S. RES. 524

Whereas an estimated 3,000,000 Americans are affected by stuttering;

Whereas stuttering is a communication disorder experienced by children and adults alike;

Whereas individuals who stutter frequently experience embarrassment, anxiety about speaking, and physical tension in their speech muscles;

Whereas many different types of stuttering exist, and the symptoms of stuttering can range from mild to severe;

Whereas the cause of stuttering is unknown, but research suggests stuttering may be genetic;

Whereas stuttering commonly begins in children between the ages of 2 and 5;

Whereas parents are encouraged to consult with pediatricians or qualified speech-language pathologists as soon as stuttering becomes apparent in a child in order to take advantage of early-intervention therapies;

Whereas it is known that stuttering is not—

(1) a nervous disorder;

(2) the result of emotional problems; or

(3) the fault of the individual who stutters or the family of that individual;

Whereas a 2009 survey by the National Stuttering Association found that—

(1) 40 percent of adults and teenagers who stutter feel that they have been denied a job, a promotion, or a school opportunity as a result of stuttering; and

(2) 8 out of 10 children who stutter report being bullied or teased;

Whereas many individuals who stutter do not have access to qualified speech-language pathologists or helpful resources;

Whereas several treatments for stuttering exist that can help individuals who stutter learn to speak more easily and gain confidence in themselves and their ability to communicate effectively;

Whereas organizations like the National Stuttering Association have been working for many years to raise awareness about stuttering, the effect stuttering has on the lives of individuals who stutter, available treatment options, and research being conducted to investigate the causes of stuttering;

Whereas, on April 13, 1988, the President of the United States signed a proclamation designating the week of May 9 through 16 of that year as National Stuttering Awareness Week;

Whereas since 1988, individuals who stutter and the families and friends those individuals, as well as medical practitioners, speech language pathologists, researchers, and others have marked the second week of May as National Stuttering Awareness Week; and

Whereas the goals of the National Stuttering Awareness Week 2010 include increasing awareness among the people of the United States about stuttering and educating the people of the United States about ways to improve the lives of those who stutter: Now, therefore, be it

*Resolved,* That the Senate—

(1) supports the goals and ideals of National Stuttering Awareness Week 2010; and

(2) encourages all of the people of the United States to learn more about stuttering and ways to help individuals who stutter feel more confident and comfortable speaking with others.

Mr. KAUFMAN. Thank you, Mr. President. I yield the floor.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2 p.m.

Thereupon, the Senate, at 1:23 p.m., recessed until 2 p.m. and reassembled when called to order by the Presiding Officer (Mr. BURRIS).

## RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from New Jersey.

UNANIMOUS-CONSENT REQUEST—S. 3305

Mr. MENENDEZ. Mr. President, I rise to discuss legislation I have offered with some of my colleagues here: The Big Oil Bailout Prevention Act. It is legislation that would make absolutely certain big oil polluters pay for oilspills and the consequences of those spills, and not the American taxpayer, not small business owners, not States or the Federal Government.

For some time now we have been told by big oil companies that what is happening in the gulf simply couldn't happen; that it was impossible; that multiple redundant safety systems were in place to prevent it. Well, we have learned there is no such thing as too safe not to spill. Supposedly, the unthinkable has happened, and not only that, but it has happened before.

Last year in Australia, the Montara oilspill began on August 21. By some estimates, the spill sent over 80,000 gallons of oil a day into the waters off the coast of Australia. It was months before they could staunch the flow of oil, and it resulted in one of the largest environmental disasters in Australian history. We should have learned from that experience. But, no; we now have the challenge before the Nation today. In comparison, the deepwater well that is leaking in the gulf is sending nearly 210,000 gallons of oil a day into the gulf; over twice the flow from the Australian spill; several million gallons already; and just like the Australian spill, it could take months to drill the relief well. Two disasters in 1 year, yet big oil companies say over and over again that the technology was simply so safe, a spill such as this could never happen.

The reality is much different than industry claims. There simply is no safety system too safe to fail and no rig that is too safe not to spill. There is no doubt the damages that will be caused by this spill will be enormous. Unfortunately, Federal law sets a $75 million limit on how much an oil company has to pay for damages—not the cleanup; that, they are clearly going to have to pay—but for the damages. So BP would not have to pay more than a total of $75 million to small businesses from lost revenues for fishing, tourism, damage to the environment, the coastline, or the lost tax revenues of State and local governments.

That is why, along with Senators NELSON and LAUTENBERG, I have introduced the Big Oil Bailout Prevention Act to raise the liability cap for offshore oil well spills from $75 million to $10 billion. That will make sure that taxpayers, small business owners, States, and local and Federal governments will not bail out big oil polluters for this spill or any other.

This spill should serve as a rallying cry for holding big oil accountable for the damages of this disaster and any future one, but it should also be a rallying cry to rethink expanding offshore drilling in places that are not already open to offshore drilling, such as my home State of New Jersey. Instead of expanding drilling and doubling down on 19th century fuels, we should be investing in a new 21st century green economy that will create thousands of new jobs, billions in new wealth, and help protect our oil and water from pollution.

We will revisit that debate soon enough, but for now I think we all should be able to agree that when an oil company causes damage by spilling oil into American waters, the oil company bears the responsibility to pay for the damage it caused. My mom taught me growing up that when you mess up, you clean up, and you are responsible for it. Oil companies should get that message as well. This will help make gulf communities whole and it will provide a stronger safety net for our communities along places such as the New Jersey shore who are looking warily at future plans for drilling along the east coast.

With that, Mr. President, I plan to ask unanimous consent on this issue, but first I wish to yield to my other colleagues who wish to speak on this issue as well. I yield 5 minutes to Senator LAUTENBERG and then 5 minutes to Senator NELSON.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Thank you, Mr. President. I thank my colleague for initiation of this bill. It will protect the American taxpayers and say to big oil: You did it, you pay for it; that is the way it goes.

I was lucky. I had two lifetime experiences that have stayed with me. One was growing up in a blue-collar family where we worried almost daily about how we would pay our bills. My father was sick for 13 months before he died at age 43 and we owed everybody—the pharmacist, the hospitals, the doctors. No insurance. No protection for the average person. Then I was fortunate enough to be able to be engaged in a business with two other fellows who had success beyond our wildest dreams. The company we started with nothing now has 46,000 employees in 26 countries, headquartered in New Jersey, of course.

I learned something in those experiences. I learned that if you fouled up, you were responsible for cleaning up, as mentioned by Senator MENENDEZ.

The American people want those responsible for doing dirt to clean up that mess, just as families do in their own lives. But the oil executives and

their lobbyists don't see things that way. They want to continue gouging the public whom they have by the tank and by the throat. They want to continue to accrue billion dollar profit gains year after year and leave the American family, the average American family, stretching daily to pay their bills.

Look at this. The profits of the big oil companies in the last quarter alone are so astounding they are almost unimaginable. BP had a $5.6 billion profit quarter, a gain of $3.2 billion over last year when America was still in some significant economic problems. Exxon, by way of example, had a $6.3 billion profit quarter. It goes beyond, again, the wildest imagination.

We have to draw the line. Our Big Bailout Prevention Act would raise the damage cap for all oilspills from a measly, a pittance, $75 million. My colleagues heard me. We compared it to a $5.2 billion quarter—not a year, a quarter—and they want to hide behind a $75 million cap on damages. Well, fortunately, we are here to say to the average working family: No, we are not going to let them get away with your money. We are not going to let them get away with walking away from this, hiding behind that ridiculous cap. It could be called in the vernacular a spit in the ocean, $75 million. So we can't afford to let those companies bail out, especially when workers' lives are at stake, the gulf environment hangs in the balance, and coastal communities are at risk.

I challenge my colleagues, especially those who on the other side of the aisle have had a habit of saying no. If you want to say no to the taxpayers, say it out loud. Say it out loud. But don't try to protect the oil companies that are stuffing profits so much that they are gorging themselves on it. They are like pigs at the trough.

The United States has seen too many oil spills, more than any other country in the world. It is time to end the special favors for big oil, get on the side of the American people, and make sure that when a catastrophe occurs, the American taxpayers don't get the bill for the oil companies' carelessness and recklessness.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, if this gusher continues—and we hope and pray that by some miracle there is going to be some capping at the seabed of this well that is spewing at least 5,000 barrels of oil a day—but if this thing continues and it doesn't stop until they get the relief well, which is another 3 months—one coming from one side, one coming from the other side, another 3 months—it is going to cover up the gulf coast. Then, as soon as the winds shift from the north coming south, it is going to take that big spill about 90 miles to the south where the loop current is, which is a current that comes up the west side of the Gulf of Mexico off the Yucatan Peninsula, into the northern Gulf of Mexico, and because of the rotation of the Earth, it causes it to come around to the east and then flows south. That loop current comes right around the Florida Keys and becomes the gulf stream. It hugs the Florida Keys and the southeast coast of Florida—and when I say hug it, I mean right off the coast—all the way up to the middle of the peninsula of Florida at Fort Pierce. There it leaves the coast a little bit, but follows the coast all the way up to Cape Hatteras, NC, where it leaves the coast of the United States and goes across the Atlantic to Scotland. It is the old gulf stream that the Spanish galleons used to catch going back to Europe from their discoveries in the New World.

Come back to the wind shifting. The wind shift from the north coming south brings that spill down to the loop current. Last weekend, I had testimony by ocean specialists from the University of Miami who said that once that oil gets in the loop current, it will be at the Florida Keys in 10 days. Eighty-five percent of the live coral reefs of the United States are in the Florida Keys. The gulf stream goes right by those delicate coral reefs. The gulf stream comes up and goes right by Miami, Key Biscayne, Fort Lauderdale, West Palm Beach, and as far north as Fort Pierce, which is only about 10 miles offshore. Can my colleagues imagine what this is going to do in economic damages?

We have been fortunate thus far that the winds have been from the east to the west—fortunate for Florida, unfortunate for Louisiana—because that oil is off all of those delicate bays and estuaries where so much of the Gulf of Mexico marine life is spawned. Sooner or later the winds are going to shift, and they are going to go from the west to the east. It is going to take that oil down there off the world's most beautiful beaches and those bays and estuaries where so much of marine life is spawned that happens to be off of Florida.

Let me tell you what the President of the Hotel and Restaurant Association told me 2 days ago. This is the Hotel and Restaurant Association of Florida. He said he had called a number of the hotels on the northwest gulf coast of Florida. This is the beginning of their season. He said normally they would be 85 percent occupied now. Their occupancy is 18 percent. Can you imagine the economic impact of this oilspill?

What about the economic impact of the lost sales tax to the State and local governments, the counties, and the cities that if they do not have all these tourists coming to the beach, they are not buying things, and there is less revenue coming into the States.

We start to see the picture of the enormous economic damage, well over and above the cost of the cleanup. That is why an artificial figure of—$75 million cap is so artificially low. I am not sure $10 billion is going to be enough as a cap, but it was a target. Let's hope it never gets to that. Thus far, nothing has worked because those backoff safety systems did not work.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, in view of the fierce urgency of now, there is harm already being levied upon these communities, commercial fishermen, tourism, and others, and because $75 million is less than 1 day of BP profits, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 3305, the Big Oil Bailout Prevention Liability Act of 2010, and that the Senate proceed to its consideration; that the bill be read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Mr. President, I do reserve the right to object, and I would like to take a few minutes this afternoon to explain why I will be objecting to this unanimous consent request.

I sat and listened to my three colleagues. I have great empathy for the concern they share. I share it as well. I represent a State that was devastated a little more than 20 years ago when the Exxon Valdez hit the rocks. We lived with oil on our beaches. We know the economic impact. We know the social impact that a spill can cause. We want to all be working together to ensure that whether it is the devastation we see in the hotels in Florida or whether it is the loss to the fishermen, that we ensure those who are responsible pay for the economic loss, for the damages that are incurred. We are with my colleagues on this issue.

The reason I stand and object at this point in time is I do not believe that taking the amount of the liability cap from $75 million, where it is currently, to $10 billion in strict liability, 133 times the size of the current strict liability limit, is where we need to be right now.

I am not just the only one who suggests that maybe we need to understand a little bit better as to how much we might need to look at raising the limit. The administration, just yesterday in their oilspill legislative package, has proposed an effort. Their proposal, would raise the caps on liability for the responsible parties. ''The administration looks forward to working with Congress to develop levels for the various caps that provide for substantial and proportional increases.''

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

Ms. MURKOWSKI. If the Senator will allow me to conclude, I will be happy to yield.

I do think we need to look at the liability cap and consider raising it, but

I think we need to be careful about unintended consequences of picking a number, $10 billion.

Let me outline what I am talking about when I say ''unintended consequences.'' This has been named the Big Oil Bailout Prevention Liability Act. I think we have some irony in that what this would do is give all of America's offshore oil resources to the biggest of big oil. It would be impossible, or perhaps close to impossible, for any energy company that is smaller than the supermajors, smaller than the national oil companies, to operate in the OCS. Mr. President, $10 billion in strict liability would preclude their ability to obtain financing, to obtain the bonds or insurance for any exploration.

Look at who is producing in the offshore. It is the independents. They produce two-thirds of the natural gas, one-third of the oil. If we move forward in raising this liability cap to $10 billion, the only companies that are going to be able to self-insure against this level of strict liability are the national oil companies, the supermajors. And we all know who they are. There is the Saudi Aramco. There is Exxon. There is the Chinese National Oil Company and, of course, British Petroleum.

It has been mentioned a couple different times now that we need to ensure that BP, as the responsible party, pays. The comment has been made that $75 million is not going to be sufficient.

What people need to remember is that the cap on the strict liability only applies to what the responsible parties have to pay back in the context of OPA, the Oil Pollution Act. The law expressly—expressly—allows for unlimited damages in State courts where compensatory and punitive damages are already being sought. As we speak, there have been numerous claims filed. Back on April 28, the Louisiana shrimpers filed a class action lawsuit against BP, Transocean, Halliburton, and Cameron for their economic losses, alleging negligence and seeking both economic and punitive damages.

The State of Florida on May 10 announced it had assembled a legal team to file suit against BP. Then just 2 days after that, on May 12, the fishermen filed another such lawsuit in Mississippi, recognizing that, again, they have the ability to go after unlimited damages in those forums.

Again, I am open to raising the liability cap, but we have both a directive from the White House and the American people who, I believe, still support offshore drilling. We need to adjust these liability caps in a way that does not give the biggest oil companies a monopoly over the entire OCS.

Mr. President, I object to the unanimous consent request at this time.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. We are now supposed to turn to the Sessions amendment.

Mr. MENENDEZ. Is that by order?

The PRESIDING OFFICER. It is by order.

Mr. MENENDEZ. Is debate on the Sessions amendment now available?

The PRESIDING OFFICER. There is 5 minutes of debate in order on the Sessions amendment, followed by a vote.

Who yields time?

The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask unanimous consent—I think this has been discussed on both sides—that we have up to 30 minutes equally divided on this amendment before the vote.

The PRESIDING OFFICER. Is there objection?

Mr. MENENDEZ. Reserving the right to object, and I am not inclined to object, what is the request? Thirty minutes instead of five minutes?

The PRESIDING OFFICER. Thirty minutes equally divided.

Is there objection? Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, if the distinguished Senator from Alabama will yield for a moment, since I chose not to object, would he allow me to take 2 minutes of our time just to follow the sequence of the previous discussion so I will not interrupt the essence of his amendment?

Mr. SESSIONS. I have no objection.

Mr. MENENDEZ. I thank my distinguished colleague. I appreciate what my colleague from Alaska had to say. Here are a couple of problems with it. First of all, when we call these companies ''independent drillers,'' some of these independent drillers who are portrayed as small mom-and-pop, some of them are like $20 billion companies. So they are not quite the mom-and-pop view we have of small mom-and-pop businesses, No. 1.

If you drill, you need to be able to pay for the damages because otherwise, imagine if this particular spill had been done by a ''small company.'' Then who would be responsible just because they were too small? The risk is what has to be calculated.

Also I simply say, I have a problem saying the administration did not say $10 billion is not the right figure by any stretch of the imagination. Quite the contrary. They said they are for lifting the liability cap. When BP makes $5.6 billion in 3 months, when the top five companies make $25 billion in 3 months, $10 billion is a drop in the bucket.

Finally, the suggestion that those who are harmed—the fishermen, the commercial fishermen, the tourism companies, and others—ultimately will be in a position to make claims in State court, I know my distinguished colleague from Alaska knows what happened in the Exxon Valdez case. That took 20 years for claimants to try to get their just response. Some of them fell off the way because they just could not keep hanging in there, and they lost everything.

I do not want Americans to have to wait 20 years to get their response to what an oil company did. Lifting the liability caps takes care of that circumstance so you do not have to litigate in State courts and then go all the way to the Supreme Court and get turned down at the end of the day.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Alabama is recognized.

AMENDMENT NO. 3832

Mr. SESSIONS. Mr. President, I appreciate the efforts of those who have worked on this financial responsibility bill. I wish to say, however, that I do not believe they have reached a successful conclusion, one that is principled and lawful in describing and mandating how a company that cannot pay the bills should be dissolved.

Throughout America, hundreds of thousands of businesses every day that are unable to pay their bills seek protection, as they often call it, in bankruptcy. All the claims against the company are stayed. A bankruptcy judge, skilled in these matters, in an open, public hearing, with witnesses under oath, determines whether the company has a realistic chance to survive and help structure the bankruptcy reorganization so it can survive, or it determines that the company is unable to survive, that it is unlikely they could pay off their creditors and most likely would only add to the debt, and they close the company down.

This is and has been the law in America since virtually the founding of the Republic. It is something that is principled, well settled as to how it occurs.

This legislation is the exact opposite, in a sense, it institutionalizes the TARP process. Only now, they will not have to come to Congress, as they did this last time, over how to dissolve some big company. They will have too much power, in my view, in a sealed proceeding—not public, not under oath—too much like the last time when the Secretary of the Treasury meets in private meetings with bankers and doles out billions and billions of dollars, puts $100 billion, $80 billion in an insurance company, AIG, all without any accountability, all without any oversight, all without the kind of integrity that is the essence of the American legal system.

I am concerned about it. My amendment would make bankruptcy more usable for large, complex cases that have derivatives in it. It would allow the cases to be brought in large bankruptcy court areas so that there is sufficient expertise and personnel to handle it, and it would deal with the problem of derivatives that some have raised and gives the courts more flexibility to do that. I think it is the better approach. It is our historic, fair approach. The American people will know the same judgment that falls on them and their small businesses will fall on the big boys.

I appreciate the opportunity to make these brief remarks. I see Senator CORKER and Senator KYL are here, and I will yield.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I thank my colleague from Alabama for the work he has done in trying to craft a bankruptcy title that more fully suits financial institutions.

This body is an interesting body because you don't have the chance to do anything but vote yes or no on particular pieces of legislation. Just last week, the Republicans—all Republicans—had a filibuster while they waited for the leaders on each side of the Banking Committee to reach a compromise, and it was supported, I think, 94 or 96 to 1. That compromise was on title II, the orderly liquidation title. So here we have an amendment that basically is to strike something this body, in essence, adopted 96 to 0.

I spent a lot of time on that title myself working with MARK WARNER. I appreciate greatly the partnership we had working on a resolution title. I thank Senator SHELBY and Senator DODD for the work they did to try to improve that title, and we held out on this side until that occurred. So now we have a vote, the Sessions vote, that would strike that.

I wish to say, I am at the point in this bill where I am under no illusion that the bill is going to get any better. I know there are a lot of messaging amendments that will begin to take place, and many of us will have the opportunity, through our votes, to express how we may feel about certain aspects of this bill. When Senator WARNER and I were working on the resolution, it was with the intent that bankruptcy be the default. That would be the place where almost every financial institution would go. There may be that rare instance—that rare instance—when resolution was necessary, but it would be due to some systemic risk. It was our hope the Judiciary Committee would actually develop a title that would allow that to happen, but it did not take place.

As a matter of fact, many of the judicial reviews that Senator WARNER and I wanted to see take place in the resolution title did not occur. There is no judicial review overpayments by the FDIC or those kind of things that we would like to see as part of the rule of law in this country. Well, let me not speak for him—that I would like to see.

What has happened is, we have developed a resolution title that was to be used only very rarely because we had hoped a bankruptcy title would be developed that financial companies would go into. That hasn't happened. So what does that mean? That means it is far more likely—far more likely—the resolution title would actually be used instead of bankruptcy.

The fact is, I am under no illusion that Senator SESSIONS' amendment is going to pass. As a matter of fact, I doubt seriously the amendment is going to pass. My intent, in voting for the Sessions amendment, is not to say I disavow the work Senator SHELBY and Senator DODD did. It is not to disavow the work Senator WARNER and I spent a great deal of time working on. It is to say I do believe, as part of this bill, we should have done the work necessary to make sure there was a bankruptcy title that would work for financial institutions. That has not been done.

I wish to thank Senator SESSIONS for giving us the opportunity to voice the fact that we believe the Bankruptcy Code in this country should be made so it works far better for financial institutions. I would like for this to have been melded in a little differently than the way the Senator is putting it forth, but I wish to thank him for his work and to signify my intent to support his amendment on the basis of the fact that the bill, the way it has been crafted, should have respected judicial review more than it has been; and secondly, the fact that we should have, as part of this thoughtful process, done something in this bill to greatly expand the ability of the judicial system to deal with a large, highly complex financial company.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to briefly echo the sentiments of both Senators SESSIONS and CORKER. They have both given a great deal of thought to the problems here.

These are not political issues that capture the imagination of either the news media or the American people, but they are very important, and they are both working to solve a difficult problem in a very reasonable way that recognizes the importance of the rule of law.

One of the great distinguishing characteristics of the United States versus some other countries, many other countries in the world, is that we follow a rule of law. It makes commercial dealings, and therefore expansion of our economy, so much easier when everyone knows what the rules are and they can plan based upon those rules.

One of the bodies of law that is most contributory to that is our Bankruptcy Code. For over a couple centuries, we have had a process and a set of rules that governs what happens when businesses can't pay their debts and have to go out of business or be reorganized. Those rules, in effect, set the rules of the road—the things people can count on both at the time a business gets into trouble but also far before that, when people are making decisions on whether to lend to or invest in a business.

They know, for example, if they are going to be a secured creditor of a business that, in the event something goes wrong, they will be quite high on the list of businesses that get paid. If they are an unsecured creditor, they are going to be lower on that list. They will probably get more for their lending because they are unsecured, but they will be lower on the list. So people can calibrate the kind of equity investment or lending they want to engage in based upon what they know the rules will be in the event something goes wrong.

If you do away with that and just say that in the event something goes wrong, a government bureaucracy—and I don't use that word pejoratively—a group of government employees in an agency are going to decide that something needs to be done and decide what that is and it is basically unconstrained by any set of rules and practices such as the Bankruptcy Code has provided, that is scary to folks. It is going to mean we will have less lending and capital formation for businesses because they are going to be uncertain about the rules of the road. Secondly, it is going to create the potential for unfairness and, frankly, poor decisions if companies do have to get unwound.

So what we are giving up by not adopting an amendment such as the Sessions amendment is certainty, predictability, and decades of understanding of what the law is in the event something such as this occurs.

What Senator CORKER has said is also true; that these financial institutions may present some very unique circumstances, and some of them may be so large and so potentially affecting of other institutions that it may be that the relatively slow pace of bankruptcy—and I don't mean to suggest it is very slow—may mean that we need something more quickly to intervene and ensure that whatever happens with this particular business, it doesn't adversely affect others or that there may be other reasons to have a more immediate infusion of some intervention. I will put it that way.

It was for that reason that all of us supported the Dodd-Shelby compromise. Our view was, as Senator CORKER said, it is better than the underlying bill, although I don't think it satisfied at least the three of us that it went far enough in creating these rules of predictability. The Sessions amendment, as has been described, does that.

I think Senator CORKER has it exactly right; we are under no illusion this will replace the Dodd-Shelby compromise. In that respect, we have to just hope, in the further process of legislating on this bill, that compromise can be informed by additional debate and discussion and maybe improved. By supporting the bankruptcy-related amendment of Senator SESSIONS, what we are trying to do is to send the message that we compliment Senators DODD and SHELBY for what they did, but a little more dose of the predictability and certainty and judicial process of bankruptcy would be very welcomed in this process.

Therefore, to the extent that we can have a good vote on this amendment, perhaps they and others will look to other ways in which they can continue to modify this language for the very best result we can achieve. This is a very important issue. It deserves our very best attention.

I wished to compliment again both Senator SESSIONS and Senator CORKER, two of the very thoughtful Members of this body, for the way they have approached this issue, without any political consideration but simply to try to make this process better, fairer, more predictable and, therefore, better for the businesses involved and for the economy of the United States.

Mr. SESSIONS. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. One minute fifty-five seconds.

Mr. SESSIONS. Mr. President, I wish to share a few things briefly before we move into the vote. William Kristol today raised a fundamental question in a blog site regarding the way this bill is written when he said:

This is a giant power grab for the FDIC and Treasury, who could use their new powers to tug the strings of our country's largest financial institutions like a puppeteer.

I would also refer to a letter of April 12, from the Judicial Conference of the United States. This is a thoughtful letter in response to an inquiry from PATRICK LEAHY, the Judiciary Committee chairman, in which they express grave concerns about the legislation. Among other things, the Judicial Conference says:

The legislation does not envision objection, participation, or input from the bankruptcy creditors (whose rights will be affected) in the course of appointing the FDIC as receiver. Indeed, the legislation proposes to deal with this petition in a sealed manner, only the Secretary and the affected financial firm would be noticed and given the opportunity of a hearing.

I think that is insufficient.

Finally, I received a letter today from a number of superb and well-known economists, legal scholars and leaders—Darrell Duffie, Dean Witter Distinguished Professor at the Graduate School of Business, Stanford University; Tom Jackson, Distinguished University Professor, University of Rochester; Kenneth Scott, Parsons Professor Emeritus of Law and Business, Stanford Law School, George P. Shultz, Distinguished Fellow, Hoover Institution, David Skeel, Professor of Corporate Law, University of Pennsylvania and John B. Taylor, Professor of Economics, Stanford University.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I ask unanimous consent for 30 additional seconds.

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

Mr. SESSIONS. Mr. President, these individuals put forth in detail their concerns about this procedure, and they point out why bankruptcy is necessary, because the rule of law applies and the process is more defined in this appropriate way. They tell us, with much care, why my amendment would be the best way to solve this problem. They say, in part, the following:

Despite the best intentions by the sponsors of Title II, our view is that it will increase rather than decrease the likelihood of financial crises . . . It might be preferable for the Congress [to] wait until the Financial Crisis Inquiry Commission completes its report . . . In the meantime, however, proposed amendment No. 3832, which has been filed by Ranking Member Sessions of the Senate Judiciary Committee, takes a bankruptcy route . . . Amending Title II along these lines would be a big step toward the bankruptcy approach we favor, and we urge you to move in this direction.

Mr. President, I ask unanimous consent to have printed in the RECORD the three items I have just quoted from.

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

[From the Weekly Standard, May 13, 2010]

BAILOUT NATION V. RULE OF LAW

(By William Kristol)

Financial regulatory ''reform'' has been wending its desultory way through Congress for quite a while, and one can lose track of where things stand and what's important.

But there's a vote scheduled for the Senate floor today that matters. It will be on an amendment—offered by Sen. Sessions—that would strike the entire Orderly Liquidation Authority (OLA) from the Dodd bill. It would instead make needed adjustments to a few provisions of the U.S. Bankruptcy Code to make it more flexible to deal with the failure of large financial firms (such as Lehman). The bankruptcy code amendment is clearly a superior alternative to OLA, which scraps the Code, the primary vehicle to reorganize companies for over a century, and replaces it with a wholly untested process to seize firms that are merely in danger of default. It replaces the Code's strict adherence to the rule of law with a system governed by the FDIC, which is given incredibly broad discretion to treat creditors as it wishes. This is a giant power grab for the FDIC and Treasury, who could use their new powers to tug the strings of our country's largest financial institutions like a puppeteer.

It's increasingly clear in the age of Obama that two very different visions of the relation of the private sector to the state are competing to shape the future of this country. With respect to financial reform, this amendment, more perhaps than any other, clarifies and signifies what's at stake in this debate. Whether or not the amendment passes, if Republicans unite behind it, they will show voters the choice in 2010 and 2012—not the status quo vs. reform, but ''reform'' that would further increase the arbitrary power and scope of government vs. real reform that would safeguard the financial system in accord with limited government and the rule of law.

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JUDICIAL CONFERENCE
OF THE UNITED STATES,
*Washington, DC., April 12, 2010.*

Hon. PATRICK J. LEAHY,
*Chairman, Committee on the Judiciary,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing in response to your letter of March 25, 2010, seeking the views of the Judiciary with regard to provisions relating to bankruptcy that are contained in the financial regulation bill recently approved by the Senate Committee on Banking, Housing, and Urban Affairs. We appreciate your soliciting the views of the courts on this matter. You identified several of the issues that are of concern to the courts, and I will address each of those.

As you noted, Title II would create an ''Orderly Liquidation Authority Panel'' within the Bankruptcy Court for the District of Delaware for the limited purpose of ruling on petitions from the Secretary of the Treasury for authorization to appoint the Federal Deposit Insurance Corporation (FDIC) as the receiver for a failing financial firm. This is a substantial change to bankruptcy law because it would create a new structure within the bankruptcy courts and remove a class of cases from the jurisdiction of the Bankruptcy Code. The legislation, by assigning to the FDIC the responsibility for resolving the affairs of an insolvent firm, appears to provide a substitute for a bankruptcy proceeding. The Judicial Conference has not adopted a position with regard to the removal from bankruptcy court jurisdiction of the class of financial firms identified in this legislation.

We note, however, that the legislation will result in the transition of at least some bankruptcy cases to FDIC receivership in situations where a firm is already in bankruptcy, either voluntarily or involuntarily. Section 203(c)(4)(A) provides that a pending bankruptcy case would be evidence of a firm's financial status for purposes of triggering the Treasury Secretary's authority to seek to appoint the FDIC as receiver. The bill does not specify how the transition from a bankruptcy proceeding to an administrative proceeding would be effected. Further, the bill does not specify the effect of the transfer on prior rulings of the court. For example, would any stays or other rulings continue in effect or be dissolved upon the transfer to the FDIC? This could be especially problematic if creditors have changed position based upon rulings in the course of the bankruptcy proceeding. The legislation does not envision objection, participation, or input from the bankruptcy creditors (whose rights will be affected) in the course of appointing the FDIC as receiver. Indeed, the legislation proposes to deal with this petition in a sealed manner; only the Secretary and the affected financial firm would be noticed and given the opportunity of a hearing. The financial position of affected creditors may have been changed within the context of the firm's bankruptcy case in such a way that the creditors' rights might have changed dramatically. Any resulting due process challenges would impose a significant burden on the courts to resolve novel issues, for which the bill provides no guidance.

In addition, we note that petitions under this title involving financial firms would be filed in a single judicial district. The Judicial Conference favors distribution of cases to ensure that court facilities are reasonably accessible to litigants and other participants in the judicial process. Although we are aware that a large number of companies are incorporated in Delaware, it is not clear that Delaware would necessarily be a convenient location for many of the affected companies, nor indeed the proper venue for that petition, absent changes to title 28, United States Code.

We also note that the legislation requires the designation of more bankruptcy judges for the panel than are permanently authorized for Delaware under existing law. The District of Delaware is authorized one permanent bankruptcy judge and five temporary judgeships. If Congress were to choose not to extend these judgeships or convert them to permanent status, it would be impossible to implement section 202's requirement to appoint three judges to the Orderly Liquidation Authority Panel from the District of Delaware.

With respect to the limited review to be conducted by the panel created in section 202, we note that the authority may exceed what is constitutionally permitted to a non-Article III entity. A previous statute was held unconstitutional because it conferred on the bankruptcy courts the authority to decide matters that are reserved for Article

III courts. Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982). The review of the Secretary's decision in this instance appears to resemble more closely appeals of agency decisions under the Administrative Procedure Act than a bankruptcy petition and, therefore, appears more appropriate for an Article III court. Moreover, the affirmation of the Secretary's petition to designate the Federal Deposit Insurance Corporation as a receiver effectively removes a case from the application of bankruptcy law. Accordingly, it seems anomalous to subject this petition to review by a bankruptcy court.

Your letter particularly questioned whether the time limit of 24 hours for a decision by the panel would be sufficient or realistic. The Judicial Conference has consistently opposed the imposition of time limits for judicial decisions beyond those already set forth in the Speedy Trial Act or section 1657 of title 28. We appreciate that a matter affecting the operation of the national economy warrants a prompt resolution. We note that the courts, recognizing this concern, have already demonstrated an ability to move swiftly in resolving bankruptcy petitions involving large corporations with broad impact on the national economy. In each of these instances, the initial determinations were made by a single judge. The resulting appeals in some cases were also adjudicated on an expedited basis without a statutory requirement to do so.

Requiring a panel of three judges to assemble, conduct a hearing, and craft a written opinion within 24 hours presents practical difficulties that may be insurmountable. Although §202(b)(l)(A)(iii) could be read to limit the court's review to the question of whether the covered financial company is in default or danger of default, the Secretary is required to submit to the panel ''all relevant findings and the recommendation made pursuant to section 203(a),'' which specifies consideration of multiple factors (repeated in subsection (b) of that section as the basis for the Secretary's petition). Even with the full cooperation of the financial firm affected by the proceeding, which is not a predicate for the consideration of a petition, it would appear difficult to hear and consider the evidence and prepare a well-reasoned opinion addressing each reason supporting the decision of the panel within 24 hours. Even assuming that factors other than the solvency of the firm would be excluded from this special panel's review, it may well be that the subject financial firm or one of its creditors would seek judicial review of one of the prior administrative evaluations of the statutory factors, either in the course of the hearing conducted by the Orderly Liquidation Authority Panel or in another court. Such challenges would also make it difficult to meet the proposed timeline. It is possible that the facts of a particular case may be so clear that a decision could be rendered within 24 hours, but the statutory requirement of such speed seems inconsistent with the thoughtful deliberation that would be appropriate for a decision of such great significance.

Although it is to be hoped that only a small number of large financial firms would ever become subject to this legislation, each of the petitions would involve large volumes of evidence regarding complex financial arrangements. Thus, the legislation could result in a large proportion of the judicial resources of a single bankruptcy court being devoted exclusively to review of the Secretary's petitions. Further, the bill provides that the Secretary may re-file a petition to correct deficiencies in response to an initial decision, thus extending the time in which the court's resources would be diverted from other judicial business. The District of Delaware is one of the busiest bankruptcy courts in the nation; to draw the court's limited judicial resources away from the fair and timely adjudication of those bankruptcy cases to process petitions under this bill would be inequitable and unjust to the debtors and creditors in those pending cases. If, as seems possible given recent economic developments, the failure of one firm weakens other firms in the financial services sector, the demand could exceed the court's resources. This consideration alone counsels against the assignment of all such cases to a single court.

Finally, we note that both the Administrative Office of the United States Courts (AO) and the Government Accountability Office (GAO) are directed to conduct studies which will evaluate:

(i) the effectiveness of Chapter 7 or Chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;

(ii) ways to maximize the efficiency and effectiveness of the Panel; and

(iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

With respect to those firms that are to be treated under Chapters 7 and 11 of the Bankruptcy Code, the vagueness of, and/or lack of criteria for determining ''effectiveness'' will hamper the ability of the AO and GAO to produce meaningful reports. Some would regard rapid payment of even small portions of claims as an effective resolution, while others would prefer a delayed payment of a greater share of a claim. There would also be significant disagreements between creditors holding different types of secured or unsecured claims as to the most effective resolution of an insolvent firm. Some would argue that effectiveness should be measured by the impact of the resolution on the larger economy, regardless of the impact on the creditors of the particular firm. Without clearer guidance for the studies, both agencies will be required repeatedly to expend resources on the development of reports that may not provide the information Congress is seeking.

Thank you for seeking the views of the Judiciary regarding this legislation and for your consideration of them. If we may be of assistance to you in this or any other matter, please do not hesitate to contact our Office of Legislative Affairs.

Sincerely,

JAMES C. DUFF,
*Secretary.*

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HOOVER INSTITUTION,
STANFORD UNIVERSITY,
*Stanford, CA, May 13, 2010.*

Hon. HARRY REID,
*Majority Leader, U.S. Senate,*
*Washington, DC.*
Hon. MITCH MCCONNELL,
*Minority Leader, U.S. Senate,*
*Washington, DC.*
Hon. CHRISTOPHER DODD,
*Chairman, Senate Committee Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.*
Hon. RICHARD SHELBY,
*Ranking Member, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.*

DEAR LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN DODD, RANKING MEMBER SHELBY: We are writing to you regarding Title II ''Orderly Liquidation Authority'' of the ''Restoring American Financial Stability Act of 2010.'' Despite the best of intentions by the sponsors of Title II, our view is that it will increase rather than decrease the likelihood of financial crises. Our view is based on experiences during the financial crisis, especially the events surrounding the disruptive failures of such firms as Bear Stearns, Lehman, and AIG. In order to avoid such harmful disruptions in the future, any failure of a large and complex financial firm must be made more orderly and predictable so that market participants can anticipate the process and adjust their positions more smoothly and gradually without chaotic spillover effects to the financial system and the economy.

However, in our view the new discretionary powers given to government officials and agencies under Title II will not result in a more orderly and predictable process. Indeed, it is likely to have the opposite effect. The legislation would give authority to officials at the Federal Deposit Insurance Corporation (FDIC) to take over and dismantle any large complex financial services business which appears to be failing. We doubt the ability of the FDIC to dismantle such complex financial institutions in a smooth and orderly way. There would be great uncertainty about who will lose and who will gain. The decisions will be made by government officials without knowledge of the circumstances underlying different claims, rather than by the rule of law. The unpredictability of the discretionary process would increase the likelihood of runs: whenever there is rumor of a government official or agency thinking of a takeover, creditors will take their money and run. There are also technical problems with Title II which would cause financial instability. For example, the nature of the delay in applying the exemption from the automatic stay for qualified financial products will lead to more runs.

Fortunately a more orderly and predictable approach is available. All that is required is an adjustment to the bankruptcy law to make it apply to nonbank financial firms in a clear way which the firms, their counterparties, and their creditors can understand and count on. With these changes, bankruptcy would be the mechanism to deal with financial institutions, and thus provisions for a government agency resolution process to override bankruptcy could be eliminated. If these changes had been in effect at the time of the Lehman bankruptcy, it would have been far smoother and less disruptive than what happened in September 2008.

The main advantage of bankruptcy is that the rule of law applies and the process is thus much more defined. The mere existence of an orderly Chapter 11 process will greatly reduce the likelihood of bailouts. There are alternative ways to change the bankruptcy law to make it apply to nonbank financial firms. Some of us and others have proposed such changes and work is continuing. For example, one change could involve creating a team of experts knowledgeable about the bankruptcy law and about financial markets and institutions, which would be ready to go in a financial emergency. Another change is to allow regulators to initiate a petition as prescribed by the law. The government could also file a reorganization plan with the bankruptcy court. The new law could also give a right of relief from the automatic stay upon petition by a counterparty seeking to sell collateral in the possession of the debtor to the extent the collateral consists of highly-marketable securities or other cash-like collateral.

To be sure the issues are complex and amending legislation on the Senate floor rather than in committee or conference is difficult. It might be preferable for the Congress to wait until the Financial Crisis Inquiry Commission completes its report, which will provide additional information and a better understanding of the issues which bear on this legislation. In the meantime, however, proposed amendment No.

3832, which has been filed by Ranking Member Sessions of the Senate Judiciary Committee, takes a bankruptcy route. The amendment is called ''The Bankruptcy Integrity and Accountability Act'' and would replace the currently proposed Title II. Amending Title II along these lines would be a big step toward the bankruptcy approach we favor, and we urge you to move in this direction. We would be happy to provide more details about these issues to you or your staffs.

In sum we urge you to replace Title II, reinstate the rule of law, reduce the likelihood of future financial crises, and prevent bailouts by instituting an orderly and predictable bankruptcy regime for large nonbank financial firms.

Sincerely,

DARRELL DUFFIE,
*Dean Witter Distinguished Professor at the Graduate School of Business, Stanford University.*
TOM H. JACKSON,
*Distinguished University Professor at the University of Rochester.*
KENNETH SCOTT,
*Parsons Professor Emeritus of Law and Business at the Stanford Law School.*
GEORGE P. SHULTZ,
*Distinguished Fellow at the Hoover Institution.*
DAVID ARTHUR SKEEL,
*Professor of Corporate Law, University of Pennsylvania.*
JOHN B. TAYLOR,
*Professor of Economics, Stanford University.*

Mr. SESSIONS. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. Twelve minutes fifty seconds.

Mr. DODD. I will not use all of 12 minutes. I will take a few minutes.

I spoke last evening about my friend's amendment, and it wasn't to a packed Chamber, I can tell you, at 8 o'clock last night. But I am sure the Senators all received copies of it or listened to it intently as you were dozing off last evening.

Let me, first of all, thank JEFF SESSIONS. He is a good pal and friend, and we have worked together on a number of issues. Senator CORKER, who is on the floor as well, in many ways—both BOB CORKER and MARK WARNER of Virginia—is as much the coauthor of the very section we are talking about as anyone in this Chamber. He spent a lot of hours trying to put this together.

But here is the quandary with the Sessions amendment. One of the things we have tried to avoid is, of course, getting back to too big to fail. The presumption of our bill is bankruptcy. Clearly, we want to get people into bankruptcy, if they deserve to be there. If they deserve to fail, they should fail. The problem is, when you end up pushing some large, highly complex entity into bankruptcy, it can have the unintended collateral damage effect of affecting otherwise solvent, good companies that are well managed, well run, and who employ a lot of people and are doing a good job. When these highly complex entities are shoved into bankruptcy, there can be collateral damage and other companies can suffer.

I am shorthanding this, in a way. So the idea was, on some rare occasions, and hopefully they are very rare, when that possibility occurs and you have to go through a number of hoops to get to that conclusion, that we would have a mechanism for a resolution, a winding down of that entity, to avoid the kind of collateral damage that could cause if bankruptcy were the only option for those complex entities.

What you are faced with, if the Sessions amendment is adopted, is right back where we were in the fall of 2008 where the choices are bankruptcy or bailout, in a sense, where bankruptcy would pose, as Lehman Brothers potentially did, as we saw, a lot of collateral damage because there was not a winddown resolution mechanism. Whether it should have been used in that particular fact situation, I don't want to try to make that case. That is not my point, not making my case. But let's say it is a Lehman Brothers-like situation where we would all agree that company ought to be put out of its misery, but to go through traditional bankruptcy would have the collateral effect of taking a lot of other people with it in the process who do not deserve to go down, not to mention the jobs and the impact on the economy.

Senator CORKER, Senator WARNER, and others obviously working with it, came up with this. They listened to a lot of people. Again, no one ever knows if you have this exactly right. We talked about all the things. We had exactly right what we want to do. We know what we want the outcome to be. Whether we did it right so it will work exactly as we planned we will never know until the first case pops up and determines whether what we put in place achieves its goal. But in the absence of that, we are right back where we were.

If someone said to me: What is the most critical part of this bill—that is a hard thing to ask someone who has been involved in a lot of it, but if you said: We are only going to let you keep one section of this bill; you are going to have to get rid of everything else; which section would you keep, Senator, this is what I would keep because this is what exposed the American taxpayer to that $700 billion check they had to write because we didn't have an alternative in place to deal with moments like that. Hopefully, they rarely come.

There were a lot of events that led up to it that we tried to deal with in this bill as well, including the underwriting standards and all sorts of things to minimize ever getting to that point where you have to make that decision. But we have all been around long enough to know they can happen, and when they happen again, what will be our answer? We had an option out there, but we got rid of it.

America, you have to make a choice. A lot of other people are going to suffer unnecessarily, but bankruptcy is the only choice to go. We would look back and say: Why didn't we put in place some alternative mechanism in those most rare occasions where some alternative other than bankruptcy should be in place?

That is the shorthand version of a lot of conversation, a lot of talk over a lot of months to this point.

Senator LEAHY, the chairman of the Judiciary Committee, opposes the amendment. Other members of the committee may agree with Senator SESSIONS. I don't want to suggest this is necessarily broad dissent, one side or the other. But this is as critical as it gets on this bill.

I say to my colleagues, there are a lot of amendments being offered, and frankly I might be against them or for them. If they are excluded or included, I might be disappointed one way or the other. If we get rid of this, I don't know how in good conscience you can walk out of the Chamber and look the American taxpayer in the eye and say again: We have now protected you against too big to fail.

For those reasons, I urge the rejection of the Sessions amendment, and I say that respectfully of a good friend.

I yield back the remainder of my time.

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

Mr. DODD. I have to ask for the yeas and nays under the order, don't I?

Mr. CORKER. Will the Senator yield for a couple of minutes over here? I know we are under time anyway.

Mr. DODD. I will be glad to yield. Instead of yielding my time, let me yield 2 minutes to my friend from Tennessee.

Mr. CORKER. I thank the Senator. I know I spent a great deal of time on the floor.

I thank the Senator from Connecticut. First, I thank him for the work he did to make the resolution title better. I know that after he and Senator SHELBY finished, I came down and thanked him but expressed concerns about the fact that many of the judicial reviews that I believed were important were not included. Yet the bill was better, and I thank the Senator for that.

I realize that in this body, as I said that day on the floor, nothing ever works out exactly as you wish. This bill is not going to be exactly the way the Senator would wish.

We are going to pass a bill that, to me, is incomplete. One of the things I think all of us, including the Senator from Connecticut, had hoped would occur is that the Judiciary Committee would actually work on a title that

would make the resolution title much less necessary because it would enhance the ability to deal with these complex financial companies. That has not happened. I know we have not dealt with Freddie and Fannie in this bill. I know you would have liked to have dealt with that. I hope you would have liked to. We are not going to deal with it.

You are going to be leaving this body after a distinguished career here. But I think what we are trying to say is that, look, we still have work to do. The Judiciary Committee has to develop a better bankruptcy title for financial companies, and I think all scholars have said that is the case. There is no question that we have to deal with Fannie and Freddie. We will do that soon, I hope.

I know the outcome of this, and the Senator knows what the outcome of this is going to be. I think there are numbers of us who would just like to see us really focus on this bankruptcy title to do—what you just said is exactly right, and that is that resolution is only used rarely. But right now, the way the Bankruptcy Code is, it is going to be used in every case one of these large companies fails because we haven't done the work we need to do to make the Bankruptcy Code work.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DODD. I will take 30 more seconds.

Here is the concern. With smaller entities, I can see the case where they should go to bankruptcy, and that may happen. We are talking about very complex, interconnected ones.

My colleague is correct, by the way. I should have made note of this. We did try. And, again, it is not the fault of the Judiciary Committee. They have been overwhelmed with judicial nominations and everything else.

The present bankruptcy process does pose an issue with large, complex entities for the very reason I outlined, and therefore you need some mechanism because then the alternative is bailout, I presume, rather than having a lot of innocent companies fail, with a lot of unemployment occurring and damage to the economy. There is a step that will have to be worked on.

I don't disagree on GSEs. I care deeply about that, and it is an area that needs to be reformed. But at this juncture, to strip this out is to throw us right back. My concern is not what else needs to be done down the road, but if you strip this out at this juncture, we leave ourselves very vulnerable.

With the Shelby-Dodd amendment that passed 93 to 5, I think it was—we tried to fill in a lot of gaps people have. We got rid of that prepayment issue that people had a lot concerns about, and it is a postpayment system. All of the issues we tried to resolve.

I appreciate the comments of my colleague from Tennessee.

With that, I yield back the remainder of my time and ask for the yeas and nays.

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

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 148 Leg.]

YEAS—42

| | | |
|---|---|---|
| Alexander | Crapo | LeMieux |
| Barrasso | DeMint | Lugar |
| Bennett | Ensign | McCain |
| Bond | Enzi | McConnell |
| Brown (MA) | Feingold | Murkowski |
| Brownback | Graham | Risch |
| Bunning | Grassley | Roberts |
| Burr | Gregg | Sessions |
| Chambliss | Hatch | Shelby |
| Coburn | Hutchison | Snowe |
| Cochran | Inhofe | Thune |
| Collins | Isakson | Vitter |
| Corker | Johanns | Voinovich |
| Cornyn | Kyl | Wicker |

NAYS—58

| | | |
|---|---|---|
| Akaka | Gillibrand | Nelson (NE) |
| Baucus | Hagan | Nelson (FL) |
| Bayh | Harkin | Pryor |
| Begich | Inouye | Reed |
| Bennet | Johnson | Reid |
| Bingaman | Kaufman | Rockefeller |
| Boxer | Kerry | Sanders |
| Brown (OH) | Klobuchar | Schumer |
| Burris | Kohl | Shaheen |
| Byrd | Landrieu | Specter |
| Cantwell | Lautenberg | Stabenow |
| Cardin | Leahy | Tester |
| Carper | Levin | Udall (CO) |
| Casey | Lieberman | Udall (NM) |
| Conrad | Lincoln | Warner |
| Dodd | McCaskill | Webb |
| Dorgan | Menendez | Whitehouse |
| Durbin | Merkley | Wyden |
| Feinstein | Mikulski | |
| Franken | Murray | |

The amendment (No. 3832) was rejected.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Washington.

Mrs. MURRAY. I ask unanimous consent for 8 minutes equally divided between myself and Senator CANTWELL in morning business.

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

NATIONAL POLICE WEEK

Mrs. MURRAY. Mr. President, I come to the floor today to commemorate and celebrate the lives of seven police officers from my home State of Washington who lost their lives in service to their communities last year.

I am proud to join today with Senator CANTWELL during National Police Week to introduce the Washington State Law Enforcement Memorial resolution to extend the condolences of the Senate to the families, loved ones, and communities of our State's fallen heroes.

This week tens of thousands of people from across the country are going to be gathering at the National Law Enforcement Officers Memorial in Washington, DC—friends and families of fallen officers, ordinary citizens, elected officials, and fellow police officers. They will be joining together in the heart of our city in a tree-lined park splashed with daffodils and lined with two curving blue-gray marble walls. On those walls—the ''Pathways of Remembrance''—are engraved the names of Federal, State, and local law enforcement officers who have made the ultimate sacrifice for the safety and protection of our Nation and its people—18,600 of them, dating back to the 18th century.

Among those crowds at that memorial this week will be men and women from the State of Washington who have flown all the way across the country to be here as seven new names are unveiled and carved into the marble and preserved for our Nation to honor.

The seven officers from Washington State who lost their lives last year in the line of duty are: Deputy Sheriff Stephen Michael Gallagher, Jr. of the Lewis County Sheriff's office; Officer Timothy Brenton of the Seattle Police Department; Officer Tina Griswold of the Lakewood Police Department; Officer Ronald Wilbur Owens II of the Lakewood Police Department; Sergeant Mark Joseph Renninger of the Lakewood Police Department; Officer Gregory James Richards of the Lakewood Police Department; and Deputy Sheriff Walter Kent Mundell, Jr. of the Pierce County Sheriff's Department.

These seven remarkable and selfless officers represented the best of their communities. They were seven heroes who served proudly as a brave boundary between civil society and the worst elements of lawlessness and unrest; seven husbands, wives, fathers, and mothers whose losses have devastated families and torn apart communities and whose deaths have weighed heavily on every member of our State's law enforcement community. Each of these tragedies sheds new light on the enormity of the sacrifice police officers make every day in Washington State and across the country. I know our officers feel this weight, but I have no doubt they will never let it stop them from continuing to put themselves in harm's way in order to serve our communities. That is a testament to the commitment they make to serve and protect us. It is an oath they honor each day, and it is a reminder to all of us that these brave men and women deserve every ounce of support we can provide to keep them safe.

It is with great pride that I introduce the Washington State Law Enforcement Memorial resolution to commemorate and celebrate the lives of those seven officers. My thoughts and prayers continue to be with their families, and I join their communities, Washington State, and the entire Nation in gratitude for their service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank my colleague for her leadership in having this resolution on the floor today. She is always focused on those who are on the front line of defense in our country and, clearly, in Washington State. I appreciate her leadership in honoring the fallen officers from Washington State.

This week does mark National Police Week where officers from across the

Nation will travel here to honor fallen comrades. Because we in Washington State have done so much of this lately, we understand how important this type of activity is for remembering the men and women who serve us. During this week, we reflect on the brave men and women who have made the ultimate sacrifice to our community.

Mr. President, 2009 was one of the deadliest years in Washington State in more than 70 years. Seven officers were killed in the line of duty. These heroes put their lives at risk for our safety. They will be missed, but they will not be forgotten. The men and women in blue keep our communities safe, and they do so at tremendous sacrifices.

Deputy Mike Gallagher from Lewis County Sheriff's Office was killed after his car was struck on his way back from responding to a domestic violence incident. Timothy Brenton from Seattle was shot while sitting in his car on Halloween in Seattle. We thought those two incidents were enough to rock our community. But then, in one of the most heinous murders in the State of Washington history, four Lakewood police officers were shot and killed while on duty in Parkland: Sergeant Mark Renninger, Officer Ronald Owens, Officer Tina Griswold, and Officer Greg Richards. It was a short time later that Deputy Kent Mundell, Jr. of the Pierce County Sheriff's office died from wounds sustained in responding to a domestic violence call.

We have seen in Washington State the sacrifice of these men and women, all they do to keep us safe and all that their families go through when those who are in the line of duty pay the ultimate sacrifice.

I hope my colleagues will remember law enforcement across the country and in their individual States. I hope they will take time, as they see officers here in the Capitol and throughout the Washington, DC area, to thank them for their service. Let's commemorate the activities of those who have fallen and also remember those who are still working to protect us every single day.

I thank my colleague from Washington for this resolution, and I hope for its urgent passage today.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. BURRIS. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

CELEBRATING THE LIFE OF LENA HORNE

Mr. BURRIS. Mr. President, in 1933, a 16-year-old girl named Lena Horne joined the chorus at a famous nightclub in Harlem known as the Cotton Club.

This young woman was passionate about performing so she jumped in with both feet.

And she never looked back.

The following year, Lena Horne made her debut on Broadway. And not long after, she became the first African American performer to sign a long-term contract with a big Hollywood studio, MGM.

She blazed a trail. She knew that her talent could outshine the ugliness of racial prejudice so, in the 1940s, she became a major movie star.

But despite her success, Lena Horne never forgot her roots or the plight of those who were subjected to hatred and bigotry on a daily basis.

She knew that she was a role model and an authority figure—and she used her fame as a platform to raise these issues, and to fight against intolerance.

She partnered with First Lady Eleanor Roosevelt to pass anti-lynching legislation. After the Second World War, she worked with Japanese Americans who had suffered internment and discrimination.

And all the while, her star was on the rise.

In 1957, she recorded ''Lena Horne at the Waldorf-Astoria'' a record that would become the best-selling album by a female singer in the history of RCA.

During the civil rights movement, she stood with leaders like Dr. King at the famous march on Washington.

She spoke out for racial equality, and became involved with the NAACP and other groups.

And she never stopped doing what she loved: performing.

In 1981, she returned to Broadway in a one-woman show, which won a Tony Award, two Grammies, and endless critical acclaim.

And she kept creating original material well into the next decade.

Mr. President, Lena Horne departed this life only a few days ago on May 9 at the age of 92.

As a performer, her legacy is unsurpassed.

She rose to become one of the most successful entertainers of the last century, and blazed a trail for countless other minority performers to follow.

Her personal legacy is no less remarkable. She consistently lived out her values, and did not shy away from opportunities to stand up for what she believed in.

She embraced every chance to make a positive difference in the lives of others and that, more than anything, is what she will be remembered for.

Lena Horne left an indelible mark on this Nation. And that is why I am proud to join Senator GILLIBRAND in sponsoring a resolution in her honor.

I ask my colleagues to stand with us in celebrating the life of this remarkable woman—a trailblazer who achieved great success in the face of tall odds, and then used that success to better the lives of others.

Lena Horne is gone.

But in her classic recordings—in the lives she touched, the movies she made, and the change she helped to bring about she will always be with us.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

Mr. BURRIS. Mr. President, in recent days, since the Chamber opened debate on Chairman DODD's financial reform bill, we have all heard a lot of talk about the irresponsible behavior on Wall Street. We have heard about the recklessness that cost this country trillions of dollars in lost savings, not to mention 8 million American jobs. We have heard about the consumers, especially minority populations and the elderly, who have suffered a great deal as a result of this economic crisis.

I thank my colleagues on both sides of the aisle for joining in the debate about how to address these issues, and I am confident we can reach and find common ground.

Just yesterday, I came to the floor to voice my strong support for the Consumer Financial Protection Bureau that would be created under Chairman DODD's bill. I believe this bureau should be at the heart of any reform legislation—to end abusive practices, serve as an advocate for ordinary Americans, and make sure everybody can get a fair deal. It would even help to prevent a similar financial crisis from taking place in the future.

But we need to make sure our bill is about more than prevention. We need to be proactive about finding solutions for millions of Americans—especially minority individuals—who are hurting right now. We need to start by expanding access to credit.

Under the Dodd bill, the Secretary of the Treasury will be authorized to establish a multiyear program of cooperative agreements, financial agency agreements, and grants—all designed to make credit more available to low- and middle-income Americans. For the first time in years, our legislation would give ordinary consumers access to mainstream financial institutions and provide alternatives to those payday loan operations. It would help defray the costs of programs that make small loans so folks could find it easier to get the resources they need without incurring unnecessary risks.

Our Consumer Financial Protection Bureau would also play a significant role in making credit more available. Currently, 16 percent of minority households do not have bank accounts, compared with only 4 percent of White households. As a result, African Americans and other minorities are more likely to use payday lending services, some of which are questionable practices, to take advantage of their customers.

That is why our Consumer Financial Protection Bureau would have the authority to supervise large, nonbank financial companies to cut down on abusive tactics. It would also help enforce fair credit card laws, rein in automatic overdraft programs, and clarify the complex web of rate charges.

In short, this legislation would reduce or eliminate many of the factors that keep people away from banks. It would help raise financial literacy and establish reasonable terms and conditions for loans. At its core, it would significantly expand access to credit—especially among those who continue to feel the worst effects of this economic crisis.

That is why I am proud to support the Wall Street reform bill that has been introduced by my good friend, the distinguished Senator from Connecticut, Chairman DODD. I urge my colleagues to join me in passing this important legislation.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

AMENDMENTS NOS. 4019 AND 3987 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I may call up Senator WYDEN's amendment No. 4019 and Senator THUNE's amendment No. 3987.

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

The clerk will report.

The assistant bill clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. WYDEN, for himself, Mr. GRASSLEY, Mr. INHOFE, Mr. BENNETT, Ms. COLLINS, Mr. UDALL of Colorado, Mr. BROWN of Ohio, and Mr. MERKLEY, proposes an amendment numbered 4019 to amendment No. 3739.

The amendment is as follows:

(Purpose: To establish as a standing order of the Senate that a Senator publicly disclose a notice of intent to objecting to any measure or matter)

At the end of the amendment, insert the following:

**SEC. ___. ELIMINATING SECRET SENATE HOLDS.**

(a) IN GENERAL.—

(1) COVERED REQUEST.—This standing order shall apply to a notice of intent to object to the following covered requests:

(A) A unanimous consent request to proceed to a bill, resolution, joint resolution, concurrent resolution, conference report, or amendment between the Houses.

(B) A unanimous consent request to pass a bill or joint resolution or adopt a resolution, concurrent resolution, conference report, or the disposition of an amendment between the Houses.

(C) A unanimous consent request for disposition of a nomination.

(2) RECOGNITION OF NOTICE OF INTENT.—The majority and minority leaders of the Senate or their designees shall recognize a notice of intent to object to a covered request of a Senator who is a member of their caucus if the Senator—

(A) submits the notice of intent to object in writing to the appropriate leader and grants in the notice of intent to object permission for the leader or designee to object in the Senator's name; and

(B) not later than 2 session days after submitting the notice of intent to object to the appropriate leader, submits a copy of the notice of intent to object to the Congressional Record and to the Legislative Clerk for inclusion in the applicable calendar section described in subsection (b).

(3) FORM OF NOTICE.—To be recognized by the appropriate leader a Senator shall submit the following notice of intent to object:

''I, Senator _____, intend to object to _____, dated _____. I will submit a copy of this notice to the Legislative Clerk and the Congressional Record within 2 session days and I give my permission to the objecting Senator to object in my name.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date that the notice of intent to object is submitted.

(b) CALENDAR.—Upon receiving the submission under subsection (a)(2)(B), the Legislative Clerk shall add the information from the notice of intent to object to the applicable Calendar section entitled ''Notices of Intent to Object to Proceeding'' created by Public Law 110–81. Each section shall include the name of each Senator filing a notice under subsection (a)(2)(B), the measure or matter covered by the calendar to which the notice of intent to object relates, and the date the notice of intent to object was filed.

(c) REMOVAL.—A Senator may have a notice of intent to object relating to that Senator removed from a calendar to which it was added under subsection (b) by submitting for inclusion in the Congressional Record the following notice:

''I, Senator _____, do not object to _____, dated _____.'' The first blank shall be filled with the name of the Senator, the second blank shall be filled with the name of the covered request, the name of the measure or matter and, if applicable, the calendar number, and the third blank shall be filled with the date of the submission to the Congressional Record under this subsection.

(d) OBJECTING ON BEHALF OF A MEMBER.—If a Senator who has notified his or her leader of an intent to object to a covered request fails to submit a notice of intent to object under subsection (a)(2)(B) within 2 session days following an objection to a covered request by the leader or his or her designee on that Senator's behalf, the Legislative Clerk shall list the Senator who made the objection to the covered request in the applicable ''Notice of Intent to Object to Proceeding'' calendar section.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. THUNE, proposes an amendment numbered 3987 to amendment No. 3739.

The amendment is as follows:

(Purpose: To provide for increased Congressional oversight through a sunset of the authority created under title X related to the creation of the Bureau of Consumer Financial Protection)

On page 1208, between lines 12 and 13, insert the following:

(f) EXPIRATION.—Notwithstanding any other provision of this Act, the Bureau, and the authority of the Bureau under this title, shall terminate 4 years after the date of enactment of this Act, unless extended by an Act of Congress.

Mr. DODD. Mr. President, I ask the senior Senator from Oregon, does he want to be heard on his amendment?

Mr. WYDEN. Yes.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 4019

Mr. WYDEN. Mr. President, thank you very much.

Let me particularly express my appreciation to the chairman of the full committee, Senator DODD. He has been extraordinarily patient, and especially with the large bipartisan coalition that has come together behind this amendment to ensure that finally the secret hold in the Senate—one of the most powerful tools a Senator has in the Senate—is no longer.

I say to the Presiding Officer, you have done very good work on this issue, along with a number of colleagues on both sides of the aisle. The reason we feel so strongly is because the secret hold in the Senate is an indefensible violation of the public's right to know.

We all understand every time we are home in our States how frustrated people are with the way business is done in Washington, DC. One way to send a message we are going to start doing business differently is to throw open the doors of government and to make sure nominations and legislation that is important gets debated in public, and people actually get to see the give-and-take of colleagues on both sides of the aisle—Democrats and Republicans—that is essential to making good policy.

Most Americans have no idea what a secret hold is, and I have said on many occasions that my guess is a lot of them think this is some kind of hair spray or something. But the fact is, this is an extraordinary tool that Senators have to effect the lives of our people, and it ought to be something that is exposed to public scrutiny and public accountability.

When asked why he robbed banks, Willie Sutton said: That is where the money is. In the Senate, secret holds are where the power is.

What our bipartisan group has said is, it is wrong for a Senator to block a piece of legislation or a nomination in secret by simply telling the leader of their party of their desire. What this has meant—and there have been scores and scores of these secret holds in recent years—is that one person, without any public disclosure whatsoever, can keep the American people from even getting a small peek at what is public business. That is not right, and it is time to eliminate secret holds.

In 2007, Senators on both sides of the aisle sought to finally bring some sunlight to this practice. Senator GRASSLEY, the distinguished Senator from Iowa, and I have worked on this for over a decade. Unfortunately, a number of loopholes have been developed since that provision was accepted, and today too much Senate business is done in the dark, unaccountable, and away from public scrutiny and public exposure.

This amendment closes the loopholes, and it is going to be enforced.

With this approach, every hold—every single hold—is going to have a public owner within 2 days.

I want to close by just briefly describing how this would work. Under this proposal, if a Senator puts a hold on a bill or a 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 is going to happen: either the Senator placing the secret hold is going to have their name publicly released, or the Senator who objected on their behalf is going to own that hold. That Senator will own it. Their name is going to be published in the congressional calendar.

So for the first time—after all of these months and months of debate about secret holds in the Senate—there is going to be public pressure and peer pressure on those who try to do Senate business behind closed doors.

Two last points with respect to reforms included in this amendment: The proposal eliminates the ability that a Senator now has to lift a hold before the current 6-day period expires and never have it disclosed.

The Presiding Officer and I have talked a bit about this matter of revolving holds in a 6-day period. This has been a huge abuse. It has allowed a Senator to do business in secret and never have it recorded. With this new bipartisan proposal, if a Senator places a hold, even for a day, even for a minute, the hold is going to be disclosed.

Finally, the proposal makes it harder for a group of Senators to replace revolving holds on a nomination or bill. With the 6-day time period, a group of Senators can pass a hold from one colleague to another and never have it discussed. By requiring all holds to be made public, it will be much more difficult to find new Senators to place revolving holds.

The last point: It seems to me, in addition to taking a step the country feels very strongly about, which is doing more public business in public, this is being done in a bipartisan way. This is being done in a way that can bring Democrats and Republicans together, in a way that doesn't involve a lot of fingerpointing. I wish to mention a number of colleagues: the Presiding Officer, the distinguished Senator from Virginia, has been very constructive and has had many conversations with me about this; Senator INHOFE, Senator COLLINS, and Senator GRASSLEY. Senator INHOFE has been talking about this issue with me and others for almost a decade as well. Senator BENNET, Senator MERKLEY, Senator WHITEHOUSE, all of these Senators, a large, bipartisan group come together to urge the passage of this amendment. I want to single out too, though, for particular commendation, Mrs. MCCASKILL, the Senator from Missouri, because we wouldn't be on this floor today had not the Senator from Missouri prosecuted this cause relentlessly. She has brought to light the number of holds. When we have talked about it, she has made the point that this has gone on on both sides of the aisle. She deserves great credit for this reform being made today.

Let me also thank Senator COBURN—Dr. COBURN—of Oklahoma. He has been very involved in reform issues for many years. We are looking forward to an additional reform he is going to be advancing that I look forward to sponsoring.

I wrap up only by way of trying to highlight that after the Senate has spent a lot of time discussing secret holds over the last few months, on a bipartisan basis, the Senate comes together today with an approach that has actually brought Senators together and is going to ensure that every single secret hold is going to have an owner. That is going to be a big change. It is high time. The public deserves to have public business actually done in public, and with the adoption of this amendment, that will be done.

The chairman of the full committee has been very gracious to me. I wish to ask for the yeas and nays at this time, and I wish to engage the chairman of the full committee in a colloquy. The chairman has been very helpful with respect to scheduling this.

Is it the pleasure of the chairman of the committee that now, having debated this, we set it aside for a vote later in the day?

Mr. DODD. My pleasure is we have the vote on the Wyden-Grassley amendment. So whenever that can occur, I am for it. We can do it right now. I am for it now.

Mr. WYDEN. I am ready to go to the yeas and nays.

Mr. President, I ask for the yeas and nays.

Mr. President, I withdraw that request. I thank the chairman of the committee.

Mr. DODD. It is not my sole decision, of course.

Mr. WYDEN. The chairman of the full committee has been very patient with us. He has done an extraordinary amount of work. Let us, with that request, hold off on the yeas and nays, and I ask the chairman that it be scheduled with the next group of votes.

Mr. DODD. I can say to my colleague from Oregon that I expect momentarily we will work out some time agreements and we will schedule a vote fairly quickly.

Mr. WYDEN. I thank the chairman.

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 3987

Mr. THUNE. Mr. President, I understand amendment No. 3987 has been called up by the manager of the bill, and I think it has been made pending, so I wish to speak to it. I hope at the appropriate time we will be able to get an agreement for a vote on it, and I will ask for the yeas and nays following my remarks.

This amendment is a very simple, straightforward one. It is one paragraph long. It is not complicated. What it essentially does is it sets a sunset date for the newly created bureau of consumer protection, allowing Congress to reevaluate the bureau after 4 years.

I think most Americans, if they knew we were creating a big new bureaucracy here in Washington, DC, would want us to have some oversight. They would want some accountability. They would want to make sure their tax dollars are being spent wisely and well.

This new consumer protection bureau will have lots of new Federal employees here in Washington, DC. It will spend hundreds of millions of dollars every single year. Yet Congress has literally no oversight or authority with regard to this new bureau.

It seems to me, at least, that when we have a fiscal situation as we have today in this country where we are running trillion dollar deficits literally every year, where our debts are continuing to pile up to the tune of doubling our Federal debt, publicly held debt in 5 years, tripling it in 10 years, we would want to do something to make sure that any new expenditure of taxpayer dollars is spent efficiently, effectively, and that we are being as frugal as we possibly can.

I, for one, would not like to see us go down this path. I don't think creating a huge new bureaucracy here in Washington, DC, is necessary. I think we can address the issue of consumer protection through existing agencies and authorities. Frankly, I wish to see this particular title in this legislation go away entirely, but it doesn't look as though that is going to happen. We offered an amendment earlier this week that would have been a substitute for this consumer protection title in the bill and addressed it in what we think is a more reasonable way, but that was voted down.

My amendment simply says that 4 years from now, once this bureau has been created, let's have it sunset, and then, if necessary, Congress can come back and reauthorize it. Congress then would have an opportunity to fine-tune it, perhaps. Congress would have an opportunity to look and see if it is performing the function it was intended to perform; whether it is doing it in an efficient and cost-effective way. Clearly, we have a responsibility to the American taxpayer to have some accountability with this new bureaucracy we are going to create as a result of this legislation.

It is straightforward. We have other agencies of government that we do this with—that we sunset, that we reauthorize. We just did that with the CFTC, which is an agency that was reauthorized during the farm bill last year. When we did that, we were able to fine-tune its mission. It also gives

the opportunity to reorganize an agency, if it has to go through a reauthorization process and a sunset process. I don't think it is asking too much, when we are talking about literally hundreds of millions of dollars annually and what would appear to be thousands of new Federal employees in this new agency, and what would also appear to be incredibly broad and vast new powers and authorities that will be unchecked because there isn't any accountability to the Congress—Congress is not going to appropriate annually as we do with most agencies the power of the purse. This is all going to be run through the Federal Reserve. Yet it is taxpayer dollars that are at risk here. It is taxpayer dollars that are being used to finance this new bureaucracy.

I hope my colleagues will be able to find their way to support this amendment. I think it is a reasonable approach. Again, I don't think it is asking too much. The American taxpayers are paying the bills every year for this government and are having to deal with the burden of debt we are piling on them because of the spending going on in Washington. Of course, if you look at what we are spending this year and what we spent last year in the Federal Government, much of it was borrowed. Out of all the spending last year, about 43 cents out of every dollar was borrowed. This year it is about 39 cents out of every dollar. When we are running those kinds of deficits and piling up that kind of debt with this kind of spending going on in Washington and the fiscal problems we have as a Nation, it makes perfect sense to me. I think it makes perfect sense to the American taxpayer. If we are going to create a huge new bureaucracy—which I said I don't believe is necessary, but, nonetheless, if it is going to happen in this legislation—let's take a look at this again 4 years from now. Let's allow it to sunset and allow us to go through a process where we reauthorize, reevaluate and review and see if it is functioning the way it is intended, and whether these authorities and powers created by this new bureaucracy is what the American people want to see happen.

One final point I will make. There are lots of entities out there other than banks that are worried about this particular title of the bill because of the rulemaking authority that exists. We have auto dealers, jewelry businesses, furniture stores, orthodontists, and lots of small businesses that are concerned they are going to be covered by the reach of this new agency with these broad new authorities with very little accountability and oversight by the Congress. That is a concern to a lot of small businesses to whom we look to create the jobs and, hopefully, initiate an economic recovery in this country and get the economy growing and back on track. This, in fact, could put lots of new burdens, lots of new bandaid, lots of new costs on many of these small businesses. That is yet another reason why I believe this is a bad idea in the first place, but at a minimum we ought to allow it to sunset so we have an opportunity to review it and reevaluate it and make some decisions with regard to its future 4 years from now.

It is very straightforward. It is one paragraph long. Sunset the Bureau of Consumer Financial Protection and allow Congress to reevaluate that bureau after 4 years.

I hope my colleagues will support this amendment. I ask for the yeas and nays and would hope at the appropriate time to be able to have a recorded vote.

I yield the floor.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The Senator from Illinois.

AMENDMENT NO. 3989 TO AMENDMENT NO. 3739

Mr. DURBIN. Mr. President, I am hoping that later this afternoon there will be a unanimous consent request that relates to an amendment I have introduced, amendment No. 3989, and I wish to take a few minutes now since there is no one else seeking recognition on the floor to describe this amendment in the hopes that when it comes up later, we can move to it and to a vote very quickly.

I have spoken on the floor of the Senate several times about the amendment because it is complicated in one respect. This amendment relates to the fees charged by credit card companies such as Visa and MasterCard to the retailers and businesses that accept the credit cards. So if you are a customer of a shop and you purchase something, you present a credit card. There are then two transactions taking place, at least. One transaction is between you and your credit card company, because you put the credit card out there and you have to pay the bill later on. The other transaction relates to the business, the shop that accepts your credit card. By accepting your credit card, they also accept an obligation to pay the credit card company or the bank issuing the credit card. It is called an interchange fee. There is another one called a swipe fee. So the credit card company is getting paid both ways. They get paid by the customers who pay interest on outstanding balances on their credit cards, and they get paid by the retail establishments that accept the credit cards. The credit card companies have a lucrative business going on both sides of the transaction.

This amendment I am speaking about relates not to you as a customer owning a credit card, but rather to the shop or retail establishment that accepts the credit card. What is a reasonable amount for them to pay?

There are two major types of credit cards. One is a credit card and the other is a debit card. A credit card is basically that. You are buying on credit with the promise to pay when your monthly bill comes around. The debit card is different because it takes the money directly out of your checking account and gives it to the shopowner. They are different in that, No. 1, there is more risk, because people may not pay their credit card balance at the end of the month, so risk is associated with it; and in the other there is very little, if any, risk. If there is no money in the checking account, then it isn't going to be paid to the shopowner. It is a very simple transaction much like writing a check and the bank honoring the check.

My amendment addresses the interchange fee. That is the amount paid by the retail establishment to the credit card company when a customer presents a credit card.

The two major credit cards in America are Visa and MasterCard. They account for over 80 percent of the credit and debit card business in the United States. They are the giants in America. There are others—Discover, American Express, and others. But the two, Visa and MasterCard, are the two big kids on the block. They have established legal arrangements with the businesses that accept their credit cards. It is those legal arrangements we are questioning with this amendment which I am going to propose later in the day.

This amendment will help small businesses, merchants, and consumers by providing relief from high interchange fees for debit card transactions. We are focusing on debit card transactions because those are the ones that have much less, if any, risk involved to them.

On the floor of the Senate, we are working on a bill to prevent the big banks from basically rigging the financial system in a way that helps Wall Street and hurts the shops on Main Street. If we are going to look at the rigged financial systems that hurt small businesses, we have to include the credit and debit card industries.

Credit and debit cards are rapidly replacing cash and checks in the American economy. There are over 1 billion credit and debit cards in America. Think of that: 300 million people and 1 billion credit and debit cards. That gives you an idea of the number of cards people own.

Last year, Americans conducted $1.7 trillion in transactions on credit cards and $1.6 trillion on debit cards, which are becoming more and more popular. Credit and debit cards are now used in more than half the retail sales in the United States of America. Yes, being able to pay with plastic is a great convenience, but there is another reality. The shift from cash and checks to credit and debit means that the way we do business in America is increasingly falling under the control of these two giants of the credit and debit card industry—Visa and MasterCard.

These card networks dominate the credit and debit industries, as I mentioned earlier. They are used in 80 percent of all such transactions. Unfortunately, these two companies are looking for profits, and they are not always looking out for the best interests of the merchants, the small businesses, the

retail businesses or the consumers. Interchange fees are a classic example.

A lot of people in Congress do not want me to bring up this issue. They have told me this is the wrong bill to talk about it. I think not. I tried to bring it up under credit card reform and they said: No, Senator DURBIN, that is the wrong bill. Now I want to bring it up on the Financial Stability Act, and they say: No, it is the wrong bill. I do not think it is. I do not think there is a right bill with an issue that is this controversial and complex. But it is an important enough issue that we should address it and we should vote on it.

Visa and MasterCard require interchange fees every time someone uses a debit or credit card. The fees range from 1 percent to 3 percent of the amount of the transaction. It is a convoluted system. Visa and MasterCard charge interchange fees to the merchants, but instead of keeping the money, they pass the money to the banks that issue the Visa and MasterCard. Why do they do this? Some of it is to help the banks cover the cost of conducting the transaction. Most of it is to induce banks to issue more Visa and MasterCard credit cards.

Around $50 billion in interchange fees were collected in 2008, with about 80 percent of that money going to 10 of the largest banks in America—80 percent of it. The card-issuing banks use this interchange revenue to pay for ads, to offer rewards, to issue more cards. Not surprisingly, the revenue also helps banks make large profits and give bonuses to their CEOs. Banks love the money, and they love the current interchange system.

As interchange fees go up, it means banks get more money to issue more cards and increase their profits. Rising interchange fees also benefit Visa and MasterCard because it means more cards will be issued, and with each card comes another fee, called a network fee, every time the card is used.

What a great system—as long as interchange fees are increasing, both the card networks and the banks could not be happier.

The troubling thing about interchange fees is they are deducted from every transaction left for the seller. This is very different from cash and check systems. When a business makes a cash sale, it gets full payment in hand, and the Federal Reserve requires the checks clear at their full face value. So a $100 sale by cash or check is a $100 sale. But when a business makes a $100 sale by credit or debit card, the banks and their card networks take a cut. The business may end up with only $98 out of $100 that is on the debit card, maybe less. The business is getting shortchanged the actual face value of the transaction.

To make up for interchange fees, businesses are forced to raise their prices, cut back on expenses or something such as that. They may even cut back on employees to keep up with these interchange fees. In a normal market, you see banks competing with one another to do business with the restaurants, shops, and the merchants. With that competition, things would be a lot better. But, in fact, the real world of credit cards with the two giants, Visa and MasterCard, is a world where there is little or no competition.

The credit and debit card markets are not normal. Visa and MasterCard unilaterally set interchange fee rates that apply to all banks within their card networks. There is no negotiation between the banks and merchants over reducing interchange rates. Individual businesses in New Hampshire, Illinois, New York, and all across America have no bargaining power with these giant credit card companies. They set the rules, they fix the fees, take it or leave it.

Visa and MasterCard have every incentive to continue to raise interchange fees because that additional revenue makes it more likely banks will issue more cards.

What can businesses do to stop these rising interchange fees? Almost nothing. Some—very rarely—businesses say they do not accept credit or debit cards, but the vast overwhelming number of businesses do. They have to. It is part of doing business in America.

Visa and MasterCard have 80 percent of the credit and debit market. Merchants have to use them. They tell the merchants: If you want to take our card, you live with the fees we charge. That is not a competitive situation at all.

This current system is not sustainable. If left alone, it is going to get worse for small businesses that face higher fees, for consumers who face higher prices, and for everyone but the banks and credit card networks.

Here is the most unbelievable part. Businesses in every other country in the world get a better interchange deal from Visa and MasterCard than businesses in the United States of America. I told that to someone, and they said: It sounds like pharmaceutical drugs, where you can buy the U.S. pharmaceutical drug more cheaply in Canada, Mexico, and Europe. It is the American consumers paying more.

The same thing is true when it comes to Visa and MasterCard. They charge American businesses higher interchange fees than they charge businesses around the world. Visa and MasterCard already charge the highest interchange rates in the world to American businesses, and the rates keep going up.

There was a GAO report last year. It found that Visa and MasterCard—listen to this—had voluntarily reduced the interchange fees on businesses in other countries. Just last month, Visa voluntarily lowered many of its European debit rates by 60 percent—unilaterally lowered them by 60 percent. What happened in the United States? They raised the fees by 30 percent on American businesses trying to fight their way out of this recession.

These huge credit card companies had some sympathy for Europe but not for America. That is unacceptable, and we need to do something about it. That is why I offer this amendment.

The amendment requires that debit card interchange fees be reasonable and proportional. I do not pick a number. I do not set a fee. We want to make sure they are proportional and reasonable to the cost incurred in processing the transaction.

Debit card transactions are fundamentally different from credit card transactions. All that happens in a debit card transaction is you deduct money from your bank account. It is akin to writing a check. That is why debit cards are advertised as check cards.

Right now in the United States, there are zero transaction fees deducted when you use a check. The Federal Reserve does not allow transaction fees to be charged for checks. But when it comes to debit cards, Visa and MasterCard charge high interchange fees just as they do for credit. Why? Because they can get away with it. There is no regulation, there is no law, there is no one holding them accountable.

An estimated $20 billion was collected from businesses and consumers across America in debit interchange fees last year—$20 billion. That money comes from the bottom line of every small business in every town in America that accepts payments by debit card.

My amendment will bring some reasonableness to the system. It tells the Federal Reserve to ensure that debit fees are reasonable and proportional to cost and not just a way of generating huge profits at the expense of small businesses. If we can reduce debit interchange fees to a reasonable level, it would be similar to a tax break on every debit card sale a merchant makes. Think how much that would help small businesses on Main Street.

One of my colleagues said: Even if the businesses save money and do not have to pay more to the credit card companies, what makes you think they are going to give the consumers a break with it? They may take it in profits. They can. There is no way to police that.

I just had a press conference with the National Association of Convenience Stores. We know them as the small shop on the corner that has some groceries and maybe candy bars, slurpies—whatever you want to stop and buy. It also turns out these convenience stores sell 82 percent of the gasoline sold in America. They are part of the same association.

I said to the man who ran the association: What guarantee do we have, if we reduce the amount you have to pay the credit card companies, that the consumers will feel it? He said: We are the only business that posts prices right out on the sidewalk for all the motorists to see of our most popular

item, our gasoline. We fight over pennies. If we can reduce it a penny or two a gallon, we are going to attract more customers. If we can save money when it comes to these interchange fees, it puts us in a more competitive position to bring in more customers to buy gasoline. That is one side of the argument that could inure to the benefit of the consumers. There are no guarantees.

In the world I am talking about, you get to shop around. As the customer, you pick the convenience store, you pick the grocery store, you pick the prices. When it comes to the owners of the store using credit cards, they do not get to shop. They get a ''take it or leave it'' from MasterCard and Visa and have no bargaining power whatsoever.

Many Senators are worried about community banks that also issue credit cards. One thing I hear over and over from my colleagues is we do not want to hurt smalltown banks, regional banks, banks that are not the big boys on Wall Street that issue credit cards. That is why I amended my amendment and said we will exempt all banks with less than $10 billion in assets. If you have more than $10 billion in assets, it would be hard to call you a community bank. You are a much bigger operation.

Under my amendment, Visa and MasterCard could continue to set the same debit interchange rates they do today for small banks and credit unions. Ninety-nine percent of banks, 99 percent of credit unions have assets of less than $10 billion. Of all the credit unions in the United States, only three have assets over $10 billion.

One of my colleagues said: I am very close to the credit unions. I say to my colleague: I am sure you are also close to the small businesses in your State, and in this situation, 99 percent of the credit unions, virtually every credit union in your State would be exempt from this law, but your small businesses may benefit from it because the largest banks have the largest impact on credit card interchange fees.

My amendment would subject the biggest banks in America, the ones that issue the vast majority of debit cards and get the vast majority of interchange fees, to a reasonable fee requirement.

I hear the so-called independent community banks of America oppose my amendment. I could not understand it. If I exempted banks with less than $10 billion, that would exempt 99.8 percent of all of the so-called community banks in America. Why do they still oppose it? I have learned why. The Independent Community Bank Association is a major issuer of credit and debit cards. They are one of the top 25 credit card issuers in the United States and are the 23rd largest debit card issuers. They make a lot of money off interchange fees. They do not have clean hands in this debate. They are, in fact, conflicted in this debate. They are not arguing on behalf of small banks. Sadly, they are arguing on behalf of their own trade association credit cards and the fact they receive these generous interchange fees.

ICBA, so-called Independent Community Bankers Association, profits from the unfair swipe-fee system just like the biggest banks in America today. That is a conflict of interest.

Is this Washington trade association truly representing small banks that will get higher interchange fees than the big banks under my amendment or is it just interested in protecting its own revenue stream? I called back to some of my friends in downstate Illinois, where I come from—small town, small city America—and I talked to them about this. I said: I am exempting banks with assets of less than $10 billion.

They said to me: Well, that is perfectly reasonable. It won't touch any community banks you know in downstate Illinois.

That is an indication to me that this trade association out here is not speaking—really speaking—for community banks when they say they oppose this amendment as amended.

My amendment also aims to make sure Visa and MasterCard can't block merchants from offering discounts to their customers. For example, Visa has a provision in its contract with all of the businesses that accept it that the business cannot offer a customer a discount to use a competing credit card, such as a MasterCard. MasterCard has a similar provision. So they are protecting one another. You can't say, for example, that your shop prefers Visa cards because the Visa card charges you less as a business. They prohibit that back and forth.

Some people say: Well, maybe that is okay. Would it be okay if we take it to the next example: It is like Coca Cola saying that a store can sell Coke but only if it agrees not to sell Pepsi at a lower price, and it is like Pepsi saying the same thing. Who loses in that deal? I can tell you who loses—the customer, because there is no competition and the business because it does not attract the customers with competition and lower prices. Translate that into credit cards, and that is what Visa and MasterCard are doing today. My amendment strips these provisions from Visa and MasterCard contracts so merchants can offer discounts without penalty.

My amendment would also allow merchants to offer discounts for customers who pay by cash, check, or debit card as opposed to credit cards. Sometimes, Visa and MasterCard threaten to fine merchants who offer discounts for these cheaper forms of payment. My amendment would end those threats once and for all. This type of effort to promote noncompetitive practices should not be allowed, and my amendment would bring it to an end.

Nothing in my amendment would allow merchants to discriminate against cards issued by small banks and credit unions. That was another comment. They said, well, listen, DURBIN, if your amendment passes, they will say: This establishment will not accept credit cards from a small bank that issues these cards. We make it express in the amendment that we are offering that you cannot discriminate against the issuer, that is, the bank, of the credit card. You can only say you prefer one network over another because the interchange fees on your business happen to be lower, but you can't pick out banks. You may say: We prefer Visa or MasterCard, but you cannot pick them out by banks.

Interchange fees have real-life consequences on businesses across America. I have been receiving calls and letters from small business owners all over the State asking Congress to fix this rigged interchange system. Last week, my office received petitions signed by 92,000 Illinois consumers seeking to reform credit and debit interchange fees. The amendment has also been endorsed by 203 national and State trade associations representing every type of business you can think of, and it has been endorsed by Americans for Financial Reform, a coalition of over 250 consumer, civil rights, labor, retiree, and business groups.

If you talk to Visa, MasterCard, and the biggest banks, all you will hear is how well the current system is working and how we ought to keep our hands off it. But if you talk to the local grocery store owner or the person who owns the local restaurant in your hometown or the man who owns the gas station or the family who runs a local diner—small businesses and merchants across America—they will tell you stories about dealing with Visa and MasterCard and what it has meant to them in their business.

This afternoon, Art Potash, who owns some grocery stores in Chicago, came by my office. We had a little press conference. He talked about the competitiveness of the grocery business, where the return is usually 1 or 2 percent and he ends up paying 2 to 3 percent back to the credit card companies for people who use credit and debit cards. He is stuck because if he doesn't accept credit and debit cards, he is really trying to fight the tide. More and more people are using them. But he is paying a fee, which is cutting right into the bottom line. With this interchange fee at a more reasonable level, he would be able to expand his business and hire more people. Wouldn't that be a good outcome in an economy where we are desperate to deal with unemployment?

Let's put Main Street above the big banks and credit card companies. I ask my colleagues to help me in passing this amendment.

Madam President, I have received letters and comments from merchants and businesses across the State of Illinois supporting my amendment for interchange reform. I have received them from James Phillip of Phillip's

Flower Shops in Westmont, IL; Robert Jones, president of American Sale patio store in Tinley Park, IL; George LeDonne, owner of LeDonne Hardware in Berkeley, IL; Russ Peters, owner of Mobile Print in Mount Prospect, IL; Jim Dames, owner of Snackers Cafe in Western Springs; George Preckwinkle, a friend of mine and president of Bishop Hardware and Supply, with 10 locations in central Illinois; Paul Taylor, owner of Taylor's Gifts and Bonsai; Rattanaporn Deeudomchan, owner of the King and I Thai Restaurant in Oak Park; Yvonne Francois, who owns Queenie's Court, a restaurant in the food court at the Ford City Mall in Chicago; and John Gaudette, director of the Illinois Main Street Alliance, representing 450 small businesses across the State.

I ask unanimous consent to have printed in the RECORD at this stage of the debate some of the comments and letters which have been sent to me.

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

AMERICANS FOR FINANCIAL REFORM,
*Washington, DC., May 13, 2010.*

Senator DURBIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR DURBIN: We write on behalf of Americans for Financial Reform, an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists. We support a strong Consumer Financial Protection Bureau and oppose weakening amendments to the Restoring American Financial Stability Act, S. 3217.

Durbin Amendment #3989 is a move towards helping Main Street.

Americans for Financial Reform supports the Durbin Reasonable Fees and Rules for Payment Card Transactions Amendment #3989 because it is good for merchants and good for consumers. The bank payment networks, Visa and MC, impose high, nonnegotiable interchange fees for accepting credit and debit cards and use other unfair contractual practices that mean all consumers pay more at the store and more at the pump, whether they pay with cash or plastic. The bulk of the $48 billion estimated yearly take from interchange fees flows to the largest Goliath banks. Giving merchants more flexibility against unfair bank and card network practices will result in more payment choices for consumers and lower merchant costs.

For information, please contact Ed Mierzwinski.

Sincerely,
AMERICANS FOR FINANCIAL REFORM.

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MAY 12, 2010.

TO THE MEMBERS OF THE UNITED STATES SENATE: The undersigned organizations, representing a diverse array of interests including small business, state, organizations, dentists, retailers, restaurants, grocery stores, convenience stores and others, write in strong support of S. Amdt. 3989, sponsored by Senator Richard Durbin, regarding interchange fee reforms to S. 3217, the Restoring American Financial Stability Act of 2010 now before the Senate. Unless relief is granted, interchange ''swipe fees,'' which amounted to $48 billion in 2008, will continue to rise as card companies and issuing banks seek even higher profits, primarily on the backs of our organizations' members. This comes at a time when businesses, state agencies and charities—all of whom pay interchange fees—are struggling to help the economy grow again and when consumers can least afford pricing increases.

Despite Congress' efforts to reign in abusive practices, credit card companies continue to take advantage of a major loophole in financial regulation. In fact, they announced interchange rate increases just months after the passage of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), effectively circumventing many of the reforms instituted by Congress. More recently, Visa Europe announced last month that it was voluntarily dropping debit card interchange fees to 0.2% in Europe, a decrease of 60%, while earlier in the month Visa increased rates on similar transactions in the United States by some 30%. Quite literally, at a rate of approximately 2.0% on debit card interchange fees, which is 10 times higher in the United States, American businesses are subsidizing European transactions.

Simple, common-sense reforms are needed to correct this market imbalance, which would give our organizations' members additional tools to manage our costs related to interchange fees. First, the amendment would give the Federal Reserve the authority to conduct an open and fair rulemaking—without prescribing an outcome—in order to develop regulations to ensure that interchange fees imposed on debit card transactions be ''reasonable and proportional'' to the cost incurred in processing the transaction. Debit transactions are not an extension of credit and are directly drawn from a consumer's checking account, yet the interchange rate on debit transactions continues to increase. Small banks, credit unions and thrifts with assets of under $10 billion would be carved-out from these rules, meaning that 99% of all banks, 99% of all credit unions, and 97% of all thrifts would be exempt, allowing them to continue to receive the same interchange fees they receive today.

Second, the amendment would prohibit anti-competitive restrictions on discounts and the setting of minimum transaction levels, providing entities with the freedom to choose their preferred method of payment. Under current rules, any business, charity or government agency that accepts credit or debit cards is prohibited from setting a minimum transaction level, such as $3, even though the entity may actually lose money on the transaction because of slim profit margins. Visa and MasterCard can and do impose fines on small businesses up to $5,000 per day for such offenses, which has the effect of ensuring that the card companies and big banks turn a profit even if the small business loses money on the transaction. In addition, the amendment allows businesses to incentivize the use of one card network over another (e.g., a discount may be provided for Discover cards if they carry a lower interchange rate) and allows businesses to offer discounts on certain forms of payment (e.g., a discount may be offered for cash, check, PIN debit, etc., all of which carry lower rates than credit cards). This amendment would not enable merchants to discriminate against debit cards issued by small banks and credit unions. Visa and MasterCard require merchants to accept all cards within their networks, and this amendment does not change that requirement.

By providing these and other important reforms, the Congress will send a strong message that it supports modernizing and updating our financial payments systems while providing relief to businesses owners who have seen their interchange credit card assessments skyrocket—for many businesses exceeding the cost of providing health care benefits to their employees.

In closing, we are very concerned about the unintended consequences of not addressing interchange fees will have on our industries as the card companies and big banks continue to seek higher profits as a direct result of financial regulatory reform legislation, and other failing portfolios, through ever increasing interchange fees. We ask that you support S. Amdt. 3989, sponsored by Senator Durbin, to the Restoring American Financial Stability Act of 2010 when it comes up for a vote in order to ensure that financial regulation reform is comprehensive and complete. We look forward to working with you and your staff to incorporate these meaningful, common-sense reforms as part of the financial regulatory reform legislation.

Sincerely,
NATIONAL TRADE ASSOCIATIONS.

American Apparel & Footwear Association, American Association of Motor Vehicle Administrators, American Beverage Licensees, American Booksellers Association, American Dental Association, American Home Furnishings Alliance, American Hotel & Lodging Association, American Nursery & Landscape Association . . .

Mr. DURBIN. Madam President, I see one of my colleagues on the Senate floor, so I am going to yield. And I say to my colleagues, I am hoping this amendment comes up this afternoon. I will take less time to describe it then, but I wanted to use this time to put my full statement in the RECORD. I will just say to my colleagues that there won't be another amendment that we will consider this week or in the near future of such importance to small businesses across America. Let's stand up for these small businesses and give them a fighting chance against giants in the credit card industry. It is only fair, and it is a good way to revive this economy and put people back to work.

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

The PRESIDING OFFICER (Mrs. SHAHEEN). The clerk will call the roll.

The assistant editor of the Daily Digest, proceeded to call the roll.

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

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

Mr. KOHL. Madam President, I rise today to speak about amendment No. 3788, an amendment essential to protecting consumers. As we work to rein in the excesses of Wall Street and shore up our economy, we must do all that we can to ensure consumers can get discount prices from retail stores at the very time when they need them the most.

My amendment will restore the nearly century old rule that made it illegal under antitrust law for a manufacturer to set a price below which a retailer could not sell a product—a practice known as ''resale price maintenance'' or ''vertical price fixing.'' This rule was overturned in June 2007 by a narrow 5–4 majority of the Supreme Court in the Leegin case. My amendment is

identical to the Discount Pricing Consumer Act—a bill which has 10 cosponsors and passed the Judiciary Committee last month. Our bill has been endorsed by 39 State attorneys general, the leading consumer groups, as well as numerous antitrust experts, including former FTC Chairman Pitofsky.

For 96 years until the Leegin decision the rules were clear. Manufacturers could not set a retail price, and retailers could not be prevented from discounting. Millions of consumers saw the benefits of discount prices every day. Thousands of retailers all across the country were able to discount their products and sell their goods at the most competitive prices. Many credit the ban on vertical price fixing with the rise of today's low price, discount retail giants—stores like Target, Best Buy, Walmart, and the Internet sites Amazon and EBay, which offer consumers a wide array of highly desired products at discount prices.

But the consequences of the Leegin decision should worry all of us. Allowing manufacturers to set retail prices threatens the very existence of discounting and discount stores, and leads to higher prices for consumers. In his dissenting opinion in Leegin, Justice Breyer cited economic studies that estimated that if only 10 percent of manufacturers engaged in vertical price fixing, retail bills would average $750 to $1,000 higher for the average family of four every year.

And the experience of the last 3 years since the Leegin decision is beginning to confirm our fears regarding the dangers of permitting vertical price fixing. The Wall Street Journal has reported that more than 5,000 companies have implemented minimum pricing policies. Internet monitors scour the Web at the behest of manufacturers to prevent discounting. And there have been many reports of everything from consumer electronics and video games to baby products and toys, rental cars and bathtubs being subject to minimum retail pricing policies.

My amendment is quite simple and direct—it merely returns us to the state of the law the day before Leegin was decided. It would simply add one sentence to section 1 of the Sherman Act—a statement that any agreement with a retailer, wholesaler or distributor setting a price below which a product or service cannot be sold violates the law. No balancing or protracted legal proceedings will be necessary. Should a manufacturer enter into such an agreement it will unquestionably violate antitrust law. Instead of the complexity of the ''rule of reason'' announced by Leegin, we will once again have a simple and clear legal rule banning vertical price fixing—a legal rule that will promote low prices and discount competition to the benefit of consumers every day.

In the last 50 years, millions of consumers have benefited from an explosion of retail competition from new large discounters in virtually every product, from clothing to electronics to groceries, in both ''big box'' stores and on the Internet. My amendment will correct the Supreme Court's abrupt change to antitrust law, and will ensure that today's vibrant competitive retail marketplace and the savings gained by American consumers from discounting will not be jeopardized by the abolition of the ban on vertical price fixing. I urge my colleagues to support this amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. UDALL of Colorado. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. UDALL of Colorado. I ask unanimous consent that Senators SCHUMER and LEVIN be added as original cosponsors to amendment No. 4016.

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

Mr. UDALL of Colorado. I thank them for their support. I also want to first thank Senators LUGAR and BOND for the efforts they brought forth, along with those on our side, for this important amendment.

This amendment will make it a fact of life that individual Americans can more easily access their credit score. I have come to the floor of the Senate on a number of occasions over the last week to push for an important change in the world of credit bureaus and credit reports and now credit scores.

A credit score impacts consumers' interest rates, monthly payments on home loans, and can even affect a consumer's ability to buy a car, rent an apartment, and get phone or Internet service. I have been working with Chairman DODD, the Treasury Department, the Federal Reserve, and other colleagues in the Senate to reach a compromise that will help us achieve those objectives I just outlined.

I am very pleased to say I think at this fairly late hour on a Thursday that we have agreed to an approach that will give millions of Americans unsolicited access to their genuine credit score. I have talked about the difference between the score and the report. The report is a valuable tool, but unless people have their score they do not know where they stand.

Our bipartisan amendment will build upon existing law and require disclosure of credit scores to consumers whenever their credit score is used against them. So under our amendment, if they are turned down for credit because of their credit score, which is not an unusual occurrence, frankly, they have the right to see the credit score that was used against them.

Under this amendment, if they are charged a higher interest rate or get less favorable terms on a loan because of their score, they will also receive notification of that score.

So this amendment, again, for which we have bipartisan support, corrects one of the inequities in our financial system which keeps Americans from accessing this very important tool that, frankly, I think is as important as their health statistics: their blood pressure, heart rate, and so on. But people have not been able to access that credit score.

So there is a fundamental principle that is at stake. If their credit score is being used against them, they ought to have the right to at least see it. This Wall Street accountability package we are considering, at the heart of it—I think the Senator from New Hampshire knows this—we want to give Americans more tools so they are more financially literate. They can take control of their financial future.

So the best part of this amendment is that consumers will receive notification of their score without any red tape. This is good government. It is pure transparency reform that will empower Americans, as I have said, with critical information about their financial health. This makes common sense.

Let's put Americans in charge of their financial future. So as I close, I thank, in turn, Chairman DODD, Senator LUGAR, Senators LEVIN, BOND, SCHUMER, BEGICH, LAUTENBERG, and all of the 20-plus additional Senators who helped push for this important reform.

I especially thank Senator PRYOR who has worked with us to find something everyone can agree on. I look forward to this amendment being called up later, and I urge all colleagues to support this commonsense reform that will give Americans control over their financial futures.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEMINT. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 3852 TO AMENDMENT NO. 4019

Mr. DEMINT. Madam President, I call for the regular order with respect to the Wyden amendment No. 4019 and call up my amendment No. 3852 as a second-degree amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT], for himself and Mr. VITTER, proposes an amendment numbered 3852 to amendment No. 4019.

Mr. DEMINT. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the completion of the 700-mile southwest border fence not later than 1 year after the date of the enactment of this Act)

At the appropriate place, insert the following:

**SEC. ___. BORDER FENCE COMPLETION.**

(a) MINIMUM REQUIREMENTS.—Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subparagraph (A), by adding at the end the following: ''Fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under this subparagraph.'';

(2) in subparagraph (B)—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) not later than 1 year after the date of the enactment of the Restoring American Financial Stability Act of 2010, complete the construction of all the reinforced fencing and the installation of the related equipment described in subparagraph (A).''; and

(3) in subparagraph (C), by adding at the end the following:

''(iii) FUNDING NOT CONTINGENT ON CONSULTATION.—Amounts appropriated to carry out this paragraph may not be impounded or otherwise withheld for failure to fully comply with the consultation requirement under clause (i).''.

(b) REPORT.—Not later than 180 days after the date of the enactment of the Restoring American Financial Stability Act of 2010, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the progress made in completing the reinforced fencing required under section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by this section; and

(2) the plans for completing such fencing not later than 1 year after the date of the enactment of this Act.

Mr. DEMINT. I yield the floor.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. KAUFMAN. Madam President, I ask unanimous consent to speak as in morning business for up to 5 minutes.

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

## TRIBUTE TO CATHLEEN BERRICK AND CYNTHIA BASCETTA

Mr. KAUFMAN. Madam President, I rise today to speak once more about our Nation's great Federal employees.

Henry Clay once said:

Government is a trust, and the officers of the government are trustees; and both the trust and trustees are created for the benefit of the people.

Every dollar of the taxpayers' money that we in Congress spend on their behalf must be accounted for and every program rigorously audited to prevent waste and fraud. That job belongs to the tireless and persistent employees of the Government Accountability Office.

Since its founding in 1921, the GAO has been called ''the taxpayers' best friend.'' It is the people's watchdog, the home of over 3,000 Federal employees whose main task is to save the American people money by analyzing how public funds are spent. They make recommendations to Congress on how best to eliminate waste and make programs more efficient. If our elected officials have been entrusted to guard over public business, surely it is the men and women of the GAO who, in the words of the ancient adage, ''watch over the guardians.''

Today, I want to highlight the achievements of two outstanding employees of the GAO.

Cathleen Berrick has spent her whole career as a public servant. First in the Office of the Inspector General at the Pentagon and with the Air Force Audit Agency, and later with the Postal Service's Inspector General and the GAO, Cathleen has been at the forefront of ensuring the accountability of government for many years.

As a Managing Director at the GAO for Homeland Security and Justice, she has led comprehensive analyses of potential security vulnerabilities at the Transportation Security Agency and suggested key improvements.

In 2008, when assigned to review the plan for the TSA's Secure Flight Program, which screens air passengers against terrorist watch lists, Cathleen identified flaws and offered sound recommendations. She also conducted studies and authored reports recommending more oversight in how we secure our Nation's mass-transit systems and passenger rail.

Cathleen has testified before congressional committees over 20 times and has proven to be an expert resource for policymakers.

The second person whose story I will share is Cynthia Bascetta. Cynthia had worked for the GAO for 30 years when she was set to retire. However, the devastation wrought by Hurricane Katrina caused her to delay her retirement, and she decided to remain in public service.

As the GAO's Director for Health Care, Cynthia leads two major reviews of public health care infrastructure in New Orleans to ensure recovery funds are being spent wisely and for the greatest benefit. In her three decades of service at the GAO, she has fought to improve Federal disability policies, urged making HIV treatment and prevention a national priority, and recommended changes to Social Security that helped beneficiaries return to work without losing health care benefits.

One of the areas of focus throughout Cynthia's career has been improving care for our wounded veterans. She testified at the first congressional hearing to investigate the conditions at Walter Reed Medical Center, and her reviews were critical in understanding where changes needed to be made.

Since we passed the Recovery Act last year, the GAO has been preparing reports every 60 days on how funds are being used. Cynthia has been working recently as the GAO's State lead for Illinois, carefully reviewing every dollar from the Recovery Act being spent there.

Madam President, employees of the GAO continue to ensure government programs work for the American people. They remain ever-vigilant to ensure all of our public funds are spent wisely and carefully.

I hope my colleagues will join me in thanking Cathleen Berrick, Cynthia Bascetta, and all of the outstanding public servants at the Government Accountability Office for their service to our Nation. They are all truly great Federal employees.

Thank you, Madam President. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, before our colleague from Delaware leaves the floor—I said this once before, but I want to repeat it. Our colleague from Delaware has only been here a few months, I guess—a little over a year now; it goes by very quickly—having stepped in after our colleague, JOE BIDEN, became Vice President, and I do not know how well noticed it goes, but Senator KAUFMAN, I believe almost on a daily basis or something like that——

Mr. KAUFMAN. Weekly.

Mr. DODD. On a weekly basis—takes a few minutes to recognize people whose names and faces I am sure most Americans have never known or seen. Their families and neighbors are familiar with them. But he chooses three or four people who have worked on behalf of all of us, in many cases for years, without ever getting the kind of notoriety and celebration people in elective office receive. I wish to thank him for doing it. It is not a piece of legislation. It is not an amendment to a bill. It is not some ordinance or some treaty this Senate has an obligation to engage in; it is merely taking a little time to recognize some very fine Americans. We all hear about the ones who mess up and do things that are wrong. They get the headlines. But every day, there are literally thousands of people in this country who go to work on behalf of the American public who do their jobs diligently and serve us all tremendously well. The fact that one Member in this body every week takes a few minutes to say thank you is something I deeply appreciate, and I thank him.

Mr. KAUFMAN. Madam President, I thank the Senator from Connecticut. I thank him for what he does, and I wish to say to all the world, he is truly one of the great Federal employees. So I thank the Senator from Connecticut.

Mr. DODD. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3776

Mr. ENZI. Madam President, I rise to speak about Specter amendment No. 3776, which has already been debated by the Senator from Pennsylvania, but I wish to bring up the other side because it is a very technical, legal issue which crosses professional fields of accounting, tax preparation, and legal counsel. However, to understand where Senator SPECTER would take this amendment, I wish to explain where we have been.

In 1995, Congress rightly decided that the Securities and Exchange Commission—the SEC—should have sole authority and ability to prosecute criminals violating securities laws. The decision was made because we knew private securities lawsuits would be driven by the wrong factors. At that time, we saw how just a handful of law firms were using class action lawsuits to clog up the courts and to tie up companies in litigation for years for mere fluctuations in company stock prices. Private lawsuits would have negative impacts on the economy, and private securities lawsuits would potentially open small businesses to unwarranted liabilities just as these small businesses are struggling to make a comeback and hope to hire more workers to stimulate our economy.

Fifteen years later, in 2010, Senator SPECTER has introduced an amendment which would run contrary to Congress's decision. Senator SPECTER's amendment would create what is called a ''private right to action,'' meaning trial lawyers are going to have a field day with this. What is worse, though, is this legal standard included in this amendment doesn't hold water. The standard for ''aiding and abetting'' in this amendment has been adjusted three times in 2 weeks, and it still isn't right. The standard in this amendment requires ''actual knowledge of the improper conduct underlying the violation'' and of ''the role of the person assisting in such conduct.'' Now, this standard is only slightly better than the first two proposals discussed earlier in the debate.

At first glance, this standard may seem as though it is all that is needed to show that someone has aided another in the act of committing a crime. It would seem that if a person has knowledge of improper conduct and knows they are helping that person, it would be a simple legal matter. However, that is absolutely not the case, and I will explain why in just a minute.

I am not a legal mind debating legal standards or case law. However, I am a businessman and an accountant by trade, and I can see what this poor legal definition will do not only to the business of accounting but to our domestic securities industry as well. Tinkering with the language of this amendment doesn't conceal the fact that the real-world impact of this provision has not changed.

I need to point out the legal standard this amendment would set has holes. Using the language laid out in the Specter amendment, here is another example: You notice this person running through the park. Having seen the person, you now have knowledge that person was running. As a passerby, you got out of the way so they could continue on their run. If we were to apply the Specter standard, even if you never met this person, you would have knowledge of that person's action—you knew he was running—and you got out of the way so he could use the sidewalk. That is aiding. If this person just robbed a bank, under this standard you could now arguably be considered a secondary accomplice.

In another hypothetical example, if a lawyer reviews a client's statement to their investors, approves what has been written, and the client falsified those statements, the lawyer is completely liable, despite not knowing that the client's disclosures were false.

Although changes from the first draft of this amendment to what is before us now are somewhat better, this amendment is still unacceptable. This amendment does not require that the person in question has knowledge the primary violator has broken the law. It is a very important part of this. You may have seen him, you may have moved aside for him, but you didn't know he was breaking the law. That is a very important requirement.

The Specter amendment just requires the person is aware of the conduct itself, not whether it is illegal. In other words, one doesn't have to know they are helping someone violate the law, which is what aiding and abetting is. One just has to know that the conduct happened.

I will say that again. This standard only requires that one knows of the ''improper conduct,'' not that he ''knows that the conduct is improper.'' This is a critical and unacceptable difference. To be clear, the standard does not even meet what is used by the SEC to prosecute criminal aiding and abetting charges. The SEC standard is significantly higher. Because the standard in this amendment is so flawed, we would be opening thousands of innocent small businesses to secondary charges of fraud.

Again, we are not talking about criminal charges. These charges would be strictly considered in a civil court. Keeping this standard would give profit-motivated trial lawyers a vague statutory standard to work from—not a good combination. They would be able to cast a wide net for defendants, and this opens professionals in their company to the costs of discovery and trial, in addition to potential liability for damages awarded in the rest of the criminal case.

Let's not forget we are talking about accountants, tax preparers, and attorneys who aid everyday companies. This means these professionals would be faced with a standard of evidence they cannot refute or argue, and they could likely be facing unfounded charges.

An accountant looks at the books, has knowledge of it, but that doesn't mean he knows it was improper. Most of the accounting audits are not of every single transaction. For a big corporation, an audit of every single transaction might take 3 or 4 years to cover 1 year's worth of transactions. It can't be done. But under that circumstance, the accountant might have knowledge, and because he signs off on the papers, he might be aiding them under this definition.

Their options under this standard would be pleading out for millions of dollars, even if innocent, or losing even more in the long process of discovery and trial in order to defend themselves and their work. All this for someone who may not even know the criminal or have known that the person's actions were criminal. Is this how our country's legal system is supposed to work? Are we going to incentivize frivolous lawsuits? The Specter amendment standard may even go so far as to hold these professionals liable for not finding fraud.

I also wish to note that this proposed amendment also goes beyond just the actions of some accountants and lawyers involved in the securities industry. Senator CHUCK SCHUMER and Mayor Michael Bloomberg from New York City commissioned a report which found that meritless securities lawsuits are driving up the cost of doing business in securities and driving away foreign investors, making the United States less competitive worldwide. Having a standard like the Specter amendment proposal means foreign trading partners may be reluctant to bring business here right when our country needs the investment the most.

Foreign investors will not want to bring business here if doing so exposes them to the private liability standard that Specter's amendment would create.

As an accountant and former small business owner, and for each of the reasons I have outlined, I urge my colleagues to oppose this ill-conceived amendment.

I would be happy to answer questions of any of my colleagues if they have any. Again, I ask them to just ask their accountant what they think about this particular standard which could lead to lawsuits, discovery, a lot of costs—and needlessly. We are trying to pass a law that would take care of 1 percent of the problem and penalize the other 99 percent. So I hope we will reject the Specter amendment. I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. Madam President, I rise to speak on an amendment that

I have offered, amendment No. 3939. I ask unanimous consent to add Senator SNOWE as a cosponsor.

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

Mrs. FEINSTEIN. Madam President, this amendment is cosponsored also by Senators LEVIN and CANTWELL. The Dodd-Lincoln bill, as currently drafted, takes major steps to reform the $600 trillion derivatives market. I don't think people understand how big this market is. It would require every trade to be reported in real time to the Commodity Futures Trading Commission. It would require that all cleared contracts be traded on an exchange or on a swap execution facility, therefore, guaranteeing transparency. It would require that speculative position limits be set in aggregate for each commodity instead of contract by contract—to assure effectiveness. It would require foreign boards of trade to adhere to minimum standards comparable to those in the United States, including reporting requirements. The provision is designed to address the underlying problem of the so-called London loophole.

I very much support these positions. However, I am very concerned that the bill doesn't go far enough to address the London loophole. This loophole has allowed for the trading of United States energy commodities, such as crude oil, on foreign exchanges, without oversight from the United States regulators. This means there is no cop on the beat to shield U.S. oil prices from manipulation or excessive speculation when they are traded in foreign markets, such as commodities exchanges in London, Dubai, or Shanghai.

The amendment I am proposing along with my colleagues would allow the CFTC to require foreign boards of trade to register with the CFTC, which would give the Commodity Futures Trading Commission the enforcement authority it needs. It is supported by the chairman of the CFTC, Gary Gensler. This provision was in President Obama's original proposed financial reform bill, and I think it is critical to pass in this bill.

Let me explain what has become known as the London loophole. In the wake of the California energy crisis, we learned that most energy trading had been exempted from regulation by the Commodity Futures Modernization Act of 2000, at the urging of a company by the name of Enron. Using the Enron loophole, this notorious firm pioneered over-the-counter energy derivatives trading. It set up EnronOnline, an electronic market for trading physical and derivatives energy contracts. It was a marketplace with no transparency, no paper trail that could be audited, no speculative position limits, and absolutely no government oversight to prevent fraud, manipulation, or protect the public interest. Enron was a participant in every trade, and only Enron knew the prices. It used EnronOnline and other trading forums to fleece California consumers for $40 billion over 2 years of increased energy prices.

Shockingly, much of what Enron had set up was legal because Congress had stripped the Commodity Futures Trading Commission of its enforcement power. Terrible.

From 2002 on, I worked with Senators SNOWE, CANTWELL, LEVIN, and many others to restore regulatory oversight to energy derivatives. We tried in 2002 on this floor, and in 2003 and 2004 to regulate energy derivatives, but we were stopped and stymied. Opponents, such as Alan Greenspan, have since said their opposition was mistaken.

Finally, in 2008—6 years after we started—we were able to close this notorious Enron loophole in an amendment to the farm bill, of all things. The amendment imposed meaningful regulation, including speculative position limits and market oversight. So the CFTC began monitoring these markets for fraud and manipulation for the first time in 10 years.

But as Congress took steps to establish regulatory oversight of domestic energy derivatives markets, Wall Street traders moved to avoid U.S. regulation. They began to turn to offshore markets.

The successor to EnronOnline, the Intercontinental Exchange in Atlanta, bought a London exchange, converted it into an electronic exchange, and began listing American oil futures abroad. That is a way speculators could go right around American regulation and avoid it.

West Texas Intermediate crude has been one of the highest volume contracts on this London exchange since 2006. This contract has what is called a price discovery impact because it is commonly referenced as the standard market price of oil. This new regulatory loophole has thus become known as the London loophole. But firms also listed American energy commodity derivatives in Dubai and Singapore and opened their electronic platforms to American traders.

This new electronically traded marketplace allows American traders, simply put, to evade American market oversight and speculation limits. The practical implication of this is that U.S. traders can use offshore electronic exchanges to artificially drive up prices of U.S. commodities without any consequences from our Nation's market regulators. This is a big problem.

In 2008, a CFTC report found that traders using this London exchange to trade U.S. crude oil futures held positions far larger than would be allowed by American regulators. In fact, from 2006 to 2008, at least one trader position exceeded United States speculation limits every single week on the London exchange, and British regulators have done nothing about it. The good news is that some steps have been taken administratively to address this loophole.

In 2008, the Commodity Futures Trading Commission negotiated an agreement with British regulators to bring greater oversight to American commodities contracts traded in London. The agreement called for speculation limits for the electronic trading of U.S. energy commodities, such as crude oil on foreign exchanges, and required recordkeeping and an audit trail so you can look at them for fraud or manipulation. Without an audit trail, it is all in the dark. But CFTC—and here is the cruncher—has limited legal authority to enforce this agreement.

Bottom line: We need to make sure the CFTC can oversee trading of American commodities, whether it happens through a computer server located on Wall Street or in Singapore.

The Dodd-Lincoln bill currently before us includes some important provisions to help close the London loophole. As drafted, the bill will require foreign boards of trade that provide access to American traders to comply with comparable rules enforced by a foreign regulator, to publish trading information daily, to supply data to the CFTC, and to enforce position limits. However, the CFTC is unable to force a foreign board of trade to comply with those requirements. And that is just fact. This is because the CFTC's current method of overseeing foreign exchanges has tenuous legal underpinnings due to a Commodity Exchange Act provision forbidding the CFTC from regulating foreign boards of trade. In many instances, our regulatory body, the CFTC, can take action against a U.S. trader trading a U.S. commodity on a foreign exchange to prevent manipulation or excessive speculation only with the cooperation and consent of the foreign regulator.

The other more controversial option is for the CFTC to completely ban the foreign exchange from all U.S. operations. Not surprisingly, they shy away from enforcement in the face of these regulatory obstacles.

We have a bill that still does not provide strong regulation. It still allows American derivatives traders to avoid American regulations by trading on a foreign electronic platform in Dubai, London, and other places as well. That is why we—Senator SNOWE, Senator LEVIN, Senator CANTWELL, and I—are offering a proposal to allow the CFTC to require foreign boards of trade to register with the CFTC, which would give it the enforcement authority it needs.

Quickly, here are the benefits of the amendment.

First, the registration process itself would give CFTC the authority to impose regulatory requirements as a condition of registration.

Second, a formal registration process would assure that foreign boards of trade all follow the same set of rules.

And third, the registration process would provide a much clearer basis for CFTC decisions to refuse or withdraw permission to foreign boards of trade wishing to allow American traders on their exchange.

Finally, and most important, all of CFTC's existing enforcement authorities apply to registered entities under the Commodity Exchange Act. This amendment would allow the Commodity Futures Trading Commission to enforce its own statute with regard to foreign exchanges operating in the United States. This is a moderate, practical amendment to assure that we give our regulator the authority to enforce the statutory provisions already in the legislation.

There are powerful interests out there that are opposed to this. They want to be able to avoid our law. They want to be able to trade over the London exchange. We negotiated with them to close the Enron loophole. We had ICE in our office. They agreed to it. It took 6 months of negotiation. Do you know what they did? They then went offshore, bought the London exchange, changed it to an electronic trading platform to avoid the very agreement they agreed with, that we legislated and enacted. That is fact. Guess what. It burns me up. And I do not intend to quit because I do not like to be duped that way, whether it is Goldman Sachs and ICE or anybody else. If you give your word, you make an agreement. You do not go offshore to avoid that agreement.

Now that I have cooled down, this is a moderate, practical amendment to assure that we give the Commodity Futures Trading Commission the authority to enforce the statutory provisions already in the proposed legislation. Why would we want legislation which cannot be enforced? Why would we want legislation that ties their hands? Why would we want legislation that allows somebody simply to avoid this law by trading what amounts to $600 trillion of derivatives in Dubai or in London or in Shanghai or anywhere else?

Guess what. These electronic exchanges will be set up everywhere to avoid this bill. That is why we have to give the Commodity Futures Trading Commission the authority to see that these foreign exchanges register with them and agree to abide by the laws of the United States of America.

I think it is important that we do this, and I do not intend to quit one way or another, if it takes me 6 years to get it done, as it did the last one. I have no respect for traders who look to go around U.S. law.

As we crack down on traders in our markets, we must be ever vigilant to assure that traders sitting on Wall Street do not avoid our regulations by trading on electronic exchanges with computer servers in London or Dubai or Singapore.

This amendment is an improvement of the London loophole provisions in the Dodd-Lincoln bill by making these provisions easily enforceable. It is the final piece to go in, to close the London loophole, which should never have been opened in the first place, and to ensure that our government has what it needs to protect American markets from manipulation and excessive speculation, no matter where U.S. energy commodities are traded.

I expect the big boys to speak out against it. But I will tell you something: Everybody in the West who knows how they were fleeced back in 1999 and 2000 by Enron clearly will understand the value of being able to enforce the law of this country. We should ask for no less.

I know I cannot call up the amendment at the present time, but I hope I will have that opportunity to do so later.

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

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 4019, WITHDRAWN

Mr. DODD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The DeMint amendment is pending for the Dodd-Wyden first-degree amendment.

Mr. DODD. Mr. President, I now withdraw the Wyden amendment.

The PRESIDING OFFICER. The Senator has that right.

The amendment is withdrawn.

AMENDMENTS NOS. 3989, AS MODIFIED, AND 3987

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Durbin amendment No. 3989 and the Thune amendment No. 3987; that the Durbin amendment be modified with the changes at the desk; that the amendments be debated concurrently for a total of 10 minutes, with the time equally divided and controlled in the usual form; that no amendment be in order to any of the amendments in this agreement prior to a vote; that upon the use or yielding back of time, the Senate proceed to vote in relation to the following amendments; that the Durbin amendment be subject to an affirmative 60-vote threshold; that if the amendment achieves the threshold, then it be agreed to and the motion to reconsider be laid upon the table; that if the amendment does not achieve the threshold, it be withdrawn: Durbin amendment No. 3989, as modified; Thune amendment No. 3987; that after the first vote, the succeeding vote be limited to 10 minutes, with 2 minutes of debate prior to each vote, equally divided and controlled.

The PRESIDING OFFICER. Is there objection?

Mr. GREGG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. GREGG. Do I have the right to object?

Can you do a quorum for a second?

Mr. DODD. Mr. President, I couldn't hear. What is the situation we are in?

Mr. GREGG. I am reserving the right to object and asking the Senator if he can put us in a quorum for a minute or two so we can clear this issue on our side.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 3989), as modified, is as follows:

At the end of subtitle G of title X, add the following:

**SEC. 1077. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.**

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by redesignating sections 920 and 921 as sections 921 and 922, respectively; and

(2) by inserting after section 919 the following:

**"SEC. 920. REASONABLE FEES AND RULES FOR PAYMENT CARD TRANSACTIONS.**

''(a) REASONABLE INTERCHANGE TRANSACTION FEES FOR ELECTRONIC DEBIT TRANSACTIONS.—

''(1) REGULATORY AUTHORITY.—The Board shall have authority to establish rules, pursuant to section 553 of title 5, United States Code, regarding any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction.

''(2) REASONABLE FEES.—The amount of any interchange transaction fee that an issuer or payment card network may charge with respect to an electronic debit transaction shall be reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(3) RULEMAKING REQUIRED.—The Board shall issue final rules, not later than 9 months after the date of enactment of the Consumer Financial Protection Act of 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the actual cost incurred by the issuer or payment card network with respect to the transaction.

''(4) CONSIDERATIONS.—In issuing rules required by this section, the Board shall—

''(A) consider the functional similarity between—

''(i) electronic debit transactions; and

''(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;

''(B) distinguish between—

''(i) the actual incremental cost incurred by an issuer or payment card network for the role of the issuer or the payment card network in the authorization, clearance, or settlement of a particular electronic debit transaction, which cost shall be considered under paragraph (2); and

''(ii) other costs incurred by an issuer or payment card network which are not specific to a particular electronic debit transaction,

which costs shall not be considered under paragraph (2); and

''(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial Protection.

''(5) EXEMPTION FOR SMALL ISSUERS.—This subsection shall not apply to issuers that, together with affiliates, have assets of less than $10,000,000,000, and the Board shall exempt such issuers from rules issued under paragraph (3).

''(6) EFFECTIVE DATE.—Paragraph (2) shall become effective 12 months after the date of enactment of the Consumer Financial Protection Act of 2010.

''(b) LIMITATION ON ANTI-COMPETITIVE PAYMENT CARD NETWORK RESTRICTIONS.—

''(1) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A COMPETING PAYMENT CARD NETWORK.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment through the use of a card or device of another payment card network, provided that the discount or in-kind incentive only differentiates between payment card networks and not between other issuers.

''(2) NO RESTRICTIONS ON OFFERING DISCOUNTS FOR USE OF A FORM OF PAYMENT.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, check, debit card, or credit card.

''(3) NO RESTRICTIONS ON SETTING TRANSACTION MINIMUMS OR MAXIMUMS.—A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to set a minimum or maximum dollar value for the acceptance by that person of credit cards, provided that such minimum or maximum dollar value does not differentiate between issuers or between payment card networks.

''(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) DEBIT CARD.—The term 'debit card'—

''(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account for the purpose of transferring money between accounts or obtaining goods or services, whether authorization is based on signature, PIN, or other means;

''(B) includes general use prepaid cards, as that term is defined in section 915(a)(2)(A) (15 U.S.C. 1693l–1(a)(2)(A)); and

''(C) does not include paper checks.

''(2) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

''(3) DISCOUNT.—The term 'discount'—

''(A) means a reduction made from the price that customers are informed is the regular price; and

''(B) does not include any means of increasing the price that customers are informed is the regular price.

''(4) ELECTRONIC DEBIT TRANSACTION.—The term 'electronic debit transaction' means a transaction in which a person uses a debit card to debit an asset account.

''(5) INTERCHANGE TRANSACTION FEE.—The term 'interchange transaction fee' means any fee established by a payment card network that has been established for the purpose of compensating an issuer or payment card network for its involvement in an electronic debit transaction.

''(6) ISSUER.—The term 'issuer' means any person who issues a debit card or credit card, or the agent of such person with respect to such card.

''(7) PAYMENT CARD NETWORK.—The term 'payment card network' means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.''.

Mr. DODD. Mr. President, I ask unanimous consent that upon disposition of the above-mentioned amendments, the Senate resume consideration of the Collins amendment No. 3879 and that the amendment be considered and agreed to and the motion to reconsider be considered made and laid upon the table.

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

Mr. DODD. Mr. President, I ask unanimous consent that the following be the next first-degree amendments in order: Rockefeller-Hutchison, the FTC amendment; Senator CRAPO, the GSE on budget amendment; Senator MARK UDALL of Colorado, No. 4016 regarding credit scores; Senator SHELBY's amendment No. 4010 re: the consumer bureau; Senator WHITEHOUSE's State usury laws; Senator VITTER, No. 4003, the manufacturing amendment; Senator CANTWELL and Senator MCCAIN's Glass-Steagall amendment; and Senator CORNYN, No. 3986 regarding the IMF.

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

Under the previous order, there will be 10 minutes of debate equally divided.

The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask the Chair to inform me when I have 1 minute of my 5 minutes remaining.

I think this is an amendment that is well known to my colleagues. I have spoken on the floor several times. It is about the interchange fees charged to small businesses across America for the use of credit cards.

This amendment does the following things: It directs the Federal Reserve to ensure that debit fees on debit cards are reasonable and proportional to processing costs; it stops Visa and MasterCard from imposing any competitive restrictions; it ends prohibitions on discounts for use of different network cards; it ends prohibitions on discounts for cash, debit, or credit; and it ends prohibitions on minimum purchase levels for paying with a credit card.

It does not affect credit card interchange rates. We do not establish a rate. That is left entirely to the Federal Reserve to review. We do not allow discrimination against small banks or credit unions. The modification specifically prohibits any discrimination against the issuer of a credit card. A merchant may decide to favor one network over another but cannot favor one bank over another that issues a card. So there can be no discrimination against a credit union, community bank, or a large bank, for that matter. It doesn't set interchange prices.

By putting a $10 billion threshold in terms of the banks issuing the cards, we literally exempt 99 percent of all banks and credit unions from the application of this law. Still, just going for the largest banks in America—86 banks in America—we will cover 65 percent of all the credit and debit transactions in this country. So it is a significant amendment, and it protects the community banks and the credit unions.

I will tell you that I am very concerned and disappointed by the so-called Independent Community Banks Association, which continues to oppose this amendment despite my best efforts to exempt virtually all of their members from being covered. I understand they have a conflict of interest because they are in the top 25 issuers of credit and debit cards in the United States. They make a lot of money under the current situation. They may not want to change it, but it is not fair to small banks in Illinois and across the Nation for them to speak to this issue when they have this conflict of interest.

The second thing I want to say to the credit unions is that there are 8,200 credit unions in America, and all but 3 are exempt from this law—99.999 percent of credit unions are exempt from this law. For them to be opposing it because of three of the biggest credit unions in America is unfair to the rest of their members and certainly unfair to the merchants who do business with them every day.

This is the single most important amendment for small business and retail business in America that we will consider on this bill. In a time of recession, when we need small businesses to step up and create jobs, this is a way to move forward.

Members have heard from all across the country, from small businesses and retail merchants who are asking for some fairness, some justice when it comes to these major credits cards that literally dictate the terms of their agreements with these small businesses. I urge my colleagues to support the Durbin amendment.

Mr. President, I am going to reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no time is yielded, the time will be charged to both sides equally.

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. One minute, 15 seconds.

Mr. DURBIN. I yield to the Republican side, if there is opposition to the amendment.

Mr. KYL. Mr. President, as far as I know, there is no one else on our side wishing to speak; therefore, we can yield back time of the minority.

Mr. DURBIN. I say to my colleagues, I know this is a complex and in some ways a controversial amendment. But I can't think of a better way for us to establish a reasonable standard that debit cards, which are now becoming more common and are equivalent to a check, are going to be charged against the merchant that honors the card only in a reasonable and proportional way by the same agency we used under the consumer credit card reform bill of just last year.

I urge my colleagues, if they are listening to small businesses across America, struggling to survive, trying to add new employees, give them a helping hand by voting for the Durbin amendment so they can have reasonable charges for the use of credit cards and debit cards at their establishment. I urge the passage of this amendment and I yield the remainder of my time.

I ask for the yeas and nays.

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

If all time is yielded back, the question is on agreeing to the Durbin amendment, No. 3989, as modified.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

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

The result was announced—yeas 64, nays 33, as follows:

[Rollcall Vote No. 149 Leg.]

YEAS—64

| | | |
|---|---|---|
| Barrasso | Feinstein | Murray |
| Begich | Franken | Nelson (NE) |
| Bennet | Gillibrand | Pryor |
| Bingaman | Graham | Reed |
| Boxer | Grassley | Reid |
| Brown (MA) | Hagan | Risch |
| Brown (OH) | Harkin | Rockefeller |
| Burr | Inouye | Sanders |
| Burris | Isakson | Schumer |
| Cantwell | Kerry | Shaheen |
| Cardin | Klobuchar | Snowe |
| Casey | Kohl | Specter |
| Chambliss | Landrieu | Stabenow |
| Collins | Lautenberg | Udall (CO) |
| Conrad | Leahy | Udall (NM) |
| Crapo | LeMieux | Vitter |
| Dodd | Levin | Webb |
| Dorgan | Lincoln | Whitehouse |
| Durbin | Lugar | Wicker |
| Ensign | Menendez | Wyden |
| Enzi | Merkley | |
| Feingold | Mikulski | |

NAYS—33

| | | |
|---|---|---|
| Akaka | Coburn | Johnson |
| Alexander | Cochran | Kaufman |
| Baucus | Corker | Kyl |
| Bayh | Cornyn | Lieberman |
| Bennett | DeMint | McCain |
| Bond | Gregg | McCaskill |
| Brownback | Hatch | McConnell |
| Bunning | Inhofe | Murkowski |
| Carper | Johanns | Roberts |
| Sessions | Tester | Voinovich |
| Shelby | Thune | Warner |

NOT VOTING—3

| | | |
|---|---|---|
| Byrd | Hutchison | Nelson (FL) |

The amendment (No. 3989), as modified, was agreed to.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The majority leader is recognized.

Mr. REID. Mr. President, if I can have everyone's attention, I will be as quick as possible. Mr. President, we have dealt with 31 amendments on this piece of legislation. Until today, this last amendment, they have all been 50-vote margins. There has been no tabling of motions.

We now have six amendments pending. We have unanimous consent that eight more can be offered. There is talk between the two managers of the bill. There are Democratic amendments we think the Republicans will agree to; there are Republican amendments that we will agree to.

We are moving toward wrapping up this bill. There will be a number of votes on Monday night starting at 5:30. Everyone should be aware of that. Tonight the managers are here. They are going to try to work through a couple of amendments. We have one more vote. After that, there will not be any more votes until Monday night.

VOTE ON AMENDMENT NO. 3987

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to Amendment No. 3987 offered by the Senator from South Dakota.

The yeas and nays have previously been ordered.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Michigan (Ms. STABENOW), and the Senator from Florida (Mr. NELSON) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Texas (Mrs. HUTCHISON).

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

The result was announced—yeas 40, nays 55, as follows:

[Rollcall Vote No. 150 Leg.]

YEAS—40

| | | |
|---|---|---|
| Alexander | DeMint | McCain |
| Barrasso | Ensign | McConnell |
| Bennett | Enzi | Murkowski |
| Bond | Graham | Risch |
| Brown (MA) | Grassley | Roberts |
| Brownback | Gregg | Sessions |
| Bunning | Hatch | Shelby |
| Burr | Inhofe | Snowe |
| Chambliss | Isakson | Thune |
| Coburn | Johanns | Vitter |
| Cochran | Kyl | Voinovich |
| Corker | LeMieux | Wicker |
| Cornyn | Lincoln | |
| Crapo | Lugar | |

NAYS—55

| | | |
|---|---|---|
| Akaka | Bayh | Bennet |
| Baucus | Begich | Bingaman |
| Boxer | Harkin | Pryor |
| Brown (OH) | Inouye | Reed |
| Burris | Johnson | Reid |
| Cantwell | Kaufman | Rockefeller |
| Cardin | Kerry | Sanders |
| Carper | Klobuchar | Schumer |
| Casey | Kohl | Shaheen |
| Collins | Landrieu | Specter |
| Conrad | Leahy | Tester |
| Dodd | Levin | Udall (CO) |
| Dorgan | Lieberman | Udall (NM) |
| Durbin | McCaskill | Warner |
| Feingold | Menendez | Webb |
| Feinstein | Merkley | Whitehouse |
| Franken | Mikulski | Wyden |
| Gillibrand | Murray | |
| Hagan | Nelson (NE) | |

NOT VOTING—5

| | | |
|---|---|---|
| Byrd | Lautenberg | Stabenow |
| Hutchison | Nelson (FL) | |

The amendment (No. 3987) was rejected.

AMENDMENT NO. 3879

The PRESIDING OFFICER. Under the previous order, the question is on amendment No. 3879, offered by the Senator from Maine.

The amendment is agreed to, and the motion to reconsider is considered made and laid upon the table.

The amendment (No. 3879) was agreed to.

Mr. DODD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

SECRET HOLDS

Mr. WYDEN. Mr. President and colleagues, the American people are furious at the way business is done in Washington, DC. Today, on the floor of the Senate, we saw a pretty good reason why.

For many months, a large group of Senators on both sides of the aisle—Senator GRASSLEY, Senator INHOFE, Senator COLLINS, and Senator BENNETT, among the Republicans; a host of my colleagues on our side of the aisle, led by Senator MCCASKILL—have been working to try to eliminate the secret hold in the Senate, which is, in my view, one of the most pernicious, most antidemocratic practices in government.

What the secret hold allows is for just one Senator—just one—to anonymously keep the American people from getting any sense of a particular piece of legislation, someone who has been nominated for an appointment—any sense of some of the most important business that is before the Senate.

The Senator from Missouri, who is in the Chamber, has noted that at times there are scores and scores of these secret holds. I have pointed out this has happened for years on both sides of the aisle.

So this has been an opportunity, when the country is crying out for bipartisanship, for Democrats and Republicans to together—as our large group has done—fix this, to open our government, to ensure that democracy is accountable, and that public business is actually done in public.

Until about an hour or so ago, I thought we would win a dramatic victory for the cause of open government. We had a good debate this morning on the measure. Colleagues on both sides of the aisle talked about it.

Not one Senator objected, not one was willing to say in public they were in favor of secret holds. Quite the opposite: We talked for some time, and no one objected at all. We were under the impression that the matter would be scheduled for a vote this afternoon.

Given that, I was flabbergasted that right before it was time to vote, one Senator—just one—without any notice whatever—no notice to me, no notice to any of the other sponsors, sponsors on the other side of the aisle—one Senator sought to attach to our amendment, which would have received a resounding vote because Senators are not going to vote in favor of secrecy when they are on the record—one Senator attached a completely unrelated matter, a very controversial matter.

I say to the Chair, I say to all my colleagues, I never, ever would have done that to another colleague. I have felt for many years now that the great challenge in the Senate is to have colleagues work together, to have colleagues come together on both sides, because that is going to help us advance the cause of open government, it is going to help us get the best possible policy.

So if I had been in our colleague's shoes, and I was interested in advancing this other issue, I would have come to that particular Senator and said: How can we work this out? That did not happen. So all of us, at the last minute, when we were looking forward to celebrating what, in my view, would have been a historic vote for open government, after all these months of Democrats and Republicans debating secrecy in government, we now sit here on Thursday evening, with secrecy having won once more, doing government in the shadows winning once more, denying the American people the accountability this institution is all about winning once again.

I think the American people deserve better. We spent a lot of time today bringing all sides together. The chairman of the committee, Senator DODD, is here with us. The whole essence of the Wall Street legislation has been to ensure more openness and more accountability in these essential financial transactions. Chairman DODD has done a superb job in advancing that case.

What Senators on both sides of the aisle sought to do, until there was an objection from one Senator at the last minute—with no notice—what we sought to do was to say: If we are going to open our system of financial transactions so there would be more transparency and more accountability, let's also open the way we do business in the Senate so the American people are not kept in the dark any longer about major judgments with respect to legislation or nominations. One Senator—just one—without notice, kept us from bringing that new accountability and openness to the Senate.

I know colleagues want to bring up other matters. I simply wish to say—I think I have been in this body now for a little over a decade—I cannot recall another instance where the cause of open government took a beating, took a blindsiding, like the cause of open government took this afternoon.

I wish to tell my colleagues, I intend to come back to my post here again and again and again until we abolish the secret hold, until we ensure that the American people see that government is being brought out of the shadows and debates are out in the open, where they ought to be.

We did not win this afternoon because I think we got kneecapped. I do not know how to describe it any other way. But I do not think, at this time in American history, where the American people are this angry—this angry—at the way Washington, DC, does business, that those who advocate secrecy are on the right side of history. I do not think they are going to be able to defend in broad daylight opposing a bipartisan coalition.

Senator GRASSLEY has worked with me on this for a decade. He has, again and again, championed the cause of transparency and openness in government, not just on this question of abolishing secret holds but on inspectors general and a variety of other practices.

So these are colleagues—Democrats and Republicans—who want to show the American people they are going to stand for open government, and they are going to do it in a way where the American people will say: Those folks finally get it. Instead of spending their time in these petty food fights, they are a group of Democrats and Republicans who acted like adults and got together and solved a major problem—a major problem—by eliminating secrecy and making government more open.

So it is my intent to come back, if possible, day in and day out until this changes. I think this is unconscionable. I can tell you, I have never seen anything like this in my time in the Senate: one Senator coming in, at the last moment, with no notice, trying to derail the cause of open government.

I am not going to stand for it. I do not think the American people are going to stand for it. We will be back here for as long as it takes to bring some real sunshine to this cause of the Senate doing its business in public rather than in the shadows.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

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

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

Mrs. MCCASKILL. Mr. President, I know someone is going to be able to use the figleaf and stand behind the argument that the amendment that was offered at the very last moment this afternoon was about something they cared about and something we need to vote on. It is a subject matter we care about that we need to work on. But really? It is pretty transparent what is going on here: that at the very last moment, when all of a sudden we were this close for everyone having to go on record about secret holds, that someone shot it out of the sky like a clay pigeon. That is what this amendment did.

So the argument is: Well, the Wyden-Grassley amendment on secret holds is not really about the financial reform bill. Why does it get a chance to be voted on? It is very simple. The reason the Wyden-Grassley amendment should be considered germane to every bill we debate in this body is because it is about the way we do business. Every day that goes by that we do not try to reform this nasty habit of secret holds, we diminish the shine and the glory that is our democracy. We diminish what this body should stand for and what our priorities should be. Every day we allow the secret hold process to continue to take root and grow and flourish, we are failing in our job as Senators who are here to do the public's business.

We are not here to go in back rooms and get something for our secret hold. We are not here to go in back rooms and leverage our secret hold for something else we want. We are not here to go in back rooms and have secret holds to keep this administration from succeeding or filling the jobs that need to be filled. We are here to be accountable.

Of all the amendments out there that can be second degreed, this amendment that would reform our process is selected to slow it down and obviously, hopefully, kill it. Well, I have bad news for my friends across the aisle who want to kill the longstanding attempts of Senators WYDEN and GRASSLEY at reform, and my recent attempts, along with Senator BENNET, Senator WHITEHOUSE, Senator UDALL, Senator WARNER, and others who have come to the floor and spoken on secret holds: We are not going anywhere. It is probably a fault I have, but I am pretty darn stubborn. In fact, I am probably stubborn to a fault. I think this is something we all ought to be stubborn about.

We have different kinds of Senators. We have some who are kind of feeling as though they are being marched to the gallows as they grudgingly support cleaning up secret holds. We have others who want to pound their chests and shout from the rooftops about trying

to get rid of secret holds. And we have others who are hiding in the crevices, the little, bitty, tiny dark places, who are trying to keep secret holds without anybody knowing who they are.

I will say this. One can make the assumption that whoever offered this amendment to try to kill this amendment probably is a big fan of secret holds. Because it seems to me if they wanted this amendment to pass, they would have at least talked to the sponsors before they offered the second-degree amendment. That is the common courtesy around here; they would have at least given everyone some notice. But they saw this amendment speeding toward the finish line. They realized they were going to be called for the yeas and nays on reforming the Senate, and they decided to take the path of least resistance and that is try to kill the bill another way.

But along with my colleague and mentor on this subject, Senator WYDEN, and Senator GRASSLEY, whom I have met with a number of times over the last week, we are going to stay with it. I know I speak for my colleagues who have been here 4 years or less, the freshmen and sophomores in this body. I know how strongly we feel about this.

I wish to remind my colleagues, if I am wrong about you, if you are against secret holds, the letter is still open. We have 60 Members who have signed the letter. Sixty Members of this body, all of the Democrats but one, both of the Independents, and now two Republicans have signed the letter saying we will not exercise a secret hold and we want to abolish secret holds. I look forward to seeing my colleagues on the other side of the aisle, more Republicans joining in the signing of this letter. It is available. I hope they will contact us. Senator WARNER, Senator WHITEHOUSE, and I are the lead signators on this letter. But it is time for everyone—by the way, if we get to 67 signatures, guess what we can do. We can amend the standing rules of this place. We could say that an objection will not be in order if it is anonymous. We could do that with 67 votes. What a great day that would be. Wouldn't that be a wake-up call to the American people that maybe we get it. Maybe we get why our approval ratings of Congress are near historic lows for all the nonsense, ridiculous games that get played around here.

Let's do the public's business and let's do it in public and let's end the secret holds, the nasty habit we can no longer afford.

I will look forward to visiting with my colleagues on the other side of the aisle and see if we can prevail upon them to withdraw their second-degree amendment so we can go forward or find some other way forward. But make no mistake, we will find a way forward and we will end the secret hold. I am confident it will happen. So you can fight as long and as hard as you want, but we are not going to give up.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BENNET. Mr. President, I will take a couple of minutes. I have been here a smaller amount of time than anybody who is on this floor. The chairman has been here longer than I have been here; Senator WYDEN, Senator MCCASKILL, and others. I have been here about 15 months. What I can tell my colleagues is that this place doesn't operate like any other place in the universe. This secret hold business we are talking about right now, so people understand, allows a Senator to be able to hold up a nomination or a piece of legislation without having to tell anybody who they are. I spent half my career in business. No business I have would have ever tolerated a rule such as that. I have worked in local government. No local government I have ever been part of would have tolerated a rule such as that. There are city councils and State governments, county governments all over this country right now—by the way, they are probably still at work, unlike us, trying to figure out how to balance their budgets in the most savage economy since the Great Depression. They are not using secret holds to stop their ability to respond to the American people, and we shouldn't either.

One of the things I want to say is that Senator WYDEN should be congratulated, because this is not a partisan piece of legislation. The No. 1 question I hear from people when I go home is, Why can't you guys work together? We lack confidence in what you are doing. There are Democrats, Republicans, unaffiliated voters who say, Why can't you work together? It looks like a partisan food fight back here because it is, but it is a little more complicated than that. In this case, we have a bipartisan piece of legislation that has broad support in this Chamber, as do the nominees who are being held up whom we have brought forward. We haven't brought forward nominees who got just Democratic votes; they are nominees who were passed out of the relevant committee of jurisdiction on a bipartisan basis, and somebody has decided that they want to hold these people up for reasons that have nothing to do with the quality of the nominees or because they were passed out on a partisan way, which they weren't. They are bipartisan.

So this isn't about everybody on the other side of the aisle holding up this legislation. This is bipartisan legislation. We should be here tonight. It is only 7:30. We should be here tonight debating this amendment, allowing people to come together in a bipartisan way to support the amendment, just as we should allow people to come together in a bipartisan way to support the nominees who have come forward and passed out of committee. There is no difference. The difference is that this rule allows some individuals to bring it to a grinding halt, to create more division rather than less division which, at least in my view, is what we need as a country.

In my State, no matter where I am—in blue parts of the State, in red parts of the State—my sense is that people have a pretty common set of aspirations for our State, for our country, for their kids, for our grandkids. They expect us to act on those aspirations rather than on the divisions that are so easy to create for just political gain. That is what has been happening when it comes to these secret holds. There are other issues as well that relate to the rules of this place that need to be changed, but this is one that is indefensible.

I came to the floor this morning and I said it reminds me a little bit of a car trip with my three little girls who are 10, 9, and 5. It happens every single time we are in the car: The first hour goes great; everybody is fine. But then they start to fret with each other, they get frustrated with each other. You can hear it. Any parent knows, the hair on the back of your neck starts to rise, and you know something bad is about to happen, and it does. Usually somebody slugs somebody else, and then you look behind you and no one will admit what they have done. No one will take responsibility for their bad act. We don't tolerate that in my household, by the way. We try hard to get to the bottom and the truth. We don't always, but we usually do.

This is the same thing. I am not saying people shouldn't be able to hold things up on the merits, but they ought to have to come to the floor and tell the American people who they are and why they are holding it up. They may have good arguments to make. That is what this is about. It is about debate, and that is what we need more of in this country because we are wasting the American people's time. We are wasting the American people's money, and we can't even get a debate on a lot of the issues this country faces.

I am going to try hard to do everything I can to contribute to a civil debate rather than an uncivil debate, and I think getting rid of these holds is going to be one of the ways forward. It is not the only thing we need to do.

I wish to thank Senator WYDEN for all of his good work on this issue, and Senator WHITEHOUSE for his good work, and the chairman's indulgence for letting us have this conversation tonight. Thanks for everything you have done to advance Wall Street reform this week.

By the way, on that, the American people should know that this bill, the Wall Street reform bill, is a very good bill. Unlike some other work we have done recently, it actually has the benefit of being worked on in a very bipartisan way, with a lot of amendments from Democrats and Republicans which I think have improved the legislation. I can't predict the future, but my guess is that it is going to pass with broad bipartisan support.

I congratulate Chairman DODD on his leadership and getting that done in a way that gives the American people confidence that we are actually doing their business.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I wish to join my colleagues in expressing our support for Senator WYDEN's continued efforts to get this rule changed.

The circumstances in which these secret holds take place are quite remarkable. Over and over again we see a committee vote clearing a nominee for the floor, often unanimously, or by heavy, huge bipartisan majorities; clearly qualified candidates; clearly candidates who enjoy bipartisan support and, in many cases, candidates who are unanimously supported. Even in this contentious and cantankerous time in this body, they come through the committee with that kind of support.

Then they come through on the floor in some cases 98 to 0, 100 to 0. But between that unanimous committee vote and the unanimous floor vote is an endless, endless, endless delay. Many of them stack up and never get that floor vote. We have had as many as 100 stacked up, waiting for that floor vote on the Executive calendar.

What is happening between a unanimous committee vote and a unanimous floor vote that creates all this hassle and delay and leaves people in limbo for months and months, 100 at a time on the Executive calendar, all of whom are in responsible positions in our Federal Government that we need to have staffed? It is the secret hold. It is the secret hold where you don't have to disclose who you are so you don't have to disclose why you are holding. Because you don't have to disclose who you are or why you are holding, you don't have to have a good reason. You could have a downright nefarious reason and you could still use the hold. It is pretty widely known that deeds that are done in the dark are not the deeds we are proud of, and this is a deed that is by definition always done in the dark. Senator WYDEN and Senator GRASSLEY's long efforts to get rid of it are very commendable. We are going to work very hard to make sure we have their back on this rule.

In this particular circumstance, Senator WYDEN has been here 14 years. He has never seen a stunt like this one. I have only been here 3 years; I can't say that. But 14 years of service in the Senate and he has never seen a stunt like this particular one.

The idea that this is on the merits, the idea that this is about trying to get a vote on that second-degree amendment, seems mighty improbable. Of all of the amendments on this bill, of all of the amendments we have voted on, of all the amendments that are pending, of all the amendments people are arguing for to get on the floor, which is the one amendment that somebody chose to drop this second-degree amendment on and jam up its passage through this body?

Which is the one? It is the secret hold. In kind of a perverse way, it is actually sort of appropriate that a procedural vehicle, the secret hold, that has such an odor of mischief around it—that the reform of that should itself be blockaded by a procedural trick that also has that same odor of mischief about it.

But what we want to do is get through that mischief so that the business of this body no longer wreaks of the odor of mischief and instead gives off the healthy air of open debate and public process and transparency. I thank Senator WYDEN and Senator GRASSLEY, who is not on the floor. We will continue to push on this.

AMENDMENT NO. 3746 TO AMENDMENT NO. 3739

If I could change to a different piece of business, I will take this opportunity to call up amendment No. 3746. I thank Senator DODD and I will say a few words about it.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for himself, Mr. MERKLEY, Mr. DURBIN, Mr. SANDERS, and Mr. LEVIN, proposes an amendment numbered 3746 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To restore to the States the right to protect consumers from usurious lenders)

On page 1320, strike line 23 and all that follows through the end of the undesignated matter on page 1321 between lines 17 and 18 and insert the following:

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update not less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

(c) USURIOUS LENDERS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following:

**''SEC. 141. LIMITS ON ANNUAL PERCENTAGES RATES.**

''Effective 12 months after the date of enactment of this section, and notwithstanding any other provision of law, the interest applicable to any consumer credit transaction (other than a transaction that is secured by real property), including any fees, points, or time-price differential associated with such a transaction, may not exceed the maximum permitted by any law of the State in which the consumer resides. Nothing in this section may be construed to preempt an otherwise applicable provision of State law governing the interest in connection with a consumer credit transaction that is secured by real property.''.

Mr. WHITEHOUSE. I don't want to speak long. I want to, first, join Senator BENNET's appreciation of Senator DODD for the long and successful way in which he has managed this bill. It has not gone unnoticed by the American people how contentious and cantankerous the environment is around the Senate. Notwithstanding that inhospitable environment, he has done an extraordinary job of bringing this legislation forward and continuing through the deliberative process, where people are getting amendments and votes are being taken. There are no motions to table so far. Only one vote has required 60 votes. It has been going by the regular order of the Senate and not the usual procedures that often have been forced by the recent obstructionism we have seen. I commend him and thank him for allowing this amendment to be called up and to go forward.

I want to add a sponsor, Senator TOM UDALL, of New Mexico. I ask unanimous consent that he be added as the amendment's 15th cosponsor.

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

Mr. WHITEHOUSE. I very much hope this can go with bipartisan support. Senator COCHRAN on the Republican side is a cosponsor as well. It is a bipartisan amendment. This is a situation that the Congress never voted on, the situation that is here to cure. We never made a decision that an out-of-State bank should be able to come into your State and violate your State's law about interest rates. We could have. That is within Congress's power to say. But we never did. We are in that circumstance, however, for an unusual reason—because many years ago, 30 years ago, the Supreme Court made a technical decision about the National Banking Act, determining that when you have a transaction between a bank in one State and a consumer in another, where is the transaction located for regulatory purposes? They decided to locate it where the bank is. They had to pick one or the other.

That didn't seem very systemically important at the time. But the big banks—the Wall Street banks—have very crafty lawyers. The very crafty lawyers saw the loophole that this innocent technical decision opened. So they started moving their credit card businesses, their divisions, into States that had the worst consumer protection laws—the ones where you could charge any interest rate you wanted, where there was the worst protection for the consumer. From that base of the worst consumer protection in the country, they could move out and sell their products and do business in all of the other States, whose laws were still on the books, whose laws still protected their citizens, whose laws had stood since the founding of the Republic, since the establishment of the

States, and they could get around those laws because of this loophole that the Supreme Court decision opened.

It is way past time that we close this loophole. In Illinois, Connecticut, and Rhode Island, over and over and over we hear from people who are suffering because they were late with a payment or they fell into one of the tricks and traps in the credit card contract or for no reason at all, just because they can do it, the credit card company jacked the interest rate up to or over 30 percent. Suddenly, boom, they are in what one expert called the ''sweat box.'' They cannot pay what they owe. It is all they can do to stay even all the time. The big company milked them and charged an interest rate that would be illegal under the laws of that State. Before 1978, the solicitation for that credit card that had the tricks and traps, and that hidden 30-percent penalty rate, would have been a matter for the authorities. Now it is the way they do business.

This amendment will put that back. For 202 years of this Republic, that was the way things were. States could protect their own citizens from unfair and excessive interest rates. That is the way it should be. That is what federalism is all about. That is what States rights are all about. So I hope that my amendment will go forward.

People believe in history—the more than two centuries of history of the States protecting their consumers, and a tradition of protection against abusive rates that goes back before the founding of our country, back to ancient Roman law, and all of the world's major religions. This is a longstanding tradition with a very strange little loophole that created a peculiar historic anomaly that allows these big corporations to take terrible advantage of ordinary Americans. Not only are Americans being taken advantage of, but local banks suffer as well because they have to play by the rules. If you haven't played that stunt of headquartering your bank in another State so you can work your way back and market in that same State, but under the nonexistent consumer protections of the home State, then you are stuck, and it is not fair.

I ask my colleagues to protect consumers in your home States and be true to history and States rights, protect your local banks have to follow local State laws. Let's put this brief moment in history into the ash heap of history, where it belongs as an anomaly where Americans, for the first time, had no protection from giant corporations gouging them with 30 percent and higher interest rates. That is not the way America was founded. That is not what we stood for for centuries. It is only because of this peculiar loophole that we have this situation. We have it within our power to change that. We have it within our power to go back to our home States and say to the people in our home States: We have done you a real good deed. We have allowed your State government, your Governor and legislature in the home State, to protect its own citizens against abusive out-of-State interest rates.

A lot of this bill is very technical. It is preventive medicine to rebuild the Glass-Steagall firewall, to regulate collateralized debt obligations, to enhance leverage requirements—things that are hard for people to grasp if they have not been steeped in these technicalities for these many weeks. It is important stuff, but if you want a clear, deliverable way to explain about this bill when you go back to your home State—when Senator COCHRAN, my cosponsor, goes back to Mississippi, if this amendment passes, he will be able to say to his fellow Mississippians: Ladies and gentlemen, the State of Mississippi is empowered to protect you now. An out-of-State company can no longer take your interest rates, and for a lousy reason, or for no reason at all, suddenly jack them up to 30 percent or more. It is simply wrong to leave ordinary Americans subject to that kind of abuse, to all the crafty, heavily lawyered, carefully designed, socially engineered tricks and traps they have built into these complicated, complex, tricky credit card agreements.

Now 50 States can stand against it. Attorneys general can proceed to defend these laws. It puts the government of this country back where it should be—in the hands of the people. Some people here would rather have the big corporations rule over the States. I believe that the States should trump even the big corporations when it comes to matters of protecting their citizens. That is the way it should be. That is the way the country was founded and, if this amendment passes, that is the way it will be again.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank my colleague from Rhode Island for his very generous comments. We have worked closely together. He hasn't been here a great deal of time, but he was an invaluable asset last year about this time when we were spending an awful lot of time together. I had become sort of the acting chairman of the HELP Committee when my dearest friend in this Chamber became terribly ill, Senator Kennedy. He asked me to take over that committee for him. We were charged with the responsibility of putting together a sizable portion of the health care proposal. The Senator from Rhode Island was an invaluable asset in that process. We had some critical moments, which I will not go into now, but in those critical moments, he played a remarkably important role. Some day, I will have time to spend more time going back and writing or talking about those days. I can point to several moments when, in the absence of Senator WHITEHOUSE's involvement, I am not sure we would have ever concluded the process as successfully as we did. I am eternally grateful to him for that. He has since then moved off that committee and he is doing other things. He is terribly interested in this subject matter, financial reform. I commend him for his passion and determination to have these issues raised.

Mr. WHITEHOUSE. Mr. President, if I may reply. As a new Senator in this body, who had not had legislative experience—I came out of an executive and law enforcement background—I have enjoyed the privilege of serving on that committee under the Senator's leadership. And now to have had the privilege of seeing him work this bill on the floor, for a new Senator, it has been a master class in leadership and legislation. I will never forget it. I feel very privileged to have had that experience. I thank the chairman.

Mr. DODD. Mr. President, I am going to be very brief. Our staff has been very patient all week. You only get to see them when the cameras pull back and we are in a quorum call. The wonderful floor staff people do a remarkable job. Our reporters of debates here do a terrific job reporting the words of every Senator who has spoken. I am grateful to them.

I briefly say, Mr. President, we have now, I think, done some 30, 35 amendments on this bill. We have been at this for a couple of weeks. The legislative days, I think, are 6 working days—maybe 7, which doesn't seem like much, but it is an awful lot. Important amendments have been debated, accepted, and rejected on both sides of the aisle.

I was determined at the outset to prove not only that we can pass important legislation, but that we can do it with a strong dose of civility in the process, and that while we have strong views and we speak, as I do from time to time, with some degree of emotion and passion about things I care deeply about, that should in no way be a reflection of my feelings for my colleagues. We have allowed a lack of civility in recent years, which makes it more difficult to get our jobs done. We didn't get elected here to let those emotions dominate our jobs on behalf of the people who sent us here.

In the last couple of weeks, we have produced a good bill, a stronger bill, but in a way the American people can take pride in how their Senate is operating. I am grateful to all my colleagues and the staffs and others who make it possible for us to do this. These people are knowledgeable about what needs to be done to work out language that allows us to move forward. They don't get mentioned or talked about, and they don't give speeches, but they play an integral and important role in how this institution works.

AMENDMENT NO. 3758 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be set aside, and on behalf of Senator ROCKEFELLER, I call up amendment No. 3758 and ask that once it is reported by number, it be set aside.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. ROCKEFELLER, for himself, Mrs. HUTCHISON, Mr. DORGAN, and Mr. PRYOR, proposes an amendment numbered 3758 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To preserve the Federal Trade Commission's rulemaking authority and for other purposes)

On page 1237, line 6, strike ''law,'' and insert ''law (other than section 1024(g) of this title),''.

On page 1254, line 15, strike ''To'' and insert ''Except as provided in paragraph (3), to''.

On page 1255, line 10, strike ''(a)(1)(A),'' and insert ''(a)(1),''.

On page 1256, line 25, strike ''law,'' and insert ''law (other than subsection (g)),''.

On page 1257, after line 25, insert the following:

(g) PRESERVATION OF FEDERAL TRADE COMMISSION AUTHORITY.—

(1) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or any other law, other than an enumerated consumer law.

(2) CERTAIN ENFORCEMENT ACTIONS.—The Federal Trade Commission may enforce, under the Federal Trade Commission Act, a rule with respect to an unfair, deceptive, or abusive act or practice issued by the Bureau as to a person subject to the Federal Trade Commission's jurisdiction under that Act, and a violation of such a rule shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices. The Bureau may enforce, under subtitle E, a rule with respect to an unfair or deceptive act or practice issued by the Federal Trade Commission as to a covered person.

On page 1375, beginning with line 7, strike through line 5 on page 1376 and insert the following:

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—The Federal Trade Commission's authority under an enumerated consumer law to conduct a rulemaking, issue official guidelines, or conduct a study or issue a report mandated by such law, shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission to the Bureau.

(B) FEDERAL TRADE COMMISSION AUTHORITY.—The Bureau shall have all powers and duties respecting rulemaking, issuing guidelines, conducting mandated studies, and issuing mandated reports contained within the enumerated consumer laws that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

On page 1462, line 5, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1464, line 10, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1472, line 4, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1477, strike lines 15 through 21 and insert the following:

''(e) REGULATORY AUTHORITY.—

''(1) BUREAU OF CONSUMER FINANCIAL PROTECTION.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. Except as provided in paragraph (2), the regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section.

''(2) FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall issue regulations to implement sections 615(e) and 628 of this Act with respect to entities within its authority under section 621 of this Act. The regulations issued by the Bureau under paragraph (1) shall not apply to those entities.''; and

On page 1482, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

On page 1485, line 24, strike ''and'' after the semicolon.

On page 1486, line 2, insert ''and'' after the semicolon.

On page 1486, between lines 2 and 3, insert the following:

(C) by adding at the end the following: ''Notwithstanding the preceding sentence, only the Federal Trade Commission shall prescribe regulations to implement section 501(b) with respect to entities subject to Federal Trade Commission enforcement under section 505(a).''.

On page 1500, line 23, strike the closing quotation marks, the semicolon, and ''and''.

On page 1500, between lines 23 and 24, insert the following:

''(3) Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this section.''; and

On page 1516, line 1, after ''agency'' insert ''(other than the Bureau of Consumer Financial Protection)''.

Ms. COLLINS. Mr. President, I rise today to speak on the amendment that Senator MURRAY and I have been working on together that would expand the Financial Stability Oversight Council established in S. 3217 to include as nonvoting members a State insurance commissioner, a State banking supervisor, and a State securities commissioner. Concomitantly, I seek to remove the independent voting member position having insurance expertise, as that would create a duplicative position.

It is critically important that the Council incorporate State regulators. State banking, insurance, and securities regulators are on the front lines of financial regulation and therefore have information and perspectives that are necessary components of an effective regulatory structure. State regulators could act as ''first responders'' to the Council, in that they see trends developing at the State level. They could serve as an early warning system, identifying practices and risk-related trends that are substantial contributing factors to systemic risk.

I ask for unanimous consent that the joint letter from the Conference of State Bank Supervisors, the National Association of Insurance Commissioners, and the North American Securities Administrators Association supporting this amendment be printed in the RECORD.

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

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS,
*May 13, 2010.*

Hon. PATTY MURRAY,
Hon. SUSAN COLLINS,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATORS MURRAY AND COLLINS: The Conference of State Bank Supervisors (CSBS), the National Association of Insurance Commissioners (NAIC) and the North American Securities Administrators Association (NASAA) are writing in support of your amendments providing for non-voting membership for state banking, insurance and securities regulators on the Financial Stability Oversight Council (FSOC).

Including state regulators on the FSOC is both necessary and appropriate. State banking, insurance, and securities regulators are on the front lines of financial regulation and bring information and perspectives that are necessary components of an effective regulatory structure. In all financial sectors, state regulators gather and act upon large amounts of information from industry participants and from investors. State regulators would bring to the FSOC the insights of a team of ''first responders'' who see trends developing at the state level, which have the potential to impact the larger financial system. Consequently, they serve as an early warning system identifying practices and risk-related trends that are substantial contributing factors to systemic risk.

Matters of financial stability and systemic risk have far-reaching implications and benefit from a diversity of regulatory perspectives. By including state regulators in the FSOC, your amendments create a more comprehensive and efficient approach that will benefit from access to all relevant information regarding the accumulation of risk in our financial system.

Thank you for your efforts and we look forward to working with you to secure passage of your amendments.

Sincerely,

JOSEPH A. SMITH, Jr.,
*Commissioner of Banks, North Carolina, Chairman, Conference of State Bank Supervisors.*
DENISE VOIGT CRAWFORD,
*Texas Securities Commissioner, NASAA President.*
JANE CLINE;
*West Virginia Insurance Commissioner, NAIC President.*

Ms. COLLINS. Mr. President, I also wish to speak briefly on my amendment, No. 3879, which would help raise capital and risk standards for banks, bank holding companies, and nonbank financial institutions.

It is not my intent that this amendment affect the treatment of small

bank holding companies as provided under the Federal Reserve's Small Bank Holding Company Policy Statement, nor do I intend that the amendment apply to Federal Home Loan Banks. Likewise, I would like the record to reflect that the effective date for bank holding companies owned by foreign banking organizations that obtained an exemption from capital requirements pursuant to the Federal Reserve's Supervision and Regulation Letter SR–01–1 should be 5 years after enactment.

I look forward to working with my colleagues to ensure that this intent is properly reflected in the final language of this reform bill.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

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

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

## REMEMBERING REVEREND JESSE SCOTT

Mr. REID. Mr. President, I rise today with a sad heart, because on Monday, May 10, the city of Las Vegas and our Nation lost a voice for truth and justice. On that day, Reverend Jesse Scott passed away.

Reverend Jesse Scott committed many of his 90 years to creating a more just world. With a commanding voice he argued for basic principles of fairness that will reverberate long into the future. His perseverance inspired us all and we continue his legacy of building a community that sees all its members as equals.

Reverend Scott's career was devoted to social justice. As an organizer, president and executive director of the NAACP in California and Nevada, he brought communities together to create better living and working conditions for minority workers. Because of his dedication, Reverend Scott was later selected to be the executive director of the Nevada Equal Rights Commission, where he served with dedication and distinction.

Until his death, Reverend Scott was assistant pastor at Second Baptist Church of Las Vegas and was the former pastor of Second Christian Church in Las Vegas. Even in his final days, he practiced his life's mission of social advocacy by working with Nevada's nonviolent ex-offenders and by promoting education to help Nevada students go to college.

The U.S. Senate will also miss an opportunity to hear Reverend Scott's words of faith; he was scheduled to serve as the guest Chaplain and deliver the opening prayer on the Senate floor on Thursday, May 20.

Mr. President, Reverend Jesse Scott was a trailblazer for civil rights and a man of deep faith in God and humanity. My thoughts are with Reverend Scott's family during this difficult time.

Our State has lost a giant, but I am proud to have worked alongside such a great Nevadan.

## NATIONAL POLICE WEEK

Mrs. LINCOLN. Mr. President, I rise today in honor of National Police Week to recognize the courage, bravery, and dedication of Arkansas's law enforcement officers, who risk their lives each day to keep our citizens safe.

In particular, I pay tribute to five fallen officers from our State whose names have been added to the National Law Enforcement Officers Memorial in Washington, DC. The officers, their departments, and their dates of death are:

John A Bratton, Grant County Sheriff's Office, February 1, 1887

H.L. Smith, Grant County Sheriff's Office, February 1, 1887

Joseph Christopher Cannon, Plumerville Police Department, June 19, 2009

Larry Neal Blagg, Trumann Police Department, January 27, 2009

Henry Jorden Willeford, Van Buren County Sheriff's Office, November 16, 2009

Along with all Arkansans, I thank these officers for their service and sacrifice. It is a fitting tribute that the names of these officers have been etched on the National Law Enforcement Officers Memorial in Washington, DC.

## HONORING OUR ARMED FORCES

### LANCE CORPORAL RICHARD R. PENNY

Mr. PRYOR. Mr. President, it is with a heavy heart that today I honor LCpl. Richard R. Penny from Greenland, AR, and pay tribute to his life and service to our country.

Lance Corporal Penny was a machine gunner assigned to the 1st Battalion, 2nd Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force based out of Camp Lejeune, North Carolina. In March of this year, he was deployed to Afghanistan's Helmand Province, an opium-producing region at the epicenter of the war on terror. He served with valor and distinction, earning numerous awards, including the National Defense Service Medal, the Global War on Terrorism Service Medal, and the Afghanistan Campaign Medal.

Lance Corporal Penny was an ''all-American'' man, an all-conference defensive tackle for Greenland High School's football team, and voted ''class favorite'' by his peers. He loved to hunt and fish and drive backroads in his four-wheel-drive pickup he called ''Skeeter.'' Those who knew him described him as ''tough as nails,'' and said the word ''quit'' was not part of his vocabulary.

Greenland police officer Michael Huber perhaps best described Lance Corporal Penny's life and the impact he had on others when he said to a local TV station: ''Here in our town, there are people we look up to. Richard Penny was one of those. He'll still be somebody we can look up to. Because he paid the ultimate sacrifice on the altar of freedom.''

Today I join all Arkansans in lifting up Lance Corporal Penny's family, friends, and all those who loved him during these challenging times. We will never forget his courage, his honor, and the life he gave for our country.

## ADDITIONAL STATEMENTS

### TRIBUTE TO COLONEL JOHN D. BIRD II

● Mr. CRAPO. Mr. President, on May 24, 2010, Mountain Home Air Force Base, in my home State of Idaho, will bid farewell to COL John D. Bird, his wife Megan, and their children Blake and Cole. Colonel Bird has been the commander of the 366th Fighter Wing at Mountain Home Air Force Base since February 11, 2009. Colonel Bird is a command pilot with more than 1,700 flight hours in the F–15C, T–37, and T–38. He has been awarded the Legion of Merit, the Defense Meritorious Service Medal, the Meritorious Service Medal with three oak leaf clusters, the Air Medal, the Air Force Commendation Medal with one oak leaf cluster, and the Air Force Achievement Medal. Colonel Bird has given a lifetime of service to his country, to the benefit of us all.

The 366th Fighter Wing consists of over 4,800 United States and Republic of Singapore personnel, with 22 squadrons, comprised of a fleet of 86 F–15 aircraft, and under Colonel Bird's command, it excelled in its mission. He oversaw the deployment of 5,286 personnel and 1,507 tons of cargo to 18 different locations around the world, with his squadrons surpassing all theater commander objectives in each location. During Colonel Bird's time as commander, and due to his leadership, the Wing was recognized with 19 individual awards and 9 program awards at the Air Combat Command level and 10 awards at the Headquarters Air Force level. While under his command, the Mountain Home Air Force Base thrived. He oversaw the expansion and enhancement of the Mountain Home Range Complex, with new urban target construction and an increase in training airspace capacity; a family housing demolition project, 3 years ahead of