We want to hold Wall Street accountable, but we don't want to do it in a way that harms people who had nothing to do with the financial crisis.

I hope we actually can end up with a system that ends too big to fail. We already have several financial institutions that are already too big to fail. What to do about those firms is very difficult, very complex, and we have to do it in a way that doesn't mess up our entire financial system and system of credit. I believe we need to take our time, because the expertise to get this right is difficult to get. I don't believe necessarily the Senate or the House has that kind of expertise. We need to take our time on this bill to get it right, to make sure we are doing what we are intending to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I don't know if there has ever been a perfect law. Maybe the law that was written on stone tablets and brought down the mountain by Senator Moses was a perfect law. Ever since then, human beings have tried to write laws that are good and acknowledge that they are human. Maybe the laws will have to be revisited and changed and revised. That humility comes with this job, because you understand this is an imperfect process. We debate, try to reach compromises and make concessions. Virtually every time at the end, you say: That isn't what I would have written, but that is what the Senate decided to move forward with.

Now we are in the midst of debating this law, 1,407 pages long, called the Financial Stability Act. Why are we doing a bill that looks like a telephone directory? We are doing it because of the recession, a recession which, frankly, hit America harder than anything since the Great Depression. Seventeen trillion dollars was taken out of the American economy. That is more than the value of all the goods and services produced in the United States in 1 year; $17 trillion yanked out of the economy, and most of us felt it. You felt it in your savings account, your 401(k). You saw it when the shop down the street laid somebody off or closed.

We know this is a real recession that hit America hard, 8 million people unemployed, 6 million people sitting out there frustrated, not even looking for jobs. That is a real recession. How did we reach that? We reached that because of some very bad decisions in Washington and on Wall Street. The decisions in Washington related to the future of housing. Are we going to expand the opportunity to own homes to people who traditionally did not own them? We thought it was a good idea.

I can remember when my wife and I bought our first home. Our lives changed. We were no longer renters. We were interested in that house and in our block and our neighborhood, our parish, and our community. It is a different look at life. Home ownership is a real American value. We also thought it was a pretty good investment. Stretch to make a house payment. Can we make it? Do you think we can make that monthly payment? If you can, you watch the value of that housing go up and say: Pretty good decision. Nice little house for the family and a good investment.

So we thought in Washington, let's expand that model. There is nothing wrong with where we started. There was nothing selfish about it or outlandish that we would move in that direction. Then came Wall Street. Wall Street said: If this is a good thing, we can make money on it. They took the mortgages people used to enter into with the bank down the street or downtown and sold the mortgages downtown to some other bank. Pretty soon that mortgage went into the business atmosphere and was chopped up in pieces, sliced and diced into securities and derivatives, traded and sold at the highest levels of Wall Street. Unfortunately, it got out of hand. It got so far out of hand that at the end of the day, it collapsed. Home values started coming down; defaults and foreclosures started increasing. People making all the money on Wall Street were sitting in financial institutions that were crumbling around them.

So where did they turn for help? They turned to taxpayers. They asked taxpayers: Bail us out. Come to our rescue. Keep our company in business even though we made some fundamental mistakes.

And we did. There is a good argument as to whether we should have. But I can tell you, having sat in the room where the Secretary of the Treasury and the Chairman of the Federal Reserve said, Senators and Congressmen, if you don't move fast, the American economy is going to collapse, what do you do? I have an education and some experience, but I am not sure I am ready to save the American economy singlehandedly. I took their advice, as did others in bipartisan votes that led to the bailout that saved these institutions.

They showed their gratitude to American taxpayers for saving them from their own malfeasance by declaring bonuses for one another, million dollar checks they gave to one another in congratulations for their economic failure. Naturally, Members of Congress and the American public said: It is disgusting that these people would make these mistakes. Ask the average mom-and-pop family to bail them out with their tax dollars and then give one another bonus checks to reward their misconduct.

That is what brought us here today. That is what this bill is about. This bill is about changing financial institutions to guarantee there will never be another taxpayer bailout, period. Senator BARBARA BOXER of California has the first amendment. It is a critically important amendment. It ought to have every vote in this Chamber. It says: No more taxpayer bailouts, period. That is a good starting point.

But then let's proceed from there. What are we going to do about these institutions to make sure they are held accountable, that they don't get so big their failure jeopardizes the American economy? That is part of this as well, the amount of money they have to keep on hand, the leverage, the liquidity, how they can loan this money, rules of the road to make sure we never get into this recession mess again.

There is another provision in here too, one that I think is equally important. It says we are finally going to create one agency of government that is going to look out for families and businesses across America who can be duped into legal agreements that can explode on them at the expense of their life's savings or their home. It is a consumer financial protection law, the strongest one ever passed in the history of the country.

I heard the Senator from Nevada call it a massive bureaucracy. It is not that. In fact, it is a self-enforcing agency that has the power to make decisions independently of existing agencies of government with one goal in mind: Empower consumers across America to make the right choices. We can't make the final decision about whether you sign that mortgage paper. We shouldn't. But you ought to know when you sign it what you are getting into. What is the interest rate? What is the term of this mortgage? Can I prepay this mortgage without penalty? Those are basic questions people need to be asked and answered. That is what this bill is going to guarantee through the Consumer Financial Protection Agency.

It took a long time to get to the point today where we will have our first vote on this bill. It took much longer than it should have. Senator CHRIS DODD of Connecticut, who is chairman of the Banking Committee, sat down with Republicans, Senator SHELBY of Alabama, over 3 months ago and said: Let's work together. Let's make this a bipartisan bill. After 2 months of effort, they concluded they couldn't reach agreement. At that point Senator DODD said: I will reach out to Senator CORKER of Tennessee, a Republican, and see if I can reach agreement with him for a bipartisan bill. He is on my committee.

They worked for a month. They could not reach agreement. So Senator DODD said: There comes a point where we have to move this legislation. He called this bill before his Senate Banking Committee and invited Republicans and Democrats on the committee to give their best ideas. How would they change this, improve it? What would you do to this bill?

Republicans filed over 400 amendments to this bill. That is a lot of work. Then came the day of the actual hearing on the bill. The decision was made on the other side of the aisle not to offer one single amendment, not one. Twenty minutes after it convened, it voted to pass the bill out and adjourned.

So when Senators from the Republican side of the aisle come in and say: There is not enough bipartisanship in this bill, I have to tell you, it isn't because of a lack of effort by Senator DODD and members of the Banking Committee. We have tried to engage our friends on the other side of the aisle to help us make this a better bill. We still offer that invitation. There will be bipartisan amendments. There should be bipartisan amendments. But at the end of the day, if we don't make a fundamental change in the economy and the way we manage financial institutions, we will invite another breakdown, and we can't let that happen. There have been too many victims of this recession to let that happen.

President Obama has challenged us to get this done. We do so little around here. It is frustrating. We spent a whole week a few weeks ago, 1 whole week, debating whether we would extend unemployment benefits for 4 weeks. One week of debate, four weeks of extension. The following week we spent an entire week on the Senate floor debating five nominees the President had sent to us out of the 100 sitting on the calendar. All of these nominees were noncontroversial, passed with strong votes. We ate up an entire week on these nominees.

Then we wasted last week when the Republicans mounted a filibuster to try to stop debate on this bill. Three straight votes, Monday, Tuesday, and Wednesday of last week in favor of a filibuster. And finally, thank goodness, several Republican Senators went to their leadership and said: This is a bad idea. We ought to be on the right side of history for Wall Street reform, and we are not going along anymore with the filibuster. At which point it ended, and we started moving to the bill.

Today we may take up the first amendment. I hope we do. There are a lot of things that need to be included in this. Let me tell you one thing I will offer an amendment on which most Americans are not aware of. If you have a credit card and you go to a local business, whether it is a restaurant or a flower shop or to get your oil changed, and you present your credit card to pay for the service or the goods you are buying, you are not only going to pay the shopkeeper, the shopkeeper is going to owe the bank that issued the credit card a percent of what you paid. It is called an interchange fee. It turns out to be a substantial amount of money for retailers. They end up paying these credit card companies a percentage of the bill for the use of the credit card. There is nothing wrong with that. There should be a fee associated with the use of credit cards by businesses. But it has reached a point of unreasonableness. It has reached a point of unfairness. Let me give an example.

If I go to a restaurant in Chicago and pay for my dinner with a check, the restaurant turns the check in to the bank. The bank contacts my bank, the money transfers. There is no fee, no cost. However, if I go to the same restaurant and use a debit card, which takes the money directly out of my bank account just like a check, the company that issued the debit card and credit card will charge a percentage of that restaurant check to the owner of the restaurant. That money is coming directly out of my checking account just as a check is.

Why is the credit card company taking as much in a fee from a restaurant as they do with a credit card, where there is at least some question as to whether ultimate payment will be made?

So we are going to have an amendment which addresses the interchange fee and tries to bring some fairness to it. I think it is long overdue. I hope all of the Members of the Senate who believe in small businesses will call them and ask them about the Durbin amendment on interchange fees. You will find, as I have, this is one of the major concerns of retailers and businesses across the United States.

I talked to a CEO of a major drugstore chain yesterday, and he told me his top four expenses for his nationwide chain of drug stores: No. 1, salaries; No. 2, what he called mortgages and rent; No. 3, health care, No. 4, interchange fees—the amount of money his chain pays to credit card companies. It is a huge expense of small business.

We are not saying there should not be an interchange fee. We are saying it should be reasonable, and if it does not involve effort, service, or liability on the part of the credit card company—such as the debit card—it ought to be reflected in the fee that is charged.

The last amendment I submitted is one I think taxpayers across the country ought to pay attention to. More and more each year, the Federal Government is accepting payment by credit card. You can pay for your income tax with a credit card. What does that men? It means Uncle Sam—the taxpayers—pays an interchange fee to the credit card companies, even though, ultimately, those credit card companies are all being paid.

So in my estimation, it calls for an amendment which says the lowest interchange fee rate should be charged to the Federal Government, so the taxpayers are not subsidizing credit card companies, which they are currently doing with interchange fees that do not reflect the liability involved in the transaction.

This is just one of the aspects of the bill. Some will say: Well, what does that have to do with the recession? I can tell you, consumer debt and personal debt had a lot to do with the recession. A lot of people, in desperation, turned to their credit cards. A lot of people found the interest rates on their credit cards going through the roof, and a lot of people did not understand why they were so expensive.

We are going to bring this out for debate. Once again, I hope my colleagues who support small businesses, as I do, and believe they are a lifeline to bring us out of this recession will join me in supporting small businesses to make sure we bring some sense to the interchange fees charged on credit cards and debit cards across America.

Mr. President, I yield the floor.

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

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

Mr. DODD. Mr. President, I just spoke with Senator SHELBY on the phone. We have been working to reach agreement on the so-called too-big-to-fail sections of the bill. I spoke with him, and while he will be coming over shortly and we will have a vote on this early this afternoon, the leaders have to set the time, I presume, that after the respective lunches we will be able to vote on this and the Boxer amendment. I will leave it to the leaders before I make a unanimous consent request.

I want to describe briefly to my colleagues what we have agreed on to, hopefully, resolve this matter of too big to fail.

For over a year, Senator SHELBY and I have been working on ways to end bailouts. We agree that ought to be done. We have had differences in other areas, but we have shared a commitment to ensure that taxpayers would never again be forced to bail out giant Wall Street firms that fail.

Last November, I asked our colleagues from Virginia and Tennessee, Senator WARNER and Senator CORKER, to produce an agreement on how best to resolve failed companies.

They did a tremendous job. I commend both of our colleagues. They worked hard, as did their staffs, to draft language as part of the underlying bill. The package they produced would create effective oversight for large firms and make these firms pay for the risks they pose to our economy and country. Their agreement put a mechanism in place to guarantee that when large firms fail, they fail. The management is fired, creditors and shareholders take losses, the company is liquidated, and taxpayers aren't on the hook.

This is a complicated area, and a number of my colleagues on the other side had raised some reservations. So I spent the last few months working with Senator SHELBY to clear up any misconceptions people may have had and otherwise address the concerns.

After weeks of negotiations—and, really, months if you consider all of the work that has gone on over the last year—I am proud to say the two of us have an agreement in this area. We intend to offer it as an amendment to the bill early this afternoon.

Let me go over the amendment, if I can. First, most of the provisions stay intact because we agree on the fundamentals of this bill. There will be an orderly liquidation mechanism for FDIC to unwind failing systemically significant financial companies.

Second, shareholders and unsecured creditors will still bear losses, and management will be removed.

Third, regulators will still have the authority to break up a company if it poses a grave threat to the financial stability of the United States. That is important.

Large bank holding companies that have received TARP funds will still not be able to avoid Federal Reserve supervision by simply dropping their banks.

Most large financial companies are still expected to be resolved through the bankruptcy process. The bill will continue to eliminate the ability of the Federal Reserve to prop up failed institutions such as AIG.

These measures represent a fundamental change in our country's ability to protect taxpayers from the economic fallout of having a large, interconnected firm collapse.

These measures will end the idea that any one company is too big to fail.

These measures will prevent large failing firms from holding our country hostage, extorting giant taxpayer-funded bailouts under the threat of economic disaster. So, today, we announce a few changes to the larger package.

First, as I have said, one of the ideas proposed by some of our colleagues, including our friends on the other side, was to create a fund, paid for in advance by the largest financial firms, to cover the cost of liquidating failed companies. This was not in my initial draft offered in November and was opposed by the Obama administration. Other Republicans have now expressed concerns about that prepaid fund because whether they pay in advance or after the fact, these costs will be paid by Wall Street, not the taxpayers. So I have no objection to dropping that provision. In fact, I was rather agnostic on it, as many of my colleagues were. We have the common goal to make sure taxpayers would not bear any costs. That is what we tried to achieve. There are a variety of ways of doing it. There were those who raised concerns about the prepayment program and raised the possibility, or the specter, or the optics that somehow they could be getting a preferred status. That was never the intent, but because people are concerned about the optics of it, we agreed to have a postpayment responsibility, or fund, that would be borne by creditors or the industry itself, based on whether there were enough assets in the failed institution to pick up the costs of winding down that firm that was failing. So that is where this comes from.

Creditors will be required to pay back the government any amounts they received above what they would have gotten in liquidation. Those who directly benefited from the orderly liquidation will be the first to pay back the government at a premium rate.

Congress must approve the use of debt guarantees. The Federal Reserve can only use its 13(3) emergency lending authority to help solvent companies. Regulators can ban culpable management and directors of failed firms from working in the financial sector. That is an add-on. It makes sense that if someone has been involved in the mismanagement of a company and caused this kind of disruption in the economy, then it requires that they would be banned from engaging in further economic activities.

With this agreement, there can be no doubt that the Senate is unified in its commitment to end taxpayer-funded bailouts.

There are some other provisions that I will run down very briefly: clawbacks of excess payments to creditors. This will allow, from creditors or the failed company, any payments that exceed what creditors otherwise would have received in liquidation. There is 100 percent taxpayer protection through assessments. It maintains the protections in the bill so if the assets in the failed company and clawbacks from creditors are not enough to pay back all the Treasury borrowing with interest, FDIC will charge assessments to large firms, a penalty interest rate. There is a time limit on receivership. Management gets paid last any salaries or other compensation owed executives. Failed companies are paid last after creditors. There is a ban on management from going to work in the financial sector. There is a judicial check in this amendment, IG review, which requires the inspector general and various agencies and Federal regulators to review actions taken under the orderly liquidation authority. Financial company definitions are included, reports and testimony on top of the requirements in the underlying bill, the FDIC will have additional reporting requirements and will have to testify before Congress.

As I mentioned, the 13(3) lending restrictions are only applied to solvent companies, as well. A congressional approval of FDIC emergency debt guarantees is included in this package as well.

So there are a number of provisions, all of which we think basically make sense. We never argued with these ideas at all and the idea of whether it is prepayment or postpayment was an argument that went back and forth without any strong objections. Many of us were trying to figure out the best way to do this so taxpayers would not be left on the hook. Obviously, I want to leave time for Senator SHELBY who will come over to talk about it. I wanted to give my colleagues an idea of the agreement that I am prepared to support when Senator SHELBY offers this as an amendment.

I see my friend from New Hampshire on the Senate floor. I will be glad to share this information and the other parts of the bill with my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I rise to speak about another part of the bill. I congratulate the chairman for the work he and Senator SHELBY did on reaching this resolution on too big to fail. It is an important step forward on a critical part of the legislation. I think it shows that there are a lot of places where we can reach a bipartisan consensus in this bill.

It is my sense that the great and very positive work done on resolution authority will—I would hope it will carry over to things such as the derivatives issue, which needs to be worked on, and issues such as underwriting standards and how the regulatory structure is created and how the chairs are moved around in that area. I think all of these issues are fertile ground for reaching consensus. I know the Senator from Connecticut has been constructive in his efforts to reach across the aisle.

This bill can be a very strong and positive piece of legislation. I hope it ends that way. I think this is a strong and good step in that direction, with the announcement by the chairman on the agreement of resolution authority.

I want to speak about a part of the bill that has been ignored because there have been so many big issues. That is what happens when you bring a bill this large to the floor. It is 1,400 pages, and it has a lot of language in it. It had to be a large bill because it deals with a complex issue. Included in the bill is language that was sort of baggage thrown on the train—that is the way I describe it—in the area of corporate governance. To a large degree, by its own definition, it has virtually nothing to do with financial regulatory reform. This language does a series of things: It primarily federalizes corporate law relative to the manner in which stockholders and directors and executives of corporations are treated.

It is not limited to financial institutions but to any publicly traded company. It guarantees what is known as proxy assets under Federal law. That is a right traditionally set up by States. It sets up standards for how directors are elected under Federal law for all companies. That is a right that has usually been reserved to the States. It even puts in place a requirement that corporations disclose certain information that has absolutely no relevance at all to financial reform because it deals with every company in America that is publicly held, such as the ratio of compensation between different workers within a company and the manner in which boards of directors are elected, whether it is all at once or under staggered terms.

It is a major push by the Federal Government into an arena that has always, historically, been primarily the role of States. It steps all over States rights, in my opinion—the right of shareholders to have companies they are comfortable with and are being well managed for the purpose of returning a reasonable return to the shareholders. It will undermine shareholders' rights, in my opinion, not increase them.

If we look at the proposal specifically, let's take proxy assets. This is a term of art that essentially says that any group of shareholders will be able to put on a proxy statement a proposal for how the company should be run. If someone wants to balkanize a company, there is probably no quicker way to do it than to have unilateral proxy assets for any issue that is of concern or interest to some group that buys shares. This type of language is essentially put in to promote special interest activity. We all hear about how terrible special interests are. This language is special interest language for the purpose of promoting special interest groups—starting with the trial lawyers, of course, but followed up by various people who have a social justice purpose relative to some corporation.

Let's take a group or a company such as McDonald's. Say a group believes they are selling too much food that creates the opportunity for people to eat too much and causes obesity.

You could have a special interest group that was concerned about that buy stock and force a proxy statement on what type of food McDonald's should sell. It does not stop there. Of course, there are all sorts of issues about which special interest groups want to promote and change corporate governance.

How you manage a corporation is supposed to be primarily in the hands of the boards of directors who are answerable to the stockholders. The purpose, of course, is to increase the value of the stockholders as a whole and their return on their investment. In most instances, that is the primary purpose of a corporation. But this Federal access, this proxy access is all about the opposite. It is about pushing agendas onto the management of corporations, through the boards of directors, through the proxy process that is very special-interest oriented and very narrow in its purpose and is not necessarily directed at return on the investment for the stockholders. It has just the opposite effect.

Short-term objectives become the standard of the day under this type of approach rather than a long-term view, which is what most of our boards of directors are supposed to take relative to these decisions. The cause of the day, the cause du jour, could be any number of things. If it happens to be the activist view of the day, it becomes the issue under corporate governance versus the purpose of managing the corporation well over the long term in order to get adequate return to the shareholders.

It is an inappropriate idea, especially inappropriate for the Federal Government to bury it in this bill. This language applies to every publicly traded corporation in America, not just the financial institutions. Why is it buried in this bill? It should not be in there.

The same can be said of the way this bill, this language approaches directors and what the shareholders' rights are relative to directors. These have historically been State decisions. In fact, the State of Delaware, which is obviously the leading State on the issue of corporate governance and has developed a uniform corporate governance structure which a lot of States have adopted, including my State of New Hampshire, which basically tracks Delaware to a large degree—that has been the law of the land for all intents and purposes, settled law, predictable law, the purpose of which is to have fair and adequate corporate governance, where the directors are responsible to the shareholders under a structure that everybody knows the rules and which is controlled by the States.

Yet this bill comes in and does fundamental harm to that. For what purpose? Because there is an agenda in this Congress to usurp States rights to be able to manage corporate law and to put in place of it opinions and ideas which are only supported by a very narrow group of special interests that basically have gotten the ear of people in this Congress. That is the ultimate special interest legislation.

The implications for these companies is, it is going to be darn expensive, if you are a small- or middle-sized company, to deal with this type of Federal interference with the management of the company and the proxy process. It is a very inappropriate initiative.

Furthermore, this creates an atmosphere where nobody is going to know who is governing what because you are going to now have State law and you are going to have Federal law and you are going to have the SEC whose responsibility will increase dramatically. We already know the SEC is strained to do what we have asked them to do. They have some big responsibilities. They have big responsibilities in the financial reform area. They have big responsibilities in corporate governance, generally. To push this further burden on them is going to be very difficult for them to meet. I happen to be a very strong supporter of having a robust SEC, but we should not burden them unnecessarily with a whole new set of corporate governance rules, which are already adequately and appropriately addressed by State law, primarily Delaware State law but other States which have their own corporate rules.

More important, we should not undermine the rights of stockholders across this country to be able to get a reasonable return on their investments by being reasonably assured that their management—specifically, the directors of the company—are working for the purposes of the company's financial return and strength versus for the purpose of some special interest group that comes in and wants to put special interest legislation in the middle of the corporate governance effort, which is exactly for which this language is proposed. That is why it is here.

The reason this language is put forward is because there are a lot of self-proclaimed social justice groups in this country that decided they want better access to corporate boards and have this Federal proxy access which will basically balkanize, as I said earlier, the process of governing and leading these businesses in which most Americans are invested.

The vast majority of Americans in this country either have a pension fund, IRAs, 401(k)s or are personally invested in the stock market. Why do they invest? They invest to get a reasonable return on that investment, either in the way of appreciation or in the way of dividends or maybe a combination. That is what they do. Most of the savings—a lot of the savings in this country are tied up in that.

Why would this language appear which will basically undermine those stockholders' rights and ability to presume and expect that their directors are going to be managing for the purposes of the stockholders-at-large versus for a single interest group within the stockholder group that happens to want to put a social justice agenda into the management of that corporation? It makes no sense at all, unless you happen to be a special interest group.

We rail around here all the time. I hear, ironically, from a lot of groups that are sponsoring this language, such as Public Citizen, that they are against special interests. Yet here we have the most significant piece of special interest legislation in this whole bill, an attempt to bootstrap special interest groups' social agenda and force them on corporations and stockholders who would otherwise not pursue their agendas because they are interested in getting a return on their investment. It is going to, as I mentioned earlier, make it much more difficult for us to have a vibrant stock market and a corporate structure in this country which is rational, and it certainly will undermine significantly States rights in the area of corporate governance, which historically had primary responsibility for setting up the rules by which our corporations operate.

I hope that as this bill moves down the road, this type of language, which is extraneous—totally extraneous—to the financial reform effort because it affects all public corporations and, ironically, the three financial corporations which are at the core of the problem we had in 2008 relative to visibility—AIG, Lehman, and I believe one other, maybe Citibank—had a couple of these rules in place anyway. Obviously, they had nothing to do with reducing the implications of the event. Rather, this language is simply put in because some group got somebody's ear. I hope it will be taken out before we get to the end of the day.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Illinois.

Mr. BURRIS. Madam President, roughly 2 years ago, the American economy stood on the verge of collapse. After years of growth and seemingly endless prosperity, the honeymoon was suddenly over. The bubble burst. The world was plunged into recession. Banks began to fail, foreclosures skyrocketed, businesses struggled, and many Americans lost their jobs. Working families saw their hard-earned economic security evaporate almost overnight. Some of our largest and most respected financial institutions were forced to close their doors and others were in imminent danger.

In Washington, policymakers found themselves face to face with the worst economic crisis since the Great Depression. They took action. They were forced to make some difficult decisions, but they stopped the bleeding and set America back on the road to recovery.

It is well known that reckless actions by large Wall Street firms helped get us into this economic mess. These companies skirted rules and regulations. They gambled with the securities of the entire financial system, and they lost.

But my colleagues knew that if these large institutions collapsed, they would bring down the rest of our economy with them. They had become, as we say on this floor, too big to fail.

In the face of the potential catastrophe, many of my colleagues summoned the kind of political courage that is rare in this town. They bit the bullet and voted to bail out these large firms, not because the firms deserved government help but because it was the only way to stop this recession from turning into a depression.

It must have been a painful decision, but it provided stability at a volatile moment. It propped up ailing markets all over the world and helped pull this country out of an economic tailspin.

Today, our recovery remains fragile, but we are moving in the right direction. Too many Americans remain unemployed, but the economy is starting to grow again. Key indicators are finally turning around.

As this Chamber considers Wall Street reform, I believe it is time to make sure this can never happen again. Let's protect our financial system from the kind of recklessness and abuse that has cost us so much. Let's make sure we never again will be forced to prop up big banks or risk total collapse. Let us end too big to fail.

As a former banker, I have a deep understanding of the role our financial institutions play. Banks help direct investment to local communities. They provide credit to small businesses and security to working families. When they make bad decisions, they deserve to suffer the consequences of those decisions. That is how our free market system works.

When big banks try to get around these responsibilities, when they package these risk investments and sell off the risk to someone else, that is not banking, that is gambling. Without commonsense regulations and vigorous oversight, Wall Street becomes a casino. I heard my distinguished colleague from Nevada mention that Nevada is the gambling capital of the world. But Nevada would not even buy some of these odds in which some of these banks are involved.

Sometimes these companies get lucky and their bets may pay off. But other times they are not so lucky. That is when they look to working families to either bail them out or suffer a second Great Depression.

We need to make sure Americans never have to face this choice again. We have to prevent firms from growing so large and reckless that they threaten our entire economy. That is why I support the bill introduced by Chairman DODD and say that it is a good bill, it is a strong bill which will end taxpayer bailouts, restore oversight, and set basic rules of the road so we can make sure too big to fail is a thing of the past.

This bill will institute the Volcker rule, which will both restore and modernize some of the key protections of the Glass-Steagall Act of 1933. I am also cosponsor of an amendment that is coming forward in this regard. I really support us going back to Glass-Steagall, having been a banker during those days when you couldn't invest in insurance companies, you couldn't invest in mortgage banking activity, and you had to be a commercial bank that took in the lending and the security of people's assets and made loans in that regard. So this would help prevent fraud, discourage conflict of interest, and keep banks from growing so large they threaten our economic security.

The bill would also give us the tools to monitor big banks for risky behavior so that we could crack down on the irresponsible practices that caused this mess in the first place.

I urge my colleagues to pass this bill as it will be amended, and I call upon them to join my good friend Senator BOXER in passing her amendment, which will help us bring down large unstable institutions without taxpayer bailouts. Taxpayers aren't going to take it anymore. We aren't going to be bailing out these big institutions only to have them turn around and pay huge bonuses to their top officials.

Over the past 2 years, we have made great strides in helping to turn our economy around. In the last Congress, Members of both parties did what was necessary to stop the recession from deepening. Then, a little more than a year ago, I was proud to join many Members of this body in passing the American Recovery and Reinvestment Act—a landmark bill that continues to bring prosperity back to communities all across this country. As a result of these bold actions, our economy is finally on the right track.

So let us in this body, at this time, finish this job. Let's pass this Wall Street reform bill, as amended, so that we can establish the basic rules of the road and allow our free markets to thrive again. Let's end too big to fail so no large bank will be able to gamble away our economic security. Let's do it now because the time is now.

I yield the floor.

PASSING OF ERNIE HARWELL

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I wish to start with a poem in honor of Ernie Harwell, who passed away yesterday. This is the way, for decade after decade, the great broadcaster of the Detroit Tigers started when the first game of the season came along.

For, lo, the winter is past,
The rain is over and gone;
The flowers appear on the Earth;
The time of the singing of birds is come,
And the voice of the turtle is heard in our land.

Well, for four decades a man named Ernie Harwell would recite those words. He would recite them at the beginning of the first baseball broadcast of spring training, and those are the words that would tell our people the long, cold winter was over.

Ernie was the radio voice of the Detroit Tigers for 42 years. During that time, there may have been no Michiganian more universally beloved. Our State mourns today at his passing yesterday evening, after a long battle with cancer. He fought that battle with the grace and good humor and the wisdom Michigan had come to expect and even depend on from a man we came to know and love.

This gentlemanly Georgian adopted our team and he adopted our State as his own, as did his family. His career would have been worthy had he done nothing more than bring us the sound of summer over the radio, recounting the Tigers' ups and downs with professionalism and wit, as he did for all those years.

Without making a show of it, Ernie Harwell taught us in his work and his life the value of kindness and respect. He taught us that in a city and a world too often divided, we could be united in joy at a great Al Kaline catch or a Lou Whitaker home run or a Mark Fidrych strikeout. He taught us not to let life pass us by, in his words, ''like the house by the side of the road.''

In 1981, when he was inducted into the Hall of Fame, Ernie told the assembled fans what baseball meant to him, and these were his words:

In baseball, democracy shines its clearest. The only race that matters is the race to the bag. The creed is the rulebook. Color merely something to distinguish one team's uniform from another.

The was a lesson he taught us so well in everything he did in his life.

I will miss Ernie Harwell personally and deeply and fondly. All of us in Michigan will miss the sound of his voice telling us that the winter is past, that the Tigers had won a big game or that they would get another chance to win one tomorrow. We will miss his Georgia drawl, his humor, his humility, his quiet faith in God, and the goodness in the people he encountered. But we will carry in our hearts always our love for Ernie Harwell, our appreciation for his work, and the lessons that he gave us and left us and that we will pass on to our children and to our grandchildren.

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

Ms. STABENOW. Madam President, today I pay tribute to an extraordinary man who passed away yesterday at the age of 92 years old: Ernie Harwell.

For 42 years, families throughout Michigan tuned into their radios and welcomed Ernie's signature voice into their homes as they listened to him call Detroit Tigers games. When he retired in 2002, Senator LEVIN and I submitted a resolution, which the Senate passed, celebrating his achievements and congratulating him on his many years of service. Today, I join with millions of people in Michigan and around the Nation in wishing Ernie a final farewell.

His accomplishments were many, and he will always hold a special place in our hearts and in our memories. He was the first active broadcaster inducted into the Baseball Hall of Fame, and for good reason. In 1948, when he was calling games for a Minor League team in Atlanta, they actually traded Ernie—their announcer!—for a backup catcher from the Brooklyn Dodgers. He joined the Detroit Tigers in 1960 and during his tenure, he missed only two games—one for the funeral of his brother and another when he was inducted to the National Sportscasters and Sportswriters Association Hall of Fame.

His most memorable broadcasts include the broadcasting debut of Willie Mays in 1951, Bobby Thomson's "shot heard 'round the world" that same year, and Hoyt Wilhelm's no-hitter against the New York Yankees in 1958. Ernie brought to life, through the medium of radio, the performances of some of baseball's greats, such as Sparky Anderson, Kirk Gibson, Al Kaline, Denny McLain, Alan Trammell, and so many others.

He loved the people of Michigan, and we surely loved him back. In 2009, he said, "I deeply appreciate the people of Michigan. I love their grit, I love the way they face life, I love the family values. And you Tiger fans are the greatest fans of all. No question about that."

Today, Tigers fans everywhere mourn the loss of the great man who gave us so many wonderful memories over the years. I offer my deepest condolences to his beloved wife of 68 years, Lulu, his two sons and two daughters, and his many grandchildren and great-grandchildren. Although Ernie has left us in this world, I know that he will live on in the memories of every Tigers fan.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. NELSON of Florida. I ask consent I be allowed to speak as in morning business.

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

OILSPILL THREAT

Mr. NELSON of Florida. Madam President, we have a huge potential economic and environmental disaster in the Gulf of Mexico that is occurring as we speak. It was on an exploratory rig. It is almost unbelievable how far they can now drill beneath the surface of the water. In this case it was 5,000 feet, and then, at the ocean bottom, they were able to drill another 13,000 feet down to find a pocket of oil, all of which caused this explosion because of the pressure of the oil and the gas, the natural gas, creating such an overpressure that it exploded at the wellhead at the sea bottom. A device, a so-called blowout preventer, that had three safety mechanisms in order to stop the flow of oil in the case of a blowout—none of those three safety mechanisms have worked.

The first was a mechanism that would be activated by a switch 5,000 feet up from the sea bed on the surface of the Gulf of Mexico on the floating exploratory rig. There were actually two switches. One was flipped closer to the surface by workers on the rig, who unfortunately lost their lives and they have not been found. The second switch was at a higher level. I think they refer to it as the bridge. Those workers were rescued. They confirm that switch was flipped, which was to automatically cause the first safety device to go into activation, which was to drive metal plates like pistons together over the wellhead to cut off the flow of oil as it was gushing upwards from the pressure beneath. That activation mechanism did not work.

The second safety mechanism was one called a dead-man switch; that is, whenever power was interrupted, automatically the second safety mechanism was to activate, driving those metal plates together to shut off the flow of oil. That did not work, as well.

The third safety mechanism was to use robotic submersibles that are quite sophisticated, that have manipulator capability even at that depth, the depth of a mile, to go in and physically get hold of a handle, an actuating device that would literally pump a hydraulic pump to drive the plates together to shut off the well. That third safety device did not work either.

This safety device, referred to as a blowout preventer, was designed and built by a company that was contracted to BP, British Petroleum, called Transocean. We now know from the Times of London, in a published article over the weekend, that as far back as 10 years ago, in the year 2000, British Petroleum had been concerned with the safety devices working and had asked Transocean, which built the devices, about this. I asked the CEO yesterday, the CEO of British Petroleum, what occurred 10 years ago. You were put on notice there was a safety mechanism that maybe was not working. He said that was raised and they worked it out.

Apparently, 10 years later, these safety devices did not function—so that they worked it out.

As you know, what is happening, the initial results provided by BP are that it was 1,000 barrels of oil a day. The Coast Guard has estimated that it is now five times that much and we are waiting for updates. So what is gushing from the ocean floor below is 5,000 barrels of oil a day. That is in excess of 220,000 gallons of oil a day that are coming into the waters of the Gulf of Mexico. It has created this slick that is now, because of the southeasterly winds, to start encountering the Barrier Islands off the southeast coast of Louisiana.

Lord knows where this is going to go. So what do they do now? Right now, they are constructing a fancy dome. This is a multistory structure, probably 10 times my height, that has worked in other blowouts but only at depths of 300 and 400 feet.

They have to try to place this dome 5,000 feet deep, over the wellhead, to see if they can then collect that escaping oil into this dome and then run it up a pipe to a transport and collect the oil there.

But, by the way, we do not know that it is going to work at 5,000 feet because of the pressure. We do not know if they can actually locate it 5,000 feet over the wellhead. What comes up if they do—and collect it—is not just oil, but there would be a rush of oil, then there would be a rush of natural gas, there would be a rush of seawater, and all along having sand corroding the inside of that pipe like sandpaper as it rushes up the pipe 5,000 feet to the surface tanker.

Let's hope it works. Because if it does not, then we have to wait 3 months for the rescue well that is presently being dug from the side, to go down 13,000 feet to the pocket of oil, to start sucking the oil out through the rescue well, thereby relieving the pressure up through the defective well that exploded. They will have to, in fact, drill not one but two rescue wells from the side.

But the estimates are that will take 90 days. If this dome does not work, which they are to insert in the ocean in the next few days, then we are looking at the possibility of that oil continuing to gush for 3 months. You can see after 2 weeks how much of an oil slick there is out there.

You can imagine, if you go on for another 13 weeks, how that could start to cover the Gulf of Mexico and much worse as the prevailing winds from the south would carry it onto some of the world's most beautiful beaches, those along the northwest coast and the gulf coast of Florida.

But, oh, by the way, there is another threat now. That is something Mother Nature has designed, known as the Loop Current. The Loop Current is a current of water that comes up the western side of Cuba, in between Cuba and the Yucatan Peninsula of Mexico, up into the northern Gulf of Mexico, loops and comes to the south, off the southwest coast of Florida, loops down around the Florida Keys and turns northeast and northward, hugs the Florida Keys, becomes the Gulf Stream, which hugs the Keys. Those delicate coral reefs, 85 percent of North America's coral reefs are in the Keys. And then it hugs the shore of Florida along the southeast coast all the way up to central Florida, to Fort Pierce, where it then leaves the coast of Florida, goes across the Atlantic Ocean and ends up over close to Scotland. That is the Gulf Stream. That was the stream that 500 years ago used to carry the Spanish Galleons, along with the wind, back from their discoveries of the New World as they went back to Europe.

You can imagine, if the spill gets so big in the Gulf of Mexico that then it encounters the Loop Current and that spill then starts carrying that oil down the southwest coast of Florida, around the Florida Keys, hugging the Florida Keys and the coral reefs and up the east coast of Florida, we are looking at potential major economic and environmental loss.

So the question is: What do we do? Well, first of all, I have not only requested but, in my kind of mild way, have strongly suggested that we stop all exploratory drilling, at least until the investigation that many of us in this Chamber have asked for, until that investigation is over, as to what went wrong and what we can do to prevent it in the future.

Oh, by the way, that is not going to be a few weeks' investigation. By the time you get through with all this, it is going to be months. So we should not be doing any more exploration with the possibility of more explosions such as this. I did not say production wells; they need to keep producing.

This risk, this blowout, was in an exploratory rig. That ought to be stopped. I asked the CEO of BP yesterday: Have you stopped exploratory drilling?

He says: Yes.

I said: Where?

He said: In the Gulf of Mexico.

I said: How about worldwide?

He said: No; only in the Gulf of Mexico.

Well, what should the President do, other than what he is doing; that is—and I give credit where certainly credit is due—the operation being taken over by the top four-star Admiral of the Coast Guard, since they have the lead. I have talked to the Chairman of the Joint Chiefs; the U.S. Navy is fully supporting the lead, which is the Coast Guard; all the agencies of Government; NOAA, Dr. Lubchenco; the Department of Interior, our former colleague from the Senate, Secretary Ken Salazar. I mean, you can go on down the list. They are all pouring in to try to help because we have a disaster of monumental proportions that is in the making and ruining peoples' lives, their livelihoods, their incomes, their way of life, their culture. We are talking about all of the above.

So I strongly suggest to the President that he ought to abandon his 5-year plan that was for offshore drilling in the Outer Continental Shelf, but which he proposed, at least in the Continental United States, he proposed it only in the Gulf of Mexico and off the mid-Atlantic coast. I suggest he withdraw that. If he does not, I believe it is dead on arrival.

Where do we go from here in the future? Potentially, we are looking at extraordinary financial loss. So I asked the chairman and CEO of British Petroleum yesterday afternoon, I said: You realize the existing law on liability says you handle the cleanup costs but that the existing law has a cap on your liability after $75 million. Do you agree that the economic loss is going to exceed $75 million?

He said: Yes.

I said to him: You have been saying on TV that you think British Petroleum will be the responsible party and take care of this. When it exceeds $75 million, are you going to accept all that liability?

He said: We will work that out.

I said: Well, if I understand that, as far back as 2000, your company had a problem with Transocean and their safety devices and the blowout preventer. Are you not going to have some considered lawsuit against Transocean for a defective piece of equipment?

He said: We are going to work that out.

So I suspect what we are going to see is some of the most enormous and complicated lawsuits you have ever seen, with a lot of finger-pointing that is going to be going around many different circles, and the question of liability for all those people who are going to be losing their jobs and their livelihood and their cultures if this gusher, this underwater volcano, is not cut off. I suspect what we are going to see is an attempt to avoid that economic liability. Therefore, that is why Senator MENENDEZ and Senator LAUTENBERG and I filed, Monday night, a bill that will lift that liability cap from a meager $75 million to $10 billion, because you can see that $10 billion economic loss is not an unrealistic figure and is what could happen if this oil continues to gush for another 3 months.

Well, let me complicate things a little bit. Because if the gusher continues for 3 months, you know what starts on June 1? Hurricane season. Do you know it has been historically a fact that several hurricanes brew in the month of June in the Gulf of Mexico? So can you imagine a big part of the Gulf of Mexico being polluted with oil and suddenly having that all stirred up with the complications of a hurricane.

This is not a pretty picture. It is a major environmental and economic disaster of the most gargantuan proportions that we can ever imagine.

For my final comments, let me say, I have, this Senator, often been derided, derided for standing for the economic and environmental interests of my State, my State of Florida, which has more coastline than any other State, save for Alaska, and certainly has more beaches than any other State, for trying to protect those interests as well as the interests of the U.S. military, since most of the Gulf of Mexico off Florida is the largest testing and training area for the U.S. military in the world.

From two successive Department of Defense Secretaries, Rumsfeld and then Gates, I have in writing that the policy of the Defense Department is in place that oil activities and oil structures are incompatible with the testing and training necessities of the Department of Defense in preparation for our national security interests. This Senator will continue to protect all of those interests.

It is my hope people will understand that the tradeoffs of drilling close to Florida are simply not worth the risk. Why is that? Because of the statistics of the Department of the Interior concerning undiscovered oil in the Gulf of Mexico. Ninety percent of that oil is not off of Florida; it is in the central and western gulf. From the statistics of the Department of the Interior, only 10 percent of that undiscovered oil is off Florida. Is it worth the risk for that de minimis oil to have future potential economic and environmental disasters? Clearly, the answer from this Senator is as it has been for over 30 years that I have been waging this battle, first as a young congressman and now in the position of representing all of Florida: The tradeoff risk is not worth it.

I wanted to bring this to the attention of the Senate. Unfortunately, this story is a continuing one because although this story began over three decades ago, it is still a drama that continues to unfold with tragic consequences.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Madam President, as soon as I possibly can, I intend to bring up an amendment which calls for transparency at the Fed. I must tell my colleagues that this amendment is one of the more unusual amendments that has been brought up in the Senate, I suspect for many years, because of the rather strange coalition that has come together around it. How often do we have the AFL–CIO, a progressive organization, and Freedom Works, a very conservative organization, supporting the same effort? How often are the SEIU, the largest union in America; moveon.org, 5 million members as a progressive organization; and Public Citizen, another progressive organization, striving for the same goal as the National Taxpayers Union or the Eagle Forum or Americans for Tax Reform, very conservative organizations? How often do we have some of the most progressive Members in Congress—and I include myself within that fold—working with some of the more conservative Members? It doesn't happen every day, but that is what is happening on this amendment.

I rise to talk about the amendment, what it does, and why so many diverse groups, representing tens of millions of Americans, are coming together in support of it. I also wish to suggest what it does not do and some of the ways it has been distorted by the Fed and other groups that are opposed. I have seen some of the statements made by the Fed which are absolutely untrue in terms of what this amendment does and does not do.

For me, the origin of this amendment came on March 3, 2009, when, as a member of the Budget Committee, I asked the Chairman of the Fed, Ben Bernanke, a very simple question. I asked him if he would tell me, the committee, and the American people which financial institutions received over $2 trillion in zero interest or near zero interest loans during the start of the economic crisis. During the bailout period, some $2 trillion of taxpayer money was lent. My question was: Mr. Chairman, who received that money? I don't think that is an unfair question. We have heard great debates here on the Senate floor about $5 million or $10 million. To ask who received over $2 trillion in zero or near zero interest loans is something I believe should be answered by the Fed, and they should make that information public. But Bernanke said no. He gave his reasons.

On that very day, I introduced legislation that would require the Fed to put this information on its Web site, make it public, just as Congress required the Treasury Department to do with respect to the $700 billion TARP money. Some may like TARP; some may not. Some may have voted for it; some may not have. But the information about who received the money, when it was paid back, et cetera, is right there on the Web site of the Treasury Department.

This $2 trillion in zero or near zero interest loans does not belong to the Fed. It belongs to the American people, and the American people have a right to know where trillions of their taxpayer dollars are going. It is not complicated. One doesn't need an MBA from Wharton to know that. That is why millions of Americans, whether conservative or progressive or in between, have come together to say we need transparency at the Fed.

This amendment not only requires that the Fed tell us who has received the $2 trillion it lent out, but, similar to the language incorporated in the House bill, it calls for an audit of the Fed by the GAO. As we all know, the GAO is the nonpartisan Government Accountability Office that does a great job in trying to figure out where there is waste and fraud within the government. That is it. This is a very simple, short amendment. It is five pages. It calls for transparency at the Fed and a straightforward audit. Who got what? When did they get it? On what basis and on what terms? Who was at the meetings? Who made the decisions and were there conflicts of interest? Simple, factual questions the American people deserve answers to. That is what it is; it is not complicated.

I understand this amendment will not be supported by everyone. Some may suggest, inaccurately—and I have heard these statements—that this amendment ''takes away the independence of the Federal Reserve and puts monetary policy into the hands of Congress.'' Let me address those concerns by simply reading exactly what is in the amendment. It is not complicated. I quote from page 4 of the amendment. This is what it says. I don't think I can be more straightforward than this:

> Nothing in this amendment shall be construed as interference in or dictation of monetary policy by the Federal Reserve system, by the Congress, or the Government Accountability Office.

It can't be more simple. It can't be more straightforward than the language in this amendment. So when people tell us this amendment is going to interfere and have Congress dictate monetary policy, it is simply not true. In other words, this amendment does not take away the ''independence of the Fed'' and it does not put monetary policy into the hands of Congress. This amendment does not tell the Fed when to cut short-term interest rates or when to raise them. It does not tell the Fed what banks to lend money to and what banks not to lend money to. It does not tell the Fed which foreign central banks it can do business with and which ones it cannot. It does not impose any new regulations on the Fed, nor does it take any regulatory authority away from the Fed. It does none of those things, no matter what anybody coming to the floor may say.

What the opponents of this amendment are doing is equating independence, which we support, with secrecy, which I do not support. At a time when our entire financial system almost collapsed, we cannot let the Fed continue to operate in the kind of secrecy they have operated in for years. The American people have a right to know.

Very often, we see Senators coming down here to the floor to make the point that working people have to play by the rules. How often have we heard that rhetoric? What are the rules governing the Fed? Who makes those rules or do they just make them up as they go along?

Let me list a few of the questions millions of Americans and Members of Congress are asking that a GAO audit might help to answer. I am sure there are many more.

Question: Why was Lloyd Blankfein, the CEO of Goldman Sachs, invited to the New York Federal Reserve to meet with Federal officials in September of 2008 to determine whether AIG would be bailed out or allowed to go bankrupt? I wasn't invited to that meeting. Other Senators were not invited to that meeting. Lloyd Blankfein was invited to that meeting.

When the Fed and Treasury decided to bail out AIG to the tune of $182 billion, why did the Fed refuse to tell the American people where that money was going? Why did the Fed argue that this information needed to be kept secret ''as a matter of national security''?

When AIG finally released the names of the counterparties receiving this assistance, how did it happen that Goldman Sachs received $13 billion of this money, 100 cents on the dollar on what AIG owed them? How did that happen? I don't know. We don't know. The American people don't know. But I think we have a right to know.

Did Goldman Sachs use this money to provide $16 billion in bonuses to its top executives the next year? All over this country, Americans have lost their jobs. They have lost their homes. They have lost their savings. They have lost their ability to send their kids to college because of this recession caused by Wall Street. Yet Goldman Sachs gets $13 billion—100 cents on the dollar—after AIG is bailed out at a meeting in which Lloyd Blankfein is in attendance.

I think it is an interesting question. I don't know the answer, but I think the American people have a right to know. A GAO audit of the Fed might help explain to the American people if there were any conflicts of interest surrounding that deal. Who got what? On what basis? On what terms? Who was at the meetings? Who made the decisions? And were there conflicts of interests?

In 2008, it seems to me—I did not go to Harvard Business School, but it does seem to me—there was an apparent conflict of interest at the Federal Reserve Bank of New York when Stephen Friedman, the head of the New York Fed—who also served on the board of directors of Goldman Sachs—let me repeat that: He was the head of the New York Fed; he also served on the board of directors of Goldman Sachs—and the New York Fed approved Goldman's application to become a bank holding company, giving it access to cheap loans from the Federal Reserve.

Let me quote from an article published in the Wall Street Journal on May 9, 2009, and let the American people determine whether this deserves a GAO audit. Quoting the Wall Street Journal:

Goldman Sachs received speedy approval to become a bank holding company in September of 2008. . . . During that time, the New York Fed's chairman, Stephen Friedman, sat on Goldman's board and had a large holding in Goldman stock, which because of Goldman's new status as a bank holding company was a violation of Federal Reserve policy. The New York Fed asked for a waiver, which after about 2½ months, the Fed granted. While it was weighing the request, Mr. Friedman bought 37,300 more Goldman shares in December. They have since risen $1.7 million in value. Mr. Friedman, who once ran Goldman, says none of these events involved any conflicts.

That was from the Wall Street Journal of May 9, 2009.

Well, maybe Mr. Friedman is right. Maybe there is not a conflict of interest. It seems to me there is a very apparent conflict of interest, but that is an issue that maybe a GAO audit might want to look at.

As a result of the bailout of Bear Stearns and AIG, the Fed now owns—this is pretty amazing—now owns credit default swaps betting that California, Nevada, and Florida will default on their debt. Let me repeat that. Senators from California and Nevada and Florida might be interested in this. As a result of the bailout of Bear Stearns and AIG, the Fed now owns credit default swaps betting that California, Nevada, and Florida will default on their debt.

So the Federal Reserve stands to make money if California, Nevada, and Florida go bankrupt. What can I tell you? This is the reality. I know it will seem strange to the American people that the Fed makes money and is betting that three of our great States go bankrupt. This may make sense to the Fed. It may make sense to some of my colleagues in the Senate. It does not make sense to me. Frankly, I do not believe it makes sense to the American people. But this is what an audit of the Fed will allow us to better understand: whether we want the Fed to be betting against some of our great States, that they will go bankrupt.

It has been reported that the Federal Reserve pressured Bank of America into acquiring Merrill Lynch—making this financial institution even bigger and riskier—allegedly threatening to fire its CEO if Bank of America backed out of this merger. When the merger went through, Merrill Lynch's employees received $3.7 billion in bonuses. Was this a good deal or a bad deal for the American taxpayer? Perhaps a GAO audit can help us find out.

When the Fed provided a $29 billion loan to JPMorgan Chase to acquire Bear Stearns, the CEO of JPMorgan Chase, Mr. Diamond, served on the board of directors at the New York Federal Reserve. Let me repeat that. When the Fed provided a $29 billion loan to JPMorgan Chase to acquire Bear Stearns, the CEO of JPMorgan Chase, Mr. Diamond, served on the board of directors at the New York Federal Reserve.

Did this represent a conflict of interest? To my mind, it does. Maybe I am wrong. But that is what a GAO audit can help explain to the American people.

Again, I know we are going to have Senators running down here saying: Oh, we are trying to break the independence of the Fed.

We are not trying to do that. What we are trying to do is allow the American people to get a glimpse and an understanding of some of the actions of the Fed involving huge sums of money.

Currently, some 35 members of the Federal Reserve's board of directors are executives at private financial institutions which have received nearly $120 billion in TARP funds, but we do not know how much these big banks received from the Fed. A GAO audit could answer that question.

Here is a very interesting point I know a lot of Senators have raised in different context: If the goal of the huge amounts of money in Fed loans—trillions of dollars in Fed loans—to large financial institutions was to achieve the goal of getting credit flowing to small- and medium-sized businesses that were cash starved—they were crying out for credit—why is small business lending in freefall? What happened? We gave the large financial institutions trillions of dollars, presumably to get it out to the small- and medium-sized businesses. They have not gotten it. Question—I think it is a reasonable question, and I am not the only one who is asking it—how much of those zero interest or near zero interest loans that these huge financial institutions received from the Fed were simply invested in Federal Government bonds, earning an interest rate of 3 or 4 percent?

In other words, are we looking at a huge scam? I cannot think of a better word. You give these large financial institutions trillions of dollars in zero interest loans in order to enable them to provide desperately needed loans to small- and medium-sized businesses, so those businesses can expand and create jobs. Yet that appears not to be happening.

Question: How much of those—those several trillion dollars in loans—simply went from the Fed to the financial institutions in order to purchase government-backed obligations at 3 or 4 percent? If that is the case, that is just giving away money. You have zero interest coming in; you get 3 or 4 percent guaranteed by the faith and credit of the United States of America.

Well, do you know what. I do not know. I do not know how much. I suspect, other people suspect, that was done. How much, I do not know. Maybe the GAO can tell us.

This amendment is virtually identical to legislation I have introduced on this subject that has 33 cosponsors. Just as we have a very broad spectrum of political ideology from grassroots organizations on the left and the right—conservative, progressive; Democrat, Republican—supporting this amendment, so we have had widespread—across ideology—support for this legislation.

Let me mention who the 33 cosponsors are. You will see how people with very different political ideologies have come together. The names of those people are: Senators BARRASSO, BENNETT, BOXER, BROWNBACK, BURR, CARDIN, CHAMBLISS, COBURN, COCHRAN, CORNYN, CRAPO, DEMINT, DORGAN, FEINGOLD, GRAHAM, GRASSLEY, HARKIN, HATCH, HUTCHISON, INHOFE, ISAKSON, LANDRIEU, LEAHY, LINCOLN, MCCAIN, MURKOWSKI, RISCH, SANDERS, THUNE, VITTER, WEBB, WICKER, and WYDEN. Those are the people who have supported the legislation.

This amendment coming to the floor has 20 cosponsors—Republicans and Democrats alike—and I want to thank all of those Senators for their support.

In terms of progressive grassroots organizations, this amendment enjoys the strong support of the AFL–CIO; the SEIU, the largest union in America; the United Steelworkers of America; Public Citizen; the New America Foundation; the Center for Economic Policy and Research; the Roosevelt Institute; the U.S. Public Interest Research Group; and Americans for Financial Reform, which in itself is a coalition of over 250 consumer, employee, investor, community, and civil rights groups.

Let me read you a letter of support I received for this amendment from Bill Samuel, the legislative director of the AFL–CIO. This what the AFL–CIO said:

On behalf of the AFL–CIO, I am writing to urge you to support—

This is a letter going out to other Senators—

the Sanders, Feingold, DeMint, Leahy, McCain, Grassley, Vitter, Brownback amendment to increase transparency at the Federal Reserve. . . . Working people want to know who benefitted from the liquidity provided by taxpayers during the crisis and this amendment will ensure that we receive this information.

Let me also quote from a letter I received from Andy Stern, the president of the SEIU, the largest union in the country; and also from Leo Gerard, the president of the United Steelworkers of America; and a number of other academics and economists. This is what they write:

Since the start of the financial crisis, the Federal Reserve has dramatically changed its operating procedures. Instead of simply setting interest rates to influence macroeconomic conditions, it rapidly acquired a wide variety of private assets and extended massive secret bailouts to major financial institutions. There are still many questions about the Fed's behavior in these new activities. The Federal Reserve balance sheet expanded to more than $2 trillion, along with implied and explicit backstops to Wall Street firms that could cost even more. Who received the money? Against what collateral? On what terms and conditions? The only way to find out is through a complete audit of the Federal Reserve. That's why we support the Sanders, Feingold, DeMint, Leahy, McCain, Grassley, Vitter, Brownback amendment to increase transparency at the Fed.

That is what leading progressive economic and social justice organizations are saying about this amendment.

Let me briefly, if I might, quote from some of the conservative organizations. One of the larger ones is the National Taxpayers Union. I do not usually quote from the National Taxpayers Union. I think I am not rated very highly on their chart. But this is what they say in support of this amendment:

> The National Taxpayers Union urges all Senators to vote ''YES'' on S. AMDT 3738 to the financial regulatory reform legislation. This amendment, introduced by Senators Sanders and DeMint, would require the Government Accountability Office to conduct an audit of the Federal Reserve. . . . Transparency is not a Democrat or Republican issue, but rather an issue of right or wrong. If the Senate insists on further expanding the Fed's reach, Americans deserve to know more about the workings of a government-sanctioned entity whose decisions directly affect their economic livelihood. A ''YES'' vote on S. AMDT 3738 will be significantly weighted as a pro-taxpayer vote in our annual Rating of Congress.

We also have support from other conservative organizations, including Americans for Tax Reform, the Campaign for Liberty, the Rutherford Institute, the Eagle Forum, FreedomWorks, and the Center for Fiscal Accountability. In a letter of support I received from them they write:

> We urge you to vote for Senators Sanders, Feingold, DeMint, and Vitter's Federal Reserve Transparency Amendment . . . This amendment does not take away the ''independence'' of the Fed. It simply requires the GAO to conduct an independent audit of the Fed and requires the Fed to release the names of the recipients of more than $2 trillion in taxpayer-backed assistance during this latest economic crisis. Any true financial reform effort will start with requiring accountability from our nation's central bank.

Let me conclude by saying this amendment is not a radical idea. I have just indicated to you that we have progressive groups, representing millions of people, and we have conservative groups, representing millions of people. We have the AARP, the largest senior group, representing, I think, tens of million of Americans.

I should also mention to you that as part of the budget resolution debate in April of 2009, the Senate voted overwhelmingly in support of this basic concept, by a vote of 59 to 39.

In the House of Representatives, this concept passed the House Financial Services Committee by a vote of 43 to 26 and was incorporated into the House version of Wall Street reform that was approved by the House last December.

In other words, a lot of what I am talking about is in the House bill—not a radical concept. This idea has the support of the Speaker of the House, NANCY PELOSI, who said Congress should ask the Fed to put this information ''on the Internet like they've done with the recovery package and the budget.'' That is what this amendment does.

This concept has also been supported—and this is important. I know my friend from Texas wants to speak. I am winding down and I apologize for going on this long. But it is important to point out that this concept has also been supported by two Federal courts that have ordered the Fed to release all of the names and details of the recipients of more than $2 trillion in Federal Reserve loans since the financial crisis started as a result of a Freedom of Information Act lawsuit filed by Bloomberg News.

The Fed has argued in court that it should not have to release this information citing, according to Reuters: ''an exemption that it said lets federal agencies keep secret various trade secrets and commercial or financial information.'' That is what the U.S. Appeals Court in New York said in disagreeing with the Fed. It was a unanimous three-judge appeals court. This is what they wrote in their opinion:

> to give the [Fed] power to deny disclosure because it thinks it best to do so would undermine the basic policy that disclosure, not secrecy, is the dominant objective. If the board believes such an exemption would better serve the national interests, it should ask Congress to amend the statute.

Let me conclude by saying this: We now have 59 Senators having voted for this transparency, 320 Members of the House, and 2 U.S. courts. All we want to know is who got trillions of dollars. That is what we want to know. We also want to know on what basis, on what terms, and who was at the meetings where key decisions were made.

This is an important amendment, and it is an amendment that millions of people want to see pass. I hope we will have an opportunity to offer it as soon as possible, and I hope it is passed.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate hearing the Senator from Vermont describe his amendment. I haven't seen the text of the amendment, but I am a cosponsor of the bill that would do exactly what he says. I think transparency at the Fed is something we can agree on. So I look forward to seeing the rest of the amendment, and if it is just that, I will be very pleased to work with him for passage.

I rise to speak today on the Hutchison-Klobuchar amendment. My colleague, Senator KLOBUCHAR from Minnesota, is also on the floor. We wish to take a moment to talk about our amendment, which will assure that community banks have a more level playing field than could be the case if the bill that is before us, the Dodd bill, passes without our amendment.

Our debate to reform our financial regulatory structure should focus first and foremost on filling the gaps in regulation that led to our financial crisis. I am encouraged by the good-faith efforts of Senators DODD and SHELBY to end too big to fail, and I certainly hope we will see language on that so it is put aside, because I think that is the most important area of this bill. We must end too big to fail. When Senator DODD and Senator SHELBY produce the language they have agreed on, I think that will open the rest of this bill for amendments such as the Hutchison-Klobuchar amendment we are discussing now that I think should be part of overall reform.

We have to look at other areas of concern besides too big to fail such as the lax underwriting standards and the lack of transparency over our derivatives markets. Those are amendments that will also be coming to the floor to assure we address those key issues in financial reform. One area on which we can find agreement is that our Nation's community banks were not a cause of the financial collapse we have seen in the last 18 months. They didn't have risky loans and financing schemes that sent our economy into a downward spiral. Financial reform should not punish the financial institutions such as community banks for faults they did not commit. If anything, financial reform should reflect what we learned from the safe and sound practices that are used by community banks.

We should learn from the example of Texas First Bank, Galveston County's largest locally owned family of community banks. On September 13, 2008, Hurricane Ike made landfall over Galveston, TX, packing strong winds and a high storm surge that ravaged much of Texas's gulf coast. Two days later, on Monday, September 15, 2008, Texas First Bank was open for business and many of its locations provided ''Hurricane Ike Relief Loans'' and other services to area families and small businesses reeling from Ike's damage.

Senator MARY LANDRIEU and I visited Galveston several weeks later. I was there a day or so after the surge that came over Galveston in a helicopter, but I couldn't get on the ground at that point. So we came several weeks later, Senator LANDRIEU and I, because we wanted to look at the recovery, because Senator LANDRIEU of course has had so much experience with Hurricane Katrina. We wanted to do everything we could to get help to people. We had a press event at a small neighborhood restaurant. The community banker from Hometown Bank was there and was applauded by the owner of the little Italian restaurant. He said: The banker was in there helping us clean up the restaurant and made sure that we had the liquidity to open our doors, because there was no food to be had on Galveston Island at that time. They wanted to serve their customers, and their community banker was right there with them.

President Obama himself has said that community banks are intimately woven into the fabric of the community. Banks such as Texas First Bank and Hometown Bank in Galveston County are examples of this.

In uncertain financial times, community banks worked hard to steady the financial hands at the wheel. Community banks provide depository and lending services critical to America's families and small businesses. Despite holding just 23 percent of the banking assets in our Nation, they make two-thirds of the loans to small businesses. Small businesses must have support from community banks to invest, to expand, and to create jobs.

Despite the widespread recognition of the importance of community banks, the current bill imposes on them a regulatory structure that punishes them. I am particularly concerned about a provision in the current bill under which the Federal Reserve will only retain supervisory authority over bank holding companies that have over $50 billion in assets. Republicans and Democrats agree that we don't want too big to fail anymore because too big to fail means taxpayer bailouts. So what does a bill say that says large banks over $50 billion will have the implicit backing of the government? It means they will be too big to fail. Creditors expecting to be made whole through this backing will offer cheaper credit to the large banks, putting community banks at a competitive disadvantage through no fault of their own. That is the first reason we need to pass the Hutchison-Klobuchar amendment.

The second reason is that this provision arbitrarily shifts many community banks out of their current prudential regulator: the Federal Reserve. The Federal Reserve supervises more than 6,500 banks of all sizes in all parts of the country. These banks include large bank holding companies such as Bank of America, Chase, and J.P. Morgan. The Fed also supervises smaller community banks: Citizens National Bank of Nacogdoches my bank—in addition to Texas First Bank in Galveston County, First State Bank of Mineral Wells, and 32 other State-chartered banks that are members of the Federal Reserve in Dallas.

I have heard from the president of the Federal Reserve Bank in Dallas, Richard Fisher, as well as the presidents of Federal Reserve Banks of Kansas City, Minneapolis, Philadelphia, and Richmond, all of whom are in town today and all agree stripping the Fed of its supervisory authority will drastically reduce the Fed's ability to achieve its objective of maintaining sound monetary policy for our country. Under the Federal Reserve Act, the Fed is mandated to effectively promote goals of maximum employment, stable prices, and moderate long-term interest rates. Implicit to this mandate is a goal of fostering stable, long-term economic growth, which requires stability in the banking and financial system.

For the Fed to have proper insight into the banking system, it must maintain supervision over a wide breadth of banks located across the country. In curtailing the scope of the Federal Reserve's supervisory authority, Senator DODD's bill does the opposite. The Fed will lose its 845 State member banks which are so vital in providing a good sense of underlying economic forces in their respective localities. This will leave the Fed to cull information about the state of our economy from—where? From the banks with $50 billion and above in assets, meaning monetary policy going forward will be a reflection of our largest financial institutions.

Well, monetary policy cannot and should not be geared toward the New York banks and the Washington policymakers. The Federal Reserve needs insight into the health of our banking system and economy as a whole. That is why we have regional Fed banks. It is important that they have the supervisory authority of banks of all sizes and in all parts of our Nation.

I wish to ask my colleague Senator KLOBUCHAR—who has stepped up to the plate to be a cosponsor of this amendment so we have bipartisan sponsors—to say a word. I wish to yield to the Senator from Minnesota for a few minutes to have the Minnesota perspective and to make sure the people know that the community banks of this country should not speak in a whisper to the ''on high'' in Washington and New York. No. They should be speaking in a loud voice to all of us through their Federal Reserve banks, which means the Hutchison-Klobuchar amendment should pass.

I yield the remainder of my time to the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. I say thank you so much to my friend from Texas. I wish to thank her for her leadership on this issue.

As she mentioned, our amendment seeks simply to preserve the Federal Reserve's authority to supervise community banks and bank holding companies as well as to preserve a system that ensures the institution charged with our Nation's monetary policy has a connection to not just Wall Street but to Main Street.

As the Presiding Officer knows, for the most part, our mid-sized banks, small banks in the States throughout this country—Texas and the Midwest—stayed out of these risky deals. They stayed away from these high-flying, way too risky deals of the past decade. They made meat-and-potatoes loans to consumers and businesses in their communities. They did well for their customers.

These Main Street banks did not dance down the yellow brick road to Wall Street dealmaking or Washington hobnobbing. When the pavement on Wall Street began to buckle and collapse, these community banks did not panic and run to Washington with tin cups in outstretched hands. They continued to conduct their business, behaving the way—well, the way banks are supposed to behave.

The Federal Reserve Bank of Minneapolis, along with 11 other regional banks, provides a presence across this country that gives the Fed grassroots connections, insights into the local economies, as well as legitimacy when they have to make tough decisions that affect not just Wall Street but the small local banks that serve so many of our communities. Through their working relationships with community banks, the regional Federal Reserve banks also collect and analyze important information about the movements and trends in local economies. This relationship is a two-way street as it also provides a voice for community banks that would be lost if the Federal Reserve were to only supervise the largest banks.

As the president of the Federal Reserve Bank of Minneapolis noted, it would be shortsighted to conclude that the Federal Reserve: ''can safely be stripped of its role as a supervisor of all banks.''

As he noted, disruptions in the financial system can come from all sectors, and the connection the regional Federal Reserve banks provide to local economies can be vital in ensuring the stability of the entire financial system.

I say to my friend from Texas, just this morning Noah Wilcox, president of the Grand Rapids State Bank in Grand Rapids, MN—a part of the country most hurt by this economic downturn caused by Wall Street—wrote to me and said this:

> All Senators should be reminded that the Federal Reserve System was created to serve all of America, not just Wall Street.

I thank the Senator from Texas for her leadership, and I look forward to working with her on this amendment. I was glad that Senator MURRAY joined us on our amendment, and we have a number of other cosponsors. Again, I thank the Senator.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Minnesota. I appreciate the bipartisan nature of the amendment. I think when people look at this amendment on both sides of the aisle, it will be clear that the community banks need this amendment to keep a level playing field and to assure that there is no concept left in this country of too big to fail. I thank my colleague from Minnesota, Senator KLOBUCHAR, and I yield the floor.

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

Mr. SHELBY. Mr. President, as drafted, the bill we are considering this week allows for bailouts. As a result, what my friends on the other side like to call Wall Street reform is actually a Wall Street dream and a Main Street nightmare for all of us.

Over the last several weeks, I have clearly articulated what needs to be changed in the underlying bill because we must do everything we can to create a credible resolution regime that protects not only our financial system but, more importantly, the American taxpayer.

Fortunately, the chairman of the Banking Committee, Senator CHRIS DODD, and I have worked through a number of issues and resolved to my satisfaction the concerns that some of us have expressed about government bailouts.

I believe it is simply unacceptable to expose innocent taxpaying American families to the excessively risky practices of Wall Street gamblers who are happy to enjoy the upside but want to socialize the downside.

Mr. President, taxpayers should not incur losses from the bad outcome of private risks they did not undertake. In order to achieve this, the Dodd-Shelby amendment that we will offer eliminates the $50 billion bailout fund—some people have called it the ''honey pot.'' It would significantly tighten up language in the bill dealing with the Federal Reserve's ability to provide liquidity to the financial system in times of severe market distress. It requires the approval of the Treasury Secretary before the Federal Reserve can undertake any emergency lending. It also establishes strict solvency and collateral requirements for any emergency Fed lending. It establishes strict accountability standards for any emergency Federal lending.

All of this is something we didn't have 18 months ago when the financial crisis came upon us. Together, we have tightened the resolution language to ensure that the creditors of failing firms will receive bankruptcy-like treatment.

A resolution regime for large failing financial institutions is simply not credible unless we make clear in language that backdoor bailouts are impossible. In this amendment we will be offering, we have significantly tightened up language in the bill dealing with the provision of debt guarantees by the FDIC and the Treasury. Any such guarantee will now require prior congressional approval.

We have also clarified and tightened the language in the bill regarding resolution and the powers of the Fed, Federal Deposit Insurance Corporation, the Treasury, and others to prevent bailouts. We have included provisions requiring postresolution reviews to determine whether regulators did all they were supposed to do to prevent the failure of a systemically significant institution. Such a review, I believe, is essential to hold regulators accountable for their actions, or inaction, as the case may be.

I believe we must put an end to the ad hoc responses of the Federal Government, which only lead to fear and panic. I believe these changes will help us do that.

I thank the committee chairman, Senator CHRIS DODD, for working with me to tighten the language in this part of the bill. I also thank our respective staffs who have worked day and night and weekend after weekend to get us where we are this afternoon.

All of these changes are important and necessary to make bailouts a thing of the past. With these changes, I believe we have done what Congress can do to prevent any future bailouts. It will now be up to the regulators to follow the law and do what we expect them to do.

I strongly support these changes, and I urge my colleagues to support them as well. However, I don't want to leave the impression that I support the entire bill at this time because we are making these necessary changes. We are not there yet.

Beyond resolution and government powers in a crisis, this over 1,500-page bill contains a broad reach into the global financial system and the American economy. Now that we are over this particular hurdle, we will be addressing many additional concerns we have in the coming days. For now, this afternoon, I am pleased to join with Chairman DODD in supporting this amendment.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, my colleague from Arkansas will speak soon. I want to say to the former chairman of the Banking Committee, my friend, I appreciate his comments. There are four major parts of this very large bill. They are too big to fail, the early warning system, consumer protection, and dealing with exotic instruments. There is a lot in the bill besides those major points, but those are the four major thrusts of the legislation.

I hope our colleagues will support this amendment as we vote shortly on it, and that it will help us reach agreement on what I argue is a major part, which is that we never want to see taxpayers again confronted with having to underwrite a failed institution. There has been a lot of hard work and negotiation to get here, and not just over the last couple of days, but weeks.

I particularly thank Senator MARK WARNER of Virginia and Senator BOB CORKER of Tennessee. They spent a lot of time on this issue, literally going back months on it. We would not be in this position today were it not for their labor and effort.

My colleague from Virginia is on the Senate floor, and he will want to say a few words. I thank Senator SHELBY and our staffs for their efforts. I thank Senator BOXER too. She will have an amendment that strengthens this issue on too big to fail and taxpayers. We have more work to do, but this is a good beginning. I thank Senator SHELBY.

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

Mrs. LINCOLN. Mr. President, first, I rise to speak in support of the Boxer amendment, which sends a strong statement that no taxpayer funds will ever again be used to bail out the risky gambles that too many on Wall Street have conducted. It should pass with 100 votes.

Also, I want to speak about the derivatives title, which is a bipartisan product that was reported out of the Agriculture Committee 2 weeks ago. Specifically, there have been statements in the press and in the Senate Chamber that I believe need to be corrected regarding section 716.

As chairman of the Agriculture Committee, I am proud to have included this provision in the Wall Street reform legislation approved on a bipartisan vote by our committee 2 weeks ago. I am also proud that it is included in the Dodd-Lincoln legislation that we are now considering today.

This provision seeks to ensure that banks get back to the business of banking. Under our current system, there are a handful of big banks that are simply no longer acting like banks. By this time, surely every Member of this body is aware that the operation of risky swaps activities was the spark that lit the flame that very nearly destroyed our economy in this great country.

In my view, banks were never intended to perform these activities, which have been the single largest factor to these institutions growing so large that taxpayers had no choice but to bail them out in order to prevent total economic ruin.

My provision seeks to accomplish two goals: first, getting banks back to performing the duties they were meant to perform—taking deposits and making loans for mortgages, small businesses, and commercial enterprise; second, separating the activities that put these institutions in peril.

This provision makes clear that engaging in risky derivatives dealing is not central to the business of banking. Under section 716, the Federal Reserve and FDIC will be prohibited from providing any Federal assistance and funds to bail out swap dealers and major swap participants.

Currently, five of the largest commercial banks account for 97 percent of the commercial bank national swap activity. That is a huge concentration of economic power, which is why I am in no way surprised that several individuals are seeking to remove it from the bill.

This provision will ensure that our community banks on Main Street would not pay the price for reckless behavior on Wall Street. Community banks are the backbone of economic activity for cities and towns throughout this great land. They don't deal in risky swaps that put the whole financial institution in jeopardy. Instead, they perform the day-to-day business of banking, making the smart, conservative decisions that banking institutions should be making.

Unfortunately, we saw the five largest banks begin to fail in part because of that risky swap activity—activity that should never have been part of their operation in the first place. Sadly, it was community bankers and their depositors who were left footing the bill.

Community banks were forced to pay for a problem they didn't create. Small banks are still paying that price. In 2009, we saw 140 bank failures, and now the cost of the FDIC insurance premiums are skyrocketing for our community banks all across the country. Higher insurance rates means less lending.

Less lending means that now individuals and small businesses are also paying the price. The FDIC reported that in 2009 the banking industry reduced lending by 7.4 percent, the biggest decrease since 1942.

I am a strong believer that you build an economic recovery from the ground up. If small and medium-sized businesses aren't getting the capital they need to grow their businesses, something is wrong. The economy simply will not recover unless we free up lending.

Unfortunately, Wall Street lobbyists are doing everything they can to distort this provision—spreading misinformation and untruths. The suggestion that this provision will force derivatives into the dark without oversight is absolutely false. The Dodd-Lincoln bill makes it abundantly clear all swaps activity will be vigorously regulated by the Fed, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

My good friend from New Hampshire, Senator GREGG, my friend from Tennessee, Mr. CORKER, Wall Street lobbyists, and others in recent days have somehow argued that by pushing out risky swaps from the Nation's largest banks, such as J.P. Morgan, Bank of America, Wells Fargo, Goldman Sachs, and Citigroup, somehow swaps will no longer be regulated. This is just plain wrong.

Just because these swaps desks will no longer be overseen by the FDIC does not mean that they will not be subject to this bill's strong regulation by the market regulators—the SEC and the CFTC. In short, they ignore the strong provisions included in the rest of the underlying bill. That is convenient for their argument but not so convenient when seeking the truth.

Let me reiterate: Every swaps dealer and major swaps participant will be subject to strong regulation.

Wall Street lobbyists have also argued that this will prevent banks from using swaps to hedge their risks. Again, that is completely false. Banks that have been acting as banks will be able to continue doing business as they always have. Community banks using swaps to hedge their interest rate risk on their loan portfolio will continue to be able to do so. Most important, we want them to do so. Community banks offering a swap in connection with a loan to a commercial customer are also still in the business of banking and will not be impacted.

Using these products to manage risk or designing exotic swaps which have led to the financial demise of places such as Jefferson County, Alabama; Orange County, California; and the country of Greece are two very different things. Hopefully, this is something my colleagues will understand.

Wall Street lobbyists have also said this provision will move $300 trillion worth of swap activities outside of the banks. My question is, Why is this activity there in the first place? I agree that regulated, transparent swap activity is a necessary part of our economy in managing risk. It just has no place inside a bank where too many innocent bystanders are put at risk.

Despite what those on Wall Street may be saying, this provision is an important part of real Wall Street reform. It has broad support from the Independent Community Bankers of America, the Consumer Federation of America, the AARP, labor unions, and leading economists, such as Nobel Prize-winning Joseph Stiglitz, among others.

Let me read what a few of these groups and individuals are saying about this provision.

Americans for Financial Reform, which includes groups such as the AFL–CIO, NAACP, and Consumers Union, writes:

The over 250 consumer, employee, investor, community and civil rights groups who are members of the Americans for Financial Reform write to express strong support for section 716 ("Prohibition Against Federal Government Bailouts of Swaps Entities'') as part of the Dodd-Lincoln substitute to the Restoring Financial Stability Act of 2010.

It is now almost universally recognized that the fuse that lit the worldwide economic meltdown in the fall of 2008 was the $600 trillion severely undercapitalized and unregulated and opaque swaps market dominated by the world's largest banks. Section 716 is designed to ensure that the American taxpayer is not the banker of last resort, as was true in the bank bailouts in 2008 and 2009, for casino-like investments marketed by large Wall Street swap dealer-banks. Section 716 is a flat ban on Federal Government assistance to ''any swap entity,'' especially in instances where that entity cannot fulfill obligations emanating from highly risky swaps transactions.

By quarantining highly risky swaps trading from banking altogether, federally insured deposits will not be put at risk by toxic swaps transactions. Moreover, banks will be forced to behave like banks, focusing on extending credit in a manner that builds economic strength as opposed to fostering worldwide economic instability.

The Nobel Prize-winning economist and former Chairman of the Council of Economic Advisers during the Clinton administration, Joseph Stiglitz, writes:

One provision holds particular promise—and has the banks especially riled up. This is the idea that the government should not be responsible for the ''counterparty risk''—the risk that a derivatives contract not be fulfilled. It was AIG's inability to fulfill its obligations that led the U.S. Government to step into the breach, to the tune of $182 billion.

The modest proposal of the Agriculture Committee is that the U.S. Government (the Federal Deposit Insurance Corporation) stops underwriting these risks. If banks wish to write those derivatives, they would have to do so through a separate affiliate within the holding company. And if the bank made bad gambles, the taxpayer wouldn't have to pick up the tab.

Here is another from the Independent Community Bankers of America:

ICBA strongly supports section 106—

Which is a section in our bill—

of the derivatives bill. This section prohibits federal assistance, including federal deposit insurance and access to the Fed's discount window, to swaps entities in connection with their trading in swaps or securities-based swaps.

Main Street and community banks have suffered the brunt of the financial crisis, a crisis caused by Wall Street players and not community banks. Assessments to replenish the Deposit Insurance Fund have increased dramatically for community banks. Large financial players have received hundreds of billions in financial assistance while community banks have been allowed to fail.

Section 106 of Senator Lincoln's derivatives legislation would be an important provision to help ensure that taxpayers and community banks are not on the chopping block should another financial crisis occur. We strongly urge retention of this provision during markup this week. Thank you for keeping the views of the community bankers in mind.

I ask unanimous consent to have printed in the RECORD these three letters from the Americans for Financial Reform, Professor Stiglitz, and the Independent Community Bankers.

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

AMERICANS FOR FINANCIAL REFORM,
Washington, DC, May 3, 2010.

U.S. SENATE,
Washington, DC.

Re Letter of support for the Prohibition against Federal Government Bailouts of Swaps Entities.

DEAR SENATOR: The over 250 consumer, employee, investor, community and civil rights groups who are members of Americans for Financial Reform (AFR) write to express strong support for Section 716 (''Prohibition Against Federal Government Bailouts of Swaps Entities'') as part of the Dodd-Lincoln substitute to the Restoring Financial Stability Act of 2010. It, along with other structural reforms under consideration such as a statutory Volcker Rule and limits on bank size and leverage (the Merkley-Levin and Brown-Kaufman amendments), will sharply reduce the possibility of taxpayer bailouts for speculative activity that does not serve the real economy.

It is now almost universally recognized that the fuse that lit the worldwide economic meltdown in the fall of 2008 was the $600 trillion, severely under-capitalized and unregulated and opaque swaps market, dominated by the world's largest banks. Section 716 is designed to ensure that the American taxpayer is not the banker of last resort, as was true in the bank bailouts in 2008–2009, for casino-like investments marketed by large Wall Street swap dealer-banks. Section 716 is a flat ban on federal government assistance to ''any swap entity,'' especially in instances where that entity cannot fulfill obligations emanating from highly risky swaps transactions. Specifically, Section 716 bars ''advances from any Federal Reserve credit facility, discount window . . . or [loan or debt guarantees by the] Federal Deposit Insurance Corporation.''

Section 716 will require, inter alia, the five largest swaps dealer banks to sever their swaps desks from the bank holding corporate structure. Those five banks are: Goldman Sachs, Morgan Stanley, J.P. Morgan Chase, Citigroup, and Bank of America, the institutions involved in well over 90 per cent of swaps transactions. Under Section 716 a ''swap entity'' and a banking entity could not be contained within the same bank holding company, if the bank holding company has access to federal assistance.

By quarantining highly risky swaps trading from banking altogether, federally insured deposits will not be put at risk by toxic swaps transactions. Moreover, banks will be forced to behave like banks, focusing on extending credit in a manner that builds economic strength as opposed to fostering worldwide economic instability. Finally, the spun off swaps entity will be sufficiently isolated to permit the kind of careful prudential oversight mandated by Title VII of the Act as a whole. Title VII ensures that the spun-off entities will both be regulated as institutions under the most rigorous prudential standards, and that almost all of the swaps instruments will be subject to standards for capital adequacy, full transparency, anti-fraud and anti-manipulation.

We understand that the largest banks which are the major dealers and their allies are arguing that taking swaps trading out of the banks will raise the price of hedging for customers and reduce market liquidity. They are wrong. Purely speculative financial derivatives now represent $78 for every $1 in true hedging by businesses and farmers. Regulation that reduces de-stabilizing speculative hedging will actually benefit legitimate commercial hedgers. The ''cost argument'' promulgated by the ''Too Big to Fail'' banks begs the question: why does attaching derivatives desks to our large banks result in cheaper derivatives products? The co-mingling of derivatives desks and other banking activities produces the formerly implicit, and now all-too-explicit, guarantee of the federal taxpayer. In the current high-risk environment, availability and pricing for hundreds of trillions of dollars in swaps can be maintained only if counterparties are assured that the Fed's backup liquidity will continue. On their own, these banks cannot create the liquidity that a market with such high levels of risk would require to sustain a disruption. That is why the banks must not be allowed to continue to deal in risky transactions that threaten deposits, the taxpayer backstop, and banks' core lending function.

Opponents of Sec. 716 also argue that it will force swaps activity into non-regulated entities or into the overseas market. The Europeans' experience with credit default swaps on Greece's government debt suggests that no central bank going forward will want to face this level of risk to its banking systems. There is every indication that the G–20 countries and many other sovereigns are prepared to constrain reckless and abusive swaps activity. The idea that systemically risky swaps-trading will migrate abroad is belied by the hostility to such trading by, for example, the European Commission and other G–20 countries. In the wake of the havoc on the Euro wrought by currency and credit default swaps, the European Commission is not eager to leave these instruments unregulated.

Section 716 is critical to ending our ''too interconnected to fail'' economy. We ask that you support the bill, and oppose any attempts to weaken Section 716 or to widen any loopholes in the derivatives title of the bill. Please contact Lisa Lindsley, Director, Capital Strategies, AFSCME, for more information.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

INDEPENDENT COMMUNITY BANKERS OF AMERICA,
Washington, DC, April 19, 2010.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN DODD AND SENATOR SHELBY: I am writing to you on behalf of the Independent Community Bankers of America, an association of 5,000 community banks across the nation. We believe that the recent financial crisis has demonstrated the urgent need for a new system to resolve large, interconnected financial firms before they create widespread damage to the financial system. A robust resolution mechanism must include an adequate resolution fund that would allow for the rapid, orderly takeover and wind down of the largest financial firms. Properly constructed, the fund would help shield both the U.S. taxpayer and community banks from the consequences of a large firm failure.

Further, prefunding the fund is vitally important to the speed with which resolution must be effected in order to prevent contagion and to ensure that the cost of resolution is borne by the Too-Big-To-Fail firms, including hedge funds and insurers, that create risk for our financial system, not by taxpayers or community banks.

The resolutions facilitated by this fund should not be characterized as ''bailouts''; rather, they would be orderly liquidations in which management would be removed and shareholders and unsecured creditors would be wiped out. The fund would function in much the same way the FDIC's Deposit Insurance Fund (DIF) has functioned since 1930s, allowing the FDIC to regularly close banks and protect insured depositors while terminating senior management without compensation and imposing losses on stockholders and uninsured creditors.

The DIF is funded by banks through deposit insurance premiums, and has allowed the FDIC to weather financial crises without resorting to a taxpayer bailout. Because the DIF is prefunded, the failed banks as well as the survivors share the costs. Without a fund, the survivors, the prudent investors, pay for the profligate. This is not a model we subscribe to.

The Dodd bill would create a $50 billion prefunded ''orderly liquidation fund'' and would prohibit any assistance to stockholders or unsecured creditors of large financial firms. Both of these elements are critical to ending Too-Big-to-Fail. Without an obvious source of funds to effect the orderly unwinding of these large firms, rational investors and creditors will conclude that in a crisis the government will blink and again guarantee large failing firms. This will confer a competitive advantage on the large firms in the form of cheaper debt and equity funding, which they will use to steadily acquire more and more business customers, to the detriment of small banks. Further, the lack of effective resolution authority will undoubtedly encourage these large firms to take on excessive risk once again, without the pain that should accompany such risks.

To level the financial and regulatory playing field we need to have the ability impose losses on the stock and bond holders of the giants of finance in ways similar to those applied to ninety-nine percent of smaller banks.

Every Friday, Community banks face the market discipline imposed by an orderly wind down by the FDIC and its industry funded deposit insurance fund. Let's level the playing field and subject our biggest and riskiest institutions—the ones that caused this economic catastrophe we are just now digging out from—to the same discipline.

As a further means of protecting taxpayers and community banks from the risky activities of unregulated players, we strongly support a provision of Chairman Lincoln's derivatives bill that would protect the DIF. Section 106, the ''Prohibition against Federal Government Bailouts of Swaps Entities,'' prohibits federal assistance (including federal deposit insurance, and access to the Federal Reserve discount window) to swaps entities in connection with their trading in swaps or securities-based swaps. This provision is targeted at the AIGs of the world—both large and small—whose swaps activities played a key role in triggering the credit crisis and subsequent economic downturn and resulted in over $180 billion in taxpayer assistance. Our support for the Dodd prefund and for Section 106 of the Lincoln bill are borne out of the same concern.

The cost of the financial crisis has been huge for Main Street and community banks and our nation. Both the Dodd and the Lincoln provisions will go a long way toward ensuring that the costs of any future crisis—should we be so unfortunate—are borne by the reckless parties who brought it about.

Sincerely,

CAMDEN R. FINE,
President & CEO.

PROTECT TAXPAYERS FROM WALL STREET RISK

(By Joseph E. Stiglitz)

CNN.—As legislators continue to trade loud barbs over the details of the bill that seeks to overhaul our financial system, we risk losing a crucial aspect of reform in the din.

We now have an important opportunity to fix the regulation of derivatives—those controversial mechanisms that played a central role in the downfall of insurance giant AIG, and helped spark the Great Recession.

The current finance bill contains reasonable proposals, developed by the Senate agriculture committee, under the leadership of Blanche Lincoln, that would rein in the most egregious abuses of these instruments.

The AIG experience should have made clear that derivatives can create enormous risks—risks that ended up being borne by taxpayers. In addition, derivatives have played an important role in all kinds of nefarious activities—from trying to obfuscate Greece's real financial position, to vast tax evasion.

Derivatives are not inherently bad. They can play a positive role in risk management, but they are only likely to do that if there is the right regulatory framework.

Without the appropriate legal and regulatory framework, they will almost surely contribute, on balance, to the creation of risk—as they did in this crisis, and as they did a decade ago in the infamous Long-Term Capital Management bailout.

The provisions reported out of the agriculture committee are an important step in the right direction. But derivatives have been an enormous profit center for a few big banks (about $20 billion last year), so we should not be surprised that there is resistance to anything that is a real change to the status quo.

Derivatives have been advertised as an ''insurance product,'' insuring bondholders, for instance, against the risk of a loss. But if they were really insurance products, they should have been regulated as insurance, with insurance regulators making sure that there was adequate capital to meet their obligations.

In reality, in many cases derivatives are more accurately described as gambling instruments. But gambling should be subject to gaming laws, and derivatives aren't.

Remarkably, in fact, derivatives have been left totally unregulated—a mistake that President Clinton, who failed to introduce regulations when he had the chance, now acknowledges. Congress's current proposal is the opportunity to rectify that mistake.

One provision holds particular promise—and has the banks especially riled up. This is the idea that the government should not be responsible for the ''counterparty risk''—the risk that a derivatives contract not be fulfilled. It was AIG's inability to fulfill its obligations that led the U.S. government to step into the breach, to the tune of some $182 billion.

The modest proposal of the agriculture committee is that the U.S. government (the Federal Deposit Insurance Corporation) stop underwriting these risks. If banks wish to write derivatives, they would have to do so through a separate affiliate within the holding company. And if the bank made bad gambles, the taxpayer wouldn't have to pick up the tab.

This change would help fix the current system, where those who buy this so-called ''insurance'' enjoy the subsidy of the essential, free government guarantee; and where competition among the few issuers of these risky products is sufficiently weak that they enjoy high profits.

This arrangement is economically inefficient—firms should pay for the costs of their insurance. If the government guarantee is removed, the banks might have to put more money into their derivatives subsidiaries. This will reduce the banks' profitability, and it might force up prices of this ''insurance.'' But that is as it should be. The government shouldn't be subsidizing ''insurance''—and it certainly shouldn't be in the business of subsidizing gambling.

The Fed and the Treasury seem to object to the agriculture committee's proposals. These objections show once again the extent to which the Fed and the Treasury have been captured by the institutions that they are supposed to regulate, and reemphasize the need for deeper governance reforms of the Fed than those on the table.

To be sure, banks' high profits from derivatives would help with recapitalization, offsetting the losses they incurred from the risky gambles of the past. But that doesn't mean that the policy of allowing banks to issue derivatives—and laying the risk of failure onto the taxpayer—is right.

Bank recapitalization should be done in an open and transparent way, consistent with sound economic principles. Abusive credit card practices could also help recapitalize the banks, but fortunately we have curtailed some of these. We should now do the same for derivatives.

We should recognize that the agriculture committee provision is already a compromise. Many worry that if the affiliate within the holding company that writes the derivatives gets into trouble, Uncle Sam will still come to the rescue.

The bill, for instance, includes a ''strong presumption'' of losses for creditors and shareholders. What should be required is that creditors (other than depositors) and shareholders bear all the losses before the government is asked to pony up any money. But ultimately, in a crisis, worries about the consequences of such strong medicine will almost surely mean a bailout for the bank holding companies as well as the banks—as happened in this crisis.

In a crisis, the government will not only bail out the banks, but also the bankers, their shareholders, and their bondholders—if not totally, at least partially.

So if we are to protect American taxpayers, we must also bar any too-big-to-fail institutions from writing derivatives.

But right now, the institutions who write the vast majority of these derivatives are too big to fail. Ideally, responsibility for writing derivatives should be spun out to a totally independent entity. The agriculture committee bill does not go this far; rather, it strikes a reasoned compromise between political expediency and economic good sense.

It would be a major mistake to walk away from this compromise by allowing FDIC-insured institutions to continue to write these risky products. To allow them to do so would simply generate more political cynicism: It would show that the big banks have succeeded in their ambition of returning to the world nearly as it was before the crash.

Mrs. LINCOLN. Mr. President, I look forward to working with my colleagues to ensure this legislation remains strong and new loopholes are not created on behalf of Wall Street.

This is a legislative body. It is designed for debate, and I welcome that debate and welcome the debate of my colleagues in terms of what we are trying to do here.

We have seen a historic economic crisis. Banks no longer look like banks, and for people in my hometowns across Arkansas, that is a frightening thing. The status quo is certainly not acceptable.

We all have to look at what it is we can do to come together with some type of assurance and confidence for the people of our States that we are not going to let the status quo remain. I believe we need to take the necessary steps to create that confidence for investors and consumers that what we experienced will not be able to happen again; that these financial entities cannot become so big that they cannot fail or that we would not allow them to fail or, worst of all, that taxpayers will have to bail them out again.

I say to my colleagues, I am a very pragmatic person, pretty simplistic in what it is I want to achieve and what we have worked to achieve. I hope all of my colleagues will continue to work together to find out what it is we can responsibly hand to the people of this great country and say to them: We not only have seen what has happened, but we are going to dare to produce something that will ensure it does not happen again. As I said, working in a pragmatic way, I think we can come up with a good, strong piece of legislation, that all of us—Democrats and Republicans, no matter what regions of the country we come from—will actually say to the American people: We saw what happened, and we are going to make sure it does not happen again.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank our colleague, the chairperson of the Agriculture Committee, for her work and the work of her staff and others and for her statement today inviting all of us to be involved in this process. I commend her. I thank her for the fine work.

I am going to propose a unanimous consent request that has been cleared by our respective leaders.

Mr. President, I ask unanimous consent that at 2:45 p.m. today, the Senate proceed to executive session to consider the following calendar numbers: 728, 701, and 702; that prior to each vote, there be 2 minutes of debate equally divided and controlled in the usual form; that upon confirmation of the nominations, the motions to reconsider be considered made and laid upon the table en bloc; that the President be immediately notified of the Senate's action; that the Senate then resume legislative session; that upon resuming legislative session, there be 4 minutes of debate prior to a vote in relation to the Boxer amendment No. 3737; that upon disposition of the Boxer amendment, the Senate then proceed to a vote in relation to the Shelby-Dodd amendment, which is at the desk, with 4 minutes of debate prior to a vote in relation to the amendment, with all time divided in the usual form, with no amendments in order to the amendments covered in this agreement, prior to a vote in relation thereto; further, that the Senate then consider en bloc the Snowe amendments Nos. 3755 and 3757, with no further debate in order with respect to the Snowe amendments and with no amendments in order to the Snowe amendments; that the next amendments in order be one from the Republican leader or his designee regarding consumer protection, and the Tester-Hutchison amendment No. 3749.

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

Mr. DODD. Mr. President, I see two of my colleagues who have been deeply involved. I mentioned them earlier in their absence. I thank Senator CORKER and Senator WARNER for their hard work. As I said, this goes back months, title I and title II of the bill. I have thanked them a lot already. They put in a tremendous amount of time with an awful lot of people on how best to draft this legislation. Everybody always has ideas and thoughts about all of it. I am grateful to both of them for their tireless efforts, and their staffs.

I yield the floor so each can comment.

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

Mr. CORKER. Mr. President, I thank the Senator from Connecticut. I will be brief.

My friend from Virginia, MARK WARNER, is here. Senator DODD and Senator SHELBY allowed us to work on this portion of the bill. I thank Senator WARNER for being such a great partner.

One of the things you learn around this body very quickly is you certainly do not end up getting everything the way you would like. I thank both Senator SHELBY and Senator DODD for the way they have worked together over the last week or so to improve this bill.

Look, I think Senator WARNER and I—I will speak for myself. Obviously, there are pieces I wish were a little different. I wish the length of receivership was not 5 years but that it was a much shorter period to wind these companies down more quickly. I wish we had judicial review so if a company is placed into this type of resolution, they actually have the opportunity to have that reviewed in a much better way. We have a bankruptcy court title. I know Senator SHELBY, Senator WARNER, and others would like to see that happen. I am hoping over the course of the amendment process that will happen. Judicial review of claims—I wish that were occurring. I know that is not part of this title. I also wish there was judicial review of the valuation process. There are a number of provisions I wish were better, but I will say that I think the work Senator DODD and Senator SHELBY have done to date is good. I plan to support this.

I say to my colleagues on this side of the aisle who want the bankruptcy process to be the process, I think they should still support what Senator DODD and Senator SHELBY have done because they have tightened this resolution title to make it much better.

I defer to my friend from Virginia because I know he is going to talk about aspects of this bill that are not talked about much. They are preventive measures—at least of this title—to keep us from being in a situation where resolution is even necessary because of precautionary issues that are put in place.

I thank Senator DODD and Senator SHELBY. I thank them for their involvement. I thank them for the way they have worked together to make this bill better with the process that has taken place over the last week.

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

Mr. WARNER. Mr. President, let me follow on my colleague's comments. He is my colleague and my friend and my partner for the last year. I think we've both, as former business guys, said this is not an issue that should be partisan. We need to check our "D" and "R" hats at the door and find a way to sort through a new set of financial rules so we never have to face what we faced in 2008.

I think some of the original approaches that we had might have been tighter. I know we talked a little bit off the floor about the notion that actually some of the borrowing authority that now exists might be larger than what we had initially proposed. But at the end of the day, what is important is that, one, the taxpayers are protected—and that is what the Shelby-Dodd approach has; it has no recoupment from the financial industry—and two, to make sure there is money to wind these firms down in an orderly fashion.

We have seen with Lehman, a year and a half after the fact, literally hundreds of millions, close to billions of dollars, that are being used to unwind. That process takes time and money. I again share the concern of the Senator from Tennessee that we ought to do this in as limited time as possible.

Let me take 2 more quick minutes and say that, if we have done our job right, we are never going to have to get to resolution because bankruptcy should always be the preferred process.

We have put the appropriate speed bumps on these firms that become large and systemically important: higher capital requirements, better review of their leverage, making sure they have good risk management plans. And we have created two new tools that have not gotten any discussion but I know, in our hundreds of meetings we had, kept coming back time and again. One was the creation of a whole new set of capital that would convert from debt into equity if a firm ever gets into a problem. And second, a funeral plan that has to be blessed by the regulator that would show how these large firms, particularly firms with international operations all around the world, can wind themselves down through bankruptcy. If the plan is not approved, the regulators can take more dramatic action.

I think the heart and soul of our challenge, which has been to end too big to fail and make sure taxpayers were not exposed, has been accomplished. I thank the chairman and Ranking Member SHELBY for their work on this. I look forward to support this—and I look forward to support this amendment as well.

I want to conclude with my thanks to my colleague and friend from Tennessee. I think we did check our hats and put a business approach on trying to get these titles right, and I agree with his comments that we appreciate any improvements made by both the chairman and the ranking member. I look forward to supporting this part of the legislation and I hope we can continue to work through on the balance of the titles in this same way.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent to use my leader time right now.

First, I want to express my appreciation to Senators WARNER and CORKER for working to improve this bill. They are very fine Senators. My friend, the Senator from Virginia, Senator WARNER, has been such a great addition to the caucus, the Senate, and the country. His experience as Governor of the State has served him well. He does a wonderful job for the people of Virginia and, of course, our country.

EXECUTIVE SESSION

NOMINATIONS OF GLORIA M. NAVARRO TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; NANCY D. FREUDENTHAL TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF WYOMING; DENZIL PRICE MARSHALL, JR. TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider nominations which the clerk will report.

The legislative clerk read the nomination of Gloria M. Navarro, of Nevada, to be United States District Judge for the District of Nevada; Nancy D. Freudenthal, of Wyoming, to be United States District Judge for the District of Wyoming; and Denzil Price Marshall, Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

Mr. REID. Mr. President, it is my understanding there is a consent agreement now in effect that has three votes for three judges, and then two other matters related to the banking bill; is that true?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask unanimous consent that agreement be modified to have the first vote be 15 minutes and the next four 10-minute votes.

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

NOMINATION OF GLORIA M. NAVARRO

Mr. REID. Mr. President, I will say a few words about the first vote we are going to have today.

I am very happy I had the opportunity and the privilege to nominate Gloria Navarro to be a Federal judge for the District of Nevada. What a wonderful addition she will be to the Federal Judiciary. She has a number of outstanding qualities.

First, she is such a fine human being. She has a wonderful family—a husband who supports her entirely in this terrifically important job she is going to take. He is an accomplished lawyer himself. She has wonderful children and a mom who supports her. She is a Nevadan who has been educated in the Nevada school system. She has attended some of the finest universities in the country—the University of Southern California and Arizona State.

In my interviews with her, I was very impressed. She has proven throughout her personal and professional life that she embodies the values of our country—hard work, discipline, and respect for the rule of law. I have been impressed time and time again by this Nevadan's record and her commitment to public service in all areas of her life. She has worked for two decades in both