rich people in 1969 who were not paying any tax, the reason for the alternative minimum tax to be passed in the first place.

Finally, if we offset revenues not collected as a result of AMT repeal or reform, total Federal revenues over the long term are projected to push through the 30-year historical average and then keep going.

The AMT then is a completely failed policy that is projected to bring in future revenues that it was never designed to collect in the first place.

President Obama met those of us who favor repeal partway by staking out a position on AMT reform during his 2008 campaign. His position provided for a permanent AMT patch. His budgets have maintained that position.

While permanent repeal without offsetting is the best option, we absolutely must do something to protect taxpayers and do it now, even if it involves a temporary solution, such as an increase in the exemption amount.

Of course, if we do that, we are going to be in the same fix next year, and I will be making that same point again.

Today, Tuesday, June 15, 2010, taxpayers making quarterly payments are going to once again discover that the AMT is neither the subject of an academic seminar nor a future problem that we can put off dealing with. The AMT is a real problem right now, and if this Congress is serious about tax fairness, it needs to stand up and take action.

JOB CREATION

Mr. President, I wish to address the Senate for a minute on another issue about how many jobs the stimulus bill created.

In recent weeks, a number of my colleagues have come to the floor to proclaim the success of the massive $862 billion stimulus bill Congress enacted in 2009. Although the number of private sector jobs has increased by only about half a million since 2009, they continue to insist the stimulus bill has created millions of new jobs. How do they justify these claims?

The stimulus bill requires certain recipients of stimulus funds to report the number of jobs they have created or saved or, more accurately, they report the number of jobs funded with the stimulus dollars.

The stimulus bill also requires the Congressional Budget Office to issue a quarterly report on these numbers. The Congressional Budget Office is careful to point out that the number of jobs being reported by stimulus recipients is not a comprehensive estimate of the economic impact of the stimulus bill. According to the Congressional Budget Office, the actual numbers could be higher or lower.

According to CBO ''estimating the law's overall effects on employment requires a more comprehensive analysis than the recipients' reports provide.''

For this analysis, CBO relies on a computer model. In other words, CBO does not look at the actual jobs data. Instead, it looks at a model of the economy.

CBO is very upfront about all of this. CBO used a computer model to predict how many jobs the stimulus bill would create before it was enacted into law. Now the stimulus bill is, in fact, law, and CBO is using a computer model to tell us it did just what they said it would do—create jobs.

Why would CBO rely on a model instead of actual data? According to CBO—and I have a three- or four-sentence quote here:

> Data on actual output and employment are not as helpful in determining the stimulus bill's economic effects because isolating those effects would require knowing what path the economy would have taken in the absence of the law. Because that path cannot be observed, there is no way to be certain about how the economy would have performed if the legislation had not been enacted.

My judgment is that CBO is saying this: CBO doesn't know how much better or worse the economy would have been if the stimulus bill had not been enacted. That means the Congressional Budget Office also doesn't know how much better or worse the economy is now as a result of the stimulus bill. So basically CBO is saying: Trust us—or more specifically: Trust our model. But if the model was wrong to begin with, then wouldn't it still be wrong? According to the Congressional Budget Office, their model relies on historical relationships to determine estimated multipliers for each of several categories of spending and tax provisions in the stimulus bill. The problem is that there is no way to know whether these historical relationships remain constant over time or whether they change under different economic circumstances.

In short, the jobs numbers attributed to the stimulus bill are based on assumptions which may or may not have any basis in reality.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

> Motion to concur in the House amendment to the Senate amendment to H.R. 4213, an act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Pending:

> Baucus motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Baucus amendment No. 4301 (to the amendment of the House to the amendment of the Senate to the bill), in the nature of a substitute.
>
> Franken amendment No. 4311 (to amendment No. 4301), to establish the Office of the Homeowner Advocate for purposes of addressing problems with the Home Affordable Modification Program.
>
> Sanders amendment No. 4318 (to amendment No. 4301), to amend the Internal Revenue Code of 1986 to eliminate big oil and gas company tax loopholes and to use the resulting increase in revenues to reduce the deficit and to invest in energy efficiency and conservation.
>
> Vitter amendment No. 4312 (to amendment No. 4301), to ensure that any new revenues to the Oil Spill Liability Trust Fund will be used for the purposes of the fund and not used as a budget gimmick to offset deficit spending.
>
> Reid amendment No. 4344 (to amendment No. 4301), to amend the Internal Revenue Code of 1986 to extend the time for closing on a principal residence eligible for the first-time home buyer credit.
>
> Thune/McConnell amendment No. 4333 (to amendment No. 4301), of a perfecting nature.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, George Santayana wrote:

> Those who cannot remember the past are condemned to repeat it.

Today, we must remember the past. We must learn from past mistakes, and we must do our best to avoid repeating them.

In its response to the Great Depression of the 1930s, the Federal Government made a serious mistake. It is important to remember this past so we are not condemned to repeat it. The stock market crashed in 1929. By 1933, the unemployment rate reached a high of 25 percent. A few years later—4 years later, to be precise—in 1937, the economy was rebounding. The unemployment rate had fallen to 14 percent, gross domestic product was growing at an average rate, if you can believe it, of 9 percent a year, and the stock market had more than doubled over the past 4 years. That was 1937. The economy was on the road to recovery. But this exceptional economic growth did not just happen. It resulted from strong actions by the Federal Government. From 1933 to 1937, for example, the United States dramatically increased the money supply. Lower interest rates and greater credit availability helped to stimulate spending and economic growth. New Deal programs also helped. Spending was modest but significant compared to the magnitude of the Great Depression. But the response provided a notable boost to the economy, and it helped instill confidence in the Federal Government's ability to tackle the Depression.

But in 1937, after 4 years of growth, the government made a mistake. Concerned about short-term deficits, what did it do? It began to cut spending and it began to raise taxes. A bonus for World War I veterans, which provided a boost in consumer spending, was allowed to expire in 1937. Social security taxes were collected for the first time in 1937. And marginal tax rates increased dramatically. What happened? This premature attempt to reduce deficits pushed the economy back over the edge. It was premature. The jobless rate shot back up to 19 percent. In 1938, gross domestic product fell by 3 percent. Shortsighted policy decisions

caused a double-dip. The mistaken desire to balance the budget too quickly effectively lengthened the Great Depression by 2 more years.

I understand the desire today to reduce deficits. I share that desire. We do need to put in place deficit reduction that will take effect after the recovery has kicked in. But we must also learn from the 1937 history. We must not repeat the mistake that led to the double-dip downturn of the late 1930s. If we were to dramatically cut spending or increase taxes to reduce the deficit in the short run, it would run the risk of causing a double-dip in this great recession.

Today, the economy remains too fragile to begin cutting back. Unemployment stands at 9.7 percent. The May jobs report was disappointing. The private sector created only 41,000 new jobs. In total, 15 million Americans still remain out of work, and half those unemployed have been unemployed for more than 6 months. Gross domestic product grew 3 percent in the first quarter of 2010, but this was down from 5.6 percent in the fourth quarter of 2009.

Just as in 1937, we are in a recovery period. That is true. And just as in 1937, it is a recovery that is showing signs of weakness. If we act recklessly today, we risk a double-dip recession. If we adopt a constrictive fiscal policy in the short run, we risk prolonging the great recession for years to come. We cannot act without regard to the consequences of our actions.

Make no mistake, we must tackle and should tackle our long-term deficits. That is clear. And that is why one of the goals of the President's Commission on Fiscal Responsibility and Reform is to ''achieve fiscal sustainability over the long run.'' We do need to act aggressively to reduce our long-term deficits as the economy enters a phase of expansion. But first we must pull ourselves out of this great recession.

One of the best things we can do to facilitate the delicate recovery is to pass the American Jobs and Closing Tax Loopholes Act before us today. This bill extends tax cuts for families and businesses that will help them in these difficult times, and this bill sustains vital social safety net programs that will also help foster economic growth.

We have made the mistake of cutting back too soon once before, and we must not make it again. The Thune amendment, which will be before us in the not to distant future this week, will move in the wrong direction. Instead of helping to create economic demand, the Thune amendment would curtail aggregate demand by more than $50 billion. Instead of continuing the good the Recovery Act has done, the Thune amendment would chop it off.

The Thune amendment would, among other things, cancel unspent and unallocated mandatory spending in the Recovery Act—stop it. That spending is working. The Recovery Act is working. The Federal Reserve and many independent economists have credited the Recovery Act with playing an important role in stabilizing the economy.

This is what the nonpartisan Congressional Budget Office said in its most recent report:

> CBO estimates that in the first quarter of calendar year 2010, [the Recovery Act's] policies raised the level of real . . . gross domestic product . . . by between 1.7 percent and 4.2 percent, lowered the unemployment rate by between 0.7 percentage points and 1.5 percentage points, increased the number of people employed by between 1.2 million and 2.8 million, and increased the number of full-time equivalent jobs by 1.8 million to 4.1 million compared with what those amounts would have been otherwise.

That is what CBO says about the recovery. And the Congressional Budget Office projects that the Recovery Act will continue to create jobs. It projects that the Recovery Act will create the peak number of jobs in the third quarter of this year and then begin to taper off. But we do not want to abruptly cut that job creation off. In this fragile economy, the last thing we should do is to cut back on this proven job creator. It works. It has been working.

We passed the Recovery Act to give a needed boost to our economy. The bill was designed to work over 2 years. That was the intent of it. We have successfully started down the road to recovery, but if we were to withdraw these critical funds, we would risk causing further damage to our fragile economy. Revoking the Recovery Act funds now would send exactly the wrong signal to the American economy and to unemployed Americans.

The Thune amendment would also cut other valuable spending programs. The Thune amendment's spending cuts are arbitrary and they are restrictive. For example, one provision in the Thune substitute amendment would freeze the salaries of all Federal employees except for Members of the armed services. But what about civilian defense workers? What about law enforcement? What about border protection?

Another provision would cap the total number of Federal employees at current levels. If an agency needed to hire a new employee, it would first need to find an existing employee to fire. This would dramatically reduce the flexibility of agencies to make hiring decisions.

The Thune substitute amendment would also cut discretionary spending by 5 percent across the board for all agencies except the Department of Veterans Affairs and the Department of Defense. Apparently, this 5-percent cut would apply to the Department of Homeland Security. It would apply to Immigration and Customs Enforcement. Apparently, it would apply to all the intelligence agencies, just to name a few.

The Thune amendment would also, by the way, rescind $80 billion in appropriated but unspent Federal funds. But just because the funds have not yet been obligated does not mean they are superfluous. For example, when money is appropriated to build a battleship, it does not all get obligated in the first year. By cutting funds that have not yet been obligated, it would adversely affect the construction of that battleship.

I support finding ways to make our government more efficient, but these cuts are arbitrary. They are inappropriately restrictive.

The Thune amendment would also make changes to the new health care law that would leave more Americans without insurance. The Thune amendment does this by expanding the affordability exception to the individual mandate for purchasing health insurance. This expansion would eliminate coverage for millions of Americans. It would strike at the heart of health care reform. And the Congressional Budget Office tells us it would also increase premiums for everybody else.

The Thune amendment, just to repeat, would increase premiums for millions of Americans who would have health insurance. The irony of this proposal in the Thune amendment is that it raises money for the government because the government would not provide as much in tax credits to Americans to help them buy insurance. That is the irony. But Congress has just enacted health care reform. Congress just expressed our Nation's commitment to helping all Americans to buy health insurance. We should let the new health care law take effect.

The Thune amendment would also propose changes to our medical liability system that the Senate has rejected many times over the years. The Thune amendment would cap damages and make other changes to State laws. This is not the solution to medical malpractice.

While the Congressional Budget Office says these kinds of ideas would generate savings, we should ask: What is the cost of those savings? What would be the cost to patients? What would be the cost to States?

The same studies upon which CBO relied in calculating its cost estimate point out that certain tort reform policies may also increase the number of risky procedures performed. And these policies may lead to more patient injuries and more patient deaths.

One study upon which CBO relied said that these policies would lead to a 0.2-percent increase in mortality.

That sounds an awfully high price to pay.

Imposing national tort reform standards flies in the face of our Nation's civil liability system. That system has always been forged at the State level. And national damage caps would put patient safety at risk.

The Thune amendment employs some of the offsets that it does because it drops the oilspill liability tax. Imagine that: The proponents of the Thune

amendment would rather put the recovery at risk by cutting back the Recovery Act, they would rather cut health insurance coverage in health reform, and they would rather expose patients to greater risk. They would rather do all these things than raise taxes on big oil, to pay for oilspills.

And the Thune amendment employs some of the offsets that it does, because it drops some of the tax loophole closers in the underlying substitute amendment. The underlying substitute amendment closes loopholes in the Tax Code that unfairly benefit certain individuals.

One such loophole is carried interest. The underlying substitute removes an inequity of the Tax Code that allows investment managers who operate through partnerships to have the income that they earn for their services taxed at half the tax rate of other working individuals.

Here's how the carried interest tax loophole works. An investment manager joins a partnership with some investors. But the investment manager does not provide any capital. The investment manager provides services.

The investment manager contracts to receive compensation not in the form of wage income, but in the form of a share of the partnership. That way, the investment manager gets to pay lower capital gains tax rates on the investment manager's income, rather than the higher wage tax rates that the rest of Americans pay.

The underlying substitute says: No longer should we allow investment managers to have a better tax rate than teachers or doctors or firefighters. Our amendment plugs this tax loophole. But the Thune amendment would strike that provision. The Thune amendment would allow that tax loophole to continue.

The underlying substitute also includes an important provision that closes another serious inequity in the Tax Code.

Lawyers, doctors, and other professionals who operate as partners or sole proprietors are currently subject to Social Security taxes on their service income up to $106,800. And they are subject to Medicare taxes on all their service income. Everybody is. But some doctors and lawyers organize themselves as an S corporation and they can pay themselves an artificially low salary. That way, they can avoid paying Social Security or Medicare taxes on much of the income generated by their services. That is just not fair.

And what is more, it hurts the Social Security and Medicare trust funds.

The choice of entity should not affect an individual's tax liability for his or her services.

Unfortunately, Senator THUNE's amendment does not close this loophole. The Thune amendment would strike this loophole closer in the underlying substitute.

The underlying substitute would also close several foreign tax loopholes.

The Senate Finance Committee developed these loophole closers jointly with the House Ways and Means Committee, with the assistance of the Treasury Department.

These loophole-closers would shut down highly structured and complex transactions implemented by multinational corporations to avoid paying U.S. tax.

These tax benefits claimed by the multinational corporations were clearly not contemplated when Congress passed the tax law.

Closing these loopholes would preserve and create jobs here in America. Closing these loopholes would discourage U.S. multinational corporations from shipping American jobs overseas.

Permitting the continued exploitation of these loopholes would only encourage U.S. multinationals to invest additional capital overseas, rather than here in America. Allowing these loopholes to continue would result in the loss of American jobs.

The underlying substitute amendment tackles these loopholes. Senator THUNE's amendment, on the other hand, ignores them. By not addressing them, the Thune amendment would allow this irresponsibility to continue.

And so, the Thune amendment would put the recovery at risk by curtailing the Recovery Act. It would cut the number of Americans with health insurance and raise premiums. It would nationalize medical malpractice law, putting patients at risk. And it would protect big oil and multinational corporations that ship their jobs overseas.

I urge my colleagues to oppose the Thune amendment.

And I urge my colleagues to support the bill before us. Let us protect and strengthen this fragile economic recovery. Let us preserve and create jobs, here in America. And let us enact the American Jobs and Closing Tax Loopholes Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I know Senator THUNE will be here in a moment. I saw him just a while ago.

One of the things hurting our economy is that Congress is sending no message whatsoever that we are serious about reducing the uncontrollable debt that every economist says is unsustainable, and that this is a cloud over our economic recovery. The sooner we quit thinking we can make the economy rebound by just spending a few more billion dollars and increasing our debt, the better off we will be and we will get on a sound track to go forward.

I know good people can disagree, but I believe very strongly in this, and I just wanted to share that thought.

OILSPILL IN ALABAMA

I would like to make a few brief comments about the oilspill in the Gulf of Mexico, and my home State of Alabama. I was there Friday and visited Orange Beach, Gulf Shores, Dauphin Island, and Bayou La Batre, examined the beaches and talked with our good mayors and other officials who are there. There are a few things I would like to share that indicate we are not where we need to be.

I have not been one who wants to run out and blame the President for everything. But I do believe as we are now going into day 57 that we need to understand our response is not working well. It could be much better.

For example, I visited Mayor Tony Kennon and his team in Orange Beach. Perdido Pass has a very strong current. You would think you could put up boom and stop oil from coming in. They told us oil was out there. They were expecting it to come in, maybe the biggest amount they had expected since the beginning of the spill. It was expected to hit the coast this past Saturday or Sunday, and it did indeed hit. The city is developing their own plan with their own engineer about how to deal with the currents and the flow of oil to keep it out of the estuaries that are inside of Perdido Pass.

It is complicated. They had a top engineer, Henry Seawell, one of Alabama's best. He was there working on it. I just happen to know him. But the Coast Guard was not there; BP was not there. The mayor said:

> You know, we feel like we are not even at the table, we are not at the children's table. They are not talking to us. But we know more about how to deal with this pass than anybody else in the U.S. Government because we have been working on it, it is our area, and we are trying to protect it.

Sure enough, the oil came. We were behind schedule. They started late. Nobody had done anything until the city started, apparently a good bit of oil got in and that is not good. It also got on the beach. We can clean that up pretty quickly, however a lot hit the beach.

Then a little further down the beach, at Gulf Shores, we had a similar discussion. I went to Fort Morgan, across the mouth of the Mobile Bay where Admiral Farragut sailed in, and we went across to Dauphin Island. The mayor there, Jeff Collier, had some of the same concerns as Mayor Robert Craft in Gulf Shores. Then I went up and met with Mayor Stan Wright, the mayor of Bayou La Batre, himself a seafood processor. He noted to me, and has repeatedly stated, that Bayou La Batre probably represents the largest seafood processing on the entire gulf coast. They are basically being shut down, and a lot of people who work there are losing their jobs. They are low-income workers who do not have extra money to live on, and they are hurting, really hurting. If we are going to receive money from BP, they need to get it out there to the people right now, before they lose their homes or have their power cut off. The mayor told me how people are calling him about their electricity being cut off. It is not a little matter. The whole situation is a big deal.

I am glad the President has gone to the gulf coast. I am hopeful tonight we

will hear some good ideas for progress. I just wanted to share one thing that struck me very vividly. Mayor Kennon's team in Orange Beach told us they had seen a strip of compact oil from the air and a boat about 6 miles offshore. It had the red color, thick process—a strip about 30 miles wide and 2 miles long. This was Friday morning. It was expected to hit Friday night or early Saturday morning. Nobody knew for sure. But it had been out there for a number of days.

So we are asking, Why don't we put a skimmer there? This is the only thing coming in that threatens the beaches. Apparently there were two strips of this offshore at some distance. It represents a significant threat. You could see that threat getting closer and closer. The obvious thought—Mr. President, having been from Alaska, you know the importance of these matters—if you had a good skimmer—where two boats pull the boom and direct the oil into a central location, then you can get it out and put it in a barge or tanker.

There was not any. It would have been rather easy, I suggest, with a good skimmer, to have gone out, with plenty of time to scoop up almost all of that oil or at least a big portion of it. That was not done. It kept coming in, and coming in, and basically by Saturday it was hitting the beaches.

You ask, where are they? We are not talking with one another enough, it seems to me. It does appear there are more skimmers, more boom, more vessels, equipment, and pumps available around the world that could be called on to assist, and we have not accepted all offers of assistance. Nor have we, apparently, sought to lease, buy or purchase the boom, pumps, and skimmers that might help us.

I was just looking at a press release today that stated, Admiral Allen, the national incident commander, Provides Guidance to Ensure Expedited Jones Act Waiver Processing Should It Be Needed.''

He says he will process any requests for waivers of the Jones Act.

For some reason the admiral is still talking about waivers and offering to expedite them. Who is requesting them? Why doesn't he request it? If there is a ship that can skim, it can be brought down to the gulf coast, and it would make a big difference. In fact, I saw the admiral, I believe, the day before yesterday on the television say we need to do a better job. This would have been Monday. We need to do a better job of intercepting the oil between the spill site and the shore.

Good. I thought it might be harder to do. I thought it might be little splotches here and there, all over, and it would be impossible to scoop it all up. But if it is moving, and it tends to move in lines and fairly compact 30-foot strips, then with good equipment we can make a big dent and just stop it.

So I don't know what the problem is. But we do know 17 countries have offered to help, however we only have two skimmers, as I understand it, in the gulf, and those are from Mexico—which we are glad to have. Pumps have been offered. I do not believe we have taken advantage of that. It takes some pretty good pumping equipment to get this oil soaked up, and only 600,000 feet of boom have been received from abroad. The UK has also offered us dispersants, which we have not taken.

I don't know what all the details are, but it seems to me that we can and must do a better job of coordinating. We need to ensure people who need resources are paid now, and we need to understand that there is great potential for effective skimming to occur where the oil has formulated and configured in groups so it can be skimmed. That apparently is more feasible than a lot of people understand. We need to be focusing on that.

The people along the gulf coast are upset about it. One mayor told me: I am a man of good judgment. I am worried about BP's slow response. They talk about responding. They talk about paying, but not enough payment is actually getting out where we have clear cases of substantial losses. Of course, the economy is not where it has been and where we need to see it develop. The beach areas probably wouldn't have been as strong this year as previous years because of the economic downturn. But the testimony from people at public meetings I have attended is crystal clear that we have almost a 50-percent drop in reservations, a 50-percent drop in bookings, and this ripples through the entire community. We already have real estate problems. We already have a little decline in beach attendance. Now we have all this horrible news on the TV and large amounts of cancellations. Some people do need money now. This process needs to be accelerated, and I hope we will hear something in some of what the President tells us tonight. I think he has heard that. He has been down to the gulf coast. He has talked to people. He probably has a better understanding today, after we are 2 months into it, than he previously had.

Maybe we can make this system work a little better. I don't only want to complain. I am thankful the President is showing attention. I am thankful he has stepped out and is showing some leadership. But for some reason, there still seems to be a lack of connection between the talk up at the top and what is happening on the ground. I have been there. I have talked to people. People are not getting money. People are in serious crisis already, people who would be entitled to receive moneys. I don't think BP should pay out money fraudulently. They don't need to pay those who don't deserve it. They ought to be careful in how they handle these payments. But for the most part, people are making legitimate claims. Some of them are desperate now. I don't think we have a unified effective plan to intercept as much of the oil as we could offshore. Nor have we had the kind of support from the Federal Government we would like to see, with scientifically determined processes, placing boom and skimming equipment to stop the flow of the oil, particularly into our estuaries, including Mobile Bay.

Mobile Bay is not that wide of an opening. People thought we could stop it. You could put boom across and stop it. The truth is, with the tides, it is a strong current. Anchors won't hold it. When water moves in, it will go over or under or even break the boom. It is not an easy thing. We need some sort of Chevron-like layers of boom outside the entrance to try to catch as much as we can before it comes in. A little, but I don't think enough, effort has been made. In fact, we now had a significant amount of oil that have gotten into that great estuary.

I wanted to share those thoughts. I believe we can do better. I believe oil production in the gulf is essential for the national interest. I believe this spill, this accident should not have happened. I believe if people had been exceedingly careful and competent in what they did, this would not have happened. I believe after this accident, there is going to be a complete review by every company out there. I think we will have an even lower possibility of accidents in the future. But we need more confidence that blowout preventers work, and that we have safety mechanisms in place. We need more confidence that this will happen. We need to understand there is always a possibility that some sort of blowout or spill will occur, but we can do better to prevent it. We can do better about plugging the leak or capturing the oil where it comes out of the pipe. I believe all of these are possible.

I am not happy. I am disappointed that we weren't better prepared in case such an accident did occur. Very disappointed. I believe the oil industry, in particular BP's plan, as the Mobile Press Register has pointed out, was not well thought out. Their plan talked about what to do with walruses and things such as that. We don't have any walruses on the gulf coast. This was not a well thought out plan. Criticism is justified in many different areas.

I thank the Chair for the opportunity to share my thoughts. Again, I appreciate the President visiting the gulf coast. Hopefully, they are breaking down some of these dysfunctional areas to get us to a higher level of response and effectiveness, and maybe they will also be able to continue to make progress in reducing the amount of flow coming out of this well. Obviously, that is the most critical point.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BARRASSO. Madam President, the tax extenders bill includes a settlement that involves a class action lawsuit that is known as Cobell v. Salazar. The total cost of this settlement is about $3.4 billion. This settlement will affect hundreds of thousands of Indian people across the United States who are class members in this lawsuit. It was signed last December by the Obama administration with the lead plaintiffs and their attorneys. Part of the settlement provides $1.4 billion to individual Indians whose trust assets have been mismanaged by the Federal Government for over 100 years. Another $2 billion would be used by the Department of the Interior to consolidate Indian land ownership to prevent a repeat of these claims.

On Wednesday, June 9, 2010, Attorney General Holder and Secretary Salazar sent letters to the Senate leaders opposing an amendment I filed on Tuesday, June 8. My amendment corrects serious flaws in the settlement. I am going to respond to their letter as well as explain my amendment.

The Attorney General and the Secretary argue that the amendment makes material changes to the settlement that would render it void. To begin with, I must point out that the parties have changed their settlement in material ways several times—several times—since it was announced that the agreement had been reached. Whenever they deem fit, they change it. For the reasons I am about to go into, they should change it again. If they don't, then Congress should act.

In their letter to leadership, the Attorney General and Secretary Salazar say:

> The nature of any settlement agreement is that no one gets everything they asked for.

I know the Cobell case has waged on and on in the courts for 14 years. It has been up and down on appeal many times—too many times. In fact, it is on appeal right now. So I support settling this case. I support providing fair compensation to people harmed by decades of Federal mismanagement. I support consolidating the fractionated ownership of land to prevent the recurrence of problems that led to this court case. But I cannot support the settlement as drafted by the administration. It has flaws, and I believe some of them are very serious. All of them can and should be fixed without making major changes to its overall structure. Leaders in Indian country agree.

I ask unanimous consent that a letter dated June 11, 2010, from the National Congress of American Indians to Senator DORGAN and to me be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. BARRASSO. Madam President, the National Congress of American Indians' letter states that the changes in my amendment address legitimate concerns that have been raised by tribal leaders and Indian people. The NCAI letter references resolutions passed by the Affiliated Tribes of Northwest Indians and the Great Plains Tribal Chairmen's Association supporting my amendment.

So what does my amendment do? It addresses five significant weaknesses in the settlement. The first issue is attorneys fees. This settlement was signed by the Department of Justice and two of the plaintiffs on December 7, 2009. Originally, the settlement said that Congress had to approve it in 24 days—by New Year's Eve. Well, supporters said there was no time for a hearing; Congress had to act immediately. I disagreed. Any $3.4 billion settlement paid for by taxpayers that affects the lives of hundreds of thousands of people should have a hearing before Congress.

I requested that the Committee on Indian Affairs hold a hearing on the settlement. Chairman DORGAN scheduled one nearly 6 months ago and that hearing was December 17, 2009. During the hearing, it was disclosed that the parties had entered into a separate agreement covering attorneys fees. In the side agreement, the plaintiffs' lawyers agreed not to ask the court for more than $99.9 million in presettlement attorneys' fees and costs, and the administration agreed not to argue that the attorneys should get anything less than $50 million. So, in effect, the two parties quietly agreed that the plaintiffs' attorneys should be paid between $50 million and $100 million.

This separate agreement also provided that when attorneys asked the court for presettlement fees, the attorneys must provide contemporaneous time records, but they said only ''where available.'' This is a very remarkable agreement, especially for a court case that was pretty much all about inadequate government recordkeeping in the first place.

What the government has done is agreed not to demand contemporaneously prepared time records when the attorneys ask the court for their fees—fees that will be taken directly out of the funds that are supposed to be distributed to the class members in the suit. This settlement should be about compensating the individual Indians who were harmed by government mismanagement. My amendment requires production of contemporaneous records and it caps the fees at $50 million. Fifty million dollars is an amount that both parties agreed would not be appealed. It is their number, so it must be fair.

Besides the issue of attorneys fees, there have been other concerns raised about the settlement—about the possibility of a multimillion dollar incentive award to named plaintiffs; about the qualification of the bank where the money will be deposited; about the role of Indian tribes and the land consolidation aspect of the settlement; and about the formula for distributing the money. My amendment addresses each of these issues.

The amendment would also require that any ''incentive awards'' to named plaintiffs be justified by documented expenses. Leading the case of Indian landowners against the government for 14 years has undoubtedly been an exhausting burden and an expensive burden. The named plaintiffs should be allowed to ask the court to have those expenses reimbursed. My amendment would limit any such award to an aggregate amount of $15 million and only for the expenses incurred by the class representatives. This is the amount the plaintiffs told us is their total estimated out-of-pocket expenses. The amendment would allow full reimbursement of these expenses.

My amendment also addresses the selection of the bank that will hold the $1.4 billion in settlement funds. The settlement is especially lax in setting standards to ensure the safety of these funds—lax, I believe, to the point of being irresponsible. My amendment simply requires the court to consider certain factors when approving a proposed bank: experience, a history of regulatory compliance, plus competitive interest rates and fees. These factors are important because if anything happens to the money, then the class members bear the risk of the loss. I cannot fathom why asking the court to simply consider these commonsense protections will void the settlement.

The amendment I have offered will require the Secretary of the Interior to consult with Indian tribes on implementation of the Indian land consolidation program. In order for this $2 billion consolidation program to succeed, the tribal governments should be partners in implementation. The amendment would require that to happen.

Finally, my amendment would provide relief for certain class members for whom the pro rata formula used in the settlement does not work. This formula is simple and will be easy to use. That is why the administration likes it. In many cases, the formula won't work and will lead to unfair results. It is necessary that we create a system for individual class members with unique circumstances to petition the court for a nonstandard settlement payment.

Under my amendment, the court would be provided with broad flexibility to make discretionary awards in appropriate cases.

In closing, I urge Members of the Senate to support this amendment to the Cobell settlement provisions in this measure. My amendment doesn't change the structure of the settlement. It does improve, however, the agreement for the hundreds of thousands of class members covered by the settlement.

What my amendment doesn't do is void the agreement. Let me repeat, my

amendment does not void the agreement; it does not void the settlement. Plaintiffs have the ability to void the settlement if they don't believe the changes are in the best interests of the class members. The administration can void it if they don't believe there should be financial standards for selection of the bank that will hold and manage $1.4 billion of settlement funds. By passing this amendment, we will not void the agreement.

Congress has the obligation to never rubberstamp an agreement and to not rubberstamp this agreement.

Adopting my amendment is the right thing to do.

I yield the floor.

EXHIBIT 1

NATIONAL CONGRESS
OF AMERICAN INDIANS,
Washington, DC, June 11, 2010.

Re Cobell Settlement and Senator Barrasso's Amendment 4313 to the American Jobs and Closing Tax Loopholes Act of 2010.

Hon. BYRON DORGAN,
Chair, Committee on Indian Affairs, U.S. Senate, Washington, DC.
Hon. JOHN BARRASSO,
Vice Chair, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DORGAN AND VICE CHAIRMAN BARRASSO: As you know, a very important vote may soon occur in the Senate. Currently the Senate is considering H.R. 4213, the American Jobs and Closing Tax Loopholes Act of 2010. For Indian people across the country the most important provision in the legislation is Section 607, which would authorize the settlement of the Cobell v. Salazar litigation over federal mismanagement of Indian trust funds. Senator Barrasso has proposed an amendment that would address some concerns about the settlement that have been raised by tribal leaders and Indian people. These are legitimate concerns that have come from the grassroots in Indian country, and it is our hope that the parties and the Senate try to find common ground on these concerns.

The National Congress of American Indians has long supported a settlement of this litigation because it is time to bring justice to Indian people and because the contentious litigation has distracted from efforts to address the many other issues that Indian country faces. When the settlement was first announced in December of 2009, there was a general feeling of elation and relief throughout Indian country. We are extremely grateful to the Administration and to Eloise Cobell and her team for working so hard on this settlement and bringing it to the brink of resolution.

However, we also believe that Ms. Cobell described it well when she said that this is a ''bittersweet victory'' for Indian country. There is no doubt that the injuries to Indian people have been much greater than the compensation they will receive. In addition, over the past several months, Indian tribes and Indian people have had an opportunity to more closely examine the details of the settlement. Hearings have been held in Congress, and meetings have taken place on reservations across the country. As might be expected with a class action settlement of this size and complexity, the details have generated considerable discussion and some disagreements.

Senator Barrasso has solicited the views of tribal leaders on the details of the settlement and has filed a proposed amendment. The Affiliated Tribes of Northwest Indians and the Great Plains Tribal Chairman's Association, two large and well respected regional tribal organizations, have both passed resolutions favoring Senator Barrasso's amendment. A similar resolution has been submitted to NCAI for consideration during our Midyear Session during the week of June 20. However, NCAI's consideration of the resolution may happen after Congress has voted.

As you know, both the Administration and the Cobell plaintiffs have raised concerns that any amendments to the Cobell settlement legislation would render the settlement null and void. We understand the need for the parties to a difficult settlement to adopt this posture. However, we have little doubt that if Congress were to make modest and reasonable adjustments, the parties will readily amend the settlement agreement to conform to the implementing legislation.

NCAI's interest is that Congress passes a settlement that is responsive to legitimate concerns raised by tribal leaders and members of the class, and that a contested floor vote on these issues may not be conducive to our shared goal of settling the litigation. I will briefly address the elements of Senator Barrasso's amendment. Amendment 4313 would:

1. Cap attorneys' fees at $50 million and incentive awards at expenses up to $15 million. The settlement was accompanied by a side agreement that the federal government would not contest an award of attorney's fees in a range between $50 to $100 million. These attorneys' fees have generated considerable discussion. Most account holders will receive an award in the range of $1500, which is less than what was expected. Over the years, the Cobell plaintiffs have frequently estimated the size of the damages in the hundreds of billions, so disappointment at the size of the award has combined with views about the size of the attorneys' fees. This is a difficult issue because we also recognize that the Cobell attorneys have worked very hard on the litigation for the last 14 years, and class action attorneys in Indian law cases should be fairly compensated on a par with similar class actions. We suggest that the numbers are not far apart, and an accommodation could be reached.

2. Require that a special master select the bank that will handle the $1.4 billion award. The settlement agreement indicates that the award will be deposited in a bank selected by the plaintiffs and approved by the court. Senator Barrasso's amendment would require that court should consider certain criteria for experience in the handling of large deposits, compliance with banking laws, and competitiveness of fees. This appears to be a reasonable provision to ensure competent and efficient management of the funds.

3. Allow tribes to participate in the land consolidation program that will occur on their reservations. NCAI strongly supports Senator Barrasso's proposal to permit tribes to participate in the land consolidation program that will be funded by the settlement. Land consolidation is critical for addressing trust management problems created by fractionation and preventing future mismanagement. However, Indian tribes have had concerns about the ability of the Bureau of Indian Affairs to administer the land consolidation program on the scale and in the timeframe required by the settlement. Since 1975, Indian tribes have been able to contract with the BIA to manage BIA programs on their reservations. The Indian Land Consolidation Program is one of the few programs that does not allow tribal participation in this way. We believe that allowing tribal governments to participate in land consolidation will greatly benefit the program because tribes have the greatest interest in its success, and because tribes know the local conditions on their reservations much better than a centrally-located BIA.

4. Set aside a $50 million fund for class members who may not be fairly compensated by the formula distribution. The inclusion of natural resource mismanagement claims within the settlement has been controversial within Indian country because it was not a part of the original Cobell claim, and because the formula would be unfair to some landowners. Although the resource mismanagement settlement allows an opt-out, it would be extraordinarily difficult for Indian landowners to pursue mismanagement claims on their own. Senator Barrasso's amendment would set-aside $50 million out of the settlement to make equitable adjustments for certain landowners who would not be adequately compensated by the formula. So long as it does not substantially slow down the operation of the formula distribution, we believe it is reasonable to set aside a small portion of the settlement to smooth out some of the inequities of the formula system.

Thank you very much for considering our views on this important issue. We greatly appreciate the enormous efforts that all of you have put into resolving the Indian trust funds litigation.

Sincerely,

JEFFERSON KEEL,
NCAI President.

Mr. BARRASSO. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

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

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

ARTHUR S. FLEMMING AWARDS 2009

Mr. KAUFMAN. Madam President, I rise today once again to recognize some of our Nation's great Federal employees.

This week, the Trachtenberg School at the George Washington University announced the winners of the annual Arthur S. Flemming Awards. These distinguished awards for public service have been bestowed upon outstanding Federal employees for the past 61 years. The Flemming Awards recognize career Federal employees, both civilian and military, who have served between 3 and 15 years in government. Nominees come from across the many departments, agencies, and service branches. Notable winners include former Senators Elizabeth Dole and Daniel Patrick Moynihan, Defense Secretary Robert Gates, former Federal Reserve Chairman Paul Volcker, astronaut Neil Armstrong, among others.

The awards are named for Arthur S. Flemming, who had a long and exemplary career in public service which spanned from 1939 until his death in 1996. He served in a number of important roles, including Secretary of Health, Education, and Welfare under President Eisenhower.

Secretary Flemming also served on the U.S. Civil Service Commission under Presidents Roosevelt and Truman, the National Advisory Committee on the Peace Corps under Presidents Kennedy and Johnson, and as Chairman of the U.S. Commission on Civil Rights under Presidents Nixon, Ford, Carter, and Reagan. President Clinton awarded him the Medal of Freedom in 1994.

It is fitting that these awards, which were originally bestowed by the DC Jaycees, are named for Flemming. His lifetime of dedication to public service continues to inspire so many.

The Flemming Awards are divided into three categories: applied science, engineering, and mathematics; basic science; and managerial or legal achievement. These categories highlight some of the most outstanding and exciting accomplishments by our public servants who are helping to lead the way in scientific discovery, efficient public management, and upholding justice.

This year's medals in applied science, engineering, and mathematics were won by a trio of brilliant individuals who are keeping America at the forefront of STEM research.

Dr. Lynn Antonelli is leading the way in developing laser-based sensors for the Navy. The sensors she and her team created have found commercial and medical applications, in addition to providing our Navy vessels with extended optics and sensing underwater.

Dr. Steven Brown of the National Institute of Standards and Technology—or NIST—also works with light. He and his team have made great strides in the field of light measurement that have enabled more detailed environmental imaging of the Earth. His work is revolutionizing the ability to detect minute changes in the environment as a result of climate change.

Also winning the applied science, engineering, and mathematics award is Dr. John Kitching. John has been leading the world's top research program in atomic measurement. He and his team developed ultra-miniature devices that can improve the accuracy of GPS, telecommunications, and medical imaging. They even have important national security uses, including in the more accurate detection of chemical toxins.

The three Federal employees who won this year's award for basic science are pioneers on the cutting edge of science research.

Dr. Dietrich Leibfried is one of NIST's leading experts on quantum computing. This exciting field could lead to supercomputers faster and more powerful than the best ones we have today. Dietrich Leibfried is responsible for many innovations in quantum computing, including the successful demonstration of a simple, fully programmable quantum computer, the first step in a long-term effort to build supercomputers that can handle nationally important applications, such as weather prediction, secure data encryption, and developing new drugs.

The basic science award is also going to Dr. Shyam Sharan of the National Cancer Institute at the National Institutes of Health. He has developed a simple and reliable way to analyze genetic mutations that increase a patient's chances of developing breast cancer. This will help doctors identify those who have the highest risk of cancer and treat them preventively.

Sharing the award with them is Dr. Eite Tiesinga, who works at NIST on ultra-cold atoms. By manipulating these atoms, scientists can carefully tune the quantum gases that might one day power quantum computers. Eite is frequently asked by researchers around the world to consult on their measurements and findings, and his work on ultra-cold atoms has put the United States ahead in the race to achieve successful quantum computing.

Four outstanding public employees were chosen for this year's managerial and legal achievement medal.

Angela Clowers works at the Government Accountability Office, and she led the GAO's efforts to audit transportation investments made under the Recovery Act. Her careful analysis and testimony before Congress prompted the Department of Transportation to refocus some of its investments in order to stimulate additional job growth. Angela also led the GAO's audit of government assistance to the American auto industry under TARP.

Another who won this award is Dr. Marla Dowell of NIST'S laboratory in Boulder, CO. Marla leads the world's most comprehensive research program in laser metrology. She won this award for outstanding management skills and for leading a team that is developing lasers for highly accurate measurement of manufacturing equipment. This will have profound and positive effects on both defense programs and high-tech businesses.

Kana Enomoto won the award for a distinguished career working on mental health access. She served as a leader in this area in the aftermath of Hurricane Katrina through her work at the Substance Abuse and Mental Health Services Administration. Kana also spearheaded efforts to improve the agency's operations, human resource management, and other critical functions as the Acting Deputy Administrator.

The fourth winner of this award is Natalie Harrop of the Air Force Global Logistics Center in Utah. Natalie distinguished herself as a lead budget analyst for the Air Force's 748th Supply Chain Management Group. She revolutionized the group's financial management, and her new system is being implemented across the 448th Supply Chain Management Wing. It is saving hundreds of work hours and over $5 million.

These 10 men and women are not an exception, they are exemplary. They represent the norm of excellence of our civil service. They have achieved great things and now join the ranks of those who share the Arthur S. Flemming Award for their great contribution to our Nation.

I hope my colleagues will join me in congratulating the winners of the 2009 Arthur S. Flemming Awards and thanking them all for their service. They are all truly great Federal employees.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BEGICH. Mr. President, I ask unanimous consent that the following amendments be debated concurrently for the total time specified in this agreement: Sanders, 4318; Vitter, 4312; Franken, 4311; that the Franken amendment be modified with the changes at the desk; with the debate time divided as follows: 20 minutes equally divided between Senators SANDERS and INHOFE; 20 minutes equally divided between Senators BAUCUS and VITTER or their designees; and 20 minutes equally divided between Senators FRANKEN and VITTER or their designees, with no intervening amendments in order; that each of the listed amendments in this agreement be subject to an affirmative 60-vote threshold; and that if the amendment, as modified where applicable, achieves that threshold, then it be agreed to and the motion to reconsider be laid upon the table; that if the amendment does not achieve that threshold, then it be withdrawn; that prior to each vote, there be 2 minutes of debate, equally divided and controlled, and that after the first vote, the succeeding votes be limited to 10 minutes each; that upon the use or yielding back of the total time specified above, the Senate proceed to vote in relation to the amendments in the order listed.

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

The amendment (No. 4311), as modified, is as follows:

At the appropriate place, insert the following:

TITLE ___—OFFICE OF THE HOMEOWNER ADVOCATE

SEC. __01. OFFICE OF THE HOMEOWNER ADVOCATE.

(a) ESTABLISHMENT.—There is established in the Department of the Treasury an office to be known as the ''Office of the Homeowner Advocate'' (in this subtitle referred to as the ''Office'').

(b) DIRECTOR.—

(1) IN GENERAL.—The Director of the Office of the Homeowner Advocate (in this subtitle referred to as the ''Director'') shall report directly to the Assistant Secretary of the Treasury for Financial Stability, and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.

(2) APPOINTMENT.—The Director shall be appointed by the Secretary, after consultation with the Secretary of the Department of Housing and Urban Development, and without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service or the Senior Executive Service.

(3) QUALIFICATIONS.—An individual appointed under paragraph (2) shall have—

(A) experience as an advocate for homeowners; and

(B) experience dealing with mortgage servicers.

(4) RESTRICTION ON EMPLOYMENT.—An individual may be appointed as Director only if such individual was not an officer or employee of either a mortgage servicer or the Department of the Treasury during the 4-year period preceding the date of such appointment.

(5) HIRING AUTHORITY.—The Director shall have the authority to hire staff, obtain support by contract, and manage the budget of the Office of the Homeowner Advocate.

SEC. __02. FUNCTIONS OF THE OFFICE.

(a) IN GENERAL.—It shall be the function of the Office—

(1) to assist homeowners, housing counselors, and housing lawyers in resolving problems with the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary, authorized under the Emergency Economic Stabilization Act of 2008 (in this subtitle referred to as the ''Home Affordable Modification Program'')

(2) to identify areas, both individual and systematic, in which homeowners, housing counselors, and housing lawyers have problems in dealings with the Home Affordable Modification Program;

(3) to the extent possible, to propose changes in the administrative practices of the Home Affordable Modification Program, to mitigate problems identified under paragraph (2);

(4) to identify potential legislative changes which may be appropriate to mitigate such problems; and

(5) to implement other programs and initiatives that the Director deems important to assisting homeowners, housing counselors, and housing lawyers in resolving problems with the Home Affordable Modification Program, which may include—

(A) running a triage hotline for homeowners at risk of foreclosure;

(B) providing homeowners with access to housing counseling programs of the Department of Housing and Urban Development at no cost to the homeowner;

(C) developing Internet tools related to the Home Affordable Modification Program; and

(D) developing training and educational materials.

(b) AUTHORITY.—

(1) IN GENERAL.—Staff designated by the Director shall have the authority to implement servicer remedies, on a case-by-case basis, subject to the approval of the Assistant Secretary of the Treasury for Financial Stability.

(2) RESOLUTION OF HOMEOWNER CONCERNS.—The Office shall, to the extent possible, resolve all homeowner concerns not later than 30 days after the opening of a case with such homeowner.

(c) COMMENCEMENT OF OPERATIONS.—The Office shall commence its operations, as required by this subtitle, not later than 3 months after the date of enactment of this Act.

(d) SUNSET.—The Office shall cease operations as of the date on which the Home Affordable Modification Program ceases to operate.

SEC. __03. RELATIONSHIP WITH EXISTING ENTITIES.

(a) TRANSFER.—The Office shall coordinate and centralize all complaint escalations relating to the Home Affordable Modification Program.

(b) HOTLINE.—The HOPE hotline (or any successor triage hotline) shall reroute all complaints relating to the Home Affordable Modification Program to the Office.

(c) COORDINATION.—The Office shall coordinate with the compliance office of the Office of Financial Stability of the Department of the Treasury and the Homeownership Preservation Office of the Department of the Treasury.

SEC. __04. RULE OF CONSTRUCTION.

Nothing in this section shall prohibit a mortgage servicer from evaluating a homeowner for eligibility under the Home Affordable Foreclosure Alternatives Program while a case is still open with the Office of the Homeowner Advocate. Nothing in this section may be construed to relieve any loan services from otherwise applicable rules, directives, or similar guidance under the Home Affordable Modification Program relating to the continuation or completion of foreclosure proceedings.

SEC. __05. REPORTS TO CONGRESS.

(a) TESTIMONY.—The Director shall be available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, not less frequently than 4 times a year, or at any time at the request of the Chairs of either committee.

(b) REPORTS.—Once annually, the Director shall provide a detailed report to Congress on the Home Affordable Modification Program. Such report shall contain full and substantive analysis, in addition to statistical information, including, at a minimum—

(1) data and analysis of the types and volume of complaints received from homeowners, housing counselors, and housing lawyers, broken down by category of servicer, except that servicers may not be identified by name in the report;

(2) a summary of not fewer than 20 of the most serious problems encountered by Home Affordable Modification Program participants, including a description of the nature of such problems;

(3) to the extent known, identification of the 10 most litigated issues for Home Affordable Modification Program participants, including recommendations for mitigating such disputes;

(4) data and analysis on the resolutions of the complaints received from homeowners, housing counselors, and housing lawyers;

(5) identification of any programs or initiatives that the Office has taken to improve the Home Affordable Modification Program;

(6) recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by Home Affordable Modification Program participants; and

(7) such other information as the Director may deem advisable.

SEC. __06. FUNDING.

Amounts made available for the costs of administration of the Home Affordable Modification Program that are not otherwise obligated shall be available to carry out the duties of the Office. Funding shall be maintained at levels adequate to reasonably carry out the functions of the Office.

SEC. __07. PROHIBITION ON PARTICIPATION IN MAKING HOME AFFORDABLE FOR BORROWERS WHO STRATEGICALLY DEFAULT.

No mortgage may be modified under the Making Home Affordable Program, or with any funds from the Troubled Asset Relief Program, unless the servicer of the mortgage loan has determined, in accordance with standards and requirements established by the Secretary of the Treasury, that the mortgagor cannot afford to make payments under the terms of the existing mortgage loan. The Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, shall issue rules to carry out this section not later than 90 days after the date of enactment of this Act.

SEC. __08. PUBLIC AVAILABILITY OF INFORMATION.

(a) PUBLIC AVAILABILITY OF DATA.—The Secretary of the Treasury shall revise the guidelines for the Home Affordable Modification Program of the Making Home Affordable initiative of the Secretary of the Treasury, authorized under the Emergency Economic Stabilization Act of 2008 (Public Law 110–343), to establish that the data collected by the Secretary of the Treasury from each mortgage servicer and lender participating in the Program is made public in accordance with subsection (2).

(b) CONTENT.—Not more than 60 days after each monthly deadline for submission of data by mortgage servicers and lender participating in the program, the Treasury shall make all data tables available to the public at the individual record level. This data shall include but not be limited to—

(1) higher risk loans, including loans made in connection with any program to provide expanded loan approvals, shall be reported separately;

(2) disclose—

(A) the rate or pace at which such mortgages are becoming seriously delinquent;

(B) whether such rate or pace is increasing or decreasing;

(C) if there are certain subsets within the loans covered by this section that have greater or lesser rates or paces of delinquency; and

(D) if such subsets exist, the characteristics of such subset of mortgages;

(3) with respect to the loss mitigation efforts of the loan—

(A) the processes and practices that the reporter has in effect to minimize losses on mortgages covered by this section; and

(B) the manner and methods by which such processes and practices are being monitored for effectiveness;

(4) disclose, with respect to loans that are or become 60 or more days past due, (provided that for purposes of disclosure under this paragraph that each loan should have a unique number that is not the same as any loan number the borrower, originator, or servicer uses), the following attributes—

(A) the original loan amount;

(B) the current loan amount;

(C) the loan-to-value ratio and combined loan-to-value ratio, both at origination and currently, and the number of liens on the property;

(D) the property valuation at the time of origination of the loan, and all subsequent property valuations and the date of each valuation;

(E) each relevant credit score of each borrower obtained at any time in connection with the loan, with the date of the credit score, to the extent allowed by existing law;

(F) whether the loan has any mortgage or other credit insurance or guarantee;

(G) the current interest rate on such loan;

(H) any rate caps and floors if the loan is an adjustable rate mortgage loan;

(I) the adjustable rate mortgage index or indices for such loan;

(J) whether the loan is currently past due, and if so how many days such loan is past due;

(K) the total number of days the loan has been past due at any time;

(L) whether the loan is subject to a balloon payment;

(M) the date of each modification of the loan;

(N) whether any amounts of loan principal has been deferred or written off, and if so, the date and amount of each deferral and the date and amount of each writedown;

(O) whether the interest rate was changed from a rate that could adjust to a fixed rate, and if so, the period of time for which the rate will be fixed;

(P) the amount by which the interest rate on the loan was reduced, and for what period of time it was reduced;

(Q) if the interest rate was reduced or fixed for a period of time less than the remaining loan term, on what dates, and to what rates, could the rate potentially increase in the future;

(R) whether the loan term was modified, and if so, whether it was extended or shortened, and by what amount of time;

(S) whether the loan is in the process of foreclosure or similar procedure, whether judicial or otherwise; and

(T) whether a foreclosure or similar procedure, whether judicial or otherwise, has been completed.

(c) GUIDELINES AND REGULATIONS.—The Secretary of the Treasury shall establish guidelines and regulations necessary—

(1) to ensure that the privacy of individual consumers is appropriately protected in the reports under this section;

(2) to make the data reported under this subsection available on a public website with no cost to access the data, in a consistent format;

(3) to update the data no less frequently than monthly;

(4) to establish procedures for disclosing such data to the public on a public website with no cost to access the data; and

(5) to allow the Secretary to make such deletions as the Secretary may determine to be appropriate to protect any privacy interest of any loan modification applicant, including the deletion or alteration of the applicant's name and identification number.

(d) EXCEPTION.—No data shall have to be disclosed if it voids or violates existing contracts between the Secretary of Treasury and mortgage servicers as part of the Making Home Affordable Program.

Mr. BEGICH. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, this country has a $13 trillion national debt and a record-breaking deficit, and it is time we began to address that issue.

This country has the potential now to transform our energy system away from fossil fuel, away from offshore drilling into energy efficiency and sustainable energy, and when we do that, we create millions of good-paying jobs over a period of years. That is what this amendment does.

Over the last decade, the five largest oil companies in America—ExxonMobil, Chevron, ConocoPhillips, BP, and Shell—made over $750 billion in profits. These profitable companies do not deserve to continue to have major tax breaks that in some cases not only prevent them from paying anything in taxes but enable them to get huge tax refunds from the IRS.

What the Sanders-Menendez-Whitehouse-Wyden-Lautenberg amendment would do is eliminate three major loopholes. It would bring $35 billion into our coffers over a 10-year period. It would use $25 billion of those $35 billion for deficit reduction. It would use $10 billion to fund energy conservation and sustainable energy and in the process create over 100,000 new jobs over a period of years.

It may make sense to somebody, but it does not make sense to me that we have a company such as ExxonMobil, which has been the most profitable company in the history of the world, making huge profits and last year not only paying nothing in taxes but getting a refund from the Treasury of $156 million. Let me repeat that. ExxonMobil, the most profitable corporation in the history of the world—year after year, huge profits—last year not only paid nothing in taxes but received a $156 million check from the taxpayers of this country to help them. That is absurd.

ExxonMobil is not the only company to enjoy that kind of outrageous tax treatment. Chevron received a $19 million tax refund; Valero Energy, a $157 million refund; and ConocoPhillips received over $450 million in tax breaks from the oil and gas manufacturing deduction over the past 3 years.

I am going to yield the floor in a moment because I want to refute some of what my friend from Oklahoma will be saying.

Here is what the bottom line is. The bottom line is we have a huge deficit and huge tax breaks for profitable corporations. We have the opportunity now to do what President Obama put into his 2011 budget and eliminate those tax breaks, bring $35 billion more into the Treasury—$25 billion for deficit reduction and $10 billion to create over 100,000 new jobs as we make our country more energy efficient and we move to sustainable energy.

With that, I yield the remainder of my time.

Mr. INHOFE. The Senator is yielding the remainder of is time?

Mr. SANDERS. I reserve the remainder of my time. I reserve the remainder of my time.

Mr. INHOFE. I thank my friend from Vermont. I know my friend from Vermont would not intentionally say something that is not true. Sometimes he does not have and sometimes I do not have the actual facts, so inadvertently we might misrepresent.

Let me just say as far as Exxon is concerned that from 2004 to 2008, they paid more than $18 billion in U.S. Federal income taxes, and that is just some of the taxes they pay.

I have to say this, though. The whole discussion on this—the Sanders bill would effectively put the small and the marginal producers in America out of business. Before I go into that in any detail, let me just share this. It is interesting, when I listen to liberals talk about doing away with drilling, with oil and gas and coal and nuclear—if you do that, you cannot run this machine called America. Every time they talk about doing something to stop production, as they are doing right now in the gulf—a lot of these people are using and exploiting the tragedy in the gulf to try to retard or stop all production in America. Consequently, this is something where we would be in a position where we would be so rationed in oil and gas that we would have to be more dependent on many of these countries on which we do not want to be dependent.

We did a study. I think this would surprise the Chair. If we didn't have any political restrictions on what we could do in North America, we could completely eliminate our reliance upon the Middle East for any gas or oil within 4 years. That is pretty shocking. Our problem is not that we do not have enough oil and gas. We have more reserves than any other country. A CRS report came out with that just the other day.

What I want to do is give my honorable friend a chance to respond to my statement, and then I will reserve the remainder of my time to discuss in a little more detail how this affects the very small, marginal operators in America.

Mr. SANDERS. I will take just a few minutes now.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. I will reserve the remainder of my time. But let me say this to my friend from Oklahoma, who I know is an honest guy. We disagree. We have differences of opinion. It was not my suggestion that ExxonMobil did not pay taxes over those years. That was not my suggestion. But let me say this. He mentioned that they do pay taxes, which is true. But let's understand that ExxonMobil was the most profitable corporation in the history of the world from 2006 through 2008, making $40 billion in profits in 2006, $41 billion in 2007, and $45 billion in 2008. In the midst of a recession, my understanding is they made $19 billion in profits last year.

Would my friend from Oklahoma deny that despite making these huge profits last year, $19 billion, they received—they paid zero in 2009 and in fact received a $156 million refund from the taxpayers of this country? I hope my friend from Oklahoma would comment on whether that is good public policy.

With that, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I would say first of all, whether that is good policy—I think you have to have the accurate input before you make a policy determination. The oil and gas industry is very complicated. In order for them to go out and risk their capital, they have to plow this money back in. Frankly, most of it is plowed back into exploration.

What I wanted to get across, which I think is important, is that the Sanders

amendment repeals three things—first of all, expensing for intangible drilling costs; that is IDC. It repeals percentage depletion for marginal oil and gas wells. It repeals the manufacturing deduction for oil and gas.

I predicted a long time ago, when the gulf spill took place, that people were going to try to parlay this into something to punish oil and gas. This is what they have been trying to do for a long time. It could very well be that tonight, when the President makes his big speech, he is going to talk about, now we are going to have to look at cap and trade, as if there is some relationship between what happened in the gulf and cap and trade.

Repealing expensing of intangible drilling costs eliminates the ability to expense intangible drilling and development costs, which would force at least a 25- to 30-percent reduction in drilling budgets, leading to lost jobs, lost production, and higher prices to consumers. On the floor of the Senate yesterday, I spent some time talking about how many jobs actually would be lost in the State of Louisiana. But the IDC is an expensing-out item that has been in our Tax Code since 1913. It really only applies to the smaller operators, so they are the ones who are singled out for oil and gas production.

Likewise, since 1926 small producers and millions of royalty owners have had the option to utilize percentage depletion to both simplify and account for the decline in the value of minerals from a property. As you know, they do deplete as you produce minerals.

Who is going to pay the most for this? I will share with you who pays for this, but right now I will yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Let me say to my friend from Oklahoma, who talked about the oil companies plowing their money back into new wells, that the big five oil companies spent $270 billion over the past decade buying back their own stock—about $100 billion more than they spent on oil exploration.

My friend from Oklahoma talks about jobs. That is obviously an important issue. I would concede there may be some job loss here, but it is matched by an investment in sustainable energy that will create far more employment than the relatively small number of jobs that might be lost.

I would mention Dr. Krueger, the Chief Economist at the Treasury Department. He has estimated that repealing these tax breaks would lead to a decline in employment in oil and gas production of less than one-half of 1 percent at most. That translates into the potential loss of 1,650 jobs in the oil and gas industry. I do not mean to minimize that. One job lost is one job too many. But on the other hand, in this bill we put $10 billion into the Energy Efficiency and Conservation Block Grant Program, where the estimate is we can create 140,000 jobs over the same period of time. On one hand, we might lose 1,600 jobs; on the other hand, we gain 140,000 jobs.

With that, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Let me mention one thing I want to make sure I get in here before we run out of time. We went through this class warfare once back in 1980. We had Jimmy Carter as President of the United States. He had the windfall profits tax. I am sure my friend from Vermont remembers that at that time. I remember it well. That is when they were going to have a windfall profits tax on the oil and gas industry. The results of that:

> The WPT reduced domestic production between 3 and 6 percent and increased oil imports from 8 to 16 percent. . . . This made the United States more dependent upon imported oil.

That is the Congressional Research Service, which is nonpartisan.

That is a major issue here in terms of our dependence on other countries for our ability to run this machine called America.

Let's get back to the percentage depletion. The percentage depletion is particularly important for the production of America's over 600,000 low-volume marginal wells. The average marginal well produces 2 barrels a day.

Let me tell you what that is so my colleagues, when they get ready to vote, will really understand whom they are affecting. A marginal well is a well producing under 15 barrels per day. The average is 2 barrels a day. My friend is talking about all these big giants. I am not nearly as concerned about the big five and the majors as I am about my marginal operators in my State of Oklahoma. With an average of 2 barrels a day, the marginal producers actually account for 28 percent of all domestic production in the lower 48 States—28 percent. These are all small people.

If you are concerned also about whom you are affecting by this legislation, look at the royalty owners. There are literally millions of royalty owners. They have maybe a small piece of property, maybe their homestead. They are the ones who would be denied the use of their land. By putting the small ones out of business, they are the ones you are damaging.

I will reserve the remainder of my time.

Mr. SANDERS. Mr. President, how much time does Senator INHOFE have?

The PRESIDING OFFICER. The Senator from Oklahoma has 1½ minutes and the Senator from Vermont 3 minutes.

Mr. SANDERS. I have 3 minutes?

The PRESIDING OFFICER. Yes.

Mr. SANDERS. Mr. President, what we are talking about now is beginning to address the deficit issue in a significant way, and $25 billion over a 10-year period is a good start. I think we cannot continue to have people coming down to the floor of the Senate and saying: Think about the legacy we are leaving our children and grandchildren. And then when it really comes to the point of doing something, of saying to ExxonMobil, which made $19 billion in profit last year and got a $156 million refund from the IRS, you can't have it both ways, this is a time to stand up and do the right thing. Again, it is not just ExxonMobil. It is Chevron, which received a $19 million refund from the IRS. It is Valero Energy, the 25th largest company in America with $68 billion of sales last year and received a $157 million refund check.

What we have the opportunity to do now is to, in fact, address the deficit crisis—$25 billion over a 10-year period; create over 100,000 new jobs over that period as we move into energy efficiency and sustainable energy.

With that, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Let me correct this again. I had already stated that the statement my good friend from Vermont made was a false statement, inadvertently, in terms of Exxon and what they had paid. I commented that they paid more than $18 billion in the years between 2004 and 2008. He returned and said in 2009 is when they have not paid any. They have already paid $½ billion in 2009 in U.S. Federal income tax, and they will not know the final liability until they file a return later this year. So they are still doing it. The information that my good friend has is false.

Getting back to the bill and who this affects, it doesn't affect Exxon, BP, and all these giant companies. It is the small producers that will be driven out of business. Without being able to do the deduction of the expenses on manufacturing, if this bill passes, this is going to single out the oil and gas industry, the only industry that does not enjoy the same deductions. They are punitive to this industry because right now it is quite obvious they are trying to exploit the tragedy in the gulf.

It is my understanding I have a minute and a half remaining.

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

Mr. INHOFE. I am timing it. It can't be expired.

The PRESIDING OFFICER. The Senator had a minute and a half when he started this segment.

Mr. INHOFE. Since my colleague has the last say, may I have 30 seconds to finish? I was going to respond to the comment about the deficit. We ought to be concerned. I am concerned about the deficit. What is interesting about this debate, I am ranked by the National Journal as the most conservative Member of the Senate. I suggest my proud liberal friend from Vermont is probably on the other end of the spectrum.

If we look at who is responsible for deficit spending, I think Members will find he would be more responsible than

I would. I thank the Senator for the additional 30 seconds.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. I am not a liberal but a progressive. Sometime we will talk about the difference.

Mr. President, I did not vote for the $3 trillion war in Iraq. I did not vote for the hundreds of billions of dollars in tax breaks. I did not vote for the Medicare Part D Program which drove up the deficit altogether as a matter of fact. I suspect my friend may have voted the other way on all of those issues which were not paid for.

In terms of ExxonMobil, let's be clear. I don't know what ExxonMobil told my colleague, but I ask unanimous consent to have printed in the RECORD what ExxonMobil told the Securities and Exchange Commission, the SEC. What is reported by the SEC for 2009 is they received a $156 million refund. That is the SEC.

I ask unanimous consent to have this printed in the RECORD.

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

FORM 10–K—ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—18. INCOME, SALES-BASED AND OTHER TAXES

[Millions of dollars]

	2009			2008			2007		
	U.S.	Non-U.S.	Total	U.S.	Non-U.S.	Total	U.S.	Non-U.S.	Total
Income taxes:									
Federal and non-U.S.:									
Current	$ (838)	$15,830	$14,992	$3,005	$31,377	$34,382	$4,666	$24,329	$28,955
Deferred—net	650	(665)	(15)	168	1,289	1,457	(439)	415	(24)
U.S. tax on non-U.S. operations	32	.....	32	230	.....	230	263	.....	263
Total federal and non-U.S.	(156)	15,165	15,009	3,403	32,666	36,069	4,490	24,744	29,234
State	110	.....	110	461	.....	461	630	.....	630
Total income taxes	(46)	15,165	15,119	3,864	32,666	36,530	5,120	24,744	29,864
Sales-based taxes	6,271	19,665	25,936	6,646	27,862	34,508	7,154	24,574	31,728
All other taxes and duties:									
Other taxes and duties	581	34,238	34,819	1,663	40,056	41,719	1,008	39,945	40,953
Included in production and manufacturing expenses	699	1,318	2,017	915	1,720	2,635	825	1,445	2,270
Included in SG&A expenses	197	538	735	209	660	869	215	653	868
Total other taxes and duties	1,477	36,094	37,571	2,787	42,436	45,223	2,048	42,043	44,091
Total	$7,702	$70,924	$78,626	$13,297	$102,964	$116,261	$14,322	$91,361	$105,683

All other taxes and duties include taxes reported in production and manufacturing and selling, general and administrative (SG&A) expenses. The above provisions for deferred income taxes include net credits for the effect of changes in tax laws and rates of $9 million in 2009, $300 million in 2008 and $258 million in 2007.

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

Mr. SANDERS. Allow me to finish my remarks. This is where we are. Where we are right now is a moment at which we either go forward or not, be serious or not. We hear day after day concerns about the deficit. What we know is the oil industry, year after year, has been enormously profitable. We know in 2009 a number of oil companies, including ExxonMobil, did not pay any taxes. Let's do something about it. Let's pass this amendment.

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

The Senator from Louisiana.

AMENDMENT NO. 4312

Mr. VITTER. Mr. President, I stand in strong support of my amendment No. 4312. I urge all colleagues, Democrats and Republicans, to come together to pass this commonsense amendment.

What is this amendment about? It is about something that is of great concern to me, representing the State of Louisiana. It is about the Oil Spill Liability Trust Fund. It is about the ongoing crisis in the gulf. I am afraid what it is about is an example of that now famous quote of the White House Chief of Staff, Rahm Emanuel, who, around February 2009, said: We are not going to let a good crisis go to waste. He was talking about the financial crisis. I am afraid that same attitude, that same politicization of real crises is going on with the ongoing oil disaster in the gulf.

This is a real crisis, an ongoing crisis, an ongoing disaster. The flow continues. It is so significant—even subtracting out the amount of oil BP is capturing, it is so significant that it is like a whole new major oilspill each and every day. It goes on and on and on.

What is the provision in this bill in relation to that crisis? In this bill there is a dramatic increase in the tax to fund the Oil Spill Liability Trust Fund from 8 cents per barrel to 41 cents, over a fivefold increase. If that were going into that liability trust fund, and if it were staying there for oil cleanup, we could come together and probably support that effort in a bipartisan way. But instead, what has happened?

As soon as all of that new revenue goes into the trust fund, $15 billion over 10 years, it is stolen. It is spent on unrelated spending. It isn't a true trust fund. It is spent on other government deficit spending. It is used essentially to hide deficit spending elsewhere. It is double counting, what I call Enron accounting. If a private company were doing this and putting this in their prospectus, putting this in their SEC reports, they would be prosecuted for criminal fraud.

My amendment is simple. It says two things: Anything that goes into the Oil Spill Liability Trust Fund can only be used to clean up oilspills. Pretty basic, pretty simple. Secondly, it cannot be double counted, used as an offset for other unrelated government deficit spending. That is pretty simple. I think it is a minimum requirement we should ask in the midst of this ongoing crisis in the gulf.

Again, are we going to treat that as a real crisis and address the challenge that is there or are we going to use and abuse that crisis in Washington to advance preexisting agendas such as big government spending, additional deficit, trying to mask and hide those? I suggest the only responsible thing to do is to treat the crisis for what it is, to respect the people of the gulf and to pass this Vitter amendment that says, No. 1, money into that trust fund can only be used to clean up oilspills; and, No. 2, it cannot be double counted to mask other deficit spending.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Minnesota.

AMENDMENT NO. 4311

Mr. FRANKEN. Mr. President, I rise to tell a very important story. Some of my colleagues have heard me talk previously about a woman named Tecora, a homeowner from south Minneapolis who is at risk of losing her home. Back in 2005, Tecora was looking for a mortgage and said she asked her bank for a conventional mortgage with fixed payments. Presented with a series of options, she unsurprisingly chose the cheapest one. Yet the simple option got her an exotic mortgage called an option ARM or an adjustable rate mortgage. Now her monthly payments have doubled over time and Tecora now owes $317,000 on a $288,000 loan.

During the housing bust and paying double what she was initially paying on her mortgage, Tecora started having trouble with her payments. Hoping to save her home, Tecora entered President Obama's HAMP program which is intended for people who want to avoid foreclosure.

One day, however, her mortgage servicer informed her that her file was closed because she ''voluntarily left the HAMP program.'' Here is the problem. She didn't. She never did. Tecora never asked that her file be closed. She never tried to leave the program. Now every

day she worries anew about losing her home simply because her servicer made a mistake. Tecora worked hard her whole life, but now she looks to the future in fear.

''I'm squeaking by,'' she told the Minneapolis Star Tribune, ''by the plaque on my teeth.''

As USA TODAY reported in March, these kinds of problems happen all too frequently. In an article entitled ''Homes Can Be Lost by Mistake When Banks Miscommunicate''—a headline that says exactly what it sounds like: homes can be lost by mistake when banks miscommunicate—the author detailed a pattern of bank errors within HAMP that have led to people losing their homes or almost losing their homes. It should not have to be this way. That is why I have offered an amendment with Senators SNOWE and MURRAY, amendment No. 4311, to create an Office of the Homeowner Advocate for people who are struggling with problems in the HAMP program.

This amendment is currently pending to the tax extenders bill. The tax extenders bill aims to help people who are suffering during this economic crisis. It includes extensions of unemployment insurance for people who have lost their job during the recession. It promotes American jobs by continuing the small business lending program which has helped create or retain over 650,000 jobs since its creation. It includes money for the national housing trust fund which will create jobs and help ensure people have affordable places to live.

Our Office of the Homeowner Advocate would continue this effort to provide a safety net to people who are struggling economically. In particular, it would help one of the groups of people who have suffered the most during the recession—homeowners. Our Office of the Homeowner Advocate is modeled after the very successful Office of the Taxpayer Advocate at the IRS. It would ensure that homeowners participating in the HAMP program know that someone is on their side, someone with the authority to actually fix the mistakes created by mortgage servicers participating in HAMP. When homeowners call this office with concerns, the office has two important powers. First, it can make sure servicers actually obey the rules of the program or suffer the consequences. Second, it ensures that the bank would not be able to sell people's homes right away, giving the homeowner advocate time to actually solve the problem. The office is temporary, lasting only as long as HAMP does. But while it lasts, it ensures that homeowners would not be losing their homes because of simple errors.

This amendment is supported by the Treasury Department. When we first filed the amendment to the Wall Street reform bill, the White House declared it one of the top 10 amendments that would improve the Wall Street reform bill. Unfortunately, the amendment didn't receive a vote. So we are bringing it to the Senate once again to ensure that homeowners in all of our States have the protections they need.

The amendment is supported by consumer groups from around the country, ranging from Americans for Financial Reform to Consumers Union, SEIU, and the National Council of La Raza. It is also supported by the superintendent of the New York State banking system, who calls it a big step forward for homeowners.

Significantly, Congress will not have to authorize any additional appropriations for this amendment. Let me say that again: Congress will not have to authorize any additional appropriations for this amendment. The office would be funded entirely by existing HAMP administrative funds. I am going to say it again. We will be helping homeowners without authorizing any new money at all—nothing, zero, zip.

I was pleased to work with Senator VITTER, who just spoke, to make this amendment even stronger by ensuring that no homeowner can game the system and still participate in HAMP, and also by increasing the transparency of the program. These two changes are incorporated in this modification to our amendment, which also incorporates some changes suggested by Senator SHELBY to ensure that the Homeowner Advocate process does not overly delay appropriate foreclosures.

I hope my colleagues see that the Homeowner Advocate is an easy way to help homeowners in all our hometowns—in Minnesota, in Arkansas, all over this country—get the protections they need to keep their homes. Let's adopt this amendment and stand up for homeowners everywhere in this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Montana.

AMENDMENT NO. 4312

Mr. BAUCUS. Mr. President, I wish to speak in opposition to the Vitter amendment.

The Senator from Louisiana is essentially offering an amendment which has the effect of preventing the oilspill liability tax from going into effect. This is a head-scratching amendment. Why in the world would any Senator suggest there be no increase in the oilspill liability tax?

Right now, beginning in about—let's see, what year was it?—1990, Congress, in the wake of the *Exxon Valdez* oilspill, enacted an Oil Spill Liability Trust Fund and oilspill liability tax, obviously, to pay for potential or future oilspills. The tax was set at 5 cents a barrel. In the 20 years since that time, the tax has been increased just 3 cents to 8 cents a barrel. At the same time, the price of oil has increased, since 1990, from the neighborhood of $20 a barrel to $72 a barrel today. Within the last 2 years, oil has been as high as $147 a barrel.

So with the increased evidence of the damage oilspills can create, and with the increased price of oil, we thought it was an appropriate time to raise the oilspill liability tax on oil companies to help pay for future spills. That is why we are doing this. In this bill, we propose to raise that tax to 41 cents a barrel. That is a very modest increase, where today oil in the market is roughly $72 a barrel.

You hear this argument—it is not even an argument. It is like Alice in Wonderland stuff. I do not know where this stuff comes from. It is Alice in Wonderland stuff, that somehow we should not do this because it is double counting or something like that. The money that is raised from the oilspill liability tax goes to the Oil Spill Liability Trust Find. And our Federal Government has a cash flow system of accounting, so by definition we will start to lower the budget deficit. That is not double counting. That is just the way it works.

It sounds as though the Senator from Louisiana either does not want to lower the budget deficit or he does not want to increase the tax on oil companies from 8 cents a barrel, which is so small. The fact is, what he is doing is saying this: He is saying that the Budget Office, for budget purposes, cannot count the oilspill liability tax to reduce the budget deficit. So, in effect, what he is saying is, there is no oilspill liability tax. What he is saying is the taxpayers should pay for the cleanup, not the oil companies. That is basically what he is saying. He is basically saying—by putting the kibosh on the Oil Spill Liability Trust Fund and the revenue coming from it—that he wants to protect the oil companies, protect the oil companies from any increase in the taxes from 8 cents a barrel up to 41 cents a barrel and, rather, have the taxpayers pay for the cleanup, not the oil companies that would pay the increase in the oilspill liability tax but the taxpayers.

I do not think that is what the vast majority of Americans wish to see. I think that is over the top and I, therefore, urge my colleagues to roundly defeat the amendment from the Senator from Louisiana who, in effect, does not want the oilspill liability tax increased and, in effect, is saying, taxpayers, pay for the cleanup, not the oil companies.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana.

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

The PRESIDING OFFICER. The Senator has 5 minutes 43 seconds—all on this amendment.

Mr. VITTER. Mr. President, it is a little difficult to know where to start, since my good friend and colleague has said so many things that are flat out wrong.

No. 1, my amendment does not prevent the tax increase. That is absolutely and perfectly clear. Let me say

it again. My amendment does not block and does not prevent the tax increase.

No. 2, my amendment does do two things. It says that any money in the Oil Spill Liability Trust Fund can only be used for oilspill cleanup and, secondly, that it cannot be used to offset other spending. That is exactly what is going on in this bill.

My colleague knows that the $15 billion created by this tax increase is used as an offset in this bill. It masks spending in this bill of $15 billion. If it were not for that money, the ''score'' of this bill would be $15 billion higher. It would go from $79 billion to $94 billion.

What I am saying is simple. We should not be grabbing, stealing that oilspill liability money to mask other spending, to double count it, to essentially steal it from the trust fund.

Again, my amendment does not prohibit the tax increase. By the way, if my colleague thinks the oil companies are paying that tax, not the consumer, I do not think he understands how the world works. But my amendment does not block that tax increase. It simply says money in the Oil Spill Liability Trust Fund has to be used for oilspill cleanup, and it cannot be used as an offset, cannot be double counted for other spending, as it is clearly in this bill.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. VITTER. Mr. President, if everyone else is amenable, I am prepared to yield back—if everyone else is yielding back.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I believe there is a Senator who might want to speak on this amendment. We are tracking him down right now. So I suggest we do not yield back the remainder of our time.

Mr. VITTER. Then, 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. VITTER. 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. VITTER. Mr. President, I want to ensure that the quorum call does not run down my time.

The PRESIDING OFFICER. The Senator would like the time divided evenly?

Mr. VITTER. Yes, that would be my request, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered, on this amendment.

Mr. VITTER. 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. VITTER. 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. VITTER. Mr. President, I ask unanimous consent that all time on all amendments be yielded back. I believe that is amenable to everyone.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Louisiana.

VOTE ON AMENDMENT NO. 4318

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the Sanders amendment No. 4318.

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) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Florida (Mr. LEMIEUX) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 35, nays 61, as follows:

[Rollcall Vote No. 187 Leg.]

YEAS—35

Boxer	Harkin	Nelson (FL)
Brown (OH)	Kaufman	Reed
Burris	Klobuchar	Reid
Cantwell	Kohl	Rockefeller
Cardin	Lautenberg	Sanders
Carper	Leahy	Schumer
Casey	Levin	Shaheen
Durbin	McCaskill	Specter
Feingold	Menendez	Stabenow
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden
Gillibrand	Murray	

NAYS—61

Akaka	Crapo	Lugar
Alexander	DeMint	McCain
Barrasso	Dodd	McConnell
Baucus	Dorgan	Murkowski
Bayh	Ensign	Nelson (NE)
Begich	Enzi	Pryor
Bennet	Graham	Risch
Bennett	Grassley	Sessions
Bingaman	Gregg	Shelby
Bond	Hagan	Snowe
Brown (MA)	Hatch	Tester
Brownback	Hutchison	Thune
Bunning	Inhofe	Udall (CO)
Burr	Inouye	Udall (NM)
Chambliss	Isakson	Vitter
Coburn	Johanns	Voinovich
Cochran	Kerry	Warner
Collins	Kyl	Webb
Conrad	Landrieu	Wicker
Corker	Lieberman	
Cornyn	Lincoln	

NOT VOTING—4

Byrd	LeMieux
Johnson	Roberts

The PRESIDING OFFICER. On this vote, the yeas are 35, the nays are 61. Under the previous order, requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

Mr. SPECTER. Madam President, I voted for the Sanders amendment on tax incentives for oil and natural gas production to H.R. 4213, the Tax Extenders Act.

Pennsylvania is in the midst of a historic boom in natural gas production from the Marcellus Shale formation. This industry is on track to create hundreds of thousands of jobs in the Commonwealth, and billions of dollars in revenue, both of which are badly needed in my home State. But the development of one natural resource must proceed with the utmost care for two others: water and land. I know that the natural gas industry desires to maintain the tax incentives which would be removed by the Sanders amendment. President Obama has also proposed removing these tax incentives in his fiscal year 2011 budget proposal. However, I cannot support further incentives for natural gas until that industry agrees to full public disclosure of the chemical composition of its hydraulic fracturing fluids, which are used to break apart the shale deep underground and initiate the gas flow. There is placeholder language to this effect in the discussion draft of the Kerry-Lieberman American Power Act, and I hope that natural gas companies large and small will support these provisions as the bill, or another energy bill, moves forward into law. There are many issues that the natural gas industry must cooperate with the Commonwealth of Pennsylvania on, including hydraulic fracturing disclosure, wastewater recycling, responsible well development, and a severance tax. My support for incentives for natural gas will remain contingent on that industry demonstrating its commitment to developing the Marcellus Shale in a manner that all Pennsylvanians will look back on, generations from now, with pride.

Mr. GRASSLEY. Madam President, I opposed the amendment of my friend from Vermont. Although I understand his frustration and his intentions, I could not agree with the effects of the amendment. Over the years, as chairman and ranking member of the Finance Committee, I have supported policy reforms in taxation of oil and gas income. Many times, the major oil firms have registered their objections. Also, in the area of corporate taxation, I pushed hard to curtail a practice that oil firms used to erode the U.S. tax base. That practice, known as corporate inversions, was curtailed in the 2004 FSC-ETI legislation.

I re-doubled my efforts to make the reform applicable to four oil service firms but was rebuffed by the House of Representatives' leadership in the years 2004–2007.

Chairman BAUCUS and I have been careful to not impair tax incentives for independent, smaller producer oil and gas production. We have differentiated the availability of these incentives for smaller producers and made clear that major oil and gas producers did not receive many of these incentives.

The amendment of my friend from Vermont blurs that line and would adversely affect domestic production. We need to ensure an adequate supply of domestic oil and gas to keep the price at the pump down. Together with incentives for alternative fuels, line ethanol and biodiesel, and conservation, these small producer incentives with hopefully reduce our reliance on imported oil. Chairman BAUCUS joins me in this view.

For these reasons, I opposed the amendment of my friend from Vermont.

Mr. CONRAD. Madam President, section 302(a) of S. Con. Res. 13, the 2010 budget resolution, permits the chairman of the Senate Budget Committee to adjust the allocations of a committee or committees, aggregates, and other appropriate levels and limits in the resolution for legislation that invests in clean energy and preserves the environment, including legislation that encourages conservation and efficiency. This adjustment to S. Con. Res. 13 is contingent on the legislation not increasing the deficit over either the period of the total of fiscal years 2009 through 2014 or the period of the total of fiscal years 2009 through 2019.

I find that Senate amendment No. 4318, an amendment offered by Senator SANDERS to Senate amendment No. 4301, an amendment in the nature of a substitute to H.R. 4213, fulfills the conditions of the deficit-neutral reserve fund to invest in clean energy and preserve the environment. Therefore, pursuant to section 302(a), I am adjusting the aggregates in the 2010 budget resolution, as well as the allocation to the Senate Finance Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 13 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 302(a) DEFICIT-NEUTRAL RESERVE FUND TO INVEST IN CLEAN ENERGY AND PRESERVE THE ENVIRONMENT

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2009	1,532.579
FY 2010	1,612.278
FY 2011	1,942.056
FY 2012	2,146.937
FY 2013	2,329.824
FY 2014	2,579.743
(1)(B) Change in Federal Revenues:	
FY 2009	0.008
FY 2010	−53.708
FY 2011	−146.575
FY 2012	−213.456
FY 2013	−185.513
FY 2014	−53.915
(2) New Budget Authority:	
FY 2009	3,675.736
FY 2010	2,907.837
FY 2011	2,860.866
FY 2012	2,833.668
FY 2013	2,993.128
FY 2014	3,206.977
(3) Budget Outlays:	
FY 2009	3,358.952
FY 2010	3,015.541
FY 2011	2,976.851
FY 2012	2,879.495
FY 2013	2,993.782
FY 2014	3,183.027

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2010—S. CON. RES. 13; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 302(a) DEFICIT-NEUTRAL RESERVE FUND TO INVEST IN CLEAN ENERGY AND PRESERVE THE ENVIRONMENT

[In millions of dollars]

Current Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY2009 Outlays	1,166,970
FY 2010 Budget Authority	1,247,336
FY 2010 Outlays	1,241,472
FY 2010–2014 Budget Authority	6,865,787
FY 2010–2014 Outlays	6,840,905
Adjustments:	
FY 2009 Budget Authority	0
FY 2009 Outlays	0
FY 2010 Budget Authority	0
FY 2010 Outlays	0
FY 2010–2014 Budget Authority	8,000
FY 2010–2014 Outlays	4,830
Revised Allocation to Senate Finance Committee:	
FY 2009 Budget Authority	1,178,757
FY 2009 Outlays	1,166,970
FY 2010 Budget Authority	1,247,336
FY 2010 Outlays	1,241,472
FY 2010–2014 Budget Authority	6,873,787
FY 2010–2014 Outlays	6,845,735

AMENDMENT NO. 4312

The PRESIDING OFFICER. There is 2 minutes of debate, evenly divided, prior to a vote in relation to the Vitter amendment No. 4312. Who yields time?

The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, I don't see the proponent of the amendment on the Senate floor.

There he comes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Madam President, I urge support for the Vitter amendment. It does two very simple things: It says any money coming into the Oil Spill Liability Trust Fund can only be used to clean up oilspills. It also says the money cannot be used as an offset for unrelated spending, as it is in this bill. It cannot be used to mask other deficit spending or as an offset for unrelated spending.

The amendment specifically does not negate or block the tax increase of funds into the Oil Spill Liability Trust Fund.

I reserve the reminder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, this amendment is sheer sophistry. The effect of his amendment will say that not oil companies but the taxpayers will pay for cleanups.

The effect of this amendment would mean no increase in oilspill liability tax from 8 cents a barrel today up to 41 cents. If there is no increase in the spill liability tax, oil companies aren't going to pay for future cleanups, the taxpayers will. He has this—I said ''sophistry.'' So it is a sophistry kind of argument. It is fog and double counting and bead counting. That is not what is going on here.

The bottom line is this amendment has the effect of taxpayers paying for the cleanup, not the oil companies. This will effectively repeal the increase up to 41 cents per barrel. I urge Senators to not support this amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Madam President, how much time remains?

The PRESIDING OFFICER. There is 21 seconds remaining.

Mr. VITTER. My good friend and colleague's argument is not sophistry, it is just statements that are not true. This amendment does not block the tax increase, period. It does not. It simply says the money has to be used to clean up oil spills, and it cannot be used as an offset for other spending. Please support this amendment.

The PRESIDING OFFICER. The time has expired on the amendment.

Mr. VITTER. Madam President, 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 bill clerk called the roll.

Mr. DURBIN, I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Florida (Mr. LEMIEUX) and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 48, nays 49, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—48

Alexander	Crapo	Lieberman
Barrasso	DeMint	Lugar
Begich	Dorgan	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Merkley
Brown (MA)	Graham	Murkowski
Brownback	Grassley	Nelson (NE)
Bunning	Gregg	Nelson (FL)
Burr	Hagan	Risch
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Conrad	Johanns	Vitter
Corker	Kyl	Voinovich
Cornyn	Landrieu	Wicker

NAYS—49

Akaka	Gillibrand	Reed
Baucus	Harkin	Reid
Bayh	Inouye	Rockefeller
Bennet	Johnson	Sanders
Bingaman	Kaufman	Schumer
Boxer	Kerry	Shaheen
Brown (OH)	Klobuchar	Specter
Burris	Kohl	Stabenow
Cantwell	Lautenberg	Tester
Cardin	Leahy	Udall (CO)
Carper	Levin	Udall (NM)
Casey	Lincoln	Warner
Dodd	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Mikulski	Wyden
Feinstein	Murray	
Franken	Pryor	

NOT VOTING—3

Byrd	LeMieux	Roberts

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 49. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

VOTE EXPLANATION

Mr. SPECTER. Madam President, I voted against the Vitter amendment on the Oil Spill Liability Trust Fund to H.R. 4213, the Tax Extenders Act, because no matter what the size of the trust fund, the party responsible for an oil spill must pay all costs of its cleanup, and is also responsible for economic damages caused by the spill. This amendment will not reduce in any way the available resources for combating the spill in the gulf, or any other future spill. The moneys in the Oil Spill Liability Trust Fund may be used to advance cleanup costs but that does not relieve British Petroleum as the primarily liable party for paying the full costs of the gulf spill cleanup which will reimburse the trust fund for any funds expended.

AMENDMENT NO. 4311

The PRESIDING OFFICER. There will now be 2 minutes evenly divided prior to a vote in relation to the Franken amendment No. 4311.

Who yields time?

The Senator from Minnesota.

Mr. FRANKEN. Madam President, let me tell you about this amendment. It comes from me and Senator SNOWE, and it would create the Office of the Homeowner Advocate within HAMP. It is needed because people don't really have an advocate within HAMP. They get their questions answered from servicers who often make mistakes, and people have been losing their homes simply because of mistakes.

The White House called this one of the 10 best amendments for the Wall Street reform bill. It didn't get a vote then. It costs nothing. No new money. It costs absolutely nothing. Senator VITTER weighed in and made it better by having me put in something about people who can afford their mortgage can't participate in HAMP, and it removes language that would delay foreclosures.

I urge all my colleagues to vote—that was telling me I was out of time?

The PRESIDING OFFICER. Order in the Chamber.

Mr. FRANKEN. Oh, it was order in the Chamber.

In that case, I will also say that it will make data public. Also, Senator VITTER and Senator SHELBY weighed in on this and made it better. So it is safe for Members on both sides of the aisle to vote for this.

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

Mr. FRANKEN. Thank you.

The PRESIDING OFFICER. Who yields time in opposition.

Mr. SHELBY. I yield back time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER) and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Florida (Mr. LEMIEUX) and the Senator from Kansas (Mr. ROBERTS).

The PRESIDING OFFICER (Mr. UDALL of Colorado). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 63, nays 33, as follows:

[Rollcall Vote No. 189 Leg.]

YEAS—63

Akaka	Gillibrand	Murkowski
Baucus	Graham	Murray
Bayh	Grassley	Nelson (FL)
Begich	Hagan	Pryor
Bennet	Harkin	Reed
Bingaman	Inouye	Reid
Brown (MA)	Johnson	Rockefeller
Brown (OH)	Kaufman	Sanders
Burr	Kerry	Schumer
Burris	Klobuchar	Shaheen
Cantwell	Kohl	Snowe
Cardin	Landrieu	Specter
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Collins	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Vitter
Durbin	McCaskill	Warner
Feingold	Menendez	Webb
Feinstein	Merkley	Whitehouse
Franken	Mikulski	Wyden

NAYS—33

Alexander	Cornyn	Kyl
Barrasso	Crapo	Lugar
Bennett	DeMint	McCain
Bond	Ensign	McConnell
Brownback	Enzi	Nelson (NE)
Bunning	Gregg	Risch
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Conrad	Isakson	Voinovich
Corker	Johanns	Wicker

NOT VOTING—4

Boxer	LeMieux
Byrd	Roberts

The PRESIDING OFFICER. On this vote, the yeas are 63, the nays are 33. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is agreed to.

The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak 9 minutes as in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

NOMINATION OF ELENA KAGAN

Mr. GRASSLEY. Mr. President, I wish to address my colleagues about the upcoming judiciary hearing and the nomination of Solicitor Kagan to the Supreme Court. I have always been of the opinion that the Senate needs to conduct a comprehensive and careful review of Supreme Court nominees. It is important that the nominee be given a fair, respectful, and also deliberative process. This is a lifetime appointment to the highest Court in the land, so it is our duty to ensure that the Supreme Court of the United States candidate understands the proper role of the Supreme Court in our system of government, and would be true to the Constitution and the laws as written. We need to be certain that the nominee will not come with an agenda to impose his or her personal political feelings and preferences on the bench.

The Senate needs enough time to adequately review the nominee's record to make these determinations. But because Solicitor Kagan does not have the usual background of being a judge on the Federal or State bench, we have no concrete examples of her judicial philosophy in action. It is critical that we understand whether she has a proper judicial philosophy because Solicitor Kagan is being considered for the Supreme Court. So it is even more important for us to look at her entire record and to give particular weight to her statements and writings as well as the positions she has taken over the years.

In order for the Senate to fulfill its constitutional responsibility of advise and consent, we must get all of her documents from the Clinton Library and have enough time to analyze them so we can determine whether she should be a Justice. I share the concerns of the Judiciary Committee ranking member, Senator SESSIONS, that Solicitor Kagan's documents will not be fully produced in time for the committee to conduct a thorough review of the nominee's record.

I hope we will receive these materials in time before the Judiciary Committee holds the Kagan hearings. From the materials and documents that we received so far, and which the committee is still reviewing, Solicitor Kagan's record clearly shows she is a political lawyer. In fact, a recent Washington Post article said her papers in the Clinton Library ''show a flair for the political,'' and that she had ''finely tuned . . . political antennae.''

Solicitor Kagan was involved in a number of hot-button issues during President Clinton's second term, including gun rights, welfare reform, partial-birth abortion, and Whitewater. The documents we received from the Clinton Library show that Ms. Kagan