for each other's amendments. This is the way it should be. However, the end must come. The time has come to begin work sending this to conference so we can have a bill to go to the President.

The Senate has voted to reject loopholes for Wall Street lobbyists. We rejected an amendment that would leave the door open for more taxpayer bailouts. We denied carve-outs for those who game the system for their own financial gain.

The message is clear: We must guarantee taxpayers that they will never again be asked to bail out big banks. We must protect families' life savings and seniors' pensions. We must ensure no bank can become too big to fail. And we must make sure the system is more transparent, which will let us rein in the risky bets before it is too late.

I remind all of my colleagues that the amendment process can continue after cloture is filed and after it is invoked. I hope the two managers of this bill, Chairman DODD and Ranking Member SHELBY, can continue working on amendments that will strengthen these urgent and overdue reforms.

Another reason we have to finish sooner rather than later is that we have such important work to do this month. At the top of that list is a new jobs bill—a jobs bill that will cut taxes for middle-class families and stimulate small businesses by giving small businesses tax cuts.

Also, we have two supplemental appropriations bills. Senator INOUYE and Senator COCHRAN are going to combine those, as the two managers of that legislation, so that when they come to the floor, there will only be one supplemental appropriations bill. They will join the FEMA supplemental—because of all of the natural disasters around the country—with the war funding bill we also need to do. We have scores of nominees awaiting confirmation. We hope to be able to complete some of that before we leave here for the recess, so I hope both sides can find a way to work together to get these bills done.

I repeat: We need to finish the bill that is on the floor. We need to do the war funding appropriations bill that is going to be combined with FEMA, and of course we have to do the jobs bill before the first of the month.

BP OIL SPILL

Mr. REID. Mr. President, Wall Street isn't the only place where a reckless pursuit of profits has proven destructive. In the weeks since the Deepwater Horizon explosion, as much as 20 million gallons have spewed into the Gulf of Mexico. To put that so it is more understandable, think of the Exxon Valdez. The Exxon Valdez was an awful spill, but it was only 11 million—I underline that, only 11 million—gallons. Already, the disaster in the gulf has been twice that big as far as the amount of oil spilled.

Last night's edition of ''60 Minutes'' reported damning evidence that the roots of this tragedy are in British Petroleum executives' efforts to pad their own wallets. The program was very direct and to the point. Their greed led to 11 horrific and unnecessary deaths. It has harmed an enormous tourism industry, weakened business at countless fisheries, and disrupted life for many along the gulf coast. As the pollution grows worse, those consequences will only compound.

It is the responsibility of Congress and the administration to investigate this disaster, and it is the responsibility of British Petroleum and anyone else found culpable to pay the price of those damages. By law, oil companies are liable for only $75 million in damages in instances such as these. This is clearly insufficient. One way Congress can act now is by raising that limit. Some believe it should be raised to $10 billion. Others support no cap at all. I certainly think a $10 billion cap is inadequate.

Whatever the final figure, the catastrophe that continues to poison our gulf coast is a wake-up call. We must make sure oil companies learn their lesson. While they spend record profits on finding more oil, they also must find safer ways to drill and to handle it. They must invest in rapidly developing clean domestic energy to protect our environment and increase our energy security.

Secretary Salazar and the President deserve credit for their continued efforts to clean up the previous administration's efforts to put oil company profits before people.

In the meantime, we and the Senate must also learn from the mistakes on Wall Street to the Gulf of Mexico. We have to work as quickly as possible to protect against it ever happening again.

I note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

RECOGNITION OF THE MINORITY LEADER

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

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

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

NOMINATION OF ELENA KAGAN

Mr. MCCONNELL. Mr. President, the American people are concerned with the direction the administration is trying to take this country. They are concerned about the government running banks, insurance companies, car companies, and the student loan business. And they are concerned about the way all this is being done as exemplified by the health care debate in which the administration and its allies in Congress defied the clear will of the people by jamming this partisan bill through Congress and stifling its critics along the way.

On this last point, I am referring, of course, to the gag order the administration imposed on insurance companies that wrote letters to seniors telling them how the health care bill could affect their benefits under Medicare Advantage. In issuing this gag order, the administration relied on the flimsiest of legal arguments. It said that regulations which allowed the Department of Health and Human Services to restrict how companies marketed their products could be used to impose a prior restraint on speech about an issue of public concern—namely, the pending health care bill. But the communications in question were not commercial speech; they were issue advocacy, which is the very type of speech the first amendment is intended to protect. That is why even the Clinton administration rejected the notion that its Department of Health and Human Services could restrict this kind of speech.

Nor was this the only time the Obama administration has attempted to use the government to stifle speech. Just 1 month prior to its issuance of this gag order, I had the opportunity to sit in the Supreme Court when the Solicitor General delivered her first oral argument in any courtroom. This was the Citizens United case, the same case that prompted the President to scold the Court during his State of the Union Address in January and a case that, if it had gone the other way, could have dealt a serious blow to the first amendment right of free speech.

For those who aren't familiar with the particulars of this case, Citizens United turned on the question of whether the Federal Government could ban a nonprofit corporation from producing a movie critical of former Senator Hillary Clinton and attempting to air it just prior to the 2008 Democratic primary.

Most people would probably be surprised to learn that in America, the Federal Government could ban a group from speaking because of who the group was and because of the type of speech being uttered, but that is precisely what Federal campaign finance law prohibited. So because this law constrained the exercise of its first amendment rights, this nonprofit, Citizens United, sued the government. The case made it all the way to the Supreme Court, and because the Federal Government was the defendant, the Solicitor General's Office—Ms. Kagan's office—handled the case, arguing in favor of prohibiting the advertising and airing of the film.

There were two oral arguments in this case, and during both of them, Solicitor General Kagan's office and Ms. Kagan herself argued that the Federal

Government had the power to regulate—and, if need be, to ban—large amounts of political speech. Indeed, the amount of power Ms. Kagan and her office argued the Federal Government had in this area was so broad—so broad—that both liberal and conservative Justices found their arguments jarring, given the reverence Americans of all ideological stripes have for the first amendment. But that was, in fact, their argument.

During the first argument, the Court asked Ms. Kagan's deputy whether the government had the power to ban books if they were published by a corporation, and if the books urged the reader to support or defeat a candidate for office. Incredibly, he said, yes, the government could ban a corporation from publishing a book—even if it only mentioned the candidate once in 500 pages.

Not surprisingly, this contention prompted quite a bit of discussion among the Justices. They wanted to be clear that that is actually what Ms. Kagan's office was proposing. So, to remove any doubt about their position, Ms. Kagan's deputy said he wanted to make it, in his words, ''absolutely clear'' that the government did, in fact, have the power to ban certain speakers from publishing books that criticized candidates. Justice Souter asked if that meant labor unions, too. Ms. Kagan's deputy said that indeed it did.

Well, so troubled was the Court by the contention of the Solicitor General's office that the government had a constitutionally defensible ability to ban certain books by certain speakers, that it ordered another argument in the case. This time, Ms. Kagan herself appeared on behalf of the government. And this time, it was Justice Ginsburg who noted that at the first argument, Ms. Kagan's office argued that the Federal Government could, in fact, ban books, such as ''campaign biographies,'' despite the protections of the first amendment.

Justice Ginsburg asked whether that was still the government's position. Ms. Kagan responded that after seeing the reaction of the Supreme Court to her office's argument, they had rethought their position. Ms. Kagan maintained that while the Federal law in question did apply to materials like ''full-length books,'' someone probably would have a good first amendment challenge to it.

So far so good.

But her fall-back position was that the same law gives the government the power to ban pamphlets, regardless of the first amendment's protection for free speech. This caused the Justices to bristle again. One Justice asked where, in Ms. Kagan's world, does one ''draw the line''?

First, her office says it is OK for the government to ban books if it doesn't like the speaker; then it says it is OK to ban pamphlets if the government doesn't like the pamphleteer—a proposition that would come as a shock to the Founders, who disseminated quite a few pamphlets criticizing the government of their day.

Not surprisingly, Ms. Kagan lost the case—and in my view, it is good that she did.

Now, I asked Ms. Kagan about her position in this case last week when we met in my office. She said she made the arguments she did because she had to defend the statute. And I understand that her office has to defend Federal law. But the client doesn't choose the argument, the lawyer does. And the argument Ms. Kagan and her office chose was that the Federal Government has the power to ban books and pamphlets. That was the position of the Solicitor General and her office.

Not only was this argument troubling to those who cherish free speech, it likely contributed to the government's defeat. But my concerns about Ms. Kagan's position in this case extend farther than the arguments she and her office made, however troubling they are.

Shortly after she and I met, the press reported that she had cowritten a memo on campaign finance restrictions when she was in the Clinton administration. In it, she says that ''unfortunately'' the Constitution stands in the way of many restrictions on spending on political speech, and she believes that the Supreme Court's precedents establishing protections from the government in this area are ''mistaken in many cases.''

And just last Thursday, she told one of our colleagues that the Court was wrong in Citizens United because it should have deferred more to Congress. But deferred to Congress on what? Deferred to Congress on a statute that is so broad that it encompasses ''full length books'' and ''pamphlets,'' as Ms. Kagan put it, and probably to a host of other materials as well? One can only assume that since Ms. Kagan was making these comments in her individual capacity, they provide a more complete picture of her views about the government's ability to restrict political speech.

No politician likes to be criticized in books, pamphlets, movies, billboards, or anywhere else, Mr. President, whether it is a President or a Senator.

But there is a far more important principle at stake here than the convenience and comfort of public officials. And that principle is this: in our country, the power of government is not so broad that it can ban books, pamphlets, and movies just because it doesn't like the speaker and doesn't like the speech. No government should have that much deference.

The administration has nominated one of its own to a lifetime position on the country's highest court. We need to be convinced that Ms. Kagan is committed to the principle that the first amendment is not, as she put it, just some ''unfortunate,'' impediment to the government's power to regulate. It applies to groups for whom Ms. Kagan and the administration might not have empathy. And it applies to speech they might not like.

So as this process continues, I look forward to learning more about Ms. Kagan's record and beliefs in area.

I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arizona.

NOMINATION OF ELENA KAGAN

Mr. KYL. Mr. President I, too, would like to address the Supreme Court nominee. I associate myself fully with the remarks of Senator MCCONNELL, which raise an important point for us to consider. I will correct the record in a couple of situations because I think, as the debate unfolds, it is important for us to base our decisions on the same set of facts. These are not going to be particularly newsmaking or big surprises, but I think the record should be corrected.

I know our majority leader, for example, misspoke the other day in commenting about Justice Sandra Day O'Connor because there is some similarity—she being the first woman ever appointed to the Supreme Court. I wanted to make sure the record reflected the actual situation with respect to Justice O'Connor.

Leader REID, I totally agreed with when he described her as ''one of my favorite Court Justices.'' He said it is ''not because she is a Republican but because she was a good judge.'' I subscribe to that as well.

He said:

> She had run for public office. She served in the legislature in Arizona. That is why she could identify with many problems created by us legislators, and she could work her way through that.

For the record, I wanted to indicate her experience on the bench as a judge, since it is not the case that she did not have prior judicial experience when nominated to the Supreme Court. She was actually appointed to the bench by our Democratic Governor at the time, Bruce Babbitt. She was on the court of appeals and on the superior court bench before that. She served on the Maricopa County Superior Court bench from 1975 to 1979, and in 1979 Governor Babbitt appointed her to serve on the Arizona Court of Appeals. So she had extensive experience, from 1975 through 1981, as a judge, including in an appellate capacity.