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 provide 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.

In implementing the derivatives title, Congress encourages the CFTC to clarify through rulemaking that the exclusion from the definition of swap for ''any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled'' is intended to be consistent with the forward contract exclusion that is currently in the Commodity Exchange Act and the CFTC's established policy and orders on this subject, including situations where commercial parties agree to ''book-out'' their physical delivery obligations under a forward contract.

Congress recognized that the capital and margin requirements in this bill could have an impact on swaps contracts currently in existence. For this reason, we provided legal certainty to those contracts currently in existence, providing that no contract could be terminated, renegotiated, modified, amended, or supplemented (unless otherwise specified in the contract) based on the implementation of any requirement in this Act, including requirements on Swap Dealers and Major Swap Participants. It is imperative that we provide certainty to these existing contracts for the sake of our economy and financial system.

Regulators must carefully follow Congressional intent in implementing this bill. While Congress may not have the expertise to set specific standards, we have laid out our criteria and guidelines for implementing reform. It is imperative that these standards are not punitive to the end users, that we encourage the management of commercial risk, and that we build a strong but responsive framework for regulating the derivatives market.

Sincerely,

CHAIRMAN CHRISTOPHER DODD,
Senate Committee on Banking, Housing, and Urban Affairs, U.S. Senate.

CHAIRMAN BLANCHE LINCOLN,
Senate Committee on Agriculture, Nutrition, and Forestry, U.S. Senate.

JUDICIAL NOMINATIONS

Mr. LEAHY. Mr. President, earlier this week, I came to the Senate with the respected senior Senator from Tennessee and sought a time agreement to consider Jane Stranch of Tennessee, a judicial nomination that has been stalled by the Republican leadership for more than 8 months. It is one of more than 20 judicial nominations being delayed from Senate consideration by Republican objection. Despite the support of Senator ALEXANDER, the senior Senator from Tennessee who is part of the Republican leadership, the Republican leader objected to a time agreement to consider the Stranch nomination to the Sixth Circuit. I was disappointed, as I have been repeatedly by Republican obstruction since President Obama was elected.

Senate Republicans have further ratcheted up the obstruction and partisanship that have regrettably become commonplace this Congress with regard to judicial nominees. We asked merely for a time agreement to debate and vote on the nomination. I did not foreclose any Republican Senator from voting against the nominee or speaking against the nominee but simply wanted a standard agreement in order to allow the majority leader to schedule the debate and get to a vote. This is for a nomination reported favorably by the Judiciary Committee over eight months ago with bipartisan support. Yet the Republican leader objected and blocked our consideration.

No one should be confused: the current obstruction and stalling by Senate Republicans is unprecedented. There is no systematic counterpart by Senate Democrats. In fact, during the first 2 years of the Bush administration, the 100 judges confirmed were considered by the Democratically controlled Senate an average of 25 days from being reported by the Judiciary Committee. The average time for confirmed Federal circuit court nominees was 26 days. The average time for the 36 Federal circuit and district and circuit court judges confirmed since President Obama took office is 82 days and the average time for Federal circuit nominees is 126 days. So when Republicans say that we are moving faster than we did during the first 2 years of the Bush administration they are wrong. It was not until the summer of 2001 that the Senate majority shifted to Democrats, but as soon as it did, we proceeded on the judicial nominations of President Bush, a Republican President. Indeed, by this date during the second year of the Bush administration, the Senate had confirmed 58 of his judicial nominations and we were on the way to confirming 100 by the end of the year. By contrast, Republican obstruction of President Obama's judicial nominees has meant that only 36 of his judicial nominees have been confirmed. We have fallen dramatically behind the pace set for consideration of President Bush's nominees.

With respect to Senate Republican leadership's current practice of holding, delaying and obstructing Senate consideration of judicial nominees reported favorably by the Judiciary Committee, this is a tactic they reserve for nominees of Democratic Presidents. Indeed, when President Bush was in the White House, Senate Republicans took the position that it was unconstitutional and wholly inappropriate not to vote on nominees approved by the Senate Judiciary Committee. With a Democratic President, they have reverted to the secret holds that resulted in pocket filibusters of more than 60 nominees during the Clinton years. Last year, Senate Republicans successfully stalled all but a dozen Federal circuit and district court nominees. That was the lowest total number of judges confirmed in more than 50 years. They have continued that practice despite the fact that judicial vacancies continue to hover around 100, with more than 40 declared judicial emergencies.

Since the nomination of Jane Stranch of Tennessee is for a vacancy in the Sixth Circuit, when the Republican leader blocked consideration of her nomination earlier this week, I provided the history of how nominees to the Sixth Circuit by Presidents Clinton and Bush had been treated. Despite the fact that Senate Republicans had pocket filibustered President Clinton's nominees, Senate Democrats proceeded to consider President Bush's.

Today I would like to outline the recent history of the Fourth Circuit. Two nominees from North Carolina to the Fourth Circuit were the subject of a request for a time agreement by the Senator from North Carolina last week. The Republican leader objected to any agreement to debate and vote on those nominations, as well. I note that one of those North Carolina nominations was reported unanimously by the Judiciary Committee, and the other received six Republican votes in favor and only one vote against. They are supported by both Senators from North Carolina, one a Republican and one a Democrat. Still the Republican leadership refuses to allow the Senate to consider them.

When I became chairman of the Judiciary Committee midway through President Bush's first tumultuous year in office, I worked very hard to make sure Senate Democrats did not perpetuate the judge wars as tit-for-tat. In fact, we did not. Senate Republicans had pocket filibustered more than 60 of President Clinton's judicial nominations and refused to proceed on them. Included among these was one of the nominees from North Carolina now pending before us again, Judge Wynn. Nevertheless, during the 17 months I chaired the Judiciary Committee during President Bush's first 2 years in office, the Senate proceeded to confirm 100 of his judicial nominees. The Fourth Circuit was problematic, as I will explain, but we were able to make progress there as well. It was not as much progress as I would have liked, but during the Bush administration we were able to reduce the number of vacancies in the Fourth Circuit.

In contrast to the Republican Senate majority during the Clinton administration that obstructed nominations and more than doubled circuit court vacancies, Senate Democrats contributed to the reduction of circuit court vacancies by two-thirds during the Bush administration. The Senator from Kentucky complained last week about two nominations made during the 7th and 8th years of the Bush administration, including one that did not have the support of home State Senators. He did not mention that, during the Clinton administration, Senate Republicans pocket filibustered five of President Clinton's nominations to the Fourth Circuit, resulting in a doubling of Fourth Circuit vacancies, which rose from two to five. The Republican leader did not mention that Senate Republicans did not proceed on even one of President Clinton's Fourth Circuit nominees during the last three years of his administration or the fact that, by