

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

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 President, I ask unanimous consent that the order for the quorum call be rescinded.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

#### UNANIMOUS CONSENT AGREEMENT—H.R. 5297

Mr. REID. Mr. President, I ask unanimous consent that the postcloture time with respect to the Landrieu-LeMieux amendment No. 4500 suspend until such time as the Senate resumes consideration of H.R. 5297.

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

#### DISCLOSE ACT—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. REID. Mr. President, I now ask unanimous consent that it be in order to proceed to Calendar No. 476, S. 3628.

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

Mr. REID. I now move to proceed to that bill, and I send a cloture motion to the desk.

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

The cloture motion having been presented under rule XXII, the clerk will state the motion.

The assistant legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 476, S. 3628, the DISCLOSE Act.

Harry Reid, Charles E. Schumer, Sherrod Brown, Claire McCaskill, Patrick J. Leahy, John F. Kerry, Byron L. Dorgan, Patty Murray, Barbara Boxer, Roland W. Burris, Robert Menendez, Jack Reed, Joseph I. Lieberman, Tom Udall, Kent Conrad, Mark Begich, Robert P. Casey, Jr.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

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

Mr. REID. Mr. President, I ask unanimous consent that the cloture vote on the motion to proceed occur at 2:45 p.m., Tuesday, July 27, with the time from 2:15 to 2:45 p.m., equally divided and controlled between the two leaders, or their designees, with the majority leader controlling the final 15 minutes.

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

#### REMEMBERING FORMER GOVERNOR KENNY GUINN

Mr. REID. Mr. President, I have just learned of the loss of one of my dear friends. He was an orphan. He was a stellar athlete. He came to Las Vegas to be a schoolteacher, but he had such a dynamic personality that soon they learned in that rapidly growing school district, which is the fourth or fifth largest in the country, that they needed his kind of leadership. He went from being a teacher to running that huge school district in Las Vegas, the Clark County School District.

He had such a magnetic personality. Kenny Guinn was built like an athlete. He was handsome as a movie star.

He left the school district after a number of years and became a bank president. He became a big utility president in our major utility in Nevada. Then he became president of the university. I think he worked for \$1 a year. He just did it to be nice.

Somebody said to him: What you should do is run for Governor. It was a slam dunk. He was a very moderate Republican. He was elected Governor twice very easily. He did an extremely good job as Governor.

We do not know what happened to Kenny today, but from reports we received, he was in an accident. He was on the roof and fell. He is dead now. I feel so badly about this. I talked with him a week or so ago about my campaign and his wonderful, beautiful, charming wife Dema. I feel so sad that Kenny is not with us anymore.

I join all of Nevada in mourning the loss of truly a great man, one of Nevada's outstanding Governors, and a friend of mine about whom I will always feel strongly.

#### TRIBUTE TO SISTER ROSEMARY LYNCH

Mr. REID. Mr. President, today I rise to honor Sister Rosemary Lynch for her lifetime of promoting peace throughout Nevada, the United States, and the entire world. Sister Lynch recently celebrated her 93rd birthday, and I am pleased to recognize her life and achievements before the U.S. Senate.

Sister Lynch was born in Phoenix, AZ, but her spiritual service in the Franciscan Order brought her to Las Vegas after periods in Mexico, Europe, Africa, and Indonesia. She began her devotion to the Franciscans more than 75 years ago and eventually ascended to an administrative post within the order. Spending 16 years in Italy helping to manage the order's global organization, Sister Lynch still found time to travel the world to deliver her message of compassion. These days, Sister Lynch can be found at the Franciscans' house on Bartlett Street in Las Vegas, where she devotes her day to assisting the underprivileged community of the city.

Sister Lynch's age has not slowed her commitment to spread peace through-

out her community. Her boundless energy is apparent in the daily early morning walks she takes through her neighborhood and the unflagging devotion to combating poverty she displays through her work at the Franciscan house. She speaks five languages, a testament to her incredible mind and her experience in spreading peaceful ideas throughout the world.

In addition to her work with the Franciscan Order, Sister Lynch founded the Pace e Bene Nonviolence Service, a group dedicated to educating communities about theories of peaceful conflict resolution. This organization celebrated 20 years of activity last year, and it continues its mission internationally due to the efforts of Sister Lynch. "Pace e Bene" means "peace and all good" in Italian, and I cannot think of a better phrase to describe the life's work of Sister Rosemary Lynch.

I am honored that Sister Lynch has offered her services to the State of Nevada for a significant portion of her life. I thank her for her ceaseless altruism and selflessness, and I wish her continued health and success in her endeavors.

#### EDUCATION JOBS PACKAGE

Mr. BENNET. Mr. President, I rise today to urge this body to get our priorities straight. During this trying moment for struggling families all over America, as we work to get our economic ship righted, it is our kids and schools that should be at the top of our list.

And moving forward with a more lasting agenda, this body must make good on our commitment to ensure that we leave more opportunity for our children than we ourselves have had. It starts with our commitment to education.

We have a very American responsibility—to set the table for our kids' futures; to prepare them for the competitive world that awaits them; and to enrich their lives with a better education than the one that was offered to us. This is our central calling.

As I have discussed many times before back in Colorado and here on the Senate floor, we must be willing to make the hard choices necessary to jumpstart our economy and put the country on a path that will return us to fiscal responsibility. This means recognizing how we got into this fiscal mess—by not paying for our priorities, not planning for future emergencies, taking on more than we can afford, and damaging, expensive bailouts.

Yet we cannot fight our way out of this fiscal hole riding on the backs of our kids. It is wrong, and it is a disservice to them.

I support legislation to preserve teacher jobs. And the full Senate must do the same. In so many areas, our children are taking the brunt of our economic downturn. School is one place we have to try to inoculate from economic hardship.

Hundreds of thousands of teachers across the country—including an estimated 3,000 teachers in Colorado—are in jeopardy of losing their jobs if we do not act. Districts have already cut their budgets substantially. The education jobs package would preserve thousands of these middle-class jobs.

I am the first person to say that we cannot simply continue to do the same thing in education and expect a different result. We need to improve the system so it does a better job of supporting our teachers and educating students.

However, we cannot stand by while schools are devastated by layoffs. Allowing this would be a shortsighted blow against our communities.

The education jobs package would keep people working, and ensure that students can continue learning. This will actually spur economic recovery in the short run, preserving thousands of good jobs, and by laying the groundwork for our kids' success, it would foster prosperity in the long run.

Preserving teaching jobs is a commonsense investment. Yet inside the Beltway the livelihood of our teachers has become a political pawn. We have seen people using this money as a negotiating tool. And we have seen people force false choices between jobs and critical education reforms. Let's not play politics with our children's future.

I call on our colleagues to move quickly to pass an education jobs package and keep our teachers in the classroom so our kids have the tools they need to succeed.

#### TREATMENT OF END USERS

Mrs. LINCOLN. Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated June 30, 2010, from Senator DODD and me to House Chairmen PETERSON and FRANK regarding the treatment of end users in the Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173.

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

U.S. SENATE,

Washington, DC, June 30, 2010.

Hon. Chairman BARNEY FRANK,

*Financial Services Committee, House of Representatives, Rayburn House Office Building, Washington, DC.*

Hon. Chairman COLLIN PETERSON,

*Committee on Agriculture, House of Representatives, Longworth House Office Building, Washington, DC.*

DEAR CHAIRMEN FRANK AND PETERSON: Whether swaps are used by an airline hedging its fuel costs or a global manufacturing company hedging interest rate risk, derivatives are an important tool businesses use to manage costs and market volatility. This legislation will preserve that tool. Regulators, namely the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), and the prudential regulators, must not make hedging so costly it becomes prohibitively expensive for end users to manage their risk. This letter seeks to provide some additional background on legislative intent on some, but not

all, of the various sections of Title VII of H.R. 4173, the Dodd-Frank Act.

The legislation does not authorize the regulators to impose margin on end users, those exempt entities that use swaps to hedge or mitigate commercial risk. If regulators raise the costs of end user transactions, they may create more risk. It is imperative that the regulators do not unnecessarily divert working capital from our economy into margin accounts, in a way that would discourage hedging by end users or impair economic growth.

Again, Congress clearly stated in this bill that the margin and capital requirements are not to be imposed on end users, nor can the regulators require clearing for end user trades. Regulators are charged with establishing rules for the capital requirements, as well as the margin requirements for all uncleared trades, but rules may not be set in a way that requires the imposition of margin requirements on the end user side of a lawful transaction. In cases where a Swap Dealer enters into an uncleared swap with an end user, margin on the dealer side of the transaction should reflect the counterparty risk of the transaction. Congress strongly encourages regulators to establish margin requirements for such swaps or security-based swaps in a manner that is consistent with the Congressional intent to protect end users from burdensome costs.

In harmonizing the different approaches taken by the House and Senate in their respective derivatives titles, a number of provisions were deleted by the Conference Committee to avoid redundancy and to streamline the regulatory framework. However, a consistent Congressional directive throughout all drafts of this legislation, and in Congressional debate, has been to protect end users from burdensome costs associated with margin requirements and mandatory clearing. Accordingly, changes made in Conference to the section of the bill regulating capital and margin requirements for Swap Dealers and Major Swap Participants should not be construed as changing this important Congressional interest in protecting end users. In fact, the House offer amending the capital and margin provisions of Sections 731 and 764 expressly stated that the strike to the base text was made "to eliminate redundancy." Capital and margin standards should be set to mitigate risk in our financial system, not punish those who are trying to hedge their own commercial risk.

Congress recognized that the individualized credit arrangements worked out between counterparties in a bilateral transaction can be important components of business risk management. That is why Congress specifically mandates that regulators permit the use of non-cash collateral for counterparty arrangements with Swap Dealers and Major Swap Participants to permit flexibility. Mitigating risk is one of the most important reasons for passing this legislation.

Congress determined that clearing is at the heart of reform—bringing transactions and counterparties into a robust, conservative and transparent risk management framework. Congress also acknowledged that clearing may not be suitable for every transaction or every counterparty. End users who hedge their risks may find it challenging to use a standard derivative contracts to exactly match up their risks with counterparties willing to purchase their specific exposures. Standardized derivative contracts may not be suitable for every transaction. Congress recognized that imposing the clearing and exchange trading requirement on commercial end-users could raise transaction costs where there is a substantial public interest in keeping such costs low (i.e., to pro-

vide consumers with stable, low prices, promote investment, and create jobs.)

Congress recognized this concern and created a robust end user clearing exemption for those entities that are using the swaps market to hedge or mitigate commercial risk. These entities could be anything ranging from car companies to airlines or energy companies who produce and distribute power to farm machinery manufacturers. They also include captive finance affiliates, finance arms that are hedging in support of manufacturing or other commercial companies. The end user exemption also may apply to our smaller financial entities—credit unions, community banks, and farm credit institutions. These entities did not get us into this crisis and should not be punished for Wall Street's excesses. They help to finance jobs and provide lending for communities all across this nation. That is why Congress provided regulators the authority to exempt these institutions.

This is also why we narrowed the scope of the Swap Dealer and Major Swap Participant definitions. We should not inadvertently pull in entities that are appropriately managing their risk. In implementing the Swap Dealer and Major Swap Participant provisions, Congress expects the regulators to maintain through rulemaking that the definition of Major Swap Participant does not capture companies simply because they use swaps to hedge risk in their ordinary course of business. Congress does not intend to regulate end-users as Major Swap Participants or Swap Dealers just because they use swaps to hedge or manage the commercial risks associated with their business. For example, the Major Swap Participant and Swap Dealer definitions are not intended to include an electric or gas utility that purchases commodities that are used either as a source of fuel to produce electricity or to supply gas to retail customers and that uses swaps to hedge or manage the commercial risks associated with its business. Congress incorporated a de minimis exception to the Swap Dealer definition to ensure that smaller institutions that are responsibly managing their commercial risk are not inadvertently pulled into additional regulation.

Just as Congress has heard the end user community, regulators must carefully take into consideration the impact of regulation and capital and margin on these entities.

It is also imperative that regulators do not assume that all over-the-counter transactions share the same risk profile. While uncleared swaps should be looked at closely, regulators must carefully analyze the risk associated with cleared and uncleared swaps and apply that analysis when setting capital standards for Swap Dealers and Major Swap Participants. As regulators set capital and margin standards on Swap Dealers or Major Swap Participants, they must set the appropriate standards relative to the risks associated with trading. Regulators must carefully consider the potential burdens that Swap Dealers and Major Swap Participants may impose on end user counterparties—especially if those requirements will discourage the use of swaps by end users or harm economic growth. Regulators should seek to impose margins to the extent they are necessary to ensure the safety and soundness of the Swap Dealers and Major Swap Participants.

Congress determined that end users must be empowered in their counterparty relationships, especially relationships with swap dealers. This is why Congress explicitly gave to end users the option to clear swaps contracts, the option to choose their clearinghouse or clearing agency, and the option to segregate margin with an independent 3rd party custodian.