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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable HARRY REID, a Senator from the State of Nevada.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal God, whom to know is life eternal, by the might of Your spirit, give our lawmakers faith in what You are willing to do with and for them. May no challenge seem too daunting when they remember Your power and love as well as the many ways You have already intervened to save us in the past. Lord, be their abiding reality, leading them into the paths of faithful service that honors You. Stay near when they are weary, as they learn to anchor their trust in Your saving grace. Help them to trust You to guide and provide, as You inspire them with Your presence and power.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER (Mrs. GILLIBRAND). The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 20, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, following any leader remarks, the Senate will resume consideration of S. 3217, the Wall Street reform legislation.

The cloture vote on the Dodd-Lincoln substitute amendment will occur at 2:30 p.m. today, and everyone should be reminded that the filing deadline for second-degree amendments is 1:30.

Votes may occur on amendments prior to the cloture vote, if agreement is reached.

The Senate will recess from 10:40 until 12 noon today for a joint meeting of Congress at 11 a.m. where we will hear an address by His Excellency Filipe Calderon Hinojosa, the President of Mexico. This will be a joint meeting of Congress. We will gather here, and I encourage all Senators to be here by 10:30 so we may proceed to the House at about 10:40 as a body.

RESERVATION OF LEADER TIME

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The bill clerk read as follows:

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

Pending:

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

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

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

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

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

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

Merkley/Levin amendment No. 4115 (to amendment No. 3789), to prohibit certain forms of proprietary trading.

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

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

The bill clerk proceeded to call the roll.

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

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

NEW HEALTH CARE LAW

Mr. McCONNELL. Madam President, ever since they passed their new health

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

care bill, Democrats promised to help small businesses offset some of the costs of the new taxes and mandates it will impose.

Yet, according to an AP story this morning, that is looking like yet another empty promise.

According to the story, a furniture supply store owner in Springfield, IL, Zach Hoffman, was confident he qualified for the new small business tax credit. Yet buried in the new law's fine print was language disqualifying his 24 employees from this needed help.

According to the law, Mr. Hoffman created too many jobs to get help, and he paid them too much, even though his average employees only made $35,000 a year.

Mr. Hoffman called this a bait and switch and noted that in order to get the most out of the new credit, he would have to cut his workforce to 10 employees and slash their wages.

''That seems like a strange outcome,'' he said, ''given we've got 10 percent unemployment.''

Speaker PELOSI told Americans we had to pass the health care bill so we could know what was in it. Now that Americans are learning what was buried in the fine print, they are rightly upset.

They see that small businesses are denied the help they were promised, while facing new job-killing taxes and government mandates. They have learned that health care costs will go up, not down, as the administration and Democrats in Congress promised.

Americans want this bill repealed and replaced with something that will work for people such as Zach Hoffman and all the Nation's job creators and small businesses.

Madam President, what is the pending business?

The ACTING PRESIDENT pro tempore. The Merkley second-degree amendment to the Brownback amendment.

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

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

Mr. HARKIN. Madam President, parliamentary inquiry: What is before the Senate at the present time?

The ACTING PRESIDENT pro tempore. The Merkley second-degree amendment.

Mr. HARKIN. Madam President, I have been, for some time, trying to bring up an amendment that has been filed which deals with a kind of, some might say, a little-known part of the insurance industry, called indexed annuities.

A little bit of background. Indexed annuities have been sold for some time. They are an annuity that people would buy, and there is an upside limit. In other words, if the S&P index goes up by, let's say, 500 percent, the holder of the annuity does not get all of that 500 percent; the insurance company gets a big portion of that. But in exchange for that, there is no downside risk. The holder of that annuity, if the S&P goes down 500 percent, doesn't lose anything if held to its term. It has been a very valuable instrument for a lot of people to have these indexed annuities.

During the recent recession of 2008 and 2009, no one lost any capital in any of their indexed annuities based on the stock market going down. They lost nothing because they had that downside protection. That was not true of other instruments, obviously. If you had a security, obviously, you lost a lot of money in the downturn of the stock market. Owners of the indexed annuities didn't lose any principal whatsoever when they held it to term. That is the value of these indexed annuities.

Two years ago in the waning days of the last administration, the Securities and Exchange Commission decided they wanted to have jurisdiction over these. There had been some abuses by sellers of indexed annuities sold to individuals—mostly elderly individuals—when it was not the best investment for them. They were sold an annuity instrument that was not in their best interest.

The SEC, under Chairman Cox, decided they were going to take jurisdiction of this. They were going to have this within their jurisdiction. It was a divided vote at the SEC as to whether they would do this, but the vote was in favor, so the SEC pulled this under their umbrella. The SEC was taken to court by certain companies. It went to the district court and then it was appealed to the circuit court of appeals in the District of Columbia.

The circuit court of appeals decided this on July 21, 2009, not even 1 year ago.

The circuit court said:

We hold that the Commission's consideration—

That is the Securities and Exchange Commission, SEC—

We hold that the Commission's consideration of the effect of Rule 151A—

That was the rule that would govern the indexed annuities over which the SEC now wants to have jurisdiction, which they never had before.

We hold that the Commission's consideration of the effect of Rule 151A on efficiency, competition, and capital formation was arbitrary and capricious.

''Arbitrary and capricious,'' held by the circuit court.

What did the circuit court say? They said: We remand this. Having determined that their analysis is lacking, ''we conclude that this matter should be remanded to the SEC to address the deficiencies with its 2(b) analysis.''

It is back at the SEC. The SEC could at some point jiggle things around and decide, yes, now they have a better analysis and now they have jurisdiction. They will be taken to court again, and this will go on and on. In the meantime, the status of the companies selling indexed annuities, are in limbo.

Again, if someone says: We had some problems with this in the past, I understand that. But the insurance commissioners who have jurisdiction over insurance fix the problems. In fact, the National Association of Insurance Commissioners, in a letter to Senator DODD, the chairman of the committee, dated April 30, basically points out what they have done to fix this problem.

The insurance commissioners said: Yes, there is a problem. Let's get together. Let's change the rules and regulations under which these are sold. And they did.

Some might say: Why shouldn't we give this to the SEC? Is the SEC the final and best word and the best protector of consumers, I ask you? Is the SEC the best protector of consumers in this country when it comes to financial instruments? Ask Bernie Madoff's customers.

Did we say because of Bernie Madoff and all the money he cheated and stole from people—and he was under the jurisdiction of the SEC—we have to take that jurisdiction away from the SEC now and give it to somebody else? No. We said: SEC, change your policies and change your regulations so a Bernie Madoff cannot happen again. That is what we are doing.

These indexed annuities have always been insurance products, governed by the insurance commissioners in each State and the National Association of Insurance Commissioners. If there was a problem, it went to them. They addressed the problem. They fixed it. We have a new regulatory regime in which indexed annuities can be sold so the problems that occurred in the past will not happen again. Will there be violations? Yes, but now there are strong enforced regulatory rules in place.

The SEC wants the oversight shared. But, two regulators in conflict create problems and considerable costs.

I am not one who says to protect the consumer against everything we have to give it to the SEC. The SEC did a lousy job—a lousy job—in protecting consumers who held securities. I mean stocks, securities. Not one person who had an indexed annuity lost one single dime in the downturn in 2008, 2009. We cannot say that about Bernie Madoff's accounts, can we?

I have been trying to get my amendment up to basically say: Look, the SEC does not have jurisdiction right now over these insurance instruments—that is what they principally are, insurance instruments. We left insurance to the States. If the SEC is able to grab hold of this kind of an instrument, what is to keep them from whole life? Now we are going to take over whole life insurance policies, too, because we have had problems in whole life policies, too and the value of their cash value can change with the markets, I say to my colleagues. Insurance commissioners keep track of this, they strengthened their regulation. They change their rules and regulations to cover these kinds of happenings.

Unless we are to the point where we are saying we are going to have federal regulation of insurance in America, if we are there, OK. I would like to see that vote happen. This is one more overreaching by a Federal department to gain jurisdiction over an area of State regulation over which they have never had jurisdiction. SEC has never had jurisdiction, and the circuit court said the analysis on which they reached their basis to grab this was ''arbitrary and capricious.''

I have an amendment, amendment No. 3920, at the desk. It has broad cosponsorship on both sides of the aisle—Democrats, Republicans, conservatives, liberals, up and down—to say, no, this ought to stay with the insurance commissioners because it is, in its essence, an insurance product.

The new rules that have been promulgated by the insurance commissioners basically cover the problems that happened in the past. The rules require certain amounts of liquidity and take into account the age of the consumer. That was the problem in the past. They were selling these to people who were way too old who would not live long enough to get their annuities. They look at the tax status, the financial objectives of the consumer, and whether this is some kind of churning policies. These are all new regulations instituted by the insurance commissioners to answer a problem that came up because of, let's face it, some agents out there who were taking advantage of elderly people.

There are always going to be some bad actors. I do not care if it is under SEC or the insurance commissioners, there is always going to be someone trying to game the system. This has always been under the insurance commissioners' jurisdictions. They have taken these steps.

We have a letter from the AARP saying they were opposed to my amendment. I have a great deal of respect for the AARP. I do a lot of work with them. More often than not, they do good things. But here is an article from the April 10, 2007, New York Times, titled ''Income for Life? Sounds Good, But Do Your Homework.''

It points out that AARP has teamed up with New York Life Insurance to—guess what—to sell annuities. I detect, I smell a little bit of a flavor of a conflict of interest.

Oh, the AARP does not want the indexed annuities sold out there. They want the elderly to buy their annuities. I don't care. Fine. If they want to be in the business of selling annuities, I don't care if AARP does that. But to send out a letter dated May 19 to the chairman of the Banking Committee talking about how bad my amendment is—did they say in their letter to the chairman of the committee, in all due candor, the AARP has joined with New York Life Insurance to sell annuities? No, they did not say that at all. So there is a little hint of a conflict of interest.

Madam President, I ask unanimous consent to have printed in the RECORD two items: a letter from AARP dated May 19 to the Honorable CHRISTOPHER DODD; and immediately following that, an article from the New York Times dated April 10, 2007.

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

AARP,
Washington, DC, May 19, 2010.

Hon. CHRISTOPHER DODD,
U.S. Senate, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR DODD: AARP writes to strongly oppose Harkin Amendment #3920, which would deprive investors in equity-indexed annuities of needed protections provided by state and federal securities laws.

These hybrid products combine elements of insurance and securities, but they are sold primarily as investments, not insurance, especially to people who are investing for their own retirement. Growth in equity-indexed annuity value is tied to one of several securities indexes (e.g. the S&P 500 or the Dow Jones Industrial Average), and comparing and choosing suitable products can be difficult for investors. These products also come with high fees and have long surrender periods, which may make them unsuitable as investments for most seniors.

In the fall of 2008, the Securities and Exchange Commission adopted a rule to regulate equity-indexed annuities as securities (Rule 151A). The rule was later challenged, and the Court of Appeals for the District of Columbia Circuit upheld the legal foundation for the SEC's action.

Because seniors are a target audience for these products, AARP submitted comments to the SEC supporting the rule, stating it was important that Rule 151A supplement, not supplant, state insurance law. In fact, the rule applies specifically to annuities regulated under state insurance law. AARP also submitted a joint amicus brief, along with the North American Securities Administrators Association and MetLife, supporting Rule 151A.

The Harkin amendment would overturn the SEC rule, which is designed to provide disclosure, suitability, and sales practice protections afforded by state and federal securities laws. The amendment would preempt any further ability of the SEC to regulate in this area. This not only deprives investors of needed protections against widespread abusive sales practices associated with these complex financial products, it also sets a dangerous precedent. If this amendment is adopted, the industry will be encouraged to develop hybrid products in the future specifically designed to evade a regulatory regime designed to protect consumers.

Regulating indexed annuities as securities is long overdue and vitally important for our nation's investors saving for a secure retirement.

The SEC's rule on indexed annuities accomplishes this goal in a thoughtful and reasonable fashion, and it should be allowed to take effect. AARP therefore opposes the Harkin amendment.

Sincerely,

DAVID SLOANE,
Senior Vice President,
Government Relations and Advocacy.

[From the New York Times, Apr. 10, 2007]

INCOME FOR LIFE? SOUNDS GOOD, BUT DO YOUR HOMEWORK

(By Jan M. Rosen)

What if I outlive my money? The fear of such a thing happening haunts many older Americans. So when a reputable company, New York Life Insurance, teams up with AARP to offer an investment with the absolute promise of lifetime income, it can sound like an answered prayer.

Indeed, the investment, an immediate annuity, may be ideal for some retirees, but financial advisers say it is not for everyone. Prospective buyers need to do some homework—studying both their own finances and the annuities available in comparison with other investments.

After all, an immediate annuity is an investment for the rest of a person's life or a couple's lives, and it is not easily liquidated if either personal circumstances or financial markets change.

''If you live beyond your life expectancy, you win,'' said Avery E. Neumark, a partner in the New York accounting firm Rosen Seymour Shapss Martin & Company, who specializes in retirement planning. ''If you die early, you lose and your heirs lose.'' The reason is that annuities, like life insurance, are based on pooling of risks and average life expectancies. Three trends have converged to make immediate annuities especially attractive to retirees: Americans' increased longevity, the decline of traditional defined benefit pension plans that make secure monthly payments, and early—thus longer—retirements.

Larry C. Renfro, the president of AARP Financial, a subsidiary of AARP Services, said, ''Mindful that they run the risk of outliving their assets without ongoing income, many AARP members have expressed interest in the potential of annuities to help fill their income gap.''

According to the National Center for Health Statistics, an American's life expectancy at birth is 77.8 years, up from 69.7 years in 1960. Those who live until age 65 will on average live until age 83.7, up from 79.3 in 1960. As people age, their life expectancies increase, so a 75-year-old today can expect to live until age 86.9. Depending on their health, family history and genetics, some people can expect to live far longer than average.

In its basic form, an immediate annuity is bought with a single upfront payment; for the AARP Lifetime Income Program, that can be as little as $5,000. Then the annuity holder receives monthly payments for life. The size of the payment depends on how much money is invested, the investors' age and sex and whether the annuity is for an individual or a couple.

Buyers may also choose optional features, including inflation protection and a withdrawal benefit in an emergency. There are also various payment choices; under one, if the annuitant dies before receiving an amount equal to the initial premium, a beneficiary receives the difference. When optional features are added, the monthly payout is reduced.

A 65-year-old man who buys a $100,000 AARP-New York Life annuity can expect payments of 6.5 to 8 percent a year, or $542 to $667 a month, depending on the features chosen. At age 75, the payout rate would be 7 to 10 percent.

''Returns are very conservative, but you can sleep at night knowing this much is coming in,'' Mr. Neumark said. ''It's reliable income and provides an opportunity for flexibility with your other investments. You can be in stocks with less worry when you have that secure monthly income stream.''

Martha Priddy Patterson, a retirement expert and director of Deloitte Consulting in Washington, said, ''In retirement we would feel more secure and happy if we knew that every month, X number of dollars will be rolling through the door.'' But, she said, ''you wouldn't want to make that your only investment,'' for several reasons.

It is always good to diversify investments, she said, adding, ''Inflation is my No. 1 fear, so I would want some TIPS,'' or Treasury inflation-protected securities. And, she said, annuities are relatively illiquid; surrender or unwind charges may be steep.

Among the other highly rated life insurance companies that offer immediate annuities are AIG, Genworth, Hartford, Integrity, John Hancock, Metropolitan, Mutual of Omaha, Principal and Prudential.

Comparison shopping can be difficult ''because so many bells and whistles are available,'' Ms. Patterson said, and they are costly. ''Decide what you want and what your goals are, and when you talk to sellers be firm about what you want and resist the others,'' she added.

Kim Holland, the Oklahoma insurance commissioner, said, ''There are certain benefits that you just can't get from other products,'' notably the assurance of lifetime income and a greater payout rate than would be available from certificates of deposit or bonds at present. And income is not taxed until it is paid out.

Still, Ms. Holland, who has waged an aggressive campaign to root out and prosecute insurance fraud, said that ''seniors are vulnerable—they are often targeted by scam artists.'' She stressed the need to check the rating of the insurance company issuing an annuity, the reputation of the individual agent selling it and whether the annuity is appropriate for the prospective buyer.

Two years ago, she enlisted AARP in a consumer education campaign on annuities, warning of ''predatory sales practices and the solicitation of unsuitable annuity products.'' In one case, an agent sold a lifetime annuity to a 104-year-old man, Ms. Holland said. and, in another, an agent brought cookies to a woman and planted flowers in her garden to win her confidence.

When approached by an agent, do not provide any information, Ms. Holland said. Instead, if you are interested, get the person's card and ''do your homework.'' She added: ''Check with peers, friends, relatives, bankers, your accountant. Don't respond to telephone solicitations or ads for free seminars or dinners.''

''New York Life is a very fine company, and AARP and New York Life have very fine products,'' Ms. Holland said, ''but that doesn't mean they are appropriate for every individual.''

An immediate annuity can be right for people who need a monthly income, just as they had when they were working, and as their parents' generation had with payments from defined benefit pensions, which only a fifth of Americans have today. They also appeal to people who fear they lack the financial expertise to make their savings last a lifetime.

On the other hand, the very rich do not need immediate annuities, said Paul Pasteris, New York Life's senior vice president in charge of retirement income. They could put their capital into Treasury bonds and live on the income. Studies have shown that it is safe to take about 4 percent a year from a retirement portfolio, he said. But relatively few people are in that position.

''For the last 20 or 30 years, the financial services sector has been telling people to save for retirement,'' Mr. Pasteris said, but once people retire they ''face a new discipline called retirement income planning.''

Immediate annuities can provide income and help people cope financially with several risks.

''The first risk is longevity,'' he said, ''the risk that you could be in a pickle if you live too long.

''The next is market risk. With a portfolio of stocks, bonds and cash, what are the returns going to be? More than just returns—the timing is critical.'' Suppose the market tumbles just when a person retires. ''Losses early can have a devastating effect,'' he said, because a shrunken portfolio will not produce enough income. ''If a poor return period is later, everything can be fine.''

Inflation is the third risk, and on annuities, inflation protection is available as an option. ''Even if it is only 2 or 3 percent, if you retire at 65 and live till 85, 90 or 95, inflation could have a huge impact,'' Mr. Pasteris said.

Health problems are another risk. A comfortable monthly income stream can ease those costs not covered by Medicare and secondary insurance.

Overspending is a risk for some retirees who have been looking forward to travel and the good life. ''Can you resist the urge to dip into your nest egg and withdraw too much too early?'' he asked. If not, putting the principal into an immediate annuity and living on the cash flow will require some financial discipline.

The median policy size is around $60,000, Mr. Pasteris said, and about half the policies are bought through I.R.A.'s or retirement plan rollovers, continuing the tax-deferment on those plans until income is paid out. If an annuity is bought with after-tax money, part of the payout is considered a return of principal and is not taxed.

Mr. Pasteris said, ''We work with customers to figure their basic income expenses—food, clothing, rent, medical.'' The next step is to calculate how much will be met by pensions and Social Security. If the amount is not enough, a lifetime annuity can be purchased to make up the difference. ''With the remainder of their savings, people can get more aggressive if they want,'' he said.

His colleague, Michael Gallo, who is also a senior vice president, said: ''We don't encourage people to be more aggressive. In general it's better to be more conservative.''

Mr. Gallo added, ''We don't want people putting all their money into this.'' The general recommendation is 25 to 50 percent of assets available for investment, although more could sometimes be appropriate. People should hold some cash in more liquid investments for emergencies, he said, and they may want to try a laddering approach, buying more annuities as they age and costs rise.

Tim Kochis, the president of Kochis Fitz, a San Francisco wealth management firm, would put far less into it. ''I would devote no more than 10 percent at the outside,'' he said. ''It is a function of risk tolerance, risk management—it can be for someone who is very risk averse and would otherwise be paralyzed.''

''It's much better than a money market fund,'' Mr. Kochis added, but he advises putting the bulk of a portfolio into stocks. ''There's so much opportunity for long-term growth if you can withstand the short-term volatility. That's the price you pay for long-term performance, the price of entry. Most people need to make a portfolio grow.''

Of course, they also need to sleep at night.

Mr. HARKIN. Madam President, I also ask unanimous consent to have printed in the RECORD a letter dated April 30 from the National Association of Insurance Commissioners.

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

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, THE CENTER FOR INSURANCE POLICY AND RESEARCH,

Washington, DC, Apr. 30, 2010.

Hon. CHRISTOPHER DODD
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR DODD: We are writing to convey the support of the National Association of Insurance Commissioners (NAIC) for efforts to preserve state regulatory authority over indexed annuities inherent in S. 1389, the Fixed Indexed Annuities and Insurance Products Classification Act of 2009. This legislation, which would nullify the Securities and Exchange Commission's (SEC) Rule 151A and clarify the scope of the exemption for annuities and insurance contracts from federal regulation, will help ensure that consumers continue to benefit from the vital consumer protections provided by state insurance regulators.

The NAIC represents the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories, whose primary objectives are to protect consumers and promote healthy insurance markets. As regulators vigilantly working towards these goals, we strongly believe that this SEC rule is unnecessary and distracts from important ongoing efforts at the NAIC and in the states to address emerging issues concerning indexed annuities.

Rule 151A ignores the fact that, at their core, indexed annuities are insurance products that guarantee purchasers' principal and a minimum rate of return. Though index performance may reduce payments above the minimum rate of return, the consumer still has a guaranteed benefit and the fundamental risk lies with the company, not the consumer. For this reason, indexed annuities are fundamentally insurance products and should be regulated by state insurance regulators who can approve annuities contracts before they can be introduced to the market, monitor individuals involved with the sales and marketing of the annuities, and regulate the investments and financial strength of the issuing company. We believe that the uncertainties and ambiguities created by the new SEC regulatory scheme could greatly hinder these rigorous consumer protections.

Additionally, Rule 151A will greatly constrain the product distribution channel. Indexed annuities can be sold through several distribution channels by companies, but under Rule 151 A indexed annuities would only be sold through one distribution system—the broker dealer channel. Since fewer people have a broker dealer connection, especially in the less populated areas, whereas almost all have an insurance representative, this product will become less available to consumers.

Thank you for your efforts to ensure that states can continue to protect consumers of annuities. We look forward to working with you to enact this important piece of legislation.

Sincerely,

JANE L. CLINE,
West Virginia Insurance Commissioner, NAIC President.

SUSAN E. VOSS,
Iowa Insurance Commissioner, NAIC President-Elect.

KEVIN MCCARTY,
Florida Insurance Commissioner, NAIC Vice President.

KIM HOLLAND,

Oklahoma Insurance Commissioner, NAIC Secretary-Treasurer.
THERESE M. VAUGHAN, PHD,
NAIC Chief Executive Officer.

Mr. HARKIN. Madam President, AARP does not come to this in a neutral position, not a neutral position at all. They have their own annuities, but they are not indexed annuities. With their product. When the downturn comes, people can lose. People can lose money in annuities but not in indexed annuities if held to term. They do not get the upside; the insurance companies get that. But they are protected. If the market goes down, they lose none of their annuity. That is exactly what happened in the last downturn.

I would like to call up my amendment, but I guess I am precluded from doing so. I was waiting for the ranking member to come back before I made a request. I was waiting for the ranking member to come back because I had been discussing this with him. I know we are going out at 10:30; is that right, Madam President?

The ACTING PRESIDENT pro tempore. At 10:40.

Mr. HARKIN. What time does the Senate reconvene?

The ACTING PRESIDENT pro tempore. At 12 noon.

Mr. HARKIN. Has there been a consent agreement entered as to a certain time for a vote on cloture?

The ACTING PRESIDENT pro tempore. Yes, 2:30.

Mr. HARKIN. Madam President, I am going to ask unanimous consent to call up my amendment.

I ask unanimous consent to set aside the pending amendment and to call up my amendment No. 3920.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. AKAKA. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. HARKIN. Madam President, I ask unanimous consent then to call up my amendment No. 3920, with 20 minutes evenly divided, with a vote on the amendment prior to the cloture vote.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. AKAKA. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. HARKIN. Madam President, the Senator from Hawaii objects to even having a vote on this amendment. I can see the Senator wanting to object to the unanimous-consent request. I just asked unanimous consent to have a vote on the amendment, and the Senator from Hawaii objects to even having an up-or-down vote. I wish the Senator would explain why he is afraid to have an up-or-down vote. That is just what I asked for. Isn't that what the Senate is for, to try to vote on issues?

I want the record to show that only one person objected to having a vote on this amendment, and that is my friend from Hawaii—and he is my friend—to say we cannot even have a vote. I did not hear any objection from the Republican side or anybody else. All I ask for is an up-or-down vote.

Why does the Senator from Hawaii not even want an up-or-down vote on this amendment?

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii.

Mr. DODD. Madam President, will my colleague and friend yield for 1 minute so I may make a couple of unanimous-consent requests?

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

AMENDMENT NO. 4003, AS FURTHER MODIFIED

Mr. DODD. Madam President, I ask unanimous consent that notwithstanding the adoption of the Vitter-Pryor amendment No. 4003, as modified, it be further modified with the changes that are at the desk.

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

The amendment, as further modified, is as follows:

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) 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) 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 that follows through line 22, and insert ''requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(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 such a manner as to evade the application of this title;

(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 consistent with paragraph (2); and

(D) upon making a determination under subsection (c)(1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination under this subsection.

(2) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

(A) ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—Upon a determination under paragraph (1), the company may establish an intermediate holding company in which the financial activities of such company and its subsidiaries will be conducted (other than activities described in section 167(b)(2) in compliance with any regulations or guidance provided by the Board of Governors). Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this title as if the intermediate holding company is a nonbank financial company supervised by the Board of Governors.

(B) ACTION OF THE BOARD OF GOVERNORS.—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 as if the intermediate holding company is a nonbank financial company supervised by the Board of Governors.

(3) 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.

(4) 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 include 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.

(5) 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).

(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)''.

APPOINTMENT OF COMMITTEE TO ESCORT HIS EXCELLENCY FELIPE CALDERON HINOJOSA, PRESIDENT OF MEXICO

Mr. DODD. Madam President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort His Excellency Felipe Calderon Hinojosa, the President of Mexico, into the House Chamber for a joint meeting.

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

Mr. DODD. Madam President, I further ask unanimous consent—I am looking at my friend from Arizona—that after the remarks of the Senator from Hawaii, the Senator from Arizona be recognized.

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

The Senator from Hawaii.

AMENDMENT NO. 3920

Mr. AKAKA. Madam President, amendment No. 3920 would prevent indexed annuities investors from benefiting from the strong protections provided by Federal securities laws. That is the reason I am objecting.

Some consumers have been hurt, including some in Hawaii. Deceptive sales practices have been found to be used in these products. An individual in Hawaii pushed equity indexed annuities to collect high commissions at the expense of senior investors. Those investors least able to effectively evaluate financial products need these Federal protections, without question, and they have been suffering.

I am not alone in my opposition to the amendment. As my friend from Iowa mentioned, AARP is opposed. The Consumer Federation of America and the North American Securities Administrators Association also oppose it.

This matter is under litigation and under review within the SEC rulemaking process.

Equity indexed annuities are financial products that combine aspects of insurance and securities but which are sold primarily as investments. These products must have the strong disclosure, suitability, and sales practice standards provided within the context of our Nation's securities laws. The amendment would preclude State and Federal securities regulators from protecting investors from inappropriate and harmful products.

I am willing to work with my friend from Iowa to look into this matter further. We need to have hearings to know more about the situation before taking such a potentially precedent-setting action as this amendment would. If this were to prevent securities regulation of a product that clearly has characteristics of a security, we would encourage the development of financial products created to avoid the stronger protection standards.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Madam President, in the final hours of debate on this bill, I think we should be asking ourselves why we started the whole exercise in the first place. What is the purpose of financial regulatory reform? I wish to address that for a moment this morning.

Presumably, we all agree the purpose should have been to tackle the problems that led to the financial crisis in the first place. That means serious reform must address root causes: most prominently, too big to fail—ending that and reining in the two government-sponsored enterprises, Fannie Mae and Freddie Mac, that had a lot to do with causing the problem in the first place. Amazingly, despite its size—and this is the legislation—and all of the hype that has attended it, the bill before us fails to address these root causes.

Moreover, even though Main Street didn't cause the problem, the bill is so extensive in its regulatory reach, it creates new burdens on Main Street while continuing the recent pattern—and one, by the way, Americans are very fed up with—of using every crisis as an excuse to involve government in almost every sector and every aspect of American life.

Republicans had hoped that once the bill came to the Senate, improvements would be made and the final product would be less partisan. We offered amendments to improve the bill, but almost all of these have been defeated. Along the way, Democratic amendments have been adopted that actually make the bill worse.

I hoped the bill would be amended to actually end taxpayer-financed bailouts and the concept that companies can be too big to fail and that it would protect small businesses from the regulatory burdens imposed by the bill and protect the rights of privacy for people's financial information. But that didn't happen, so we are left with a bill that enshrines into law failed policies of the past, imposes a massive new bureaucracy on small businesses that had nothing to do with creating the financial crisis, and threatens jobs and our economic growth.

Today, let me address these three problems in a bit more detail—first, too big to fail. The very first amendment offered by the majority purported to end too big to fail. While that sounds good, the amendment that passed won't accomplish the goal. The amendment has the effect only of declaring the intent of Congress. It does not actually prohibit taxpayer funds from being used to assist banks, and that is why I voted against it. It expresses a sentiment, but it is not actually operative.

As I will discuss, provisions remain in this bill that enshrine taxpayer bailouts forever, even after the removal of the $50 billion bailout fund. For instance, section 113 establishes a Financial Stability Oversight Council. This section would give the Federal Reserve the authority to prop up any nonbank financial company the council deems to be a potential threat to systemic stability.

The council would designate certain firms as ''systematically significant.'' Market participants would obviously interpret this to mean too big to fail. Therefore, the designations would increase moral hazard and perpetuate the very problem we are trying to fix. So a new government board based in Washington would decide which institutions get special treatment, giving unaccountable government officials tremendous authority to pick winners and losers, resulting in a competitive advantage for the winners.

What determines whether a nonbank financial institution is a threat to stability? Among other possible considerations, ''any other factors that the Council deems appropriate,'' according to the bill. Such broad authority would allow the council to protect and promote or to hamper firms based on whatever it deems appropriate—''any other factors.''

Section 1155 of the bill, entitled ''Emergency Financial Stabilization,'' also guarantees bailouts. Here, the FDIC would be allowed to create a new program of unlimited size to guarantee the obligations of depositories and holding companies with depositories. Since there is no requirement that a company that receives the guarantees and defaults on its obligations be taken into bankruptcy, the FDIC and Treasury could prop up whatever company they choose.

So this bill does not end too big to fail. If we had truly wanted to do that, we would have passed the Sessions amendment. This amendment would have struck the entire liquidation authority section from the bill and replaced it with a bankruptcy process for nonbank financial institutions. It also would have prohibited bailout authority and made needed adjustments so that a few provisions of the U.S. Bankruptcy Code to provide necessary flexibility to deal with the failure of large financial firms, such as Lehman Brothers, would work. In other words, it would have ended too big to fail.

The second area I mentioned was the government-sponsored enterprises. No debate on too big to fail would be complete without a discussion of Fannie Mae and Freddie Mac. These are the two government-sponsored enterprises given the authority to acquire mortgages. It seems to me almost unconscionable that this bill does not even attempt any reform of these two institutions given the fact they were a large part of the creation of the problem. And it is not because Republicans haven't tried. We have. The reckless behavior of these two institutions—by the way, institutions that have come to epitomize too big to fail—has surged through the entire commercial banking sector and our economy as a whole.

Let's recall how central these two government-sponsored enterprises were to the housing bubble and the ensuing collapse of that bubble. For years, Fannie and Freddie backed mortgages that were issued to too many people who could not really afford them. The two GSEs reaped enormous profits, while recklessly taking advantage of the government's intrinsic guarantee of purchasing trillions of dollars' worth of these bad mortgages, including all those made to risky subprime borrowers. This is the model that allowed Fannie and Freddie to inflate the subprime mortgage bubble. But when the housing market collapsed, the two GSEs were left with billions of dollars of bad debt. And guess who is on the hook for those billions. The American taxpayers.

These two institutions had their own dedicated regulator—the Office of Federal Housing Enterprise Oversight, or OFHEO. Republicans tried to give OFHEO more authority, Democrats objected, and so they allowed the situation to spiral out of control. The easy credit fueled rapidly rising homes prices. As prices rose, so, too, did the demand for even larger mortgages. So Fannie and Freddie looked for ways to make even more mortgage credit available to borrowers with a questionable ability to repay.

By 2008, the two GSEs had nearly $5 trillion in mortgages and mortgage-backed securities. They were overleveraged and too big to fail. It was a textbook example of moral hazard on a massive scale. I warned about it repeatedly.

Today, they hold a combined $8.1 trillion of total outstanding debt. Because the Federal Government has decided to cover this debt—by the way, even though there has never been a vote in the Congress to authorize this—both of these entities have recently asked taxpayers for billions more to cover their rapidly mounting losses. Recently, Freddie Mac announced it will need an additional taxpayer bailout of $10.6 billion, and that is after it lost $6.7 billion during the first quarter of this year. In 10 of the last 11 quarters, Freddie Mac has lost a total of $82 billion, which is twice the amount it earned over the previous 30 years. Fannie, too, just recently asked taxpayers for more money—$8.4 billion—to cover its soaring losses.

Since the Federal takeover of Fannie and Freddie, taxpayers have lost $145 billion propping them up—just two companies. And since the Treasury Secretary recently lifted the bailout cap, taxpayers are responsible for unlimited losses at these institutions.

The Associated Press summed up the situation succinctly. It wrote last week:

> The rescue of Fannie Mae and sister company Freddie Mac is turning out to be one of the most expensive after effects of the financial meltdown.

So why not embrace real reform and relieve the taxpayers? We know some of our friends on the other side believe we have an obligation to trim Fannie's and Freddie's sails. Republicans offered three amendments, all of which attracted bipartisan support—one each from Senators MCCAIN, CRAPO and ENSIGN—that would have done exactly that. But they were all rejected by the majority.

The alternative side-by-side amendment that was adopted instead is meaningless. Rather than rein in Fannie and Freddie, this amendment really established that Congress will commission a study on conservatorship of the two GSEs from Treasury Secretary Timothy Geithner. As the Wall Street Journal asked in an editorial, if a study is so key to dealing with the GSEs, what has Mr. Geithner been doing in the last 17 months since the crisis? Let's also remember that it was Mr. Geithner's Treasury Department that lifted the $400 billion GSA bailout cap last Christmas Eve.

Let's be absolutely clear: Every day Fannie and Freddie remain in their current form is a day U.S. taxpayers are subsidizing their activities. This bill does nothing to change the status quo, and I think taxpayers deserve better.

The third area I wanted to mention is the so-called consumer protection and its effect on small businesses—this Bureau of Consumer Financial Protection. Well, small businesses across my home State of Arizona and, indeed, across the country are very worried about the intrusive new bureaucracy here intended for consumer protection. Of course, all of us support consumer protection. I don't know of anybody who doesn't. The question is how you do it and to whom it applies.

We create a lot more cost to consumers if we make the regulation so expensive and inefficient that consumers actually wind up paying more money than they would have otherwise. That is what has happened with the credit card legislation we previously passed, and it could happen with this legislation as well, thanks to a newly created Bureau of Consumer Financial Protection.

The bill establishes new restrictions on credit through so-called consumer protection provisions by limiting or reconfiguring credit options that are currently available to us. The bill gives the new bureau a budget of up to $650 million—an amount that is more than double what the FTC has requested for its economy-wide consumer protection activities. This money is to be spent as the director of the BCFP wishes, with no oversight or veto authority by Congress or the administration.

Moving regulatory authority for consumer protection to a new bureau with broad powers would add to an already complex layer of regulation these businesses are forced to navigate, creating uncertainty that would likely make it more difficult to comply with existing regulations.

My staff and I regularly hear from constituents who are trying to find ways to pay off their outstanding debts. I am concerned that duplicative regulation has the potential to have the unintended consequence of making it more difficult for individuals and families to manage their debts.

Moreover, the proposed consumer protections reach beyond credit cards, restricting the availability of all forms of credit. These reductions in credit also mean declines in job creation since many small business startups use things such as home equity debt and sometimes credit cards as their sources of funding. Obviously, this poses a serious threat to our economy.

A recent New York Post op-ed by Mark Calabria stated:

> New restrictions on credit are likely to cost our economy tens of thousands of jobs a year.

Of course, no one intends this result. No one wants to raise costs on small businesses. But that is the inevitable result of a policy that is written too broadly. That is one reason the Chamber of Commerce, for example, opposes this bill.

Some of my colleagues have suggested that the Bureau of Consumer Financial Protection would be significantly different from the Consumer Financial Protection Agency that was written into the House bill that passed last year. Well, I respectfully disagree. While the new bureau would not be officially independent, it would effectively function as an independent, stand-alone agency with rule-writing powers and enforcement authority; whereas, the Consumer Financial Protection Agency would be responsible for its own financing, this Bureau of Consumer Financial Protection would enjoy an automatic funding stream from the Federal Reserve. Given the close similarities between the two proposed consumer units, it is constructive to consult a study released last year by economists David Evans and Joshua Wright. After analyzing the Consumer Financial Protection Agency Act, they concluded it would "most likely result in a significant reduction in the availability of credit to consumers."

"A significant reduction in the availability of credit." Of course, that is not what the authors intend, but that would be the probable result.

In my view, the potentially serious costs of this Consumer Financial Protection Bureau do not justify its purported benefits. We all want to shield consumers from real abuses and exploitation, but this is not the right way to do it.

As the National Review recently editorialized, "To the extent that existing consumer safeguards need strengthening, the task can be accomplished without launching a massive new bureaucracy that would negatively affect credit access and economic growth."

In conclusion, I hope my colleagues will ask themselves this question: Why is it that the CEOs of large companies such as Goldman Sachs and Citigroup favor this bill? The reason is simple: The legislation would entrench their privileged status. It would institutionalize the idea that certain big financial firms deserve preferential treatment by Federal regulators. These firms would be insulated from the negative effects of the new consumer protection bureaucracy. However, that bureaucracy would severely diminish credit access for small businesses and middle-class Americans.

What we have before us is a bill that is supported by Wall Street but opposed by the Chamber of Commerce, the Business Roundtable, and many others on Main Street.

For all these reasons that I have discussed and others, despite my strong desire to enact prudent financial reform, I cannot support this legislation. It does not effectively take on the fundamental problems that we all agree needed to be addressed.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. DODD. Madam President, I ask unanimous consent the call of the quorum be rescinded.

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

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY PRESIDENT FELIPE CALDERON HINOJOSA OF MEXICO

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 12 noon.

Thereupon, the Senate, at 10:40 a.m., recessed until 12 noon, and the Senate, preceded by the Vice President, JOSEPH R. BIDEN, Jr., the Secretary of the Senate, Nancy Erickson, and the Deputy Sergeant at Arms, Drew Willison, proceeded to the Hall of the House of Representatives to hear an address to be delivered by President Felipe Calderon Hinojosa of Mexico.

(For the address delivered by the President of Mexico, see today's proceedings of the House of Representatives.)

Whereupon, at 12 noon, the Senate, having returned to its Chamber, reassembled and was called to order by the Presiding Officer (Mrs. HAGAN).

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Madam 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. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DURBIN. I ask unanimous consent to speak as in morning business.

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

IMMIGRATION REFORM

Mr. DURBIN. Madam President, I just left the address of President Calderon to the joint session of Congress in the House of Representatives. I think President Calderon's speech to Congress and to the American people was important and timely and really touched some issues of controversy which we cannot ignore.

He acknowledged the fact that his country is being torn apart by drug gangs and drug cartels. He acknowledged the obvious: the object of their commerce is to sell drugs in the United States of America. Our insatiable appetite for narcotics is creating a situation where people are engaged in lawlessness and violence and murder and mayhem in his country. We have to acknowledge that as the reality of the relationship between our two countries. It is not enough for us to lament the violence in Mexico without equally being prepared to say we have to do something on our side of the border to deal with drugs moving into the United States and the market for those drugs in our cities and States.

He also raised the important issue about the firearms that are flowing from the United States of America into Mexico, into the hands of these lawless members of these drug cartels. In the last several years, he told us, some 75,000 firearms have been confiscated. They believe 80 percent of them came from the United States, and many of them were military-type weapons, assault weapons and the like. He said—and I am sure it was not welcome to all corners on Capitol Hill—that we have to accept our responsibility when it comes to sensible gun safety and sensible gun laws.

The Supreme Court has said that under the second amendment, individuals are entitled to possess firearms for self-defense and for legitimate and legal purposes. The President of Mexico doesn't question that. I don't either. But the people who are buying and shipping guns into Mexico from the United States are not engaged in the type of protected constitutional activity the Supreme Court has noted. They have gone way beyond that. They are using, unfortunately, an open system in the United States to feed a drug war in a country south of us. So what are the results of this drug war? Thousands of innocent people are being killed. It is true that the gang violence back and forth results in the death of criminals on both sides, but innocent people are being caught in this crossfire in Mexico as well.

I might also add that the lawless nature of the situation in the northern part of the border is forcing more people into migration into the United States. It is not just the economics that drives people across the border; it is also the fear that they have to continue to live within communities and cities that are rife with violence.

I am glad the President of Mexico came forward to speak to these issues. We addressed them earlier this week in my Subcommittee on Human Rights and the Law in the Senate Judiciary Committee. We had testimony from experts in the administration and outside the administration. It is obvious we need to do more to support Mexico, to try to do what we can to end this violence and the root causes of it on both sides of the border.

But there was one other issue the President of Mexico raised which needs to be discussed honestly. Yesterday, the First Lady of the United States visited an elementary school in a suburb of Washington with the First Lady of Mexico. Their purpose was to salute this school because of the physical activities that were available to the students and their commitment to a healthy lifestyle, which has been one of the real causes the First Lady has espoused in her role.

Then she had a little meeting there. You probably saw it on television. There were some small children around who asked questions, and one little girl said to the First Lady—she wanted to know why Obama, the President, was taking everybody away who does not have papers. This first-grader asked that question, sitting in with about a dozen other schoolchildren. And, of course, the First Lady of Mexico was sitting alongside our First Lady.

The First Lady, Michelle Obama, said: That is something we have to work on, right, to make sure people can be here with the right kind of papers.

Then this first-grader, this six- or seven-year-old girl, said: But my mom does not have any papers.

She blurted that out. I would say that was a telling moment for us in the United States to pause and reflect on what we are engaged in and what we are refusing to do in Congress. Had this young girl, this first-grader, made that statement in the State of Arizona today, it is my understanding their new law would have compelled an investigation of her family. What she said could create reasonable suspicion that someone in her family was here illegally. That innocent statement by that first-grader could have launched an investigation and an arrest and deportation. Is that where we are in America today? Is that what we have come to? I hope not.

I hope we accept our responsibility here in Congress. The President of Mexico invited us, challenged us—and he should—to do our job here to deal with comprehensive immigration reform. It is long overdue. We have to deal with our border situation, with the workplace situation, and with the fact that there are millions of people here today undocumented. We have to decide what is a just outcome for their fate.