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 Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.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

promoted liberal positions and offered analyses and recommendations that often were more political than legal in nature.

Solicitor Kagan's memos from the Marshall papers also indicate a liberal and seemingly outcome-based approach to her legal analysis. So I look forward to asking Solicitor Kagan about her record and her judicial philosophy. But a judge needs to be an independent arbiter, not an advocate or a rubberstamp for a political agenda. We already know that Solicitor Kagan has held far left political views from a young age. She has been a long-time political lawyer, and she is a personal friend of the President.

As Solicitor General, she has been a prominent member of the Obama administration's team. As a nominee to the Supreme Court, Solicitor Kagan has the burden of showing that despite her record as a political lawyer, rather than as a sitting judge or practitioner, if she is confirmed she will apply the law impartially and not as a member of someone's team who is working to achieve their preferred political result.

Moreover, President Obama's standard for picking judicial nominees is one that places a premium on a judge's empathy for certain individuals or groups rather than on an even-handed reading of the law. As a Senator, President Obama lauded judicial nominees who would decide cases based on ''one's deepest values, one's core concerns, one's broader perspectives on how the world works, and the depth and breadth of one's empathy.''

As a Presidential candidate, President Obama said he would appoint judges who have empathy for certain groups. As President he said his judges would have ''a keen understanding of how the law affects the daily lives of the American people.''

The Obama ''empathy'' standard concerns me greatly because the inference is that an empathetic judge will pick winners and losers based on his or her personal preferences rather than the law blindly picking winners and losers.

When President Obama nominated Solicitor Kagan to the Supreme Court, Vice President BIDEN's chief of staff, who was involved in vetting the Supreme Court of the United States candidates, assured liberals they had nothing to worry about from her selection. In fact, he said Solicitor Kagan was ''clearly a legal progressive.'' Thus, it is safe to assume that the President was true to his promise and picked someone who embodied his empathy standard.

Because Solicitor Kagan does not have one of the best indicators of a Supreme Court nominee's judicial philosophy; that is, a judicial record on a State or Federal bench, then I believe she should be very forthcoming with the Judiciary Committee's inquiries into her judicial philosophy.

In fact, Ms. Kagan herself advocated that a nominee should respond to specific inquires into the nominee's judicial philosophy and positions on constitutional issues.

Solicitor Kagan wrote in her University of Chicago Law Review article, ''Confirmation Messes, Old and New:''

> The kind of inquiry that would contribute most to understanding and evaluating a nomination is . . . discussion first, of the nominee's broad judicial philosophy and, second, of her views on particular constitutional issues. By ''judicial philosophy'' . . . I mean such things as the judge's understanding of the role of courts in our society, of the nature of and values embodied in our Constitution, and of the proper tools and techniques of interpretation, both constitutional and statutory.

She also wrote that a nominee could comment on ''hypothetical cases'' and on general issues such as ''affirmative action or abortion,'' or ''privacy rights, free speech, race and gender discrimination, and so forth.''

Given the fact that Solicitor Kagan has been nominated to a lifetime position on the Nation's highest Court, the Senate must determine that if confirmed, she will interpret the Constitution with judicial restraint and without imposing her personal political policy preferences and biases.

The Senate must determine by examining the totality of her record that if confirmed, she would not be a rubberstamp for the President's political agenda. We will have to see whether Ms. Kagan will live up to her own standard for Supreme Court nominees and whether she will be as forthcoming as she argued Supreme Court of the United States nominees should be in the Senate confirmation process.

So I am going to be pursuing this for my people of Iowa because they are very concerned. I am getting a lot of phone calls both for and against her that have to be taken into consideration.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

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

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

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

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

INTERCHANGE FEES

Mr. DURBIN. Mr. President, a few weeks ago we considered a Wall Street reform bill which tried to address some of the underlying problems in our economy which led to the recession. It was an ambitious undertaking. The Senate Banking Committee, under Chairman DODD, led us through a very difficult and lengthy debate over the bill.

Part of the debate included an amendment which I offered relative to what is known as an interchange fee. An interchange fee is the amount of money charged to a business when a customer presents a credit card. So if I go to a restaurant in Chicago and pay for the bill with a credit card, the restaurant is going to have to pay a percentage of my bill to the credit card company or at least to the issuing bank of the credit card. And then I, of course, have to pay the bill when it comes in the mail.

This so-called interchange fee—the charge by the credit card company to the business I am patronizing—is a fee that turns out to be very large and expensive. Nearly $50 billion in credit and debit card interchange fees is collected each year, primarily by the largest credit card companies and by the largest banks that issue those credit cards. This is virtually unregulated. There is no regulation as to the amount charged or collected from these businesses. Visa and MasterCard, which dominate the credit and debit card industries, establish the interchange rates that all merchants and, by extension, their customers pay to banks whenever a card is swiped. So if the restaurant I went to is charged 1 percent, 2 percent, or 3 percent because I presented a Visa card or a MasterCard, that is going to be reflected in the bill I pay. It certainly is going to come off of any profit margin the restaurant might realize as a result of my patronizing it.

Already more than half of the retail transactions in America are conducted by debit and credit cards. Every time someone uses a credit or debit card to make a donation to a charity, Visa and MasterCard require an interchange fee to be paid. There have been exceptions where they have said they will suspend the fees, but by and large, if one makes a donation to the charity of their choice using their credit or debit card, part of the money they think they donated is going to end up in the hands of these credit card companies.

According to a January 14 analysis by the Huffington Post, banks and card companies make an estimated $250 million a year from their interchange or swipe fees on charitable donations. In other words, it turns out that Visa and MasterCard are declaring themselves part of this charitable contribution and taking millions of dollars out of it. I would like to see more of that money go to the charitable purposes for which people donate their money.

The Huffington Post noted that charities such as Habitat for Humanity pay about 2.15 percent of their donation in card fees. St. Jude's Children's Research Hospital, well known and well respected, pays about 2.5 percent in card fees. Is it really necessary for Visa and MasterCard and the big banks to take a cut out of every charitable donation? We are not talking about the cost of the transaction. I will concede the fact that the regular proportional cost of a transaction of using the card is certainly fair for Visa and MasterCard to charge, but they raise that dramatically. There is no way that Visa and MasterCard could justify

2.5 percent if I use my debit card to try to make a donation to St. Jude's Children's Research Hospital. They are literally gaming the system and profit-taking from charities.

In the wake of the devastating earthquake in Haiti in January, Visa, MasterCard, and their member banks voluntarily suspended the collection of interchange fees for some charitable donations for earthquake relief. It seems these companies can survive without charging these fees for charitable donations. They have done it. One bank, Capital One, has decided not to collect interchange on donations made to charity by their cards. I salute them. It is the right thing to do. Why aren't they all taking this position? Why don't they exempt charitable institutions from these issuing bank and credit card fees? I wish other banks were as reasonable when it came to interchange fees and charitable causes as Capital One.

There is another group—universities. They pay a heavy cost in interchange fees. They lose a fortune in interchange when people use cards to pay for things such as tuition and housing.

After my amendment passed the Senate, I received a letter from the American Council on Education and eight other major university associations thanking me. The letter said:

> As a result of your amendment, we believe that colleges and universities will see reduced debit card costs which they will be able to pass on to students and their families through lower costs as well as increased resources for institutional grant aid and student services.

The reach of credit cards is unlimited in our economy. So are the greedy hands of the credit card companies and their issuing banks when it comes to these interchange fees. When I said in this amendment that we really want those fees to reflect the reasonable and proportional cost of processing the transaction, they screamed bloody murder because there is a lot of money being made—some $50 billion across the economy from these fees. Wouldn't it be great if we could enable colleges and universities to lower the cost students have to pay and put more resources into financial aid?

The letter also said that under my amendment, ''colleges and universities will be able to offer discounts to students and their families for payments made with checks and debit cards.'' That is another thing they don't like to talk about. These two major credit card giants, Visa and MasterCard, really have a sweet deal. They basically coordinate their policies. It is as if Coke and Pepsi reached an agreement and said to your local store: Don't you dare offer that other product at a discount. That is virtually what has happened with Visa and MasterCard. They tell the stores: You can't give any better treatment; you can't say this is a Visa store or a MasterCard store. No way. You have to say we accept all credit cards from these issuing agencies. And basically, you can't limit it to debit cards, limit it to check cards, give a discount, limit the amount in terms of the dollar amount you can charge on these cards.

I also want to say that governments are paying these credit card companies a lot as well. Think of all the ways in which people conduct transactions with Federal, State, and local governments. Every time somebody uses a card to pay for a driver's license or a parking sticker or a ride on public transit or to pay a ticket or to obtain a permit, there is an interchange fee. The city of Chicago paid $7.5 million in interchange fees last year. The Chicago Transit Authority paid $1.8 million per year in interchange fees. The Illinois Tollway paid $11.6 million in interchange fees last year. In most cases, the government agencies have no bargaining power when it comes to the amount of the interchange fee. Every dollar spent on these fees is a dollar that could have been spent on jobs and services and a dollar that could have been spared from the taxpayer.

The American Association of Motor Vehicle Administrators represents DMVs across the country. They accept cards for payment of things such as driver's licenses, car registrations, and license plates. They wrote a letter. They said:

> State motor vehicle agencies and other state agencies are experiencing unprecedented financial strain today, as we seek to control costs where possible. . . .While our customers certainly appreciate the convenience of electronic transactions, few understand that the costs of accepting credit and debit card payments for motor vehicle agencies are higher today than ever before, and that these fees compound the current budget crisis that many states face.

The cost of interchange fees affects every local government, every State, every Indian tribe, and even the Federal Government. Right now, even the Federal Government is as helpless as any small business when it comes to trying to reduce their interchange costs.

The amendment which I offered, which was adopted on the floor of the Senate by a vote of 64 to 33, requires debit interchange fees to be kept at a reasonable level, and it allows sellers to offer discounts to consumers without threat of punishment from Visa and MasterCard. The amendment was adopted in a broadly bipartisan vote, as 17 of my Republican colleagues joined me in passing it. The amendment is going to help American families, each of whom pays an estimated $427 a year to subsidize the credit card companies and the banks issuing these cards.

Lobbyists for the financial industry have thrown the kitchen sink at my amendment in an effort to keep the $50 billion interchange fee system completely unregulated. Imagine, here is DURBIN's amendment getting into $50 billion worth of profit-taking these credit card companies and their banks, the biggest banks, are engaged in.

Incredibly, the card companies and banks have even argued that they need to preserve the $50 billion interchange system in order to protect consumers. Give me a break. On the issue of consumers, they have no shame. Do my colleagues recall that we passed a credit card reform bill and the credit card companies said: We will need 6 months to really get all this stuff together, all these changes. Give us a little time.

Remember what happened in that 6-month period? Every time you would go to pick up the mail and there was something from the credit card company, you would open it and they would announce they were raising interest rates. So they ran the rates up as high as they could before the Credit Card Reform Act went into effect.

When have Visa and MasterCard and the big banks ever stood up for consumers? Didn't we just see them fall all over themselves to gouge cardholders before this last credit card act went into effect? Where do the banks and card companies think their $50 billion in interchange fees comes from? It comes from consumers who subsidize the interchange system by paying higher retail prices. It is a massive hidden transfer of wealth from consumers to big banks.

The amendment represents one of the big wins for small businesses and consumers in years. It will help small businesses grow and create jobs.

Don't let the Wall Street lobbyists fool you. They will say anything to protect their big bank profits.

I have received some letters from Illinois small businesses supporting my interchange reform. From James Phillip, Jr., owner of Phillip's Flower Shops in Westmont, IL:

> As an 87-year old family business, over one-third of our customer purchases are paid by credit and debit cards; yet we found that over the years our cost of clearing credit cards and complying with their rules has increased faster than the total amount cleared—to the point that it is now extremely burdensome on the independent retailer. . . .I am writing to voice my support for legislation that would make credit card fees and rules for merchants more reasonable and competitive.

Mr. President, whether it is Colorado or Illinois, if we are coming out of this recession, it will be because small businesses are on the move, expanding their employment, expanding their efforts, expanding their businesses. This is a drag on small business.

From Robert Jones, president of the American Sale patio store in Tinley Park, IL:

> I am a small businessman in Illinois. I want to thank and encourage you to push for credit card and debit card interchange reform. Being a small business we have absolutely no choice and no power to negotiate with the big credit card companies over their fees. They basically tell us ''take it or leave it.'' Since the vast majority of our customers now pay with credit cards due to all the points and perks they are getting for doing so, we have no alternative. They essentially have a monopoly on taking payments from our customers. I applaud your amendment to level this playing field.

From George LeDonne, owner of LeDonne Hardware in Berkeley, IL:

As the owner of a hardware store in Berkeley, IL, I am directly affected by these fees. Small businesses are closing every day as it becomes more of a struggle to stay profitable. Your help in recognizing and acting on this is appreciated.

Russ Peters, owner of Mobile Print, Inc., a printing company in Mount Prospect, IL:

I wish you to know I definitely support this reform. Credit cards are ubiquitous in today's marketplace and these common sense reforms will benefit a small business like mine.

Jim Dames, he owns the Snackers Cafe in Western Springs:

Please help small businesses, I can't fight the credit card companies alone.

And here is an old friend of mine, George Preckwinkle, president of Bishop Hardware and Supply. He has 10 locations in central Illinois. I have known George for 40 years. He wrote me a letter. And George is not of the same political faith that I am, so I accept this as being a genuine statement, not partial in any way. George writes:

It is very important to business, especially smaller business, to solve the problems retailers are having with exorbitant fees and contractual restrictions imposed by Visa and MasterCard. Senator DURBIN's amendment would be a huge help.

I cannot tell you how great it is to hear from my friend George, who probably has never voted for me but just sent me the nicest note about this effort.

I could go on with a long list, but I will not. But I will just tell you this: The information we are receiving is very clear. Whether the business is small or large, whether it is a private entity or a public entity, such as the city of Chicago, the city of Springfield, IL, whether we are talking about universities that are trying to keep their costs down for students, whether we are talking about charities that literally are trying to raise enough money to do the good things that need to be done in our country and in our world, the credit card companies are always there with their hand out and their demands for these fees. For years, there has been virtually no competition. These small businesses do not have a fighting chance against these credit card companies.

Well, I can tell you, I have roused a sleeping giant, if it was ever asleep, in the giant credit card companies in what they are trying to do on Capitol Hill. They are smothering this place with lobbyists who are calling, and they realize they have almost no credibility whatsoever, so they are finding surrogates.

The latest group, which really saddens me, is the credit unions. Historically, I have always voted with the credit unions. I have thought they virtually represent the right way to loan money, and they get special treatment because of that approach. Their idea, of course, is they collect the money from their members in their savings, and they loan it out so that their members can buy cars and other things that are necessary. They keep their costs low because they are nonprofit. We do not tax them, so we give them special treatment. But they also issue credit cards, so we exempted them from my amendment. Virtually every credit union in America, but for three, is exempt. We put a $10 billion threshold for any financial institution that would be affected by it. That eliminates almost 8,000 credit unions. Only three would be covered. They are huge. Yet the credit unions are roaming all over Capitol Hill saying the Durbin amendment is the end of the world.

Here is their logic: If we end up reducing the interchange fee on debit cards in the biggest banks, then Visa and MasterCard have said to the smaller banks and credit unions: We are going to reduce your interchange fee too. And they say they have to do that because they just cannot separate all these different banks and credit cards. Well, that is just a bunch of baloney, if I can say that on the floor of the Senate—and I just did—because Visa has 122 different categories of interchange fees today; MasterCard, over 100. So the argument that they cannot separate the little banks from the big banks—get out of here.

Secondly, they have the power today to lower interchange fees unilaterally. They can just call and say to these credit unions and community banks: We are going to lower the interchange fee that is being paid to you. They can do it, and these banks have no recourse whatsoever. If the banks and credit unions think that is an unfair proposition, then they are standing in the shoes of small business—in exactly the same position.

These Visa and MasterCard credit card companies have reached the point where they have so much power and virtually no competition, that it was confirmed last week in a hearing of the Senate Judiciary Committee that they are currently being investigated by the Antitrust Division at the U.S. Department of Justice. No details were provided in terms of this investigation, but the person who spoke for the Department of Justice confirmed that fact. They have reached the point where they virtually have no competition. They can impose whatever they want.

Let me make one last point about that. If Visa and MasterCard make their money because more people own credit cards and more banks issue credit cards, does it make sense that they would create an environment where credit unions and smaller banks would not want to issue credit cards? Of course not. The profitability of Visa and MasterCard is when more people are using credit cards, more banks are issuing credit cards. So if they are going to make it more difficult for banks and credit unions to issue credit cards, they are really cutting off their nose to spite their face, and I think that is pretty obvious.

But it is interesting to me how fearful credit unions are of Visa and MasterCard. They are literally shivering in their boots. They do not understand that they are the victims as much as the small businesses are of these powerful credit card companies. I wish for once they would step back and take a look and not just automatically sign up whenever the largest banks in America say jump. It just should not be that the commercial banks, the community banks, the credit unions are doing this, and it really is a vast departure from where they have been historically.

So at this point, the bill is now in conference committee, and I know Senator DODD and Chairman BARNEY FRANK of the House Banking Committee are working hard to try to enact this bill. I know the strong bipartisan vote in the Senate is an indication of how we feel about it. I hope our friends in the House, though they do not have that provision in their bill, will consider making this part of the conference committee report.

It will be a positive day for us in America when the message is finally delivered to the credit card companies that they can no longer have this dictatorial grip over small businesses and the issuing banks they have today.

I hope we can see, in the next 2 weeks, a bill coming forward on Wall Street reform with many important provisions. This is one that is certainly important to me personally and I think will be a way for us to help small businesses increase jobs and help this economy come out of this recession. I hope we can do that soon.

Mr. President, I see another colleague on the floor, and I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. First of all, Mr. President, let me thank the distinguished assistant majority leader for his continuing work on this issue. It protects small businesses and consumers from gouging by the credit card companies and the monolithic monopoly power they bring to bear. I was pleased to vote for and support this amendment on the floor, and I wish the assistant majority leader much success in the conference committee to get that in the final bill.

Mr. DURBIN. I thank the Senator.

Mr. WHITEHOUSE. Mr. President, I rise today to speak about the Foreign Manufacturers Legal Accountability Act, which I have filed as amendment No. 4324 to the package currently under consideration by the Senate. This amendment would close a loophole in Federal law that allows foreign manufacturers to evade accountability when their products injure Americans here at home. It would do so by requiring foreign manufacturers to meet the same standards as domestic manufacturers. It is a simple reform. It is much needed. It will protect American industry against unfair competition or having to, in effect, subsidize dangerous foreign products. It will foster American jobs for that reason. It will keep

American consumers safe, and it will help Americans who are injured make sure they get an adequate recovery for their injuries from the foreign manufacturer who caused them the harm.

What happens here in America when a foreign manufacturer is able to avoid responsibility for a defective product that causes an injury to an American? When they are able to avoid responsibility, one of two bad things happen. One or the other has to be. One is that the injured American gets no recovery. Their injury goes unredressed. They cannot find the accountable company, and they just have to suffer without compensation. The second alternative is that an American company, under the theory of joint and several liability, has to make good for the harm caused by the foreign company. It becomes a cost to the American company.

This actually came up in the hearing on the bill when an Alabama contractor explained how he had to make good on the claims of homeowners whose homes he built when, without knowing it, he had used defective Chinese wallboard in the homes and they emitted sulfur that was bad for the health of the home occupants, that corroded piping, and that caused an immense amount of work that had to be redone to have his customers be satisfied customers. It became his problem when the Chinese wallboard company was nowhere to be found when their defective product caused all this harm down in Alabama. These are things that should not happen, and they are bipartisan concerns.

I want to say I am proud and grateful to have had the opportunity to work with Senator SESSIONS and Senator DURBIN to achieve these goals. Both Senator SESSIONS and Senator DURBIN were original cosponsors when I first introduced this bill on a stand-alone basis. Thirteen other bipartisan cosponsors have since signed on to that bill, and I am very grateful for all their support.

Let me describe for a few minutes the specifics of this particular amendment.

There are two legal hurdles that currently face an American harmed by one of these foreign manufacturers. As my lawyer colleagues know, someone who gets injured and brings a lawsuit must bring the responsible party into the proper court. This requires the injured party, one, to serve process on the defendant, to file the papers in the lawsuit with the defendant, and two, to establish personal jurisdiction over the defendant, consistent with the due process clause of the Constitution. No service of process, no jurisdiction, no lawsuit, no recovery, no assistance for the injured American.

The problem is that service of process on a foreign manufacturer is often extremely costly and extremely slow because it often must be done abroad rather than here in the United States. For instance, when an American seeks to serve a defendant in a country that is a signatory to what is called the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters, the complaint must be translated into the foreign language, transmitted to the central authority in the foreign country, and then delivered according to the rules of service in the home country of the defendant, which may not be hospitable to foreign litigants. Even more complex procedural hurdles face an American seeking to serve a defendant in a country that has not signed the Hague Convention.

But let's say you get through all that expense and all that hassle and all that delay. Even when an American does serve process successfully on a foreign manufacturer, personal jurisdiction then can prove an insurmountable hurdle. This is because Supreme Court decisions interpreting the due process clause make it hard to exercise jurisdiction over foreign companies, even those whose products have injured Americans.

So something clearly needs to be done to bring the way we treat foreign manufacturers into line with the liability and responsibility of domestic manufacturers. They should not have this advantage over our domestic industry.

This amendment provides a simple solution to both of these problems. It requires a foreign manufacturer that wants to import products into the United States for our consumers to use to register an agent in the United States who will accept service of process for cases in the United States. By designating such an agent, the manufacturer would consent to the personal jurisdiction of the courts in the State where the agent is located, and no further complicated service of process would be required. This is not dissimilar, for example, to the way a corporation from outside my home State of Rhode Island must register to transact business in our State—a requirement that exists in many States around the country. I suspect it exists in the distinguished Presiding Officer's home State of Colorado.

Finally, let me make clear to whom this applies and how. The big foreign manufacturers that ship billions of dollars of products into the United States and whose names we would all instantly recognize already can be held accountable somewhere in the United States by virtue of their having American operations or by virtue of the size of their imports. They can usually be found. And for companies such as that, complying with the new law will be as simple as designating someone in their U.S. headquarters to be that agent for service process. It will be a 5-minute task to comply with this law.

For foreign companies that have set up manufacturing operations somewhere in the United States, they will get the same treatment as domestic companies under this bill. Their domestic operation will be a location where they can be served. It is the foreign manufacturers that take advantage of our marketplace, but when their defective product injures someone and can't be found, that are the real targets of this amendment, they don't want to be held responsible anywhere.

Who are they? Well, to give a few examples, they are the ones who make the drywall I talked about, full of sulfur, that corrodes wiring and makes the residents sick. They are the companies that make cheap toys with lead paint on them that is poisonous to children or metal plumbing fittings that rupture under routine use because they are so shoddy or those that contaminate medical supplies that are sold into the United States with unthinkable chemicals. These companies may look perfectly legitimate when they sell their products, but when you try to find them once you have been injured by them, it is like grasping smoke. They disappear, and they avoid all accountability when their products hurt our fellow Americans.

It is these companies that this amendment will fully bring within the scope of the American legal system. It is important that we do this, because they should play by the same rules our American companies do with respect to service of process and availability for redress.

The Foreign Manufacturers Legal Accountability Act applies to major product categories including consumer goods, drugs, cosmetics, and chemicals through the Federal agencies that already regulate those product categories and through the components of the Department of Homeland Security that oversee our Nation's imports. The amendment empowers those agencies to use their expertise in these fields to set appropriate thresholds; for instance, to exempt small foreign manufacturers from having to register an agent, and allows a working period to ensure that no disruptions in imports occur during the implementation period of this amendment.

I urge my colleagues to support this amendment. I think it is important. By leveling the economic playing field, it will allow American manufacturers to compete fairly with foreign manufacturers, thereby protecting American jobs. By holding foreign manufacturers to the same standards as American manufacturers, it will protect our consumers and American businesses without raising any trade issues. It will eliminate this terrible situation of a foreign product causing an injury to an American for which that American can get no relief or a foreign company causing an injury to an American but because they can't be found, having an American company that worked on the installation of the product, that sold the product, that is for some reason jointly and severally liable for that injury having to carry the cost that belongs on the foreign manufacturer and would be their cost if only they could be found and served and brought to account in an American court. Both of

those things are rankly unfair, and this is the best solution to put an end to those two injustices.

I think it is an important and a much needed fix to a quirk in our laws. We should pass it as soon as possible. I hope very much it can become a part of the legislation to which it is now a pending amendment.

I thank you very much.

I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. 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. REID. Mr. President, I ask unanimous consent that on Wednesday, June 16, following morning business, the Senate resume consideration of the House message with respect to H.R. 4213; that there then be 5 minutes of debate equally divided and controlled between Senators BAUCUS and GRASSLEY or their designees; that upon the use or yielding back of that time, Senator MCCONNELL or his designee be recognized to make a Budget Act point of order against the Baucus motion; that once the point of order is raised, Senator BAUCUS then be recognized to waive the applicable budget point of order; that if the waiver fails, then the Baucus motion to concur with an amendment be withdrawn, and Senator BAUCUS then be recognized to move to concur in the House amendment to the Senate amendment to the bill with an amendment; provided notwithstanding the withdrawal of the previous motion, the previously agreed-upon amendments Nos. 4302, as modified, 4326, and 4311, as modified, be incorporated into the new Baucus motion to concur; that the Reid amendment No. 4344 be reoffered with the same text; that on Thursday, June 17, beginning at 10 a.m., the Senate debate the Thune substitute amendment No. 4333, to be reoffered with the same text; that the amendment be debated for 2 hours, with the time equally divided and controlled between Senators BAUCUS and THUNE or their designees; that upon the use or yielding back of time, Senator BAUCUS be recognized to raise a budget point of order against the Thune amendment; that Senator THUNE, or his designee, then be recognized to move the applicable budget point of order; that if the waiver fails, then the Thune substitute amendment be withdrawn; further, that if the waivers for either Baucus our Thune amendments succeed, the amendments remain pending; finally, that the cloture motion be withdrawn.

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

Mr. CONRAD. Mr. President, pursuant to section 302(a) of S. Con. Res. 13, the 2010 budget resolution, I made adjustments to the 2010 budget resolution earlier today for Senate amendment No. 4318, an amendment offered by Senator SANDERS to S.A. 4301, an amendment in the nature of a substitute to H.R. 4213.

The Senate did not adopt Senate amendment No. 4318. Consequently, I am further revising the 2010 budget resolution to reverse the adjustments previously made pursuant to section 302(a) to the aggregates and to the allocation provided 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	1,939.131
FY 2012	2,142.415
FY 2013	2,325.527
FY 2014	2,575.718
(1)(B) Change in Federal Revenues:	
FY 2009	0.008
FY 2010	−53.708
FY 2011	−149.500
FY 2012	−217.978
FY 2013	−189.810
FY 2014	−57.940
(2) New Budget Authority:	
FY 2009	3,675.736
FY 2010	2,907.837
FY 2011	2,858.866
FY 2012	2,831.668
FY 2013	2,991.128
FY 2014	3,204.977
(3) Budget Outlays:	
FY 2009	3,358.952
FY 2010	3,015.541
FY 2011	2,976.251
FY 2012	2,878.305
FY 2013	2,992.352
FY 2014	3,181.417

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
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
Adjustments:	
FY 2009 Budget Authority	0

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—Continued

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	6,865,787
FY 2010–2014 Outlays	6,840,905

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

RECOGNIZING HELP OF SOUTHERN NEVADA

Mr. REID. Mr. President, I rise today to celebrate the 40 year anniversary of HELP of Southern Nevada, a nonprofit organization providing Nevadans with housing, emergency services, life skills and prevention—the four cornerstones for which its name is an acronym. HELP has served as a vital resource to hundreds of thousands of Nevadans, and continues to provide unwavering support to our communities.

HELP was first created out of the Junior League of Las Vegas in 1969, and called the Voluntary Action Center. They incorporated a year later, in 1970, and became one of Nevada's premier resource centers for the disadvantaged. In that year, HELP provided its services to 300 people in southern Nevada. Today, they serve 55,000 distinct clients every year.

The services HELP offers range from financial assistance with rent and transportation costs, to providing meals to families during the holidays. A focus on providing practical assistance in gaining self-sufficiency makes HELP one of southern Nevada's greatest social service providers. Its services include seven different areas of support: Community Alternative Sentencing, Holiday Programs, Nevada 2–1-1, Social Services, Weatherization, Work Opportunities Readiness Center—W.O.R.C., and the Youth Center.