The affordable care act—also known as Obamacare—contains an individual health insurance mandate that takes Congress's powers to a whole new level. For the first time in American history, our national legislature has required every American in every part of this country to purchase a particular product; not just any product but health insurance; not just any health insurance but that specific kind of health insurance that Congress, in its wisdom, deemed appropriate and necessary for every American to buy. This is absolutely without precedent. It is also, I believe, not defensible even under the broad deferential standard that has been applied by the U.S. Supreme Court since the late 1930s and early 1940s.

Among other things, the limits that have been maintained by the Supreme Court, notwithstanding its deference to Congress under the commerce clause, have been limited by a few principles.

First, the Supreme Court has continued to insist that although some intrastate activities will be regulated by Congress under the commerce clause, some activities occurring entirely within one State—activities that historically would have been regarded as the exclusive domain of States, activities such as labor, manufacturing, agriculture and mining—although some activities might be covered by Congress, those activities at a minimum have to be activities that impose a substantial burden or obstruction on interstate commerce or on Congress's regulation of interstate commerce.

The Supreme Court has also continued to insist that the activity in question that is being regulated needs to be activity, first of all, and not inactivity. But it also needs to involve economic activity in most circumstances, unless, of course, it is the kind of activity that, while ostensibly noneconomic, by its very nature undercuts a larger comprehensive regulation of activity that is itself economic.

Finally, the Supreme Court has continued to insist time and time again that Congress cannot, in the name of regulating interstate commerce, effectively obliterate the distinction between what is national and what is local.

The affordable care act through its individual mandate effectively blows past each and every one of these restrictions, restrictions that even under the broad deferential approach the Supreme Court has taken toward the regulation of commerce by Congress over the last 75 years or so—even the Supreme Court, even under these broad standards, isn't willing to go this far. There are very good reasons for that, and those reasons have to do with our individual liberty. They have to do with the fact that Americans were always intended to live free, and they understood that they are more likely to be free when decisions of great importance need to be hammered out at the State and local level; that is, unless those decisions have been specifically delegated to Congress, specifically designated as national responsibilities. This one is not.

Decisions about where you go to the doctor and how you are going to pay for it are not decisions that are national in nature, according to the text and spirit and letter and history and understanding of the Constitution. They are not, and they cannot be.

If in this instance we say, well, this is important so we need to allow Congress to act—if we do that, we do so at our own peril. We stand to lose a great deal if all of a sudden we allow Congress to regulate something that is not economic activity; in fact, it is not activity at all. It is inaction. It is a decision by an individual person whether to purchase anything, whether to purchase health insurance or, if so, what kind of health insurance to purchase. Our very liberties are at stake, and that is why I find this concerning.

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

Mr. ENZI. I ask unanimous consent for an additional 2 minutes.

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

Mr. ENZI. Mr. President, I thought I had 2 more minutes. I appreciate the comments.

This is the 2-year anniversary of passing what is the so-called affordable patient care act. The Supreme Court has chosen next week to begin the deliberations on it, and they are going to take three times as long as they do on any case so that they can divide this into pieces, and that mandate piece will be the second one.

One that they probably won't be going into is this Medicare problem. We are going to have seniors who are going to be without care because we have taken $500 billion out of Medicare when it needed a doc fix and it needed a whole bunch of other things, and particularly in rural areas where there are critical access hospitals, rural health clinics. Can any reasonable person believe that you can cut $½ trillion from a program and not affect its impact on patient care?

I wish to have more time to show that there is a theft of this $500 billion, there is fraud involved, that there are bureaucrats and accounting sleight of hand.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

JUMPSTART OUR BUSINESS STARTUPS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3606, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3606) to increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies.

Pending:

Reid (for Merkley) Amendment No. 1884, to amend the securities laws to provide for registration exemptions for certain crowdfunded securities.

Reid (for Reed) Amendment No. 1931 (to Amendment No. 1884), to improve the bill.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 p.m. will be equally divided between the two leaders or their designees.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask unanimous consent that I be yielded 10 minutes.

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

Mr. LEVIN. Mr. President, in a few hours, after votes on two amendments that I hope we will pass, we are going to vote on final passage of the House of Representatives-passed bill, the so-called JOBS bill. I am going to vote against passage of this bill because it would remain far too deeply flawed even if the two amendments were passed to justify passage by the Senate. I am going to vote no on this bill because it will significantly weaken existing protections for investors against fraud and abuse.

The supporters of this bill claim it will help to create jobs. They have even titled it the JOBS Act, but there is no evidence it will help create new jobs. There is not one study that its proponents have shown us how repealing provisions that protects us from conflicts of interest in the research coverage of companies with up to $1 billion in revenue will create jobs; nor is there evidence that removing transparency and disclosure requirements for very large companies will create jobs; nor is there evidence that allowing unregulated stock sales to those unable to assess or withstand high-risk investments will create jobs; nor is there much else in this bill that will, even arguably, help create jobs. It will, however, take the cop off the beat relative to the activities of some huge banks, and it will threaten damage to the honesty and integrity of our financial markets.

That is a mistake in its own right. We should value honesty and integrity in markets, as in all things. And legislation that creates new opportunities for fraud and abuse should be amended or rejected. But the damage done by this bill to the integrity of our markets will also work against the purported goal of this bill—the encouragement of investment to create jobs.

By making our financial markets less transparent, less honest, and less accountable, this legislation threatens to discourage investors from participating in capital markets. That damage would make it harder—not easier—for companies to attract the capital that they need and to hire new workers.

Our capital markets are the envy of the world, and that is in part because

we recognize that efficient markets that help businesses raise capital and aim to match up investors in companies need transparency and they need financial integrity. But this bill will allow companies to make fewer disclosures and will remove important investor safeguards. This bill will increase many types of risks to investors, including the risk of outright fraud. I want to focus on a few of the many serious flaws in this bill.

First, it harms investors by allowing a wide range of companies to avoid basic requirements for disclosure and transparency. It does that by changing the threshold at which companies are considered large enough and their stock is widely enough held to trigger those disclosure requirements. Today, companies are generally required to register with the SEC and meet basic requirements for financial transparency and accountability if they have 500 or more shareholders. The bill before us would raise that exemption to 2,000 or even more shareholders. It would even raise the level at which banks can deregister from 300 to 1,200 or more shareholders regardless of the bank's size in terms of assets. These changes will allow even very large companies with several thousand shareholders to avoid telling regulators, shareholders, and potential shareholders even the most basic information about their finances, and to avoid important accounting standards.

Second, this bill harms investors by allowing companies to make largely unregulated private stock offerings to members of the public. Today, such inherently risky, unregulated offerings cannot be advertised to the public and are generally limited to shareholders who are financially able to absorb the risks involved. But the House bill allows advertisement of these unregulated offerings to the general public. It will allow TV ads for get-rich-quick schemes with almost no oversight. Advertisers could pitch these risky investments in cold calls to senior citizen centers. That is why groups such as AARP are deeply concerned about what these changes will do to senior citizens who are often the targets of financial fraud and abuse.

Third, this bill abandons a lesson that we learned all too painfully during the dot-com crisis of the 1990s. At that time, investment banks seeking to underwrite initial public offerings—which is a lucrative line of business—engaged in brazen conflicts of interest. They sought this business by promising companies about to go public that their research analysts—whom investors depend on for honest and impartial advice—would give favorable coverage to their stocks in exchange for the underwriting business.

In company after company, investors were misled about the strength of new stocks by investment banks engaging in this conflict of interest. This abuse helped to feed a stock bubble that, when it burst, wiped out investors, evaporated companies, and it devastated the economy. The Nasdaq index still, to this day, has not recovered from that bubble. As a result, regulators put up barriers designed to end these conflicts, but the House bill before us knocks down those barriers. It is astonishing that we would forget these lessons and allow the return of such blatant conflicts of interest.

Fourth, this bill will allow very large companies, companies with up to $1 billion in annual revenue, to make initial public offerings without complying with basic disclosure and accountability standards. These companies would be able to avoid compliance with accounting and disclosure rules to help give investors accurate information on the company's finances. They would not have to obey standard accounting rules or have auditors certify that they have adequate internal controls. Many of these rules were adopted in response to high-profile accounting frauds, such as Enron and WorldCom. Some were recently enacted in the Dodd-Frank Act in the wake of the financial crisis.

Yet while our economy is still recovering from the damage of the most recent crisis that arose, in large part, as a result of deregulation, we are about to consider undoing safeguards we created in its wake. The $1 billion limit of the House bill will allow nearly 90 percent of the IPOs to avoid even the most basic disclosure standards. With these provisions, we will essentially ask America's investors to place their capital at risk almost blindly, with little if any reliable information about the companies seeking their investment. It defies common sense to argue that investors will be more likely to put their money at risk and therefore help to create jobs in that kind of environment.

This is a bad bill. Because debate was closed off and amendments severely limited, we will not be able to fix nearly enough of it. But we will hopefully remedy a few of its flaws in amendments we are going to be voting on. Change to the crowdfunding provisions of the House bill is welcome, and I commend Senators MERKLEY, BENNET, and others who crafted that provision which Senators REED, LANDRIEU, and I also incorporated in our substitute bill, which was defeated yesterday. This amendment will give investors somewhat greater confidence in a new and potentially useful method in establishing capital and in support of Senator REED's amendment to close important loopholes in the current law—one the House bill fails to address. With this amendment, it will be harder to evade registration and disclosure requirements by using shareholders of record who exist only on paper but who hold shares for large numbers of actual beneficial owners. This, too, is part of our substitute, and its inclusion in the bill would represent an improvement.

But we should not fool ourselves. These improvements, if adopted, though welcome, are far from sufficient. We are about to embark upon the most sweeping deregulatory effort and assault on investor protection in decades. The Council of Institutional Investors warns us that ''this legislation will likely create more risks to investors than jobs.''

If we pass this bill, it will allow new opportunities for fraud and abuse in capital markets. Rather than growing our economy, we are courting the next accounting scandal, the next stock bubble, the next financial crisis. If this bill passes, we will look back at our votes today with deep regret.

We should not adopt this bill today. We should return it to committee. We should have hearings. We should have opportunities to amend this bill. Adopting this bill will put us in a position of the most massive and mistaken deregulation of our capital markets in decades.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWN of Ohio). The senior Senator from Iowa is recognized.

STOCK ACT

Mr. GRASSLEY. Mr. President, soon, around the 12:30 hour or on one of the seven votes this afternoon, we are going to be voting on cloture on the STOCK Act. I have 45 minutes allotted to me to speak about the disappointment I have with the way this has been handled and why I think the parliamentary procedure is wrong and why the whole process irritates me.

Bipartisanship happens to be alive and well in Washington, DC, where most of our constituents believe it is never working. Earlier this week, we had the Republican majority leader of the House and the Democratic majority leader of the Senate—that is bipartisanship—work together to thwart the will of 60 Senators and 286 Members of Congress. The end result is, as well-meaning as the people behind this maneuver might be—the end result is that 60 Members of the Senate are going to be denied an opportunity to pursue what they had previously voted for and 286 Members of the House of Representatives, cosponsoring the language of my amendment, are not going to have a chance to do what 286 Members of the House want to do. As I said, this is bipartisanship, but it is not the kind of bipartisan cooperation, intended or not, this Nation deserves.

I will not ascribe motives to anyone in this body, but I know that today's action only serves the desires of obscure and powerful Wall Street interests, and it undercuts the will of the overwhelming majority of Congress I just described. Once again, it is an example of Wall Street being heard in Washington and maybe the common persons throughout the United States not having their will expressed.

With this process, they took a commonsense provision, supported by a majority of both Houses of Congress, and they simply erased it. In other words, we have to remember, when we

have a 60-vote requirement in the Senate, we know what that 60-vote requirement is meant to do; that no amendment under a 60-vote requirement is ever going to be adopted. That was surely the motive behind the 60-vote threshold on the amendment I got adopted when this bill was first up, because the Democratic leader voted against it, the Republican leader voted against it, the Democratic manager spoke against it, and the Republican manager was against it. Common sense tells us, if we study the Senate, an amendment such as that is never supposed to get adopted. But we got the 60 votes to get it adopted. Frankly, I was surprised we got the 60 votes to get it adopted. But that is taken out of the bill we are going to be voting on this afternoon.

My amendment simply says that if someone seeks information from Congress or the executive branch to trade stocks, Congress, the executive branch, and the American people ought to know who they are. Nobody is saying they cannot do it, but we ought to know who they are. We do that through the process where everybody ought to know who lobbyists are—not that lobbying is illegal or wrong, but it ought to be transparent. With transparency comes accountability. The same way this amendment asks these people who are involved in seeking information to register so we know who they are. The amendment makes nothing illegal. But we ought to know who these people are who seek political and economic espionage. We ought to bring all that out of the shadow, into the public's information.

But the leadership of both parties—the majority in the House and the majority in the Senate—went behind closed doors and made that provision magically disappear. What they did was truly amazing because a handful of Senators and Congressmen overrode the will of 60 Senators and 280-plus backers of my amendment in the other body. First, the majority leader in the House said the definition of political intelligence was so vague he could not possibly figure out how to define it. That is the excuse given for stripping any regulation of political intelligence, my words, or political and economic espionage from the STOCK Act when it was taken up in the House of Representatives.

Let me tell you why that excuse is truly amazing to me and quite a surprise. It is because the House of Representatives put in a diluted provision that uses the very same definition I had in my bill of what political intelligence gathering is. Then, by taking out my language and putting in theirs, they got it done because it was an excuse, that the language I had in my amendment was so vague. But you know what. They took that very same language and put it in their amendment, calling for a study of political and economic espionage and political intelligence and used it.

Let me go back to section 7, part b, and quote:

> Definition—for purposes of this section, the term ''political intelligence'' shall mean information that is derived by a person from direct communications with an executive branch employee, a Member of Congress, or an employee of Congress; and provided in exchange for financial compensation to a client who intends, and who is known to intend, to use this information to inform investment decisions.

That is the definition that they thought we don't know what political intelligence is, so we should not be passing this amendment, even though 286 Members of the House of Representatives have sponsored a bill to do it and take that very same definition that they say is so vague and put it in a bill for the purposes of studying something. That seems pretty straightforward, doesn't it? That definition seems pretty straightforward. Of course, now that definition will only by applied to a study, not to legislation with real teeth—because the powerful interests of Wall Street are winning out.

If you think that is bad, this is what happened to the STOCK Act in the Senate. By now, I think just about everybody in this body knows how strongly I feel about this amendment that was adopted by this body 60 to 40, under a rule requiring 60 votes because that kills any amendment—but it did not kill this one because we were right. I have spoken many times about the dangers of unregulated political and economic espionage. I have reached out to the leadership to express my concern and written a letter with Senator LEAHY, the chairman of the Judiciary Committee, on the importance of our STOCK Act provisions. I said that I was willing, if necessary, to negotiate on the language of my amendment, and that would be on the question of what is political intelligence. But it seems to me one doesn't need to negotiate that if we pass something with that definition in it. The House already has 286 cosponsors with that definition in it, but they take that same definition and put it in the amendment in the other body for a study, not an amendment with any real teeth.

So when I said I was willing to negotiate, what was the response? Nothing. I was not even given the courtesy of being notified before cloture was filed. So it was kind of like an ambush, plain and simple. Just like those people who traffic in political and economic espionage, this process has been cloaked in a great deal of secrecy.

Now the claim is made that the Senate was forced to take up the House bill because an unnamed Republican was threatening to object to a conference. However, no Republican—or any Senator, for that matter—has publicly owned up to trying to stop this bill from going to conference. But even if we accept this fact, there are still more questions. Supposedly we are taking up the House bill because the Senate does not have time to take two or more cloture votes. Throughout this Congress, we have spent weeks in nothing but quorum calls, but suddenly we have run out of time.

Of course, in less than 10 days we will be leaving Washington, DC, for a 2-week recess. I intend to go home and have town meetings, but we are not going to be doing business here in Washington, DC. So I have an idea for people to consider. With congressional approval ratings in the near single digits, why can't we spend part of that time getting the STOCK Act right? And by getting it right, I see nothing wrong with the basic underlying piece of legislation, but when there is a chance to bring transparency and accountability through the registering of people who are involved in political and economic espionage, I think we ought to do it, and that is what I mean by getting the STOCK Act right.

The Washington Post said that my amendment, combined with Senator LEAHY's political corruption amendment, ''transformed the [STOCK Act] into the most sweeping ethics legislation Congress had considered since 2007.'' Maybe you don't agree with the Washington Post all the time, and I don't agree with them all the time, but they are looking at things on a wider scale, and they are saying that a Congress that doesn't have a very good approval rating has a chance, for the first time in 5 years, to do sweeping ethics legislation that we need in order to improve the Congress's reputation by the public.

So isn't it worth taking just a couple of extra votes to get it done right and to make Congress look better? I think so, but apparently a small handful of people in the House and the Senate who make the decisions on how we are going to do business around here—not taking into consideration the votes of 60 Senators supporting this—have other ideas.

Well, at the end of the day, here is what will happen if we don't proceed. There are about 2,000 people working in the completely unregulated world of political intelligence or political and economic espionage. Right now, these people have to be celebrating because they are in the shadows. They want to stay in the shadows. They are celebrating because they know it is business as usual. They can continue to pass along tips that they get from Members of Congress, Senators, and staff, and no one will be the wiser. They pass along these tips to hedge funds, private equity firms, and other investors who pay them top dollar. The lobbyists get rich, Wall Street traders get rich, but the American people lose.

At one time, these folks who set up these meetings for Members of Congress or even in the executive branch—and I have examples to show that—used to charge $10,000 for just setting up a meeting. They don't charge $10,000 anymore because that information got out and it was too embarrassing to

them. So now there is kind of a relationship built up here between the people who know their way around Congress and people who want this information that if there is investment in stock as a result of this and there is an increase in the value of the stock, that one will do their trading through the company. That is a tragic result of this decision by the leadership to leave out the amendment that was adopted by 60 Members of this Congress and would do nothing more—not make anything illegal—than let us know who these people are.

Through my oversight investigations, I have learned that political intelligence gathering for Wall Street is a growing field ripe for abuse. Here are two examples of the type of activity that will continue to be kept in the dark.

In the course of my investigations of a whistleblower's claim, I learned that the Center for Medicare and Medicaid Services has closed-door meetings with Wall Street firms where CMS policies are discussed. No record is kept of the meetings, and employees are essentially on the honor system to make sure they are not giving investors inside information. As an example, the whistleblower who came to us claimed that over a dozen CMS employees spent nearly 2 hours briefing Wall Street analysts and investigators on the taxpayers' dime. A member of the public could not walk in and get that kind of access to that information. CMS is supposed to be working for us. Instead, we found out that they are working for Wall Street. If my amendment fails, we won't know how many of these meetings occur throughout the government and who profits from these meetings.

Another example is an investigation I conducted into the Obama administration's Department of Education. The Department of Education was getting set up to issue regulations on gainful employment that would affect not-for-profit colleges. Several hedge funds had bet big that those new regulations would make it harder for for-profit colleges to do business. Then news began to leak that those regulators were not going to be as tough as was expected. Suddenly, for-profit stocks began to rise, and these hedge fund investors reached out to their friends in the Department of Education.

This is from an actual e-mail my investigators uncovered. It was sent from Steve Eisman, a hedge fund investor, to David Bergeron. He was part of a team in charge of writing these regulations. The e-mail reads:

> I know you cannot respond, but FYI education stocks are running because people are hearing DOE is backing down on gainful employment.

To translate that Wall Street jargon, the term ''running'' means that a stock is going up.

Within minutes this e-mail was marked ''high importance'' and forwarded to senior-level political appointees. These appointees included James Kvaal, the Deputy Under Secretary, and another policy expert at the Department and Phil Martin, the Secretary of Education's confidential assistant. To this day we do not know why the Department's higher education policy experts needed to know that a hedge fund investor was losing money. What we do know is that for-profit stock dropped significantly, and if you bet big that these stocks would drop, you likely made a lot of money.

When the Department of Education answered my questions, they admitted to my staff that this e-mail was not a proper contact.

In addition, the Department of Education inspector general is investigating the gainful employment rulemaking process.

These are just two examples in government agencies where reports such as these are just the tip of the iceberg. The more power Washington, DC has, the more it affects financial markets, and the more it affects financial markets, the more people on Wall Street want to pay for information about what is going to happen here on this island surrounded by reality that we call Washington, DC.

Usually, the only way any sort of ethics reform gets done around here is if someone gets caught. With political intelligence, we have the opportunity to create transparency before the next scandal occurs. As government grows, this industry is going to grow, with the potential for corruption. The question is, What are we going to do about it? Transparency is the simplest and least intrusive solution, and if transparency doesn't do the job, then you can legislate. But I have found out through so many of my investigations over the last 20 years that if you bring transparency to something and get it out in the open, it tends to correct itself—maybe not completely but to a great degree.

Originally, in starting investigations, you think you are going to have to have a massive amount of legislation, but when you get transparency involved and the accountability that goes along with it, you find that you don't have to pass a lot of laws, that a lot of people know that if somebody is looking over their shoulder, they are going to do what is right.

Now, we can commission another study, as the House of Representatives wants to do and we are going to be voting on when we vote on cloture here, but that is kicking the can down the road for another year. We can act today by defeating cloture and getting to some of these amendments that have such widespread support in the Congress of the United States. With 60 votes in the Senate and 286 cosponsors in the House of Representatives, this is our last chance to make sure the Senate speaks with a unified voice against secrecy for political and economic espionage people and for transparency in government. We must not allow the special interests to operate in the dark. Just bring them out of the shadows—not that what they are doing is illegal, but we ought to know what it is.

For these reasons, and to support transparency, to support open government, and to support good government, I will oppose cloture on the bill, and I hope a lot of my colleagues—in fact, I hope all 60 of my colleagues who voted for the amendment in the first place—will oppose cloture.

If cloture is invoked, which is likely, I intend to vote for this bill anyway because the underlying bill is a very necessary piece of legislation, but it is not much of a victory for the American people. As the Washington Post said, if it included the Leahy amendment, if it included the Grassley amendment, it would be the most sweeping ethics reform in the last 5 years.

I yield the floor and reserve the remainder of my time. I suggest the absence of a quorum.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. 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. REED. Mr. President, this is a critical moment. The Senate is on the verge of adopting legislation that could cost the American people dearly in the future. The House bill with respect to capital formation, which is labeled a jobs bill, but goes more to fundamentally changing security laws, is, in effect, another regulatory race to the bottom. There has not been a normal committee process in terms of weighing this legislation. This is a complicated bill involving the interaction of many different securities laws, interactions which have not been sorted out or analyzed. As a result, we are rushing to justice—or rushing to conclusions.

Hasty deregulation has repeatedly been the source of financial crises—including the savings and loans crisis, the Enron-era crisis, the great recession of 2008, and the list goes on. Those who are impacted by those crises—those who lost their savings or dealt with cleaning them up, experts in this field, and many more—have come out in strong opposition to the House proposal: from the Chairman of the Securities and Exchange Commission, Mary Schapiro, the North American Securities Administrators Association, the State officials charged with enforcing securities laws, auditors, financial analysts, pension fund managers, and organizations like AARP, all who have spoken out against this legislation and supported my efforts to protect investors.

This capital formation bill is fundamentally flawed, and it should not become law in its present form. It undercuts and dilutes investor protections and has no real requirements to

protect American jobs in order to use these new capital raising procedures. That is what is so ironic. We have a jobs bill, but actually I see nothing in this bill that requires creating American jobs in order to earn the benefits of this bill. I think it is, again, misnomered as a jobs bill.

In addition to the substitute amendment I offered with Senators LANDRIEU, LEVIN, and others that received a majority vote earlier this week, I offered an amendment that we will be voting on later today to clarify the shareholder trigger for Exchange Act reporting so that all companies count their actual shareholders so they cannot avoid periodic reporting requirements.

Adoption of this amendment would achieve one of the stated goals of the legislation, which is ostensibly to have more companies into a transparent marketplace, disclosing and/or listing on stock exchanges. That was the whole essence of this IPO onramp idea: encourage more people to go public so they can disclose information to shareholders, so the market can follow them, and so investment advisers can advise investors about purchasing the stocks on the market.

This proposed amendment would close one glaring loophole, but, frankly, too many others remain, and I have grave concerns about the impact this underlying bill will have on the middle class. Backers say it is needed because initial public offerings are down since the 1990s. They blame regulation, ignoring evidence that the dot-com bubble bursting—which shook the confidence of many investors through lots of new IPOs coming on the market quickly with huge multiples in their prices and then quickly disappearing and leaving the scene altogether—and the biggest financial collapse since the Great Depression, beginning in 2008 and lingering with us today, have shaken the confidence and, frankly, shaken the business calculation of many small businesses.

These small businesses are looking to expand when they see the demand out there for their products. If the demand is there, they will, even in this environment, go forward with initial public offerings. They also repeatedly blame the lack of IPOs on accounting costs and all other compliance costs brought on by Sarbanes-Oxley and other laws. They conveniently ignore that the single largest cost, by a large multiple, is not the Sarbanes-Oxley audit costs or the attorney costs; they are the investment bankers' fees, and there is nothing in this legislation that will affect those fees whatsoever.

In the case of Groupon, for example, the investment bankers were paid 28 times what the auditors were paid. If we ask the shareholders of a company's stock whether they would prefer solid auditing practices going forward to ensure their investment is being wisely used, I think they would say they prefer that to paying large fees to investment bankers. In the case of LinkedIn, the underwriters were paid 18 times what the auditors were. Groupon paid their accountants and auditors $1.5 million, and their investment bankers received $42 million. So the notion that these Sarbanes-Oxley auditing costs and accounting procedures are what is stopping a business person from deciding to go ahead ignores the fact that compared to the investment banking fees which they will still have to pay, these costs are somewhat insignificant in comparison.

Theoretically, this bill is supposed to promote the flow of capital to emerging businesses. But in practice it will likely promote and continue to promote the flow of big fees to investment bankers and others to bring these companies public. There is nothing wrong with that, but there is nothing in this underlying legislation that is going to require discounts in the cost of an IPO because of the reductions in accounting costs. There is nothing in this legislation that will change that dynamic. However, this legislation could give insiders more ways to manipulate the market while average investors are left out in the cold.

There is a difference between cutting redtape and allowing insiders to cut corners—undoing the commonsense safeguards that protect people who play by the rules. The House bill lowers standards for taking companies public and lowers standards for protecting the public from investment fraud.

This so-called IPO onramp desperately needs an offramp, through more careful consideration by the Senate and the House in conference so that we can improve some provisions which have great merit but need improvement. This bill would allow very large companies with up to $1 billion in revenues per year to avoid financial transparency and auditing disclosure designed to ensure they are not manipulating their books while enjoying lighter regulation for up to 5 years after the IPO.

If this unbalanced bill becomes, law without these needed improvements, it could weaken oversight of Wall Street—oversight that in the past has provided investors protections that are extremely important. Again, there is merit to the idea of giving small startup companies more financing options, but the devil is in the details, and the way this bill is written and packaged could have the opposite effect and ultimately make it harder to raise capital.

It opens the spigot to general solicitation and mass marketing of what have traditionally been private securities offerings, and we could fully expect to have senior citizens and others—through nightly cable advertisements, through billboards, cold calls by brokers, or other individuals telling them about the special opportunities for investing their cash, fall for some of these tactics.

Retail investors can be solicited through this bill's reg A process to raise up to $50 million capital for small businesses. They will hear the pitches to make their investment now and get rich.

Again, there is potential for expanding the use of regulation A—it is on the books already at the Securities and Exchange Commission—but not without safeguards. For example, as the bill is currently drafted, these solicitations can be made without audited financial statements. I think as a point of departure, if someone is trying to sell a security, they should at least have to provide ordered financials from the company they are soliciting on behalf of.

Now, the crowdfunding amendment, I hope, will be improved dramatically by the work of Senator MERKLEY and Senator BENNET and Senator BROWN. We will be voting on that later today too. It is a substantial improvement, but I think even they themselves will admit this is an experiment and perhaps could be improved even further. But I commend them and salute them for what they have done, and I hope our colleagues will accept the amendment and move forward.

Over the last few days we have spent a great deal of time talking about the shortcomings in this legislation. With the exception of the proposals before us, many of these shortcomings still exist, and I think they will lead potentially to difficulties and harm to investors.

People understand investing is risky. They try to make an informed choice, and they win some and lose some. But most Americans would agree that U.S. financial markets work best when investors have access to timely, comprehensive, and accurate public information that allows people to make solid investment decisions. In fact, one of the principles of the competitive market, if we refer to an economics 101 textbook, is perfect information.

That is the assumption for competitive markets: perfect information.

Well, there is never perfect information. But there has to be adequate information. Otherwise it is not a market, it is a casino. This legislation undermines some of the decades-long protections we have had in place to provide at least adequate information to investors.

By stripping away auditing standards and giving the investing public less information in almost every setting, sophisticated players and investment banks will have all the advantages. The average investor will be operating in much more challenged circumstances.

Middle-class America will be particularly affected. As USA Today noted:

> Banks that manage IPOs will be able to use inside access to past financial results to dominate research on new companies, with incentives to promote their firm's banking clients.

The American people want big banks and large companies to play fair and comply with the basic rules and responsibilities that go with being a public company. That is not too much to ask.

I believe history will judge this misnamed bill quite harshly. Instead of rushing to pass this bill, we should be working together to protect the interests and economic well-being of the American public. We should be focused on creating jobs and helping working families. In my estimate, this bill does not do that and, indeed, ironically, it could harm our constituents by shattering their faith—and it has been tested quite recently by the financial crisis and other crises—in the market, rather than reinforcing their confidence that they will be protected against fraud and manipulation.

I believe we are capable of writing better legislation without sacrificing important investor protections. I hope we can go forward. I am disappointed the substitute amendment, authored by myself and Senator LANDRIEU and Senator LEVIN, was not accepted. As such, I would urge, when we get to final passage, people think very seriously about the consequences of the bill. Despite the efforts of Senator MERKLEY and Senator BENNET, Senator BROWN of Massachusetts and others, despite my efforts, I am afraid the final version of this legislation will not protect investors as it should and, therefore, should be rejected.

Mr. President, I ask unanimous consent that any time remaining in quorum calls be equally divided between my Republican colleagues and my Democratic colleagues.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. TOOMEY. Mr. President, I would like to yield myself 5 minutes to discuss the JOBS Act.

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

Mr. TOOMEY. Mr. President, I think we are on the verge of doing something very constructive in this body, something very constructive for our economy, for the American people, for economic growth, and for job creation. After being in a Congress that has thus far been a little frustrating for the lack of progress we have made on this front, today is a very big day.

We have a chance to pass a bill that has passed the House overwhelmingly with a huge bipartisan majority—a bill that the President of the United States has said he will sign into law. We have a chance to pass this, to have it signed into law, and to, thereby, enable small and growing businesses across America greater access to the capital they need to grow, to hire new workers, to help expand this economy, to really make some progress at a time when we need it badly.

The bill I am talking about, of course, is the JOBS Act. It has passed the House 390 to 23—an overwhelming majority. It consists of a series of component measures I will talk about in a little bit in some detail—each of which has either passed the full House almost unanimously or at least in committee by overwhelming majorities. This is very broad bipartisan support.

It is important, however, that to get to this point we need to defeat the amendment offered by my friend and colleague, whom I respect a great deal, the Senator from Rhode Island, who is offering an amendment that would have devastating unintended consequences—an amendment that does not merely weaken the progress we are going to make with this bill but would actually take us backwards from where we are today.

The way in which it would do that—and I doubt this is the intent, but I am sure this is the consequence of this amendment—if it were enacted, this amendment would cause companies that are organized as private companies, for good and sufficient reasons—many for many years; they choose to be private companies because it is what is best for their business, their employees, and their customers—it would force many of them to become public companies against their will.

Because a change in the rules, in the regulations by which we count the number of shareholders—as the amendment from the Senator from Rhode Island would do—would trigger this change in the status of these companies, having an enormously detrimental impact on many companies, raising their costs of compliance dramatically, making them less profitable.

I am very concerned, for instance, among the many ways this could happen—one could be through ESOPs, the employee stock ownership plans. I know the Senator from Rhode Island believes they would not trigger this. I think it is very likely they would. Not only would this force private companies to go public against their will, but it would discourage the creation of employee ownership in companies. I think the last thing we want to do is discourage a very constructive way of compensating employees.

So if we can defeat the Reed amendment, then we can move on to—I think we will have another amendment that will deal with crowdfunding. I do not know whether that passes. But either way we will be able to expand the opportunity of small companies to raise capital through crowdfunding mechanisms. Then we will have a final passage vote on what I think might be the most progrowth measure this body will consider perhaps this whole year.

Let me walk through a couple of specific items.

This is a chart I have in the Chamber that shows just a sampling of the organizations and institutions that support this bill. It is a wide range of businesses and business associations, folks who are in the business of launching new companies, of growing small companies. It is a long list. This is an incomplete subset of that list.

As shown on this next chart, this is an important point I want to make; that is, there is a very vast range of investor protections that are completely unaddressed, completely unaffected by this legislation.

The legislation is actually modest in the regulations it changes, and the categories it leaves in place to protect investors who are choosing to invest in companies—be they public or private—are quite extensive. A whole range of antifraud provisions that remain in full force are unaffected.

A full range of SEC disclosure and reporting obligations remain entirely still in full force. There are governance rules that are unaffected by any of this legislation—proxy statements, reporting obligations. We have a very extensive body of law and regulation that very precisely controls all kinds of reporting and disclosure requirements designed to protect investors. It all stays in place.

Investors remain very well protected if this legislation is enacted.

I want to touch on the three aspects I think I am most excited about, and I will acknowledge my bias. These are three bills I introduced with Democratic cosponsors in the Senate, each of which has been rolled up into this package, in addition to the crowdfunding piece I alluded to earlier and a bill introduced by Senator THUNE and others that is also part of this package.

One of the pieces in this jobs package that is very constructive is a bill I introduced with Senator TESTER. This is a bill that takes the existing regulation A in the securities law, the body of law—regulation A allows companies to issue a security in a streamlined regulatory fashion. It streamlines the process. It reduces costs somewhat. The problem is, the current limit is only $5 million, making it not very practical for the vast majority of companies. Our bill would take that limit to $50 million and make this an option to raise capital and grow a business that would be available to far more companies.

A second piece that I introduced with Senator CARPER, and I am very grateful to Senator CARPER for his work, is to lift the permissible number of shareholders that a small privately held business can have without triggering the full, very expensive, and onerous SEC compliance regime. Our bill would take that from a current level of 500 up to 2,000. There are many companies throughout Pennsylvania, across the country, that are successful. They are thriving, they are growing, but they have a number of shareholders that is bumping up against their limit. They are close to 500. They need to raise capital. They do not want to go public, and they have plenty of people who would like to invest in their successful business so they can grow. But they cannot do it because they are so close to the threshold. We would lift that threshold to 2,000 so they can raise more money in the private markets which is available to them.

Then, finally, what is in some ways the centerpiece of this legislation in my mind is a bill I introduced with Senator SCHUMER, and I thank him for his work. This is a bill that facilitates going public. When a company reaches that point in its growth where—in order to grow further, in order to hire more workers, in order to expand—it needs to become a publicly traded company, we make it more affordable for more companies to do that, so they can do it sooner, they can grow sooner, they can hire the additional workers sooner.

We do it with what we call an onramp. It is a process by which a company—if it has less than $1 billion in sales, less than $750 million in market flow—such a company would be able to do a public offering without being subject to all of the most expensive parts of the SEC regulatory regime. They would be required to comply with a big majority of all of the existing reporting requirements, but there would be some pieces—especially section 404(b) of the Sarbanes-Oxley Act, which is extremely complex and expensive to comply with—they would not have to fully comply with that for 5 years or until they reached $1 billion in sales or $750 million in market flow, whichever came first.

So what we are doing with this part of the JOBS Act is we are giving small and growing companies an opportunity to grow into the ability to afford the most expensive regulation to which they would be subject. Nobody is exempted permanently. Everybody who goes public would be subject to the full panoply of regulations within 5 years or sooner if they grow faster, and it is only available to companies that have sales, as I said, of less than $1 billion. But that describes a great number of companies.

I can tell you from personal experience, when a company is approaching that threshold of asking themselves: Should we go public—we could grow, we could use the capital, we could deploy it to hire more workers, we could make constructive use of it—they also have to weigh the cost. The cost of compliance right now is huge, and we have seen a huge dropoff in the number of IPOs. We have seen a huge extension in the period of time between the successful launch of a company and the moment they do an IPO. We have seen that lengthen dramatically since we passed Sarbanes-Oxley. It is, in part, because it is so expensive to comply.

So what we will be doing, if we pass this legislation today—which I certainly hope we will—is making it a little bit more affordable for companies to make that decision sooner, which means hiring workers sooner, which means growing sooner, which means more growth for our economy, more opportunities for all of the people we represent.

So I am very optimistic. I am very pleased that we have been able to pull together such broad bipartisan support—this overwhelming vote in the House, the endorsement of the President of the United States, the support and cooperation with individual Democratic Senators who have cosponsored key pieces of this legislation.

I do think it is equally important we defeat the Reed amendment so we do not actually go backwards in this process and have the unintended consequence of forcing currently private companies to become public against their will, forcing them to incur all kinds of costs that are actually counterproductive. If we can do that today, then I think we can pass this legislation. We know the President of the United States will sign it. We should do it as soon as we can. I wish to thank all my colleagues who played a role in advancing us to the point we are at today.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. DURBIN. Madam President, how much time is remaining in the debate on this measure?

The PRESIDING OFFICER. There is 23 minutes total; 18 minutes on the majority side.

Mr. DURBIN. Madam President, I see the floor is vacant. I assume the time is being taken from both sides at this moment.

The PRESIDING OFFICER. In the quorum call, the time is being charged equally. Right now, it is being charged to the majority.

Mr. DURBIN. Thank you. I will try to fill that time with something interesting. The United States has the best markets in the world. Because of strong regulation and oversight by the Securities and Exchange Commission and other agencies, our markets are transparent and investors get accurate detailed information. One hundred million Americans depend on the strong regulated markets when they are making their savings for retirement or college. This is a creation that began back after the Great Depression, when Franklin Roosevelt said we needed to establish the appropriate regulatory agencies to set the economy on the right track and keep it there.

Strong oversight has helped pension fund managers who count on safety and transparency so they can provide pension benefits to millions of American retirees, and investors from around the world bring their money here because of our investor protections. Yet the Senate is considering a House-passed capital formation bill that rolls back the very protections that make our markets the best in the world.

Supporters of this bill claim investors will jump at the opportunity to invest in a company as soon as we reduce disclosure, auditing, and accounting standards. They say this is a perfect way to create jobs. But why should investors choose to invest in companies under conditions that do less to protect their money? Why should investors who were burned during the dot-com crash put more capital in companies that are exempt from the same rules we put in place to ensure it would never happen again? Why would investors who were left with nothing after the financial crisis because of risky behavior by executives with golden parachutes find companies exempt from compensation standards more attractive?

The answer is they will not. The ones who do will be more exposed to deceit and fraud. The result will not be more jobs, it will be less transparency, less accountability. Professor John Coats of Harvard Law School agrees. Here is what he said: ''[T]he proposals could not only generate front-page scandals, but reduce the very thing they are being promoted to increase: job growth.''

Listen to what SEC Chief Accountant Lynn Turner said:

> The proposed legislation is a dangerous and risky experiment with US capital markets. . . . I do not believe it will add jobs but may certainly result in investor losses.

The House-passed bill, as written, will not create jobs, but let me tell you what it will do. It will exempt firms with more than $1 billion in revenue—that is 90 percent of the newly public companies—more than $1 billion of annual revenue exempted from the standards that help ensure audits based on facts, not on who is managing the auditor's contract. These are the same internal controls we just adopted after Enron, after we were burned there, after investors lost their money, after pension funds lost their investment, after people lost their jobs. We set up standards and said: Let it never happen again.

In this euphoria, we are going to repeal the Enron standards for these companies. This bill would allow companies to use billboards and cold calls to lure unsophisticated investors with the promise of making a quick buck investing in new companies.

According to the New York Times, it will allow anyone with an idea to post that idea online and raise $1 million without ever providing financial statements. This is a scam. How many times have we picked up our cell phones to see there is a Nigerian opportunity out there? Be prepared after this bill passes. They will not be from Nigeria; they may be from next door. We are giving them the opportunity to ask people all across America for their hard-earned savings on investments that are not backed with financial statements.

Last Friday, SEC Commissioner Aguilar joined the Chairman of the SEC Mary Schapiro in raising concerns about this House-passed bill. Is that

not fair warning that we ought to least have a hearing on this bill before it passes?

I ask unanimous consent to have Commissioner Aguilar's statement printed in the RECORD.

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

[From the U.S. Securities and Exchange Commission, Mar. 16, 2012]

INVESTOR PROTECTION IS NEEDED FOR TRUE CAPITAL FORMATION

(By Commissioner Luis A. Aguilar)

Last week, the House of Representatives passed H.R. 3606, the ''Jumpstart Our Business Startups Act.'' It is clear to me that H.R. 3606 in its current form weakens or eliminates many regulations designed to safeguard investors. I must voice my concerns because as an SEC Commissioner, I cannot sit idly by when I see potential legislation that could harm investors. This bill seems to impose tremendous costs and potential harm on investors with little to no corresponding benefit.

H.R. 3606 concerns me for two important reasons. First, the bill would seriously hurt investors by reducing transparency and investor protection and, in turn, make securities law enforcement more difficult. That is bad for ordinary Americans and bad for the American economy. Investors are the source of capital needed to create jobs and expand businesses. True capital formation and economic growth require investors to have both confidence in the capital markets and access to the information needed to make good investment decisions.

Second, I share the concerns expressed by many others that the bill rests on faulty premises. Supporters claim that the bill would improve capital formation in the United States by reducing the regulatory burden on capital raising. However, there is significant research to support the conclusion that disclosure requirements and other capital markets regulations enhance, rather than impede, capital formation, and that regulatory compliance costs are not a principal cause of the decline in IPO activity over the past decade. Moreover, nothing in the bill requires or even incentivizes issuers to use any capital that may be raised to expand their businesses or create jobs in the U.S.

Professor John Coates of Harvard Law School has testified that proposals of the type incorporated into H.R. 3606 could actually hurt job growth:

''While [the proposals] have been characterized as promoting jobs and economic growth by reducing regulatory burdens and costs, it is better to understand them as changing . . . the balance that existing securities laws and regulations have struck between the transaction costs of raising capital, on the one hand, and the combined costs of fraud risk and asymmetric and unverifiable information, on the other hand. Importantly, fraud and asymmetric information not only have effects on fraud victims, but also on the cost of capital itself. Investors rationally increase the price they charge for capital if they anticipate fraud risk or do not have or cannot verify relevant information. Anti-fraud laws and disclosure and compliance obligations coupled with enforcement mechanisms reduce the cost of capital.

''. . . Whether the proposals will in fact increase job growth depends on how intensively they will lower offer costs, how extensively new offerings will take advantage of the new means of raising capital, how much more often fraud can be expected to occur as a result of the changes, how serious the fraud will be, and how much the reduction in information verifiability will be as a result of the changes.

''Thus, the proposals could not only generate front-page scandals, but reduce the very thing they are being promoted to increase: job growth.''

Similarly, Professor Jay Ritter of the University of Florida has testified before the Senate banking committee that such proposals could in fact reduce capital formation:

''In thinking about the bills, one should keep in mind that the law of unintended consequences will never be repealed. It is possible that, by making it easier to raise money privately, creating some liquidity without being public, restricting the information that stockholders have access to, restricting the ability of public market shareholders to constrain managers after investors contribute capital, and driving out independent research, the net effects of these bills might be to reduce capital formation and/or the number of small [emerging growth company] IPOs.''

As drafted, H.R. 3606 would have significant detrimental impacts on the U.S. securities regulatory regime, including the following:

First, the bill will reduce publicly available information by exempting ''emerging growth companies'' from certain disclosure and other requirements currently required under the Federal securities laws. The bill's definition of ''emerging growth company'' would include every issuer with less than $1 billion in annual revenues (other than large accelerated filers and companies that have issued over $1 billion in debt over a three year period) for five years after the company's first registered public offering. It is estimated that this threshold would pick up 98% of IPOs and a large majority of U.S. public companies for that five year period.

An emerging growth company would only have to provide two years (rather than three years) of audited financial statements, and would not have to provide selected financial data for any period prior to the earliest audited period presented in connection with its initial public offering. It would also be exempt from the requirements for ''Say-on-Pay'' voting and certain compensation-related disclosure. Such reduced financial disclosure may make it harder for investors to evaluate companies in this category by obscuring the issuer's track record and material trends.

''Emerging growth companies'' would also be exempt from complying with any new or revised financial accounting standards (other than accounting standards that apply equally to private companies), and from some new standards that may be adopted by the PCAOB. Such wholesale exemptions may result in inconsistent accounting rules that could damage financial transparency, making it difficult for investors to compare emerging companies with other companies in their industry. This could harm investors and, arguably, impede access to capital for emerging companies, as capital providers may not be confident that they have access to all the information they need to make good investment decisions about such companies.

Second, the bill would greatly increase the number of record holders a company may have, before it is required to publish annual and quarterly reports. Currently, companies with more than 500 shareholders of record are required to register with the SEC pursuant to Section 12(g) of the Securities Exchange Act and provide investors with regular financial reports. H.R. 3606 would expand that threshold to 2000 record holders (provided that, in the case of any issuer other than a community bank, the threshold would also be triggered by 500 non-accredited investors). Moreover, the bill would exclude from such counts any shareholders that acquire securities through crowdfunding initiatives and those that acquire securities as eligible employee compensation. Thus, a company could have a virtually unlimited number of record stockholders, without being subject to the disclosure rules applicable to public companies. This effect is magnified by the fact that the reporting threshold only counts records holders, excluding the potentially unlimited number of beneficial owners who hold their shares in ''street name'' with banks and brokerage companies, and thus are not considered record holders.

This provision of the bill raises concerns because it could significantly reduce the number of companies required to file financial and other information. Such information is critical to investors in determining how to value securities in our markets. Regular financial reporting enhances the allocation of capital to productive companies in our economy.

Third, the bill would exempt ''emerging growth companies'' from Section 404(b) of the Sarbanes-Oxley Act, which requires the independent audit of a company's internal financial controls. Section 404(b) currently applies only to companies with a market capitalization above $75 million; companies below that threshold have never been subject to the internal controls audit requirement and were exempted from such requirement in the Dodd-Frank Act. The internal controls audit was established following the accounting scandals at Enron, WorldCom and other companies, and is intended to make financial reporting more reliable. Indeed, a report last year by Audit Analytics noted that the larger public companies, known as accelerated filers, that are subject to Section 404(b), experienced a 5.1% decline in financial statement restatements from 2009 to 2010; while non-accelerated filers, that are not subject to Section 404(b), experienced a 13.8% increase in such restatements. A study by the SEC's Office of the Chief Accountant recommended that existing investor protections within Section 404(b) be retained for issuers with a market capitalization above $75 million. With the passage of H.R. 3606, an important mechanism for enhancing the reliability of financial statements would be lost for most public companies, during the first five years of public trading.

Fourth, the bill would benefit Wall Street, at the expense of Main Street, by overriding protections that currently require a separation between research analysts and investment bankers who work in the same firm and impose a quiet period on analyst reports by the underwriters of an IPO. These rules are designed to protect investors from potential conflicts of interests. The research scandals of the dot-com era and the collapse of the dot-com bubble buried the IPO market for years. Investors won't return to the IPO market, if they don't believe they can trust it.

Fifth, H.R. 3606 would fundamentally change U.S. securities law, by permitting unlimited offers and sales of securities under Rule 506 of Regulation D (which exempts certain non-public offerings from registration under the Securities Act), provided only that all purchasers are ''accredited investors''. The bill would specifically permit general solicitation and general advertising in connection with such offerings, obliterating the distinction between public and private offerings.

This provision may be unnecessary. A recent report by the SEC's Division of Risk, Strategy and Financial Innovation confirms that Regulation D has been effective in

meeting the capital formation needs of small businesses, with a median offering size of $1,000,000 and at least 37,000 unique offerings since 2009. Regulation D offerings surpassed $900 billion in 2010. The data does not indicate that users of Regulation D have been seriously hampered by the prohibition on general solicitation and advertising.

I share the concerns expressed by many that this provision of H.R. 3606 would be a boon to boiler room operators, Ponzi schemers, bucket shops, and garden variety fraudsters, by enabling them to cast a wider net, and making securities law enforcement much more difficult. Currently, the SEC and other regulators may be put on notice of potential frauds by advertisements and Internet sites promoting ''investment opportunities.'' H.R. 3606 would put an end to that tool. Moreover, since it is easier to establish a violation of the registration and prospectus requirements of the Securities Act than it is to prove fraud, such scams can often be shut down relatively quickly. H.R. 3606 would make it almost impossible to do so before the damage has been done and the money lost.

In addition others have noted that the current definition of ''accredited investor'' may not be adequate and that the requirement that purchasers be accredited investors would provide limited protection. For example, an ''accredited investor'' retiree with $1 million in savings, who depends on that money for income in retirement, may easily fall prey for a ''hot'' offering that is continually hyped via the internet or late night commercials.

These are just a few observations regarding H.R. 3606. It also includes other provisions that require substantial further analysis and review, including among other things the so-called crowdfunding provisions.

The removal of investor protections in this bill are among the factors that have prompted serious concerns from the Council of Institutional Investors, AARP, the North American Securities Administrators Association, the Consumer Federation of America, and Americans for Financial Reform, among others.

QUESTIONS RE: H.R. 3606

As H.R. 3606 is considered, the following is a non-exhaustive list of questions that should be addressed:

1. The bill would define ''emerging growth company'' as any company, within 5 years of its IPO, with less than $1 billion in annual revenue, other than a large accelerated filer or a company that has issued $1 billion in debt over a three-year period.

What is the basis for the $1 billion revenue trigger?

Why is revenue the right test? Why is $1 billion the right level?

It has been estimated that this definition would include 98% of all IPOs, and a large majority of all public companies within the 5-year window. Was such a broad scope intended?

2. As provided in the bill, financial accounting standards, auditing and reporting standards, disclosure requirements, and the period for which historical financial statements is required, could all differ as between ''emerging growth companies'' and all other public companies—including all companies that went public before December 8, 2011.

How will these differences affect the comparability of financial reporting for these two classes of issuers?

Will reduced transparency, or lack of comparability, affect the liquidity of emerging growth companies?

Will reduced transparency or reduced liquidity affect the cost of capital for emerging growth companies? Will investors demand a ''discounted price'' to offset any perceived higher risk resulting from reduced disclosures and protections?

Will emerging growth companies be required to include risk factors or other disclosure in their registration statements and other filings, regarding transparency, comparability and any potential effects thereof?

3. The bill would expand the threshold for the number of shareholders an issuer may have, before it is required to file annual and other reports under Section 12(g) of the Exchange Act, from 500 to 2000 (of which no more than 500 may be non-accredited investors, for issuers other than community banks), and would exclude from such counts shareholders that acquire securities through crowdfunding initiatives and those that acquire securities as eligible employee compensation.

How was the new threshold of 2000 holders determined?

Is that the right threshold for determining whether the public interest in such securities justifies regulatory oversight?

How many companies would be exempted from registration and reporting by the bill?

When shares are held in ''street name'' the number of beneficial owners may greatly exceed the number of record holders. How will the new threshold of 2000 record holders be applied in such cases?

How would the exclusion of employees and crowdfunding purchasers be applied, if such holders transfer their shares to other investors? How would this be tracked?

4. To the extent the bill results in reduced transparency and/or reduced liquidity for emerging growth companies, or for companies exempted from Exchange Act reporting by the new thresholds under Section 12(g), such results may impact investment decisions by institutional investors.

How would mutual fund managers, pension fund administrators, and other investors with fiduciary duties address such reduced transparency or lack of liquidity in making investment decisions?

Could reduced transparency or reduced liquidity impact the ability of fund managers to meet applicable diversification requirements?

Could such effects cause managers to increase concentration into fewer US reporting companies? How would such concentration affect market risk? Would the bill result in investor funds being redirected to companies overseas?

5. The bill is being promoted as a jobs measure, on the grounds that reducing regulation will improve access to capital for small and emerging businesses, allowing them to grow and add employees.

What is the evidence that regulatory oversight unduly impedes access to capital?

What is the evidence that companies that are otherwise prepared to grow (that is, they have the appropriate business model, management team, and aspirations) are prevented from growing by an inherent lack of access to potential sources of capital?

I understand that the costs of complying with regulatory requirements are a factor underpinning H.R. 3606. How do such costs compare to other costs of raising capital, such as investment banking fees? How do such costs compare to other administrative costs? If reduced transparency, lack of comparability, and other consequences of the bill result in a higher cost of capital for emerging growth companies, will the money saved on compliance be worth it?

6. Evidence shows that the public companies that are currently exempt from internal controls audit requirements have a higher incidence of financial reporting restatements, and that companies that have restated their financial results produce substantially lower returns for investors.

How do any perceived benefits from H.R. 3606's exemption of emerging growth companies from the audit of internal controls compare to the likelihood of increased restatements? Would an increase in restatements hamper capital formation?

Will the lack of an internal controls audit result in greater financial and accounting fraud?

7. The bill requires the Commission to revise its rules to provide that the prohibition against general solicitation or general advertising contained in Regulation D shall not apply to offers and sales of securities pursuant to Rule 506, provided that all purchasers are accredited investors.

Given the success of Regulation D as a capital raising mechanism, including its successful use by small and emerging companies, is there any evidence that general solicitation and general advertising are necessary for capital formation?

Given the current definition of ''accredited investor'', is that the right test for determining who issuers may target, in offers made by general solicitation or advertising?

CONCLUSION

H.R. 3606 would have a significant impact on the capital markets and raises many questions that have yet to be satisfactorily resolved. I have yet to see credible evidence that justifies the extensive costs and potential harm to investors this bill may impose.

I urge Congress to undertake the review necessary to resolve these questions, and to ensure that investors, as the providers of the capital that companies need to grow and create jobs, have the protections they need and deserve.

Mr. DURBIN. Commissioner Aguilar said he shares concerns expressed by many that provisions of this bill would be a boon to boiler room operators, Ponzi schemers, bucket shops, and garden variety fraudsters by enabling them to cast a wider net and make securities law enforcement that much more difficult.

Others have raised concerns. The North American Securities Administrators Association, the Consumer Federation of America, the Americans for Financial Reform, the Council of Institutional Investors, securities experts such as Professor John Coffee and former SEC Chief Accountant Lynn Turner, the AARP, concerned that seniors will be bilked out of their savings with these phony solicitations for companies that may not even exist.

I share the concerns. I believe there is a path forward to protect investors and make it easier for small firms to come up with capital. Several of my colleagues had a substitute amendment—Senator JACK REED, Senator CARL LEVIN, Senator MARY LANDRIEU—which would have done just that, made it easier to raise capital but kept the safeguards in place.

It was defeated virtually on a party-line vote. It was defeated. It would have preserved the Dodd-Frank say-on-pay provisions to allow investors to weigh in if executives are getting exorbitant compensation and golden parachutes. The amendment would have prohibited companies from advertising and selling stock to the unsophisticated, unsuspecting investors. It would have included minimum requirements for crowdfounding Web sites so investors are not blindly giving money to

someone with a good-looking Web site that promises a good return that will never ever happen.

In short, the amendment would have responded to investors' concerns—the very same investors some of my colleagues claim the underlying bill will encourage to invest.

That is not all we have done. The amendment also included a reauthorization of the Export-Import Bank, which makes loans to major companies and smaller companies too who want to export American-made products made by American workers.

The reauthorization increased the bank's lending cap to $140 billion. This is the same Export-Import Bank that received bipartisan support in the Banking Committee and was reported out on a voice vote. A similar reauthorization was introduced by a Republican the last time around in 2006. It passed the Senate without even the requirement of a record vote.

However, yesterday, both the Landrieu-Reed-Levin amendment, which was the substitute that included the Export-Import Bank reauthorization, and the Cantwell amendment failed to obtain enough votes to invoke cloture, mostly on a party-line vote. Two Republicans voted to extend the Export-Import Bank authorization—two. This is a bank which gives our companies in America a fighting chance around the world to compete with those companies in other countries that are subsidized by their government. We have the Export-Import Bank to help our companies, companies in my State such as Boeing and Caterpillar. Good-paying jobs right here in America, sustained by exports, helped by the Export-Import Bank, defeated on the floor of the Senate. Only two Republican Senators would step up and vote for that bank, and it used to be noncontroversial. We did it because we knew it was so good for our economy. It turned out to be a partisan issue.

Too many things turn out to be partisan issues on the Senate floor lately. That is the latest casualty. It is clear that politics and theoretical jobs created by a bill that significantly reduces investor protections are more important to some of my colleagues than the real jobs that would have been created by the Export-Import Bank.

The Export-Import Bank is responsible for supporting 288,000 American jobs at more than 2,700 U.S. companies. One would think it would have won more than two Republican votes. Madam President, 113 of these companies are located in my State of Illinois and 80 are small businesses.

One of those companies, Holland LP, in Crete, IL, employs 250 people and completed a major export transaction with assistance from the Export-Import Bank. Holland was able to sell two complete in-track welding systems to a company in Brazil.

The CEO of Holland said: ''Without [the Export-Import Bank], this transaction would not have come to life.''

That is how the Ex-IM Bank can help companies in my State and companies around the United States.

I have to say, there will be an amendment offered soon, this afternoon, within the hour, the Merkley-Bennet-Scott Brown amendment, which is bipartisan. It would allow small businesses to raise up to $1 million through crowdfunding Web sites but will put in protections for investors from those posing as a business and selling a lot more hope than substance.

The amendment would require all crowdfunding Web sites to register with the SEC. That is a step in the right direction. It is one of the most important elements that needs to be changed in this bill out of about eight elements, and it is the only one we are likely to address this afternoon.

I urge my colleagues to support the amendment of JACK REED of Rhode Island requiring the SEC to revise the definition of ''holder of record.'' The financial industry has been working overtime to beat this amendment. They have been on the phones calling everybody saying, ''Stop the Reed amendment.''

According to John Coffee, a professor at Columbia Law School, the shareholder of record concept is archaic and can be gamed.

State securities regulators also share that same concern. The American Securities Administrators Association said in a recent letter that it makes little sense to exclude any investor from the count of beneficial holders.

The Reed amendment would require the SEC to update the definition of ''holder of record'' to revise an outdated definition that may hide the true number of shareholders a company might have.

While I believe the bipartisan Merkley-Bennet and the Reed amendments will significantly improve parts of this bill, it doesn't make this a good bill. That is why I am prepared to vote no on final passage.

This bill, as much as any bill we have ever considered on the Senate floor, should have at least had a hearing. We should have at least brought in some expert witnesses. I will tell you, we will rue the day we ran this thing through the House and Senate without the appropriate oversight. I can already predict, having seen this happen time and again, there will come a time, after we pass this bill, when we start hearing from Americans who are being lured into phony investments, losing their life savings and their retirement in the process, and we will step back and say: My goodness. How did that happen? Remember, on March 22, 2012, we had a chance to make a difference to slow down and stop this bill until there was an adequate hearing, until we could put safeguards into place, which Americans deserve.

I am not against investment. I know there is risk associated with it. We have said since the 1930s—1932—under the creation of the SEC, that we owe to Americans, when they make a decision about an investment, two basic elements: Make sure the salesman is telling the truth and make sure what he said can be backed up with audited financial statements.

We can all remember stories about the people who used to blow in, sit down and sell penny stocks and $5 stocks and unsuspecting investors losing their savings as these folks caught the next train out of town. We don't need to return to that in the name of job creation. If we are creating the jobs of new charlatans who are offering these investments, these are not the kinds of jobs America should encourage.

I believe the House-passed bill should be defeated today. We should take the time to get it right and listen to the Chairman of the SEC and put the protections in the law so we can move forward with a bill that all of us can be proud of.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. MERKLEY. Madam President, I rise to address the amendment on crowdfunding that we will be considering shortly on the floor of the Senate. Specifically, the goal is to create a solid foundation for success of enabling Americans to invest in startup companies, invest in small companies through the Internet, and to do so in a fashion that does not result in predatory scams but results in capital formation that helps small business thrive across our Nation.

The House bill, as it came over to us, has crowdfunding provisions that are simply a pathway to predatory scams, a paved highway to predatory scams. What do I mean by that? They say basically that a company seeking to raise investment capital doesn't have to give any financial information of any kind about their company. If they do provide information, they don't have to have accountability for the accuracy of that information. By the way, they can hire people to pump their stock, and that is OK under the law. In other words, everything we associate with the worst boiler rooms, the worst pump-and-dump schemes, is made legal by the House legislation. That is why we need to fix this on the floor of the Senate.

We lay out a provision that says, if you raise less than $100,000, you as the CEO assert the accuracy of the information you are putting out—simple financial statements. If you raise a larger amount of funds, you proceed to have an accountant-reviewed statement that you can vouch for. If you raise yet more funds, at a higher level, then you have an audited financial statement. So it is adjusted in degrees and it streamlines it to the appropriate levels, based on the amount of investment you are asking.

This amendment says directors and officers should take responsibility for the accuracy of that information. That

will give investors a great deal more confidence that what they are reading is actually and truly the case. That is a foundation for successful investment.

There are many folks across the country who have looked at these crowdfunding positions, different measures. I thought I would read from Motaavi, a crowdfunding intermediary based out of North Carolina. On the House bill, they say:

The crowdfunding language in the [House bill] lacks critical investor protection features. It does not require offerings to be conducted through an intermediary, which opens the door to fraudulent activity. . . . It also does not require appropriate disclosures or inspections. The bill does not require the issuer to inform investors of dilution risk or capital structure.

Crowdfunding is premised on openness. Without disclosure, investors cannot protect themselves or accurately price the securities they are buying. If issuers are not willing to provide information over and above what is required, the [House] language does not provide investors with other alternatives short of giving up on crowdfunding altogether.

They then comment on the bipartisan amendment we are presenting on the floor of the Senate, and they note:

It strikes the right balance between disclosure and flexibility. The language is tightly integrated with existing securities laws to provide investor protection. It places easily met obligations on the issuer and the intermediary to ensure that investors have the information they need to make sound decisions. The bill has many provisions for appropriate rulemaking, and is written in a way that reflects how crowdfunding actually works.

Remember, this is a crowdfunding intermediary based in North Carolina—one working to occupy this Internet space and wants a platform, a structure, that works and makes crowdfunding a legitimate strategy for capital formation.

The letter continues:

We think crowdfunding can be a valuable and integral part of the capital formation process. The Crowd Funding Act is the right bill [the amendment we are considering today] to make this happen.

Launcht is a crowdfunding portal provider. They say:

For the first time, we have a Senate bill with bipartisan sponsorship, a balance of state oversight and Federal uniformity, industry standard investor protections, and workable funding caps.

Let's turn to the startup exemption—three entrepreneurs who have led the charge in our Capitol for flexible provisions for crowdfunding:

We write to suggest that if you consider the House version of the bill, you consider adding the following crucial components:

1. Crowdfunding investing intermediaries that are SEC-regulated to provide appropriate oversight.

2. All or nothing financing so that an entrepreneur must hit 100 percent of his funding target, or no funds will be exchanged.

3. State notification, rather than state registration, so the states are aware of who is crowdfunding in their states. This ensures they retain their enforcement ability while creating an efficient marketplace.

These provisions are in the amendment we are considering and the amendment they have endorsed.

Finally, we have SoMoLend, a peer-to-peer lending site. Here is their commentary, where they say this amendment is:

. . . robust enough to provide guidance to a new industry, but will also benefit the crowdfunding industry in the long-term, as compared to a possible race to the bottom with a ''no regulatory'' approach. The disclosure and regulatory requirements will provide adequate information to investors, advising of risk but also deterring fraud.

It continues:

Again, this has long-term benefits to the industry as a whole.

This hits at the heart of why these investor protections are so important. Not only do they deter scams and fraud, not only do they protect vulnerable investors, such as seniors and others, who have little experience in the investing market, but they build a strong capital formation market, a successful platform for capital formation, a market that puts capital where citizens would like to put it—the wisdom of the crowd, if you will—a market that allows good ideas to rise to the top, a market that will create jobs now and in the future.

I urge my colleagues to support amendment No. 1884 to provide the right balance of streamlining and investor protection.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REED. Madam President, I ask unanimous consent to speak up to 1 minute.

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

AMENDMENT NO. 1931

Mr. REED. Madam President, shortly, we will be voting on my amendment, which will maintain the House's increase in the number of shareholders at 2,000 in order to remain private. But what I do is actually ensure that the shareholders are the real shareholders; that there is not an intermediary holding the stock in the name of perhaps literally hundreds of shareholders, but they are the real shareholders.

There has been some criticism about the affect it will have on ESOPs, private funds, mutual funds, and others. We have been assured by legal experts it doesn't affect any of these funds or entities.

In addition, the SEC has assured us that it, through rulemaking, can clarify that ESOPs, mutual funds, private funds, and other entities similar to these will not be affected. I believe if a company has 2,000 real shareholders, those shareholders should have access to routine information on a regular basis, and that is the thrust of this amendment.

SHAREHOLDER THRESHOLD

Mrs. HUTCHISON. Madam President, one of the six components of the House-passed JOBS Act is a measure I sponsored here in the Senate to foster capital formation in the community banking industry. I appreciate the support of Senator TOOMEY and twelve additional cosponsors, including Senators PRYOR, MCCASKILL and BILL NELSON. Our bill would update the threshold before a bank must register its securities with the Securities and Exchange Commission from 500 shareholders to 2,000. It is Title 6 in the JOBS Act before us today. My colleague Senator TOOMEY has a bill contained in the JOBS Act as well that would raise the shareholder threshold for all companies. Senator TOOMEY's legislation is contained in Title 5 of the JOBS Act.

On this point, my understanding is that Sections 501 and 601 of the JOBS Act address two distinct classes of issuers. One is a general provision for all issuers other than banks and bank holding companies—and the other one applies to banks and bank holding companies. I ask the Senator, is this correct?

Mr. TOOMEY. Yes, that is my understanding. I thank Senator HUTCHISON for all of her hard work on the bank shareholder bill, and for clarifying this point.

Mrs. FEINSTEN. Madam President, I rise today in strong opposition to the JOBS Act. Supporters of this bill insist it will help small businesses looking to raise capital, but instead its primary effect would be to strip away critical investor protections.

The House-passed bill applies to more than just small businesses. It also exempts large corporations—those with annual revenues up to $1 billion—from important financial reporting requirements.

There are many good reasons why public companies are required to undergo periodic examinations and disclose financial information, and this bill undercuts those protections.

I remember the massive fraud and financial chicanery that led Enron to intentionally shut down powerplants in California in order to pump up profits. And all of us remember the lasting damage from the collapse of the dot-com bubble.

Let me go over some of the problems with the House bill.

It would eliminate the requirement that many companies audit their internal controls, a requirement put in place specifically in response to the Enron debacle.

Companies with virtually no operating history could sell stock directly to the public over the Internet without going through any registered intermediary.

The bill has no meaningful protections to prevent investors' savings from being wiped out on risky investments. Investors could bet 10 percent of their annual income on any one company, with no limit to how much income or savings they could invest in

multiple companies' stock sold over the Internet with little financial disclosure.

The JOBS Act would reduce the number of years of audited financial statements that companies must publicly disclose.

It would abolish shareholder advisory votes on executive compensation and golden parachutes.

And it would eliminate the disclosure requirement of CEO-to-median-worker salary ratio required under the Dodd-Frank Wall Street Reform Act.

It remains unclear why the supporters of the JOBS Act believe disclosing executive compensation is an obstacle to companies going public.

Under the JOBS Act, a fraudster could raise up to $1 million in small increments from mom-and-pop investors without having to disclose any significant financial or legal disclosures. Candidly, this could lead to the greatest proliferation of get-rich-quick schemes in history.

It is a shame this process has unfolded in this manner and at this breakneck speed. There are some merits to the underlying goal of the bill.

Reducing compliance costs on actual small businesses seeking to go public is a laudable goal. But instead of debating the issues, we are rushing through this bill.

It is important to note that, even under the Sarbanes-Oxley law, financial game-playing by big public companies has not gone away. This bill would invite even more of that harmful activity, under the guise of being good for the public marketplace.

Congress's recent track record on financial deregulation isn't very good. In the past decade or so Congress has eliminated the Glass-Steagall firewall between commercial and investment banking and deregulated the over-the-counter derivatives market. We are still paying for those mistakes.

I had hoped the Senate would be humbled by that experience. Instead, we are rushing through changes to decades-old securities laws that could have significant negative effects on investor protections.

I voted against the JOBS Act so we can take the time to truly understand the ramifications of this bill for the marketplace, small businesses, and investors.

Mrs. BOXER. Madam President, I wish to explain my opposition to H.R. 3606, a bill that would undermine regulation of our financial markets and leave investors vulnerable to fraud.

The underlying spirit of this legislation is one that I support: improving the ability of smaller companies, especially startups, to raise capital. Small companies are essential to our economy, and it is critical that they be able to raise capital efficiently. Our financial regulations should be up-to-date and pragmatic, realistically reflecting the size of new public companies in modern times, and new methods of reaching out to potential investors.

However, I am deeply concerned that the bill goes too far in rolling back investor protections. These rules were created for a reason, often after hard lessons learned from scandals like Enron and WorldCom. They protect ordinary people from losing their retirement savings to corporate fraud and mismanagement, and help our markets function efficiently, ensuring that investors of all types have meaningful and accurate information. All companies benefit when investors have confidence in the safety and fairness of the marketplace.

SEC Chair Mary Schapiro and SEC Commissioner Luis Aguilar have raised concerns that this bill will hinder securities law enforcement and reduce investor protection. Bloomberg News editorialized that it "would be dangerous for investors and could harm already fragile financial markets." The New York Times Editorial Board said this legislation "would undo essential investor protections, reduce market transparency and distort the efficient allocation of capital." CalPERS and CalSTRS have expressed concerns, as have Americans for Financial Reform, AARP, AFL–CIO, AFCSME, Consumer Federation of America, the Main Street Alliance, the Sustainable Business Council, and many other well-respected organizations.

It is a mistake to rush this important piece of legislation when the possibility of a genuinely bipartisan compromise exists. The Reed-Landrieu-Levin amendment, which was blocked by Senate Republicans despite bipartisan support from 54 Senators, would have greatly improved the bill. It would have allowed smaller companies to raise capital more easily, without going as far as the underlying bill in providing exemptions for companies with annual gross revenue of up to $1 billion. I thank my colleagues for their efforts in drafting that carefully balanced proposal.

I am pleased that the bipartisan Merkley-Bennet-Brown amendment became part of the bill. It will allow companies to reach investors through social media, but with sensible rules to reduce fraud and provide meaningful regulatory oversight. Nevertheless, significant investor protection problems remain in the other sections of the bill, and I cannot support its passage.

I was also disappointed that reauthorization of the Export-Import Bank, which was offered as an amendment by a group of bipartisan cosponsors, was blocked by Senate Republicans.

The Ex-Im Bank keeps American businesses competitive worldwide, especially in countries with challenging economic and political conditions, and sustains American jobs in the process. The Bank's investments helped to support 290,000 export-related American jobs last year, including 21,025 in California. As the economic recovery continues, now is not the time to take away this support and put our companies at a disadvantage.

This bill clearly was rushed; this bill is risky for investors, and that is why I voted no.

Mr. JOHNSON of South Dakota. Madam President, I rise today to express my views on the bill that is before us—H.R. 3606—the Jumpstart Our Business Startups Act. This bill is a package of measures intended to increase capital formation a goal which I believe Democrats and Republicans share. Banking Committee members on both sides of the aisle, including Senators SCHUMER, CRAPO, TESTER, VITTER, MERKLEY, TOOMEY, BENNET and JOHANNS, teamed up to introduce a number of bipartisan legislation on this issue, and I commend them for their hard work.

Small businesses are the engine of the American economy. Start-ups and small businesses create a majority of new jobs, and they deserve every opportunity to take an idea and turn it into an exciting, new venture that could lead to the next great American company.

Investments are often necessary resources that allow start-ups and small businesses to grow. Unfortunately, the recent trend is that fewer emerging growth companies are entering the U.S. capital markets though IPOs. According to the IPO Task Force, 92 percent of job growth occurred after a company's IPO, so it makes sense to consider ways to facilitate more IPOs in a manner that protects investors. There are also novel ideas to help start-ups raise money over the Internet, reaching out to their friends through social media and inviting them to invest small amounts to help them grow their business.

So in considering these new ideas to spur job creation in a balanced and thoughtful way, the Banking Committee held four hearings since last summer. We heard a wide range of views on how best to modernize our securities laws to allow new and growing companies to raise capital, but in a way that does not undermine investor protections so that people will still be willing to invest.

At our hearings and through our efforts to explore this subject, members of the Banking Committee heard concerns about provisions in the House bill before us from a number of experts, including the Chairman of the Securities and Exchange Commission. One piece of the legislation attempts to encourage more companies to pursue an IPO by creating a so-called "on-ramp." The House bill determines that companies under $1 billion in annual revenue should be exempt from disclosures for up to 5 years. Witnesses at the Banking Committee's hearings raised concerns about whether this threshold is appropriate and accurately reflects those companies that need relief most. The House bill contains a provision to restrict the independence of accounting standard-setting by the Financial Accounting Standards Board. For many years Congress has debated whether we

should legislate accounting standards or leave it to the experts. I remain unconvinced that interfering with the independence of FASB would be an appropriate action for Congress to take or would inspire more people to invest in IPOs.

It is also unclear that eliminating safeguards to reduce conflicts of interest between stock research analysts and firms selling stock, as the House bill does, will on the whole be beneficial. The absence of such safeguards a decade ago led analysts to write conflicted stock recommendations which too many Americans believed and relied upon to invest, and ultimately lose, their money. Those misleading and fraudulent stock recommendations caused many Americans to pull out of the market and lose confidence in the integrity of the financial system. We must closely monitor this area going forward.

Crowdfunding is a concept with potential, but I do not think that the House bill provides appropriate oversight of the online funding platforms to ensure that unsuspecting investors are not ripped off by an online scam. Operators of online funding platforms are not required to register with the SEC. While there is some information these operators are required to share with regulators, it remains unclear if this modest sharing of information will be sufficient for regulators to monitor these new equity-raising platforms in the same way investments on the stock market are monitored. The House bill needlessly limits the involvement of State securities regulators to help the SEC oversee new crowdfunding operations.

In response to these concerns on crowdfunding, I was pleased to assist Senators MERKLEY, BENNET and others in crafting an alternative approach that strikes a better balance between capital formation and investor protection. The Merkley-Bennet amendment requires crowdfunding companies to provide basic disclosures, including a business plan and financial information to potential investors. It also requires companies offering stock online to either register as a broker-dealer with the SEC, or pursue a ''funding portal'' registration. This will provide greater oversight than the House bill. Among other key improvements, the Merkley-Bennet amendment provides for stronger Federal-State oversight coordination, and it allows for properly scaled investment limits as well as an aggregate investment cap across all crowdfunded companies, further protecting investors. For these reasons and more, I urge my colleagues to correct the weak House crowdfunding title and join me in supporting the Merkley-Bennet amendment.

Another provision in the underlying House bill modernizes the Regulation A threshold by raising the cap on how much money can be raised in the capital markets without registering with the SEC. The House bill transfers authority away from Congress by requiring the SEC to review and potentially raise the threshold every 2 years. This has the potential to preclude a rigorous public debate about when and why the Regulation A threshold should be raised again.

The House bill would also expand the ability of companies to advertise private offerings to accredited investors, referred to as Regulation D. Some have raised concerns that there are not enough protections for our seniors, who could be misled into investing in a company without a full appreciation of the level of risk they are taking on. This will also warrant close attention moving forward to ensure seniors are not taken advantage of.

Finally, while I believe the current 500–Shareholder Rule should be updated, it is unclear if the House approach to dramatically raise the threshold to 2,000 shareholders of record is a balanced approach. A more modest increase seems more appropriate to balance investor protection and transparency with capital formation.

Throughout this process I have sought to help address needed investor protections in a thoughtful manner while helping to support entrepreneurs, grow small businesses, and put Americans back to work.

But I did not write the underlying House bill before us today, and I was pleased to help support my colleagues in drafting the Senate substitute amendment. I believe the Senate substitute addresses each of the concerns I raised. I am disappointed more of my colleagues did not support this alternative that would have increased protections for investors.

That said, no piece of legislation is perfect, and this bill contains innovative new solutions that have the potential to boost the economy. Small businesses and startups deserve the opportunity to test these new ideas, but Congress has chosen to act quickly.

The House bill received 390 votes in the House, including most House Democrats, and the President and the Majority Leader support it. So despite my misgivings over a number of these provisions, I will support my Leader and the President and vote for this legislation.

That said, we must all keep an eye on the effects of these changes as we plow this new ground. As lawmakers, we seek out the appropriate balance in writing laws, doing our best to promote a strong economic recovery while protecting the public from abuse and fraud which would undermine the confidence in our financial system.

While I will support this underlying package today, I believe we all have a shared responsibility to ensure that going forward the new changes that we pass today will truly benefit, and not undermine, both start-ups and investors alike.

Mr. BAUCUS. Madam President, in Taming of the Shrew, William Shakespeare wrote:

> There is small choice in rotten apples.

I am here to talk about the choice we have this afternoon, on voting for final passage of H.R. 3606.

Over the past week, the Senate has been debating a bill the House has called the JOBS Act. But as former Securities and Exchange Commission chief accountant Lynn E. Turner said recently:

> It won't create jobs, but it will simplify fraud.

I fully support finding ways to help the private sector create good-paying jobs.

Last year, I worked with my colleagues on both sides of the aisle to pass the Vets Jobs bill, cutting taxes for small businesses while helping veterans get back to work. This Chamber also passed three free trade agreements, setting the stage to increase American exports to Korea, Colombia, and Panama by an estimated $13 billion a year, resulting in tens of thousands of new jobs. And just last week, the Senate passed overwhelmingly the highway bill, which will create and sustain more than 14,000 American jobs per year.

But our choice today leaves much to be desired. While this bill includes some very positive changes to enhance and encourage small business investment, it includes several rotten apples that roll back important investor protections and put the integrity of our markets into question.

So quickly we forget the past. Just over a decade ago, a company called Enron revealed one of the largest corporate and accounting scandals of our time. We all remember the stories of documents shredded, shell companies, exaggerated profits, and lax accounting rules.

Within 1 month, shareholders lost nearly $11 billion as Enron stock plummeted. Families and employees lost their entire savings in a matter of days. Investor confidence in the entire system evaporated.

Just a few years earlier, the dot-com boom hit a fever pitch. Wall Street firms worked frantically to put together initial public offerings for fledgling Internet companies. At the same time, these firms would agree to release upbeat research reports supporting the upcoming IPO in exchange for the company's underwriting business. Unassuming investors relied on this public research touting the IPOs, while firms failed to fully disclose the inherent conflicts of interest.

Congress and the Securities and Exchange Commission responded to these scandals by putting investor protections in place to restore confidence in the markets and ensure companies provide comprehensive and honest information to the public. Thanks to these protections, investors no longer have to wonder whether the accounting and auditing disclosures are, in fact, independent and accurate. We can't afford to go backward.

Still, these rules are not perfect. Congress should be looking at ways to

ensure small businesses are given a level playing field.

I hear from Montana small businesses that rules under the Sarbanes-Oxley Act can be costly and time-consuming for small companies which simply lack capacity to handle the extra regulation. I agree we must also look at what these rules may be doing to hamper growth of U.S. small businesses. But we should not forget the past. We should not exempt big business carte blanche without fully discerning the implications.

There are several pieces of this legislation with which I agree. I commend my colleague and friend from the State of Montana, Senator TESTER, for his tireless effort to address legitimate concerns with the current cap on small business public offerings.

Senator TESTER introduced his bipartisan measure after meeting and talking to growing companies in Montana and elsewhere that could benefit greatly from raising the cap on regulation A small public offerings. Rob Bargatze, founder and CEO of Ligocyte, in Bozeman, MT, and chairman of the Montana Bioscience Alliance, testified in the Banking Committee last year on ideas to improve access to capital for the emerging bio industry.

Rob rightly points out that the current $5 million cap ''does not allow for a large enough capital influx for companies to justify the time and expense necessary to satisfy even the relaxed offering and disclosure requirements.'' Senator TESTER has done extraordinary work to shepherd this bill forward. It received considerable support in the House, and was included in the Senate substitute amendment that I supported on Tuesday.

However, this straightforward update to regulation A has been folded into a broader House package. This package includes enough rotten apples to spoil the whole bunch. The House fails to take heed of past history. This bill goes too far in relaxing investor protections critical to preserving the integrity and transparency our markets depend on to function.

For example, this bill includes a new IPO process to exempt companies from many SEC rules for a period of 5 years. The idea is to give small emerging companies time to comply with new auditing and reporting requirements. However, the House bill applies to all offerings by companies with sales less than $1 billion. At this level, even the very large, well-established companies will have a free pass for 5 years before complying with the very rules put in place to protect investors and the markets from another Enron-type scandal.

Furthermore, the House creates a gaping hole in the rules set up after the dot-com bubble to prevent an underwriting bank from publishing research reports in support of the upcoming IPO. The House bill would now allow underwriting banks to issue such research to unsuspecting investors. And it limits the company's responsibility to make sure such research is accurate and comprehensive.

We have seen too many examples lately of what can happen when we don't protect the little guys from Wall Street greed—just look at how MF Global took advantage of Montana ranchers, and that is when there were rules in place. We can't afford to go back to the days when Enron was able to swindle thousands of Americans out of their life savings.

I appreciate the work of my colleagues on this matter, but we owe it to American workers and families to see to it that this bill preserves investor confidence and integrity in our markets.

I simply cannot support the House package containing so many bad apples.

The PRESIDING OFFICER. Under the previous order, all postcloture time has expired.

The question is on agreeing to the Reed amendment No. 1931.

The amendment (No. 1931) was rejected.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

AMENDMENT NO. 1884

Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to the Merkley amendment No. 1884.

Who yields time?

The Senator from Oregon.

Mr. MERKLEY. Madam President, I have 1 minute?

The PRESIDING OFFICER. The Senator is correct.

Mr. MERKLEY. Colleagues, I want to encourage you to adopt amendment No. 1884. The House bill, as it came to us, on crowdfunding is a pathway to predatory scams. It requires no information to be provided by a company; and if the company provides information, it requires no responsibility or accountability for the accuracy of that information. It allows companies to hire people to pump the stocks, which is exactly what we all know, from pump-and-dump schemes, is very devastating to any sort of solid financial foundation for capital aggregation, capital formation.

I want to applaud my colleagues Senator BENNET, Senator LANDRIEU, and Senator BROWN of Massachusetts, who have worked together to bring this bipartisan amendment forward. It provides the right amount of streamlining for the companies, the right amount of streamlining for portals on the Internet, and the right set of investor protections, information, and accountability necessary to make crowdfunding fulfill the exciting potential it has.

I thank the Chair.

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

Who yields time in opposition?

Mr. KYL. I yield back.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to amendment No. 1884.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Illinois (Mr. KIRK).

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

The result was announced—yeas 64, nays 35, as follows:

[Rollcall Vote No. 54 Leg.]

YEAS—64

Akaka	Franken	Murkowski
Baucus	Gillibrand	Murray
Begich	Grassley	Nelson (NE)
Bennet	Hagan	Nelson (FL)
Bingaman	Harkin	Pryor
Blumenthal	Hutchison	Reed
Blunt	Inouye	Reid
Boxer	Johnson (SD)	Rockefeller
Brown (MA)	Kerry	Sanders
Brown (OH)	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Stabenow
Casey	Leahy	Tester
Coats	Levin	Udall (CO)
Cochran	Lieberman	Udall (NM)
Collins	Manchin	Warner
Conrad	McCaskill	Whitehouse
Coons	Menendez	Wicker
Cornyn	Merkley	Wyden
Durbin	Mikulski	
Feinstein	Moran	

NAYS—35

Alexander	Hatch	Paul
Ayotte	Heller	Portman
Barrasso	Hoeven	Risch
Boozman	Inhofe	Roberts
Burr	Isakson	Rubio
Chambliss	Johanns	Sessions
Coburn	Johnson (WI)	Shelby
Corker	Kyl	Thune
Crapo	Lee	Toomey
DeMint	Lugar	Vitter
Enzi	McCain	Webb
Graham	McConnell	

NOT VOTING—1

Kirk

The amendment (No. 1884) was agreed to.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table.

The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote on passage of H.R. 3606, as amended.

The Senator from Rhode Island.

Mr. REED. Madam President, the House bill has some very promising concepts about providing access to capital. What it fails to do is adequately protect investors.

We have tried, through our alternative, to protect investors. That alternative has been rejected on a cloture vote by the Senate. We have made some improvements with the Merkley proposal, but we are not quite to the point yet where I think we can be confident that investors will be protected.

As such, I think we should vote against this legislation, and that we should in fact try again and get it right. That is why the head of the Securities Exchange Commission opposes this, and the state securities regulators, and former heads of the Securities Exchange Commission, and the Council of Institutional Investors, and many others.

We are opening up vast loopholes in our securities laws without adequate disclosure for investors. I think we will regret this vote.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Madam President, I claim the time in support of the legislation.

I suggest that we are on the verge of doing something very constructive for our economy, for small businesses, and for job growth, and it might be one of the most constructive things we are going to do this year in that area.

This legislation makes it easier and more affordable for young and growing companies to go public, to raise the capital they need to grow, to hire more workers. It also actually makes it easier for those who want to remain private and to attract more investors, and to do so without triggering the very onerous and expensive regulations attendant to being a public company.

This is going to create more jobs and more growth in the economy. That is why it passed the House with a vote of 390 to 23. That is why the President of the United States has endorsed this bill and said he will sign it into law. That is why there are dozens and dozens of organizations and groups and companies and trade associations that support this legislation, so that we can do something right here, right now, today, that the President will sign into law, which will help small and growing companies raise the capital they need to grow.

I urge my colleagues to vote yes.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass?

Mr. INHOFE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Illinois (Mr. KIRK).

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

The result was announced—yeas 73, nays 26, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—73

Alexander
Ayotte
Barrasso
Bennet
Bingaman
Blunt
Boozman
Brown (MA)
Burr
Cantwell
Carper
Casey
Chambliss
Coats
Coburn
Cochran
Collins
Coons
Corker
Cornyn
Crapo
DeMint
Enzi
Graham
Grassley
Hagan
Hatch
Heller
Hoeven
Hutchison
Inhofe
Inouye
Isakson
Johanns
Johnson (SD)
Johnson (WI)
Kerry
Klobuchar
Kohl
Kyl
Lee
Lieberman
Lugar
Manchin
McCain
McCaskill
McConnell
Menendez
Moran
Murkowski
Nelson (NE)
Nelson (FL)
Paul
Portman
Pryor
Reid
Risch
Roberts
Rubio
Schumer
Sessions
Shaheen
Shelby
Snowe
Stabenow
Tester
Thune
Toomey
Udall (CO)
Vitter
Warner
Wicker
Wyden

NAYS—26

Akaka
Baucus
Begich
Blumenthal
Boxer
Brown (OH)
Cardin
Conrad
Durbin
Feinstein
Franken
Gillibrand
Harkin
Landrieu
Lautenberg
Leahy
Levin
Merkley
Mikulski
Murray
Reed
Rockefeller
Sanders
Udall (NM)
Webb
Whitehouse

NOT VOTING—1

Kirk

The bill (H.R. 3606), as amended, was passed.

STOP TRADING ON CONGRESSIONAL KNOWLEDGE ACT OF 2012

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to concur in the House amendment to S. 2038, which the clerk will report.

The legislative clerk read as follows:

Motion to concur in the House amendment to S. 2038, an original bill to prohibit Members of Congress and employees of Congress from using nonpublic information derived from their official positions for personal benefit, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 4 minutes of debate, equally divided in the usual form.

Mr. LIEBERMAN. I thank the Chair. I urge my colleagues on both sides of the aisle to support this bipartisan and now bicameral congressional ethics measure. This started as a response to stories and allegations that Members of Congress would not be held liable for insider trading. It then developed into what I think is the most significant congressional ethics legislation we have adopted in at least 5 years. It has been in a lot of other public disclosure and good government measures.

I wish to give particular thanks to Senator KIRSTEN GILLIBRAND and SCOTT BROWN, who led the effort and took the initiative that got this ball rolling.

I yield the rest of my time to Senator GILLIBRAND.

Mrs. GILLIBRAND. I thank the Chairman.

We are certainly taking a significant step forward, on behalf of the American people, toward restoring some faith our country has in their government. I wish to thank Leader REID for his leadership, Chairman LIEBERMAN, Ranking Member COLLINS, Senator BROWN, and all our colleagues on both sides of the aisle who worked so hard to pass this legislation.

I wish to thank my colleague from New York, LOUISE SLAUGHTER, who fought so hard and so long toward this effort.

This legislation was a rare instance where 96 Senators came together to deliver results for the American people. We passed a strong bill with teeth that will clearly and expressly make it illegal for Members of Congress, their staff, and their families to gain personal profits from nonpublic information gained through their service.

I strongly believe we have to make it clear no one is above the law and that Members of Congress need to play by the exact same rules as every other American. It is simply the right thing to do.

This is a commonsense bill and Americans can be assured our only interest is in their interest. When President Obama signs the STOCK Act, we will have begun to restore the public's faith in Washington.

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

The Senator from Maine.

Ms. COLLINS. Madam President, I ask that I be notified after 1 minute.

The PRESIDING OFFICER. The Senator will be notified.

Ms. COLLINS. Mr. President, I rise to speak in favor of the STOCK Act, which we will be voting on very shortly. This legislation is based on a bill that was first introduced in the Senate last fall by Senator SCOTT BROWN, and a similar one introduced by Senator GILLIBRAND. I wish to commend them both for their work on this legislation. As a cosponsor of Senator BROWN's bill, I especially want to recognize his leadership on this issue.

I also wish to recognize Chairman LIEBERMAN for all the work he has done in moving this important bill through our committee, through a robust debate here on the Senate floor, and to final passage today.

Last fall, press reports on ''60 Minutes'' and elsewhere raised the question of whether lawmakers are exempt, either legally or practically, from the insider trading laws.

The STOCK Act is intended to affirm that Members of Congress are not exempt from our laws prohibiting insider trading. As we saw when we first considered this legislation, despite reassurances from legal experts and the SEC that no so such exemption exists, there has been persistent disagreement about the issue. That's why we feel it is important to send a very clear message that Members of Congress are not exempt from the insider trading laws, and that is exactly what this bill does.

Last month the Senate passed its version of the STOCK Act by an overwhelming bipartisan margin of 96 to 3. That bill had, at its heart, the affirmation of a duty arising from the relationship of trust and confidence already owed by Members and their staff