a lake that connects geographically and spiritually to the Plains of Abraham in Quebec. He began his academic career studying engineering and philosophy at Notre Dame followed by theology in France and Italy. He earned his Ph.D. in International Relations from the University of Denver in 1975 and has taught at the University of Notre Dame and the University of Chile. Since 1991, he has served as an associate professor in the department of history and political science here at the University of Portland and became department chair in 1994. Fr. Claude also currently serves at the Director of the Social Justice Program and is the Religious Superior of the Holy Cross brothers and priests at UP. He enjoys traveling and observing the universe, but especially visiting the University of Chile where he is a visiting professor in the summer. Fr. Claude is an accomplished clarinet player, sometimes playing loudly and late at night in Tyson Hall where he is grateful to be chaplain to a bunch of wonderfully tolerant students.

Mr. LEAHY. Madam President, again, I thank our leaders, and I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Republican leader is recognized.

FINANCIAL REGULATORY REFORM

Mr. McCONNELL. Madam President, last night, the Senate took a strong stance on protecting taxpayers from the unintended consequences of a bill that was originally meant to hold Wall Street accountable for its mistakes.

Put aside for a moment the latest talking points the other side is using about Republicans. Our goal throughout the debate has been to protect taxpayers who got burned during the last crisis, and last night's vote showed that those efforts are beginning to yield results.

A $50 billion fund for failing financial firms that would have distorted the market by encouraging the same kinds of risky investments that led to the last crisis is now out of the bill.

A provision that would have given investors in failing firms special treatment is out. Congress will now have to approve any government effort to ensure bank debt. So improvements are being made to this financial regulatory bill in the right direction.

Now it is time to focus on what has emerged as another central point of contention, and that is the new government bureaucracy this bill would create over at the Fed. The first thing to know about this new agency is that Congress would not have any power over it. The second thing to know is what it would do. Some of that is still vague, but the ambiguities are part of the problem.

What we do know is that this new agency would be authorized to gather information on banking and purchasing patterns and on anyone—anyone—operating in consumer financial markets. One provision, section 1071, could lead financial institutions to maintain a record on the number and dollar amount that each customer deposits at bank branches and ATMs.

Now, understandably, a lot of Americans and a lot of small business owners have serious concerns about all of this. They are also concerned about the potential of this bill to further dry up credit at a time when they are trying to dig themselves out of a recession.

We received a letter just yesterday from groups representing hundreds of thousands of businesses—from florists to orthodontists to builders to car dealers—all concerned about the potential impact this new agency would have.

Now, let me state the obvious: None of these businesses had anything whatsoever to do with the financial crisis. None of these businesses had anything to do with the financial crisis. Why on Earth would we want to punish them for the reckless behavior we saw on Wall Street? Why on Earth would we want to punish these small businesses for the reckless behavior we saw on Wall Street?

The fact is, this agency is more about using this crisis as an opportunity to slip a vast new European-style regulatory bureaucracy past the American people than it is about holding Wall Street accountable.

I say let's focus on Wall Street and the GSEs and leave ordinary Americans out of this. Let's put the middle-class families and small business owners who shouldered the burden of this crisis ahead of the bureaucratic wish lists in Washington. At a moment of near double-digit unemployment and exploding debts and deficits, let's have at least one Democratic idea for expanding the reach of government on the shelf.

Later today, the Senate will have an opportunity to blunt the potential impact of this agency. Senator SHELBY and I have joined several cosponsors on an amendment that would deflect the focus of this bill from Main Street and back to Wall Street where it belongs. Let's take the bill off Main Street and send it back to Wall Street where it belongs.

The National Federation of Independent Business supports our amendment because, in the place of this new bureaucratic agency, it would establish a new division within the FDIC that would oversee mortgage originators and other big financial service providers. That is where the target should lie—not on the backs of America's small businesses and middle-class Americans who expected to be protected by the bill, not punished by it.

I urge my colleagues on both sides of the aisle not to lose our focus in this debate. I also urge everyone to support the Shelby-McConnell amendment.

Madam President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The bill 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.

Shelby amendment No. 3826 (to amendment No. 3739), to establish a Division of Consumer Financial Protection within the Federal Deposit Insurance Corporation.

Tester amendment No. 3749 (to amendment No. 3739), to require the Corporation to amend the definition of the term ''assessment base.''

AMENDMENT NO. 3749

The PRESIDING OFFICER. Under the previous order, the time until 10 a.m. will be for debate on amendment No. 3749, with the time equally divided and controlled in the usual form.

The Senator from Nebraska.

Mr. JOHANNS. Madam President, I am just going to speak for 2 minutes this morning, but I would like to stand to take a moment to voice my support for the Tester-Hutchison amendment.

This amendment will ensure that banks of all sizes pay their fair share by broadening the assessment base that is used by the FDIC. The FDIC would determine bank premiums by basing it on total assets, not just domestic deposits. For far too long, community banks have paid a disproportionate share of the deposit insurance premiums.

This amendment levels the playing field. It is a good piece of policy. It will put community banks on a more equal footing with the large bank conglomerates. So I urge my colleagues to vote for this commonsense amendment.

Let me wrap up by saying, the Independent Community Bankers have looked at this amendment. This amendment would reduce assessments for 98 percent of the banks with less than $10 billion in assets, keeping nearly $4.5 billion in the banks—much needed capital to make our economy grow.

Madam President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Texas.

Mrs. HUTCHISON. Madam President, how much time is on our side?

The PRESIDING OFFICER. Eight minutes.

Mrs. HUTCHISON. Madam President, would you notify me when I have consumed 5 minutes because there is another speaker.

The PRESIDING OFFICER. Yes.

Mrs. HUTCHISON. Thank you, Madam President.

I rise to join my colleague, Senator TESTER, and an increasing number of cosponsors, in support of our amendment which will ensure that banks of all sizes pay their fair share in deposit insurance for the risk they pose to the banking system.

Our amendment is intended to level the playing field for our safe community banks that for far too long have paid assessments into the FDIC insurance fund above and beyond the risk they pose.

The FDIC levies deposit insurance premiums on a bank's total domestic deposits, but domestic deposits are not the best means to analyze the safety of banks. Financial assets other than deposits create risk in the system. Nondeposit assets are held disproportionately by larger noncommunity banks and can be more complex and more risky.

Community banks with less than $10 billion in assets rely heavily on customer deposits for funding. This penalizes safe institutions by forcing them to pay deposit insurance premiums above and beyond the risk they pose to the banking system.

Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the deposit insurance fund. At the same time, large banks hold 80 percent of the banking industry's assets. Yet they just pay 70 percent of the premiums.

We must fix this inequality. That is what the Tester-Hutchison measure does. It will do so by requiring the FDIC to change the assessment base to a more accurate measure: a bank's total assets, less tangible capital. This change will broaden the assessment base and will better measure the risk a bank poses.

A bank's assets include its loans outstanding and securities held. One need only look back to the last 2 years to know those are the assets that are more likely to show a bank's exposure to risk than just plain deposits. It wasn't a bank's deposits that contributed to the financial meltdown. The meltdown was caused by bad mortgages which were packaged into risky mortgage-backed securities which were used to create derivatives. These risky financial instruments and the large institutions that created and held them are what led to our financial crisis.

So our amendment is particularly timely because the FDIC has now said banks are going to have to prepay into the insurance fund for 3 years, and all that will be due this year, so a 3-year assessment will be due at the end of this year. It is so important to have a fair assessment ratio, and that is what the Tester-Hutchison amendment will do. It will have a ratio for what a bank owes into the deposit fund that is based on its risk, based on assets minus capital.

I am very pleased to be the sponsor of this amendment. I worked on this amendment in committee. I did the research on it to try to make sure we were doing the right thing. I am pleased Senator TESTER joined me in this effort, and we have a very bipartisan group of supporters of this amendment. It is my hope that we pass by an overwhelming vote this amendment which will put into the law that the FDIC deposit insurance will be based on a standard that levels the playing field for community banks so big banks don't have an advantage over community banks. It is our community banks that are giving the loans to businesses throughout our country. They are the ones that were there in the crisis as best they could to try to put liquidity into the market. They didn't cause the crisis and they certainly shouldn't pay the price for it.

I urge all my colleagues to support the Tester-Hutchison amendment.

Madam President, I was going to suggest we allocate the time being used against both sides. That would be my request.

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

The Senator from Connecticut.

Mr. DODD. Madam President, let me commend our two colleagues, Senator TESTER and Senator HUTCHISON, for this proposal. As I said several times yesterday, I think this is a very sound contribution to this bill for the very reasons outlined this morning by Senator HUTCHISON and Senator TESTER earlier—reducing the cost to our community banks at a time when obviously they are all feeling tremendous pressures under this economy. So I am a strong and ardent supporter of their proposal, and I am confident it will be overwhelmingly supported by our colleagues.

Let me quickly add we are going to be moving on after that vote to the Shelby, et al., amendment regarding consumer protection and complete replacement for the title. My colleague from Texas has written to me along with Jay Rockefeller regarding the Federal Trade Commission's interests, and we have worked that out, I believe, to the satisfaction of my colleagues on the Commerce Committee. But I draw to the attention of Members the amendment we will be voting on does great damage to the FDIC's rulings and abilities in this legislation. I urge people to take a good look at what we are going to be asked to support, as it deprives the FDIC of some of the very authority and rulemaking that I think we want to preserve in our legislation. So I will address the Shelby amendment after the Hutchison-Tester amendment is disposed of.

But let me say in response to the minority leader, one of the strongest features of what has happened to our country over the last several years is we have had seven different Federal agencies that have divisions on consumer protection. They have been around for a long time. The reality is, most of them were asleep at the switch and were treated as second-class operations within their prudential regulator to such a degree that even though we mandated legislatively to protect home mortgages and people, they never even promulgated a single regulation in this area. Small businesses watched credit card rates go through the ceiling. Many people who rely on that ability are watching their rates jump from 5 percent to 22 percent, which is not uncommon.

So the idea that this has been a division between bureaucracy in Washington and what happens on Main Street is a complete aberration. We have seen 7 million people lose their homes, many of them because they were lured into deals they never could afford at the fully indexed price. We saw the outrage expressed by consumers and we saw consumer credit cards again where rates exploded, making it difficult. There are all sorts of features.

This bill covers only financial products and financial services. That dentists and butchers and retailers on the street are going to be affected by this is a complete myth, totally so, and the provisions of the bill couldn't be more clear about it. There are no new regulations. We are taking existing consumer laws, things such as truth in lending, fair credit. Some legislation goes back 50 years to protect consumers and others from the kind of activities people have to worry about every day, in terms of making sure they are not going to be abused by people who would take advantage of them. The question is whether anybody is going to enforce any of this. So by setting up this agency in the Federal Reserve, we are giving them independent rulemaking authority, appointed by the President, confirmed by the Senate as an operation, and then working in consultation with prudential regulators so we don't end up with a conflict between the safety and soundness requirements of our financial institutions and the consumer protection issues.

In the absence of this, what we are confronted with every year is having to draft legislation to deal with one consumer problem after another, and we all know how long that can take, if it ever gets done at all. In the meantime, we see what happens to average citizens who have paid dearly.

As to the whole shadow economy, community banks are right to be annoyed. Here they are located on one street corner, and they have a payday lender on the other corner completely unregulated. Here they are as a community bank having to go through a regulatory process to make sure things are working right and yet the shadow economy operating maybe 100 yards away and no protections. Under this proposed amendment, we require assessments of community banks to pay for the regulation of the nonbanks. Here they go again. Another cost. Our bill does none of that. The cost of the consumer protection agency comes out of Fed money; no assessment, no appropriations to support it. This one requires an assessment. Here we are going to adopt an amendment, the Hutchison-Tester amendment, which reduces the cost to 98 percent of consumer banks, and the next amendment adds an assessment onto them. We have to be a little bit consistent about this.

So that is what the Shelby amendment does. There is an assessment in his bill on community banks, on the nonbank community. So while nonbanks will pay some, the other ones do. We don't do that in our bill. I think there are so many assessments out there already. That shouldn't be the case. We consolidate so you get clarity, not seven agencies telling you what consumer regulation you ought to follow or not. They deserve clarity in thought so there is a consistent line of what is occurring out there and that consultation and cooperation with prudential regulation so we don't have the conflicts.

We spent a lot of time going through this. This amendment, the provision of the bill, is one that was worked on, by the way, on a bipartisan basis as we were drafting it so we could have this feature of the bill.

Again, I am willing to listen to ideas on how we can strengthen this and make it more clear against some of the accusations that we are reaching into Main Street on this legislation. Nothing could be further from the truth. We are not reaching into it at all. Obviously, any proposal deserves to be looked at again and other ideas that can tweak it and make it look better. But the idea that we are going to level assessments—the FTC gets damaged, in my view, as it is presently written. I think people need to read carefully what they are going to be asked to vote on in the Shelby amendment and then walk away from it. It is worse than the status quo in many ways. It takes a huge step back. If there is anything we have learned in the last 2 years, it is those small businesses, those people out there who rely on the flow of credit, the access to capital, to see to it there is going to be someone watching out on a consistent basis to what happens to them, we believe we have a very strong provision in our legislation.

Senator TESTER is here to close on the amendment. I apologize for drifting off into this other area. I see my colleague and friend from Massachusetts. But I know Senator TESTER wishes to be heard on the Hutchison amendment. So I apologize to my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, the Senator from Montana, I believe, is gesturing that the Senator from Massachusetts could have up to 3 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BROWN of Massachusetts. Thank you, Madam President. Thank you to my colleague from Montana. I have enjoyed working with him very much over the last couple days and the Senator from Texas as well. I know we have been working very hard on this amendment. I wished to commend the Senator who just finished speaking as well—I have privately and publicly—for taking this effort and trying to work through it in a bipartisan manner because, as I have said many times, this is an issue that affects the American people in very serious ways. I don't want to rush in. I want to do it right so we don't have to come back next year or next month and try to fix problems we may have inadvertently created. So I appreciate the Senator from Connecticut allowing me to come and speak to him privately in his office and his staff and work through this and I am hoping we can continue with that bipartisan effort.

As a reflection of that, I have signed on to many amendments, some by my Democratic colleagues and some by my Republican colleagues, and I am thankful the majority leader has said publicly that we are going to get a full and fair discourse on these issues. The one I am referring to today is the Tester-Hutchison amendment, of which I am also a cosponsor, amendment No. 3749.

For more than 75 years, the presence of FDIC deposit insurance has meant that Americans who deposit savings in insured banks sleep soundly at night. That is kind of the basic small community bank. You know when you are giving your money to a bank it is not going to be treated as a casino; it is going to be protected. But as our banking sector has consolidated and large national banks have emerged, our smaller community banks have been getting squeezed. These small banks pay approximately 30 percent of the total of the FDIC assessments but hold only 20 percent of the Nation's banking assets.

I feel it is time for the larger institutions to pay their fair share. This amendment will improve competition in the marketplace and help small businesses. Everyone knows small businesses across the country are having a hard time getting loans. Lowering the assessments on these community banks, I believe and others who are sponsoring this amendment believe, will help increase loans to small businesses. On a relative basis, our small community banks are far more active in the market compared to larger banks. As someone who was, in a prior life before I got here, involved in representing some of those banks, I can tell my colleagues they are the ones that are continuing to keep the economic engine going in these small towns.

I am pleased the amendment we will vote on today also makes sure the institutional custodial banks and bankers' banks are protected from unfair assessment levels that are not in line with the true role in the financial system. This matters a great deal to my State of Massachusetts—the global hub of institutional asset management—and will allow us to restore fairness to the FDIC assessment system without imposing large, unjustified assessment increases on custodial banks.

So I urge my colleagues to support the amendment. Thank you, Madam President, and the Senators from Montana and Texas.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Madam President, first of all, I wish to thank the Senator from Massachusetts for his comments. I very much appreciate his cosponsorship and support of this amendment. I also wish to thank Senator HUTCHISON for her hard work on this amendment. I very much appreciate her ability to get things done in a fair way, and I thank her very much for that.

Senator HUTCHISON and I have come to the floor several times to talk about this bipartisan, commonsense amendment to hold banks accountable for their behavior and to preserve the integrity of the FDIC deposit insurance fund. It has been said before that this would direct the FDIC to base assessments on assets rather than deposits, forcing big banks to pay their fair share into the fund. This amendment will ensure that the community banks that make rural America run will pay only their fair share into the fund—no more and no less—fixing the lopsided system we have now. It would also protect the integrity of the deposit insurance fund, which is critically important, ensuring that it has the resources to be self-sufficient and prepared to address any future crises.

Let me say, Senator HUTCHISON and I think this amendment makes a great deal of common sense, as do the other 13 cosponsors of this legislation. I am pleased we are joined by so many of our colleagues on this important amendment and that it is one of the first amendments up for consideration. It is a question of equity. It is a question of making sure the FDIC insurance fund is solvent for years and decades to come.

I wish to thank all the people who have cosponsored it, and once again let me thank Senator HUTCHISON as well as the chairman of the Banking Committee, Senator DODD, for working with us on this amendment.

Madam President, is it appropriate to ask for the yeas and nays?

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

All time is yielded back. Under the previous order, the question is on agreeing to amendment No. 3749.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—98

Akaka	Enzi	Menendez
Alexander	Feingold	Merkley
Barrasso	Feinstein	Mikulski
Baucus	Franken	Murkowski
Bayh	Gillibrand	Murray
Begich	Graham	Nelson (NE)
Bennet	Grassley	Nelson (FL)
Bingaman	Gregg	Pryor
Bond	Hagan	Reed
Boxer	Harkin	Reid
Brown (MA)	Hatch	Risch
Brown (OH)	Hutchison	Roberts
Brownback	Inhofe	Rockefeller
Bunning	Inouye	Sanders
Burr	Isakson	Schumer
Burris	Johanns	Sessions
Cantwell	Johnson	Shaheen
Cardin	Kaufman	Shelby
Carper	Kerry	Snowe
Casey	Klobuchar	Specter
Chambliss	Kohl	Stabenow
Coburn	Kyl	Tester
Cochran	Landrieu	Thune
Collins	Lautenberg	Udall (CO)
Conrad	Leahy	Udall (NM)
Corker	LeMieux	Vitter
Cornyn	Levin	Voinovich
Crapo	Lieberman	Warner
DeMint	Lincoln	Webb
Dodd	Lugar	Whitehouse
Dorgan	McCain	Wicker
Durbin	McCaskill	Wyden
Ensign	McConnell	

NOT VOTING—2

Bennett	Byrd

The amendment (No. 3749) was agreed to.

Mr. DORGAN. Madam President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNS. Madam President, I rise today to discuss the consumer protection piece of the financial reform bill we have been debating.

Let me start by expressing my appreciation for the good work of Chairman DODD and the good work of Ranking Member SHELBY and others who are making their way through a thoughtful process to try to get an overall bill that will work.

This piece of the bill, though, in my judgment, needs a tremendous amount of effort, attention, and work yet. The consumer protection piece has generated a lot of debate. We have all asked the question in Banking Committee hearings and on the floor: What is the best way to protect consumers? Let me underscore that. This has not been a debate about whether we do or not. No one is talking about ignoring this piece of the legislation. No one is advocating that we do nothing on consumer protections. What we are trying to focus on is the best way of doing it. We need to keep that perspective in mind as this debate unfolds and motives and words get distorted and stretched.

The bill before us establishes a consumer protection regime that is going to be housed at the Federal Reserve. But let me emphasize, that does not mean it is under its supervision. It functions like a stand-alone agency.

This new ''bureau'' will have what I would describe as unprecedented powers. It will reach into nearly every area of our economy with power over nearly everything. Anything that resembles the term ''financial in nature'' will come within the purview of this bureau.

I must admit, as this debate was going on, I found it surprising, if not shocking, that folks such as car dealers, accountants, and lawyers were showing up at my office to talk about the impact on them. It is no wonder that so many business groups have come out in opposition to this current piece of this legislation. I am not talking about banks. I am talking about business groups.

The Chamber of Commerce sent a letter outlining concerns on April 28 on behalf of—and I am using their language—''hundreds of thousands of nonfinancial services businesses.'' These hundreds of thousands of businesses—many of them small businesses—had absolutely nothing to do with the last crisis. Yet with this new bureau, I believe they will be punished or, at a minimum, tied up in redtape.

There are many pieces of this on which I could spend a lot of time talking on the floor, but what I have tried to do today is to encapsulate my thoughts into five areas, five concerns, if you will.

The first area is the unlimited rulemaking authority provided for in this legislation. Because the term ''abusive'' was added to the unfair and deceptive acts or standards, there is virtually no limit to the kinds of rules this new bureau can write.

We also know that the term ''abusive'' is entirely subjective. So how do you determine abusive? Will you make each customer take a financial literacy test? Is abusive different for MIKE JOHANNS than it is the next customer? Because ''abusive'' can be defined so differently from one customer to the next, we can see the unlimited problem that is created.

The second area, no veto power. I consistently said that it is a mistake to separate consumer protection from the issues of safety and soundness of the institution. If a proposed rule will have a negative effect on the safety and soundness of financial institutions, then we need some kind of checks and balances. Checks and balances are good. In this bill under debate, this new agency only has to list the regulator's concerns, not take them into any kind of meaningful consideration.

The third area, privacy rights. While there are a lot of privacy concerns here, two major ones come to mind.

Let me go to the language of the bill itself. Section 1022 mandates the bureau to:

> . . . gather information . . . regarding the organization, business conduct, markets, and activities of persons operating in consumer financial services markets.

A person is defined in the bill as an ''individual.'' So do you follow me? What this means is the bureau can look into the business conduct of the average person out there.

Section 1071 requires any deposit-taking financial institution to geocode customer addresses and maintain records of deposits for at least 3 years.

As Jim Harper from the Cato Institute described it:

> Think of the government having its own Google map of where you and your neighbors do your banking.

Is that what Americans want out of this bill?

The fourth item is the preemption standard. The current bill really changes current Federal law under the guise of giving States more power over their consumer protection laws. This worries me. This will wreak havoc for financial companies operating in more than one State. What we would be saying is they will have to comply with a patchwork of 51 State laws, and State AGs will have the power to enforce State and Federal laws against national banks. If this were the way since the beginning of time, one might say: Well, they have adapted to it. But to put them in this kind of regimen is literally to say to them: You are going to have to chew up mountains of capital to try to comply with all these various rules and regulations and laws of the various States.

The fifth item I wanted to mention is the expansive reach. This bill includes what I regard as an overly broad definition of ''consumer financial product or service'' and ''service provider.'' Specifically, section 1027 will subject numerous merchants to the regulation of this new bureau just because the business provides the ability to their customers to repay in four installments.

Imagine that you order a camcorder for the holidays off a home shopping network. This company provides you with the flexibility of making four installment payments. This new company could be swept under this new bureau. How long do you think companies will continue to provide that kind of flexible option to consumers if they are going to be buried in regulation? That is why the dentists, the lawyers, the advertising agencies, the accountants, and even florists are concerned with this bill and are showing up in our offices saying: What are you doing? I don't know about anyone else, but I can make the case without any hesitation that my local florist doesn't come to mind when I think about the players who brought our economy to the edge.

In response to this expansive and unfettered bureau, I am proud to announce my support for an alternative. This alternative, led by Senator SHELBY, is well thought out, is a reasonable approach and I believe a compromise to a very difficult issue in this legislation. It would establish a consumer protection division within the FDIC, which I believe is a natural fit since this agency is already tasked with protecting consumer deposit accounts. This new division would have authority to make rules relative to consumer protection. All rules, regulations, and orders would receive the approval of the board of the FDIC—an important check and balance. This is a very important distinction in terms of what we are debating today. Board approval will ensure that actions taken by the division appropriately consider safety and soundness of the financial institution, while ensuring that consumer safeguards are in place. While it allows primary supervision and enforcement to exist with the existing regulators, it does not bring in nonbank mortgage originators for supervision.

I will end on a final thought. Many have claimed that these mortgage insurers acted unfairly and that they preyed upon unsophisticated borrowers during the last crisis. This ensures the mortgage broker operating out of his garage or whatever is going to be regulated.

Finally, this new agency will be able to go after the bad actors, and that is what we should be doing. Anyone who shows a pattern of material violations will be brought under this new FDIC division.

Let me wrap up where I began. I applaud all my colleagues who have spent so much time and energy focusing on the consumer piece of this regulatory reform. Chairman DODD led us through hearing after hearing trying to figure out the best way to protect consumers. Senator SHELBY, our ranking member, worked on those issues in concert. We can get this right, but in my judgment, where we are today, the proposed legislation on the floor does not get it right. Let's focus on getting it right, getting the bad actors.

I believe the approach that is being championed by Ranking Member SHELBY is a reasoned one that elevates consumer protection while keeping safety and soundness as a paramount consideration. I ask my colleagues to support the alternative.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, first of all, if I may, let me acknowledge the contribution of the Presiding Officer, my colleague from New York. Everyone brings value to this Chamber from time to time based on what they have done in their earlier lives. I thank her immensely for bringing her background and experience to this critical debate we are having. She spent a lot of years working in this area of the law, knows it well, and I have come to appreciate her counsel and advice and thoughts on all of this, and I want to acknowledge that, if I may.

Madam President, as I said at the outset, there are four major pieces of this bill of ours, and I will add a fifth, obviously, dealing with the derivative section that was worked on by the Presiding Officer as a member of the Agriculture Committee, BLANCHE LINCOLN being the chairman of the Agriculture Committee. Title VII of this bill deals with that section. The Banking Committee side deals with the four other major parts of this bill, and they are, No. 1, end too big to fail; No. 2, set up an early warning system—and I am being simplistic in describing these—deal with the derivatives and the so-called exotic instruments; and have a strong consumer protection feature to this bill. Those are the four points.

We have resolved, I believe to virtually all of our satisfaction, the too-big-to-fail argument. We did that yesterday. And again, I thank my colleagues, particularly Senator SHELBY and others, for helping us work through that to come to a conclusion that ends the debate as to whether the bill before us ends too big to fail. I think that in itself would be justification for supporting the legislation—knowing that if we adopt this legislation, as I am hopeful we will, and Lord forbid we are confronted with another major economic crisis, we will not be faced with the choices we were in the fall of 2008 where the American taxpayer wrote out a check for $700 billion to bail out major financial institutions that were on the verge of collapse. We were told that if they did so, the financial system of our country, and possibly globally, would melt down, to use their words. What we wanted to avoid was ever being put in that position again, where you had the implicit guarantee that the Federal Government would write that kind of check. We have done that now in this bill, so let's check that box. Too big to fail is over with, and this bill takes care of that. We need to pass the bill, and we need the President to sign it so that it becomes law. But as of right now, we are far closer to resolving that issue than ever before.

The derivative section of the bill and so forth—I know people are working on this and working with Senator LINCOLN and others on that section of the bill. I respect immensely their efforts to make sure we can arrive at a compromise. We think we have good provisions in the bill, but I think all of us recognize other ideas and thoughts are always welcome. So that is being worked on.

The sort of radar, the look-ahead approach to our legislation, I don't think there is any debate about, so that box has sort of been checked. Maybe someone has some amendments on what they would like to do to strengthen it but not the idea that we have an early warning system so that we pick up these problems far earlier than we did or were willing to acknowledge as they were developing within the residential mortgage market as early as 2005 and 2006, beginning to explode in 2007, and then, of course, watching the events of 2008, culminating in the fall with the decisions we had to make in order to stabilize the financial system in our country. Had we had that early warning system—more than just one set of eyes at the Federal Reserve, which did, to put it mildly, a very inadequate job of picking up what was occurring in the real estate bubble—we would never have found ourselves in the situation we did in our country in the fall of 2008.

We believe the early warning system will be a major step in limiting the kinds of problems we have seen in the last couple of years. It does not stop the next economic problem. There will be another economic crisis. Future generations will deal with that. There is nothing in this bill that prohibits us or guarantees us that we have once and for all avoided economic crises. First of all, we are no longer in total control of that within our own country. How many more headlines do we have to read about Greece and what is occurring there—the riots in the streets today because of the economic decisions they are making to stabilize their country. These are already having an effect globally. So while we can do a lot to minimize what happens here, we recognize today that we live in a far more interconnected world that poses its own set of risks.

Nonetheless, I think the fact that we have established, on a bipartisan basis—and again, our colleagues MARK WARNER and BOB CORKER, along with other Members, did a great job, in my view, in crafting that part of our bill. So I think we have done a good job there, and I see very little dissent about it.

The fourth piece, the consumer protection, is the one in which we are now engaged. This is a debate that I believe is worth having over the next hour or two and then vote. Let me say to my friend from Alabama, the author of the amendment, and his cosponsors that we have to come and debate this stuff. I am here and will be glad to engage in the debate, but I have one other colleague here right now involved in this question. This is a major part of the bill.

People have told me over and over again that this is a big issue for them. I am willing to accept their determination. I think it is a big issue too. But we have about 100 amendments people want to offer, and we have about 39 legislative days between now and the end of this Congress, with an awful lot to do.

Now, I can't get there for you. I can't get your amendments up if others insist upon elongated times on the consideration of their amendments. We have all been debating consumer protection for years now, particularly over the last 18 months. There is no reason to have a protracted debate on this question. My Republican friends have offered a substitute to my bill on this issue, and I welcome that substitute. We need to now debate it and then vote on it and move on to the next issue.

Madam President, I am delighted to see my good friend, who just arrived to engage in this discussion. So let me address this issue of consumer protections in terms of both what we have in the bill, reading the language of it, and what the alternative would do.

Let me first of all say that I listened to my friend from Nebraska, Senator

JOHANNS, a wonderful member of our committee and a person I have come to respect very much. He has been very productive and very helpful in the Banking Committee.

But the idea, to use his language, that we are covering florists and accountants and lawyers and dentists—nothing could be further from the truth. I guess the old adage is, if you say something often enough and repeat it often enough and if it goes unchallenged, it becomes a fact. It is not a fact. In fact, it is anything but a fact. I know they wish to use that argument to try to pass their amendment or to defeat the sections of the bill I have included, but I cannot say it any more clearly to my colleagues. I believe it is section 1027 of the bill. You have all got copies of the bill on your desk. Read section 1027 when you come to the floor. It is not complicated legislative language. It says specifically the only reason you would be covered by the consumer protection language in this bill is if you are significantly involved in financial services or financial products.

I realize the word ''significantly'' is what people want to work on, and I am willing to listen to some ideas as to how we can define that word ''significantly.'' That is not a bad point. I understand that. But don't tell me it covers a florist under any definition of the words ''significantly involved in financial services and products.'' It excludes retailers and merchants across the country. Again, I am willing to debate all sorts of language here but don't make me debate completely false allegations about what is in the bill.

At any rate, we have been working on our bill for a long time. My compliments and thanks to my colleague from Alabama for the efforts yesterday and so forth. But this is a very important part of the bill. We have worked to create an early warning system, as I mentioned, and of course too big to fail, but consumer protection is critical because it goes to the very heart of what we are trying to do. In fact, it was consumers, small businesses, families, individuals, farms that were adversely affected. Wall Street did fine, as we have seen. Some people lost some jobs along the way. A couple of these large institutions did collapse. But we have heard about the bonuses that went to top executives. The buildings are still there. They have been making record profits over the last couple of years. But what happened to those millions of people who had a home that now is gone? What happened to those 8.5 million jobs? Gone. What happened to those retirees in our country who watched 20 percent of their retirement evaporate? What happened to those people who still have a house but the value of that home has declined by 30 percent in the last year and a half? I don't know what you call them; I call them consumers, the average person in our country who did not do anything except try to hold body and soul together, got lured into a bad deal by people who were unregulated and were willing to convince them they could buy a home they never could afford, knowing that the fully indexed adjustable rate mortgage was going to wipe them out.

I talked about Dolores King, who was the first witness I brought to our committee 3 years ago, in January or February of 2007. She was a retiree in Chicago who worked as a librarian for 30 or 40 years. Her husband had died. She had about a $30,000 or $40,000 credit card debt and some unscrupulous broker came in and convinced her she needed to rewrite her mortgage and an adjustable rate mortgage would work for her. She lost everything. She lost her home—70 percent of her fixed retirement income went to pay that mortgage.

So when people tell me you cannot get consumer protection, when that automobile company a few weeks ago had to recall its cars because the accelerator got stuck, they got recalled. Did Dolores King get her mortgage recalled because it was faulty, when she lost her home? That is what consumer protection does. If you are in the business of financial services and products, having someone watch out for the average citizen ought not be such a radical idea when we talk about financial reform.

We have this in a way, on a bipartisan basis, I might add, that sets up an independent consumer protection agency housed at the Federal Reserve. Its director is appointed by the President and confirmed by the Senate. It has the authority to write rules on consumer protection in the financial services area where financial products are involved.

Then of course it has examination and enforcement authority—only for those institutions that have assets more than $10 billion—for enforcement; otherwise, it is done at the local level. The rules are the same. We don't write any more rules. The rules are there. They have been around in some cases for 50 years—truth in lending, fair credit, RESPA—all of these laws in place. All we are saying, can someone enforce them and examine institutions and determine whether they are living up to them?

Right now there are seven agencies that have a consumer protection division. For a huge part of our economy, no one is watching them. One of the very legitimate complaints our community banks make: We get regulated but that guy down the street, that payday lender, no one is watching out what he is doing every day, and we are disadvantaged. Our bill stops that. If you are a payday lender, you are under the same rules that banks would be under—at least have someone watching out there. That is a major step forward. We recognize a major part of our economy's collapse or near collapse was in the shadow area of our economy. Our legislation fills those gaps.

We understand, or should understand, how important having an independent agency with rulemaking authority is. Again, the issue is—wait a minute, you have to be careful, Senator, because you have safety and soundness and the prudential regulators have to be considered in all this. That is a legitimate point. I don't disagree with that, although I think sometimes the accusation that there is this great conflict is exaggerated. Our bill says the prudential regulators have to examine and look at the rules coming out. If they vote, two-thirds of them, and say that rule creates a conflict or some problem, it does not go into effect. There is not another agency in government that can have its own regulations or rules vetoed by another group of regulators. That was a suggestion, again, by Republican colleagues to include in our bill, to provide the kind of safeguards against potential conflicts of interest between safety and soundness and consumer protection.

Again, that today with seven agencies tasked with consumer protection, not one of which did the job to anyone's satisfaction in the lead-up to this crisis, ought to be justification alone for what we are trying to do. Our legislation will have an independent director appointed by the President and confirmed by this body, as I said. They will have a dedicated independent budget paid for by the Federal Reserve Board.

The proposal we are being asked to vote on adds additional assessments to banks and to nonbanks. We just got through adopting the Tester-Hutchison amendment regarding assessments, to reduce the assessments on community banks. If you adopt the Shelby amendment, you are going to add assessments on again. Here we vote on one hand to take them away, and now with an amendment—this asks to put them back on and is asking our community banks for additional assessments to cover the activities of nonbanks. I thought I heard my colleagues say around here we ought to be more sensitive to what is happening at the community bank level. Yet this amendment my colleagues are going to be asked to vote for does the opposite. So be very careful when you get up and vote for this amendment to explain why, later, if in fact it gets adopted, this bill does, why we are adding assessments to those banks.

Our bill will have an office of financial literacy to ensure consumers are able to understand the products and services being offered, which was a major problem in the last crisis, and a national toll-free consumer complaint hotline so Americans have somewhere to go when they need to report a problem.

Our bill will make us empowered to write consumer protection rules governing any institution, bank, or payday lender that offers consumer financial services or products, and only those businesses that do that. In short, we are ending the alphabet soup of distracted and ineffective regulators and replacing it with one single, empowered, focused cop on the consumer protection beat.

Again, a complaint, I think legitimately, is when you have seven agencies with consumer protection jurisdiction—I think the lack of clarity is important. My colleagues should understand that. My colleague from Alabama has come out with a Republican substitute for the consumer protection bureau. I am surprised. I know my friends were not going to agree with the consumer protection provisions as strongly as some of the ones in my bill, and in some of my more pessimistic moments I thought they might want to maintain the status quo, but this is worse than the status quo. This is a major step back. This substitute actually goes backward, making it easier for unscrupulous lenders to rip off the American public, businesses, and families. It is a stimulus package for scam artists, that is what it is, this amendment; nothing short of that. For the life of me, I cannot understand, after months of hearings, months of analysis, months of discussion regarding the fact this financial crisis started with a failure of consumer protection, anyone would think that the right solution is less consumer protection. Yet that is exactly what this amendment does.

It is as though we are in a deep hole and we spent a full year debating how to get out and our Republican friends' solution is: Keep digging.

I am going to walk through the provisions of their substitute but, in short, here is why it is simply unacceptable.

First, when it comes to writing new consumer protection rules, the Wall Street substitute—and that is what it is—relies on the same regulators who screwed up the country in the first place. Why would you ask them to do it again?

Second, when it comes to enforcing rules, their plan actually makes things worse, reducing regulators' ability to stop rip-offs and leaving American families even more vulnerable.

Third, the Republicans' substitute wants to raise taxes on community banks and credit unions to pay for the regulation that will not even happen.

Fourth, they want to make it easier to sell Americans mortgages they cannot afford which, if you have been paying any attention at all to what has been going on in the last 18 months, is the very reason we got into this mess in the first place, making it easier to sell Americans mortgages they cannot afford.

Fifth, to top it all off, this substitute eliminates the provision of any consumer protection proposal that targets discrimination in lending. How on Earth could anyone be against ending discrimination in lending? Yet that is also a part of this substitute.

If you look at how we got into the crisis and you conclude that the answer is to weaken consumer protection, you are doing it all wrong. Let me go into a bit more detail, and then I see my colleagues want to be heard as well.

The first important change in the Republican substitute is, instead of having an independent agency write consumer protection rules, it puts the task in the hands of the same distracted and ineffective regulators who failed so badly in the first place.

What would that mean for the consumers? Here is a preview. One of those regulators has already demonstrated itself to be anticonsumer, opposing proposed rules to keep credit card companies from retroactively raising interest rates on outstanding balances.

I can speak firsthand. I am the guy who wrote the credit card bill. The agency that fought me on it now is going to be tasked with the job of protecting people from it. For the life of me, of all the agencies you could have picked to run this in your bill, you picked the one agency that has fought us on credit card reform. It is stunning to me that someone would actually write a substitute tasking this agency, knowing this was the agency that did so much damage, was opposed to the idea that we put limits on interest rates to be charged on outstanding balances. That is not putting consumer protection at the heart of our financial system, that is putting consumer protection in the backseat, where it has been for far too long.

That is not the worst of it. The Republican substitute limits enforcement powers to ''large nonbank mortgage originators.'' Large nonbank mortgage originators—other finance companies will avoid enforcement unless they demonstrate a ''pattern or practice'' of consumer abuses. In other words, their version of the consumer protection agency will not be allowed to prevent abuses committed by commercial—or banks, or payday lenders, check cashers, credit card companies, debt collectors, car dealers who are involved in the finance business, and a wide range of the worst actors in the subprime mortgage industry, until it is already too late for potentially thousands of consumers to be protected. It is as though they want to create a police department that is allowed to enforce laws against littering. Maybe they will cut down on littering, but to leave the same regulators to deal with the rest of the financial sector, they are essentially turning a blind eye to every other kind of crime out there. In fact, it is like legalizing those crimes by eliminating the Federal Trade Commission authority to police unfair and deceptive financial practices in these other sectors. The substitute is worse than the status quo, and the status quo is very bad indeed.

Meanwhile, the substitute raises taxes on potentially any nonbank financial services company. It allows the Federal Deposit Insurance Corporation to raise assessments on banks, including community banks and credit unions. In fact, their plan would ask credit unions to pay for the regulation of their nonbank competitors—the same competitors who will be getting a free ride, exempted from any Federal oversight whatsoever.

Our plan is to have the Federal Reserve pay for enforcement. Their plan is to have community banks pay for enforcement, and then do not have the enforcement, of course. That is a tax increase they don't need and one that our depository institutions, so critical to rebuilding our economy, cannot afford.

The amendment also prohibits the establishment of strong mortgage underwriting standards. We all know how important it is to establish better underwriting standards. If we had rules in place 2 years ago that required banks and mortgage lenders to make loans only to people who could show that they have the ability to repay them, we would not be in this mess—if that had been the case.

The amendment before us would prohibit the new division we have proposed to create from issuing commonsense rules like these. If you had to pick one thing in this bill to undermine and ensure that we have another financial crisis, in my view, this would be it.

The substitute also eliminates as an objective of the new consumer division the goal of eliminating discrimination. I believe this goal is essential to restoring America's faith in our markets.

In short, I find it impossible to work with this proposal. There are ideas I am willing to listen to, that we might define ''significantly'' and things like that. That is fine. I understand that. But this approach does more damage than you can imagine.

Again, to go back to what I said at the outset, we have spent a lot of time talking about what happened to the big firms on Wall Street and what happened to large institutions and large manufacturers. The root cause of the problem we are in began because there was a total disregard for small businesses and families and individuals out there; that they could take advantage of them, as they did, because they could sell off—they could get paid immediately, they securitized these crummy mortgages out there, leaving that home owner in a situation they could never afford to sustain, and the house of cards came tumbling down. And it all began—it all began—with that problem.

I say, respectfully, this proposal goes right at the heart of the very issue we must address in this bill, in addition to all of the other aspects we are talking about. There is no more very important vote we will cast, in my view, in this debate than this one. If we walk away from providing the safeguards for the average American—I do not care what their politics are, what their ideology is, anything else, they deserve to know in this debate, at long last, they are being considered, that watching out for them is part of this.

The outrageous case that this somehow reaches into retailers and merchants is highly offensive to me. It is the last thing I would ever suggest to my colleagues, that we somehow get into the business as Federal regulators of poring over florists and dentists and butchers and accountants and lawyers. Nothing could be further from the truth.

This goes after those businesses involved in financial services and products. It does so in a way that provides clarity, provides an opportunity for those institutions to be regulated, to know what rules they have to follow, and who is in charge of insisting that they meet those obligations.

So with that, I urge my colleagues to vote against this amendment. My hope is we will vote fairly soon. Again, we have hundreds of amendments that people want to be heard on, and we do not have all of the time in the world to deal with it. So we have to move on on these issues.

I think people understand the debate. They can read the amendment. I urge you to read 1027 in our bill, the section dealing with consumer protection, dealing with who is covered. Then we will have a vote.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. DODD. Madam President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 789, the nomination of Larry Robinson to be Assistant Secretary of Commerce for Oceans and Atmosphere; that the nomination be confirmed and the motion to reconsider be considered made and laid upon the table; that any statements be printed in the RECORD; the President be immediately notified of the Senate's action, and the Senate resume legislative session.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF COMMERCE

Larry Robinson, of Florida, to be Assistant Secretary of Commerce for Oceans and Atmosphere.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator form North Dakota is recognized.

Mr. DORGAN. Madam President, I will join my colleague from Connecticut in opposing the amendment on the floor if it weakens the underlying bill, but I do not come to speak about that proposal at the moment. I wanted to speak about an amendment I have discussed previously on the issue of too big to fail.

There is much yet to do on this subject of too big to fail. I recall, in a room just steps from here, on a Friday, I believe it was, the Treasury Secretary leaning over the lectern in a very stern way saying to the caucus that I was involved in, if within 3 days a three-page bill granting $700 billion to the Secretary of the Treasury, with which to provide funds to stabilize some of the biggest financial institutions in the country, if that did not come about, our economy could very well collapse completely.

I remember that moment and remember thinking that it was pretty bizarre that our country got to that point: that all of a sudden 1 day, after being told month after month that the economy was strong, the economy was in good shape, that there were some ripples and hiccups here and there, but things were on course and we had confidence in the strength of the economy, that we were now being told the economy may well collapse in days unless the Congress comes up with $700 billion.

Why was that the case? Because institutions that were so large in this country, at the top of the financial industry, were so important to the economy that their failure could very well result in failure of the entire American economy. That is what is called too big to fail.

Let me show a chart that shows the six largest financial institutions in the country and what has happened to them since 1995. This is their growth as a percentage of GDP. It shows that they are getting larger and larger and larger and much larger. Even during this period of near collapse, the same institutions that were judged too large to fail and judged to represent a grave risk to the entire economy have gotten larger than just too big to fail.

We had a vote yesterday, but that cannot be the end of this discussion about how to address too big to fail. The vote yesterday was rather Byzantine, as far as I was concerned. I was not someone who was a big fan of the $50 billion to be pre-funded for resolution of too-big-to-fail companies. But having said that, to decide that the $50 billion, which would come from the very institutions that are too big to fail, should be abolished, and that the funds instead would come from the FDIC, which are initially funds from the American taxpayer, made no sense to me. Then suggesting that it will be all right because the FDIC will be repaid with the sale of assets—oh, really? Well, firms that are too big to fail that are going to get in trouble in the future are not going to have very many assets. They are going to be in trouble because of dramatic amounts of overleverage, leverage that goes far beyond their ability to continue to do business. And when the firm comes tumbling down, I fail to see where assets are going to exist in substantial quantity to repay the taxpayer.

But that was yesterday. I did not support that. That was yesterday. This issue of creating a circumstance of early warning on too-big-to-fail firms is not satisfactory to me. The only way to resolve too big to fail is to abolish too big to fail. I mean abolish too big to fail. That means having firms that are not too big to fail, that will not cause a moral hazard or a grave risk to the entire economy should they fail.

Do you believe that is the case with this graph? Is there anything here that—as this graph shows, we have firms that are too big, far too big to fail. Is there anything here that is going to solve that in this bill? The answer is no. The only direct and effective way to address this is to decide, if you are, in fact, too big to fail, then there has to be some sort of divestiture or dissolution to bring that firm back down to a point where in size and scope such firm is not too big to fail and is not causing the kind of dramatic special risk to the country's economy that it would bring the economy down with it.

That is the only direct and effective solution. Is that radical? Well, I have an amendment that requires that if you are determined to be too big to fail, then we begin a process, over 2 years, of breaking away those parts that make you too big to fail. Is it a radical idea? I do not think so.

One-fourth of the Board of Governors of the Federal Reserve Board says we ought to do that. Richard Fisher, president of the Dallas Fed: Too big to fail is not a policy, it is a problem. Too big to fail means too big period. We ought to break them up.

Federal Reserve Bank of St. Louis, James Bullard, president and chief executive officer: I do kind of agree that too big to fail is too big to exist.

The economist, Joe Stiglitz, Nobel Prize winner: Too-big-to-fail banks have perverse incentives. If they gamble and win, they walk off with the proceeds. If they fail, taxpayers, pick up the tab.

Alan Greenspan—I seldom, if ever, agree with Alan Greenspan, but I have used a quote of his to describe where we are now. He was around sitting on his hands for a good many years while these problems developed, despite the fact that he had the authority to have avoided them. Then he has written a book acting as if he was exploring the surface of Mars while all of this went on.

But now he says: The notion that risks can be identified in a sufficiently timely manner to enable the liquidation of a large failing bank with minimum loss has proved untenable during this crisis, and I suspect in the future crises as well.

Simon Johnson, professor of entrepreneurship, the Sloan School: There is simply no evidence, and I mean no evidence, that society gains from banks