would allow him to say a few words, and then I will ask unanimous consent to move the nomination. I ask unanimous consent that Senator LEVIN be recognized, following which I will move the nomination by consent.

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

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Senator from North Dakota. He has been dogged in his determination to get this nomination before the Senate. It is unconscionable that a military officer in the uniform of the United States, who has put his life on the line for this country, month after month after month, has had his promotion held up by one Senator. It is only one Senator. All the Senators of the Armed Services Committee on both sides wanted to confirm this general. But the rules of the Senate permit one Senator to threaten a filibuster or a so-called hold. In this case, it was an open hold, not a secret hold. He was able to thwart the Senate because we cannot take 2 or 3 or 4 days to take up every nomination of every soldier or civilian because we would get even less done than we do now.

Those are the rules of the Senate. They should not be used this way. We expressed that to Senator VITTER. That hold has been lifted. So a well-qualified soldier is going to be promoted 6 months late by the Senate. We can thank him for his service, but the best way we could have thanked him would have been to have promptly promoted him. Short of that, he knows he has, on a bipartisan basis, the support of the Senate. It is very important to us as an institution that he knows that. He also knows full well the power of one Senator. He should also understand that when it comes to the defense of this country, Republicans and Democrats are going to stand together.

I, again, thank the Senator from North Dakota for his determination. He is kind of the 27th member of the Armed Services Committee, if my memory is correct. I thank the Senator.

Mr. DORGAN. Mr. President, again, Michael Walsh is a good soldier, who served 30 years and has gone to war for this country. The demand that existed and resulted in holding this nomination is a demand that could not be met. He could not possibly do what he was asked to do. He does a good job.

EXECUTIVE SESSION

NOMINATION OF BRIGADIER GENERAL MICHAEL J. WALSH TO BE MAJOR GENERAL

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 526, the nomination of BG Michael J. Walsh; that the nomination be confirmed; that the motion to reconsider be laid upon the table; that any statements related to the nomination be printed in the RECORD, as if read; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

IN THE ARMY

The following named officers for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brigadier General Michael J. Walsh

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. DORGAN. Mr. President, I thank my colleagues, Senator LEVIN and Senator MCCAIN, and the rest of the Armed Services Committee. I think all of us would say to General Walsh: Congratulations to you. We are sorry it took the time it took. It was unfair. Nonetheless, as of today, you should understand this Senate very much values and respects your duty and dedication to this great country.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

Mr. DORGAN. My understanding is that we would now yield 6 minutes to the Senator from Illinois, after which I have been asked to call for a quorum call.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. BURRIS. Mr. President, I am proud to join my colleagues on the floor of this Chamber today.

Here, in our Nation's Capital, we gather to confront shared challenges. We celebrate our great leaders, and mourn fallen heroes. Here, we carry out the hard work of self-government. We try to make this union a little more perfect every day. It is messy. It is difficult. We make mistakes, and at times we fall short.

In any other country, these flaws and missteps might be fatal—but not in the United States of America. Here, we are defined by our ability to correct injustice to confront problems and move ahead peacefully, with respect for the rule of law even when those problems are great.

Mr. President, much of our history has been written right here in this city. But in some ways, the city itself tells two divergent stories:

More than two centuries ago, the foundation of this country was laid by a group of American patriots, who chose this land for their new Capitol.

They fought—and many died—for principles of freedom and equality. They framed the greatest, most progressive system of government in the history of the world.

And then, in an irony both tragic and unjust, the foundation of this very building the heart of our democracy was laid by enslaved African Americans.

So, from the very beginning, our Nation has struggled to live up to its highest ideals.

But, in many ways, I believe that is where our greatness truly lies: in our ability to determine our own course, and correct the mistakes of the past.

That is why the American civil rights movement is perhaps one of the greatest periods in our history.

During the 1950s and the 1960s, citizens and activists joined together with lawmakers to overturn policies of hatred and discrimination that created a powerful nonviolent movement for civil rights under the rule of law which brought about one of the most significant social and cultural changes in our Nation's history.

Earlier today, I spoke before the Subcommittee on National Parks, chaired by my friend, the distinguished Senator from Colorado, Mr. UDALL, to advocate for a piece of legislation that is very important to me. I am proud to sponsor the United States Civil Rights Trail Special Resource Study Act, S. 1802, a bill that will help identify and preserve the history of the people and places that defined the civil rights movement. This bill joins a bipartisan companion measure from the House of Representatives, H.R. 685, which passed unanimously last September.

It will honor folks who forever changed the landscape of this Nation. Their stories deserve to be told. In any other country, this kind of progress would have been impossible, but not in America. We have the capacity for sweeping change woven into our very identity, and that is what my bill would recognize, celebrate, and preserve.

This Capitol Building was constructed under slavery. Yet it embodies a system of government that allows subsequent generations to correct this terrible wrong. During the civil rights movement, thanks to ordinary people with extraordinary vision, we witnessed a revolution of values and ideas that changed this Nation forever.

I come to this floor today in celebration of the pioneers who made these changes possible. My bill would direct the Secretary of the Interior to identify the places, the resources, and the themes associated with this movement and consider adding them to the National Trails System. This would include the sites of the famous march in Selma and Montgomery, AL, the Greensboro sit-in, and the Montgomery bus boycotts. We would commemorate these places where peaceful protesters demonstrated for equal rights, and even in some places where violence broke out and lives were lost in the cause of freedom.

My bill would also recognize folks such as the citizens and elected leaders of Savannah, GA, who were ahead of the rest of the country and took peaceful action to desegregate local communities well before Federal laws were passed.

We need to make sure the next generation learns and does not forget the story of the civil rights movement and the ideals it strove to achieve. That is why this legislation is so important.

This bill, with the companion bill in the House, would highlight this powerful legacy. Yes, these injustices were great and they must never be forgotten, but it would be a mistake to dwell exclusively on the errors of our past. Instead, I believe we should celebrate the progress we have made. We accomplished what many other countries find impossible. We corrected the greatest mistakes of our history. We encountered obstacles and overcame them. We took control of our shared destiny and redefined it.

Our Union remains far from perfect, but challenges persist, and it will be up to future generations to address these challenges. But there is no denying we have come a very long way.

Two centuries ago, my ancestors would not have been allowed in this building except as laborers. Today I stand on the floor of the Senate as a Member of the highest ranking body in this land. That is a powerful affirmation of what this country stands for.

Let's preserve this history and pass it on to the next generation.

I thank Chairman UDALL, Ranking Member BURR, and other members of the Subcommittee on National Parks for allowing me to offer a statement earlier today.

I ask my colleagues to join me in supporting this bill before the full committee and the full Senate so we can send it to the President's desk.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Mr. President, I wish to spend a few minutes talking about our previous vote this evening.

I know many of my colleagues worked hard on regulatory reform legislation, but I also think it is important that we keep our eye on a very critical part of solving this problem. I know many of my colleagues, particularly on the Banking Committee, have had a long history with banking issues and may see things a little differently from the context of the issues they have been dealing with in the committee.

It has been clear to me for a long time that the deregulation of the derivatives market in 2000 led to a very unfortunate situation. Before deregulation, we actually had transparent trades in reporting to the CFTC. We had capital requirements. We had speculation limits. We had antifraud and antimanipulation. We had trader licensing and registration. And we had public exchange trading.

The reason I bring that up is because to me, if the derivative crisis brought on basically a world economic implosion, then the principles of this underlying bill ought to adhere to the principles that have been laid out by the White House and others on what would help us fix this problem.

We know it was deregulated, and we know these things were eliminated. But I take the Treasury Secretary at his word when he wrote earlier this year:

> To contain systemic risks, the CEA and the securities laws should be amended to require clearing of all standardized derivatives through regulated central counterparties.

The reason I bring that up is because the underlying bill before us—even though the Agriculture Committee corrected this—the language coming from the Banking Committee created a loophole and basically says that if you go to a clearinghouse and they say you do not need to be cleared, don't worry about it, you don't need to be cleared.

It should be no surprise to anybody that the swaps dealers are the people who own the clearinghouses. In that context, a fundamental tenet of derivative regulatory reform, exchange trading, clearing, aggregate position limits, and transparency, one of those pillars is missing from this bill.

Look at what happened because of this deregulation in 1999. There was less than $100 billion in the derivatives market, and today we are at a $600 trillion derivatives market—$600 trillion. Before deregulation it was a very small amount of money, and now we have this incredible market.

The question is whether we are going to regulate it to have the basic tenets of true competition, which means there is some oversight and some transparency to make sure that there are not manipulative devices or contrivances in this legislation.

The good news is we have tried to say that of these principal tenets of exchange trading, we have to have transparency, real-time monitoring—all these things should be in there. But you also have to have capital behind the trades. That means we have to have a clearinghouse to make sure this type of activity is being cleared.

There were many times before the Senate Finance Committee where the Treasury Secretary said:

> I'm fully supportive of moving the standard part of those markets onto central clearinghouses and exchanges . . . We want to make sure that the standardized part of those markets moves into central clearinghouses and onto exchanges as quickly as possible . . .

That was in January.

We had another time where the administration said:

> . . . we need to establish a comprehensive framework of oversight, protections and disclosure for the OTC derivatives market, moving the standardized parts of those markets to central clearinghouses, and encouraging further use of exchange-traded instruments.

That was in March.

I don't know why we are still having this debate as to whether we are going to have clearing of these derivatives. To me it is critical.

I know there are other good parts of this legislation about which people care deeply. But if we have this $600 trillion market and we are not truly going to have exchange trading and clearing and aggregate position limits across all exchanges, we are not going to rein in the derivatives problem. We are not.

I hope my colleagues will take these words from the Treasury Secretary and from the White House and hopefully get a piece of legislation on this floor that will take care of this clearinghouse loophole.

I know my colleagues think we can talk about building a dam against this wall of dark derivatives. But even something such as Hoover Dam, with all the great concrete and all the great engineering and all the great things that make that structure work, still has a problem if somebody drills a hole in the bottom of it. Over time, that is where all the water will flow, and that is where this derivative market is, too. If we do not have a regime of exchange trading and clearing, we will have money seeping into a continuation of a dark market.

Would I like other amendments, would I like a vote on an amendment by my colleague from Arizona and me that is the reinstatement of Glass-Steagall? Sure, I would. Sure, I would like to have many other amendments that my colleagues have been talking about, and hopefully they will get votes on them, whether it is Merkley-Levin or other pieces of legislation people have been offering. But this issue is a fundamental one. We will not have reform if we do not have exchange trading and clearing, if we do not bring derivatives onto the same kind of mechanisms we have for other products in the financial markets. If we do not do that, then I don't know what we are doing out here in the context of what brought us to this crisis.

Trading of dark market derivatives is what has brought this challenge to our U.S. economy. Let's bring some transparency into that market. Let's adhere to these words and actually implement this so we can move on with this legislation.

I yield the floor.

Mr. SHELBY. 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. DURBIN. 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. DURBIN. Mr. President, what is the order of business before the Senate?

The PRESIDING OFFICER. The Merkley amendment is pending.

Mr. DURBIN. Mr. President, I stand in support of the Merkley amendment.

This is an effort by JEFF MERKLEY of Oregon and CARL LEVIN of Michigan to try to strengthen the bill that is before us on Wall Street reform; to try to minimize the types of investments made by banks which could, in fact, jeopardize those government institutions that guarantee the deposits at banks because some bankers make bad decisions and bad investments. What Senator MERKLEY is trying to do is to reduce that likelihood, which means banks are less likely to fail and taxpayers are less likely to be holding the bag.

Senator LEVIN of Michigan, you will remember, 3 or 4 weeks ago held a historic hearing with Goldman Sachs representatives, including Mr. Lloyd Blankfein, their CEO, to discuss some of their practices. Those of us who know Senator LEVIN know he is a very studious and thoughtful individual and he doesn't take on complex issues lightly. He spent months in preparation for that hearing, and coincidentally it came up just as we began the debate here on Wall Street reform. It was quite a hearing. It went on for many hours because there was an effort by the witnesses to avoid answering questions, so the committee decided they would keep the witnesses there until the questions were answered. As a result, they stayed into the night. At the end of the day, I think people had a better understanding of some of the practices at Goldman Sachs, one of the largest financial institutions on Wall Street. I think they also may have had some second thoughts about some of the standards being used by that firm and others.

We know Goldman Sachs is currently being investigated by the government for alleged wrongdoing when it comes to the sale of investment products. It turns out, as best I understand it, that this Wall Street firm of Goldman Sachs was selling investments to individuals and then basically betting they would fail—with their own money. It strikes me as a complete abdication of any financial or fiduciary responsibility, to put their customers in that kind of compromised position. It is interesting that I have had a conversation with people in other firms on Wall Street who think this is routine and not extraordinary. That makes it all the more troubling.

The Levin portion of the Merkley-Levin amendment addresses this issue about the ethical considerations of these companies that, in fact, are selling products to their customers and then turning around and secretly, quietly betting with their own investments that those products will fail.

So that sort of thing should be addressed in this bill. The Merkley-Levin amendment is an amendment which would have been considered regardless of whether today's cloture motion had passed.

For those who do not follow the Senate, the cloture motion is an attempt to at least bring a close to the beginning of a debate and start to wind down the debate toward a vote. So we had a vote today. We needed 60 votes in the Senate out of 100 Members to vote in favor of the cloture vote.

After 4 weeks on the floor of the Senate on this Wall Street reform bill, the majority leader and many of us felt we had reached a point where we needed to start winding this bill down and bring it to a final vote. Well, we needed 60 votes to do it. There are 59 Democratic Senators here when all are present and accounted for. One of our Senators, Mr. SPECTER of Pennsylvania, was not here today, and as a consequence we found ourselves needing help from the other side of the aisle.

We needed at least one—it turns out three—Republican vote in order to move forward and to bring this bill to a vote. At the end of the day, we did not have them. We fell one vote short. We had two Republican Senators who crossed the aisle and voted with us—that would be the two Senators from Maine, SUSAN COLLINS and OLYMPIA SNOWE—and no other Republicans who would join us in trying to bring this bill to a close with some closing amendments and a vote.

If you followed the debate on this bill, it is no surprise that the Republicans are reluctant to be part of Wall Street reform. When the debate started, it started with three—not one but three—straight filibuster votes. Those were efforts by the Republicans to stop us from even bringing this issue and subject to the floor of the Senate. Many of us felt this discussion and debate over this bill was long overdue. We know this recession has cost us dearly in the United States. We know it extracted $17 trillion out of the American economy.

We felt it personally. You felt it in your savings account, your IRA, your retirement account. You saw it when the business down the street started to lay off its employees and another one closed. You noticed the home across the street going into foreclosure.

You heard all the stories about unemployed people, maybe some in your own family. So we knew what this recession meant and what it cost us, $17 trillion. What we are trying to do with this Wall Street reform bill is to change the way they do business on Wall Street so we never face another recession such as the one we are in, brought on by the greed and stupidity of the so-called banking experts on Wall Street.

We know what happened. Wall Street got away with murder for years, and taxpayers ended up holding the bag. Hundreds of billions of dollars out of the Treasury, out of the wallets of families across America in terms of tax payments, that ultimately found their way to Wall Street to rescue the failing businesses there.

Why were they failing? Well, try reading ''The Big Short'' by Michael Lewis, one of the most popular books now in America. Mr. LEWIS was in my office today. He has written a number of books, and he is pretty good at it. He talked about his experience sitting down with people who were insiders on Wall Street who were describing what went on literally for years.

What you think is that when you get to the top, you will find the smartest people. I guess that is possible and likely. But in this case, when you got to the top, you found some of the dumbest people who were involved in constructing investment ideas that were fundamentally flawed, taking failing mortgages across the United States and packaging them together and then trying to sell them locally and globally and watching the bottom eventually fall out.

Lewis wrote this in this his book, ''The Big Short.'' Many of us have read it. He and I had a chance to talk about it today. But it was that kind of conduct that led to this recession that cost us all these jobs, that wrecked the savings accounts of American families, that has set us back on our heels, and we are finally coming out of it slowly. But it has cost us dearly as a nation.

We are trying to change the way Wall Street does business so we never have to face a recession such as this again. The Republicans in the Senate, with only a few exceptions, have resisted our efforts to pass this bill.

First, with three straight filibusters to stop us from bringing the Wall Street reform bill to the floor, three efforts to stop us from even debating the bill, then 4 weeks of debate on the floor of the Senate, and I will tell you, that is rare. I have been around here for a few years. It is very rare that you would spend 4 weeks on one bill. Well, this is our fourth week on this bill.

During that time, Senator DODD, the chairman of the Senate Banking Committee, has been working with Senator SHELBY, the ranking Republican from Alabama, who is on the floor, and they have been going back and forth with amendments.

I think Senator DODD said today almost 60 amendments have been considered, pretty close. A lot of different ideas have come to the floor back and forth. Some Democratic amendments have been considered and failed, some passed. Some Republican amendments were considered and failed. There were bipartisan rollcalls. It has been a real Senate debate.

It feels good. It does not happen enough around here. This so-called deliberative body spends a lot of time, such as at this moment, where nothing is going on, on the floor except some profound speeches by the Members. What we have tried to do, during the course of this debate, is give everybody a chance to bring out their point of view. Points of view are much different. That is OK. That is why we are here. We are supposed to debate these things and vote on them.

I had an amendment last week, one that I have been working on for literally 3 years or more, that deals with the credit card companies' charges to merchants and retailers. When a customer uses a credit card, they not only get credit to buy a meal, for example, that restaurant has to pay a percentage of the bill, the cost of the meal, back to the credit card company. This interchange fee has become unfair to small businesses.

Well, after working at it for more than a week, we finally had the amendment called 6 days ago, and it was enacted, passed by the Senate, with a vote of 64 to 33, 17 Republicans joined me. So it was a good bipartisan amendment. It was a surprise to many because the credit card companies and the banks that support them are very powerful. In this case, they came up short. The retailers, the merchants, the convenience stores, the gas stations, the restaurants, grocery stores all across America finally prevailed in this long battle against the credit card companies.

But that was the best of the Senate, I thought, and of course I am partial because my amendment passed. But it was the best of the Senate because it was a real debate and a real vote and an outcome which was bipartisan.

We felt this was a good time, in the course of the debate, to start winding it down and come down to a handful of amendments, vote on them, and then vote for final passage so we can conference this bill, work it out with the House, send to it the President to be signed into law. But we could not get the votes.

The Republicans, but for two Senators, refused to give us the votes to end this part of the debate and bring this bill to a final vote. It is frustrating. I do not know that they can argue that we have been unfair. We have given pretty wide berth to the Republican side to offer the amendments they wanted to offer. They have offered quite a few, and we have, too, on our side of the aisle.

So I do not think you can argue that we should not stop debate over fairness in the course of the debate. They might be arguing they do not want a bill at all. That is possible. First, they filibustered to stop us from bringing the bill to the floor. Now they are basically filibustering to stop us from ending the debate on the bill and bring it to a final vote.

I only know of several groups across the country that want to stop the debate on this bill: Wall Street, the biggest credit card companies, and the biggest banks. They want to stop this bill. They want to kill it. They have spent a fortune on lobbyists, roaming around our offices on Capitol Hill, to try to convince Members to stop this Wall Street reform bill.

Well, they at least were successful today. They convinced all but two Republican Senators to come to their side of the issue and to stop this debate on Wall Street reform. That is unfortunate because I think the American people expect us to get something done. They expect us to hold Wall Street accountable, to make sure the reckless gambling by Wall Street institutions that led to the loss of more than 8 million American jobs comes to an end.

They want to end taxpayer bailouts once and for all. They do not ever want to hear the word ''TARP'' again, unless it is something you can put over the top of your station wagon. They certainly do not want us in a situation where we are coming up with hundreds of billions of dollars to bail out these banks. Thanks to an amendment by Senator BARBARA BOXER of California, one of the first, we made it clear that we are prohibiting any future bank bailouts under this bill. Senator BOXER was a real leader on that issue.

I think most Americans believe we need to have an agency that is going to be here in Washington which will administer the strongest consumer financial protection law in the history of the United States, a law that will empower consumers when they go through a real estate closing or sign a credit card agreement or sit down next to their son or daughter to sign the student loan forms or take out a loan for a car, knowing they are not going to be cheated and treated poorly.

This agency is there to empower consumers so they are not, in fact, swindled out of their life savings and are not brought into legal deals which are totally unfair. We want to bring sunlight and transparency to shadowy markets. Some of the things we voted on will move us in that direction, to start eliminating some of the trading that has gone on that is an outrage.

I do not think business as usual is the right way to go. But the Republican votes today, all but two Republican Senators voted to continue business as usual on Wall Street. They do not want this bill to pass. So they voted that way today. At the end of the day, 39 out of 41 Republican Senators voted for the status quo, keep things as they are on Wall Street.

In addition, of course, we understand that Wall Street is powerful. When my amendment came up on interchange fees, the banks warned Senators: If you vote for the Durbin amendment, we are not going to support you; that is, contribute, in the next election campaign. That was on the front page of the New York Times last Saturday. It is the most bald-faced admission I have ever seen by special interest groups that they are putting the pressure on Members who vote for Wall Street reform.

So I say to my colleagues: They may have won today and kept the banks happy. But, ultimately, it is more than the bankers who will be voting in November. It is people all across America who are angry at what happened on Wall Street and do not want it to happen again. They are going to remember the Senators who voted with Wall Street and those who voted for reform, and today we have a rollcall that indicates it.

We have to make sure we make the changes that make the difference across America. Some of the things that have happened here are pretty graphic. Paul Krugman, a writer from the New York Times, wrote a few weeks ago:

> The main moral you should draw from the charges against Goldman, though, doesn't involve the fine print of reform; it involves the urgent need to change Wall Street. Listening to financial industry lobbyists and the Republican politicians who have been huddling with them, you'd think that everything will be fine as long as the federal government promises not to do any more bailouts. But that's totally wrong—and not just because no such promise would be credible.
>
> For the fact is that much of the financial industry has become a racket—a game in which a handful of people are lavishly paid to mislead and exploit consumers and investors. And if we don't lower the boom on those practices, the racket will just go on.

That is why this vote today was so critically important. Those who want to stick with the status quo, who want to reward the special interests, who want to load up this bill with lobbyists' loopholes, prevailed today on this vote today by one vote on the floor of the Senate. There will be another vote tomorrow and maybe the day after too. The question is, Will any other Republicans, aside from the two Senators from Maine, break ranks and join the Democrats for Wall Street reform?

This is a once-in-a-political-lifetime opportunity. If they want to stand with the special interests and Wall Street to stop this reform, they will certainly have to answer for it when the time comes and they face the voters.

This attempt we are making to change the rules on Wall Street is an attempt to empower the people of this country to help them make the right decisions personally and to make certain that they do not end up losing their savings and their homes and their jobs because of the greed and selfishness of those on Wall Street.

I can remember many years ago on the floor of the Senate, when I was a brand new Senator, way in the back row there, and offered an amendment to a bankruptcy bill. The amendment said: If you are a predatory lender; that is, if you violated the laws of America in the loans that you are making, such as mortgages, you cannot then turn around in bankruptcy court and recover from the debtor who has been the victim of your predatory lending practices.

I was arguing on the floor with Senator Phil Gramm of Texas, who was here arguing against my amendment. He was high ranking on the Senate Banking Committee. He said: If the Durbin amendment passes, it is going to kill the subprime mortgage market in America. Well, I lost by one vote. If my amendment had prevailed, who knows, history might have been a little different. That is why one vote makes a difference.

Today, we needed one more Republican Senator to vote for Wall Street reform. We had two. We needed one more. I understand two of our Democratic Senators withheld their votes because they want this bill to be stronger. I hope they will come around. I hope they will vote with us. But at the end of the day, we only had two Republican Senators who stepped up and said they favored Wall Street reform.

Well, I lost my amendment by one vote that might have changed a little bit of financial history if it had passed. Today, we lost by one vote when it came to Wall Street reform.

We are not going to quit. President Obama is committed to it. Democrats in the Senate are committed to it. Democrats in the House already passed their bill. We need to get this done. It is time to stop the obstructionism. It is time to stop the stonewalling. It is time to bring this to a close with a handful of amendments on both sides of the aisle. Let's have an up-or-down vote, and let's get on with it. Let's pass this bill.

On final passage, a number of Republicans who have been holding back and would not support this bill may have second thoughts. They may decide they don't want to be found on the wrong side of history again; that it isn't worth standing up with the special interest groups or Wall Street lobbyists when America is crying for basic reform and accountability.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I appreciate the distinguished majority whip. I voted with him last week on the interchange fees on debit cards. I thought it was a good amendment. But I have to take issue. Don't generically accuse those of us in this body of stonewalling a bill or more or less being interested in looking out for Wall Street or anybody else.

A little history lesson is due. First, what brought us into this recession was the subprime market, which the distinguished Senator mentioned, and the housing market. It happened because Members of this body and the body down the way, 13 years ago, began to direct Fannie Mae and Freddie Mac to include in their portfolios a portion of affordable housing loans which were the words for what became subprime loans.

Freddie Mac and Fannie Mae created the market that allowed Wall Street to go find capital and collect that capital, put a high premium on the capital, high interest rate, maybe 200 basis points over the going rate, but then make it a higher credit risk to lenders because that is the way credit works. What happened is, those loans became popular, and because of a government-sponsored entity that began the consumption of those loans, they proliferated. Those securities were sold around the world. When they collapsed, and we went all through that, it was a terrible collapse. But the root of this problem is that Freddie Mac and Fannie Mae were under the direction of the Congress as to what they should do in terms of the securities they owned. I am saying the Congress of the United States, not pointing fingers at any particular party.

With that being true—and I don't think anybody can dispute it—we have a financial reform bill before us that exempts Freddie Mac and Fannie Mae from reform. That doesn't make any sense. If you listen to the arguments to why they weren't there, it is because it was too hard.

These are hard times. Americans are having hard times. It is time we did the hard things. It is time we not try and politically label Members as friends of Wall Street or friends of Main Street. We are all Americans. It is our economy. It is not just part of the economy. I take issue with the labeling that takes place sometimes. Let's talk about the facts that are there, one way or another. Let's let the facts determine what we do.

I didn't vote for cloture because I don't think it is right to leave Freddie Mac and Fannie Mae outside the equation and incorporate every other business on Main Street and on Wall Street to the extent we have. It is right for us to take some of the blame in the Congress. A lot of this wouldn't have happened had we not directed the government-sponsored entities with which we had influence, and the implied full faith and credit of the taxpayers would be the consumers that would create the liquidity for subprime loans.

My only statement to the majority whip is this: I understand facts. The facts are that Freddie Mac and Fannie Mae started this. They are exempt from this piece of legislation. I, for one, take issue with that. We cannot reform and address the concerns that happened if we don't address the root of the problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, at the risk of a real debate, I invite the Senator from Georgia to stay, if he would, for a moment so we can engage.

Mr. ISAKSON. I am happy to.

Mr. DURBIN. I have the highest respect for the Senator from Georgia personally, and I thank him for his support on my interchange amendment. We have worked on many other issues, and we will in the future. I will concede what he pointed to as a fundamental flaw, a mistake that was made. There was a presumption made that owning a home was such a valuable American ideal—and I know your background; you certainly agree with that—but we went too far. We extended the opportunity for home ownership to people who were not ready. We believed if we pushed them to the limit of how much they could pay, the home would appreciate in value, their incomes would go up, and everything would work out. It turned out that gamble was wrong for some people. Certainly, Fannie Mae and Freddie Mac, as the ultimate guarantors of mortgages, were part of that. There is a government element here. I don't question that for a moment. Certainly some blame lies there.

Blame lies with those people who overextended, bought more than they could afford. They may have been misled into it, but the fact is, they did it. They made mistakes.

Having said that, though, there were a lot of people involved in financial institutions which led them into this, misled them into this. No-doc closings, where people didn't have to present a document proving the amount of income they had, basically telling people: We will give you a mortgage where it is; you will be paying just interest for a few years, and everything will be just fine.

These mortgages where the interest rates would explode in the outyears, and people would not be able to pay, there was a lot of things that went wrong there. But I hope the Senator from Georgia will agree that behind this bill is the notion that some things happened on Wall Street which were outrageous. The fact that we ended up coming up with somewhere in the range of $700 or $800 billion to save most Wall Street institutions is an indication that things were out of hand on Wall Street, that we never want to return to that again.

I will concede to the Senator from Georgia his premise. Do we need to reform Fannie Mae and Freddie Mac? Yes, we do. If we don't, we will pay dearly for it. I don't know if we can accomplish it in this bill, accomplish it at this moment, but it literally has to be done. I have never quarreled with that premise in the debate, nor do I question his starting point that this was part of the problem that led to where we are today.

It is always the best is the enemy of the good around here. We have a good Wall Street reform bill that moves in the right direction to avoid some of the abuses there. To argue that it doesn't include Fannie Mae and Freddie Mac and therefore we can't support it, perhaps we just have a different point of view. I think this is a valuable thing to do to move forward. I will concede his point. He is right in what he said.

Mr. ISAKSON. Will the Senator yield?

Mr. DURBIN. Yes.

Mr. ISAKSON. I appreciate his comment. That was my point. When I was listening to the Senator's speech, I got a little irritated. Then I realized I have probably done the same thing before too. I leaped over some facts that belong in the debate. The fact that the Congress directed Freddie and Fannie to own a percentage of their portfolio in subprime loans was the source of the capital that bought the first securities that created the subprime securities. I do not argue that there are not good things in this bill.

In fact, when the Senator was referring to the liar loans, it was the Isakson-Landrieu amendment that we successfully added to this bill that defined that a qualified loan is to be exempt from risk potential because it requires income verification, requires an employer statement that the employee is hired, and it requires an income ratio that is sufficient to retire debt that is borrowed. I agree with the Senator.

My point was that when all of us make these remarks of what bills are and they are not, we ought to include all of the facts that are in there, not just a select few. I appreciate the Senator's comments. I was proud to be a part of his amendment.

Mr. DURBIN. I thank my colleague from Georgia. It depends on one's perspective. The amendment he just described that he added to the bill is a valuable part of this bill. It wasn't there originally. It is now. I am glad it is. I am happy to support it. That is what we are trying to do today, to move its passage so it becomes the law of the land. But because we fell short by only two Republican votes coming forward today, we can't move forward.

If the position of the Senator is we should not pass his amendment or this underlying bill until we reform Fannie Mae and Freddie Mac, I am with him in terms of the reformation. I don't believe it is reasonable to require this bill to do everything that needs to be done. That is my only difference with the Senator from Georgia.

Mr. ISAKSON. The Senator and I might differ on points, but I defer to the Senator. I wish I had the control to control votes, but I don't. There were two on his side and two on ours. There are people with higher pay grades who were responsible for that. I wanted to make the point about what is, to me, a serious issue with regard to the bill and something that should be considered in the debate.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I don't mean to jump into these things, but I wanted to make a couple comments. First, no one knows real estate like JOHNNY ISAKSON. I have had the privilege of working with the Senator from Georgia over the last year or so on a couple of proposals, one of which I think made a big difference. That was the $8,000 tax credit for home buyers to go out and encourage home purchases and sales. It has proven to be pretty worthwhile. I haven't seen the latest data. My friend is far more familiar than I. But, clearly, for most Americans, home ownership is the single largest and most important acquisition they ever have. It is the greatest wealth creator for most Americans.

As the Senator from Illinois points out, that additional trajectory is where we increased this, and people used that equity to help with retirement and student loans, a variety of things they need as a family.

As my friend from New Hampshire pointed out the other day, there is a history here. I acknowledge that we in Congress have failed in this responsibility, actually going back to around 2003. The Senator from Alabama can correct me. There were various attempts. A good friend of ours, the former chairman of the House Financial Services Committee, Mike Oxley, a Republican, offered one as chairman. They actually got one done.

It was a bipartisan bill in the House on Fannie and Freddie in 2005. It then came to the Senate, and things got bogged down over here. There were attempts, including the former chairman from Alabama, who offered a proposal. Senator Sarbanes did. It went back and forth. We didn't get the job done.

It is important to remember during times such as this, when we are not hesitant to point an accusing finger at other institutions for having helped create this problem, we in Congress collectively did not get the job done with Fannie and Freddie. I join with my colleague from Illinois, it is important we acknowledge that if we are going to be accusing other institutions for malfeasance or misfeasance. In this case, we should have done a better job.

Here is the problem. As the Senator from New Hampshire pointed out—I am quoting him—this issue was ''too complex'' for this bill. The reason is, we don't know what to replace it with at this point. There are a number of ideas floating around because all of us recognize we need to have a housing financing system in place. In the absence of having any in place, around 97 percent of all home mortgages are backed by the Federal Government today. If we pull that rug out at this particular juncture, I don't know what the implications would be. I think they would be pretty profound.

We are caught in this quandary, acknowledging the need to reform and replace Fannie and Freddie, the present structure, but doing so without replacing it with something could pose serious problems in the very area the Senator from Georgia is so knowledgeable in; that is, how do we continue to promote home ownership.

What we did—and I would be the first to admit it, being the author of the provision—is fairly anemic in light of what we need to be doing. We have said we are mandating that there be a study completed with options presented within 6 months. The President of the United States I have heard say on one occasion, maybe more, this is a top priority come next January for him and this Congress to grapple with.

Again, there is nothing there that absolutely requires it, but it will be essential that we come up with options.

I recall the previous Secretary of the Treasury advocating for a public utility concept to replace Fannie and Freddie. I would be the last one to tell others whether that is a good idea or a bad one. But it is one option. Clearly, we have conflicting goals—one of home ownership, which is the very one we all support, combined with the goal of satisfying shareholder interests. What happened is, shareholder interests trumped in a sense the kind of manageable, sensible policy that would promote home ownership at the expense of returning investments for shareholders. That is also a laudable goal. But to have the same entity have the two missions, one for home ownership, one for a return on investment, they collided with each other. We have ended up in the situation we are in without a great answer—yet—as to how to replace it.

The point I guess I am making is, I totally agree with the Senator's premise. The question is, as chairman of this committee, how do we fix this thing at this point? And I have never suggested with this bill we were dealing with every financial problem in the country. It would be an impossible task for us to take that on.

So all I can say to the Senator, as someone who will not be here next January, is, I hope whoever sits at this desk—or at this desk, across from my good friend from Alabama chairing the committee—that this will be a priority of our Banking Committee. I cannot dictate that. I cannot even bind the next Congress constitutionally with anything we require here. But my fervent hope would be—I cannot think of a more important priority for the Banking Committee of the Senate than to have the reform of Fannie and Freddie because I think we are going to be in deeper and deeper trouble both financially and in terms of home ownership if we do not. So whatever else happens here in the next few days with regard to this bill, I want to thank my friend from Georgia for his continuing commitment to the issue and to say that I associate myself with his concerns. I would also plead that failure to deal with that issue in this bill ought not to be justification for walking away from all the other good things we are trying to accomplish in this legislation.

I thank the Senator for hanging around and listening to this filibuster.

Mr. ISAKSON. Mr. President, will the Senator yield for one comment?

Mr. DODD. I am happy to yield to my friend.

Mr. ISAKSON. First of all, my comments were directed specifically to the speech of the Senator from Illinois.

Mr. DODD. I did not hear it. I apologize.

Mr. ISAKSON. They were not a criticism of the chairman, first of all. I think the ranking member would certainly agree with that.

Second of all, there is some good news that was received today, thanks to the Senator's help, because I could not have done it if it were not for him. We had the tax credit we extended and ultimately passed, which terminated April 30. As to the numbers from the most recent month: the average sales price in the 20 top markets in America, for the first time in 36 months, went up by six-tenths of 1 percent. So the distinguished chairman deserves a lot of credit for that contribution as well.

I was just making sure there was a voice over here that reminded everybody of what got us in this to begin with in the context of the speech of the Senator from Illinois. It was never a criticism of the chairman of the committee.

Mr. DODD. I thank my friend from Georgia.

With that, Mr. 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.

Mr. ISAKSON. 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. 3746, AS MODIFIED

Mr. ISAKSON. Mr. President, I understand the body may, in a little bit, take up the Whitehouse amendment, and out of an abundance of caution, to be sure my statement is in the RECORD, I want to speak to that amendment for a second.

I have the greatest respect for the Senator from Rhode Island, Mr. WHITEHOUSE, and all of his work. But the amendment he has proposed basically says that the usury rate to apply to any loan shall be the usury rate in the State, which will take us back to a period of time post 1982 or 1983, when interest rates went to 16 and three-quarters percent. And because usury rates in the United States were 8, 9, or 10 percent in most of the States, there was no money. Usury rates are the maximum ceiling that a loan can do.

Now we have South Dakota and Delaware where there are no usury rates. Most banks are chartered there and, therefore, interest rates on loans are negotiable and competitive. There are a lot of people in public life who think: Well, if you put a ceiling on interest rates, you are guaranteeing the consumer that they are not going to pay a high rate. What you are usually guaranteeing the consumer is, they are going to pay a fixed rate, which is whatever the government says is the usury rate. Floors set by government become ceilings, and ceilings by government become rates.

So I want to caution the body, in considering the Whitehouse amendment, to be very careful what you ask for. Because what you will do is you will put an end to credit in the housing business and in many other types of instruments in the United States, and you will have 50 different usury regimens in 50 different States. You will create a fixed-rate environment by the government, not by competition. What effectively happens is a rise in the cost of credit, a rise in the cost to the consumer, and in the end what I am sure is intended to be beneficial to the consumer will, in fact, cost the consumer more money and be disastrous to the expansion of credit in a time where there is very little credit as it is.

I would respectfully ask the body to consider what we went through in the mid-1980s and early 1980s with interest rates. We hope they will not go up again, but if they do, credit is more important than no credit at all, and usury rates can assure you have no credit at all and end up having the unintended consequence of having a negative impact on the economy.

I would oppose the Whitehouse amendment, should it come up tonight, and I hope the Members of the body will consider the history lesson from the early 1980s.

Mr. President, I yield back and 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.

AMENDMENT NO. 3746, AS FURTHER MODIFIED

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now resume consideration of the Whitehouse amendment No. 3746 and that the amendment be further modified with the changes at the desk; that it also be in order for the Ensign amendment to be considered; that they be debated for a total of 10 minutes, with time equally divided and controlled between Senators WHITEHOUSE and ENSIGN or their designees; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Whitehouse amendment, to be followed by a vote in relation to the Ensign amendment; that each of these amendments be subject to an affirmative 60-vote threshold; that if they achieve that threshold, then they be agreed to and the motion to reconsider be laid upon the table; that if they do not achieve that threshold, then they be withdrawn; further, that prior to the second vote, there be 4 minutes of debate, divided as specified above, and the second vote be limited to 10 minutes.

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

The amendment, as further modified, is as follows:

On page 1325 between lines 20 and 21 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.—Section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) is amended—

(1) by striking "Any association" and inserting the following:

"(a) IN GENERAL.—Any association"; and

(2) by adding at the end the following:

"(b) LIMITS ON ANNUAL PERCENTAGES RATES.—Effective 12 months after the date of enactment of this subsection, the interest applicable to any consumer credit transaction, as that term is defined in section 103 of the Truth in Lending Act (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. DODD. Mr. President, I further ask unanimous consent that there be no further amendments to those amendments.

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

Mr. DODD. Further, Mr. President, I ask unanimous consent that it be in order for the Cantwell amendment No. 4086 to be called up for consideration.

The PRESIDING OFFICER. Is there objection?

Mr. SHELBY. I object.

The PRESIDING OFFICER. Objection is heard.

The Whitehouse amendment is now the pending question.

The Senator from Connecticut.

Mr. DODD. Mr. President, I commend the Senator from Rhode Island for his passionate and persistent advocacy for his amendment. He has been extremely eloquent.

However, I have to oppose the Senator's amendment. I do it with some reluctance.

Nobody has been more concerned about credit card abuses in this body than I have.

We passed strong, new legislation to address many of these abuses just last year, and the Federal Reserve has written regulations to implement these protections.

In addition, the Wall Street Reform Act includes a strong new consumer financial protection bureau that will, for the first time, create an independent entity devoted to empowering consumers with clear, transparent, easy-to-understand disclosures so that they can make smart financial decisions for themselves.

This bureau will help achieve the goals that Senator WHITEHOUSE hopes to accomplish with his amendment, though it will not be done in exactly the way he seeks to do it.

By creating better disclosures, by eliminating confusing fine print, the consumer bureau will help consumers become better shoppers. This will help drive down credit card interest rates.

In addition, as Senator WHITEHOUSE knows, the Wall Street Reform Act will use States as partners in enforcing new rules under the consumer title. This will put additional cops on the beat to make sure American families are not lured into buying unfair, deceptive, or abusive financial products.

In sum, the underlying legislation would be a giant leap forward for consumer protection.

But as I have said earlier, I reluctantly oppose Senator WHITEHOUSE's amendment. One of the reasons is that this amendment does not actually address the problems that it is supposed to solve. It would only stop national banks from exporting interest rates. Out-of-state savings associations and state-chartered banks can still charge a higher interest rate. So it does not restore the states ability to enforce interest rate caps against all out-of-state lenders. And it does not level the playing field for local lenders as intended.

I believe that the Wall Street Reform Act represents an important step forward for consumer protection. If, indeed, the Whitehouse amendment is even the right thing to do, we should not make the perfect the enemy of the very good.

Finally, let me say that the abuses of which Senator WHITEHOUSE speaks are very real. The interest rates so many of these banks charge are outrageous. However, it is a complex issue that will not be solved in this debate.

I urge my colleagues, let's pass the Wall Street reform bill into law, so the consumer bureau can start doing its work and start helping the American people make smart financial choices.

Mr. President, I have great respect for our colleague. He has worked hard on this amendment. He has been trying to get attention over the past 2 weeks, probably as much as anyone in this Chamber, and he is anxious to be heard. So I am grateful to my colleagues for giving him the opportunity to have this debate on a legitimate issue; that is, interest rates. All of us, of course, hear from our constituents about the rising and higher cost of interest rates.

This amendment takes an approach that would, in effect, repeal the so-called Marquette decision reached a number of years ago that allowed for interest rates to basically be determined by the home State of a corporation. That the corporation actually does business in other States is not terribly relevant to whatever the rates would be, but whatever the rate is in the State where their corporate headquarters is domiciled is what would determine that. I may not be stating that quite as eloquently as the author of the amendment will, but it is words to that effect. I am getting tired after days of describing these.

While I respect the effort here, there are some problems associated with this, in my view, so I will vote against the Whitehouse amendment. But, again, I respect my colleague's proposal. I respect the efforts he has made and believe there is legitimacy to the issue. I am not sure, however, the approach is the correct one to pursue.

With that, I see my colleague and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. I thank the chairman. I guess as the old song goes, what a long, strange trip it has been to get to this vote. But I appreciate very much the chairman's efforts and the ranking member's efforts that have allowed this vote.

I thank the cosponsors who have helped me work so hard on this legislation: Senators COCHRAN, MERKLEY, DURBIN, SANDERS, LEVIN, BURRIS, FRANKEN, BROWN of Ohio, MENENDEZ, Chairman LEAHY, Senators WEBB, CASEY, WYDEN, my distinguished senior colleague from Rhode Island, JACK REED, Senator UDALL of New Mexico, and Senator BEGICH, who is now Presiding.

I am very proud of that support and very proud of the support of over 200 consumer groups for this legislation, including AARP, Consumers Union, National Consumer Law Center, Public Citizen, and Common Cause. That is a blue ribbon group of consumer supporters, and it is just the tip of the iceberg of a large organizational push to correct an inequity in American society that arises out of an inadvertent loophole that the Supreme Court created 30 years ago.

This vote presents all of my colleagues a clear, stark choice. Whose side you are on will be defined by your vote on this amendment. If you are on the side of the big out-of-State banks that are marketing into your home State and that are forcing your home State citizens to pay 30 percent and over interest rates even though those interest rates might be illegal under your home State laws, then you will cast your vote against this amendment and in favor of those big out-of-State banks charging that exorbitant interest. If you support it, you are taking the side of your home State citizens who are being gouged right now by banks over which they have no control because they are pitching their business into the home State from elsewhere and the home State laws, because of this peculiar Supreme Court loophole, have been held not to apply. If you vote in favor of this amendment, you are voting in favor of your home State's laws.

This is not a reach of Federal authority. This is traditional federalism and States rights to honor the laws of the States whose citizens sent us here and who wish to protect them from abusive interest rates.

If you vote in favor of this amendment, you are also voting in favor of your community banks, your local State-chartered banks, which don't take advantage of this loophole, which don't create their headquarters in a faraway State that gives them zero consumer protection restriction and allows them to target their marketing against the laws of the home State. The home State banks have to play by the laws of the home State, and this would level the field for your home State banks.

So it is a pretty clear and stark choice: Are you for your home State citizens, are you for your home State's laws, are you for your home State's banks or do you want to take your stand today with the big out-of-State banks whose interest rates are unregulated, whose behavior is in conflict with 200 years of American history and every civilized legal tradition dating back into the mists of time? Every major religion has limited usury. Every civilized legal code has restricted the ability of one individual to harm another by charging them exorbitant interest rates when they are in need.

This is the aberration we are facing right now. We have the chance to fix it. We have the chance to fix it in a way that is justified and proven by 202 years of history in the United States and thousands of years of tradition before that. I urge my colleagues to stand up for their fellow citizens against these out-of-State banks.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from Virginia (Mr. WARNER) are necessarily absent.

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

The result was announced—yeas 35, nays 60, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—35

Akaka	Feinstein	Reed
Begich	Franken	Reid
Bennet	Gillibrand	Rockefeller
Boxer	Harkin	Sanders
Brown (OH)	Lautenberg	Schumer
Burris	Leahy	Stabenow
Cardin	LeMieux	Udall (CO)
Casey	Levin	Udall (NM)
Cochran	McCaskill	Webb
Dorgan	Merkley	Whitehouse
Durbin	Mikulski	Wyden
Feingold	Nelson (FL)	

NAYS—60

Alexander	DeMint	Landrieu
Barrasso	Dodd	Lincoln
Baucus	Ensign	Lugar
Bayh	Enzi	McCain
Bennett	Graham	McConnell
Bingaman	Grassley	Murkowski
Bond	Gregg	Murray
Brown (MA)	Hagan	Nelson (NE)
Brownback	Hatch	Pryor
Bunning	Hutchison	Risch
Burr	Inhofe	Roberts
Cantwell	Inouye	Sessions
Carper	Isakson	Shaheen
Chambliss	Johanns	Shelby
Coburn	Johnson	Snowe
Collins	Kaufman	Tester
Conrad	Kerry	Thune
Corker	Klobuchar	Vitter
Cornyn	Kohl	Voinovich
Crapo	Kyl	Wicker

NOT VOTING—5

Byrd	Menendez	Warner
Lieberman	Specter	

The PRESIDING OFFICER. Under the previous order requiring 60 votes in the affirmative, the amendment is not agreed to.

AMENDMENT NO. 4146 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, the pending business is the Ensign amendment; is that correct?

The PRESIDING OFFICER. It has not been called up at this time.

Mr. DODD. I would suggest that we call up the Ensign amendment. I understand the Senator from Nevada has a modification.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask that the amendment be called up for immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 4146 to amendment No. 3739.

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

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

The amendment is as follows:

On page 1273, delete lines 17–18.

Mrs. MCCASKILL. Mr. President, I wish to be recorded as opposing the Ensign amendment. Whether I have been speaking to community banks, consumer advocates, or businesses, I have been clear that the purpose of the Consumer Financial Protection Bureau would be to ensure that everyone plays by the same rules. I said I would not support carve-outs. It was clear from the initial drafts of the Ensign amendment that this was intended to exempt certain lending by casinos from the jurisdiction of the bureau. The underlying bill already clearly exempts sellers of nonfinancial products who offer financing in support of those sales. It is my belief that the Ensign amendment could undermine that goal and I therefore oppose it.

Mr. ENSIGN. Mr. President, from what I understand the amendment is agreeable to both sides.

Mr. DODD. With the modification.

Mr. ENSIGN. It is already modified. I would tell the chairman of the committee, through the Chair, the modification was the amendment we called up. So it is actually the modified amendment at the desk.

Mr. DODD. I understand there is no need for a recorded vote, we can have a voice vote?

Mr. ENSIGN. That is correct. I ask for a voice vote.

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

The amendment (No. 4146) was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and move to lay that motion upon the table.

The motion to lay upon the table was agreed to.

Mr. REID. Mr. President, I have an announcement to make. Members of the Senate, we have made progress today. We are going to come in at 9:30 tomorrow. There will be amendments processed until we leave to go to the joint session. We will come back as soon as that is over and continue working on this bill.

At 2:30 I will move to reconsider the vote we had earlier today. So we will have a cloture vote at 2:30 tomorrow. Following that, of course, we have to look forward to when we are going to move to the bill of Senator INOUYE and Senator COCHRAN, on which I understand they have done some good work. That will be the next matter we move to. No further votes this evening.

Mr. FRANKEN. Mr. President, 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. 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. 4003, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the Senate now consider the Vitter amendment No. 4003, and that the amendment then be modified with the Pryor amendment No. 4087; that the amendment, as modified, then be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4003) is as follows:

(Purpose: To protect manufacturers and entrepeneurs from unintended regulation)

On page 19, strike line 16 and all that follows through page 21, line 22 and insert the following:

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

(A) FOREIGN NONBANK FINANCIAL COMPANY.—The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company or a subsidiary thereof), that is—

(i) incorporated or organized in a country other than the United States; and

(ii) the consolidated revenues of which from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) constitute 85 percent or more of the total consolidated revenues of such company.

(B) U.S. NONBANK FINANCIAL COMPANY.—The term ''U.S. nonbank financial company'' means a company (other than a bank holding company or a subsidiary thereof, or a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et. seq.)), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) the consolidated revenues of which from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) constitute 85 percent or more of the total consolidated revenues of such company.

(C) INCLUSION OF DEPOSITORY INSTITUTION REVENUES.—In determining whether a company is a financial company for purposes of this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

(5) OFFICE OF FINANCIAL RESEARCH.—The term ''Office of Financial Research'' means the office established under section 152.

(6) SIGNIFICANT INSTITUTIONS.—The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors.

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the criteria to determine, consistent with the requirements of subsection (a)(4), whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) for purposes of the definitions of the terms ''U.S. nonbank financial company'' and '''foreign nonbank financial company'' under subsection (a)(4).

The amendment (No. 4003), as modified, was agreed to, as follows:

(Purpose: To address nonbank financial company definitions and to provide for anti-evasion authority)

On page 20, line 1, strike ''substantially'' and insert ''predominantly''.

On page 20, beginning on line 2, strike ''activities'' and all that follows through line 5, and insert ''financial activities, as defined in paragraph (6).''.

On page 20, line 17, strike ''substantially'' and all that follows through the end of line 20, and insert ''predominantly engaged in financial activities as defined in paragraph (6).''.

On page 21, line 11, strike ''(6)'' and insert the following:

(6) PREDOMINANTLY ENGAGED.—A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) or are incidental to a financial activity, and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7)

On page 21, line 16, strike ''criteria'' and all the follows through line 22, and insert ''requirements for determining if a company is predominantly engaged in financial activities, as defined in paragraph (6).''.

On page 37, line 3, strike ''(c)'' and insert the following:

(c) ANTI-EVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this Act, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United

States would pose a threat to the financial stability of the United States based on consideration of the factors in subsection (b)(2);

(B) the company is organized or operates in a manner that evades the application of this Act; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this title.

(2) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d), (f), and (g) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(3) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term ''financial activities'' means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and related to the ownership or control of one or more insured depository institutions and shall not include internal financial activities conducted for the company or any affiliates thereof including internal treasury, investment, and employee benefit functions.

(4) TREATMENT AS A NONBANK FINANCIAL COMPANY.—

(A) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

(B) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title.

(d)

On page 37, line 15, strike ''(d)'' and insert ''(e)''.

On page 39, line 3, strike ''(e)'' and insert ''(f)''.

On page 40, line 13, strike ''(f)'' and insert ''(g)''.

On page 40, line 21, strike ''(g)'' and insert ''(h)''.

Mr. DODD. With that, 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.

Mr. DODD. Mr. President, I ask unanimous consent that at 2:30 p.m. Thursday, May 20, the motion to proceed to the motion to reconsider be agreed to, the motion to reconsider be agreed to, and the Senate then proceed to vote on the motion to invoke cloture on the Dodd-Lincoln substitute, amendment No. 3739.

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

CLOTURE MOTIONS

Mr. DODD. Mr. President, I have two cloture motions at the desk.

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Jon Tester, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, John D. Rockefeller, IV, Sheldon Whitehouse, Michael F. Bennet.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, John D. Rockefeller, IV, Sheldon Whitehouse, Michael F. Bennet.

Mr. DODD. Mr. President, 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. 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.

BUREAU OF CONSUMER PROTECTION

Mr. JOHANNS. Mr. President, it is my understanding that title X of the bill would give the Bureau of Consumer Financial Protection the power to regulate not only businesses that provide financial products and services to consumers but also companies that provide services to these businesses. I understand that the purpose of giving the bureau the power to regulate these service providers is to prevent a financial service company's use of a service provider to frustrate the efforts of the bureau to protect consumers because important functions that bear directly on consumers are contracted out to service providers. I also understand that this approach is designed to provide the bureau with authority comparable to the authority that Federal bank regulators have over service providers to banks under the Bank Service Company Act.

Am I correct in understanding that it is the intent of the service provider provisions for the bureau to focus on the service contracted out, not the terms of the service contract? Further, am I correct that it is not the intent of the service provider provisions for the bureau to subject the terms of business-to-business contracts, or the agreements between providers of consumer financial products and services and their own service providers, to the jurisdiction of the bureau, even when there may be disputes between these business parties?

Mr. DODD. Mr. President, the gentleman is correct; the purpose of the Bureau of Consumer Protection is to protect consumers and not to address disputes between businesses over the terms of their business relationships.

Ms. COLLINS. Mr. President, I rise to speak in support of an amendment that Appropriations Committee Chairman INOUYE, Vice Chairman COCHRAN, Financial Services and General Government Appropriations subcommittee Chairman DURBIN and I filed to the Restoring American Financial Stability Act regarding funding for the Securities and Exchange Commission—SEC.

This amendment would strike the section that would permit the Securities and Exchange Commission to be ''self-funded''. I have serious concerns with this provision because it would allow the SEC to self finance and thus avoid the scrutiny and oversight of the appropriations process. Our bipartisan amendment would keep SEC funding as part of the appropriations process and maintain critical congressional oversight.

The financial crisis and its consequences have served to remind us all of the critical requirement for more robust oversight and heightened transparency throughout our regulatory environment and financial system. As we have seen, most recently in the review of the SEC's actions in the Bernie Madoff Ponzi scheme, there is clearly a demonstrated need for more Congressional oversight. The annual budget and appropriations process ensures congressional oversight of vital enforcement agencies such as the SEC. As noted by Vice Chairman COCHRAN, our amendment recognizes the need to ''regulate the regulators'' and to hold accountable those regulators who fail do their jobs correctly.

And the recent inspector general investigation revealing that high-level SEC employees spent their days looking at porn rather than pursuing wrong-doing demonstrates the need for oversight.

The appropriations process subjects the SEC to a review which must balance the requests of the Commission against the competing needs of other Federal agencies. That process, however, is grounded in the Constitution and the very foundation of our government is based on the concept of checks and balances. While I appreciate the accomplishments Chairman Shapiro has achieved during her tenure as chairman, funding decisions and the process by which they are made, cannot be based on any particular holder of an office, but rather on government-wide needs and the best interests of the taxpayers.

Allowing the SEC to have sole authority to negotiate the fees that support its operations with the institutions they regulate precludes any meaningful oversight by Congress and invites conflicts of interest. Reports by the Government Accountability Office and the SEC Inspector General regarding enforcement procedures and internal controls over financial reporting highlight the need for congressional oversight. Also, the GAO has noted that SEC's current system of transaction-based fees could provide revenues that are less predictable and more difficult to estimate than the assessments used by bank regulators to fund their operations.

While the budget and appropriations process is challenging for all Federal agencies, Senator DURBIN and I, in our roles as Chairman and ranking member of the Financial Services and General Government Appropriations subcommittee, have given careful review to all resource requests from the SEC and consistently placed a high priority on its requests, recognizing the agency's critical enforcement role. For the current fiscal year, Congress provided $1.11 billion, a 25 percent increase over the fiscal year 2007 level and $85 million above the amount that the President and the SEC requested.

The financial reform bill passed by the House of Representatives does not include a provision for the SEC to be self-funding. I share the hope of Chairman INOUYE and all of the cosponsors of this amendment that the conference agreement on the bill before the Senate will preserve the critical oversight function inherent in the appropriations process. I urge that the SEC self-funding provision be dropped from the bill in conference to ensure that Congress can continue to play an important role in the oversight of our financial regulators.

Mr. LEAHY. Mr. President, last week, I filed two important amendments to the pending Wall Street reform legislation to protect the identity of whistleblowers and to ensure transparency and accountability to the American public when the government investigates allegations of financial fraud. My amendments on whistleblower confidentiality strike a careful balance between the need to protect the identity of whistleblowers and the public interest in transparency. I hope the Senate will work to include these amendments in the bill.

The recent economic crisis has revealed how corporate greed must be reigned in on Wall Street. While average Americans were suffering, many Wall Street investment banks and insurance companies went to great lengths to hide their shaky finances from stockholder and government regulators. Whistleblowers serve an important role in exposing financial fraud. This underscores the importance of ensuring that whistleblowers are provided the necessary protections to come forward with allegations of financial fraud and ensuring that the American public has access to critical information about corporate financial wrongdoing.

My amendments addresses two key problems with the whistleblower provisions in the bill: First, the bill would prevent whistleblowers from obtaining information that they themselves have provided to government regulators under any circumstances. Second, the bill creates an unnecessary exemption to the Freedom of Information Act, FOIA, that would, in some cases, shield critical information about financial fraud from the public indefinitely.

To strengthen the protections for whistleblowers, my amendments strike the well-intended, but overbroad confidentiality provisions in sections 748(h) and 922(h) of the bill, and replace those provisions with new language that both protects the confidentiality of whistleblower identity information and ensures the public's right to know. Specifically, the amendments require that government regulators may not disclose whistleblower identity information without the whistleblower's consent. My amendments also require that the government notify the whistleblower if information about the whistleblower's identity will be shared with other government agencies, or foreign authorities assisting with an investigation.

To ensure the public's right to know, my amendments remove language from the bill that, in some cases, would change law and could indefinitely shield critical information about financial fraud from the public. My amendments do not change existing disclosure requirements and exemptions under FOIA, but, rather, they require that government regulators treat information that reveals the identity of whistleblowers as confidential. Other information that a whistleblower provides to the government would remain subject to the existing disclosure requirements and exemptions under FOIA and other Federal laws.

My amendments are modeled after whistleblower protection provisions that Congress has previously and overwhelmingly enacted in other recent legislation. The amendments also complement the whistleblower protections already included in the bill.

My amendments are supported by a broad coalition of open government organizations, including—the Project on Government Oversight, Citizens for Responsibility and Ethics in Washington, OpenTheGovernment.org, Public Citizen, the Progressive States Network, Common Cause, National Community Reinvestment Coalition, Consumer Action, OMB Watch, National Fair Housing Alliance, and Americans for Financial Reform. I thank each of these organizations for their support of the amendments and for their work on behalf of whistleblowers and the public's right to know.

As the Senate concludes debate on critical reforms to head off the Wall Street fraud and abuses, we must work to ensure accountability and openness in how the government responds to this crisis. The improvements in my amendments will ensure that whistleblowers have the protection that they deserve and that financial firms will be held accountable. I urge all Senators to support these open government amendments.

I ask unanimous consent that a copy of a support letter signed by several open government organizations be printed in the RECORD.

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

MAY 11, 2010.

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: We, the undersigned organizations, write to thank you and share our support for the amendment (SA 3297) you have offered to the Restoring American Financial Stability Act, S. 3217. The amendment will replace two dangerous provisions that would unnecessarily limit public access to critical information and place a gag on whistleblowers with language that instead would provide authentic confidentiality and protection of the identity of whistleblowers. We believe that in order to both preserve government accountability and encourage whistleblowers to come forward this amendment must be incorporated into S. 3217.

Tucked inside two provisions to establish whistleblower incentives and protections to rightly encourage the flow of information of wrongdoing to the Securities and Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) are poison pill secrecy measures. Sections 748(h)(2) and 922(h)(2) bar the public and the whistleblower from ever being able to obtain information about investigations if the government never acts. If a whistleblower faces retaliation there would be no access to government records needed to prove status as a whistleblower. If there is no action due to inept bureaucracy, fraud, collusion, or worse, there would be no way to hold the government accountable.

We must preserve the ability of the whistleblower to gain access to the information if retaliation occurs, as well as public access to hold the Commission and other government agencies accountable, especially if there is no investigation or the investigation leads to no further judicial or administrative action. Your amendment would do just that, and would remove the blanket gag orders creating a permanent seal and government secrecy.

Moreover, as you know, it is unnecessary to add additional exemptions to the Freedom of Information Act (FOIA) in these whistleblower provisions. Forty years of jurisprudence have proven the FOIA's exemptions (amended in 1986 to expand protection for law enforcement records) have stood the test of time, fairly and effectively balancing the agency's interests in confidentiality and personal privacy rights with the public's right to know.

Investigations occur across the federal government every day and information pertaining to the administrative stages of these investigations is protected. In more than two decades, no agency has expressed concern over unwarranted access to investigative information during an open investigation. We not only see no justification to hide closed investigations of possible wrongdoing in the financial industry, whether or not provided by a whistleblower, but find this to be at cross-purposes with making government regulation of the financial industry more transparent and effective.

We thank you for this amendment to preserve whistleblower rights, public access to information, and government accountability, and for your commitment to protecting the public's right to know.

Sincerely,

Project on Government Oversight (POGO); Citizens for Responsibility and Ethics in Washington (CREW); Government Accountability Project (GAP); OpenTheGovernmentorg; Public Citizen; Progressive States Network; Common Cause; National Community Reinvestment Coalition; Consumer Action; OMB Watch; National Fair Housing Alliance; Americans for Financial Reform.

Mr. ENZI. Mr. President, I would like to make a point of clarification on my GASB amendment. This amendment creates a new and stable funding source for the Governmental Accounting Standards Board. The GASB serves an important function to provide pronouncements on accounting and financial reporting for State and local governments, and their work should be commended. However, I must clearly make a point that for the purpose of this amendment, and the work of the GASB, that financial reporting be defined as the ''presentation of objective historical financial data on the financial position and resource inflows and outflows of State and local governments, as well as information necessary to demonstrate compliance with finance-related legal or contractual provisions.''

Mr. FEINGOLD. Mr. President, I am pleased to be an original cosponsor of two amendments to the Restoring American Financial Stability Act that seek to ensure there is greater transparency around how international companies are addressing issues of foreign corruption and violent conflict that relate to their business. Creating these mechanisms to enhance transparency will help the United States and our allies more effectively deal with these complex problems, at the same time that they will also help American consumers and investors make more informed decisions.

Mr. President, I am very pleased that my colleagues agreed yesterday to accept the first amendment, sponsored by Senator BROWNBACK. This amendment specifically responds to the continued crisis in the eastern region of the Democratic Republic of Congo. Despite efforts to curb the violence, mass atrocities and widespread sexual violence and rape continue at an alarming rate. Some have justifiably labeled eastern Congo as ''the worst place in the world to be female.'' Several of us in this body, including Senators BROWNBACK and DURBIN and I, have traveled to this region and seen firsthand the tragedy of this relentless crisis. Increasingly, American citizens are also learning of the devastating situation in eastern Congo and are actively engaged to bring about policy changes. I am pleased to see Americans so engaged on this issue.

One of the underlying reasons this crisis persists is the exploitation and illicit trade in natural resources, specifically cassiterite, columbite-tantalite, wolframite and gold. The United Nations Group of Experts has reported for years how parties to the conflict in eastern Congo continue to benefit and finance themselves by controlling mines or taxing trading routes for these minerals. In response to these reports, the U.N. Security Council adopted Resolution 1857, 2008, encouraging Member States ''to ensure that companies handling minerals from the DRC exercise due diligence on their suppliers.'' Over a year ago, Senator BROWNBACK, Senator DURBIN, and I teamed up to author legislation that would do just that: the Congo Conflict Minerals Act, S. 891.

Senator BROWNBACK's amendment is taken from that bill, but includes modifications based on discussions with representatives from industry, U.S. Government agencies, and the Banking Committee. The amendment applies to companies on the U.S. stock exchanges for which these minerals constitute a necessary part of a product they manufacture. It will require those companies to make public and disclose annually to the Securities and Exchange Commission if the minerals in their products originated or may have originated in Congo or a neighboring country. Furthermore, it will require those companies to provide information on measures they have taken to exercise due diligence on the source and chain of custody to ensure activities involving such minerals did not finance or benefit armed groups.

I recognize that this conflict minerals problem is a complex one, given the importance of this trade to the local economy in eastern Congo and given the extensive supply chains and processing stages between the source and end use of these minerals. The Brownback amendment was narrowly crafted in consideration of those challenges, and it includes waivers and a sunset clause after 5 years. However, I believe strongly that the status quo in eastern Congo is unacceptable to the people there and it should be to us as well. We have put financial resources toward mitigating this crisis, but we need to get serious about addressing the underlying causes of conflict. The Brownback amendment is a significant, practical step toward doing that, and I thank my colleagues for their support of it. I thank Senator BROWNBACK for his longstanding leadership on these important humanitarian issues.

The second amendment, led by Senator CARDIN and Senator LUGAR, is different than the Congo amendment but would complement it. This amendment would require companies listed on U.S. stock exchanges to disclose in their SEC filings extractive payments made to foreign governments for oil, gas, and mining. This information would then be made public, empowering citizens in resource-rich countries in their efforts to combat corruption and hold their governments accountable. In far too many countries, natural resource wealth has fueled corruption and conflict rather than growth and development. This so-called ''resource curse'' is especially problematic in Africa, and in 2008, I chaired a subcommittee hearing on this very topic. I said then that we must look for ways that the United States can use our leverage to push for greater corporate transparency in Africa's extractive industries.

In addition to helping countries combat the ''resources curse,'' it is also in our national interest to improve transparency in the extractive industries. The amendment was drawn from an important piece of legislation, the Energy Security through Transparency Act, S. 1700. The bill was given this title because enhancing transparency in the extractive industries can have real benefits for U.S. energy security. This will ultimately create a more open investment environment and increase the reliability of commodity supplies. Energy security is a topic that Senator LUGAR and his staff have worked on for years, and we all know how central it is to our national security. I thank Senator LUGAR and Senator CARDIN for their work on this important amendment, and I urge my colleagues to support it.

Mr. DURBIN. Mr. President, I rise today to commend and thank Senators DODD and SHELBY for their extraordinary leadership and tenacity in shepherding this complex bill through the arduous floor consideration process over the past several weeks, and for their years of work to reach this point. Their task has not been an easy one. The amendment process was delicate at times, but certainly collegial and fair. The fruits of our labor are an improved product emerging from the Senate, albeit not a perfect one. Invariably, in a bill of this scope and significance, some matters were not fully addressed or resolved to everyone's satisfaction.

I am disappointed that we did not consider an important bipartisan amendment submitted by Senators INOUYE and COCHRAN relating to the funding of the Securities and Exchange Commission.

Section 991 of the bill would permit the Securities and Exchange Commission to be ''self-funded,'' thus removing a critical oversight role for the Appropriations Committee. The Inouye-Cochran amendment would have stricken this section.

Retention of the language in the bill is objectionable for a host of reasons. Section 991 removes the role of Congress in dictating how potentially limitless funds, up to whatever level is generated in fees under a budget that would be set by the SEC itself, are to be spent. It would make the agency potentially less, rather than more, responsive to congressional priorities.

Spending would go unmonitored. The critical role of the Office of Management and Budget for apportionment of funds would also disappear.

Congress oversees Federal agencies primarily through two distinct but complementary processes—authorizations and appropriations. The authorizing committees are responsible for creating a program, mandating the terms and conditions under which it operates, and establishing the basis for congressional oversight and control. The appropriations committees and subcommittees are charged with assessing the need for, amount of, and period of availability of appropriations for agencies and programs under their jurisdiction.

Exempting an agency from the appropriations process reduces opportunities for annual congressional oversight. The appropriations process, with its annual budget justifications, hearings, and markups, provides a useful layer of congressional review and scrutiny of agency operations, in addition to what is provided by the authorizing process. In the appropriations subcommittee I am privileged to chair, I have conducted annual hearings on the SEC's budget through which I have learned much about this agency's requirements, particularly its staffing and information technology needs.

Allowing an agency to set its own budget is an abdication of the constitutional responsibility of the legislative branch of government. It is a dangerous surrender of the congressional power of the purse.

It does not make sense—in this comprehensive bill aimed at bolstering oversight, transparency, and accountability of the world that the SEC regulates—that we would weaken, in fact, abolish, the vital role of the appropriations committee to evaluate the resource needs and spending by this agency.

This comprehensive bill confers significant new responsibilities on the SEC as a financial regulator. Shouldn't we evaluate on a regular basis whether this agency is responsive to the mandates we impose? Shouldn't Congress determine if the SEC has adequate funds and is using those resources wisely, in the right places, to accomplish its mission? Under section 991, we toss out the important, longstanding role and responsibility of appropriators to do just that.

Public opinion of the SEC as a vigilant investor-protector has been less than stellar in recent years. The SEC has been under withering criticism over the past years with the release of the inspector general's report chronicling the SEC's failure to identify Madoff's Ponzi scheme as far back as 1992. The recent IG report on the Stanford case is another example of years of SEC inaction to act against a Ponzi scheme.

Under the leadership of Chairman Mary Schapiro, the SEC is making strides to turn things around. I think Chairman Schapiro is doing a commendable job leading the charge for reform. However, she herself admits that there's more to do and much room for improvement. Our interest in leaving the appropriations oversight process intact is not a verdict on Chairman Schapiro's ability to effect meaningful change.

Those who contend that the SEC ought to set its own budget argue that requiring the agency to compete for funding in the annual appropriations process will lead to chronic underfunding and limited flexibility. Recent experience suggests to the contrary. My Financial Services and General Government Appropriations Subcommittee has placed high priority on the budgets of several agencies including healthy and justified increases above the President's request. For the current fiscal year, Congress provided $1.111 billion, a 25-percent increase over the fiscal year 2007 level—and $85 million above the amount that the President and the SEC requested. We have also acted promptly to consider and approve reprogramming and internal reorganization requests.

Those who claim that the SEC has been shortchanged in past years should consider that in each of the past 7 years, the SEC has had substantial amounts of unobligated balances from prior years. This means there were appropriations provided that the SEC was not able to use.

The SEC has not been reauthorized since the Sarbanes-Oxley Act of 2002, when Congress authorized $776 million for fiscal year 2003. Instead of putting this agency beyond the reach and oversight of appropriators, we should act to authorize levels of robust funding for each of the ensuing 5 years—like the House did—and thus clearly express the intent of Congress that this agency be adequately funded.

Reauthorization of suitable and reasonable funding levels would certainly send a strong signal about the amount of resources that Congress believes are necessary for this agency to thrive and grow to meet its important mission and satisfy its many new responsibilities. Leaving this agency unchecked in its budgeting and spending activities is simply the wrong way to go.

I trust that as we reconcile this bill with the version adopted in the House that this matter will be favorably resolved and that the conference agreement will acknowledge and preserve the critical oversight role of the appropriations process.

Mr. DODD. Mr. President, I rise to further discuss the reasons for my votes against two amendments relating to credit rating agencies, amendment No. 3991 creating a new credit rating agency board and amendment No. 3774 which eliminates references to requiring credit ratings from certain financial laws.

First, I want to emphasize that I agree with my colleagues that erroneous credit ratings on asset backed securities played a central role in the financial crisis and that we need to improve the regulation of credit ratings.

Credit rating agency reform is an extremely important area of the Restoring American Financial Stability Act of 2010 passed by the Banking Committee. It has 40 pages of carefully constructed credit rating reforms to improve regulation, transparency and accountability. Let me highlight some of these strong provisions, as they would improve the SEC, reform rating agencies and empower investors.

The SEC will have a new Office of Credit Ratings to regulate and promote accuracy in ratings, staffed with experts in structured, corporate and municipal debt finance. The office's own examination staff will conduct annual inspections and the essential findings will be available to the public. The SEC will have expanded authority to suspend the registration of agencies that consistently produce ratings without integrity. The SEC will also have more authority to sanction ratings agencies that violate the law, including managers who fail to supervise employees.

Credit rating agencies will have to comply with tough new requirements. Rating agency boards will be subject to new rules for independence. Rating analysts must work separately from those who sell the firm's services. Agencies must publicly disclose when they materially change their procedures or methodologies or make significant errors, and update their credit ratings accordingly. Agencies must establish strong internal controls for following procedures and methodologies and have these attested to by their CEO. The agencies must establish hotlines for whistleblowers and retain complaints about the firm's work for regulators to examine. Agency compliance officers must report annually to the SEC. Agencies must consider credible information they receive from sources other than the issuers in making the ratings, rather than relying only on the issuer's representations.

Investors will be empowered. Agencies must disclose their track record of ratings in a way that is comparable so that users can compare ratings for accuracy across different agencies. The agencies must disclose more about their ratings assumptions, limitations, risks, historic accuracy and factors that might lead to changes in ratings. Investors will also have access to due diligence reports prepared at the request of underwriters on asset backed securities, as well as have the benefit of having a new pleading standard when they need to file suit.

The recommendations and ideas underlying these provisions have been considered by the Banking Committee over the course of more than 3 years. The committee held hearings and received analyses from countless experts, regulators, ratings agencies, investors and other users. The provisions in this bill have been extensively vetted, improved and refined.

Regarding conflicts of interest, when I served as ranking member of the Securities Subcommittee, I worked with then-Banking Committee Chairman SHELBY and others to enact legislation to control or eliminate credit rating agency conflicts of interest. Through the Credit Rating Agency Reform Act of 2006, we added section 15E to the Securities Exchange Act of 1934 so that they are controlled or eliminated if they cannot be effectively managed. It gave to the SEC the power:

to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

The SEC has adopted several rules under the act to address NRSRO conflicts of interest, amending those rules twice since they took effect in 2007. The first set of amendments took effect in 2009, and the second set of amendments will go live in a few weeks. Among other things, in addition to prohibiting certain conflicts of interest outright, these rules require each NRSRO—issuer-pay and subscriber-pay—to publicly disclose certain additional conflicts, as well as the policies and procedures it has adopted to address those conflicts. Pursuant to these rules, NRSROs must separate their business activities from their rating activities, so that the analysts, who operate in teams, to reduce the influence of any one person, do not negotiate, arrange or discuss fees. Commission rules designed to address the issuer-pay conflict include prohibitions on issuing credit ratings in certain circumstances, such as when: the NRSRO has received 10 percent or more of its revenue from an issuer or underwriter; the NRSRO makes recommendations on how to structure an instrument; the analyst has participated in fee negotiations with the issuer; or the analyst has received gifts from the issuer. There also is a new requirement that information provided to a hired NRSRO to rate a structured finance product be made available to any other NRSRO to allow the other NRSRO to determine an unsolicited—i.e., non-issuer-paid—credit rating.

Since these rules have been in effect for only a short time, we have yet to see their full benefits. And if more regulation is needed, the SEC has authority to go farther under the 2006 law.

During the consideration of S. 3217, amendment No. 3808 was introduced and passed to direct the SEC to set up a new credit rating agency board, which prohibits the private selection by issuers of rating agencies for initial asset-backed securities ratings and creates a system in which the board makes semi-random ratings assignments to nationally recognized statistical ratings organizations that it deems to be qualified. The intention is to eliminate negative effects of conflicts of interest in the issuer pay business model.

I applaud my colleague's goal of developing a solution to this problem of poor credit ratings. And I appreciate his devoting a tremendous amount of effort in a short period of time to craft his solution.

However, this novel approach raises many questions which have yet to be answered. While I support Senator FRANKEN's goal, I could not vote for this amendment while many questions and uncertainties remained about the impact of this new type of ''self-regulatory organization.''

Credit ratings have a tremendous impact on the credit markets nationally and internationally. Any significant change in their preparation should be the subject of full examination before enactment. Unresolved questions raise the potential for unintended or unforeseen consequences. In addition to my own concerns, I have received communications from many interested parties, such as a letter from the Investment Company Institute that I will ask to be printed in the RECORD.

Let me identify some of the questions that, it seems to me, exist with respect to the board and its operations:

Will the board's semi-random assignment of ratings work cause the rating agencies to lose their incentive to do a superior job, which otherwise might get them more initial ratings business?

Will the ''reasonable'' fees that the legislation directs the SEC to set for QNRSROs to charge issuers generate sufficient revenues for rating agencies of different types of securities to perform the quality of ratings they would like? In this connection, a technical question, what standards should the SEC use to determine the fees—a ''reasonable'' return on capital? prices comparable to other ratings agencies? sufficient to hire staff at compensation levels comparable to other businesses or to Federal regulatory agencies?

How many of the 10 nationally recognized statistical rating agencies are expected to register as ''qualified nationally recognized statistical ratings organizations''? Will the registrants be sufficient to make the board meaningful? Will some ratings agencies choose not to register with the board, to avoid board assessments, costs, regulatory burden or for other reasons, and would this affect the quality of ratings? Will some smaller rating agencies not register because they are unable to meet the board's qualification standards? I understand that after the passage of the amendment, one of the NRSROs has deregistered from providing ratings on asset-backed securities.

The amendment uses an issuer-pay business model. How would the amendment affect the rating agencies that use a different business model, such as a subscriber pay model, and want to provide ratings on asset backed securities?

What will be the costs of operating the new board? The legislation authorizes the board to assess QNRSROs, and how much is the board expected to assess the QNRSROs to cover its budget? How much would it add to the current cost of ratings? What is the expected budget of a board that must hire financial experts who evaluate rating agencies' qualities, institutional and technical capacity and performance and implement systems that can make ratings assignments to QNRSROs on potentially hundreds of thousands of securities in a timely fashion?

How many different categories of securities are expected to be rated and how many rating agencies are expected to be qualified to rate each type? If only two agencies have the capacity or experience to rate some complex types of securities, and an issuer wants two ratings, what will be the purpose of the SRO randomly choosing a rating agency?

How will the board attract, afford and retain top experts who would be needed to perform its statutory mandates to assess the effectiveness of ratings methodologies and assess the accuracy of ratings?

The board would be given substantial powers such as rulemaking authority over NRSROs, allocating business to NRSROs or rejecting an NRSRO's ability to obtain business. Is it certain that the board's establishment and exercise of authority are consistent with the Constitution?

The legislation states that the board will be a ''self-regulatory organization.'' What will be the impact on the new board on the numerous statutory and regulatory restrictions and obligations in the Securities Exchange Act of 1934 affecting ''self-regulatory organizations''?

What will be the interaction of the legislation's mandate that the board assess the accuracy of the credit ratings provided by QNRSROs and the ''effectiveness of the methodologies used by'' QNRSROs and the existing Federal law that states the SEC may not ''regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings''?

In this legislation, the Federal Government will obligate one private party to deal with another private party of the government's choosing in a private business transaction. Does this raise any potential legal questions?

It is my understanding that beginning in June, all NRSROs will also have to publish a history of their rating actions since the NRSRO regulatory regime was instituted in June of 2007. When enough data becomes available, issuers can see which NRSRO's ratings were more reliable. Would the board be expected to be better able to identify better QNRSROs than issuers who examine this data on their own?

These are some of the questions that existed at the time of the vote. While I am sure these questions will be fully addressed in the months and years ahead, and hope that the board is successful, these questions are significant and created uncertainty, with the potential for significant unintended consequences. Accordingly, I felt it inappropriate as chairman of the Banking Committee to support the amendment.

Amendment No. 3774, which the Senate passed, removes provisions in banking and securities statutes that use credit ratings of NRSROs to distinguish the creditworthiness of obligors or debt instruments and would replace these provisions with standards promulgated by banking agencies—in the case of the banking statutes—and the SEC—in the case of securities statutes.

I agree with the intent of the provision to reduce investor reliance on NRSRO ratings in making investment decisions. However, I feel that it is unwise to eliminate all of these statutory requirements without a prior study of the consequences. Therefore, I voted against this provision.

I think it more prudent to carefully study this matter and remove ratings that are found to be unnecessary. This is why I included in S. 3217 passed by the Banking Committee a required 2-year GAO study to examine the scope of provisions in Federal and State law as to the necessity and purposes of NRSRO ratings requirement; which requirements could be removed with minimal disruption to the financial markets; the potential impacts on the financial markets and on investors if the rating requirements were rescinded; and whether the financial markets and investors could benefit from the removal of such requirements. This would be followed by reviews by the Federal financial regulators of all regulations requiring the use of an assessment of a security, requirements related to credit ratings and alternative standards of creditworthiness that are based on market-generated indicators. The bill required each agency to modify references to credit ratings in their regulations and, when removed, to use an appropriate standard of creditworthiness not related to credit ratings, if possible and consistent with the statute or the public interest. This seems to me the more appropriate way to improve the ratings situation while taking appropriate steps to avoid unforeseen and unintended consequences.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from the Investment Company Institute to which I referred.

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

INVESTMENT COMPANY INSTITUTE,
Washington, DC, May 13, 2010.

Hon. HARRY REID,
Senate Majority Leader, The Capitol, Washington, DC.
Hon. MITCH MCCONNELL,
Senate Minority Leader, The Capitol, Washington, DC.
Hon. CHRISTOPHER J. DODD,
Chairman, Senate Banking Committee, Dirksen Senate Office Building, Washington, DC.
Hon. RICHARD C. SHELBY,
Ranking Minority Member, Senate Banking Committee, Russell Senate Office Building, Washington, DC.

Re Senate Amendment #3991, Credit Ratings.

DEAR SENATORS: I am writing on behalf of the Investment Company Institute, the national association of U.S. investment companies, to express our concerns with elements of Senate Amendment 3991 to S. 3217 of the Restoring American Financial Stability Act of 2010 (RAFSA). The Institute is highly supportive of the majority of rating agency reforms contained in the RAFSA, which focus primarily on disclosure and transparency of ratings and the ratings process. As long as ratings continue to play an important role in the investment process, they should provide investors and other market participants with high-quality, reliable assessments of the credit risks of a particular issuer or financial instrument. We are concerned, however, that Amendment 3991, which would create a Credit Rating Agency Board to regulate structured finance product ratings, may conflict with the RAFSA, create confusion for investors, and hinder competition in the rating agency space. Presented at the last minute, the changes contemplated by the Amendment would significantly alter the current regulatory regime for rating structured finance products and could, ultimately, affect the rating process for other debt securities.

First, to properly address concerns about conflicts of interest, poor disclosure, and lack of accountability, the Institute believes the reform of the regulatory structure for rating agencies must be applied in a uniform and consistent manner and should apply equally to all types of rated securities. This uniformity and consistency is not only critical to improving ratings quality and allowing investors to identify and assess potential conflicts of interest, but also to increasing competition among rating agencies. By focusing solely on structured finance securities, the Amendment would create a different set of rules for different segments of the rated marketplace which, among other issues discussed below, could create confusion among investors.

Second, establishing an additional and distinct oversight system for ratings of structured finance securities, as outlined in the Amendment, does not improve investor access to information about these securities. The Institute believes that issuers, in addition to credit rating agencies, have a role to play in the effort to increase transparency and disclosure about structured finance products, as well as for other debt instruments. To this end, we have recommended that the Commission expand the disclosure of information to investors by rating agencies. We also have recommended that the Commission take additional steps to provide investors with increased information by requiring increased disclosure directly by issuers to investors, and requiring the disclosure be in a standardized format where appropriate. In its recent proposal to revise the asset-backed securities regulatory regime, for example, the Commission has proposed to do just that—expand and standardize issuer disclosure in public and private offerings of asset-backed securities—and we commend the Commission for its efforts.

Third, we are concerned that having a Board assign a rating agency to a structured finance product stifles competition by denying the market of two or more ratings on a security and perhaps differing opinions and insights. Investors should be encouraged to pick and choose investment transactions using, to the extent they desire, the ratings they receive from the various rating agencies, not a single agency. Further, this approach creates the appearance of a ''seal of approval'' for the assigned rating by placing a government imprimatur on the rating, regardless of the proposed disclaimer contemplated by the Amendment. The fact that the Amendment would permit unsolicited ratings of an assigned security becomes meaningless under the proposed framework; as in the status quo, it will rarely, if ever, be done.

Fourth, a Board designating a rating agency allows for politicizing the rating process, even if it is by a lottery or rotation, whereby the Board could be biased on how it chooses the ''preferred'' rating agency. Conflicts can arise because Board members may have a strong interest in ensuring favorable ratings for a particular issuer or security. Consequently, we do not perceive an advantage to the proposed Board-model over the existing rating agency models, all of which possess various beneficial and detrimental characteristics.

Fifth, what will be the criteria used for determining the ''best performer'' for purposes of assigning a rating agency to a new issue? Is an ''A1'' rating more correct than an ''A'' rating? How would the Board define success or failure? Performance of debt securities in the municipal market, for example, has as much to do with structure and maturity of the security as with its credit. Drawing a line in the structured finance market would be even more difficult because of the complexity, diversity, and novelty of this market. Further, who would be responsible for surveillance under this model—the Board, the Commission, the rating agencies?

We believe that education regarding the characteristics and limitations of a rating would be of more value to investors than the operational and policy concerns raised by the Amendment. In the end, credit ratings are informed opinions which play a significant role in the investment process. Accordingly, the Institute has repeatedly stated that improving disclosure and transparency about ratings and the ratings process may be the most important reform for improving the quality and reliability of ratings. Public disclosure of this information allows investors and market participants—the consumers of ratings—to more effectively evaluate a rating agency's independence, objectivity, capability, and operations. Such disclosure also serves as an additional mechanism for ensuring the integrity and quality of the credit ratings themselves.

We appreciate the substantial progress made in the RAFSA to improve the ratings process and we look forward to continuing to work with the Senate for the benefit of investors in this area.

Sincerely,

PAUL SCHOTT STEVENS,
President and Chief Executive Officer.

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 therein for up to 10 minutes each.

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

TRIBUTE TO FORMER NEVADA SUPREME COURT CHIEF JUSTICE E.M. ''AL'' GUNDERSON

Mr. REID. Mr. President, Al Gunderson was a paratrooper, a blackjack dealer, a sailor and a voracious reader. He was a lawyer, a justice, a mentor and a teacher. He was a humanitarian. And he was a loving husband to Lupe for 45 years and a wonderful father to Randy. Of all the determined leaders I have met in Nevada, no one was tougher than Al. No one was funnier. And no one worked harder than he did.

His wife, Lupe, told me this week about one memory from their time in Carson City. A young man came up to her once and asked why he kept seeing Al's Jeep at the courthouse at 3 a.m. But everyone knew the answer: Al Gunderson worked round the clock. It would be more strange not to see his car at the office.

The man who as chief justice presided for 6 years over the highest court in our State believed strongly in the phrase that watches over the entryway of the highest court in our Nation: Equal justice under law. He dedicated his life in public service to making sure everyone got a fair hearing and a just ruling. During his 18 years on the court, he steered it away from elitism and shaped it as a forum for everyday Nevadans. And if that meant standing up for the little guy, all the better.

He was a staunch advocate for civil rights. He used his passion for the law to groom future lawyers and judges as a professor at California's Southwestern University. And the same year Al was sworn in and joined the Nevada Supreme Court, he established the Nevada Judges Foundation to extend to more in our State the opportunity to serve as judges, especially in rural communities.

Al found his way to Nevada by way of Minnesota, where he was born of humble means; Nebraska, where he earned his law degree; and Chicago, where he began his legal and public service career with the Federal Trade Commission. We are fortunate that he did.

My friend and mentor and our State's former Governor, Mike O'Callaghan, used to call Al Gunderson a human being first and an outstanding legal mind second. He was right. Al Gunderson brought honor not only to the title of justice but also the pursuit of justice. We were honored to know him and learn from him.

THE PRESIDENT'S POLICY: LEADERS WITHOUT FOLLOWERS

Mr. KYL. Mr. President, I ask unanimous consent that the text of my remarks today to the National Policy Conference of The Nixon Center and The Richard Nixon Foundation be printed in the RECORD.

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

A central tenet of the Obama Administration's security policy is that, if the U.S. ''leads by example'' we can ''reassert our moral leadership'' and influence other nations to do things. It is the way the President intends to advance his goal of working toward a world free of nuclear weapons and to deal with the stated twin top priorities of the Administration: nuclear proliferation and nuclear terrorism. This morning, I want to test this thesis—to explore whether, for example, limiting our nuclear capability will cause others who pose problems to change their policies.

To begin the discussion, let me mention just three specific examples of things the administration has done to ''lead by example.''

First, the Administration's Nuclear Posture Review (NPR) changed U.S. declaratory policy to limit the circumstances under which the U.S. would use nuclear weapons to defend the nation on the theory that if we appear to devalue nuclear weapons, other states will similarly devalue them and choose not to obtain them. The downside, of course, is that such emphasis on nuclear weapons only reminds states, including rogue regimes, of their value.

Second, the central point of the START agreement, was a significant draw down of our nuclear stockpiles. And, the Administration has already been talking about a next phase that could even include reductions by countries in addition to the U.S. and Russia.

Third, President Obama wants to commit the U.S. never again to test nuclear weapons under the CTBT so that, hopefully, others will follow our example.

I'll discuss these three examples in more detail in a minute.

Obviously, if the theory is wrong, we could be risking a lot. For example, we could be jeopardizing our own security and the nuclear umbrella that assures 31 other countries of their security. Ironically, as our capacity is reduced, their propensity to build their own deterrent is increased—the opposite of what we intend.

We could be sacrificing our freedom to deploy the full range of missile defenses we need by agreeing to arms control agreements like START or other agreements or unilateral actions like the U.S. statement on missile defense accompanying the START treaty.

Were we to ratify the CTBT, we would forever legally give up our right to test weapons. That's a very serious limitation.

The point is, leading by example means sacrifices on our part that could have significant consequences. The question is whether the risks are justified.

Zero nukes: what does President Obama want to achieve with this strategy? Barack Obama has long advocated zero nuclear weapons going all the way back to his writings as a college student in 1983. In fact, he wrote then that the drive to achieve a ban on all nuclear weapons testing would be ''a powerful first step towards a nuclear free world.'' He's even cast it in moral terms, saying that ''as a nuclear power, as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act.''

There are four big assumptions here: that the Global Zero idea, a world without nuclear weapons, is necessarily a good thing; that such a world could realistically be achieved; that our leadership here will help to reestablish previously lost moral force behind U.S. policy; and that, if we lead by example, others will follow.

The first three assumptions need to be carefully examined; though this morning, I will focus only on the last.

Suffice it to say the following about the first three assumptions: first, is ''zero'' really desirable? If nuclear deterrence has kept the peace between superpowers since the end of World War II, which itself cost over 60 million lives by some estimates, are nuclear weapons really a risk to peace or a contributor to peace?

Second, since the know-how exists to build nuclear weapons and they can't be disinvented, is it really realistic to think they could be effectively eliminated? For example, if we get near to zero, any nation that can breakout and build even a few nuclear weapons will become a superpower.

And the superpowers themselves will find it difficult to get close to zero. For example, if Russia deploys ten extra nuclear weapons today, that's not a big deal, we have 2,200 deployed. If, however, each side is at 100 weapons, and one side deploys an extra ten, that's a significant military breakout. And while we will have 1,550 deployed weapons under the new treaty, and China will still have only several hundred, as we go lower, China has every incentive to build up quickly and become a peer competitor to the U.S. How do we deal with these problems? It's not clear we know.

Third, do we really have to ''restore our moral leadership'' and is it necessarily more moral or moral at all to eschew weapons that have been a deterrent to conflict, but the elimination of which could make the world again safe for conventional wars between the great powers? Again, World War 2 cost an estimated 60 million lives. After 1945, the great powers have been deterred from war with each other.

These three questions deserve full debate—but, it is the last assumption I want to explore today—that if we lead, others will follow.

Put another way: is the world just waiting for the U.S. to further limit or eliminate its nuclear weapons? Is it true that if we lead by example, others will follow, and nuclear weapons will cease to exist? And, does our credibility in the world depend on taking these actions?

The President outlined his vision in an interview with the New York Times last year: ''it is naïve for us to think that we can grow our nuclear stockpiles, the Russians continue to grow their nuclear stockpiles, and our allies grow their nuclear stockpiles, and that in that environment we're going to be able to pressure countries like Iran and North Korea not to pursue nuclear weapons themselves.''

The first problem with that is that it's factually wrong—we are not growing our nuclear stockpiles, we're reducing them, and we have been for years. The second problem is that, notwithstanding our reductions, others are not following suit.

One of the first places President Obama chose to lead was to modify our approach to the use of nuclear weapons in his new Nuclear Posture Review. I previously mentioned his new policy of non-use against certain kinds of non-nuclear attacks.