the strongest Nevadans we could ever meet and I ever met.

Officer Daniel Leach was a career corrections officer. He began his shift last November 21 by driving to Laughlin to pick up prisoners at the Tucker Holding Facility. He was going to take them to the Clark County Detention Center in Las Vegas.

But before he could get to Laughlin—not far from my home in Searchlight—he was involved in a vicious two-vehicle accident and was killed instantly. Officer Leach was 49 years old. He had spent the last 25 years of his life as a Las Vegas police officer. He is survived by his wife, whom I met this morning, two children, his parents, one brother, and one sister.

Before Trevor Nettleton was an officer in the Las Vegas Metropolitan Police Department, he proudly held the honored title of United States marine. His 9 years in the Marine Corps included service in the elite Presidential Guard unit, where he protected President George W. Bush.

Last November 19—2 days before Officer Leach was killed—Officer Nettleton was shot and killed by three gang members who broke into his garage in an attempt to rob him and his family. Officer Nettleton was 30 years old. He left behind a wife, two young children, his parents, and a brother.

Like Officer Nettleton, Officer Milburn Beitel III was also a marine. Tragically, he also died as a Las Vegas police officer at age 30.

''Milli''—as everyone called him—was on patrol late one Wednesday night last October when a car turned in front of him. Officer Beitel swerved to avoid the other car but was thrown from his patrol cruiser and died early the next morning. He, of course, was on a call he had received. He is survived by his parents and brother.

Last Friday marked 1 year since Officer James Manor responded to his last call. It was in the same Las Vegas community where he grew up. While responding to a domestic abuse call, a pickup truck driver failed to yield to him in his police vehicle—going as fast as he could to respond to that dispute—the collision occurred, and James Manor was killed.

He was known as ''Jamie.'' He had 10 brothers and sisters, and even more whom he considered brothers and sisters who served on the police force with him. His siblings, his mother, and his large extended family will tell his young daughter Jay'la—whom I met this morning; a beautiful little 8-year-old girl—they will tell her and the rest of the family about who he was. They will tell Jay'la about how courageous her father was, who died at 28 years of age.

This memorial wall that will bear these four Nevadans' names is a living reminder of some of our most selfless citizens. This year we will also add to that wall the names of Nevadans whom we recognize belatedly—some very belatedly:

Uriah Gregory, a jailer from Virginia Center during its heyday, was killed by two of his prisoners in 1866.

Arthur St. Clair, a constable and father of two, and George Requa, a deputy sheriff, were killed in an ambush in Elko in 1920. They were both killed at the same time.

Charles Lewis, another deputy sheriff from Elko, was killed by a thief in 1925.

George Washington Cotant, an Elko constable, died in a car accident in 1937.

Hugh Gallagher, Sr., a deputy sheriff from Virginia City, died on duty in 1948.

Ronald Haskell, a narcotics agent in Carson City, died on duty in 1975.

Richard Willson, a sergeant from Hawthorne, NV, died after apprehending a suspect in 1994.

These men were killed a long time ago—one almost 150 years ago, when Nevada had been a State for only 2 years, but it does not matter the time—and we can never forget their sacrifices.

Every day we should thank those who wake up on otherwise unremarkable mornings and head out to work with the job simply to keep us safe. Today we thank and honor the courageous Nevadans who, one unforgettable day, never came home.

Madam President, will the Chair report the bill.

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.

Collins amendment No. 3879 (to amendment No. 3739), to mandate minimum leverage and risk-based capital requirements for insured depository institutions, depository institution holding companies, and nonbank financial companies that the Council identifies for Board of Governors supervision and as subject to prudential standards.

Brownback modified amendment No. 3789 (to amendment No. 3739), to provide for an exclusion from the authority of the Bureau of Consumer Financial Protection for certain automobile manufacturers.

Brownback (for Snowe/Pryor) amendment No. 3883 (to amendment No. 3739), to ensure small business fairness and regulatory transparency.

Specter modified amendment No. 3776 (to amendment No. 3739), to amend section 20 of the Securities Exchange Act of 1934 to allow for a private civil action against a person that provides substantial assistance in violation of such Act.

Dodd (for Leahy) amendment No. 3823 (to amendment No. 3739), to restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers.

Sessions amendment No. 3832 (to amendment No. 3739), to provide an orderly and transparent bankruptcy process for nonbank financial institutions and prohibit bailout authority.

Dodd (for Durbin) amendment No. 3989 (to amendment No. 3739), to ensure that the fees that small businesses and other entities are charged for accepting debit cards are reasonable and proportional to the costs incurred, and to limit payment card networks from imposing anti-competitive restrictions on small businesses and other entities that accept payment cards.

Dodd (for Franken) amendment No. 3991 (to amendment No. 3739), to instruct the Securities and Exchange Commission to establish a self-regulatory organization to assign credit rating agencies to provide initial credit ratings.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

AMENDMENT NO. 3776, AS MODIFIED

Mr. SPECTER. Madam President, I have sought recognition to ask cosponsors of the pending amendment who wish to present an argument to come to the floor as early as practical. The pending amendment involves reinstating a civil cause of action against aiders and abettors. The law, up until 1994 with a Supreme Court decision, provided that aiders and abettors were liable for damages for those who had been defrauded in securities transactions.

We all know the massive problems caused by Wall Street operations with many allegations of fraud. In our effort to reform Wall Street, this is a very important provision. Traditionally, people who have been injured, lost money, as a result of fraud have had a civil right of action to go into a civil court. The law had been uniform that under the Securities Act those cases could be brought.

There have been two Supreme Court decisions which have modified that, requiring this act change the decisions of the Supreme Court of the United States—which we have the authority to do: not decided on constitutional grounds but decided on grounds of statutory interpretations. So Congress has the plenary power to make that modification.

I have offered the amendment and argued it briefly. We will discuss it further a little later this morning. I offered it on behalf of Senator REED of Rhode Island, Senator KAUFMAN, Senator DURBIN, Senator HARKIN, Senator LEAHY, Senator LEVIN, Senator MENENDEZ, Senator WHITEHOUSE, Senator FRANKEN, Senator FEINGOLD, and Senator MERKLEY, and I want to let all of the cosponsors know the matter is now on the floor, and if they care to support the arguments, now would be the time to come to the floor.

Madam President, I see other colleagues waiting for recognition, so I yield the floor.

Mr. WYDEN. Madam President, I note the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. WYDEN. Madam 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. WYDEN. Madam President, I am going to speak for about 5 minutes on the effort to finally, once and for all, eliminate secret holds in the Senate. Senator GRASSLEY, my partner in this effort for a decade, will also speak. Then, two colleagues on our side who are a part of this large, bipartisan coalition, Senator WHITEHOUSE and Senator BENNET, and who also have done very good work along with Senator GRASSLEY, Senator INHOFE, and Senator COLLINS, who have been part of a bipartisan coalition, will take just a few minutes.

Let me also express my appreciation to the chairman of the committee, Senator DODD, Senator DURBIN, and others who have been so helpful.

This bipartisan amendment will abolish the secret hold in the Senate, which, in my view, is a violation—an indefensible violation—of the public's right to know. With a secret hold, any Senator can block a piece of legislation or a nomination in secret simply by telling the leader of their party of their desire. This means that one person, without any public disclosure whatsoever, can keep the American people from even getting a peek at what is public business.

When asked why he robbed banks, Willie Sutton said: ''That's where the money is.'' In the Senate, secret holds are where the power is. With a secret hold, one of the most powerful tools a Senator has to affect the lives of our people can be exercised anonymously.

In 2007, the Senate sought to eliminate secret holds. Since then, big loopholes have been developed to keep too much Senate business in the dark, unaccountable, and away from the public.

This bipartisan amendment closes those loopholes. With this bipartisan proposal, every single hold in the Senate will have an owner who is public within 2 days. It is an amendment that will be enforced. Here is how it would work: If a Senator puts a hold on a bill or nomination, they are required to submit a written notice in the CONGRESSIONAL RECORD within 2 days. When that bill or nomination comes to the floor and any Senator objects to its consideration on the grounds of a hold, one of two things will happen: either the Senator placing the secret hold will have their name publicly released or the Senator who objects on their behalf will own that hold, and then that individual will have their name published in the CONGRESSIONAL RECORD. For the first time, there would be both public accountability and peer pressure on those trying to keep Senate business behind closed doors.

The bipartisan proposal includes two additional reforms. First, the proposal eliminates the ability a Senator has today to lift a hold before the current 6-day period expires and never have it disclosed. This has been a huge abuse. It has allowed a Senator to do business in secret and never have it reported.

With the new proposal, if a Senator places a hold—even for a day, even for a minute—that hold is going to be disclosed. Second, the proposal makes it harder for a group of Senators to place revolving holds on a nomination or a bill. I particularly thank Senator WHITEHOUSE, who has highlighted this issue of revolving holds in his past comments on the floor. With the 6-day time period, a group of Senators can literally pass a hold from one colleague to another and never have it disclosed. By requiring all holds to be made public, it will be much more difficult to find new Senators to place revolving holds.

What this comes down to is the question of whether public business ought to actually be done in public. It seems to me that if it is important enough for a Senator to say they are making it a priority to keep a bill or nomination from coming to a vote, that ought to be a public matter and not be something that is decided in the shadows, away from the public and unaccountable.

I thank my colleagues. This has been part of a bipartisan coalition. No one has put more time into this cause than my friend from Iowa, Senator GRASSLEY. I also thank Senator MCCASKILL, who has prosecuted this cause of accountability and openness relentlessly, along with Senators WARNER, WHITEHOUSE, BENNET, INHOFE, and COLLINS—I could go on.

Finally, there is a desire in the Senate to eliminate secret holds once and for all. I will close with this. I don't think that 1 out of 100 people in this country have any idea what a secret hold is. Most people probably think it is some kind of hairspray. It is one of the most powerful tools in our democracy that is being used to keep what is public business from the eyes of the American people, and it has to change.

I will yield to my colleagues, Senators GRASSLEY, WHITEHOUSE, and BENNET. I thank Chairman DODD and Senator SHELBY for indulging us at this time. It seems to me that when Senator DODD has done so much good in terms of arguing for openness and accountability on Wall Street, this is a perfect time to say we ought to have that in the Senate. That is what we are going to do on a bipartisan basis today.

I yield the floor.

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

Mr. GRASSLEY. Madam President, I thank Senator WYDEN for his leadership and for working together with me and other Senators over a long period of time. I think he referred to maybe 10 years that we have been struggling to get to what we are finally getting to today.

In the past, we thought we had victories and they turned out to be hollow victories—maybe a little more openness but largely ineffective. So maybe now we will finally be able to accomplish an effective openness in the Senate on one of the most powerful tools a Senator has.

I think it gives hope to the fact that if you are right, eventually right wins out, even in the Senate. Long struggle does pay. I think we are bringing simply common sense to a process in the Senate. It is, as my friend from Oregon said, transparency, and with transparency we have accountability.

The amendment Senator WYDEN and I have offered would restore the prohibition on secret holds the Senate voted for overwhelmingly in a previous Congress—the 109th Congress—and make it even more robust. As I said, those turned out to be largely not very effective.

At that time, in the 109th Congress, our measure passed as an amendment to the ethics reform bill by a vote of 84 to 13. That bill never became law, but the next Congress passed then what is referred in the title of the legislation as the Honest Leadership and Open Government Act. Our provision was also originally included in that bill.

Ironically, as I have alluded to, in a move that reflected neither honest leadership nor open government, our provisions were altered substantially—I might say too substantially—behind closed doors, before we had final passage.

The current provisions essentially say it is OK to keep a hold anonymous until 6 days after someone asks unanimous consent to proceed to a bill or a nominee. I am not going to explain how that process works out, but it can be summed up in the words that it is a very ineffective sort of transparency, hardly doing any good whatsoever.

The amendment that is before us says Senators must go public from the moment they place the hold.

Perhaps I should take this opportunity to address what a hold is all about. A hold arises out of the right of all Senators to withhold their consent when unanimous consent is asked.

It goes without saying that any Senator has a right to object to a unanimous consent request that the Senator does not support because it is not unanimous unless, obviously, we all support it.

In the old days, when Senators conducted much of their daily business from their desk on the Senate floor, it was a simple matter to stand and say, ''I object'' when necessary, and, of course, that Senator was immediately identified. Now, Since most Senators spend so much time off the Senate floor in committee hearings, meeting with constituents, and other sorts of obligations that we have, we have tended to rely upon the majority and minority leaders to protect our rights and prerogatives as individual Senators, asking them to object on our behalf.

Just as any Senator has the right to stand on the Senate floor and say, ''I object,'' it is perfectly legitimate to ask another Senator to object on our behalf if we cannot make it to the floor when consent is requested.

By that same token, it would be illegitimate, not to mention impossible, for a Senator to stand on the floor and object anonymously. Senators have no inherent right to have others object on their behalf and keep their identity secret.

If a Senator has a legitimate reason to object to proceeding to a bill or a nominee, then he or she ought to have the guts to do so publicly.

I believe this is part of expanding the principle of open government. The public's business ought to be public. Lack of transparency in the public policy process leads to cynicism and distrust of public officials and, quite honestly, less accountability.

I maintain that the use of secret holds—with emphasis upon the adjective ''secret''—damages public confidence in the institution of the Senate. The public's business ought to be done in public, period.

I have made it my practice to put a statement in the RECORD when I have placed a hold on a nominee or a bill for over a decade. I can tell you that is no burden whatsoever, and it hasn't hurt me in any way whatsoever to let my colleagues and the public know—for the last decade—that Senator CHUCK GRASSLEY had a hold on a bill and why I had that hold on a bill or nominee.

Our amendment—the one before us—would make it crystal clear that holds are to be public. Senators placing a hold must get a statement in the RECORD within 2 days, and they must give permission to their leaders at the time they place the hold to object in their name.

Also, if a Senator objects, ostensibly on behalf of another Senator but refuses to name the Senator he is objecting for and that Senator doesn't come forward within those 2 days, the objecting Senator will be listed as having that hold, owning that hold.

I wish to make it clear that we do not come to this lightly. We have tried other paths to accomplish our goal. I said those other paths have turned out to be largely ineffective.

We sought the advice and assistance of several majority and minority leaders over the last decade, and we twice tried informal policies issued jointly by the two leaders, in 1999 and 2003, but those turned out to be as flimsy as the sheet of paper on which they were written.

So working with two former majority leaders, Senators Lott and BYRD, we crafted the policy I mentioned earlier that the Senate adopted by a vote of 84 to 13, which was later gutted.

It is this policy, with some improvements—in fact, some very needed improvements—that we are introducing today. It is important the Senate have the opportunity to speak on this issue as a body. I look forward to this vote and finally having a true victory against secrecy.

I yield the floor.

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

NATIONAL POLICE WEEK

Mr. MCCONNELL. Madam President, all across the country this week, Americans will honor the law enforcement officers who keep our towns and communities safe and pay solemn tribute to those who have lost their lives in the line of duty. National Police Week is a time to thank all those whose service preserves the rule of law, at great risk to themselves.

I wish to pay special tribute to one of those heroes today, Officer Bryan J. Durman. Officer Durman was a 27-year-old, decorated, Lexington, KY, police officer and a veteran of the U.S. Air Force. He was, tragically, the first Lexington police officer to die in the line of duty in over 20 years.

This past April 29, he was responding to a noise complaint when he was struck by a car and killed. He leaves behind his wife Brandy and their 4-year-old son Brayden.

Bryan Durman went to Paul Laurence Dunbar High School in Lexington, where he was on the wrestling team. After graduation in 2001, he enlisted with the Air Force. He rose to the rank of staff sergeant and served in both Operation Enduring Freedom and Operation Iraqi Freedom. More important, it was while serving in the Air Force that Bryan met Brandy, his wife.

Bryan's mother, Margaret Durman, says that from the time her son was a small boy, she knew he would grow up to be a peacemaker. After leaving Air Force service in July 2007, Bryan returned to Lexington to keep the peace here at home and was accepted into the Lexington police academy.

In his 3 years of service with the Lexington metro police department, Bryan earned great respect from his colleagues and the community. ''The amount of support that we have received speaks volumes about the caliber of person Bryan was and his character,'' says his wife Brandy.

For administering lifesaving CPR to a vehicle collision victim and to a woman in medical emergency in two separate instances, Bryan received the Lifesaving Award and the Exceptional Service Award. His family will be presented with those awards as a small reminder that, as his mother puts it, Bryan ''died doing something that he loved.''

During this National Police Week, as we remember our peace officers and their families, we also remember the loved ones Officer Durman leaves behind: his wife, Brandy; his son, Brayden; his mother, Margaret Durman; his sisters, Monique Wanner, Michelle Wiesman, and Danielle Hood; his brothers, John A. Day and David P. Durman II; his brother-in-law, Robert Fletcher; and many other family members and friends.

Brandy will always have a fond memory of a recent Christmas when Bryan and Brayden received toy dart guns. Father and son spent much of the day playing with their new toys. ''I found about 50 darts in the Christmas tree,'' Brandy says. ''They were in the sink, in the bathtub.''

The day after Officer Durman's death, Lexington police officers wore black bands across their badges as a tribute to their fallen brother. The bands are also a stark reminder of the hazards of the job each and every peace officer in Kentucky and across the country faces every day.

The Senate has the deepest admiration and respect for police officers in every community in the Nation. We recognize theirs is both an honorable job and a dangerous one. We recognize they bravely risk their lives for ours. I appreciate all they do. And America is grateful.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I know there are a number of Senators on the floor who wish to speak on unrelated matters. I wish to speak on the underlying bill. I believe Senator WHITEHOUSE and maybe Senator MCCASKILL and Senator BENNET wish to speak on the hold issue. I merely ask that we alternate back and forth after the next speaker speaks on whatever subject they do and that I then be allowed to speak on the underlying bill and then go back to the other side of the aisle.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, if I may make a suggestion to my friend from Texas, as I understand, my colleagues are going to speak 2 or 3 minutes apiece. So the cumulative time of all three Senators will be about 6 or 8 minutes. I know the Senator from Texas has a longer statement to make on Senator SESSIONS's amendment.

Mr. CORNYN. I will be glad to defer to them under those circumstances and then ask to be recognized following those 6 or 7 minutes.

Mr. DODD. Madam President, I make that request.

Mr. WYDEN. Will the Senator yield for a question? Again, to save time—the Senator from Connecticut has been very gracious to allow an opportunity to do this—Senator WHITEHOUSE, Senator MCCASKILL, and Senator BENNET are all going to speak. I think that would allow us to set up time later for the vote, and we would have to formally offer the amendment. Would that be acceptable to the chairman?

Mr. DODD. I cannot agree to anything at this point. We can certainly talk with the leadership about that.

Mr. WYDEN. It is acceptable to the leader.

Mr. DODD. I am not in a position to give that consent. That is something that has to go through leadership. Let's get the speeches done so we can get back on the bill.

Mr. WYDEN. All right.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. Madam President, I congratulate Senator WYDEN and Senator GRASSLEY for their long effort to eliminate the secret holds in this body. They thought they had succeeded in 2007 with a mechanism that would scrub secret holds and make them public after 6 days. But it turns out that a number of our colleagues on the other side discovered a loophole in the rule. Whether it is called the old switcheroo or revolving holds or hold laundering, they found a way to defeat the purpose of a rule that was voted for by 84 Members of the Senate on a strong bipartisan basis. That is why we are back here today.

I want to also add to the role of honor on this subject CLAIRE MCCASKILL, who has done the lion's share of the work of shepherding in some cases 100 stalled nominees blockaded on the Executive Calendar through those 2007 year procedures so that we could get to the point of proving that there were, in fact, secret holds and that despite the rule, hold laundering was taking place and the rule was not being put into effect and holds were being kept secret.

I suppose an asterisk on the role of honor should go to Senator COBURN, who is the one Senator on the Republican side who had the courage to stand up and disclose his actual holds. Everybody else went to some other Senator and said: I don't want my name on this. Would you please take my hold over so I can avoid the rule, keep my hold, and have no accountability.

Perhaps there once was a reason for a secret hold, for this kind of business to be done in the dark, in the shadows, and anonymously. I think history and common sense tell us that deeds that are done in the dark are not usually ones of which we are proud. Certainly, the experience of the last few months has shown that if there ever was a legitimate use for secret holds, that purpose has evaporated. It has evaporated under the pressure of blocked nominees numbering, in some cases, over 100—a systematic approach, a systematic attempt to disable this administration's ability to govern by systematically opposing nominees, irrespective of the merits; opposing nominees who came out of committee in a bipartisan fashion; opposing nominees who came out of committee with zero opposing votes; with Senators raising objections to nominees they voted for in committee. There is clearly something more going on than a sincere concern about an individual nominee.

Finally, this effort to what I call hold launder and to avoid the rule 84 Senators stood up and voted for that does nothing more than put your hold in the plain light of day shows that the 2007 rule, unfortunately, has been ineffective and that it is time for a change.

I have continuing gratitude for Senator WYDEN, Senator GRASSLEY, and for all those who have supported us on this issue and particularly for Senator MCCASKILL for her relentless presence on the floor, making this actually happen.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Colorado.

Mr. BENNET. Madam President, I join my colleagues in support of the effort Senator WYDEN and Senator GRASSLEY have led to end the corrosive practice of secret holds. This is a reform that is needed and cannot wait.

I have been in Washington for only about a year, but it did not take that long to realize our government needs to fundamentally change the way it does business. Coloradans deserve a government that works for them. They are tired of the petty partisanship in Washington. They want their elected officials to listen and address their day-to-day concerns. I cannot think of a worse example of this dysfunction than the secret hold. It is undemocratic, and it is hurting our economy.

Quite a few of us in the Senate—the chairman and I—have young daughters, young kids who are familiar with the ups and downs of a long car ride heading out on vacation. The first hour always seems to go pretty well, full of excitement about where everybody is headed. But it is not long before that excitement turns to restlessness and that restlessness turns to secretly doing everything they can to bother their siblings just for the sake of doing it. And every time you turn around, they stop and smile and claim their innocence.

It never occurred to me that experience would actually prepare me to come to the Senate. Countless nominations and important legislation make their way to the floor. Senators make speeches about the importance of doing the country's business, appearing motivated to get the job done, to get the American people's work done. But when the cameras are off, they use the secret hold to bring this progress to a stop.

Since I have been here, I have seen nominees and bipartisan legislation held up for weeks, only to pass with 97 or 98 votes, all to score political points and waste the American people's time and the American people's money.

Earlier this year, we spent months working to reform health care. We have spent a lot of time under the chairman's leadership trying to fix Wall Street. It is past time we fix the way Washington works as well.

Congress must stop living under a glass dome. The Wyden-Grassley amendment is simple. It requires any Senator seeking to hold up the Nation's business to publicly announce his or her hold. All holds should be in writing, made public for the other 99 of us and, most importantly, for the American people so they can render their own judgment.

While I support this amendment, I have legislation that would go even further. My legislation would not only end secret holds, as this amendment does, but also require that any hold be bipartisan or else it expires after 2 legislative days. All holds, public or private, would expire in 30 days. At that point, the pending business would be ready to be considered on the Senate floor.

The Senate was designed to be the greatest deliberative body in the world. Let's have the debate and put an end to these secretive attempts to prevent debate.

Once again, I thank Senators WYDEN and GRASSLEY for their leadership and look forward to the passage of this amendment. I also wish to recognize the great work our colleague from Missouri, CLAIRE MCCASKILL, has done bringing this legislation to this point.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mrs. MCCASKILL. Madam President, first, let me say how grateful I am to Senator CORNYN for his patience. I will try to be very brief because I know he is waiting to address the underlying bill.

I think everything that needs to be said has been said. I will be interested in this vote because there is a group of people right now who voted for a rule that simply said: You have to disclose your secret holds if a certain procedure takes place. There are a bunch of people who voted for that who are not doing it. I do not know how that computes in the mind of a U.S. Senator. I do not know how you vote for a rule that requires you to disclose and then you knowingly continue to keep a hold secret.

I had a colleague tell me the other day they had talked with a colleague across the aisle about a couple of judges they desperately wanted to get released from the land of secret holds. This colleague visited with a Republican about it, and the Republican told her: The leader says he has to get something for it. You have to get something for it? Have we come to that, that you get to hold on to someone whose life is in limbo to be a U.S. district judge until you get something for it? That is not the way the American people want us to operate around here.

I know Senator GRASSLEY and Senator WYDEN have toiled in this field for a long time. I appreciate their efforts. I thank all my colleagues who have been helpful in us bringing this to the attention of the American people. We now have 60 Senators who have signed a letter saying they will never engage in secret holds and they want them completely abolished. The Wyden-Grassley approach is almost as good as never. It is a very limited window, and I pray that it will work. I had been wildly optimistic it would work right after I voted for the rule back in 2007. I thought, this is all it is going to take. I am not as optimistic, frankly, right now. Games may still be played. I think we have to get to 67 names on that letter.

The American people have to rise with their pitch forks, the way they are in so many other ways, and say: Enough already. Stop this incredibly bad habit of thinking you can hold up nominations just because you feel like it and never have to own it.

I encourage everyone to vote for the Wyden-Grassley amendment. I appreciate Senator CORNYN's patience with us this morning. I look forward to a vote on this amendment. I really want to find out who is secretly holding right now, who votes for this amendment, and how they reconcile those two things.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, I want to speak on the underlying bill, particularly on the Sessions amendment to the bill, but let me just precede that with some more general comments.

I was very concerned when I read in the most recent publication of National Affairs comments from the inspector general of TARP—appointed to oversee that program that has now gotten completely out of control. More to the point, he says what has happened since September of 2008 is that we have seen further consolidation of the banking industry. Actually, he has said what has happened is that things have actually gotten worse as a result of the several mergers that have actually made banks larger. The implicit guarantee of moral hazard that we are not going to let these large institutions fail has contributed to them engaging in more and more risky conduct.

The problem with too big to fail and these large institutions, particularly large banks with assets of over $100 billion, is that they can actually borrow money cheaper than community banks in Texas or New York or Connecticut or elsewhere, and they actually represent a $34 billion subsidy to the largest 18 banks in America because this bill does nothing to eliminate the concept of too big to fail. Indeed, in many ways, it makes it worse. It institutionalizes the concept.

I want to address specifically the provisions in the Dodd bill—the underlying bill—which have to do with how we deal with these large financial institutions if they get into trouble. The underlying bill empowers the Federal Deposit Insurance Corporation—which previously has had no experience dealing with investment banks or other companies that engage in financial transactions, other than depository banks—to seize a vast range of financial companies based on nothing more than their impression that the institution is in ''danger of default.''

Of course, we know one of the reasons we have gotten into this mess—why Wall Street has gotten into the shape it has gotten into—is because either regulators were too close to the people they were supposed to regulate or they were asleep at the switch. If we empower the Federal Deposit Insurance Corporation now to take on this new role as megaregulator in the resolution authority, it literally is going to have to run these businesses—something they are not prepared to do, something they have never done before. It will actually encourage management at the institutions that are subject to this new expanded authority of the FDIC to foster stronger relationships with the regulators, further entangling the government with the fabric of the U.S. private sector.

This underlying legislation creates a resolution scheme for large complex financial institutions that allows the FDIC to serve in multiple capacities at once—as corporate management, as creditor to the corporation, and referee of the liquidation process. There is no question that in the underlying bill there are going to be enormous conflicts of interest on the part of the government agency itself when it is required to wear this many hats at the same time.

The underlying bill also provides the government—and here specifically the FDIC—the authority to discriminate among creditors of the same class. All we have to do is look at what happened when the Federal Government took over General Motors, where we saw the government's $15 billion gift to labor unions to the disadvantage of the bond holders. This is the same sort of abuse that is propagated and continued in the underlying resolution authority in the bill which needs to be fixed. It needs to be changed.

This underlying legislation also forces companies that are financially sound and that have done nothing wrong to contribute to a fund to bail out organizations and institutions—I should say companies—that have been irresponsible and done exactly the wrong thing.

I must say I really wonder why we are rushing through this legislation so fast when the very commission that Congress has created to report back to us—the Financial Crisis Inquiry Commission—is not supposed to report until December. So in the very complex and complicated area such as financial regulatory reform, we are going to be denied the very report that Congress commissioned, which is due in December, that will tell us, hopefully, how to get this done and get it done right.

I think it is a terrible mistake for us to give the FDIC this incredible authority and discretion which will just alter the relationship again between the private sector and government. We have seen a tendency over the last year and a half to grow government and to basically burden the private sector in ways that cause many people to wonder whether we are still committed to a free enterprise system or whether we are going to have one government takeover after another. This legislation—particularly this resolution authority—represents something that will provide for more government intervention in the private sector without making sure ''too big to fail' comes to an end.

AMENDMENT NO. 3832

I want to talk specifically about the Sessions amendment, as I said, because the Sessions amendment restores the rule of law to the resolution authority that would be granted under this bill. Under American bankruptcy law, we have an adversarial process. We have judges who are independent, we have a requirement that when you walk into bankruptcy court you actually have to swear under oath, under the penalty of perjury, that what you are saying is the truth, the whole truth, and nothing but the truth, so help you God.

I don't know why we should allow these big financial institutions that are covered by the resolution authority under the underlying bill a special set of rules. Why shouldn't they be forced to operate under the same rules—bankruptcy rules—that apply to every business that gets into financial trouble all across America today? Many scholars and policy analysts have argued convincingly that bankruptcy reform would be the most effective action Congress could take to protect against future financial panics and bailouts.

There is one note I would make of the Lehman Brothers bankruptcy. As the Chair and my colleagues know, there was a voluminous report written by the court-appointed examiner who dissected the Lehman Brothers bankruptcy for reasons why Lehman Brothers failed. This is a 2,209-page examiner's report which documents accounting gimmicks that were used to hide the extent of Lehman's indebtedness, which was not even known to the Securities and Exchange Commission because the Securities and Exchange Commission took the position it didn't have jurisdiction to do this very sort of regulation and very sort of oversight that might have detected and prevented the meltdown of Lehman Brothers and all across Wall Street.

Amazingly, Richard Fuld, chief executive of Lehman Brothers, when he was confronted with the examiner's report documenting the various maneuvers, including one known as Repo 105 transactions, said he had no knowledge of the accounting maneuvers that were used to take some of the financial obligations of Lehman Brothers off its books.

So I would ask my colleagues: Don't we want this sort of transparency and accountability that comes only out of a bankruptcy-type resolution authority? Don't we want that kind of information so we can hold the people who were responsible for these huge meltdowns of our financial system accountable? I would say we must insist on that kind of accountability. Unfortunately, under the authority given to the FDIC to conduct this resolution in the Dodd bill, there will be no sort of report by court-appointed examiners such as the one that exposed Lehman Brothers' accounting gimmicks and the complete abdication of responsibility of the chief executive officer for not knowing what kind of accounting transactions were taking place and which hid a lot of their liabilities not only from him but also from examiners. We would not have that kind of information.

That is another reason I believe bankruptcy provides a far superior way of handling this resolution rather than giving the FDIC—a sort of FDIC on steroids—the power to make these decisions without the kind of transparency and accountability we need.

Recently, in the Wall Street Journal, a couple of professors wrote:

> If there were a silver bullet in financial reform, legislation would have been enacted a long time ago. There isn't, but removing the special treatment of derivatives in bankruptcy comes close. It could provide the basis for a sensible compromise on derivatives regulation while also addressing the bailout problem.

That is exactly what the Sessions amendment does. With a small tweak of bankruptcy law, we could assure that everyone is going to have to play by the same rules, and when any financial institution goes bankrupt the automatic stay, which protects the court's jurisdiction to be able to sort out the creditors and debtors, can be used in an appropriate way to deal with derivatives contracts. Currently, derivatives contracts are exempted from the automatic stay, which creates a very dangerous risk of a run on the bankrupt entity's derivatives book. This could lead to a cascade effect, exacerbating systemic risk. The Sessions amendments provides for timely court supervision over any stay on derivatives contracts. Other than that, the Bankruptcy Code would apply as it does every day in bankruptcy courts across this country involving businesses both large and small.

So I think the Sessions amendment provides much more transparency, much greater accountability, much more certainty, and certainly helps restore the rule of law to an otherwise discretionary authority over a Federal agency that has never exercised this kind of authority before, one that has the very real danger of perpetuating the kind of picking of winners and losers that we saw in the GM bankruptcy where the bondholders, who were supposed to be among the most secure creditors, if not the most secure, were forced to take a significant loss in favor of unions, which happened to be more active players in the political process.

So I would urge my colleagues to support the Sessions amendment, which makes bankruptcy a preferable alternative to dealing with future failures of financial institutions.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. ENSIGN. Madam President, we are venturing down a dangerous path that threatens to put the economic future of our country in jeopardy. When the housing market collapsed, the government stepped in with a blank check to bail out the Nation's largest mortgage giants—Fannie Mae and Freddie Mac. When the automakers started to feel the pinch of a downward economic turn, again the government stepped in, taxpayer money in hand, and bailed them out. When the giants of the financial market started to see their bank accounts drop below zero, again the U.S. Government stepped in to bail them out, allowing them to sidestep the pain of their financial mismanagement—pain that was then passed on to hard-working Americans, many of whom are barely scraping by during these difficult economic times.

The pain was certainly not felt by the managers of these institutions when they received exorbitant bonuses, despite their bad performance.

This country has witnessed bailout after bailout after bailout. Yet not one piece of legislation has passed this body that would establish protections for taxpayers to ensure that we do not remain on the hook for bailing out these institutions every single time they mismanage themselves.

Unfortunately, this financial reform bill that we have before us continues this trend. Last week, I offered an amendment that would have restricted the size of Fannie Mae and Freddie Mac so they would not continue to be too big to fail. My amendment was defeated, largely along party lines.

Senator MCCAIN offered an amendment this week that would have reduced the size of Fannie and Freddie, while moving to let them stand on their own so the government gets out of the business of subsidizing mortgages. Again, his amendment was defeated, largely along party lines.

Today, we have another chance to listen to the American people and to stop the bailouts of these mismanaged corporations. The amendment offered by Senator SESSIONS, of which I am a cosponsor, will do this by taking away the bailout option, to, instead, force these companies to declare bankruptcy. This amendment will produce a clear set of rules which will create certainty in the marketplace, rather than continuing the precedents set during the crisis where the government was allowed to pick winners and losers.

This is not the first time I fought against these bailouts. In 2008, when we were debating the bailout of the automakers, I offered an amendment, along with Senator SHELBY, that would have required the big three to file Chapter 11 bankruptcy. At that time, I argued that this was the best way to ensure the automakers would emerge in the future as successful companies. I still believe that. Chapter 11 bankruptcy would have allowed them to restructure their firms and would have protected the employees of these automakers by keeping politics out of the process by eliminating the need for an auto czar. Unfortunately, the government stepped in and, with the exception of Ford, decided to bail them out. I thought this was wrong at that time, and I still believe this was the wrong thing to do.

While we cannot erase the decisions of the past that led to the bailouts of the automakers, Fannie and Freddie and the financial firms, we can correct course to ensure that the American taxpayers get off the hook for bailing out these industries in the future by forcing them to file bankruptcy, should they mismanage their finances again in the future.

The reality is, when Americans mismanage their funds or are unable to stay afloat under mounting debt, they file bankruptcy. I am sure many would rather have the government step in and pay off their debt, but this is simply an unsustainable option.

The same argument can be made for bailouts of financial firms. Bailout after bailout footed by the taxpayers will force our already debt-laden country into further debt that we cannot afford to crawl out from under. We are already rapidly approaching this reality. These bailouts do not incentivize these institutions to minimize their risks. Instead, they go as far as to privatize the profits while socializing the risks of their losses.

The amendment offered by Senator SESSIONS offers hard-working Americans a reprieve from footing another financial sector bailout. But he also discourages these companies from continuing the irresponsible practices that got them into trouble in the first place. Under the financial bill we are currently debating, the government will continue to pick winners and losers and the taxpayer will continue to foot the bill, unless we adopt the amendment offered by Senator SESSIONS. This amendment would make these companies utilize an enhanced bankruptcy process, which would ensure that the costs are covered by the financial institutions and their creditors, not the taxpayer.

The amendment creates a new chapter 14 in the Bankruptcy Code that will utilize many of the tenets in chapter 11 reorganization bankruptcy but will be for the specific use of the big financial institutions. This addition to the Bankruptcy Code creates a new pathway to limit the cascading spread of risk and panic throughout the financial system and ensures the more orderly wind down of these financial institutions insulated from bailouts and political influence.

The amendment offered by Senator SESSIONS delivers much needed transparency, accountability, stability, and due process through the use of bankruptcy courts and the expertise that we have in bankruptcy courts. Further, to protect the taxpayers, it specifically denies the Federal Government the authority to take over firms, dictate the terms of the reorganization or liquidation, and support them with Federal bailouts. This amendment guarantees real reform that will result in real stability.

This is what the American people are asking us to do. They are asking us to make sure they are not the ones responsible for bailing out these financial giants that make poor decisions. The American people are working hard to weather through these tough economic times, and we owe them much more than legislation that will continue to allow the government to pick winners and losers and will allow too big to fail to continue.

I hope we adopt the Sessions amendment. Unfortunately, almost every good amendment that has been offered to this Wall Street bill has been defeated, largely along party lines. This is an amendment that will actually stop too big to fail. It is a responsible amendment. It is my hope that we will finally adopt a good amendment to this bill.

I yield the floor and I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3776

Mr. SPECTER. Madam President, I have sought recognition to comment further about the pending amendment to make tortfeasors, under the Securities Act, liable for civil damages; that is, people who engage in fraudulent conduct. We have a deep recession. Millions of people have lost their jobs. There were enormous financial losses. There were many contentions of fraudulent practices being responsible for that conduct. In this act, we are seeking to reform Wall Street.

The practice had been, the law had been, for decades, under the Securities Act, someone who was cheated, defrauded by people who practice under the Securities Act could sue them. That would involve those aiders and abettors and people in the chain beyond the principal would be responsible. I have offered an amendment on behalf of myself and Senators REED, KAUFMAN, DURBIN, HARKIN, LEAHY, LEVIN, MENENDEZ, WHITEHOUSE, FRANKEN, FEINGOLD, and MERKLEY to reinstate the law prior to what it had been prior to the decision of the Supreme Court. The Supreme Court has held that aiders and abettors are not liable and that there is a requirement that the defendant must have made the representation directly to the person buying or selling the securities, which is a sharp reversal from what the law had been.

It is anomalous, unheard of, to have criminal liability under the Federal Criminal Code for aiding and abetting but not to have liability under the civil claims. It is a much higher standard of proof, criminal culpability, to put somebody in jail than it is to establish a claim for monetary damages. But that is where we find the law and we find people in urgent need of this kind of standing to recover their damages but also to have this procedure serve as a deterrent to Wall Street fraud.

The issue was succinctly summarized by a distinguished Federal judge, Judge Gerald Lynch, in a case captioned In re Refco Litigation, 609 F. Supp. 2d 304 (S.D.N.Y. 2009), to this effect:

> It is perhaps dismaying that participants in a fraudulent scheme who may even have committed criminal acts are not answerable in damages to the victims of fraud. . . . There are accomplices and there are accomplices: after all, in the criminal context, when the Godfather orders a hit, he is only an accomplice to murder—one who ''counsels, commands, induces or procures'' but he is nonetheless liable as a principal for the commission of the crime. Likewise, some civil accomplices are deeply and indispensably implicated in wrongful conduct.

So that you have aiders and abettors. There have to be people who are participants in the fraud. It simply is not a one-person operation. Yesterday, I put into the RECORD the impact of these civil suits in financial recoveries compared to the lesser amounts which can be collected by the SEC. Illustrative of that were two cases—Enron, where the SEC recovered $450 million and the private litigants recovered $7.3 billion—14, 15 times more. In the WorldCom case, the SEC recovered $750 million, the private litigants recovered $6.85 billion. So there is an enormous difference.

This is a subject I have had a deep concern about going back to my law school days, when I wrote a comment for the Yale Law Journal on the subject, about the importance of private prosecutions. Private actions have been very important—treble damages under our antitrust laws, very important under our securities laws.

In 1995, we restricted the scope of discovery. I urged the President, at that time, to veto the bill.

Just a very brief personal story. I was in my condo one night at about 10:30, quarter of 11, I got a call from the White House. The President came on the line and said: Do you have a few minutes to let me read to you my veto message? Well, I had more than a few minutes. I was very interested in the President's veto message.

But the law, nonetheless, notwithstanding the veto, the law was modified.

There is other litigation pending to open the scope of pleading. Federal Rules of Civil Procedure have traditionally been what we call notice pleading; that is, put the defendants on notice as to the claim. Then, under the discovery proceedings, the party is then entitled to probe into the records of the defendant because these are all transactions within the sole control and possession of the defendant on almost all circumstances.

When the Supreme Court of the United States was considering taking the Stoneridge case, I wrote President Bush a letter, on August 3, 2007, urging him to allow the Solicitor General to respond to the request of the Securities and Exchange Commission for the Solicitor General to argue the case. The Solicitor General was precluded from doing so. Stoneridge came down with a very restrictive holding that the people responsible had to make direct representations to the person buying or selling the securities—which is an unrealistic and unreasonable standard. It backed up the prior decision of the Supreme Court in 1994, in Central Bank of Denver, which eliminated aiders and abettors from responsibility.

This is a very important bill. I did compliment the distinguished chairman for his very effective work on it.

I do believe it is fair and accurate to say this is one of the most important provisions of this bill.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. Madam President, I wanted to note during this discussion some commentary this week about something that is quite extraordinary. We saw news reports this week about a perfect game that was pitched in the Major Leagues recently by a pitcher from the Oakland Athletics named Braden. In all of the history of baseball, it was the 19th perfect game ever pitched. But it is not the only perfect thing that has happened recently.

We have news reports now that the four biggest banks in America have scored a perfect 61-day run, never having lost money in 61 days. That is like a perfect game, batting 1,000. It is all of those things.

How is it that the four largest banks in the country could, for the first quarter of the year, make money every single day? Is the system rigged? A columnist named Jonathan Well pointed out that if you managed a highly leveraged, diversified investment fund and have become so skilled at it that you had a 70-percent probability of winning on any given trading day, the prospect of your winning 63 times in a row would be about 1.75 billion. Even if you had a 95-percent chance of winning every day because you were so skilled at picking all of the right investments, you would have about a 3.9-percent chance of doing it on 63 straight trading days. And yet four of the largest banks in America, Goldman Sachs, JPMorgan Chase, Bank of America and Citi, scored a perfect game.

How did that happen? Does it happen because the Federal Reserve Board loans them money at near-zero interest rate, and then they invest in 10-year Treasuries at 3.8 percent? That is how you make profits every single day. Is that a rigged game? Can everyone do that? If everyone can do that, I have got a sure-fire way here for everybody to make money. You get to borrow from the Federal Reserve Board for near nothing, and then you can invest it in 3.8-percent 10-year Treasury notes.

It is interesting this relates to something else we have been trying to do for a while. We have been trying to get information about how much money the Federal Reserve Board is lending those investment banks and the biggest banks in America. How much money is the Federal Reserve Board giving them and at what rate? We know it is at a near-zero rate, but we do not know how much and to whom.

The Federal Reserve Board has now been told by two Federal courts, you have a responsibility to tell the American people and the Congress who got your money and what the terms were and how much. The Federal Reserve Board has said, we do not intend to tell everybody. They have now appealed it to a third Federal court.

I have led the effort in letters to the Fed Chairman saying, you have a responsibility here. But now this latest evidence tells us how this game is played. Isn't it interesting, and isn't it pathetic, that at a time when so many people wake up in the morning jobless, so many people are still losing money on their homes, on their assets, losing hope and losing confidence in the future of this economy, that at the very top of the heap, some of the same firms that caused the problem that threw this country into the deepest recession since the Great Depression now announce they are pitching a perfect game every single day. They are batting 1,000 and pitching perfect games. Why? It appears to me that it is not about lending money to help restore America and help firms that want to expand by providing capital. It appears to me that their reports suggest they are once again back doing the same things they used to do, except this time they understand that they cannot fail.

They borrow money from the Fed at near-zero interest rates, and invest it in Fed 10-year notes at 3.8 percent. That is about as close to guaranteed income as you can get. But it is not guaranteed income for all of the American people, it is just for the folks at the very top of the chain, the biggest financial firms.

Again, let my say as I do every time I come to the floor, I don't have a grief against the biggest financial firms. We need big financial firms. But we do not need them too big to fail. And we certainly do not need to be feeding them with a strategy that says, I tell you what; we will give you a deal no other American has. You get to go to a window at the Fed, get money for almost nothing, and then invest it back in Fed bonds and pay 3.8 percent. We will give you a guaranteed annual income.

I just wanted to make note. It is too often little known, and it is seldom raising much concern among anybody these days, that all of this is happening. I think it is scandalous. It seems to me worth mentioning the only perfect game that is going on around here was not by a pitcher named Braden, but it is by some of the biggest financial institutions in the country that are not only fully recovered but have guaranteed income opportunities every single day, every single day, while a lot of the American people are trying to figure out, how am I going to pay the rent? How am I going to find another job?

I had come to the floor because I want to indulge—I should not say indulge. I wonder if the Senator from Connecticut will indulge me for a moment. I have spoken to the Senator, and I recognize that doing what he is doing is perhaps a cross between a migraine headache and a root canal. This is tough business out here hour after hour after hour and day after day.

I respect that. I was on the floor with a piece of legislation last year that took forever and it did try my patience. So kudos to my colleague from Connecticut. I respect the difficult job he has.

I have had an amendment, along with Senator KAUFMAN, Senators LEVIN, CANTWELL, FEINGOLD, SANDERS, and so on, a Dorgan amendment No. 4008. I would ask the courtesy of being able to set aside the pending amendment and call up this amendment. I do not intend to proceed with it, I just want to get it pending. I would proceed with debate at any time that is convenient. I do not want to inconvenience the Senator and the schedules he has. But I wish to ask if he would give me the opportunity to at least call it up, get it pending, and then we will proceed at a pace and at a time that would be convenient to the manager of the bill.

Mr. DODD. Let me say first, I appreciate my colleague from North Dakota's inquiry. All I am trying to do in this—and, again, everyone can do that. I suppose there are about 60 amendments, and if we can have everyone's amendment called up, we end up with 60 amendments pending around the place. It adds to the difficulty of sorting it out, because obviously it takes consent to withdraw amendments, to modify amendments, do all sorts of things. So while it seems harmless enough to do so, it complicates the job, which is to sequence events, because obviously then it takes consent to do different things, at which point, for all sorts of different reasons, people can have motivations on why not to give consent, including people who may oppose the amendment, for reasons they want the amendment pending. So I will be very candid with my friend from North Dakota, it complicates my job. But, obviously, I do not want to cause anyone discomfort in the process. They all have amendments they want to bring up, and my job here is to try and orchestrate in a way so that amendments can be brought up, be discussed and debated.

My concern is that we end up with sort of this flood. Then everyone comes over, why not give everyone else the same courtesy along the way. If we do, then we end up potentially with chaos, on what happens to be a pretty good bill, I think at this juncture. More work needs to be done, I will be the first to acknowledge and admit that. But there is no guarantee that because we are in a good spot right now and heading, I think, toward a good conclusion of this bill—there are those who frankly would like to see it lose. I know that. There are thousands of lobbyists who have been hired to oppose this piece of legislation, the underlying bill that is before us. They are here in town and will use every mechanism and vehicle available to them to throw this off track. They are very smart. They do not just get paid well, they are bright, and they know how to do this. Many of them, in fact, worked up in these buildings for years. So they know how the place operates. They know a consent to bring up an amendment is, lay it aside, and pending, and they know what unanimous consent means in this body. Any one Member here can object.

So it does add difficulties to the management of the bill to have an unlimited amount of amendments brought up and pending, of which you then try to go through and orchestrate an outcome here that gets us to a reasonable conclusion where people are given an opportunity to debate their amendments.

So, again, I know what I am in for once this starts. We run the risk, I will say—I am very blunt on the RECORD. If we start this process, which I am fearful will be the case, we run the risk of losing this bill. That is the reality. This is not hyperbole. I have been here for 30 years, and I have watched what can happen. When you have got this many opponents, the opponents of this bill who are determined to throw this bill off track, to stop too big to fail, consumer protection, from getting the kind of sunlight on derivatives, all of those issues, including what my colleague from North Dakota wishes to achieve, there are people who will use every means available to destroy this piece of legislation.

We only have a couple of days left, maybe, and then we are going to move on to other bills. I urge my colleagues here—Senator SHELBY and I are doing our best to try and accommodate all of our colleagues. We have had no tabling motions, we have had no filibusters on this bill, we have dealt with literally I do not know many amendments, I think some 20 or 30 amendments already. So we are moving through it and we are getting to everyone who is along the way.

So, again, if my colleagues want to go this route, I understand it, but I would be less than honest if I said, does it help or hurt the effort. Candidly, having everyone come over and demanding they be in line hurts.

Mr. DORGAN. Madam President, let me say, my purpose here is not to add to the burdens of the Senator from Connecticut, who is trying to get a bill through the Congress and signed by the President. I understand that.

I think I tried to in my opening comments be pretty complimentary of the work and understanding of the work. I agree there are times when there is a straw that breaks the camel's back. I also think this camel can carry a bit more. What I wish is, I think the Senator from Connecticut would agree that I have been to this floor a fair number of times, spoken with some passion and some vigor on things that I care a lot about. It is not as though I came out of a closet someplace here in the cloakroom and started talking about the issue that I intend to offer an amendment.

What I wish to do, with the consent of the Senator from Connecticut, is ask unanimous consent that the pending amendment be set aside and to call up amendment No. 4008.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DODD. Reserving the right to object, I will make the case again. There are unlimited Members who wish to be in line. I understand that. I warn my colleagues, no amendment, in my view, is more important than the underlying bill. Understand that if we go this route, and I end up with every Member coming over and making that request—and there are many more who want to do that here—once this starts, then my ability to get us to the conclusion of a good bill is at risk. So I am going to object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DORGAN. Let me say that unfortunately when I, last evening, saw the note on the desk in front of us that said ''no further rollcall votes'' I had another event, and so I left the Chamber, because there were no further votes, and I went to the other event.

I discovered later that even as I was leaving the Chamber, I understood that there were three amendments at that point made in order. There were, I believe, two Republican amendments and one Democratic amendment that were noticed, and I think the chairman indicated they would be the next amendments. That is the basis on which I left this Chamber.

When I came back this morning, I understand that a fair number of other amendments had been called up, the pending amendment had been set aside, and other amendments had been called up. I do not know how many. I think four or six amendments, perhaps, beyond the three. I was unaware that opportunities such as that would have existed last evening. I think as one Member of the Senate who has spent a considerable amount of time on this floor on this issue, had I been aware last evening that the gate was open a bit to be able to get an amendment pending that I have talked about many times on this floor, I would have been here last evening.

I was not aware of that, and that is the basis on which I came this morning at 11 o'clock. I hope the Senator from Connecticut would not object. I would hope he would rethink that. He has every right as chairman to decide to manage this bill as he wishes. We cannot have 100 managers for this bill. The chairman has done a lot of work to bring the bill to the floor.

On the other hand, this issue is not some ordinary issue. The country will live with the consequences of this bill perhaps for a decade, perhaps more, perhaps less than a decade if we do not do the right things and we suffer another economic near collapse. We will have another bill on the floor for those who are here in 2 years or 5 years.

What I want is financial reform to be done, done well, done right. I was going to say to the Senator from Connecticut, the amendment I have offered is an amendment that I think is very important.

I don't have any idea whether we have the votes for it. But I do think it is one of those pieces that is essential—critical, in fact—in order to address financial difficulties going forward. If we don't pierce this unbelievable building bubble of speculation that has caused a significant part of our problem, then we will not have addressed the real issues of financial reform. The issue of what are called naked credit default swaps, those are newly created instruments by which people make wagers with one another with no insurable interest on any side of the security. If we don't put a dagger in the heart of that kind of activity—and that is not shutting down, as my colleague from Georgia said yesterday, the use of credit default swaps. It is shutting down one portion of them, the largest portion that is just a flatout gambling device.

I hope we can address these issues. I think I have been respectful to the chairman of the committee. I say to the chairman if I am allowed to set this amendment aside and offer amendment No. 4008, I will certainly be willing to have a reasonably short time period for debate. That kind of cooperation is also important in the construct of trying to get this bill done. It is an amendment that should have a lengthier debate.

When I left the floor yesterday, the Senator from Georgia had an amendment. I think it was 2½ hours later that we had a vote. This amendment is much more consequential than that. I am willing, if we can at least get it pending, when the Senator from Connecticut believes it is appropriate to debate it, to engage in an agreement on a short timeframe.

Mr. DODD. Madam President, let me say to my colleague, I have any number of colleagues who would like to be doing the same thing. All of them believe strongly in their amendments. I am not arguing about the substance of the amendment. At the conclusion of last evening, we tried to establish a sequence. I have no problem putting my colleague's amendment in the next tranche. My problem is, what do I say to the next colleague who wants to do the same thing? At what point do I say: I can't manage this if we are going to do it this way. Anyone can make a request, and I am trying to deal with these requests as they come forward and put it together in a way that allows us to go forward.

We will vote shortly on the Sessions amendment, a Franken amendment. Senator DURBIN has an amendment I would like to have called up. Trying to get time agreements is the art of management of legislation. I do not want to deprive anyone of offering an amendment. But at some point—what is the point of having someone sit in this chair if we just all come over and offer amendments and get in line somehow and then we have 60 amendments? Taking unanimous consent at some point to drop that creates a problem in terms of managerial capacity.

My colleague will get, to the best of my ability, a chance to have his amendment come up and, hopefully, an adequate amount of time to debate it. I respectfully ask him to give me a chance so I don't end up opening the door to the next Senator making a similar passionate request. At some point we have to put a stop to this so I can manage the bill and go forward. That is all I am saying.

Mr. DORGAN. I am not unsympathetic to what the Senator is doing. It is the case that I, certainly as one Senator, see amendments being offered again and again by Senators from the Banking Committee, and they had a pretty good shot at this for a good long while before it came to the floor. Those of us who don't serve on that committee just want an opportunity to get amendments pending and up and so on.

Mr. DODD. The next three amendments—those of Senators DURBIN, SPECTER, and FRANKEN—are not offered by members of the committee.

Mr. DORGAN. I am speaking about amendments that have been offered. If the Senator objects, he has the right, but I will be back. If I am in the next tranche the Senator from Connecticut announces, that is fine. I will be able to offer an amendment. But between now and then, I guess I would like to understand how the system is going to work because I will continue to come and ask consent to offer this amendment. Then when we do debate it, I will have a real debate. This is the heart and soul of trying to shut down a system that creates unbelievable speculation in the economy and poses great danger.

I might point out, we should not always assume that we are in safe territory on all of these issues. Colleagues probably saw the news this morning. Last month's Federal budget deficit is $83 billion. Take a look at what the trade deficit is. As I mentioned, in the midst of all this, the biggest financial institutions in the country are batting a thousand. Every single day they make a profit with what I think looks like a rigged system.

This bill is very important. I want the Senator from Connecticut to succeed. If we don't pass a financial reform bill, the American people have a right to look at the Congress and say: What on Earth are you there for? What are you doing? But not just any bill, a bill that actually addresses the heart of the issues that caused the near economic collapse of this country. That is what we need to have accomplished at the end of this process. That is what brings me to the Senate floor. I am sorry I can't get this pending at the moment. But as Governor Schwarzenegger said in a previous life: I will be back, and soon.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

AMENDMENT NO. 3832

Mr. DEMINT. Madam President, I rise to speak in favor of the Sessions bankruptcy amendment. This is critical to the current financial debate because one of the big issues in whether we treat some companies and some banks differently. The current bankruptcy laws create a predictable rule of law. There is no arbitrary or political decisionmaking. When a company can't pay its bills, it can ask for bankruptcy protection to restructure or liquidate in some kind of controlled fashion. This is what is meant by ''justice is blind.'' Our courts, our legal system and political systems do not get involved with deciding which companies have to be liquidated, go through bankruptcy. During our current financial meltdown, the government decided to pick winners and losers, to bail out some companies, some banks, and not others.

The underlying financial regulation bill makes that system permanent, essentially throwing out the rule of law and allowing the political system, the bureaucratic system to decide which companies need to be treated differently while others have to go through the bankruptcy process. The Sessions amendment would treat all companies the same and allow an orderly restructuring or liquidation of banks, regardless of how big they are.

The underlying bill abandons the rule of law. It suspends free market principles, and it perpetuates the idea that there are some companies that are too big to fail and have to be treated differently. It even expands that arbitrary system by giving the FDIC the ability to pick companies they think might fail and to seize them if they are not meeting certain criteria. The market does not decide which company is failing anymore. This becomes a political system which sets up corruption and political meddling as part of the financial system.

There is no reason we can't have special bankruptcy courts to deal with large banking institutions so their failure does not take down the whole financial system. This idea that some people in Washington are going to look at Wall Street or anywhere in the country and decide which company is too big to fail, has to be treated differently, while this company goes through a traditional bankruptcy process—that puts us right back where we are now, where people in the government can arbitrarily take taxpayer money and bail out one company. Maybe it is their political friends and supporters—or maybe they don't bail out the companies that are their political enemies. It makes no sense to make bold promises to the American people that we are going to end too big to fail when this bill actually makes it permanent.

I encourage my colleagues to consider the Sessions amendment. It would take us back to a rule-of-law that is predictable, that let's every company, every bank know if they can't pay their bills, they have to go through a predetermined system, not one that is decided by bureaucrats at the last minute based on criteria that could change at any moment.

Let's get this one right. The underlying bill will not do what we promise. The Sessions amendment will move us in the right direction to keep our promises to the American people.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

AMENDMENT NO. 3991

Mr. FRANKEN. Madam President, let me say how thankful I am that Senator DODD has worked with us to get my amendment to a vote. I know how hard he has been working on this bill and how precious floor time is during this debate.

Last week I proposed an amendment with Senator SCHUMER and Senator BILL NELSON to reform our Nation's credit rating industry. Today I am thrilled to announce that Senators GRASSLEY, KAUFMAN, DURBIN, HARKIN, KLOBUCHAR, LEVIN, WYDEN, and BEGICH have joined as cosponsors. Senator GRASSLEY, of course, is the ranking member of the Finance Committee and a senior member of the Budget Committee. Senator LEVIN led the Permanent Subcommittee on Investigations which revealed some of the credit rating industry's worst abuses. Senator KAUFMAN has also been a leading critic of the rating agencies, pointing out how these agencies kept AAA ratings ''rolling off the assembly,'' despite consistent and increasing indications that they were totally unwarranted. Senators DURBIN, HARKIN, and KLOBUCHAR have long established themselves as strong voices on behalf of consumers.

Over 20 of my colleagues have now cosponsored my amendment, including senior members of the Senate Finance and Banking Committees. Since I have filed this amendment, I have come to the floor several times to explain the different aspects of it. Now that this amendment will be up for a vote, I wish to step back and summarize. To underscore the scope of this problem, I want to explain how this amendment is a simple investor-based solution to the problem. Here it is in a nutshell.

There is a staggering conflict of interest affecting the credit rating industry. The way it works now, issuers of securities are paying for the credit ratings. They shop around for their ratings, selecting those agencies that tend to offer them the best ratings and threatening to stay away from rating agencies that are too tough on them. Because of this, the credit rating agencies are issuing ratings that are orders of magnitude higher than they should be. We know this from the record. We know from the PSI release of e-mails that this was the case. This conflict of interest has cost American investors and pensioners billions of dollars because supposedly risk-free investments have failed or been downgraded to junk status.

My amendment will correct that conflict of interest by having an independent third party assign the credit rating agency that conducts the initial rating for newly issued complex financial problems. My amendment puts investors in charge, not the government.

Let's take this from the top. Right now, when a bank issues a product, it gets a credit rating—it gets a couple credit ratings before they will sell their product. But the problem is, they don't get their rating from an independent agency. They don't get it from someone who has a real interest in being accurate. Rather, issuing banks currently get their credit ratings from rating agencies they hire, and they pay them upwards of $1 million per transaction.

Now, you do not have to be Adam Smith to guess what has happened. As with any other financial transaction, the issuers—the buyers of credit ratings—shopped around for ratings. When they would go to a credit rating agency, and the credit rating agency did not give them the rating they wanted, they would not hire them the next time. So the credit rating agencies responded in kind. They changed their algorithms for rating the products when the ratings they produced were too low, and, thus, they repeatedly overrated terrible securities.

This is not a hypothetical. The Permanent Subcommittee on Investigations, Senator LEVIN's committee, uncovered pages upon pages of e-mails confirming this is exactly what happens. But I think the numbers explain it the best, and we know this. Of all the subprime mortgage-backed securities issued in 2006 and 2007 that received a AAA rating, over 90 percent have since been downgraded to junk status.

Credit rating agencies will counter that the downgrading of AAA bonds to junk status occurred because of the unpredictable collapse of the housing market. Two points here: The e-mails that were released in the investigation by the Permanent Subcommittee on Investigations showed that the credit rating agency knew what was happening. Here is an e-mail from 2006. This is from one of the Standard & Poor's executives:

[T]his is like another banking crisis potentially looming!!

There was an executive who said they wished they could go public with the loss figures they were seeing—this is in 2006—but that ''may be too much of a powder keg.'' And there are e-mails where they were saying: We better increase the ratings so we keep getting business.

These were the guys who got it. Admittedly, there were guys who did not get it in the credit rating agencies. But there is an old Upton Sinclair quote, which is: You can't get a man to understand something that his salary depends on him not understanding.

So there is this inherent conflict of interest, which is, if I give a good rating to these subprime mortgage-backed securities, I am going to make a lot of money; there is a lot of money here; my salary depends on my not getting what is happening. That all emanates from the conflict of interest. That is what I am going after. That is why they either ignored what they were seeing in 2006, or, if they got it, they did not say anything about it. So some were maybe less than completely getting it, and others who got it were corrupt. It was all for the same reason: because of this conflict of interest.

These downgrades did not just result in major losses to Wall Street. They resulted in multibillion-dollar losses to millions of Americans, especially pension holders. CalPERS, which 1½ million Californians rely on for their pensions and health benefits, lost $1 billion. Pensioners in Ohio lost $½ billion. The same story is repeated all across the country.

This was people's retirement money. This was not people buying yachts. This was not people staying a night at the Waldorf. This was their retirement money. So this was the problem, the conflict of interest.

Let me tell you how our amendment addresses this problem. My amendment would call for a new clearinghouse, regulated by the SEC, to assign issuers to a credit rating agency that will give them their first rating on complex financial products. They would be assigned. That means an issuer will no longer be able to shop around for a rating. They will not be able to pressure a rating agency into giving a good score in exchange for future business. Over time, the clearinghouse will monitor the ratings these agencies give out and refine its method of assignments. It can reward agencies that are more accurate and give fewer assignments to those that are less accurate. It will incentivize accuracy. Imagine that. In doing so, it will give smaller agencies a chance to get into the action.

Standard & Poor's and Moody's and Fitch do about, what, 94 percent of the business. The other agencies will get a chance because what will be rewarded is accuracy.

By making these simple changes—and it is a very simple change; it is a third party—the amendment will eliminate the fundamental conflict of interest at the core—at the core—of this problem.

Some people are going to tell you this is a government takeover of the credit rating industry. That is patently, 100 percent false. The clearinghouse will not issue a single rating. The clearinghouse is not going to tell credit rating agencies how to determine their ratings. In fact, every single rating an agency gives after being assigned a security will have a disclaimer that says, ''This is not a government-approved rating.''

Moreover, the clearinghouse will be run by investors such as managers of pension funds and managers of university endowments. OK. There is not a single seat on this board that would be reserved for a government official. Moreover, while the initial board members are to be named by the SEC, after the initial appointments, the board itself will choose its future members. There will be a representative from the rating agencies, there will be a representative from the banks, but a majority will be investors. This makes sense. We will be putting people in charge who are the people who are actually buying the securities, and who pay the price when the securities prove to be significantly overrated.

So let me repeat that. We are putting the buyers of securities—not the government—in charge. OK.

The clearinghouse will be an independent, self-regulatory organization that operates with oversight from the SEC, just like the Financial Industry Regulatory Authority or FINRA.

Finally, this board will not act as an intermediary for every credit rating issued. It will only assign an agency to do the initial rating—the first rating an issuer receives. The issuer is then free to seek as many other credit ratings as it wants from whomever it wants, as most issuers currently do.

I am merely proposing that at least one rating—the initial rating—from an issuer be free from the conflicts of interest inherent in an issuer-pays system. This initial rating will then serve as a check against any possible inflation in subsequent ratings.

You may also have heard there are alternative proposals that would eliminate any requirement of reliance upon a credit rating issued by an NRSRO. Senator LEMIEUX, my good colleague from Florida, will be offering a side-by-side to this amendment. Now, my only problem with this is, this approach ignores the reality that ratings will, by necessity, continue and will always play a role in our economy. Investors will still rely on them even if the statutes do not mandate it.

I believe Senator LEMIEUX's approach does absolutely nothing to tackle the conflicts of interest or address the current oligopoly, both of which would surely persist under this approach, especially the conflicts of interest.

There is nothing in Senator LEMIEUX's approach that I understand is contradictory at all to what I am doing. So if a Member would like to vote for Senator LEMIEUX's side-by-side, it would be fine. You have to determine for yourself the value of that. I am just saying it does not get at the heart of the matter, which is the conflict of interest: the issuer actually paying the rating agency for the rating.

With the help of Senators SCHUMER and NELSON, I have crafted a measure that is not liberal or conservative. It is not moderate. It is not on any spectrum. It just makes sense. It is common sense. This is like the solving of forum shopping in courts. It is an elegant solution. I can say that because I did not think of it. Some professors in academia thought of it, and I guess the chief economist at Patton Boggs. It is just a simple, elegant idea. So it is not conservative; it is not liberal. It is just common sense.

That is why Senator WICKER has embraced this amendment. Senator GRASSLEY has embraced this amendment. It is just plain common sense. That is why Senators LEVIN, JOHNSON, MURRAY, DURBIN, WHITEHOUSE, BROWN, MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, SANDERS, KAUFMAN, HARKIN, KLOBUCHAR, WYDEN, and BEGICH also support the amendment.

That is why Americans for Financial Reform support it. That is why the Consumers Union supports it; the Teamsters, the National Association of Consumer Advocates, Public Citizen, SEIU, and a number of other national organizations stand behind this amendment.

That is why, as I said, leading economists in academia and private industry support this amendment. In fact, as I was saying, the chief economist at Patton Boggs, Dr. David Raboy, who first developed a similar proposal, is squarely behind this amendment. Of course he would be; he developed it.

That is why independent, smaller rating agencies have come out in support of this amendment. That is why this amendment cannot wait.

I urge colleagues on both sides of the aisle to vote in favor of this amendment.

I thank you, Madam President.

I believe my good colleague from Florida has a side-by-side which, as I say, in no way conflicts—I do not believe—with this amendment. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

AMENDMENT NO. 3774, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. LEMIEUX. Madam President, I ask unanimous consent to temporarily set aside the pending amendment so I may call up amendment No. 3774, as modified.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, the clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. LEMIEUX] proposes an amendment numbered 3774, as modified, to amendment No. 3739.

Mr. LEMIEUX. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment, as modified, is as follows:

(Purpose: To remove statutory references to credit rating agencies)

On page 1036, strike line 14 and all that follows through page 1041, line 3, and insert the following:

SEC. 939. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(b)(1)(E)(i), by striking ''credit rating entities, and other private economic'' and insert ''private economic, credit,'';

(2) in section 28(d)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(C) in paragraph (2), by striking ''not of investment grade'';

(D) by striking paragraph (3);

(E) by redesignating paragraph (4) as paragraph (3); and

(F) in paragraph (3), as so redesignated—

(i) by striking subparagraph (A);

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (B), as so redesignated, by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(3) in section 28(e)—

(A) in the subsection heading, by striking ''NOT OF INVESTMENT GRADE'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(C) in paragraphs (2) and (3), by striking ''not of investment grade'' each place that it appears and inserting ''that does not meet standards of credit-worthiness established by the Corporation''.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended by striking ''that is a nationally registered statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) Investment Company Act of 1940 (15 U.S.C. 80a–6(a)(5)(A)(iv)(I)) is amended by striking ''is rated investment grade by not less than 1 nationally registered statistical rating organization'' and inserting ''meets such standards of credit-worthiness as the Commission shall adopt''.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency'';

(2) in the heading for subsection (a)(3) by striking ''RATING OR COMPARABLE REQUIREMENT'' and inserting ''REQUIREMENT'';

(3) subsection (a)(3), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.''.

(4) in the heading for subsection (f), by striking ''MAINTAIN PUBLIC RATING OR'' and inserting ''MEET STANDARDS OF CREDIT-WORTHINESS''; and

(5) in subsection (f)(1), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency''.

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking ''is rated in one of the two highest rating categories by at least one nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''; and

(2) in paragraph (53)(A), by striking ''is rated in 1 of the 4 highest rating categories by at least 1 nationally registered statistical rating organization'' and inserting ''meets standards of credit-worthiness as established by the Commission''.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100–461, (22 U.S.C. 286hh(a)(6)), is amended by striking ''credit rating'' and inserting ''credit-worthiness''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

(1) IN GENERAL.—Commission shall undertake a study on the feasability and desirability of—

(A) standardizing credit ratings terminology, so that all credit rating agencies issue credit ratings using identical terms;

(B) standardizing the market stress conditions under which ratings are evaluated;

(C) requiring a quantitative correspondence between credit ratings and a range of default probabilities and loss expectations under standardized conditions of economic stress; and

(D) standardizing credit rating terminology across asset classes, so that named ratings correspond to a standard range of default probabilities and expected losses independent of asset class and issuing entity.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report containing the findings of the study under paragraph (1) and the recommendations, if any, of the Commission with respect to the study.

Mr. LEMIEUX. Madam President, I come to the floor today to talk about this important issue my friend from Minnesota has brought forth, and I congratulate him on the work he has done. We know one of the main reasons we had our financial debacle in 2008 was that credit agencies failed to do their job. They put AAA stamps of approval on products that deserved no such stamp. The investing world relied upon the fact that rating agencies were supposed to do their job, and they failed to do their job.

So just as when you read Consumer Reports, and you believe they are giving objective information and a good accounting of how a product is or is not safe, the investing world thought Fitch and Moody's and S&P and these others had done their job and had done the due diligence. So I congratulate, again, my friend from Minnesota. He has focused on one of the main reasons we had our financial debacle.

Unfortunately, much of what is in this 1,409-page bill does not go after what caused the debacle in 2008. We do not deal with Fannie and Freddie. We did not pass significant underwriting standards yesterday in the Corker amendment. We have a chance to address the issue of the rating agencies, because, but for their failure to do their job, we may not have had this debacle that destroyed, as some estimate, $600 trillion worth of wealth.

Where I differ with my friend from Minnesota is that I don't think he has gone far enough. I appreciate his efforts to go after conflicts of interest. I believe there are conflicts of interest. We cannot have the people whose products they rate pay them. He is right about that, but I would go further. My amendment writes these organizations out of law. Why should we reward them and allow them to continue to have what, in effect, is a government-sponsored monopoly? Federal law says creditworthiness will be determined by these rating agencies. Why should we reward them by allowing them to continue in any fashion to have the sanction and permission and basically a monopoly granted by Federal law? That doesn't make any sense to me.

So the amendment I am proposing, again, is not, as my friend from Minnesota said, inconsistent with his amendment, and I believe there will be Members who will vote for his amendment and my amendment. I am glad we are both focused on addressing this issue.

What my amendment will do is take away this sanctioned monopoly that holds out these rating agencies as the entities that determine what is creditworthy. Certainly, rating agencies will still exist, but there will be more rating agencies involved, plus banks themselves will have to do the due diligence to convince the FDIC or whoever the regulator is that the bonds they hold on their books are creditworthy. In a way, we are saying that the astrology we relied upon in the past didn't work. Let's have some new and better astrology.

The rating agencies don't work. Did they not work because they had a conflict of interest? Perhaps. Did they not work because they are incompetent independent of that conflict of interest? Perhaps. I hope what my amendment does will achieve both goals. They will not be paid by these same investment banks if they are no longer written into law, I believe. Plus, if they are no longer written into law, there will have to be something in the marketplace that people can rely upon when they have to make their case to your Federal regulator that these instruments are creditworthy. Someone is going to have to do their homework.

My friend from Minnesota is exactly right that the damage done in the marketplace was done in large part because of our reliance upon these rating agencies. The Wall Street Journal on April 21 said:

When the government ordains—

And that is an important word—

Moody's and Standard & Poor's as official arbiters of risk, the damage can be catastrophic because so many people rely upon them.

So let's stop ordaining them. Why are we going to reward bad behavior?

My friend from Minnesota, who has gotten his language from professors and others, the language we have worked on—it is not a conservative idea; it is not a Democratic idea. In fact, it is exactly the same as the language BARNEY FRANK put forward on the House side. So we have a liberal Democrat and a conservative Republican working to the same end. So let's not just go halfway. Let's go all the way. Let's make sure these rating agencies don't get rewarded for bad behavior.

This will take some time to implement. It needs time for the market to adjust. There is a 2-year period in this amendment for this to take effect. That is important so that banks can beef up their staff to make sure they can do the due diligence, do the homework, to prove creditworthiness. It is good for the market to settle, which it will need to do, from relying upon just these three big rating agencies.

I believe the solution has to go the full measure. While I congratulate my friend from Minnesota for tackling this issue and while I also don't think our two measures are inconsistent, I believe the amendment I am proposing, which is almost exactly—similar to the language of BARNEY FRANK on the House side—is the right answer to really get us off this ordination of these rating agencies.

Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Madam President, I rise in strong support of the Franken amendment.

First, I wish to praise my colleague from Minnesota for the great job he has done on this amendment. This is going to make a huge difference. It strengthens the section that is already in Senator DODD's fine bill, on which Senator JACK REED did great work, and now it goes a little further.

In particular, I thank my colleague from Minnesota for really getting at the heart of the conflicts of interest. We can vote around the conflict of interest, we can shine a mirror of light on the conflict of interest, but unless we get to the heart of it, we are not going to undo the problem. The Senator from Minnesota does that, and I praise him for his fine work. I think that if this amendment passes, it is going to be one of the lasting contributions and one of the most significant contributions to prevent a future crisis from happening.

Nobel economist Joseph Stiglitz said:

I view the rating agencies as one of the key culprits . . . They were the party that performed the alchemy that converted the securities from F-rated to A-rated. The banks could not have done what they did without the complicity of the rating agencies.

Credit rating agencies played an important role—an unfortunate and important role—in what led up to the financial crisis. They adopted questionable practices intended to win over clients and capture greater market share, ignoring the true credit quality of the complex securities at the heart of the market meltdown. They neglected their own internal controls and developed a coziness with clients. And because rating the complicated structured finance products brought in more money to these agencies, they raced each other to the bottom, competing for clients by inflating ratings. Because the clients had an incentive to sell products with the highest ratings to investors, the rating agencies would give them advice on how to structure their products to score AAA. This race to the bottom is the easiest, quickest, and least disputatious. Giving an AAA rating is one of the major culprits of the financial crisis we are seeing.

The conflict of interest-ridden industry helped bring our economy to its knees. To provide one example, 93 percent of AAA-rated subprime mortgage-backed securities issued in 2006 have been downgraded to junk status. Is that incredible? Ninety-three percent went from AAA to junk status. That is not an accident and, frankly, that doesn't just happen because people make mistakes. There was something more pernicious at work, which was conflict of interest. That is the fundamental problem. Again, 93 percent of the securities the rating agencies concluded were of the highest quality, least risky investments, in just 2 years they became worthless. Many people lost money. Some were big investors, some were small investors, some were large banks and institutions, and some were pension funds that had the savings of millions of hard-working Americans. Everyone suffered because of what the credit rating agencies did. This bill we are debating this week makes important strides in holding the rating agencies accountable to their credit quality assessments.

Once again, I commend Senator DODD, our able chairman, and Senator JACK REED, our able chairman of the securities subcommittee, for the immense work they did in this area. Requiring the creation of a new Office of Credit Rating Agencies at the SEC; disclosures of rating methodologies; prohibiting compliance officers from working on ratings methodologies or sales; a new liability provision; and requiring rating analysts to pass qualifying exams all helps.

As I said, the provision Senator FRANKEN is offering and I am proud to cosponsor goes to the heart of the conflict of interest. It doesn't go around the edges of the conflict of interest but is a dagger at the heart. This amendment breaks that inherent conflict by having a third party, a neutral third party, step in-between. Issuers will no longer be able to choose a rating agency and directly influence what kind of ratings they get.

The amendment establishes a board of highly knowledgeable and experienced people, a majority of whom will be from the investor industry, including pension funds, municipalities, and retail investors who got clobbered in this financial crisis because the rating agencies were getting paid by the issuer and had an incentive to issue the best rating possible.

How the heck—this is a little digression—how the heck no-doc loans got AAA ratings over and over, packages of no-doc loans—what does that mean to the average person? It means they never asked you if you could afford to pay the mortgage, and they got AAA credit ratings. What was going on, and why didn't anyone catch it? Well, the Dodd part and the Reed part of the amendment will catch it, but the Franken part of the amendment will prevent it by having a noninterested party make a rating.

The Franken amendment establishes a board of highly knowledgeable and experienced people, as I said. They have to submit their products to be rated to the board and, like a wheel, the board will choose a rating agency for each product. When I say a wheel, it is like a wheel; it comes up randomly. Where did Senator FRANKEN—and I have spoken with him about this, so I know—where did he come up with this idea? This is how we prevent forum shopping, bias of judges. When you go to the Southern District of New York and you have a case, it is a wheel and you get a judge randomly. In the past, we have found there were even conflicts of interest in the judiciary because you got to choose your own judge, just as the issuer now gets to choose its own credit rating agency. The wheel makes it random. You don't choose it. That is a big, huge step forward.

The board will also monitor the performance of these ratings and ensure the rating agencies are qualified to rate the products. This model will motivate rating agencies to develop and gain the right expertise and methodologies so they can become eligible to rate different classes of structured finance products, and the smaller rating agencies and investor-paid agencies will have a level playing field to compete against the big three.

This proposal has a broad range of bipartisan support. I greatly appreciate not only Senator FRANKEN's outstanding work on this issue but the cosponsorship of Senators NELSON, WHITEHOUSE, BROWN, MURRAY,

MERKLEY, BINGAMAN, LAUTENBERG, SHAHEEN, CASEY, SANDERS, JOHNSON, KAUFMAN, DURBIN, HARKIN, and—thank you to our Republican friends—Senators WICKER and GRASSLEY.

So I hope we will get unanimous support for this amendment. I hope we won't leave out any major provisions. I hope we won't modify it or weaken it. Let's stick to this amendment. It is modest and thoughtful and goes to the heart of what helped cause the financial crisis—the inherent conflict of interest in the way credit rating agencies worked.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Madam President, I was going to address the underlying question here, but I know my colleague from Maine wishes to be heard on a different amendment.

Let me say briefly that I appreciate the comments and I appreciate the efforts of Senator FRANKEN in this regard. Forty pages of our bill are exclusively dedicated to rating agencies. We spent an inordinate amount of time on the rating agency question. This is a complex issue and the source of a lot of discomfort. There is a headline in one of the national newspapers this morning that talks about the rating agencies and the problems they have posed in giving ratings to products that were worth vastly less than their claims.

Very briefly, on the underlying bill, the SEC will have a new office of credit ratings to regulate and promote accuracy in ratings, staffed with experts in structured, corporate, and municipal debt finance. The office's own examination staff will conduct annual inspections, and the essential findings will be available to the public. The SEC will have expanded authority to suspend the registration of agencies that consistently produce ratings without integrity. It will have more authority to sanction ratings agencies that violate the law, including penalties for management for failure to supervise employees who break the law.

The bill imposes tough new requirements on credit rating agencies. Ratings agency boards are subject to new rules for independence. Ratings analysts must be separated from those who sell the firm's services. Agencies must publicly disclose when they materially change their procedures or methodologies or make significant errors and update their credit ratings accordingly. Agencies must establish strong internal controls for following procedures and methodologies and have these attested to by their CEO to the SEC. The agencies must establish hotlines for whistleblowers and complaints, retain complaints about the firm's work for regulators to examine.

Compliance officers must submit annual compliance reports to the SEC. They are required to consider credible information they received from sources other than the issuers in making the ratings, rather than relying on the—basing ratings only on the issuer's representations.

Investors are empowered. The agencies must disclose more about their ratings assumptions, limitations, risks, accuracy, and factors that might lead to change in ratings. Agencies must disclose their track record of ratings in a way that is in compliance so that users can compare ratings for accuracy across different agencies.

It also will have the benefit of having new pleading standards so when private suits are brought, they will be able to have actions brought against these rating agencies.

The issuer or underwriters of any asset-backed security shall make available any due diligence reports, and on and on.

The point I want to make is we have spent a lot of time on this issue. A lot of work went into this issue. My colleague from Minnesota has what I think is a good and sound idea. Here is my concern as chairman of the committee. I do not know what the implications are because we have had no real examination of having the wheel about which my friend from New York talked. Not all rating agencies are equal. There ought to be more of them. There are smaller ones out there that ought to be able to grow in their competency and do things. But there are companies of different sizes and needs, and merely changing a rating agency based on an arbitrary choice without considering whether the rating agency can do the job is my concern.

I like the idea because what it does do is get away from the conflict of interest. That is as it presently exists. Here is the quandary we have: Right now, the company that seeks the rating agency pays the rating agency. Obviously, on its face, you have a problem. If I am buying a service from you—and by the way, I would like to get a AAA rating—I have a pretty good chance of getting it whether I deserve it or not. The alternative idea, somebody said, is why don't you have the buyers of the rating agency? There is a similar problem. They might like to have a DDD rating to lower the value. So you have a conflict on either side of this question that is difficult and difficult to resolve.

Compound the problem with the fact that the rating agencies, as presently construed, prior to our language in this bill, basically rely on the information from the very purchase of the rating agency to determine whether it is a good product. There is no due diligence done by the rating agency. Our bill changes all of that.

It is with a great deal of reluctance—as I said to my colleague from Minnesota, I was prepared to take a good study of this; in fact, language that would recommend the SEC and others—the SEC has authority under existing law to deal with conflicts of interest. They have the power to do it. Whether they do it is another matter. That is always the issue with a regulator.

I am concerned what this means. I say that respectfully to the author. He has worked hard on this amendment. There are a lot of good ideas in it. I am just uneasy about what the implications can be. I would be remiss if I did not express that as chairman of the committee having spent hours listening to the debate back and forth.

On the amendment offered by our colleague from Florida, there is a different set of issues I have, but I also have to express my opposition to that amendment. The reason is because very simply we know that credit ratings are far from the perfect measure. We know that. We wrestled with this.

I agree that the markets may place too much reliance on credit ratings. But the way to address the problem is not to simply repeal the safety and soundness provisions of the law. That is what he is asking us to do.

While I have problems with the present system and we made major inroads on how to address that in ways we thought made some sense, the idea of the Senator from Florida that because we are not happy with the present structure—although I think the bill before us does an awful lot in 40 pages to deal with how this is to be accomplished—he repeals all of it. Someone may have a better idea out there, but to get rid of what we have, leaving a vacant space, in a sense, is not my view of the way this ought to be addressed. Congress could not simply repeal safety and soundness laws without careful prior study of the impact on the markets. That is what we are doing with the LeMieux amendment.

Our bill sets out a process by which overreliance on these rating agencies can be reduced without creating risk throughout the financial system. That is my concern. Stripping everything out of safety and soundness in this area does not get you safety and soundness.

With regard to both amendments, I am more attracted to the amendment offered by Senator FRANKEN, and I like the idea of where he is going. I just do not know whether it is sound. Again, it is the kind of thing I wish to see examined—and that is not to suggest he has not done that—where you take the time and go through the process.

It is with some reluctance that I express my opposition to both amendments and urge my colleagues to review, if they care to, the 40 pages of effort we have made in our bill.

JACK REED of Rhode Island deserves a lot of credit for having worked particularly hard on the rating issue in our committee and the subcommittee dealing with securities. We think we have a strong bill in these areas. I would be the first to say it is far from perfect, but we did our best to find a way to get far greater responsibility and accountability out of the credit rating agencies. There is a great concern here that accountability and responsibility needs to be taken into consideration.

As I said, our bill has 40 pages of safeguards to strengthen the SEC, empower investors, and to make rating agencies far more responsible and accountable.

Madam President, I yield the floor.

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

AMENDMENT NO. 3883

Ms. SNOWE. Madam President, I rise to speak today on amendment No. 3883, which is pending, which I have offered with my good friend and colleague from Arkansas, Senator PRYOR.

I ask unanimous consent that Senator PRYOR be able to follow my remarks.

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

Mr. LEVIN. Will the Senator yield for a question?

Ms. SNOWE. I will be glad to yield.

Mr. LEVIN. How long does the Senator expect to take?

Ms. SNOWE. Fifteen minutes.

Mr. LEVIN. Does the Senator from Maine know how long Senator PRYOR will take?

Ms. SNOWE. About 5 minutes.

Mr. LEVIN. I thank the Senator.

Ms. SNOWE. Madam President, the amendment that is pending that we have offered—and I add that also has been cosponsored by Senator GRAHAM and Senator MENENDEZ—would ensure that small businesses are considered in the federal rulemaking process by the Bureau of Consumer Financial Protection that would be created in this bill.

The more attentive we are with respect to small businesses and the issues incorporated in this legislation, the better small businesses will be in their ability to create jobs and to survive what is a very difficult and tragic economic environment.

This amendment would ensure that when the newly created bureau promulgates rules and regulations, it fully considers the economic impact those rules and regulations would impose on our Nation's more than 30 million small businesses that have created 64 percent of all new jobs over the past 15 years and no question will drive our Nation's economic recovery. Indeed, we are depending on these small businesses to lead us out of this jobless recovery.

We know a jobless recovery is not a true recovery. We have more than 15 million Americans who are unemployed or underemployed. Clearly, it is going to be small businesses that pave the way toward employment.

Plain and simple, onerous regulations are crushing the entrepreneurial spirit of America's small businesses. In 2009 alone, there were close to 70,000 pages in the Federal Register, and the annual cost of Federal regulations now totals more than $1.1 trillion. Furthermore, according to the research by the Small Business Administration's Office of Advocacy, small firms—and this is no surprise—bear a disproportionate burden, paying approximately 45 percent more per employee in annual regulation compliance than larger firms.

The amendment we are offering today would ensure small business fairness and regulatory transparency by first designating the Consumer Financial Protection Bureau as a ''covered agency'' under the Regulatory Flexibility Act so that small business review panel provisions would apply to the bureau's rulemaking. These advisory small business panels currently apply to EPA and OSHA and have been extremely successful in helping to shape more workable regulations at these agencies for small businesses across America.

Since 1996, when these small business panel provisions were passed unanimously in the Senate and signed into law by then-President Clinton, the EPA has convened 35 panels and OSHA has convened 9 panels. The findings of the panel reports have helped EPA and OSHA improve draft proposals by tailoring regulatory approaches to the unique situations of small businesses.

I know there are some who will argue that my amendment will undermine the rulemaking capacity of the bureau. This simply is not the case. According to the SBA Office of Advocacy report, ''The panel process does not replace, but enhances, the regular notice-and-comment process.''

The Office of Advocacy has also found that these small business review panels have facilitated ''revisions or adjustments to be made to an agency draft rule that mitigated its potentially adverse effects on small entities, but did not compromise the rule's public policy objective.''

Others have expressed concern that these small business advocacy review panels should not apply to the bureau because they apply to no other financial regulatory authority. Unfortunately, there is continued frustration by leaders in the small business community toward government agencies and one-size-fits-all regulation. Independent agencies, such as the Securities and Exchange Commission, the SEC, and its approach to regulation under Sarbanes-Oxley, and the Federal Communications Commission, the FCC, and its rulemaking governing telecommunications practices are too often cited as failing to adequately consider their impact on small business prior to issuing new regulatory mandates. This is why it is vital that small business requirements apply to the new independent agency that is created in the underlying legislation.

Still others will argue that our amendment is unnecessary because my earlier amendment to this legislation provides for an exemption for small businesses from the regulatory requirements of the bureau. However, we must go further to ensure that rules that the bureau promulgates do not unintentionally impact small firms' job creation capacity. That is why our amendment would also specify during the rulemaking process the bureau must consider the economic effects its rule would have on the cost of credit for small businesses.

According to a recent National Federation of Independent Business, NFIB, survey—and that is the foremost organization that speaks for small businesses—42 percent of small business owners use a personal credit card for business purposes. It is imperative that small business interests are fully considered when the bureau issues regulations on consumer credit cards, so that however well-intentioned, the bureau does not inadvertently cut off vital small business credit sources, especially during these tenuous economic times when a recent Federal Deposit Insurance Corporation survey noted that banks posted their sharpest decline in lending since 1942.

That is a big issue right now because lending is not occurring to small businesses. That is one of the issues we must address in any small business tax relief package. Those discussions are ongoing right now with the Treasury Department and the Administrator of the Small Business Administration, Karen Mills, with Chairman LANDRIEU of the Small Business Committee, myself, and key staff from the Finance Committee, and the leadership of both the Republican and Democratic sides because it is so critical. If we cannot get access to lending to small businesses, jobs cannot be created.

We do not want to compound the problem with the creation of this bureau that ignores the implications when it comes to applications for credit from small businesses. After all, all the entities under this legislation—even the smaller institutions—all the entities will be covered under this bureau with respect to regulations. We must make sure that the smallest financial institutions' voices are heard because they are the ones that primarily provide access to small businesses, not to mention the credit card companies that also will certainly be regulated under this bureau.

We want to make sure we are not just having the big institutions' voices heard but not the small financial institutions and not how it will affect small businesses throughout the country.

To give an understanding of how strongly regarded and supported this legislation is, we have a broad cross-section of stakeholders who support this amendment, more than 23 organizations that represent millions and millions of small business owners. I am going to list them now because they are so important, given the support they are providing this amendment and how critical they think it is to the functioning of this bureau and being cognizant of the regulations that are issued, that they do not adversely affect the well-being of small businesses during these tumultuous economic times. You have the Associated Builders and Contractors, the Association of Kentucky Fried Chicken Franchisees, the Hearth, Patio & Barbecue Association, Hispanic Leadership Fund, Independent Electrical Contractors, Institute for Liberty, International Franchise Association, the National Association for the Self-Employed, the National Federation of Independent Business, the National Lumber and Building Material Dealers Association, the National Restaurant Association, the National Roofing Contractors Association, the National Small Business Association, the Printing Industries of America, the S Corporation Association, Small Business & Entrepreneurship Council, Society of American Florists, the Society of Chemical Manufacturers & Affiliates, the Tire Industry Association, the U.S. Chamber of Commerce, the U.S. Black Chamber of Commerce, the United States Hispanic Chamber of Commerce, and the Women Impacting Public Policy.

As you can see, a broad array of stakeholders are so concerned about the pending legislation with respect to this bureau that they support this amendment.

These groups have sent a letter as well to both the chairman and the ranking member of the Banking Committee as well as the majority and minority leadership because they are so concerned about the underlying legislation, the creation of this Consumer Financial Protection Bureau, and how it will affect small businesses. I wish to quote from their letter. It says that our amendment is:

> . . . an effort to prevent unintended consequences by a new agency that could harm the small business sector . . . and provides assurance that small business access to credit is a top consideration by Bureau officials as they take on the important task of overseeing our financial sector.

Just to give you another indication of how supportive and how important these advisory panels are—the ones that would be created in order to review the regulations that would be issued by this bureau—this would be before they issue the proposed rule that these advisory panels would be created—this has occurred under EPA as well as OSHA since 1996. To give an illustration of the rules that have been reviewed through these advisory panels that are created—within a 60-day period, I might add, they would be required to report to the bureau on their assessment of any particular rule before they propose and issue that rule so we can understand the ramifications. The EPA has issued rules that created an advisory panel on groundwater, radon and drinking water, arsenic and drinking water, and diesel fuel requirements, just to give an illustration.

Since 1996, these advisory panels, as the SBA Office of Advocacy has indicated in their materials, has provided extremely valuable information on the real-world impact—and that is important to understand, the real-world impact, when a small business has to digest and to live by and to implement any rules and regulations issued by this bureau and the compliance costs of these agency proposals. So, clearly, this will have enormous benefits to small businesses because we will have a chance to review, in advance, through these advisory panels that would be comprised of the rulemaking agency—in this instance it would be the Consumer Financial Protection Bureau—representatives of the small business community, as well as the Office of Management and Budget's Office of Information and Regulatory Affairs. So there would be a broad array of voices including small business concerns to examine these rules before they are proposed for the rulemaking process.

Doesn't that make sense? Isn't it important to understand the ramifications before we issue these regulations that could have adverse consequences for small businesses as they attempt to survive during these tenuous economic times?

The SBA Office of Advocacy has indicated in their materials with respect to how these panels work—and, again, they are required under law within 60 days to make a proposal to the bureau in terms of the ramifications or the effects or other considerations that ought to be incorporated as they issue their proposed rule.

The purpose of the panel process is threefold, and this is from the SBA Office of Advocacy. First, the panel process ensures that small entities that would be affected by a regulatory proposal are consulted about the pending action and offered an opportunity to provide information on its potential effect. Second, a panel can develop, consider and recommend less burdensome alternatives to a regulatory proposal when warranted. Finally, the rulemaking agency has the benefit of input from both real-world small entities and the panel's report and analysis prior to publication.

Doesn't it make sense? It saves everybody a lot of aggravation, a lot of money, a lot of energy that would have to be devoted in the rulemaking process after they issue the proposal rather than before they issue the proposal for the rulemaking process.

It clearly does make sense and that is why it has worked so well for EPA and OSHA and that is why it will work well under this circumstance and most especially during these times when we are creating this bureau that will have a wide-ranging effect on financial institutions all across this country that ultimately will affect the more than 30 million small businesses, because 42 percent of them depend on personal credit cards for credit. We want to make sure we are considering the consequences of anything that is done.

Also, the downstream effect of bank regulations would be considered as well as a potential effect of a regulation by this bureau. When banking practices are restricted, they do not just affect consumers, they also affect small businesses—higher capital requirements tighten the availability of credit for small businesses. That is another example of a potential rule that would come out of this bureau that could directly affect small businesses. So it is not only consumers, it is also small businesses.

The regulation of angel investors—a very important fact. In fact, NFIB has written on this question because there will be subsequent amendments to address this issue as well. But the regulation of angel investors also affects the economic well-being of small businesses because they use them as a source of capital. I know that NFIB is concerned about the reduced pool, as they have indicated in their letter, with respect to angel investors. Many small businesses depend on these individuals who invest to provide that kind of startup capital in their businesses. There are other significant small entities in the financial products industry who are likely to be overlooked in the bureau's rulemaking process. The panel requirement will benefit these businesses and will benefit the bureau's consideration of how their rules should be tailored to minimize the impact on these businesses while maximizing the intended benefits overall for small businesses.

This is not anything unique to what we don't already know about how important the Regulatory Flexibility Act is overall. Every agency is required to consider the effect of any rule or law and how it is going to have implications on small businesses and two agencies—the EPA and OSHA—are required to establish advisory panels when it is determined rules are going to be issued that have consequences on small businesses and that gives them the opportunity to have input into the process before this bureau issues those rules.

I think it makes a great deal of sense. It is reasonable, it is logical, and it averts any unintended consequences in the onset of the process rather than waiting to see how well it takes effect, and then we discover that, in fact, it depresses the ability of small businesses to create jobs or to survive.

So I hope we can get very strong support for this legislation. I am very appreciative of the work of my colleague, Senator PRYOR, with whom I work on the Small Business Committee. He does a great job and has provided a great deal of input into the drafting of this legislation, and I appreciate his leadership. I appreciate the fact that it is done on a bipartisan basis because I think we all recognize the pivotal role small businesses play in today's economy and will certainly depend on playing a critical role in the future.

I ask unanimous consent to have printed in the RECORD a report regarding the Regulatory Flexibility Act.

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

TABLE A.4—SBREFA PANELS THROUGH FISCAL YEAR 2009

Rule title	Date convened	Report completed	NPRM [1] published	Final rule published
Environmental Protection Agency				
Nonroad Diesel Engines	03/25/97	05/23/97	09/24/97	10/23/98
Industrial Laundries Effluent Guideline [2]	06/06/97	08/08/97	12/12/97	
Stormwater Phase	06/19/97	08/07/97	01/09/98	12/08/99
Transportation Equipment Cleaning Effluent Guideline	07/16/97	09/23/97	06/25/98	08/14/00
Centralized Waste Treatment Effluent Guideline	11/06/97	01/23/98	09/10/03	12/22/00
			01/13/99	
Underground Injection Control Class V Wells	02/17/98	04/17/98	07/29/98	12/07/99
Ground Water	04/10/98	06/09/98	05/10/00	11/08/06
Federal Implementation Plan (FIP) for Regional Nitrogen Oxides Reductions	06/23/98	08/21/98	10/21/98	04/28/06
Section 126 Petitions	06/23/98	08/21/98	09/30/98	05/25/99
Radon in Drinking Water	07/09/98	09/18/98	11/02/99	
Long Term 1 Enhanced Surface Water Treatment	08/21/98	10/19/98	04/10/00	01/14/02
Filter Backwash Recycling	08/21/98	10/19/98	04/10/00	06/08/01
Light Duty Vehicles/Light Duty Trucks Emissions and Sulfur in Gasoline	08/27/98	10/26/98	05/13/99	02/10/00
Arsenic in Drinking Water	03/30/99	06/04/99	06/22/00	01/22/01
Recreational Marine Engines	06/07/99	08/25/99	10/05/01	11/08/02
			08/14/02	
Diesel Fuel Sulfur Control Requirements	11/12/99	03/24/00	06/02/00	01/18/01
Lead Renovation and Remodeling Rule	11/23/99	03/03/00	01/10/06	
Metals Products and Machinery Effluent Guideline	12/09/99	03/03/00	01/03/01	05/13/03
Concentrated Animal Feedlots Effluent Guideline	12/16/99	04/07/00	01/12/01	02/12/03
Reinforced Plastics Composites	04/06/00	06/02/00	08/02/01	04/21/03
Stage 2 Disinfectant Byproducts Long Term 2 Enhanced Surface Water Treatment	04/25/00	06/23/00	08/11/03	01/04/06
			08/18/03	01/05/06
Nonroad Large Spark Ignition Engines, Recreational Land Engines, Recreational Marine Gas Tanks, and Highway Motorcycles.	05/03/01	07/17/01	10/05/01	11/08/02
			08/14/02	
Construction and Development Effluent Guidelines [3]	07/16/01	10/12/01	06/24/02	
			11/28/08	
Aquatic Animal Production Industry	01/22/02	06/19/02	09/12/02	08/23/04
Lime Industry—Air Pollution	01/22/02	03/25/02	12/20/02	01/05/04
Nonroad Diesel Emissions—Tier IV Rules	10/24/02	12/23/02	05/23/03	06/29/04
Cooling Water Intake Structures—Phase III Facilities	02/27/04	04/27/04	11/24/04	06/15/06
Section 126 Petition (2005 Clean Air Implementation Rule—CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Federal Implementation Plan for Regional Nitrogen Oxides (2005 CAIR)	04/27/05	06/27/05	08/24/05	04/28/06
Mobile Source Air Toxics	09/07/05	11/08/05	03/29/06	02/26/07
Nonroad Spark-ignition Engines/Equipment	08/17/06	10/17/06	05/18/07	10/08/08
Total Coliform Monitoring Rule (TCR)	01/31/08	03/31/08		
Renewable Fuel Standards 2 (RFS2)	07/09/08	09/05/08	05/26/09	
Occupational Safety and Health Administration				
Tuberculosis [4]	09/10/96	11/12/96	10/17/97	
Safety and Health Program Rule	10/20/98	12/19/98	**	
Ergonomics Program Standard	03/02/99	04/30/99	11/23/99	11/14/00
Electric Power Generation, Transmission, and Distribution	04/01/03	06/30/03	06/15/05	
Confined Spaces in Construction	09/26/03	11/24/03	11/28/07	
Occupational Exposure to Respirable Crystalline Silica Dust	10/20/03	12/19/03		
Cranes and Derricks in Construction	08/18/06	10/17/06	10/09/08	
Occupational Exposure to Hexavalent Chromium	01/03/04	04/20/04	10/04/04	02/28/06
Occupational Exposure to Beryllium	09/17/07	01/15/08		
Occupational Exposure to Diacetyl	05/05/09	07/02/09		

[1] Notice of Proposed Rulemaking (NPRM) published in the Federal Register.
[2] Proposed rule was withdrawn August 18, 1999. EPA does not plan to issue a final rule.
[3] Proposed rule was withdrawn on April 26, 2004. EPA issued a new proposal November 28, 2008.
[4] Proposed rule was withdrawn on December 31, 2003. OSHA does not plan to issue a final rule.
** In process.

CHAPTER 41—REGULATORY PANELS

In 1996, SBREFA amended the RFA to include a number of important provisions. One of those was section 609, which requires, among other things, that certain agencies conduct special outreach efforts to ensure that small entity views are carefully considered prior to the issuance of a proposed rule. This outreach is accomplished through the work of small business advocacy review panels, often referred to as SBREFA panels.

WHO MUST HOLD SBREFA PANELS?

The statute requires that the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) evaluate their regulatory proposals to determine whether SBREFA panels should be convened. The requirement for SBREFA panels may appear to impose additional steps for EPA and OSHA in their rulemaking processes. However, the panel process only formalizes the outreach requirements and analyses that the Administrative Procedure Act and the RFA already mandate for all new rules that affect small businesses. Any additional work that may be needed in this special early outreach effort should be offset by time saved at the other end of the regulatory process. When problems are resolved before a proposed rule is published, objections from the public are reduced. Experience has shown that the panel process results in better rules, better compliance and reduced litigation. In at least one instance, EPA withdrew a regulatory proposal based on work performed in connection with the panel process.

HOW IS THE DECISION TO HOLD A SBREFA PANEL MADE?

For each proposed rule, the RFA requires that an agency either certify that the proposal has no significant economic impact on a substantial number of small entities, or prepare an initial regulatory flexibility analysis (IRFA) on the proposal. Whenever EPA or OSHA determines that a regulatory proposal may have a significant economic impact on a substantial number of small entities, the law further requires that the agency convene a SBREFA panel. This SBREFA panel outreach must take place before the publication of the proposed rule. SBREFA panels are required for all EPA and OSHA rules for which an IRFA is required. However, the Chief Counsel for Advocacy may waive the panel requirement upon the request of EPA or OSHA under certain conditions. To waive the panel requirement, the Chief Counsel must find that convening a panel would not advance the effective participation of small entities in the rulemaking process. Section 609(e) of the RFA lays out several factors in making this determination, including consideration of whether small entities have already been consulted in the rulemaking process and whether special circumstances warrant the prompt issuance of a rule.

HOW DOES A SBREFA PANEL WORK?

A SBREFA panel consists of a representative or representatives from the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and the Chief Counsel for Advocacy.

The panel solicits information and advice from small entity representatives (SERs), who are individuals that represent small entities affected by the proposal SERs help the panel better understand the ramifications of the proposed rule. Invariably, the participation of SERs provides extremely valuable information on the real-world impacts and compliance costs of agency proposals.

The law requires that a SBREFA panel be convened and complete its report with recommendations within a 60-day period. The formal panel process begins with the convening of the panel by the rulemaking agency. The date is normally fixed after consultation with both Advocacy and OIRA. Before convening, the three agencies usually work together to discuss regulatory alternatives and their advantages and disadvantages. The rulemaking agency usually has preliminary discussions with small entities about its draft proposal before the panel is formally convened. These preparations ensure that the panel process can be completed during the statutorily specified 60-day period.

The product of a SBREFA panel's work is its panel report on the regulatory proposal under review. The panel completes its final report, including its recommendations, early in a rule's developmental stages, so that the agency has the benefit of the report's findings prior to publication of a proposed rule. The panel report also becomes part of the official docket for the proposed rule.

The purpose of the panel process is threefold. First the panel process ensures that small entities that would be affected by a regulatory proposal are consulted about the pending action and offered an opportunity to provide information on its potential effects. Second, a panel can develop, consider, and recommend less burdensome alternatives to a regulatory proposal when warranted. Finally, the rulemaking agency has the benefit of input from both real-world small entities and the panel's report and analysis prior to publication.

SUGGESTED SBREFA PANEL TIMELINE

The RFA provides that the formal panel process must be concluded within 60 days from the formal convening of the panel to the completion of its report. Experience has shown that the panel process works best if agencies and panel members accomplish as much preliminary work as possible before the formal convening of the panel. A suggested timeline follows, although panel members have flexibility to adjust their pre-panel work schedules to ensure the best outcome for each individual rule.

Ms. SNOWE. Madam President, I yield the floor and now also yield to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Madam President, at this point I wish to thank my colleague from the State of Maine. She has been a great leader in small business matters. She and I serve on the Small Business Committee together, and we have been working for, I guess, 3 years now on the Regulatory Flexibility Act and other related efforts to try to make sure the proper environment exists in America for small businesses to thrive and for entrepreneurs to be successful.

This amendment would make certain that key provisions of the Regulatory Flexibility Act, which require that Federal agencies fully consider during the rulemaking process the economic impact on small firms, would apply to the CFPB created in the bill offered by Senator DODD. This amendment would ensure that the newly created CFPB, when it is promulgating its rules and regulations, fully consider the economic impact those rules and regs would impose on our Nation's almost 30 million small firms, which have created 64 percent of all the new jobs in this country over the last 15 years and, undoubtedly, will drive this Nation's economic recovery.

The last point I wish to make before I make a few closing comments is the fact that we, as the Senate and as the House, should be aware and should address the fact that onerous regulations can crush entrepreneurial spirit for America's small businesses. In 2009 alone—last year—during a recession, there were close to 70,000 pages added to the Federal Register of new regulations. The annual cost of complying with Federal regulations totals about $1.1 trillion.

I am not saying we should end all regulation. I think most of these—or at least a lot of these—make a lot of sense and there are good reasons for a lot of them. But we have to be careful and we have to understand the impact that these regulations have on small businesses. We want our small businesses to thrive. We want our small businesses to be successful. If we are not careful, an agency such as the CFPB—and there are many other Federal agencies—can create rules and relations that actually choke off business opportunities for entrepreneurs and for small businesses.

So I am proud to join my friend and colleague from Maine on this amendment, and I would encourage other colleagues to look at this amendment, look at the text of the amendment. I have enjoyed working with the Senator from Maine, over the last few years, when it comes to trying to help small businesses.

With that, I yield the floor.

AMENDMENT NO. 3808

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I come to the floor to support the amendment of the Senator FRANKEN, amendment No. 3808, along with his cosponsors. This will address a major unresolved cause of the financial meltdown.

The cause which this amendment focuses on is the flawed and inaccurate credit ratings that labeled poor-quality mortgage-backed securities and high-risk collateralized debt obligations as AAA investments. AAA means they were on par, in the view of these rating agencies, with U.S. Treasurys. Investors from pension funds, to universities, municipalities, insurance companies, and more lost hundreds of billions of dollars, in part, because of these ratings.

How did the credit rating agencies get it so wrong? A big part of the answer—one that would be remedied by the Franken amendment—is the inherent conflict of interest that now permeates the credit rating industry. I am going to read from a few e-mails we uncovered and disclosed at our hearings. We had long hearings. We have been investigating this economic meltdown that we had—the financial meltdown—for about a year and a half. One of the four hearings we had was looking at the credit rating agencies—looking at Standard & Poor's, looking at Moody's—and looking through their documents, which we subpoenaed, literally, by the millions.

Listen to some of these e-mails, and we want to focus on what this conflict of interest is. If you want to get a feel for how it is that the credit rating agencies are being paid by the very people whose financial instruments they are doing the ratings of, listen to just a few of these e-mails which we got.

One Standard & Poor's analyst wrote that a ratings model that could have been released months before wasn't because we had to massage the subprime numbers; if "we didn't have to massage the sub-prime . . . numbers to preserve market share."

Inside Standard & Poor's you have their analysts saying we had to massage the numbers on this financial document. Why? Not because the rating required it or because the merits required it, but in order to preserve their market share they were massaging the subprime numbers.

Here is an e-mail from a UBS banker warning Standard & Poor's not to make it harder to get high credit ratings. This is a UBS banker, talking to the credit rating agency:

> Heard you guys are revising your residential [mortgage backed security] rating methodology. . . . Heard your ratings could be 5 notches back of mo[o]dy's equivalent. This is going to kill your [residential business]. It may force us [UBS] to do moodyfitch only cdos.

The Standard & Poors manager who received the e-mail asked a colleague, "[A]ny truth to this?" The response:

> We put out some criteria a couple of weeks ago that we will begin to use for deals closing in July. . . . We certainly did not intend to do anything to bump us off a significant amount of deals.

They are worried about their deals. They are worried about their bottom line. The country worries about whether those AAA ratings are real.

Here is another example, called Vertical ABS. A major bank asks Standard & Poor's and Moody's to rate one of these financial instruments. The bank refused to cooperate with the analysts—so the bank is not working with the analysts at Standard & Poor's and Moody's to rate a CDO. One analyst now is complaining to another, inside of this credit rating agency.

> Don't see why we have to tolerate lack of cooperation. Deals likely not to perform.

"Deals likely not to perform," one analyst inside to another. That is Exhibit 94b, by the way, if anyone wants to look it up.

Despite the analyst's judgment that financial instrument, that CDO, was unlikely to perform, both Moody's and Standard & Poor's rated it, giving AAA ratings to the four top levels of that particular CDO. What happened? Six months later both agencies downgraded that financial instrument and it later collapsed.

One more example. In June 2007, a Moody's analyst sent an email to a Merrill Lynch banker stating that he could not finalize a rating until the issue of fees was resolved. The Merrill Lynch banker responded: "We are okay with the revised fee schedule for this transaction. We are agreeing to this under the assumption that this will not be a precedent for any future deals and that you will work with us further on this transaction to try to get to some middle ground with respect to the ratings." Moody's assured the Merrill analyst that its deal analysis was independent from its fees, but it is clear as glass what is going on here. That is Exhibit 23 from our hearing.

It is past time to tackle the conflicts problem. This bill is the right legislation, and the Franken amendment takes the problem head on. It would direct the SEC to create a self-regulatory organization, a clearinghouse or SRO, to develop a method of assigning credit rating agencies to provide initial ratings to structured finance products. The entity would have the discretion to develop its own methodology for assignment—it could use a rotating system or a formula, just as long as the issuer doesn't get to choose the rater. It wouldn't set prices or issue ratings, it would just act as an intermediary between issuers and raters. In addition, it could increase the number of assignments to a particular credit rating agency, based on that agency's past performance, or decrease assignments in the case of poor performance, creating a key incentive for accurate ratings.

The amendment would also permit issuers to go to whichever credit rating agency they wanted for second or third ratings.

I commend Senator FRANKEN for this far-sighted effort to correct the conflicts problem. If we don't fix it now, we are going to be right back here with another financial crisis fueled by inaccurate, conflicts-ridden credit ratings.

I want to note that, while this amendment attacks the most important problem with CRAs, there are a number of other problems that also need to be addressed in the credit rating agency area. To me, the most important remaining problem is eliminating the current statutory ban that prevents real SEC oversight. This is what current law says right now in 15 U.S.C. section 78o–7(c)(2):

> Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.

To me, that statutory ban against looking at the substance of a rating or the procedures or methodologies used to produce that rating is absurd. It ought to be eliminated. We can't give the SEC the responsibility for overseeing credit rating agencies and then prevent them from looking at the substance of a rating or the procedures or methodologies used to produce that rating.

I have introduced an amendment with Senator KAUFMAN that would eliminate that statutory provision and direct the SEC to set standards and exercise oversight of credit rating agency procedures and methodologies, including qualitative and quantitative data and models, to ensure that the ratings have a reasonable basis in fact and analysis. Given the overwhelming evidence at our hearing about basic flaws in the rating models, how the models were tweaked to help clients, and how the models were ignored when agencies wanted to inflate ratings, it defies common sense to prohibit the SEC from looking at the models and the procedures.

The Levin-Kaufman amendment would also preclude the credit rating agencies from relying on due diligence that they had reason to believe was wrong. Our investigation showed that the credit rating agencies knew that they were relying on bad information because of the rampant fraud and weak underwriting standards, and this led to bad ratings. Again, this is a common-sense fix, that we hope to offer later or have incorporated into a managers amendment.

In the meantime, I urge my colleagues to vote in support of the much-needed Franken amendment to eliminate the inherent conflicts of interest that now infest the credit rating industry.

I know the leader is trying to get on with votes, but I want to alert colleagues that our hearings, based on a 1½ year investigation, looked at one of the major causes of this collapse. One of the major causes was because our credit rating agencies were interested in their bottom lines instead of getting accurate ratings for the financial instruments, which our universities, our pension funds were buying.

The Franken amendment corrects it. It requires that this conflict of interest be ended. It does not just study it, it requires an end to the conflict of interest by allowing the Securities and Exchange Commission to identify an independent intermediary who will put a process in place to end this conflict of interest. I commend Senator FRANKEN for his amendment.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, I appreciate my friend from Michigan yielding the floor. I appreciate the statement. I appreciate the work the Subcommittee on Investigations has done and I appreciate the work his Permanent Subcommittee on Investigations has done. They have done remarkably good work.

I ask unanimous consent the Senate now proceed to vote in relation to the following amendments in the order listed; that no amendments be in order to any of the amendments covered in this agreement: Franken amendment No. 3991; LeMieux amendment No. 3774, as modified, and as a side-by-side to No. 3991; provided further that after the first vote in the sequence, the remaining vote be limited to 10 minutes; and that there be 2 minutes of debate equally divided and controlled prior to the second vote; further, that at the conclusion of these votes, Senator KAUFMAN be recognized for a period of 5 minutes as in morning business; that at the conclusion of his remarks, the Senate then stand in recess until 2 p.m.; that at 2 p.m. there be a period of morning business, in which Senators MENENDEZ, LAUTENBERG, and NELSON of Florida be permitted to speak on the subject of S. 3305 and make a unanimous consent request upon the subject; that immediately thereafter the Senate resume the consideration of S. 3217 and there be 5 minutes debate remaining in order to the Sessions amendment No. 3832, with the time equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Sessions amendment.

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

AMENDMENT NO. 3991

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the Franken amendment.

Mr. KYL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 146 Leg.]

YEAS — 64

Akaka	Franken	Murray
Baucus	Gillibrand	Nelson (FL)
Begich	Graham	Pryor
Bennet	Grassley	Reid
Bingaman	Hagan	Risch
Boxer	Harkin	Rockefeller
Brown (MA)	Inouye	Sanders
Brown (OH)	Johnson	Schumer
Burris	Kaufman	Shaheen
Cantwell	Kerry	Snowe
Cardin	Klobuchar	Specter
Carper	Kohl	Stabenow
Casey	Landrieu	Tester
Cochran	Lautenberg	Udall (CO)
Collins	Leahy	Udall (NM)
Conrad	Levin	Warner
Crapo	Lincoln	Webb
Dorgan	McCaskill	Whitehouse
Durbin	Menendez	Wicker
Ensign	Merkley	Wyden
Feingold	Mikulski	
Feinstein	Murkowski	

NAYS—35

Alexander	DeMint	Lugar
Barrasso	Dodd	McCain
Bayh	Enzi	McConnell
Bennett	Gregg	Nelson (NE)
Bond	Hatch	Reed
Brownback	Hutchison	Roberts
Bunning	Inhofe	Sessions
Burr	Isakson	Shelby
Chambliss	Johanns	Thune
Coburn	Kyl	Vitter
Corker	LeMieux	Voinovich
Cornyn	Lieberman	

NOT VOTING—1

Byrd

The amendment (No. 3991) was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

VISIT TO THE SENATE BY PRESIDENT HAMID KARZAI OF AFGHANISTAN

Mr. KERRY. Madam President, we are currently being visited in Washington by the President of Afghanistan. He has been in the Senate engaged in a luncheon with Senators. I ask unanimous consent that the President of Afghanistan, Hamid Karzai, be permitted the privilege of coming on the floor to be greeted by the Senate, together with his Ministers who are here for a series of important meetings.

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

[Applause.]

AMENDMENT NO. 3774, AS MODIFIED

The PRESIDING OFFICER (Mr. BURRIS). Under the previous order, there are 2 minutes of debate equally divided on the LeMieux amendment No. 3774.

Who yields time?

The Senator from Florida.

Mr. LEMIEUX. Mr. President, this Chamber just supported and voted for the Franken amendment. My measure goes further. My measure says we are going to write these rating agencies out of the law. We should not reward bad behavior. There are other ways to determine creditworthiness. There will be a 2-year period to figure that out. There is a better way to solve this problem. These rating agencies were responsible for this debacle.

I yield the remainder of my time to my colleague, Senator CANTWELL.

Ms. CANTWELL. Mr. President, this language was also offered in the House by our colleague, BARNEY FRANK. It is appropriate that we don't require Federal agencies to just rely on these rating agencies. It is critical that agencies such as the FDIC and the Comptroller of the Currency use their discretion to come up with appropriate standards of creditworthiness and not rely on the monopoly of rating agencies. I hope my colleagues will support the amendment.

The PRESIDING OFFICER. Who yields time in opposition?

The Senator from Connecticut.

Mr. DODD. Briefly, my concern with this amendment is we are replacing the rating agencies without having anything in their place. I urge my colleagues to vote no and yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. ENSIGN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

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

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 38, as follows:

[Rollcall Vote No. 147 Leg.]

YEAS—61

Alexander	Crapo	Levin
Barrasso	DeMint	Lincoln
Bayh	Dorgan	Lugar
Begich	Ensign	McCain
Bennet	Enzi	McCaskill
Bennett	Feingold	McConnell
Bond	Graham	Menendez
Boxer	Grassley	Murkowski
Brown (MA)	Gregg	Murray
Brownback	Hatch	Reid
Bunning	Hutchison	Risch
Burr	Inhofe	Roberts
Cantwell	Isakson	Sanders
Chambliss	Johanns	Sessions
Coburn	Kaufman	Shelby
Cochran	Klobuchar	Snowe
Collins	Kyl	Specter
Corker	Landrieu	
Cornyn	LeMieux	
Thune	Vitter	Wicker
Udall (CO)	Voinovich	Wyden

NAYS—38

Akaka	Gillibrand	Nelson (FL)
Baucus	Hagan	Pryor
Bingaman	Harkin	Reed
Brown (OH)	Inouye	Rockefeller
Burris	Johnson	Schumer
Cardin	Kerry	Shaheen
Carper	Kohl	Stabenow
Casey	Lautenberg	Tester
Conrad	Leahy	Udall (NM)
Dodd	Lieberman	Warner
Durbin	Merkley	Webb
Feinstein	Mikulski	Whitehouse
Franken	Nelson (NE)	

NOT VOTING—1

Byrd

The amendment (No. 3774), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

STUTTERING AWARENESS WEEK 2010

Mr. KAUFMAN. Mr. President, I rise today to mark National Stuttering Awareness Week.

Most of us take for granted the ability to speak comfortably and fluently. All we have to do is think of words, and they come out clearly. Introducing ourselves in meetings, holding conversations over the phone, ordering meals in restaurants—all of these are situations avoided by many people who stutter as a result of being self-conscious.

Approximately 3 million Americans stutter. Since President Ronald Reagan's proclamation in 1988, the second week in May has been observed as National Stuttering Awareness Week. It provides an opportunity for all of us—for all of us—to learn more about stuttering and ways to help those who stutter.

We have all encountered people who stutter. Contrary to popular misconception, stuttering is not a result of nervousness or emotional problems. It is not the fault of those who do it or of their families and friends. Stuttering is a speech disorder that is neurological and physiological. The cause to this day remains unknown, but a recent study indicates the likelihood that stuttering may be genetic.

While there is currently no cure, there are many treatment options available. Children usually begin stuttering between the ages of 2 and 5, and parents should not wait to seek treatment from a doctor or speech language pathologist. Early therapies have been shown to help reduce stuttering.

Those who continue to stutter in adulthood often face social and economic difficulties. Unfortunately, according to a 2009 study by the National Stuttering Association, 40 percent—40 percent—of adults and teenagers who stutter said they were denied a job or denied a promotion or denied a school opportunity as a result. Furthermore, 8 out of 10 children who stutter have reported being bullied and teased.

I am not just speaking about stuttering today because it is an important issue for so many Americans, and I am not just speaking about it because my friend and predecessor, JOE BIDEN, the Vice President, has shared his story—his incredible story—of overcoming stuttering. This is a personal issue for me because stuttering runs in my wife's family, and I have been around people who stutter for many years.

When my wife Lynne was a child, her parents took her to a therapist for her stuttering, who recommended immobilizing her right arm with a solid tube. At that time, the theory was that if she were forced to learn to write using her left hand instead of her right, she could somehow be distracted from her stuttering. Suffice it to say, the tube did not work. She is just one example of what stutterers have historically had to endure. Thankfully, today there are great treatment options available from licensed professionals.

I am glad—very, very glad—there are great organizations, such as the National Stuttering Association and others, that are raising awareness on this important issue. There are important steps all of us can take to help those who stutter feel more confident and comfortable speaking. I hope people will go out and learn more about what they can do themselves, especially if they know someone who stutters.

In recognition of National Stuttering Awareness Week, I have submitted a resolution to mark this observance. I am proud to say I am joined by 27 of my colleagues in sponsoring this resolution supporting the goals and ideals of National Stuttering Awareness Week 2010, and I thank them for their support. They include Senators BARRASSO, SHERROD BROWN, BURRIS, CARDIN, CARPER, CANTWELL, CASEY, CORNYN, DURBIN, ENZI, GREGG, HAGAN, ISAKSON, LEMIEUX, LEVIN, MIKULSKI, PRYOR, REED, RISCH, SESSIONS, SHAHEEN, SNOWE, STABENOW, TESTER, WARNER, WHITEHOUSE, and TOM UDALL.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 524, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 524) supporting the goals and ideals of National Stuttering Awareness Week 2010.

There being no objection, the Senate proceeded to consider the resolution.

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 524) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows: