Mr. CARDIN. Mr. President, I ask to speak on the Democratic time.

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

ENERGY POLICY

Mr. CARDIN. Mr. President, what has happened in the Gulf of Mexico makes one thing very clear; that is, America's energy policy is a disaster. I thank Senator KERRY, Senator LIEBERMAN, and Senator BOXER for their leadership in pointing out the need for America to get off its addiction to oil and promote safe and clean energy sources for America so that we can be independent, so that we can achieve the type of economic growth we need and contribute to a cleaner environment. If we do our energy policy right, as Senator KERRY, Senator LIEBERMAN, and Senator BOXER have been telling us, we can solve all three problems.

I must tell you, I think one of the most urgent needs for an energy policy is to make America more secure. We spend almost $1 billion a day on imported oil that goes to many countries that disagree with our way of life. Americans are actually helping to fund those who are trying to compromise America's security. That makes no sense whatsoever.

The Department of Defense has pointed out that our energy policy actually contributes to international instability. We spend a lot of money trying to figure out how we can make the world safer. One way we can make the world safer is to develop an energy policy where we are self-sufficient, where we do not have to rely on imported oil.

We can also solve the second problem, and that is economic growth. Take a look at what is happening in China. They are investing heavily in solar and wind power because they know they are going to create jobs. We want to create these clean jobs in America. We want to manufacture the component parts for solar and wind. We want to be able to manufacture component parts for nuclear. We believe we can create jobs in America by having a policy that relies more on clean energy. There are more jobs to be created, much more so than in oil. For the sake of our economy, we need to develop a comprehensive energy policy.

Then, for our environment, I can talk a great deal about why we need to move forward and get the pollutants out of our air and reward those who use clean technologies. Climate change is real. Tell the people on Smith Island, as they see their island disappearing because of the rising sea level, or tell those who see the traditional seafood industry go in decline because of warmer waters. We know climate change is real, and it is causing instability around the world. We need to deal with it.

If we need a reminder, take a look at what is happening in the Gulf of Mexico. BP originally told us there was 1,000 barrels a day leaking. Now they tell us it is 5,000. We do not know whether that is accurate. We know one thing: It has caused an environmental disaster in the Gulf of Mexico. We can expect dead zones because of oxygen deprivation. We can expect that our wetlands, which are critically important for our ecosystem and to protect our environment, will be invaded by this oil. As Senator NELSON points out frequently, if it gets into the Loop Current, it could very well go through the Keys and the east coast of the United States.

The tragedy of this is, we all know we cannot drill our way out of our energy problem. We have less than 3 percent of the oil reserves and we use over 25 percent. We know we cannot drill our way out of our energy problems.

Additional exploration will give us very little as far as energy independence. I will talk about the mid-Atlantic because I am most familiar with the mid-Atlantic. We have been told by recent studies that we may have enough oil in the mid-Atlantic to handle our energy needs for 2 months in the United States. Think about that—the risk factor versus the reward. It makes no sense whatsoever.

If we have a Deepwater Horizon episode in the mid-Atlantic, it will be catastrophic to the Chesapeake Bay. Many of us have invested a lot of energy to clean up the Chesapeake Bay. We know we need to do more. EPA has come out with its game plan. I filed legislation with my colleagues to have a stronger effort in cleaning up the bay. But if we had an oilspill in this region anywhere near what happened down in the Gulf of Mexico, it would set us back for generations.

Some say: Is that a real possibility? Could that really happen? Let me tell you about the lease site 220 off of Virginia which is being primed for offshore drilling. That is 60 miles from Assateague Island and 50 miles from the mouth of the Chesapeake Bay. The prevailing winds are toward the coast, which means a spill is likely to come on the coast a lot quicker than we saw in the Gulf of Mexico.

I have a few suggestions for my colleagues. First, we need to stop any further offshore exploration of gas or oil until we have put in place the regulatory structure to make sure we have done adequate environmental assessments before any new drilling is permitted. That is the least we can do.

We know the exploration plans submitted by BP Oil told us there was virtually no risk, and if there was a spill, they had the proven technology to make sure it did not reach our coastlines. The proven technology was these blowout protectors that we note failed in the past, had very little experience at 5,000 feet of water, and as a result we see the disaster that has unfolded.

The regulatory system is not independent. It needs to be changed. We need to make sure other agencies in the Federal Government that are knowledgeable about wildlife are consulted before permits are granted. At least we need to make sure those regulatory changes are in place.

Secondly, we need to protect, as Secretary Salazar has said, those places in America that are environmentally too sensitive to risk drilling. Secretary Salazar points with pride—and I agree—to the west coast of the United States or to the North Atlantic.

The area off the coast of the Chesapeake Bay is environmentally too sensitive to risk drilling for the little bit of oil that may be there. I urge my colleagues to provide protection—permanent protection—from the offshore drilling in the mid-Atlantic.

Then we need to consider legislation for a comprehensive energy policy in this Nation. I applaud Senator KERRY and Senator LIEBERMAN for bringing forward a proposal. It is a good start. I compliment them for the manner in which they handled offshore drilling because they give States, such as Maryland, a veto if the environmental risks are there. To me, that is far better protection than current law and better than what the administration has proposed.

I hope we can do better. There are provisions in the bill I want to strengthen. There are issues I want to make sure are added to it. But unless we get started on energy legislation, unless we bring to the Senate Floor and are willing to debate, as we should, an environmental and energy policy for our country, we won't have a chance to move on these issues.

I can't tell you how many people I have talked to in the State of Maryland who say: Look, we need to be energy independent, we need to create jobs, we need to be sensitive to the environment. But we can't do that unless we have a bill before us.

I want to applaud Senators KERRY and LIEBERMAN for their efforts. I hope we will have a chance to consider that, and I can assure my colleagues that I will have some suggested changes for that legislation in order to strengthen it so we truly can achieve the goals of making America more secure, of creating the jobs we need and being an international leader on preserving our environment to make sure that polluters do not continue to pollute our environment.

With that, Mr. President, I yield the floor, and I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. FRANKEN. 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.

FINANCIAL REGULATORY REFORM

Mr. FRANKEN. Mr. President, I rise today to clarify some confusion regarding two amendments adopted by the

Senate last week to the Wall Street reform bill. Some in the media have characterized the two amendments as conflicting, incompatible, or rendering one another moot, and I wish to put a quick end to that misunderstanding.

To draw these conclusions means you think there is only one problem with the credit rating industry. In fact, there have been many problems with the credit rating industry, and the two amendments passed last week tackle two different problems. In the end, these two amendments can be implemented concurrently and effectively.

My colleague from Florida offered an amendment that he stated ''writes NRSROs out of the law.'' NRSROs are a select group of credit rating agencies recognized by the SEC. But in fact his amendment does not get rid of credit rating agencies and it does not get rid of the category of NRSROs. This is based on our reading of the text in our office, the Senate legislative counsel's office has confirmed this, and several academics in the field have further confirmed it. The amendment simply does not eliminate NRSROs. Instead, the LeMieux amendment eliminates provisions in Federal laws that require reliance upon ratings from NRSROs.

For example, this amendment eliminates a provision that requires certain State-chartered banks to only buy securities with top NRSRO ratings. It replaces this provision with a requirement that banks may only acquire securities which meet ''creditworthiness standards'' established by the FDIC.

The amendment also changes a provision in which the Director of the Federal Housing Finance Agency may hire an NRSRO to conduct a review of Fannie Mae, Freddie Mac, or the Federal Home Loan Bank. Under Senator LEMIEUX's amendment, the reviewer need not be an NRSRO. So while the amendment eliminates reliance upon NRSROs, it does not eliminate the NRSRO designation or eliminate credit rating agencies.

One can argue that there are benefits to reducing overreliance on NRSROs. Regulators gave little thought to the types of debt held by banks because they were rated AAA. Perhaps the regulators should have looked at factors other than the AAA rating before waving through these volatile securities. This is all true, and the LeMieux amendment seeks to address it.

But here is the problem. Here is the problem. Eliminating federally mandated reliance on NRSRO credit ratings doesn't change the fact that State laws, pension fund policies, and other private market actors will still explicitly rely on NRSRO ratings. Eliminating blind overreliance on NRSRO ratings is a respectable goal, but the amendment will not eliminate reliance on credit ratings entirely, nor should it.

For example, at least 5 of the 10 largest pension funds—California Public Employees, California State Teachers, Texas Teachers, Wisconsin Investment Board, and New Jersey Retirement funds—are required by State law or internal policy to use NRSRO ratings. These are funds totaling over $½ trillion—and that is just the top 10. In fact, in my colleague's home State of Florida, the Local Government Surplus Funds Trust Fund controls $6 billion in assets from 954 local governments and school districts, and the fund explicitly conditions purchases of asset-backed securities on NRSRO credit ratings.

In fact, 42 States, plus the District of Columbia, incorporate NRSRO ratings into their State laws. So NRSRO ratings are not going anywhere. The LeMieux amendment has absolutely no effect on those requirements. The simple fact is that credit rating agencies have a place in the market and they perform a needed function.

Most institutional investors simply lack the capacity to perform the analysis that credit rating agencies perform. For many small institutional investors, such as a school district's pension fund, researching its own investments would be cost prohibitive. It needs to rely at least in part on credit ratings issued by a rating agency.

Let's say we want the LeMieux amendment implemented into law as has been passed. After its implementation we still have the issue of States and pension funds and other investors relying on NRSRO ratings.

I should say, the amendment wasn't passed into law, but it was passed as an amendment to this bill. So we still will have to rely on NRSRO ratings. But not only that, it is also very likely that Federal regulators will continue to use credit ratings as part of their new creditworthiness standards. So it is safe to say that the credit rating agencies will still be very much a part of the market. What is being done to ensure the accuracy of these ratings?

That is where my amendment comes in. Eliminating government-mandated reliance on NRSRO ratings is one thing, but actually changing the way they play the game to eliminate conflicts of interest is entirely another. My amendment gets to the heart of how they play the game.

Right now, credit rating agencies have incentives to hand out top AAA ratings to every product because they need to maintain their business. If they hand out low ratings, issuers of financial products can go shop around for a higher rating from a different rating agency. My amendment finally puts a stop to the rating shopping process and implements a system that would finally reward accuracy instead of grade inflation.

The board created by my amendment—and contrary to some claims, this board will be a self-regulatory organization, not a part of the government—will create a process to assign a credit rating agency to provide a product's initial rating. This will eliminate the rating shopping process and the conflict of interest it creates. The board can take past performance into account in handing out further assignments and finally incentivize accuracy in the market.

The amendment offered by my colleague from Florida has an admirable goal—to eliminate blind overreliance on credit ratings. But it does not go far enough and does not get to the heart of the problem. The heart of the problem is that the current market incentivizes inaccurate ratings, which contributed to the financial crisis—which was a huge part of the financial crisis.

Alone, my colleague's amendment doesn't respond to the reality that the market will still demand credit ratings, whether the Federal Government mandates it or not. State laws, pension fund policies, and private investors will continue to exist and continue to need the expertise credit rating agencies can supply, if given proper incentives.

Our amendments each tackle a different part of the problem, and there is nothing about them that would prevent them from both being implemented. That is why this body passed both of them. Together, these two amendments will both reduce the blind overreliance on credit ratings and ensure that the ratings demanded by the marketplace will finally be accurate.

Any assertion implying that these two amendments cannot be reconciled or are contradictory is ill-informed. In fact, these amendments will go a long way in addressing the multiple problems plaguing the credit rating industry. Together, they will create more stability and certainty in our economy.

Mr. President, I yield the floor.

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

Mr. WHITEHOUSE. Mr. President, I wanted to share with my colleagues an update on where we are with the bipartisan amendment on which I have been working so hard. I see Senator SANDERS of Vermont is here, and he is one of my cosponsors, as is the Presiding Officer, Senator UDALL of New Mexico.

The amendment, as you know, would allow States to protect their citizens from exorbitant interest rates that are charged by out-of-State banks. There is a trick to this. Years ago, the Supreme Court made a decision saying when a bank is in one State and a consumer in another, the transaction between them is governed by the laws—and here they had to pick one State or the other—the bank's State. It didn't seem like a big deal at the time, but it opened a loophole that crafty bank lawyers figured out, and that is that you could move and redomicile a bank's headquarters in the State with the worst consumer protection laws in the country. Then, from that State, you could market back to other States which have consumer protections, which have interest rate limits honoring the tradition of usury restriction that was at the founding of this country and that lasted for hundreds of years but goes back to all our ancient religions and which is a constant in human civilized legal codes. This overruled all of that, allowing them to sneak right by it because they have either gone to or perhaps even cut a deal with their home State to have the worst consumer protection and be able to take advantage of people in other States. It is the proverbial race to the bottom. I am confident if you called up on the Senate floor as the government's policy proposal the way it is right now, you would not get a single vote. Who would vote for the notion that the consumer protection policy of the country is going to be set by the worst State and have that be a situation in which the worst State is usually getting rewarded by the industry for being the worst State?

It is a bad situation. This amendment has gotten a lot of attention. It has gotten a lot of support—it has bipartisan support. It is a very practical thing we can do for American consumers.

This is a pretty esoteric piece of legislation in a lot of ways, this Wall Street reform bill. This does things like trying to rebuild the Glass-Steagall firewall. Until I got in the middle of this debate, I couldn't tell what that was. This changes the leverage limits and puts restrictions on what banks can do. That is pretty esoteric stuff. This deals with the regulation of derivatives and collateralized debt obligations and credit default swaps and things that nobody ever heard of until we were drilled into this legislation—esoteric, preventive stuff. But this piece of the bill, this amendment would enable all of us to go home and tell our constituents: You know those 30 percent penalty rates that your out-of-State credit card company drops you into if you make a mistake, if you are late in a payment, for no reason at all? We have done something to protect you against that—consistent with the traditions of our country, our laws, consistent with the doctrine of federalism and States rights, consistent with the Founding Fathers' delegation to the States, the ability to protect consumers in this way. We have restored the States rights. They are no longer trumped by an out-of-State corporation. Now they have the sovereign right they should to protect consumers.

I think it is a meritorious piece of legislation. I think it is an amendment that deserves consideration on the floor. It is beginning to appear that it may not actually even get a vote, notwithstanding that it is pending. We may be edged right out.

I want to explain why. People who have been watching this debate have seen long hours of nothing happening on this floor. There has been a lot of delay. There has been a lot of delay allowing us to get to amendments. Why is that? We are up against a time restriction on this bill. It is a practical time restriction. The leader needs to make sure we pass the supplemental Defense appropriations bill that funds our troops. What could be more important than, when we have troops in the field, overseas, serving our country, putting themselves in harm's way, that we provide them the resources they need to be successful? We have to do that.

We have to do something to increase the strength of our economy. In Rhode Island we are at 12.6 percent unemployment. We have been in the top three States for unemployment every single month of the Obama administration.

I think we are in the 28th month of severe recession. So we know how bad this economy is and how much more we need to do to try to bolster it. So we need to get to the next jobs bill, the jobs and tax extenders bill, to make sure we are providing the necessary support to our economy.

We have to get to those things. Because of all the delay that our friends on the other side have built into the process we are now getting into the end point where we are starting to be squeezed for time.

Now that we are squeezed for time, they are refusing to give time agreements to amendments like mine that would actually make a difference. They do not want to vote in favor of out-of-State corporations and against their home State's ability to protect their home State's fellow citizens. But they do want the out-of-State corporations to win. They don't want to vote in their favor, but they want them to win.

If that is your position, the perfect thing is to delay and delay until it gets to be here at the end, crunch time, then take the amendments that worry you, the amendments that will get after the big banks, the amendments that will be fair to consumers, and refuse to give time agreements and vote agreements on those and basically run out the clock.

That is the position we are in right now. It appears there is no willingness on the other side of the aisle to give this a vote—not just at a 50-vote margin, even at a 60-vote margin. They don't want to be on record supporting these out-of-State credit card companies that are gouging their own citizens. They just want them to win, and they figured out this way to do it.

The only alternative is to call up the bill, what is called postcloture, which means I have to be technically something called germane. Right now we are working with the Parliamentarian to argue as strongly as we can that we are indeed germane. It is an open question whether we are indeed germane, and I hope it gets resolved in our favor before the bill comes up in its regular order postcloture.

That is the situation. If people are wondering why this amendment does not appear to be on any list, is not going anywhere, it is because there is a blockade of it on the other side. They are taking advantage of the time crunch that they created with all the delays that led us to this time crunch to squeeze out the amendments where they do not want to vote for the big banks, they don't want to vote for the big credit card companies, but they do want the big banks and the big credit card companies to win. So it is the squeeze play at the end to try to drive these impactful amendments that will make a tangible, immediate difference in the lives of Rhode Islanders and the lives of their home State citizens, the ones paying that 30-plus percent interest rate that until very recently would be a matter to bring to the authorities of this country, not a matter that the Senate tried to defend. So that is where we are.

I will continue to work with the Parliamentarian to make sure we are germane postcloture, and I will continue to argue to try to get a vote. But forces are arrayed against us at this point, and I want to be perfectly candid about it.

I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BEGICH.) Without objection, it is so ordered.

Mr. BOND. Mr. President, I ask unanimous consent to speak as in morning business for 10 minutes.

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

Mr. BOND. Mr. President, for weeks now we have been debating the financial reform bill, which is being sold to the American people as the solution to holding Wall Street accountable for the economic crisis that hurt every American family and business in every community across the Nation.

Unfortunately, in this current form, the so-called reform bill will actually punish Main Street America, the families who suffered from and did not cause the financial meltdown. It should be a wakeup call when Lloyd Blankfein of Goldman Sachs says Wall Street will be the big winner under this bill, and we know the people who provide jobs, essentially small business, and the people who provide credit to the rest of America are warning of dire consequences.

Let me make this clear. This bill was meant to rein in Wall Street. Yet it is supported by Goldman Sachs and Citigroup. It is opposed by small business and community bankers. I think that tells you all you need to know about this bill. That is why I rise today in strong opposition to cloture on this bill. Yes, we made some improvements on the bill, and I congratulate the leadership for allowing us to have amendments and debate them, and I thank and I am grateful to my colleague from Connecticut, Senator DODD, for working across the aisle to remove an onerous provision that unintentionally would have killed small business startups. Senator DODD has worked in good faith in a bipartisan fashion to make real changes in the bill. But despite the progress we have made, the provisions most destructive and harmful to taxpayers, families, and small business still remain.

First, it is completely unbelievable and unacceptable that so many of my colleagues want to turn a blind eye to the government-sponsored enterprises Fannie Mae and Freddie Mac which contributed to the financial meltdown by buying the high-risk loans that banks were pushed to make to people who could not afford them.

They were the enablers of the issuance of bad mortgages. Everyone here knows what I am talking about. Despite the bill's 1,400-plus pages, it completely ignored the 900-pound gorilla in the room. The need to reform Fannie Mae and Freddie Mac, or the ''toxic twins'' as I refer to them, is completely ignored. How can you ignore the major government-sponsored enterprises that were the enablers for the bad mortgages that brought our system and much of the world's system down?

To add insult, Fannie Mae and Freddie Mac devastated entire neighborhoods and communities as property values diminished. But when they bought up loans and encouraged issuance of loans to people who could not afford them, that turned the American dream of home ownership into the American nightmare for far too many families.

Fannie Mae and Freddie Mac went belly up, and now it is the very Americans who suffered from their irresponsible actions who are left footing the bill for them, because, if it were not bad enough, unless we act now to reform the toxic twins, over the next 10 years, Fannie Mae and Freddie Mac will run up hundreds of billions of dollars.

Let me put that into perspective. Freddie Mac lost $8 billion in the first quarter, one quarter of this year, and an additional $10 billion from taxpayers, and warned that it will need more in the future. That comes on top of the $126 billion that Fannie Mae and Freddie Mac had already lost through the end of 2009.

To make matters worse, this administration has taken off the $400 billion credit card limit on Fannie Mae and Freddie Mac, and it is our credit card they took the limit off. How much more does the administration think Freddie Mac and Fannie Mae can lose? How much more are they going to force not just us as taxpayers but our children and grandchildren to pay to bail out these toxic twins?

Next, a great concern I have is that this bill lumps in the good guys with the bad guys and treats them all the same, particularly when it comes to derivatives. When it comes to derivatives, this bill lumps in those folks who try to manage risk and control costs by making long-term contracts with their suppliers or with their purchasers to even out the prices at which goods are exchanged. These are normal hedging contracts, and they are very different from the people who are speculating in the market to make a buck by shady bets with money they did not have or they were making insurance bets on property they did not own.

I would urge my colleagues, if they have not read it, to read ''The Big Short'' which talks about how this whole scam unfolded with the bad underlying mortgages that caused the meltdown.

I have heard some folks say, what actually does this bill mean to you and me? Well, it means, for instance, that utility companies may not be able to lock in steady rates for their customers, leaving them instead at the whim of the volatile market. They will have to clear all of their long-term contracts and pay billions of dollars to Wall Street or Chicago to clear the normal long-term contracts with energy suppliers whom they work with on a regular basis, and whose contracts never contributed a nickel to the volatility.

As a matter of fact, by locking in prices, they were able to produce their energy at a reasonable rate. The billions of dollars these utility companies will be forced to cough up to Wall Street and Chicago will come down to each and every one of us on our utility bills. When the utility companies have to pay more, guess what. We, as ratepayers, get it in the wallet. That is where we will feel it, and that is what it means in every community in this country. You will be paying a higher cost every time you flip on the light switch, turn on the air conditioning, or use a computer. You will pay more for that energy.

For family farms, the backbone, the agricultural backbone of our country, they will not be able to get long-term financing. That may force some of them to quit farming and prevent others from even getting started.

Frankly, I am stunned that any Senator in good conscience would vote for a bill that would increase costs for every American, especially at a time when working families are struggling to make ends meet. What will this do to business? These businesses, who will be forced to pay higher energy costs, who will have requirements on derivatives that have to be cleared, may not create the jobs.

The community bankers who make the loans that families need or that small businesses need may be so strapped they cannot make the loans. That credit will dry up. I cannot vote for a bill that creates a massive new superbureaucracy with unprecedented authority to impose government mandates and micromanage any entity that extends credit.

We are not talking just about the Goldman Sachs and AIGs of the world, the ones at the center of this crisis. No, in the real world we are talking about this organization, this Consumer Finance Protection Board or Bureau, regulating the community banks, your car dealers, even your dentist or orthodontist who has to extend some credit to a few people for expensive orthodontic features.

Don't be fooled. Any of the new costs as a result of the new mandates and regulations will be passed on to the consumers. The very people the bill was supposed to protect—you and I—will get to pay for it.

Under this new superbureaucracy misnamed the Consumer Financial Protection Bureau, will safety and soundness requirements for healthy banks give way to a prevailing agenda of the new bureaucracy? There will be political appointees of the President who will be looking over everything as consumer protectors.

Some of these consumer protectors were the ones who forced banks to make loans to people who could not afford them in the past. Will the safety and soundness which is key to assuring a sound banking system be overridden by these rules and regulations?

These regulations can be enforced by every attorney general in the Nation. Attorneys general may decide it is an abusive practice if a community bank does not follow the mandates, the credit allocations, mandated to this CFPB. How would the community banks be able to operate if the attorneys general are suing them? This bill, regrettably, is much like the health care bill recently signed into law, because I fear that small businesses will soon learn that there are many more unintended consequences which have yet to be seen.

I ask unanimous consent that at the end of my remarks, I have printed in the RECORD an article by Meredith Whitney that appeared in yesterday's Wall Street Journal, one of the people who foresaw this crisis coming, who warned of the impact on small business.

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

(See exhibit 1.)

Mr. BOND. To sum up my view on this bill, if the goal here is to enact real reform that ensures we never have another financial crisis such as the one we had 18 months ago, this bill falls woefully short of the goal. The bill is light on reform of Wall Street and the bad actors, it is heavy on overreach and unintended consequences throughout our economy, which will affect the ability of people to get and hold jobs.

It will affect the budgets of every family. My colleagues I hope will oppose cloture and continue to work to pass bipartisan amendments that will make changes to the destructive provisions I have outlined above.

Let us not forget about the rating agencies. The book I mentioned, ''The Big Short,'' pointed out that the braindead analysts at the ratings firms routinely put AAA ratings on some of the most toxic, worthless paper, and then other people managed to buy insurance on those bad contracts even though they did not have any interest in them and made millions.

This amendment takes out the rating agencies, but the rating agencies still need to be overlooked and they ought to be funded not by the people who issue the paper but by the people who are buying the paper.

There is no doubt that everybody here knows we need to protect Americans from falling victim to another Wall Street gone wild. This is government gone wild. It benefits Wall Street. It harms small business, community bankers, your local utility company, which sends you your utility bill. Is that on the right track? I do not see how anybody can say it is.

We do not want—and this is why this debate is so important—to punish the everyday Americans for a crisis they did not cause and whose impact they feel the burden, and our children will feel it, for years to come. Unless we succeed in it, the Democrats' bill will do just that. The cost will be paid by Main Street and by each and every one of us. Therefore, I urge my colleagues to oppose cloture and let us get to work on regulating what went bad and not messing with things that work.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, May 17, 2010]

THE SMALL BUSINESS CREDIT CRUNCH

(By Meredith Whitney)

The next several weeks will be critically important for politicians, regulators and the larger U.S. economy. First, over the next week Capitol Hill will decide on potentially game-changing regulatory reform that could result in the unintended consequences of restricting credit and further damaging small businesses.

Second, states will approach their June fiscal year-ends and, as a result of staggering budget gaps, soon announce austerity measures that by my estimates will cost between one million to two million jobs for state and local government workers over the next 12 months.

Typically, government hiring provides a nice tailwind at this point in an economic recovery. Governments have employed this tool through most downturns since 1955, so much so that state and local government jobs have ballooned to 15% of total U.S. employment.

However, over the next 12 months, disappearing state and local government jobs will prove to be a meaningful headwind to an already fragile economic recovery. This is simply how the math shakes out. Collectively, over 40 states face hundreds of billions of dollars in budget gaps over the next two years, and 49 states are constitutionally required to balance their accounts annually. States will raise taxes, but higher taxes alone will not be enough to make up for the vast shortfall in state budgets. Accordingly, 42 states and the District of Columbia have already articulated plans to cut government jobs.

So the burden on the private sector to create jobs becomes that much more crucial. Just to maintain a steady level of unemployment, the private sector will have to create one million to two million jobs to offset government job losses.

Herein lies the challenge: Small businesses, half of the private sector (and the most important part as far as jobs are concerned), have been heavily impacted by this credit crisis. Small businesses created 64% of new jobs over the past 15 years, but they have cut five million jobs since the onset of this credit crisis. Large businesses, by comparison, have shed three million jobs in the past two years.

Small businesses continue to struggle to gain access to credit and cannot hire in this environment. Thus, the full weight of job creation falls upon large businesses. It would take large businesses rehiring 100% of the three million workers laid off over the past two years to make a substantial change in jobless numbers. Given the productivity gains enjoyed recently, it is improbable that anything near this will occur.

Unless real focus is afforded to re-engaging small businesses in this country, we will have a tragic and dangerous unemployment level for an extended period of time. Small businesses fund themselves exactly the way consumers do, with credit cards and home equity lines. Over the past two years, more than $1.5 trillion in credit-card lines have been cut, and those cuts are increasing by the day. Due to dramatic declines in home values, home-equity lines as a funding option are effectively off the table. Proposed regulatory reform—specifically interest-rate caps and interchange fees—will merely exacerbate the cycle of credit contraction plaguing small businesses.

If banks are not allowed to effectively price for risk, they will not take the risk. Right now we need banks, and particularly community banks, more than ever to step in and provide liquidity to small businesses. Interest-rate caps and interchange fees will more likely drive consumer credit out of the market and many community banks out of business.

Clearly, the issue of recharging the securitization market as an alternative source of liquidity is one that needs to be addressed over time, but politicians should not force rash regulatory reforms when significant portions of our economy remain fragile. The very actions designed to "protect" the consumer, such as rate caps and interchange fees, will undoubtedly take more credit away from the consumer.

It is important now to support any and all lending activities that would enable small businesses to begin hiring again. If the regulatory reform passes with rate-cap and interchange regulation amendments incorporated, small businesses will be hurt rather than helped. Politicians and regulators need to appreciate the core structural challenges facing unemployment in the U.S.

Elected officials know better than most that an employed voter is better than an unemployed voter. They should improve their odds of re-election and do the right thing on regulatory reform.

Mr. HATCH. Mr. President, I rise today to express my opposition to S. 3217, the Restoring American Financial Stability Act. I am not opposed to financial regulatory reform, but there is precious little of that in this misnamed bill.

No, real financial regulatory reform is something that should have been done a year ago, but, instead, Democratic leaders and the Obama administration opted to focus on a Washington takeover of our Nation's health care system.

There are a few parts to the Restoring American Financial Stability Act that are worthy of support. In particular, I believe we need to monitor derivatives to require more capitalization and demand issuers maintain a stake in the game when creating and selling certain financial instruments. However, I think this bill is going to do more harm than good to our economy. It will weaken our financial system rather than strengthen it. Furthermore, it not only preserves the fragmented financial regulatory structure that is already in place but adds even more burdensome, costly, and misguided regulations. Before I list my concerns about the bill, I am going to address the specious accusations I have heard from the other side of the aisle that Republicans are being obstructionist or trying to protect the interests of Wall Street over those of Main Street. Give me a break.

These accusations are not only false, they are aimed at diverting attention from our solutions to a bad bill by attacking our credibility and motivations. We are not trying to protect anyone except the American people who are the victims of this economic collapse.

Let me be clear that every Senate Republican and I want financial regulatory reform in order to prevent a recurrence of what happened a couple of years ago with the collapse of our financial markets. But the problem with this proposal is that it not only regulates Wall Street but also Main Street. It goes beyond regulating large financial institutions that caused the problem and proposes to regulate community banks and credit unions, payday lenders, and other small businesses and almost any business that provides financing to their customers. If the other side is implying that we are trying to protect Wall Street because we have some sort of special relationship with large financial institutions, that is blatantly false on its face and simply not true.

Large financial institutions contributed way more to Democrats than Republicans in the last election and elections before that. If anyone is guilty of trying to do a special favor for Wall Street, it certainly isn't this side. That is all I can say. If you look at the financial filings, it is pretty darn clear who Wall Street supported.

If anything, I believe this bill will benefit Wall Street in the sense that it is something they can always get around. It would provide a perpetual bailout for large financial institutions. I know there is an argument against that, but look at the bill. It would require higher capitalization for many of the companies in which these institutions invest and place larger financial institutions at an unfair advantage over smaller financial institutions.

But don't take it from me. Take it from the CEO of Goldman Sachs, Lloyd Blankfein, who said "the biggest beneficiary of reform is Wall Street itself." He is a smart guy. He deserves to be the president of Goldman Sachs, one of the more important companies on Wall Street. There isn't any way they would not get around whatever we do today. They are the smartest people on Earth. So the claim that Republicans are trying to protect Wall Street doesn't hold very much water at all.

Some on the other side of the aisle have claimed our objective is to obstruct passage of any financial regulatory reform bill. I can't agree with that. In fact, I cannot disagree more. Not only did a Democrat join Republicans in voting against proceeding to this bill, another Democrat who serves on the Banking Committee and has been involved in negotiations noted that the concerns being raised by Republicans about potential bailouts of large financial institutions are legitimate. He validated our concerns by stating that ''there are parts that need to be tightened.'' So at the very least, both Democrats and Republicans believe this bill leaves a lot of room for improvement.

I would like to turn my attention to the substance of the bill. The reasons I am opposed to this legislation are because, along with many others, I have serious misgivings about its effectiveness, specifically the FDIC's orderly liquidation authority, the overregulation of the consumer protection agency, and the lack of reforming Freddie Mac and Fannie Mae. The meltdown of our financial markets highlights a major flaw in our financial regulatory system—the expeditious dissolution of a financial institution.

I recently finished reading former Treasury Secretary Hank Paulson's book, ''On The Brink,'' which details the time leading up to the catastrophic failures and the handling of the crisis. I would like to read a short passage:

> Back in my temporary office on the 13th floor, a jolt of fear suddenly overcame me as I thought of what lay ahead of us. Lehman was as good as dead, and AIG's problems were spiraling out of control. With the U.S. sinking deeper into recession, the failure of a large financial institution would reverberate throughout the country—and far beyond our shores. It would take years for us to dig ourselves out from under such a disaster.

What I took away from this book was the enormity and complexity of trying to dissolve these large financial institutions before their assets disappeared. There is no doubt that our current system is incapable of handling such a complicated task. In fact, over the last few weeks, I not only read ''On The Brink,'' but I read ''The Ascent of Money.'' I read ''The Panic of 1907'' and was amazed at the correlation between 1907 and 2007. I read ''On The Brink'' by Hank Paulson. I read Sorkin's book, ''Too Big To Fail.'' Just last weekend I read the book, ''The Big Short,'' by Michael Lewis, which is an excellent read. They have all been excellent reads. That is in the last few weeks.

The Federal Deposit Insurance Corporation, or FDIC, was established in 1933 to insure bank deposits. It mainly deals with the common brick-and-mortar bank that most of us use on a daily basis. It oversees roughly 8,000 depository institutions and $9 trillion in deposits. In the aftermath of the economic collapse, the FDIC administered 25 bank failures in 2008 and 140 in 2009. That is approximately 2 percent of all the banks they oversee.

Despite such a low percentage, the FDIC's deposit insurance fund was nearly depleted. According to the Federal Reserve, there are approximately 5,000 top-tier bank holding companies with roughly $17 trillion in assets. The top 10 largest financial institutions hold $9 trillion in assets. The current financial regulatory reform bill proposes to provide the FDIC with an orderly liquidation authority to unwind not only depository institutions but now large financial institutions that pose a systemic risk to our financial system.

With the passage of this bill, the FDIC would be responsible for unwinding nearly double the total number of assets. However, the magnitude of the task is the least of my concerns. By taking the resolution out of the bankruptcy courts, with all of their expertise, and putting it in an executive branch administrative proceeding conducted by politically appointed bureaucrats, we definitely lose transparency and accountability. It is ridiculous.

If you would like to see a glimpse of the consequences of losing transparency and accountability, just look at the FDIC's behind-closed-doors handling of Washington Mutual. During a Senate investigatory hearing last month, former Washington Mutual Chief Executive Kerry Killinger denounced the FDIC's handling of the bank failure as ''unnecessary'' and ''unfair,'' partly because the thrift was shut out of hundreds of meetings and phone calls with financial industry executives who determined the ''winners and losers'' in the crisis.

Our current bankruptcy courts avoid many of the problems associated with creating a government resolution authority and are a superior way of dealing with failed or failing nonbank financial firms. The bankruptcy courts make dissolving large institutions transparent. That is why we have them. They are experts at it. They know what they are doing. We can all watch what they are doing. We can read the pleadings. We can do a lot of things that bring transparency. The other way will not.

That brings me to my next concern with this bill, the creation of the Consumer Financial Protection Agency. Of course, I think we can all agree we need to strengthen consumer protection within our financial system. But I first believe we need to ask what went wrong with the current system before we create yet another government agency to create more regulations and oversight.

This will only make it more difficult for consumers and small businesses to obtain a loan, a line of credit, or a credit card. The entire alphabet soup of Federal Government agencies—the FDIC, OCC, SEC, FTC, and the Fed—all have consumer protection divisions. However, these divisions did not meet the standard of protection we need. Extracting these consumer protection arms from each of the agencies and putting them in a new agency is like taking the worn parts from several clunkers and using them to build another car. You will still have a clunker.

Furthermore, think of the costs that new local banks, credit unions, payday lenders, and other industries that deal with credit, such as auto dealers and other small businesses, will incur when trying to comply with all these new, overly burdensome regulations.

But the worst part of this legislation is what it is missing—reform of Fannie Mae and Freddie Mac. These two mortgage agencies caused the financial crisis by backing loans to people who couldn't afford them. But that certainly didn't stop Uncle Sam from bailing them out at a cost to taxpayers of some $145 billion. This financial abuse is swept under the rug because the debt is not put on our books. These companies, which the government now fully owns, are not considered government agencies and, therefore, are not included when tallying up our outrageous trillion-dollar deficits. I might add, that is just the beginning. We all know Fannie and Freddie are about to explode into all kinds of bigger problems, some estimate as much as $500 billion. That is scary. Yet we are not doing a doggone thing about it in this bill.

We should have faced the music and done whatever we could. A lot of games are played with the budget.

As I said before, I support financial regulatory reform. However, this bill falls short of reform and opens the way for another economic collapse to occur. It will unjustly protect companies that are deemed too big to fail by providing them preferential treatment during FDIC-conducted liquidations. It will create costly burdens for the 99 percent of financial institutions that did not cause the financial collapse, and it misses the mark by not addressing the reform of Fannie Mae and Freddie Mac.

There are other reasons, but I think I will limit my remarks today to those few. Those few involve trillions of dollars, involve all kinds of future problems for our country, and I think will lead us even further down the path of poor economics, higher debt, higher spending, more and more government, and less and less control by the people.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The bill clerk read as follows:

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

Pending:

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

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

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

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

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

Whitehouse modified amendment No. 3746 (to amendment No. 3739), to restore to the States the right to protect consumers from usurious lenders.

Dodd (for Cantwell) modified amendment No. 3884 (to amendment No. 3739), to impose appropriate limitations on affiliations with certain member banks.

Cardin amendment No. 4050 (to amendment No. 3739), to require the disclosure of payments by resource extraction issuers.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

AMENDMENT NO. 3789

Mr. MERKLEY. Mr. President, I ask for the regular order in regard to amendment No. 3789.

The PRESIDING OFFICER. The amendment is now pending.

AMENDMENT NO. 4115 TO AMENDMENT NO. 3789

(Purpose: To prohibit certain forms of proprietary trading, and for other purposes)

Mr. MERKLEY. Mr. President, I offer a second-degree amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oregon [Mr. MERKLEY], for himself and Mr. LEVIN, proposes an amendment numbered 4115 to amendment No. 3789.

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

The PRESIDING OFFICER. Is there objection?

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

The PRESIDING OFFICER. The Senator does not have the floor. The Senator from Oregon has the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. DODD. Madam President, I ask unanimous consent that at 2 p.m. today, the Senate consider the Snowe amendment No. 3883 and a Landrieu side-by-side, No. 4075, and that they be debated concurrently for a total of 30 minutes, with the time equally divided and controlled in the usual form; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Landrieu amendment No. 4075, to be followed by a vote in relation to the Snowe amendment No. 3883; that no amendment be in order to either amendment prior to a vote; that upon disposition of these amendments, the Senate then resume the Whitehouse amendment No. 3746, as modified, and there be 2 minutes of debate equally divided and controlled with respect to the amendment; that upon the use of time, the Senate proceed to vote in relation to the amendment, with the amendment subject to an affirmative 60-vote threshold, and that if the amendment achieves the threshold, it be agreed to and the motion to reconsider be laid upon the table; that if it does not achieve that threshold, then it be withdrawn; that no amendment be in order to the Whitehouse amendment; that upon disposition of the Whitehouse amendment, Senator VITTER be recognized to call up his amendment No. 4003, which is in order to be called up per a previous order; that once the amendment is pending, it be modified with the language of the Pryor amendment No. 4087, and that as modified the amendment be agreed to and the motion to reconsider be laid upon the table; that once this agreement is entered, Senator BARRASSO be recognized to speak in morning business, with no amendments or motions in order during this period; that the cloture vote be delayed until disposition of the above-mentioned amendments; and that upon the conclusion of Senator BARRASSO's remarks, the Senate stand in recess until 2 p.m.

The PRESIDING OFFICER. Is there objection? The Senator from Michigan.

Mr. LEVIN. I object and suggest the absence of a quorum.

The PRESIDING OFFICER. Objection is heard.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to call the roll.

The legislative clerk continued with the call of the roll.

Mr. REID. 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. REID. Madam President, I ask unanimous consent the Senator from Wyoming, Mr. BARRASSO, be recognized for up to 15 minutes; that following his remarks, the Senator from Ohio, Mr. BROWN, be recognized for up to 15 minutes; that following that, the Senate go into a recess at that time, after the two Senators finish their speeches, until 3:15 today. The two Senators are going to speak as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Wyoming is recognized.

HEALTH CARE REFORM

Mr. BARRASSO. Madam President, I come to the floor as someone who has practiced medicine in Casper, WY, since 1983, as an orthopedic surgeon taking care of many of the families in the great State of Wyoming. I come to you to talk about the health care bill that has been signed into law and to provide a doctor's second opinion about what is now the law of the land.

I come to you as someone who has worked very hard for many years, working with preventive medicine and early detection of problems as a medical director of the Wyoming Health Fairs, a program designed to give people information to stay healthy and keep down the cost of their care.

I come to you with a second opinion on what is now the health care law because I believe the goal of health care reform should be to lower costs, improve quality, and increase access to care.

Unfortunately, the new health care law, in my opinion, is going to be bad for patients, for providers—the nurses and doctors who take care of them—and for the payers, the people paying the bills—the patients as well as the American taxpayers.

I am concerned that the health care bill signed into law is going to increase the cost of care, provide less access to care, and is going to lessen the quality of the available care in this country.

I come to you with new information that has come to light on the health care bill and, specifically, an article that was in Politico this Monday, May 17, written by Kathleen Sebelius, the