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House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, June 9, 2011, at 10:30 a.m.

Senate

WEDNESDAY, JUNE 8, 2011

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God of light and truth, in these challenging times, enable our Senators to hear Your still small voice. Make this awareness of Your presence renew their spirits and lift their vision of what this Nation can become by Your grace. May they be people dedicated to moral values and determined to live by the highest ethical standards possible. Lord, keep them from success that is purchased with cowardice, cunning, or deception. Enable them to experience the constancy of Your presence so that they will choose the harder right and leave a legacy that honors You.

We pray in Your holy Name.

Amen.

PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which is stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. INOUYE).

The bill clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 8, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Madam President, following any leader remarks, the Senate will be in a period of morning business for 1 hour. The majority will control the first half of that time and the Republicans will control the final half.

Following morning business, the Senate will resume consideration of the Economic Development Act, with the time until 2 p.m. equally divided between the opponents and proponents of the Tester amendment.

At approximately 2 p.m., there will be a rollcall vote in relation to the Tester amendment regarding swipe fees, with a 60-vote threshold.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half of that time and the Republicans controlling the second half.

The Senator from Illinois.

DEBIT CARD SWIPE FEES

Mr. DURBIN. Madam President, this afternoon there will be a critical vote that will take place on the Senate floor. It is one of the most controversial, business-oriented votes that we have faced. Leading up to this vote has been one of the most heated debates and exchanges that many of us in the Senate have seen in our time. It relates to an issue that affects almost every American family, and certainly all American businesses, and the financial community. It is a basic question that needs to be resolved on the Senate floor.

My friend and colleague from Montana, Senator JON TESTER, is offering an amendment, which I oppose. I have the highest respect for JON. We have discussed this, and our friendship remains strong throughout this debate.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

We just see this differently. Whatever the outcome of the vote, I certainly am going to continue my strong friendship with JON and be a fan of what he brings to the Senate and what he does for the State of Montana.

Joining him in this amendment is Senator BOB CORKER of Tennessee. I have the same high regard for Senator CORKER, and any remarks that I make today are no reflection on them at all. I think they are both honorable people who are standing tall for their point of view, with which I happen to disagree. But I want to make it clear that I think this is a historic vote, a threshold vote in terms of whether the Senate, the Congress, and the Government of the United States will step into a situation that has created a fundamental unfairness. And this is the unfairness.

When we use debit cards, or plastic, to pay for a transaction, there is a fee that is collected. It is a fee that is paid to banks and, of course, paid to the issuing credit card network. The merchant or retailer that accepts that plastic, that debit card, has no voice in determining what that fee will be, and it is invisible.

Just one floor below us in the Capitol is a carryout. I went there this morning to pick up a little breakfast, and there was a young lady—a Capitol Hill policewoman—in front of me. She took a package of chewing gum and put it on the counter and handed her debit card to the cashier. The chewing gum cost $1.20. The average fee paid by the merchant—in this case, the proprietor of the carryout—is 44 cents on that transaction, more than one-third of the cost of the pack of chewing gum. The owner of the carryout had no voice in that fee. It is a fee that has been imposed on that merchant by the credit card network that issued the debit card.

A year ago, we took up this issue and asked, Is it fair or reasonable? The reason I think we need to take a look at this is, in the United States of America the so-called swipe fee is dramatically greater than in virtually any other country in the world. The same networks, Visa and MasterCard, charge, on average, 1.14 percent on every transaction using a debit card. If one goes to the European Union, the average debit interchange fee is .2 percent, less than one-fifth of what is charged in the United States by the same credit card network. Then, of course, take a look at Canada, just north of the United States, where there is no—zero—interchange fee charged on debit card transactions.

Why is the United States, through its consumers, small businesses, and large retailers alike, paying so much more? These credit card networks, through their issuing banks, are charging this because they can. There is no restraint whatsoever—at least there wasn't until last year.

We had a debate on the floor of the Senate, and we asked—on behalf of consumers, small businesses, retailers, and merchants all across America—should we establish a reasonable fee for the use of a debit card? We voted, with 64 votes, to do that. The fee is to be established by the Federal Reserve.

Most everyone would concede two things. First, the Federal Reserve is not partisan. It is going to make this judgment based on the economics of the marketplace, in terms of what the fee should be. Second, if there is any bias at the Federal Reserve, it is not toward consumers. This is not a consumer protection agency. No one has ever called it that. It is an agency which, by and large, is more comfortable in the boardrooms of major banks. So we gave them this responsibility.

What the Federal Reserve came up with, after 5 or 6 months of investigation, was a startling discovery; and that was the interchange fee being charged on debit card transactions in the United States, on average, was 44 cents—that is what the 1.14 percent translates into, 44 cents a transaction—and the actual cost to the debit card network issuing banks was in the range of 12 cents.

What is being charged to consumers and small businesses all across America is more than three times the reasonable and proportional cost of the transaction. At that point, the Federal Reserve said: We are going to sit down as instructed by this law passed by Congress and signed by the President and come up with a reasonable interchange fee. They confessed—Chairman Bernanke and others said it was a challenge, and it is. But they said they were going to do it, and do it right, and they needed more time. Chairman Bernanke called me and said: I need an additional 6 to 8 weeks to do that. I said I was sorry to hear that.

They had more than 11,000 comments posted to the Federal Reserve about what this debit fee should be, what is a reasonable fee. They are about to announce, before the end of this month, what it is going to be. I don't know what their report will say. I suspect it will be somewhere between 12 cents and 44 cents, with many other provisos included. That is where we stand.

Under the law passed last year, this new debit card interchange fee rule would go into effect July 21. Well, needless to say, it has generated a lot of controversy, particularly among the card networks, Visa and MasterCard, and the issuing banks that issue these debit cards. They don't like this at all.

As Senator Dale Bumpers of Arkansas—who used to sit right back there—used to say: They hate this interchange fee regulation ''like the devil hates holy water.'' They have done everything in their power to stop the Federal Reserve from issuing a rule that would bring down this 44-cent charge on every swipe of our plastic debit cards. Of course, they want to do it before the Federal Reserve issues their rule.

Today on the Senate floor, at 2 o'clock this afternoon, the banks and credit card companies get their chance to stop the Federal Reserve from coming forward with this new approach to the interchange fees.

As you can imagine, it is a titanic struggle because of all the retailers and merchants in the United States. From Walmart, on down to the corner bodega in Manhattan, or the corner store in Chicago, they are all involved. When I get into the car that picks me up at O'Hare to take me to my apartment in Chicago, my driver says: We are pulling for you. Every time somebody gives us a debit card, we end up paying more and more because of it.

I think the reach of these charges may surprise a lot of people. Here is a letter that we received yesterday from Tom Gordy, president of the Armed Forces Marketing Council. He writes and says:

> On behalf of the member companies of the Armed Forces Marketing Council, I want to offer our sincere appreciation for your efforts to curb the skyrocketing costs to retail business through debit card fees.
>
> Our particular concern about debit card fees is the adverse impact the fees are having on the pocketbooks and the quality of life of military families through the military exchange systems.
>
> As you are aware, the military exchanges provide a non-pay compensation benefit to military families and support military families' financial readiness by offering name brand products at an average savings of over 20 percent. Additionally, the profits generated by the military exchanges are given back to the military community through dividends that support quality of life programs on military bases, including childcare centers, movie theaters, gyms and swimming pools, to name a few.

Let's bring it back to the Senate floor now, and here is what he writes:

> Currently, the three military exchange systems—Army-Air Force Exchange System, Navy Exchange Command and the Marine Corps Exchange—are having to pay well over $100 million per year combined in interchange fees and interchange fees are the fastest growing uncontrollable expense to the military exchange system.
>
> As interchange fees continue to increase, the military exchange systems must either absorb the costs, thus reducing the dividends that support essential military quality of life programs, or they must pass the cost of the fees on to the military family by raising prices. Either way, military families lose because of interchange fees.

That is just one example, but an example that should hit close to home to us because it is an example that reflects on the quality of life of people we care for very much—military families—who sacrifice for this Nation. A system which is designed to help them is paying over $100 million a year to the issuing banks for the Visa and MasterCard debit fees. Is $100 million reasonable? If next year it is twice that, is that amount reasonable?

Most people would argue, if you believe in a free market system, you believe in two things: transparency, so people know what the rules of the game are—the actual prices and cost—

and competition. The honest answer is there is no competition here. Visa and MasterCard literally dictate these fees that are collected. What choice does a merchant have? Could you stay in business today and not take plastic? I guess some people do, but not many. The reality is more and more people are using plastic to buy things as basic as a pack of chewing gum for $1.20, which I saw this morning.

That is what this debate comes down to. The question is whether we will let the Federal Reserve issue this rule, take a close look at it, watch its implementation, and then respond, if needed. I don't know if their rule will be excellent or need help. I am prepared to stay the course with it. If we need to address it in any aspect with further legislation, I want to do that.

I particularly want to address my friends—at least those friends I have left—in the banking community. I am not going to stand here in defense of Wall Street. I think they have had quite a bit of friendship and love thrown their way by this Congress over the last few years. I am going to say, though, when it comes to community banks and credit unions, I think they deserve an exemption. It was included in the law. If we need to provide any other reassurances after the rule is issued, I will be there. I believe I can speak for the merchants and retailers, that they will be there as well. They have never disputed this issue of the community banks and credit unions being treated differently than the big banks.

But I do want to make it clear what is going on here in terms of the biggest banks that issue these debit cards. There is $1.3 billion a month collected in debit card interchange fees—$1.3 billion—which is more than $15 billion a year. Three banks—Bank of America, Chase, and Wells Fargo—control 50 percent of the debit card market, and they will collect nearly $7 billion in fees this year off of these debit cards. As I mentioned, the merchants and retailers have no voice in this. They pay what they are told they have to pay and they collect it from consumers.

Jamie Dimon is a person I have known. He is the CEO of Chase Bank. I worked with him when he was in Chicago. I had many conversations with him when he moved back to New York. I respect him for his business acumen. But he has been particularly pointed in going after this regulation of interchange fees. He has called it idiotic, in letters to shareholders and his customers. Chase has written to all of their debit card customers across the United States and said this so-called Durbin amendment—incidentally, it isn't an amendment anymore, it is a law—will mean that Chase will have to raise fees on the people holding debit cards because they will collect less from debit card interchange fees.

That seems to make sense, doesn't it? If less revenue is coming in, they will have to make it up some way. But I want to call to the attention of those who are following this debate to this fact: The bonuses distributed by the banks on Wall Street last year amounted to $20.8 billion. If they lost every nickel in interchange fees on debit cards, it wouldn't even get close to the amount they paid out in bonuses to their executives.

So before Mr.—before the Chase Bank—I don't want to be personal about this—threatens its customers about increased fees and reduced benefits, let them be honest with their customers about the bonuses that are being paid. That bank—Chase—if I am not mistaken, had an increase in annual earnings of 48 percent this year. They are doing quite well, thank you.

And for the record, let me remind those who are following this debate that the taxpayers of America were asked to stand by these banks in one of their darkest hours when we faced this recession. Many of us believe it was brought on by some awful practices on Wall Street and among other banks, insurance companies, and financial institutions around the world. But in their darkest hour, when things were toughest, where did they turn for help? Not the good old free market system, but the Treasury of the United States of America. So in the end we gave—we gave—$25 billion to the Chase Bank. We gave $45 billion to Bank of America and $25 billion to Wells Fargo to help them through their time of need.

Oh, sure, they survived and they paid us back. But what was their gratitude? How was it reflected? It was reflected by these banks, after receiving taxpayer money to get them out of the hole they dug for themselves, turning around and awarding bonuses to their executives right and left. That is not an expression of gratitude where I come from. Now they come to us and say, we want you to continue this interchange fee subsidy, 50 percent of which goes to the three largest banks in the United States of America.

I think it is time for us to say no. I think it is time to stand for consumers and small businesses across America who have no voice, no power, and deserve our help in making this system fairer, more transparent, and more competitive.

The amendment before us is one I want to address specifically. Because instead of letting the Federal Reserve issue their rule at the end of this month—measuring whether its impact is as we had planned, responding, if needed, to changes—what the banking community and the credit card networks want to do is to kill this rule literally in the cradle before it has a chance to be issued, before it has a chance to be implemented. I think that is plain wrong.

Right now, I hear my colleagues who come to the floor offering this amendment—both Senator CORKER and Senator TESTER—saying this is a compromise. This is a compromise.

This is not a compromise. A compromise involves sides with differing views sitting down together and working out their differences. I wasn't invited to any meeting to come up with this so-called compromise. The merchants and retailers and businesses across America were not invited—not at all. There were no representatives of consumers in these meetings for this grand compromise. This was a compromise between the biggest banks, the medium-sized banks, and the small banks. So it is a bankers' compromise for bankers' benefit. That is what it comes down to.

In the last 2 days alone, letters opposing this amendment have been sent by consumer groups—military exchanges, as I mentioned, 11 colleges and university associations—because, incidentally, our kids at college bookstores, using debit cards, are actually paying more for their books because of these fees as well—308 national and State merchant trade associations and 6,500 small businesses. They are all opposing this so-called compromise amendment, though it isn't a compromise.

Secondly, this amendment is described as a 1-year delay of the interchange rulemaking. Actually, it is an open-ended delay. The bankers who wrote this very carefully crafted it. The amendment requires the Federal Reserve's rules to be rewritten in 1 year, but it doesn't set an effective date for the revised rules. There is no telling when, if ever, these rules will go into effect. This delay could be significant, and from the banks' point of view, the longer the delay, the better, because it is worth $1.3 billion a month for every month they can delay it. And how long would they like to delay it? Forever.

Then there is this idea of needing a study after the Federal Reserve put 12 months into reviewing this issue, considering thousands of comments to promulgate this rule. The amendment sets up a study of the interchange system that only takes into account the views of the banking regulators. Search the amendment—the Tester-Corker amendment—for one indication there will be anyone sitting in the room representing the consumers or small businesses of America for this study. They are not invited. Not welcome. Not part of the conversation. Is this another compromise—a compromise that just involves banking regulators sitting down to decide what is in the best interest of consumers? Would you want your fate left to their hands as a consumer? Not me.

The study, incidentally, is loaded—the so-called triggers in the study, if you take a look at them. If the bank regulators deem that any of the triggers are met, they have to throw out what the Federal Reserve has done and start over. Well, guess what, the triggers are written in a way that this is a foregone conclusion. These triggers will be met. As each trigger mirrors public statements the public regulators have already made about the Fed's

draft rules, this is loaded. There is nothing objective or unbiased about this whatsoever.

The amendment essentially mandates a complete rewrite of the Federal rules by the banking regulators for the banking industry in favor of the banks.

Let me mention something else I think is outrageous about this. What the banks have said is, we don't want to measure the reasonable and proportional cost of a debit transaction to establish the fee we are going to impose. We want to include every variable and incremental cost we can consider. This amendment goes on for more than a page with all the possibilities.

The amendment provides the Fed must rewrite the rules under a very different standard than the law which currently exists. The new standard is one the big banks have been begging for. The Durbin amendment says the fee set by Visa and MasterCard, on behalf of the big issuing banks, has to be reasonable and proportional to the costs incurred that are ''specific to a particular electronic debit transaction.'' The Tester-Corker amendment would require the Fed to let Visa and MasterCard fix fee rates to cover bank costs that are not specific to any debit transaction. The Tester-Corker amendment requires the Fed to allow interchange fees to cover ''all fixed and incremental costs associated with debit card transaction and program operations, including incentives.''

This is a truck-size loophole the banks are begging for, because they know they can get up to 44 cents and beyond if they can add everything in from the cost of an ATM machine to executive compensation and executive bonuses. So honestly, are we going to stand here and say we cannot protect small businesses across America, struggling to survive, from outrageous price-fixing by the credit card companies so we can reward the issuing banks with bonuses? Is that what this is about? If it is, it is a pretty stark choice.

This amendment is a big bank windfall. The amendment has been described as an effort to help small banks, but it would undoubtedly be a windfall for the Nation's largest banks. It would give them a free pass to continue their anticompetitive practices for at least another year, and then it would require the Fed to write rules in a way that would enable big banks to justify the fees they are charging today. It is a no-change amendment.

If you believe, as a Member of the Senate, the current system is fair to businesses across America and we shouldn't change it, then voting for this amendment will guarantee your position will be enshrined in law. This proposed amendment is a gift to the big banks that will keep on giving and deny swipe fee relief to small businesses and consumers who desperately need it.

Madam President, I ask unanimous consent to have printed in the RECORD these three letters I have received from the Armed Forces Marketing Council, the American Council on Education, and Public Citizen U.S. PIRG.

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

ARMED FORCES MARKETING COUNCIL,
Manassas, VA, June 7, 2011.

Hon. RICHARD J. DURBIN,
U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN: On behalf of the member companies of the Armed Forces Marketing Council, I want to offer our sincere appreciation for your efforts to curb the skyrocketing costs to retail business through debit card fees.

Our particular concern about debit card fees is the adverse impact the fees are having on the pocketbooks and the quality of life of military families through the military exchange systems.

As you are aware, the military exchanges provide a non-pay compensation benefit to military families and support military families' financial readiness by offering name brand products at an average savings of over 20%. Additionally, the profits generated by the military exchanges are given back to the military community through dividends that support quality of life programs on military bases, including childcare centers, movie theaters, gyms and swimming pools, to name a few.

Currently, the three military exchange systems—Army-Air Force Exchange System, Navy Exchange Command and the Marine Corps Exchange—are having to pay well over $100 million per year combined in interchange fees and interchange fees are the fastest growing uncontrollable expense to the military exchange systems.

As interchange fees continue to increase, the military exchange systems must either absorb the costs, thus reducing the dividends that support essential military quality of life programs, or they must pass the cost of the fees on to the military family by raising prices. Either way, military families lose because of interchange fees.

The debit card interchange fee restrictions that you authored will help save the military exchange systems tens of millions of dollars per year, reducing the adverse impact that interchange fees are having on the pocketbooks and quality of life of military families.

We are hopeful that you will be successful in maintaining the law that you authored to curb debit card interchange fees and preventing any delays in its implementation.

Sincerely,

TOM GORDY,
President.

OFFICE OF THE PRESIDENT,
AMERICAN COUNCIL ON EDUCATION,
Washington, DC, June 7, 2011.

U.S. Senate,
Washington, DC.

DEAR SENATOR: I write on behalf of the higher education associations listed below to oppose the Tester Amendment, which would significantly delay regulatory implementation of the debit card swipe fee reforms enacted last year in the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). We reiterate our support for these needed reforms, which will provide real relief to students, their families and colleges and universities across the country, and urge that they be implemented in a timely manner consistent with the Dodd-Frank Act.

Debit card swipe fees are a hidden expense for students and families paying for college for which they receive no benefit. As a result of the Dodd-Frank Act and the Federal Reserve's proposed rule, we believe colleges and universities will see reduced debit card costs which they will be able to pass on to students through lower costs as well as increased resources for institutional grant aid and student services. In addition, implementing this reform will create an opportunity for institutions to offer discounts to students for payments made with checks and debit cards.

During this time of economic insecurity, steps like those undertaken in swipe fee reform will help students and their families manage the costs of college with increasingly strained budgets.

We urge the Senate to reject the Tester Amendment and stand with students and the colleges and universities that serve them by ensuring that these debit card swipe fee reforms be fully implemented in a timely manner.

Sincerely,

MOLLY CORBETT BROAD,
President.

On behalf of: American Association of Collegiate Registrars and Admission Officers; American Association of Community Colleges; American Association of State Colleges and Universities; American Council on Education; Association of American Universities; Association of Community College Trustees; Association of Jesuit Colleges and Universities; Hispanic Association of Colleges and Universities; National Association of College and University Business Officers; National Association of College Stores.

PUBLIC CITIZEN, U.S. PIRG, FEDERATION OF STATE PIRGS,
June 6, 2011.

Re Opposition to Tester, S. 575, To Delay Swipe Fee Reform.

DEAR SENATOR: We, the undersigned consumer groups, write to reinforce our continued support for the Durbin amendment to reform debit card swipe fees that passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Federal Reserve Board of Governors has conducted enough research and has adequate authority to issue a fair final rule in this matter without the delays that would be imposed by Senator Tester's proposal, S. 575, no matter how it might be modified for the floor.

All consumers, whether they pay with cash or plastic, pay more at the store and more at the pump due to the current non-transparent interchange fee system, which is tantamount to a wealth transfer from the poor to the rich. Recent Federal Reserve research has shown that lower-income cash consumers subsidize the rewards cards of more affluent customers. Yet, retail is a highly-competitive industry where cost savings are routinely passed along to consumers. There is no reason to expect that retailers, in a marketplace where numerous sellers routinely compare and change their prices on a daily basis, would fail to pass along the savings from the unfair anticompetitive interchange system. Yet, as the non-profit and non-partisan American Antitrust Institute said in a recent letter to Congress:

[The Durbin amendment] limits the amount of fees that can be charged through a price-fixing network regime and allows banks to charge unregulated fees if they simply compete on their prices rather than set them centrally. If the limits set by the Fed are low, that aids competition by giving a large incentive for banks to actually compete by lowering their fees. Banks with less than $10 billion in assets would not have to compete, however, because they are exempt. Certainly, banks with more than $10 billion in assets can compete in the free markets by

setting their own prices rather than hiding behind the cartel process overseen by Visa or MasterCard. What the Fed is doing is to substitute competition for administered prices. (March 14, 2011)

As Senator Tester's legislation to delay implementation of the Durbin amendment and the final Federal Reserve regulations comes up for a vote on the Senate floor, we urge your opposition to it or other efforts to weaken or delay the Durbin amendment through Congressional action. Thank you for your consideration of our views. If you or any of your staff have any questions, please contact Ed Mierzwinski at U.S. PIRG (202–461–3821 or edm@pirg.org).

Sincerely,

PUBLIC CITIZEN,
U.S. PIRG.

Mr. DURBIN. Madam President, the groups that stand behind me on this effort know what we are up against. When we take a look at the most powerful special interest groups in Washington, we have to put the banking industry near the top, if not on the top, of the ladder. Throughout my career I have tackled them on the floor. I can recall many years ago, brandnew to the Senate, when I said we ought to change the banking laws so we would put an end to the so-called subprime mortgages. I was in a debate with Phil Gramm of Texas, who said at that time that if the Durbin amendment passed, it would be the end of the subprime mortgage business. I lost by one vote. If I would have prevailed, history might have been a little different. The subprime mortgage mess created an economic downturn from which we still suffer.

I stood up as well when it came to this foreclosure crisis and said that at some point these banks have to be reasonable. You just can't take homes away from people, board them up, and watch them deteriorate into nothing. You have to give people a fighting chance to stay in their homes. I said at the end the bankruptcy court should have the last word on that. The banking industry, the credit unions, the community banks opposed me. Take a look across America today at the foreclosed homes, in Chicago, in Aurora, in Springfield, all across my State, and across this Nation. The outcome, years after I lost that battle, certainly does not speak to a stronger America because of these foreclosures. The banking industry beat me on that.

Last year, fighting for these small businesses, retailers, I stood up and said: Somebody has to step up here and argue that there ought to be fairness in the fees they charge to businesses and consumers across America. We rallied 64 Senators—a bipartisan group—in support of that.

The banks want a second run at this. They want to take this game into overtime. They want to come back today and count their friends here and hope they can come up with 60 in the hopes that if the big banks and credit card companies can win this battle, we will leave them alone, we will not ask hard questions about the interchange fees that are charged. I am asking my colleagues in the Senate not to give the banks this overtime, extra-time victory. Give the victory to consumers. They have precious few on the floor of the Senate. Stand up for small businesses that do create jobs across America, and give them a chance to create jobs in this country by not being overcharged by the credit card networks and the biggest banks in America.

How many of us have come to the floor and said small business is the key to economic recovery? If you believe it, if you mean it, vote against the Tester-Corker amendment. That amendment is a blow to small and large businesses alike, large retailers and merchants alike, all across America. They stand in support of my effort to have a reasonable interchange fee on debit card transactions and to make sure they have a fighting chance to be profitable, to expand their businesses, and to hire more employees. That would be good for economic recovery. A vote for the Tester-Corker amendment unfortunately would be a win for the banks at the expense of an economy that desperately needs our help and support today.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. I am going to proceed on my leader time.

The ACTING PRESIDENT pro tempore. The Senator has that right.

ENERGY POLICY

Mr. MCCONNELL. Madam President, yesterday and the day before, I came to the floor and noted the many troubling signs of a persistently weak economy and how I believe the actions of Democrats here in Washington are seriously undermining the recovery Americans desperately want. I proposed some things that could be done about it right now.

The President says he wakes up every morning asking himself what he can do to create jobs and help businesses succeed. Let me offer a few suggestions. It is not that difficult, really. I am sure the job creators and the workers the President meets with are telling him the same thing they tell all of us every day. Most people think Washington is too intrusive, that it imposes too many job-stifling regulations and sends too many mixed signals today for anybody to plan for tomorrow. We know that many who would hire right now are actually holding back because they do not know what else to expect in terms of regulations, in terms of taxes, in terms of mandates, and in terms of fees. In fact, we just learned that a significant percentage of businesses plan to drop their employee health coverage—something the administration assured us repeatedly people did not have to fear. Unexpected jolts such as these are causing confusion and anxiety, and they are freezing job creators and entrepreneurs in place.

Beyond that, many Americans are also seriously concerned about a government in Washington that spends trillions more than it takes in and a national debt that this year will exceed our entire national economy. Many people are also understandably outraged by the fact that the party that occupies the White House and runs the Senate has not even taken the time to put together a budget or any other kind of plan to get our Nation's fiscal house in order. After all, if the government does not plan ahead, how can job creators? If the White House does not have a plan to pay down the debt or preserve entitlements, why should people have any confidence that something will be done?

None of this is news to the President or to the Democrats in Congress. The fact is, the President and Democrats in Congress know as well as I do what employers and workers need to prosper and to create prosperity and jobs. They just don't seem to want to do it, and that is the problem. To be blunt, people wonder whether the President is really focused on jobs when so many of his policies seem to be aimed at destroying them and where there is so much he can do right now to create tens of thousands of good American jobs.

Yesterday, I spoke about trade and how, even though the President admits that pending trade agreements with South Korea, Panama, and Colombia have the potential to create tens of thousands of new jobs and boost American businesses, he refuses to move on them in an apparent favor to his union allies.

This morning, I would like to focus on the two sides of the President's energy policy in which he publicly claims to support greater domestic production and the jobs that come with it even as he seems to do everything he can behind the scenes to block production and to kill energy-related jobs right here at home.

The President says he is a proponent of domestic energy production, but, let's be honest, he has not shown it. This should not surprise anyone. This is an administration, after all, that appointed an Energy Secretary who, a month after the President's election, said, ''Somehow we need to figure out how to boost the price of gasoline to the levels in Europe.'' Since then, the administration's policies have helped us get there. Not only have gas prices skyrocketed, but the administration's policies are also hindering the creation of thousands of good private sector jobs that so many Americans desperately need. Let's look at just a couple.

Everyone knows that in the aftermath of the oilspill in the gulf last year, the President imposed a 6-month moratorium on new deepwater drilling. We can dispute the wisdom of a temporary ban for purposes of a safety and

environmental review. What we cannot dispute is that the impact on jobs and the Nation's economy has been quite severe, nor can we deny that the White House has effectively continued the ban even after its time was up and the review was complete. It was only after the courts got involved and months of political pressure from both Democrats and Republicans that the administration reluctantly began issuing new permits months after the ban was supposedly lifted. And even as gas prices hover around $4 a gallon, permitting is still well below prespill levels and energy production in the gulf is expected to slow.

Senator VITTER tells us that the administration's anemic permitting in the gulf for domestic energy production threatens nearly 100,000 jobs every year in addition to the many thousands of jobs that could be lost every year in industries that are related to or are dependent on energy. Senator VITTER has also told us about one estimate suggesting that 23 wells per month are needed just to maintain current production levels in the shallow waters of the gulf and that even after the moratorium was supposedly lifted, the administration has averaged fewer than 2 per month.

As for deepwater drilling, the administration has issued a grand total of two new deepwater permits—just two. The other 13 have been for work that was already permitted prior to the moratorium.

The administration's lack of support for energy production in deep water has led to five rigs simply pulling up stakes over the past year and moving their tax dollars and their workers elsewhere in the world. This is just one of the ways the administration is holding back job creation in the energy industry. This is to say nothing of the administration's actions with respect to Alaska's Outer Continental Shelf, which, according to one estimate, could create an average of 54,700 new jobs annually for decades, adding billions in pay and tax revenue.

Let's not forget that the administration's impact would be even worse if it had its way and raised taxes on energy producers, which would have only served to strengthen foreign competitors, raise gas prices even more, put energy independence further out of reach, and kill more American jobs. By one estimate, the energy tax Democrats still want to impose on energy producers could cost 154,000 jobs and $68 billion in lost wages.

For 2½ years, Democrats in Washington have paid lipservice to the idea of job creation even as they have pursued an agenda that is radically opposed to it. We can see this when it comes to trade, as I indicated yesterday, and we can see it when it comes to energy, as I have discussed this morning. Unless Democrats change their priorities and their policies, the threats of a downgrade will not go away. The debt will not get any smaller and businesses will not create the kinds of jobs Americans need. The President can talk all he wants about the economy, but it is time he starts looking at the impact of his own policies on the economy.

We need to change course, and a good place to start is with trade and with energy. American businesses want to expand and want to hire. Here are two areas where we can help them do it right now.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. JOHANNS. Madam President, I ask unanimous consent to speak for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE EPA

Mr. JOHANNS. Madam President, I rise today to talk about something that is on the minds of our agricultural producers. In meetings in my home State, across Nebraska, it seems the first question is always going to be or the second question is always going to be something related to the EPA. Most of the time, the question goes like this: What is going on at the EPA? Why are they trying to put me out of business?

In response to this growing concern, which I am confident the EPA has heard, they have taken to the road with a good old-fashioned charm offensive. The problem is, what the EPA is selling publicly to farmers and ranchers—what they are trying to sell—just doesn't match up with reality. They say one thing on the road while the regulatory train just continues to barrel forward, right here in Washington. In fact, the EPA Administrator is touring the country, community after community, saying not to worry; there is no need for ''. . . fear in rural areas that EPA is coming after you.'' Yet the regulations continue to come after our Nation's farmers, ranchers, and small businesses, and those regulations are coming fast and furious. Even the Regional Administrator with responsibility for Nebraska and Iowa and Kansas and Missouri has joined the charm offensive. In a recent speech to the Agricultural Business Council of Kansas City, he has said that he does not ''see where this administration is doing anything new.''

But, quite simply, the EPA's charming rhetoric does not match up with its rule-by-rule intent. If I might, let me illustrate what I mean. Let's talk about dust—not the stuff you find on your bookshelf but the stuff a truck kicks up or a tractor kicks up when it is going down a field or farm lane. Earlier this year a bipartisan group of 33 Senators wrote to the EPA. We were worried. We were worried that the EPA had plans to regulate farm dust. Don't get me wrong. Clean air is a good thing. We need clean air, but dust is also unavoidable in farm country. Farming without kicking up dust is like asking a carpenter to cut and frame a house without creating sawdust. Well, it just doesn't happen. The two things do not go together. Not to worry, says the EPA, message No. 1 in the charm offensive; the EPA does not have any plans to do anything as silly as regulating farm dust. In fact, on March 10, Administrator Jackson noted that EPA has, and I am quoting, ''no plans to do so.'' He went on to explain:

> EPA staff is conducting meetings to engage with and listen to farmers and ranchers well before we propose any rule.

My goodness, that sounds reasonable. Well, except that the response letter that the 33 Senators received from the EPA contained an entirely different story. That letter, written by Assistant Administrator Gina McCarthy, simply said that the source of the dust does not matter and that EPA cannot consider costs when it sets the standard.

Here is how she put it: National air quality standards ''are not focused on any specific category of sources or any activity including activities related to agriculture or rural roads.''

McCarthy further noted that ''the Agency is prohibited from considering costs.'' The letter leaves my Nebraska producers and producers all across this great Nation wondering, what happened? What happened to the EPA Administrator saying she wasn't going to regulate farm dust? This letter sends the exact opposite message. The answer is there is a public relations effort, and then there is a whole separate effort called the charm offensive effort, and then there is regulatory reality.

Here are some more examples. On water quality, on April 20, the Des Moines Register headline blared message No. 2 of EPA's charm offensive: ''EPA chief has no plans to regulate farm runoff.''

Well, EPA was addressing another worry in the farm community that EPA would shift from the current State-based approach to a more heavy-handed ''Federal Government knows best'' approach. It will be our-way-or-the-highway Federal Government type approach.

So, again, after reading the headline, farmers and ranchers hoped that maybe the EPA was taking a turn for the more reasonable. But a March 16 letter from EPA to their regional offices once again tells a very different story. The letter lays out a very specific framework how EPA wants States to regulate runoff. While the headline says the EPA will not initiate regulation of farm runoff, in reality they are aggressively prodding States to do it for them.

If that weren't enough, the agency is also trying to expand their authority literally to every irrigation ditch, every low-lying area, and they even want to regulate your farm pond. The law is very clear that EPA does not have authority over these waters. After

Congress refused to enact this expansion of their authority, the EPA decided, well, let's plow ahead anyway regardless of congressional intent. Does that sound familiar with this administration?

To make matters worse, they are not doing this through a full rulemaking process with those pesky public comments and such. Instead, the EPA sat down with the Corps of Engineers, the Department of Interior, and the U.S. Department of Agriculture, and issued a so-called guidance document. That happened in May. EPA claims this approach includes exemptions for agriculture, but the whole story is not told.

Instead, it says irrigated areas, stock tanks, and low-lying areas are ''generally not waters of the U.S.'' Generally? What do you mean by generally? Well, that word ''generally'' produces a tremendous amount of uncertainty. It creates fear. It creates confusion and gives farmers and ranchers zero peace of mind. You see, they do not trust the EPA.

Further, the guidance shifts the burden of proving exemption from regulation to our producers. Instead of EPA or State regulators being forced to explain why on Earth agricultural producers should be subjected to such regulations, producers will now have to explain why it is ridiculous to regulate their stock tanks in irrigated areas under runoff regulations. This will result, of course, in increased permitting costs, paperwork, and other redtape, and it is far from farmer friendly.

Yet the FDA exemptions for agriculture do not end there. Let us not forget EPA's backdoor energy tax where EPA is promising farms and ranches an exemption. EPA is once again lulling farmers to complacency by sending this message: do not worry; we are not going to force you to buy permits. To quote the EPA Administrator, ''EPA is proposing reducing greenhouse gas emissions in a responsible, careful manner and we have even exempted agricultural sources from regulation.''

Producers, quite justifiably, heard the words ''exempted agriculture'' and may have thought: we are going to be OK here. The reality is far different and very definitely a course has been set that should concern every single farmer, rancher, small business person in this great Nation.

The American Farm Bureau put it best in testimony to the House Energy and Commerce Committee. I am quoting:

> Any costs incurred by utilities, refiners, manufacturers to comply with the greenhouse gas regulatory requirements will be passed on to the consumers of these products including farmers and ranchers. As a result, our Nation's farmers and ranchers will have higher input costs—namely fuel and energy costs—to grow food and fiber and fuel for our Nation and the world.

So picture this: A Nebraska farmer gets the electric bill, calls up the power company and says, whoa, wait a minute here. EPA told me its climate change efforts were not going to target me. In fact, they said I was exempted. So why am I paying so much more?

Unfortunately, they are going to have the same conversation with the diesel supplier, their fertilizer retailer, and the local gas station where they fill up the pickup and truck.

The EPA promise of exemption will, unfortunately, meet the reality of dramatic increases in input costs. EPA's reassuring words about an exemption will turn out to be absolutely empty, misleading, and absolutely 100 percent unhelpful when the electricity and diesel bill come due. But the public relations effort and charm offensive marches on. It even includes an Executive order titled ''Improving Regulation and Regulatory Review,'' issued by the President in January. Isn't that enticing?

The directive instructs each Federal agency to consider ''how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient or excessively burdensome.''

According to the order, ''our regulatory system must protect public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation.''

My goodness, that is all of the right words. Once again, it sounded as though we are headed in the right direction. But then, in April, an EPA official stated that the Agency—this is remarkable—the Agency was unaffected by the President's Executive order because they do not propose rules where costs exceed the benefits. However, the same official admitted that the Agency does not consider direct job impacts in its economic analysis. Can anybody figure that out?

These two statements obviously conflict. EPA's actions in drafting several of these costly, excessive burdensome regulations fail to meet the goals of the Executive order issued by the President of the United States, but their public relations campaign speeds forward.

Back home in Nebraska, as in other States in this great country, we make agreements on a handshake, because we believe if you shake somebody's hand, you can trust them. That is the way it works. Unfortunately, within the bureaucratic walls of the EPA, that is not the case. Instead of spouting charming verbiage about the benefits of increased regulation, EPA should be looking for ways to work with farmers and ranchers and small businesses to find solutions to environmental challenges while creating jobs for Americans who are out of work.

After all, the men and women who depend on the land to feed their own families and to feed us are responsible stewards of the environment. Unfortunately, based on what we have seen over the past couple of years, EPA used agricultural producers as offenders, not partners. EPA's shift into campaign mode to appear farmer friendly is disingenuous. They rolled out this charm offensive to make it sound as though they were farmer friendly.

Let me wrap up by saying, why not just do it? Be job friendly, farmer friendly, agriculture friendly.

Thank you, Madam President. I yield the floor.

The ACTING PRESIDENT PRO TEMPORE. The Senator from Alabama.

THE ECONOMY

Mr. SESSIONS. Madam President, I appreciate my colleague's remarks about the agricultural community. I am certainly hearing that, and one of the very real factors in our inability to create jobs in America is the surging regulations that burden the private sector including the agricultural community. Mr. Bernanke, the Chairman of the Federal Reserve, was asked about that yesterday. He said no study had been done about it, talking about the banking regulation primarily. We need to do more about that and face the reality that that is so. Last week's economic numbers were not good. They were very troubling. We saw an increase in unemployment. We saw a decline in consumer confidence. We saw a decline in manufacturing in the Midwest—a key area of our country for manufacturing. A number of factors were noted during that period which were not good. I guess it is part of an accelerated decline in the stock market, which is down 5 percent, maybe 6 percent, after 5 consecutive weeks of decline, and the Senate has gone 770 days without passing a budget. It is a fundamental responsibility of this body, required by statute, that we pass a budget. The date is April 15—and April 1 to commence hearings in the Senate—and we have not met that responsibility. In fact, we haven't even had a markup in the Budget Committee to commence considering a budget. Our Democratic leader, Senator REID, the majority leader in the Senate, has stated it would be foolish to pass a budget. By that he means politically foolish for the Democrats because they are enjoying trying to attack the House Members who passed a responsible, long-term budget that changes the debt trajectory of America. Instead of trying to do the same thing, they just attack the House budget and produce nothing of their own.

The American people are rightly worried about our debt. They are worried about our economy. They are worried about overregulation. They are worried about the lack of jobs.

This week, Austan Goolsbee, the senior economic adviser to the President, announced he would be resigning his post this summer. His departure is just the latest in a trend of top economic advisers abandoning the administration over the course of the 2-plus years since the passage of the failed $820 billion stimulus package, every penny of which was borrowed. The idea was to send out money and somehow artificially create a stronger economy. It

failed, and many predicted it would fail.

The President's first Director of the Office of Management and Budget, Peter Orszag, left in July of last year. Christina Romer, the President's first Chair of the Council of Economic Advisers, left last September. Larry Summers, the former president of Harvard, former Director of the National Economic Council for the President, left last December after less than 2 years.

As a result of the failed stimulus and other debt we have accrued, we are in much deeper debt, but Americans know it has not made them better off. In fact, increased debt has further eroded the economic confidence that is necessary for a spirited recovery and has made our situation worse. Many say we have to borrow money to spend it and that is how we get the economy on a sound footing. Thoughtful economists and others have said that this not so. I believe history has proven them to be correct; that borrowing to spend does not make us better off.

The last deficit before the President took office was $450 billion—far too high. The year before that, the deficit was $162 billion. This year, the deficit will be $1.5 trillion, the third consecutive trillion-dollar deficit. Yet the President and some on his economic team have promised that their spending program would keep unemployment from rising above 8 percent, but more than 2 years later unemployment now stands at 9.1 percent, after having increased again last week.

The economic numbers released Friday show this to be the most disappointing economic recovery in 70 years. Only 54,000 jobs were created in May, marking the worst jobs report in 8 months. The President asserts he is responsible for adding 2 million jobs since he took office. But the percentage of our working age population that is employed—and we have had an increase in the working age population—has declined to 58.4 percent. We have to go back to October of 1983 to find such a low number.

Nearly half the unemployed—45.1 percent—are now classified as long-term unemployed, meaning they have been unemployed for 27 weeks or more. While the official unemployment rate increased from 9 percent to 9.1 percent, adding those who are underemployed—meaning those who can't find full-time work or those who are so discouraged by the job market they have given up trying to find work—would boost the unemployment rate to 16.1 percent.

But perhaps most alarming of all, as pointed out in the June 4 lead editorial by Alan Abelson in Barrons, is that actual private sector employment today is now 2 percent below where it stood 10 years ago. Two percent fewer people are working today than were working 10 years ago.

Citing Philippa Dunne and Doug Henwood of the Liscio Report, Mr. Abelson notes:

> Job losses over a 10-year period is unprecedented since the advent of something resembling reliable tallies began in 1890. So far, they point out somewhat grimly—

He is talking about Mr. Dunne and Mr. Henwood—

> we've regained just 1.8 million jobs lost in the Great Recession and its aftermath, or about one in five.

So the policies we are following are not working. We have to get this economy moving. We added only 54,000 jobs, a net decline in percentage in terms of employment. We have to get jobs created, and 54,000 is way below what we need to have to stay level. About 180,000 a month need to be added.

I would suggest that it is no wonder the President's top economic team is leaving the administration.

But rather than recognizing the need to change course, the President doubled down with the budget he submitted to Congress. He told the American people his budget would ''not add to the debt'' and that it would allow us to ''live within our means.'' But the Congressional Budget Office analyzed that budget and found otherwise—dramatically. In fact, CBO said that the budget the President submitted to this Congress in February would double our debt over the next 10 years.

Meanwhile, economists are warning that if we don't change our debt trajectory—and soon—our debt could stifle the very economic recovery that is already moving far too slowly.

This is the important point, and it goes right to the heart of the argument that we have to artificially stimulate this economy by borrowing money from our children so we can spend it today and that this is going to make us more healthy. A study by Carmen Reinhart and Ken Rogoff titled ''Growth in a Time of Debt'' in American Economy Review (2010) shows that economic growth is 1 percent lower, on average, in countries with gross debt above 90 percent of GDP—90 percent of their economy. It is 1 percent lower. If we want growth, we have to look at how big our debt is. If it gets over 90 percent of GDP, then we show an average of a 1-percent reduction in growth.

When asked about this study while testifying before the Budget Committee earlier this year, Treasury Secretary Geithner called the Reinhart and Rogoff study excellent, adding that ''in some ways . . . it understates the risks.'' In other words, it creates greater risks of economic and financial spasm that could put us back into a recession. Stephen Roach, chairman at Morgan Stanley and lecturer at Yale, was recently asked on CNBC—yesterday, I believe—about what is happening with the economy, why we see the disappointing results. This is what Mr. Roach, a professional economist and player in the world financial markets, said:

> I come down on it as Ken Rogoff and Carmen Reinhart do, in their analysis of post-crisis economies. This is the way it is. When you have such a massive buildup of debt pre-crisis, when you hammer the consumers the way we did in this crisis, the economy is going to sputter.

America's debt stands now at 95 percent of GDP. It is set to exceed the entire economy by the end of this year, and the President's own Treasury Secretary and widely respected economists are saying this could have a negative impact on the economy and jobs. It could cause a 1-percent decrease in economic growth, according to Rogoff and Reinhart.

According to the Council of Economic Advisers, a 1-percent decrease in growth could cost about 1 million jobs—not 54,000 but 1 million. If we had less debt, we would be seeing more than the anemic 1.8-percent growth in the first quarter as we come out of this recession. We would have probably had 2.8 percent growth, if this study, which Mr. Geithner considers to be excellent, is accurate. Certainly, debt pulls down economic growth. Common sense tells us so. Numerous experts agree this debt is dangerous. It threatens our fragile economic recovery. Growth is what we need for jobs and it brings in more tax revenue and helps us balance our budget.

But in response to the debt threat, what do we see? We got a budget from the President that would double the Nation's Federal debt in 10 years. When that budget was released it received immense criticism, so the President gave us a speech that suggested some changes. He called it a framework. Members of the Budget Committee wrote to the President and said: Well, put this in budget language. Send us a new budget then. If you are changing, if people didn't like your first one, let's see this one in detail. But they refused to do that. Recently, we voted on the President's budget in this Senate. It was brought up and voted on. Not one Senator, Republican or Democratic, voted for that budget. It was utterly rejected.

Meanwhile, our Democratic leadership in the Senate, which has the power to call the committee hearings that would commence a budget markup and eventually pass a budget, hasn't offered a budget this year. Indeed, they haven't passed a budget in the last 770 days. At least one was brought out of committee last year but never brought up by Senator REID on the floor to be voted on, so we didn't have a budget last year. This year, they didn't even bring the budget to committee to be marked up. The majority leader said it would be foolish for us to have a budget. It would be foolish to have a budget in a time of the largest deficit the Nation has ever incurred, which will occur this year—approximately $1.5 trillion in deficits. We bring in $2.2 trillion, and we are spending $3.7 trillion this year. Forty cents of every $1 we spend is borrowed, and we don't even have a budget. What do we do? The majority leader calls up the House budget, a responsible, historic alteration of the unacceptable debt path we are on, putting us on the right path.

You can argue about some of the things that are in it, fine. But it courageously and honestly changed the trajectory of America's debt path and was widely praised in that regard. The majority leader brought it up so he could vote it down and attack it, producing nothing on his own. So I brought up the President's budget. It got zero votes.

The failure of this body to produce a spending plan to tackle our Nation's debt only creates more uncertainty in the economy. Doubt and fear are driving away jobs, stifling growth and investment. That is a fact.

For nearly 3 years, the White House has been seduced by the vision of growth through artificial means, including trillions in fiscal stimulus spending and so-called investments. Indeed, in a time of dramatic fiscal irresponsibility, the budget the President submitted to us called for a 10-percent increase in the Department of Education, a 10-percent increase in the Department of Energy, a 10.5-percent increase in the State Department, and a 60-percent increase in rail and transportation spending. We do not have the money.

That budget reflected utter confusion and a detachment from reality.

Are our cities, are our counties, are our States increasing spending by 10.5 percent? Aren't most of them actually reducing spending? That is reality. That is what is happening in the rest of the world. The British reduced some of their spending recently—far more than we have. Some people there did not like it, and they complained that it was too difficult and too tough. But the International Monetary Fund, in a recent report, said: Stand to your guns. Get your debt under control. In the long run, the International Monetary Fund said, this is the way to build a strong economy, and we have been going in the other direction.

The Keynesian siren call to spend did not lead us to prosperity. We have restored only one-fifth of the jobs lost in the recession. As a percentage of our population fewer are working today than during the so-called worst period of this recession, and we are experiencing the weakest recovery in modern history. Unemployment is back up again, and the housing market is back down. Bad housing numbers came in last week also.

Our fast-rising debt and our unwillingness to adopt a credible budget plan—and we can do that—is shattering economic confidence and jeopardizing our future. But our Democratic leadership in this Senate refuses to put forward a budget plan to confront the debt that they have themselves increased so greatly.

We are told the President has not involved himself personally in discussions over the debt limit. That has been turned over to the Vice President. One report says he no longer receives daily economic briefings. What signals do these actions send to our out-of-work Americans, to struggling industries and businesses, and the anxious financial markets throughout the world?

Instead of stonewalling a budget, the Senate should be working together, Republicans and Democrats, to produce a budget that puts us on a sound path and makes our economy as robust and as dynamic as possible. That is so basic. Blocking a budget under these economic circumstances is simply unthinkable. There is no quick fix, no accounting gimmick, no political trick that will solve these problems. We have a potentially healthy, growing economy. Our American businesses have never been leaner or more efficient, as the Dallas Federal Reserve Governor, Mr. Fisher, said the other day on one of these interview programs. We have never had a more efficient, competitive business environment in America.

But in the long run—and that is what we must focus on—sound principles, common sense, spending restraint, less regulation, and more commitment to the free markets will, if allowed, lift us out of this malaise in which we find ourselves. To put America back to work, the Senate needs to get back to work.

I thank the Acting President pro tempore and yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

ECONOMIC DEVELOPMENT REVITALIZATION ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 782, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 782) to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

Pending:

Tester amendment No. 392, to improve the regulatory structure for electronic debit card transactions.

Durbin amendment No. 393 (to amendment No. 392), to address the time period for consideration of the smaller issuer exemption.

AMENDMENT NO. 392

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 2 p.m. will be equally divided between the proponents and opponents of amendment No. 392 offered by the Senator from Montana, Mr. TESTER.

The Senator from Montana.

Mr. TESTER. Madam President, I will yield to the Senator from Rhode Island, and then I will make my statement.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. REED. Madam President, I thank the Senator from Montana for yielding and also for bringing this issue before the Senate. I am reluctantly opposing my dear friend but doing so on the principles that are inherent in what we have tried to accomplish in the Dodd-Frank legislation; that is, to provide for transparency in the pricing of financial products. With that as a starting point, I will begin.

One aspect I think we have to consider is not just this specific amendment but the growing attempt to undermine the ability to implement the reforms incorporated in the Dodd-Frank legislation, which are actually critical not just to protecting consumers but also to providing a foundation for an effective financial system in the United States, which is the foundation, I believe, of a growing and thriving economy.

So this debate is not just about interchange fees; it is about comprehensively dealing with the problems we saw manifest themselves in the financial crisis of 2008 and 2009, where market discipline collapsed, where some great institutions failed and some were on the verge of failure. If they had failed, then the ramifications would not be simply restricted to Wall Street; they would have been felt on Main Street, and we would be in a worse financial position than we are today.

But this specific amendment deals with the interchange fees or swipe fees. The first issue I think we have to recognize is these are hidden fees. They are charged in each transaction a consumer makes using a debit card. Every time you swipe the card—which serves as an electronic check—there is a fee. But the consumers do not see this fee. So basically you have a disguised price. If the price is disguised, then the consumer does not have a real indication of the cost. If he does not know the cost, then that affects the rational economic decisions we assume consumers are making every time they make an economic decision.

But at the end of the day, despite the fact that the consumer is unaware of these fees, he or she ends up paying them in higher prices for gas, for milk; in fact, they have been paying these higher prices for the privilege of using a debit card for years and years and years.

Debits cards are used more than checks today, more than credit cards to pay for everyday purchases. These secret fees—in a sense, you might even describe them as hidden taxes on consumers—add up to billions of dollars a month. The Durbin interchange provision of the Dodd-Frank Wall Street reform law sought to make these interchange fees transparent and public for

the very first time. It requires that for transactions involving debit cards issued by banks with assets over $10 billion—the largest banks, not the community banks, not the credit unions but the largest banks—that these interchange fees set by a card network on behalf of its issuing banks must be reasonable and proportional to the amount it costs the issuer to conduct the transaction.

This is the law of the land. The Federal Reserve was given the responsibility of implementing the law through regulations, and they are on the verge of publishing those regulations.

Senator DURBIN proposed this provision because businesses such as, in my home State of Rhode Island, Cumberland Farms—the old convenience store chain that I grew up with and the quintessential small business, a family-owned business—pays almost as much in these hidden fees as it earns each year in profits. These fees roughly equal their profit.

Interchange fees are Cumberland Farms' second largest expense. It is not the milk. It is not the gasoline. It is not a lot of things. It is their second largest expense. For example, despite the fact that the total number of gallons of gasoline they have sold has remained flat, the interchange fees have increased 270 percent, from $13 million in 2003 to a projected $48 million this year. Again, the number of gallons of gasoline they have sold has remained flat, but their interchange fees have gone up almost 270 percent.

Cumberland Farms' CEO calls this increase a ''runaway train.'' When gasoline was $2 per gallon, interchange fees were about 3 cents per gallon. Now that gas prices are about $4 per gallon, interchange fees have increased to 5 cents a gallon. So for the same 15-gallon fill-up, the hidden fees increased 63 percent. So the motorists, the local Rhode Islanders filling up at the local corner gas station, are paying for greater interchange fees, on top of the increase in the price of gasoline.

The actual debit card services have not changed. But because the price of gas increased, the fees almost doubled. That is a pretty good deal for Visa and MasterCard and the banks. Unfortunately, as these fees continue to increase, they increase gas prices, they prevent investment, and they preclude new hiring. Indeed, the convenience store industry reports that, overall, it pays more in these fees than it is earning in profits. That is overall across the board and across the country.

There is another example, a very local company, a very small business: Chocolate Delicacy in East Greenwich, RI. It pays a swipe fee on every piece of chocolate sold when paid by a debit or gift card, which amounts to 60 percent of their purchases. The owner, Marie Schaller, told me she feels like she has no choice but to pay the fee. ''If I don't, I would lose over half of my sales.'' The growing swipe fees have meant a cutback in hiring for Marie.

At the Beehive Café, located in Bristol, RI, a cup of coffee costs $1.75. The swipe fee is 15 cents. Because card fees are hidden and there is no ability to negotiate them, owner Jennifer Cavallaro said:

> Visa and MasterCard have inserted themselves into every single transaction that takes place—equating to a tax on commerce. This is not free enterprise; the small business person is trapped.

When consumers pay for some drinks with debit cards, 7–11 owners in Rhode Island told me they lose money on every transaction. So why don't supermarkets, drug stores, and other merchants negotiate to pay less? Well, they can't. The fees are set by Visa and MasterCard and the card networks. They have no bargaining power.

Most merchants in America are left with no choice but to accept the cards. They cannot play if they do not pay. In July 2010, we passed an interchange provision so the Federal Reserve could study the fees and decide whether they are reasonable. In fact, the Federal Reserve found that they were not reasonable nor proportional.

The Federal Reserve found that the average swipe fee was 44 cents for every purchase, but the processing costs were less than about 12 cents per purchase, giving them a 30-percent margin on their actual cost.

In December of last year, the Federal Reserve proposed rules to limit the fee to reasonable rates. The Federal Reserve's top economists are reviewing and considering over 11,000 comments on their current reasonable fee proposal.

Chairman Bernanke has said they are committed to issuing a final rule by July 21 of this year. I believe they should be given the chance to study all the comments and complete the rule. Only by letting them do their work instead of disrupting it are we going to be able to see if the new reasonable fee structure can open up this system and make these fees more reasonable and transparent.

Banks and card issuers that receive the fees have been vocal about their objections, preferring to keep the fees hidden and ever rising beyond the current 44 cents. With such a large profit margin in this line of business most of us can understand why. MasterCard said in its Annual Report to Shareholders:

> We are devoting substantial management and financial resources to the defense of interchange fees.

Visa told its shareholders that the rules ''may give retailers greater ability to route debit transactions onto competitive networks which can reduce the processing fees we currently earn.''

So the credit card companies are very much aware that there could be a better competitive environment for merchants and consumers if this legislation goes through. That is what they told their shareholders.

Small banks, under $10 billion in assets, are exempt from the rules. A survey conducted by the American Banker found that an overwhelming majority believe the law actually helps small banks. Small banks will have a competitive advantage since their fees are not limited by the rule.

The United States is not alone in closely examining these fees. The European Union, Canada, Australia, New Zealand, Israel, Spain, South Africa, and Switzerland already regulate swipe fees. In addition to the ever-increasing swipe fees merchants are forced to pay for, merchants also bear the brunt of the cost of fraud, contrary to some of the assertions the industry has made.

It is my understanding that after fraud claims, networks typically raise interchange fees of the company that has been subject to the fraud and often engage in litigation against merchants to recoup fraud losses. Of course, all of these costs—the merchant's costs and, I think, also the interchange costs—are passed on to consumers.

Here are some examples: When criminals installed scanners to obtain customer account information at Michael's, a craft store, it was only the latest theft of such consumer data. Community banks were quick to respond and immediately issued new cards and returned stolen money. However, despite paying millions in interchange fees in the recent past, Michael's may have to reimburse Visa and MasterCard and the banks for these replacement costs.

In another example, in December 2006, T.J.Maxx discovered that computer hackers had broken into their computer network and had stolen customer payment card data. In March of last year, a Federal judge sentenced one of the computer hackers responsible to 20 years in Federal prison.

Since 2006, T.J.Maxx has spent about $170 million in costs related to this incident, including nearly $65 million to Visa and MasterCard to compensate banks for the cost of the fraud.

This, of course, is in addition to continuing to pay their interchange fees. The same hacker who hacked T.J.Maxx also hacked Heartland Payment Systems. That attack cost Heartland over $140 million, the majority of which was paid to Visa and MasterCard and other banks to compensate for the cost of the fraud. Heartland Payment Systems had to pay the banks and Visa and MasterCard for the computer fraud committed.

So the consumer pays for the data breaches, the consumer pays for the debit card fraud, and the consumer pays more and more for interchange fees. I think any further delay in the rules to require reasonable swipe fees only harms small businesses and, in the end, the consumers.

The amendment before us provides for at least a 12-month delay in the rule, in addition to a 6-month study, and effectively a completely new version of the proposed rule. I think it is unreasonable. There is no reason for delay. The Federal Reserve has what

Chairman Bernanke characterized as, in his words, plenty of information from over 11,000 comments to the Federal Reserve's December 2010 rule proposal.

In addition, the Federal Reserve has done an enormous amount of surveying of the industry, again in the words of Chairman Bernanke. I think the proposal before us provides the banks another way to avoid transparency in their operations.

The Federal Reserve should be allowed to finish their rules to establish a reasonable fee for debit card services. Then we can work with the banking regulators to make sure their rules do in fact work, and do in fact provide for a more transparent, competitive marketplace to the benefit of merchants and consumers.

Our market system only works well if merchants and consumers have the information they need to make informed choices, and that was what was at the heart of this provision in the Dodd-Frank Act. I believe that is what is at the heart of the Dodd-Frank proposal overall, which is to provide better information, more transparency, whether it is credit cards or debit cards or complicated derivatives, because armed with better information individual consumers and individual merchants can make better choices about economic decisions that will accrue to the benefit of all of us.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. TESTER. Madam President, well, I want to thank Senator REED for his comments. Senator REED is one of the leaders on the Banking Committee. I appreciate his comments.

I do want to set the record straight on a couple of things though. It is not a 12-month delay plus a 6-month study. It is a 6-month study and then implementation of the rules.

The Senator said Chairman Bernanke had plenty of information. The problem is he does not have much information from community banks and credit unions, and that is what this amendment is about.

The exemption that is in the amendment that we passed last year, called the Durbin amendment, every regulator at the Federal and State level has said they cannot make the exemption work because market forces will determine where the customers flow.

I am glad we are here to vote on the amendment that Senator CORKER and Senator HAGAN, Senator CRAPO, Senator BENNET, and I have worked so hard on. This afternoon we are finally going to have an opportunity to vote for an amendment that has been crafted in the right way.

Senators HAGAN and CRAPO and BENNET came to Senator CORKER and I about a month ago to share their interests in fixing the unintended consequences of that amendment that was passed in the Senate about a year ago. The amendment directed the Federal Reserve to issue regulations limiting the cost that banks can charge retailers when consumers use their debit cards to buy things. Based on the law, the Fed intends to limit those costs to 12 cents, even though the actual costs of these transactions may be higher.

The big Wall Street banks can handle that. They are not happy about it, but they can live with it. They have plenty of tools that will help them make up the difference. The Main Street community banks and credit unions are a different story. These small guys, who had nothing to do with the financial crisis, do not have that same flexibility the Wall Street banks have. These are the banks in Montana. These are the folks I want to make sure have a fair shake. So folks from both parties came together and said: How can I fix this to make this protect the local banks and credit unions since the original amendment does not?

Senator CORKER and I suggested initially a 2-year delay, a study, and then more legislating to fix any problems that were identified in the study. The Senators who are here today with me thought we could do better, and we could, and we did. After talking with our colleagues, we worked together to reduce the study period down to, as I said earlier, 6 months.

At that point the Fed and other regulators will decide if the rules can adequately prevent the small banks from getting hurt. I do not know what the study is going to find, and I do not think anybody knows. If the agencies find that the rules consider all costs, that consumers would not be harmed, and that the small issuer exemption—those that apply to credit unions and community banks—if that exemption will work, then the pending rules would move forward as passed. I would be the first person in line to tell Senator DURBIN that he was right about the two-tiered system.

But if the Fed and the other regulators find that the changes must be made to ensure that current rules do not include all costs or that small banks and credit unions and consumers might be harmed, then they will have to issue new rules within 6 months, and every 2 years the Fed would have to tell us in Congress whether these rules are still working for the small banks and credit unions.

That is all we are asking. Before the Fed's new rules get implemented, let's make sure we have them correct. Yesterday the good Senator from Illinois said this was not truly a compromise. But when you sit down with folks who think you are on the wrong track and you work together to find the middle ground, well, to me that is the definition of compromise.

Some other charges have been made about this amendment, and I would like to take a moment to discuss those. Some say it is a favor to the big banks. Well, it is not. In fact, this amendment corrects a very big problem that only affects the community banks and credit unions. The good Senator from Illinois said yesterday that he crafted this amendment with awareness that a major reduction in interchange fees would kill small banks and credit unions.

No one denies that small banks and credit unions would be deeply harmed if they are forced into a system where they can only charge 12 cents per transaction. No one denies that. This is why Senator DURBIN tried to establish a two-tiered system. Under his proposal, big banks, the Wall Street banks, could charge one rate, 12 cents per transaction.

The small banks, the community banks, credit unions, could continue to charge a percentage of a transaction, 44 cents on average. But there is a big flaw in the plan. The two-tiered system simply will not work. Let me repeat that. The two-tiered system simply will not work. I did not make that up. Here is what the Chairman of the Federal Reserve said:

> It is possible that the merchants will reject the more expensive cards from smaller institutions, or because networks will not be willing to differentiate the interchange fee for issuers of different size. It is possible that the exemption will not be effective in the marketplace.

That was Ben Bernanke saying that. He went on to say that because the exemption will not be effective, small banks could be hurt or even fail. Here is what the head of the FDIC said:

> The likelihood of this hurting community banks and requiring them to increase the fees that they charge for accounts is much greater than any tiny benefit that the retail customer may get.

Again, everyone agrees if the Fed's rules go into effect, the small banks and credit unions will suffer because the exemption simply will not work. So today we can stop and doublecheck to make sure that does not happen or we can just flip a coin and hope for the best and watch as more small banks and credit unions fail, reducing consumer choice and reducing banking options, especially as they currently exist in rural America.

These small banks and credit unions are the ones that make the loans to small businesses in rural America. They are in places where folks are still willing to put their money. They are the ones that folks in Montana still trust. They do not trust the big Wall Street banks. We probably will not lose too many banks in Washington, DC, or Chicago, IL, but we will in rural America. I do not want to see that happen.

Another good one that I have heard this week is the argument that the amendment will allow banks and credit unions to factor executive compensation into the cost of interchange fees. It will not. In fact, the amendment specifically states that the Federal Reserve and other banking regulators must look at the costs associated with debit card transactions and program operations.

We also know how dangerous it is to set a price for a product without understanding all of the costs that go into that product.

Home Depot would never allow the Federal Government to set the price of garden hoses simply by looking at the cost of manufacturing a garden hose.

No, Home Depot charges us for the cost of manufacturing it, shipping it, keeping it in stock, having someone tell you what aisle it is in, and on and on.

Likewise, if we are going to be regulating debit interchange fees, we need to understand all of the costs associated with debit transactions and debit programs.

When we voted on this amendment last year, we thought we were voting to allow the Federal Reserve to consider all costs. However, the reality is that last year's interchange amendment limited the costs that could be included. Some fraud costs were allowed to be included but not others. Some technology costs were included but not others. If we are going to be regulating this market, we need to be fair about it.

So the amendment directs the Fed to determine what is ''reasonable and proportional'' but it gives the Fed the discretion to look at all of the costs associated with debit transactions.

That does not mean executive pay. That does not mean a special rewards program.

All costs will still need to be justified, and if they cannot be justified they will not be considered. The Fed has been very clear with me—no executive pay, no bells and whistles.

But the decisions about the cost of routing networks, the costs of fraud and other technical details are much better left to the Fed than decided by the U.S. Senate.

Finally, Madam President, some have said that this amendment hurts consumers. It does not.

As someone who voted against the Wall Street bailout, who wrote part of the credit card reform act, and who voted for the Wall Street reform bill, I can tell you that if this amendment was somehow bad for consumers, I would not offer it.

In fact, the amendment requires the regulators to certify that the Fed's rules address consumer concerns.

The current law does not require anyone to look at the impact of interchange fee regulation on consumers. They are out of the picture.

I am not aware of any specific plans by any retailers to lower prices or provide customer rebates if interchange fees are lowered. I know that one large big box store held an earnings call at the beginning of the year where a company executive called the proposal to lower interchange fees a ''$35 million windfall.''

If I were a shareholder, that would have sounded pretty good to me. But as a customer, it is not clear how I benefit.

I understand that there are some folks who wish the amendment could go further to include additional consumer-oriented agencies such as the Federal Trade Commission as agencies that will conduct the study.

I would be happy to work with those Senators to see how we best protect consumers in this process. But the only way to make that happen is to get this amendment adopted; otherwise, the Fed's rules go into effect on July 21 regardless of what any consumers think.

I am looking forward to today's debate because we have an opportunity to address the unintended consequences of the Durbin amendment. Make no mistake, those unintended consequences will be felt all over rural America—and not for the better.

For the folks who think the two-tiered system will work, there is not a regulator out there who will tell you that it will. Some folks will tell you the Durbin amendment has an exemption for community banks under $10 billion and for credit unions under $10 billion. If they think that will work, there is not a regulator out there who will tell you that they can implement it and it will work because the free market system will drive it to the lower price. That is the way it is.

I am saying, let's slow down a little bit and make sure we get it right.

If we are going to create regulations, we are doing it in a way that is fair and consistent with the intent. Let's not try to solve one problem and create three others.

And let's not take shots at the folks in my neck of the woods who were not part of the financial meltdown.

That's all I am asking, and I urge my colleagues to support this amendment.

I yield the floor and ask unanimous consent that the time during the quorum calls until the vote be divided equally.

With that, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ENZI. Madam President, I ask unanimous consent to speak as one of the opponents of the amendment.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. ENZI. Madam President, I rise today to express my strong opposition to the Tester-Corker amendment No. 392 to the Economic Development Revitalization Act.

The interchange fee debate is not a new one for the Senate. This is an old discussion with both sides—financial institutions and retailers—bringing their perspectives to the table.

I should note that I am a former small businessman and retailer. My wife and I owned and operated Enzi Shoes, a family retail shoestore in Wyoming and Montana, for over 25 years.

Retail stores have been clamoring for a change for years and have always felt ignored by the credit card and the big bank card companies. Stores with small-priced items are forced to allow a sale to be put on a debit or credit card. While some stores post signs requiring a minimum purchase, they are violating their service contract. If the fees were merely a percentage of the sale rather than a minimum amount or a percentage, whichever is larger, much of the argument would be gone. Without the percentage fees, small businesses have no leverage for negotiation.

Soon vending machines will allow you to kind of point your cell phone at the vending machine and click, and you will get your snack or your soda, and it will be billed to your debit card. But if the cost of making that purchase eats up the profits on the sale plus some money out of the vending machine owner's own pocket every time someone buys a soda or snack, will the machines be available? No. You can't be in business if you lose money on every sale.

Now, the vender has an option: They can charge as though every sale is a debit card sale and increase the cost of the item to cover whatever cost the debit card company puts on your purchase. What you have right now is this hidden fee that goes to a card company. The card company shares that fee with participating banks. Banks are now saying that if they lose that fee, they will have to charge their customers in other ways. I am told the average bank will have to make up about $150,000 in hidden fees they are now receiving that customers have been paying on their purchases and don't know about them. Are hidden fees fair? I fight them every chance I get.

According to the Wyoming Retail Federation, retail stores, hotels, restaurants, and small businesses in Wyoming consistently report that credit-debit card fees have tripled in the last 10 years. These fees have become a major cost, now surpassing other traditional costs of doing business. This is a small business issue and small businesses particularly because they do not have the leverage to do any negotiating. Incidentally, in this case, neither do the big companies. But the small businesses are paying two or three or four times, and sometimes more, for credit and debit charges.

When I recently traveled to Wyoming, a businessman compared his expenses in the last 5 years to explain the effects of interchange fees on his business. Gross sales between 2005 and 2010 were $5 million and $5.5 million a year. Percentage of sales made on credit-debit cards was 15 percent in 2005 and 37 percent in 2010. Sales in the last 5 years increased 10 percent and credit card

fees increased over 100 percent. Credit and debit card fees as a percentage of total sales were three-tenths of 1 percent in 2005 and 1 percent in 2010. So the fees tripled in just 5 years. The retailer has no control over that. It is a monopoly. When the bank raises fees, if you know about it, you can change banks. The debit card business is like a monopoly, so when the debit card companies increase their fees, the only alternative is not to accept the cards as payment. But the cards have become a way of life, and the companies know it.

The profit margin of business is too narrow to sustain these increases. This is why defeating the Tester-Corker amendment means saving jobs in my home State of Wyoming and around the Nation. I believe increases in interchange fees are cutting into the resources that could be used to provide more jobs.

During the financial regulatory reform debate last year, Senator DURBIN offered an amendment that tasked the Federal Reserve—the Fed—with studying the actual cost of debit card interchange costs versus fees being charged. I voted in favor of the Durbin amendment, hoping it would create a dialog and a commonsense compromise on this issue. I was trying to force this dialog clear back in my shoe-selling days. Card companies didn't pay any attention. I have tried ever since becoming a Senator. I have been ignored.

The Durbin amendment is the only thing that has gotten the debit card-big banks' attention. But did they try to resolve it with the stores—the stores that were generating the sales and therefore collecting their revenue? Again, a resounding no. They haven't met with them at all. They have spent a fortune trying to convince the public that their monopoly is OK and they shouldn't have to do anything about it; that they have always been right, they are still right, they are going to be right, and they do not have to talk to their customers, which are the stores.

I encouraged the banks to listen and to negotiate, but they chose to advertise and message to make stores look like the bad guys. They have spent a small fortune advertising and messaging. One day, on my way to work, I came by a place where they were giving out insulated coffee cups to give this message that the big banks were going to be put out of business by this amendment.

As we all know too well, dialog is occurring in the Halls of Congress, but that isn't going to rectify the problem. I agree that government should not determine a set price on fees. I will say that again. I agree the government should not determine a set price on fees. But if a huge segment of the economy makes a case for redress, then it will likely fall under what I call the probable legislation rule No. 3: If it is worth reacting to, it is worth overreacting. It is not a good way to legislate, but unfortunately it happens a lot in Washington, and it may have happened in this case. I have worked for years to bring retailers and the big banks to the table to discuss and negotiate interchange fees and make the system work better for both parties. It hasn't happened, and that is when we get to this reaction time.

Since passage of the bill last July, there has been ample time for the banks and retailers to work out a solution. Dialog between the financial institutions and the retailers has to occur in order to find an immediate and a real solution to this problem.

The interchange fee provision is an important issue that deserves the full attention and consideration of both intended and unintended consequences, but our Nation's retailers and small businesses can't afford continued delays and studies because this kicking the can down the road is to keep things the way they were, and it is what we will be getting today if the amendment passes. Oh yes, it looks as though there is going to be some interaction there. If the big banks win today, the customers of stores lose.

Following the passage of the Durbin amendment, S. 575 was introduced this year by Senators TESTER and CORKER as a stand-alone bill to delay implementation of the Federal Reserve rules until the impact of those fees could be studied for another 2 years. That is the original bill where this amendment comes from. A similar House bill proposed to delay-study the debit card interchange fee rule for 1 year. Now, searching for votes, Senators TESTER and CORKER have changed their amendment, so what we will be voting on today is a study and a year of kicking the can down the road. But even though it has been changed, it is still wrong.

My colleagues knew I was not willing to support the original 2-year delay which would effectively bury progress made on the issue. A 2-year study was not just kicking the can down the road; it was making an indefinite delay on any changes and prohibiting dialog between parties.

I commend Senators TESTER, CORKER, CRAPO, and others for working to decrease the study timeline from 2 years to 12 months. As you have heard during this debate, the Tester-Corker amendment would allow for 6 months of studying the interchange fees, plus an additional 6 months for the Treasury and Federal Reserve to draft a final rule. While this is a step forward in the resolution, more needs to be done to accelerate this process. Another full year without a solution is too long for merchants and retailers.

There is another problem too. That is the Fed will still be making the rule. We have to realize that banks work with the Fed all the time, so banks understand the Fed and the Fed understands the banks. Retailers don't work with the Fed. The Fed does not check on the retailers. So how do you think the rule the Fed will write will come out if we kick the can down the road another year? I think the banks will have a big advantage.

What we need is for the banks to listen to their customers, the retailers, and come up with a workable solution. The Fed isn't the right place for that decision. The Fed just made a decision that the banks decided they didn't like. Quite frankly, for some of the small banks, there is a problem too because what was allowed for small banks to give them an edge isn't ever going to happen. People will shop where it is cheapest, which will be the big banks. So I think the Fed did get it wrong, and I don't think the banks will get it right unless there is something that is real to them.

On July 21, the current rule will go into effect. On July 21, they will finally feel that it is real, and they ought to sit down with their customers, the retailers, and get it figured out. I don't think it is that tough. I know where the changes were that I would have liked to have seen, and I didn't represent the whole gamut, but there are a few associations that would be viable to work this out. It doesn't need to be done through legislation. But if today we pass the Tester-Corker amendment, there won't be any incentive for them to do anything for at least another year because the problem still won't be real.

The banks don't think there is a problem. The retailers know there is a problem, and the retailers' customers are beginning to understand there is a problem. I just saw a survey from Montana, and 75 percent of the people are opposed to the swipe fees that are currently in place—75 percent. America is figuring things out faster than Congress is, and we have to be with the people. We have to take care of the problems they see, especially when it is that huge a majority. I don't like doing things based on polls, but I do like polls to give me an indication.

I go back to Wyoming almost every weekend, and I travel to a different part of the State every weekend and talk to the real people; I just don't read it in the papers or read the studies. I can tell you that 75 percent is probably just about right. I think it might be just slightly higher than that in Wyoming.

The banks and the retailers should get together and come up with a rule that will work for both of them but not one that maintains a monopoly. When you sign on to one of these credit card agreements—and you have to do one of those in order to be able to accept them and have the money work through the system back to you—you are not given any options. There isn't anything you can shop around for because all the agreements are the same. If you sign one of those agreements, you have to be willing to accept it no matter what the size of the purchase.

Now, if you are selling a soda for $1 and you are paying 44 cents, you know the soda company isn't making enough to cover the 44 cents, so they have to

raise their price, which gets passed on to the customer. They have to raise the price so that it covers the credit card, but it also has to cover the other sales because there is no way for them to distinguish one from the other. They can't charge more for a credit card sale than a debit card sale, and they shouldn't. So they build in a hidden fee that you don't know you are paying. That fee is a huge fee, and it takes away some of the profits on the small sales. That is one of the primary areas that is driving this whole issue. There are other areas, too, but that is the simplest one that could be figured out.

Both sides on this issue need to have a hand in the negotiating. Defeating this amendment gives them both a hand, and that is why I strongly believe two things need to occur to fix this problem. No. 1, any study should not be longer than 6 months total study time and drafting of the rule and, No. 2, banks and credit unions must come to the table with retailers and merchants to define some middle ground. It would be more workable if bankers and retailers sat down and negotiated an agreement. They don't need a study. The retailers know what the problem is. The banks know the problem better than the retailers. So all they have to do is skip the study, sit down, and work it out. I think it could be worked out before July 21, although a deadline is always good. So we really need to defeat that.

It is a tough issue for small business owners, merchants, and retailers because many of our community lenders have come to rely on this interchange income. No good comes from pitting small businesses against lenders in Wyoming or otherwise, especially not in this economy. Bankers already know what changes need to be made. If they had put more effort into forcing bank card fees to be more reasonable, the situation could have been solved years ago. Clearly, it could have been when I was back in the shoe business. I can tell you, I am pretty discouraged that now that I am in the Senate they still are not listening.

This bill has made them listen. So no more delays should occur. Interchange fee reform was overwhelmingly approved by Congress last year. U.S. consumers do not need additional studies to tell them they already pay the highest swipe fees in the world. Delaying these reforms will delay urgently needed relief for American businesses and consumers, relief that cannot wait longer during this fragile economic recovery.

Today I ask my colleagues to side with the stores and their customers; otherwise, we will have just done another bailout for big banks.

I yield the floor and reserve the remainder of the time.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank my colleague from Wyoming. Our relationship and friendship has been growing over the years. I respect him so much as one of the real voices of retailers and small business. I had an opportunity to spend some time visiting China with him and his wife. We got to sit down and talk about their lives and what they have been through.

My colleague knows the small business side of this world better than anybody who sits in this Chamber. As I listened to him talking about the solution to this problem, I could not help but nod affirmatively. There is no reason we should have had to vote a year ago to establish this interchange fee. It reflected the fact that retailers, small businesses, merchants, hotels, restaurants, and shopkeepers across the board were literally given no seat at the table to discuss the fairness and propriety of these interchange fees. The point he made drives it home. The credit card networks, working through the banks, are charging our businesses in America the highest interchange fees—that is the fee charged every time someone swipes that plastic debit card—of any country in the world. The interchange fee in Canada is zero; in the United States, 44 cents on average on every transaction.

I could not agree with the Senator more. If the banks would come down out of their ivory towers on Wall Street and other places and sit down, roll up their sleeves with the folks running shoe stores and grocery stores and hotels and restaurants, and say all right, we are going to come up with a fairer system—if it is zero in Canada and it is 44 cents here, there is a number in between that can make sense to both sides. If that were the case, the Senator and I would be working on some other issues rather than this one.

But my colleague is so right. Today we have to defeat the Tester-Corker amendment; otherwise, we are sending a massive subsidy to the biggest banks on Wall Street, up to $8 billion a year that they collect in these debit card interchange fees at the expense of small businesses and consumers all across America.

I thank the Senator for his support. I know later this afternoon at 2 o'clock when we face this vote it is an important vote for every small business in his home State and mine as well. I thank the Senator for taking the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. CORKER. Mr. President, I rise to talk about the Tester-Corker vote which will take place at 2 o'clock today. I know there has been a lot of discussion about the Durbin amendment which occurred during Dodd-Frank and where we are today.

I wish to spend a moment clarifying the fact that the Tester-Corker amendment does not do away with the Durbin amendment. The Durbin amendment will still be the law of the land and a huge victory during the Dodd-Frank regulation—something I did not support but a huge victory for the retail industry, in that for the first time in the history of our country, per the law that was passed, debit cards are going to be a regulated industry.

There is nothing about the Tester-Corker amendment that in any way changes the fact that it is going to be a regulated industry. That is going to occur. What Tester-Corker does is to try to bring back into balance how we look at this particular transaction. We are going through this period of time in our country's history where people have been very upset with financial institutions at many levels. It is almost as if the Durbin language is an attempt to basically punish, be punitive, to community banks, rural banks, credit unions, mega banks all across our country for things that happened in the past.

There is no question many financial institutions made mistakes. There is no question that government made mistakes. There is no question that Congress has made mistakes. There is no question that consumers across our country, in many cases, have made a lot of mistakes. But we are at a place in our country's evolution where what we need to do is reinforce economic growth in this country and make sure that regulation has the right balance.

I feel the pushback against Tester-Corker is an attempt to continue to try to punish, stick a stick in the eye of, do whatever, to get back at the financial industry. Again, I think there has been a tremendous win by the proponents of the Durbin amendment. You have a debit card industry that is going to be regulated.

The question is, What is the fair way to regulate them as it relates to what are the allocated costs. So the Federal Reserve has told us the language that exists in the Durbin amendment, which only allows incremental costs, is inappropriate. They are very uncomfortable with it. They are uncomfortable with what that is going to do to community banks, rural banks, smaller banks all across our country.

The FDIC has said they are very concerned about the language because the cost of the transaction is not going to be appropriately assessed. They have shared that in public testimony. The OCC has done exactly the same. State bank commissioners across this country have done the same.

I know the Presiding Officer is from Minnesota. I know he flies to Washington probably each week. The way the language is now written, it would be as if the Presiding Officer got on a flight in Minneapolis to fly to Washington, the seats were mostly full, but a standby passenger got on the plane at the last minute, sat down in an empty

seat, and the airline was forced to charge everybody who flew on their airline only the cost of what that one additional passenger—already the trip was going to take place—what that one additional passenger cost the airline to travel from Minneapolis to Washington.

Obviously, that cost is almost negligible because all the reservations, the flight has been fueled, the flight attendants are there, the pilots are there. All those costs are already there.

That is the way the Durbin amendment now reads. That is the way the law now is; that the Federal Reserve can only take into account, as they regulate the debit card industry, what that incremental cost is, what adding one transaction to the system would cost.

Everybody knows—the retailers that are opposing our amendment know—there is no way any of them could survive in the retail industry if their costs were only allocated to them on an incremental basis. So everybody knows this is flawed. I do not think there is any debate about the fact that the way we are looking at regulating the debit card industry is flawed.

But what people are doing—it is almost sort of a Venezuelan approach. We are angry at these folks, so even though we know that assessing the cost of debit cards and only allowing incremental costs, even though we know that is inappropriate and that no business in America can survive, we are still going to do it because the banks were involved in TARP or the banks did this or the banks were involved in mortgages.

It is a policy that does not make sense. It is not an appropriate way, in my humble opinion, for a body such as ours—that hopefully stands above grudges, stands above trying to punish people but is here to put policies in place that will make our country stronger. So what we have added—and I see the Senator from North Carolina who has been highly involved in reaching the place we are—what we have said is: Look, Durbin should stand. Durbin should stand as it is. We should regulate the debit industry. OK. We understand that is going to happen. But let's make sure that when the regulators look at regulating the debit card industry, they are able to also look at the fixed costs, those costs that should be appropriately considered in setting the rates.

My guess is the Presiding Officer has some regulatory boards in the State of Minnesota. Maybe they regulate electricity. Maybe they regulate water. Maybe they regulate natural gas. I do not know. We have similar types of things in Tennessee. When they look at regulating those industries, they take into account those costs that are appropriate in regulating the industry.

I have not heard anybody debate, negatively, that it is inappropriate—that it is inappropriate—to allocate costs the way Senator HAGAN, the way myself, the way others have talked about doing. It has all been about the emotion of trying to do damage to financial institutions because people are upset with them. That is what their argument has been about. It has been an emotional argument about saying: These institutions did some very bad things, and therefore we want to punish them, even though we know the cost allocation is inappropriate.

We all know that what is going to happen is, not only are we going to do damage to our community banks, our credit unions, our rural banks all across this country, but in the process of allowing the rules to stand as they are and the direction we give to the Fed to stand as it is, what is going to happen is we are going to have a constriction of credit.

I mean right now in our country, we are watching a pause, a pause taking place in economic growth. One of the driving factors—there is no question—is our financial institutions are out there. They are seeing in every way their ability to lend to be clamped down on. Capital requirements are changing. Some of these things were good things that needed to happen, but this is just one more of those.

Lots of people have been involved in making this so we get back to the middle of the road, that when we regulate debit cards, we do so truly looking at the cost of the card itself.

If this amendment is defeated, it is just one more blow against our economy as we continue to constrict lending in our financial institutions to communities and citizens all across our country. Somebody had a chart up yesterday looking at Canada and looking at Europe. One little detail—and they were talking about the lack of debit charges or, in some cases, the fees were less than they are in our country.

One of the details they left out is, they do not have community banks. In Canada, you have a handful of highly regulated almost utilities that are banks—under five. That is a very different scenario than we have, where we have community banks all across the country that are out there lending to innovators, banks all across this country lending to innovators, a very different environment.

So, in Canada, they are able to actually generate fees in other ways. Of course, they do not have the community banking system and credit union system that we have across our country. To me, what I hope will happen at 2 o'clock—I know this has been a contentious issue, a vote that candidly a lot of people would just as soon have go away because people have friends who are retailers, people have friends who are bankers, and they hate to ''choose between their friends.''

But I hope what will happen at 2 o'clock is that when people come down in the well to vote, they will look at the policies, and they will say: You are right. The financial industry has been involved in some excesses. You are right. We heavily regulated the financial industry 1 year ago when Dodd-Frank was passed, and you are right; if we are going to set rates on debit cards, let's at least allow the Fed to consider all the appropriate costs—they do not have to take all the costs—but, look, if a bank is offering bonus awards for people, that should not be included. We understand that.

But the Fed ought to be able to look at all those costs that are fair. I hope Members of this body will rise above the emotional aspect of this vote. I hope they will rise above the rhetoric. This is anything but another bank bailout. What this is allowing is the Fed to rightfully, as they have requested of the Senate, to rightfully be able to look at all the appropriate costs that go into a debit transaction.

Again, if Tester-Corker passes, if Tester-Corker-Hagan-Crapo passes, if it passes, it is a tremendous win for the retailers. They have a regulated debit card industry, something they wanted for a long time. But it also strikes the balance of appropriateness as it relates to us as we look to move ahead with appropriate regulation of our financial industry.

I know we are on the cusp. I know this is going to be a very close vote. I do hope our colleagues will look at the policy. If they have not spent time yet with their staffers, look at the language. Durbin still stands if Tester-Corker passes. Durbin stands. All it does is allow the regulators to appropriately—just as happens in every State around this country that regulates industries—allows the Fed to appropriately look at those costs that ought to be associated with a debit card.

I urge my colleagues to vote in support of Tester-Corker.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mrs. HAGAN. Mr. President, I, too, come to the floor in support of the amendment by Senator TESTER and Senator CORKER from Tennessee.

Let me tell you, I threw myself into these negotiations many weeks ago when I saw the great bipartisan work of my colleagues from Montana and from Tennessee. You just heard the Senator from Tennessee talking about this. They have worked tirelessly on this issue. They have shown great leadership in their willingness to modify their approach.

What we have now is a bipartisan, balanced compromise amendment that is going to address the concerns raised by the regulators, small debit card issuers, and many Senators, about the Federal Reserve's approach toward a regulated interchange fee market.

The amendment does not repeal the debit interchange amendment championed by Senator DURBIN last year. As the Senator from Tennessee just said, it does not repeal that. In fact, a number of Senators who supported Senator DURBIN's amendment, also support this

compromise amendment. It is moderate. It is bipartisan. It is balanced. It now gives the regulators the time and the tools they need to get this rule right.

This is the type of commonsense compromise that Senators on both sides of the aisle can support. This bipartisan, balanced approach is how the Senate should operate.

When the Senate added section 1075 to the Dodd-Frank Act last year, it required that interchange transactions fees charged by issuers be reasonable and proportional.

Importantly, the amendment also exempted banks with fewer than $10 billion in assets. During the rule writing process, this exemption has been characterized as ineffective.

In February, during testimony before the Senate Banking Committee, Federal Reserve Chairman Bernanke, the person ultimately responsible for writing these rules said that, ''it is possible that that exemption will not be effective in the marketplace'' and that ''it is possible that, in practice, community banks would not be exempt from the lower interchange fee.'''

FDIC Chairwoman Bair and the Conference of State Bank Supervisors echoed those concerns.

These are the people responsible for monitoring the safety and soundness of our community banks and credit unions and they have expressed serious doubts about the practical effectiveness of the small issuer exemption.

This is extremely concerning to me, a Senator from North Carolina, which has a strong presence of community banks and credit unions that serve my constituents across the State.

This legislation helps get the small issuer exemption right. It provides two levels of protection for small banks and credit unions.

First, it considers the impact on small issuers up front as part of a short 6-month study.

It directs the banking and credit union regulators to carefully review the effectiveness of the small issuer exemption, which will be going to the community banks and credit unions.

And it directs the regulators to look at the exemption from a safety and soundness perspective. This is of particular importance at a time when community banks around the country are struggling to provide credit to Main Street businesses.

Then, once the final rules are in place, it would require a review of the effect of the rule on the market.

This approach gives regulators the time to look at small banks and credit unions up front and an opportunity to point out any problems that may occur in the future.

This is a sensible, balanced approach. It is a bipartisan approach. It is one that I would urge my colleagues to support.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I want to take a few minutes to discuss the underlying legislation, the Economic Development Administration bill, because I think, with the new numbers about the American economy—the joblessness and the trends—we are all looking for ways to encourage investment in the United States, and we are looking for ways to promote new industries that will create family wage jobs.

The Economic Development Administration has helped to do that in my home State and in other parts of the country. I want to take a few minutes and discuss that. I see the chairman of the Finance Committee. We may have gotten a little backed up, and I am anxious to hear from the chairman of the Finance Committee.

The area I want to talk about with respect to the Economic Development Administration involves nanotechnology. This is, in effect, the science of small stuff. We are seeing it pay off big in a whole host of energy-related applications, and in health care particularly, in terms of drugs and new medical devices. It has made a big difference at the Pentagon in terms of their looking at and adding carbon nanotubes to a number of the products we need to protect our warfighters.

The fact is, when we talk about this agency, we are seeing that a small public investment can leverage very substantial private sector investment in a way that is going to encourage jobs in the United States, and particularly in what I call the sunrise industries. It is sure making a difference.

For example, Wired magazine recently talked about growth in a number of key sectors. They said nanotechnology, between 2006 and 2010, grew more than 18 percent—one of our leading growth industries with jobs in the United States.

I, for one, thought we were going to see growth in a number of instances. We have seen bipartisan support for congressional efforts. The 21st century nanotechnology legislation in particular, signed by George W. Bush, is one piece of legislation I was especially proud of being part of because it encouraged research in this exciting field and had bipartisan support. It laid the groundwork for the next steps.

The next steps in particular involve using at EDA some modest public investments to leverage very substantial private investments in innovation. In my State, ONAMI, the Oregon Nanoscience and Microtechnologies Institute, is on the cutting edge of nanotechnology research and application. It has been helped by the EDA agency.

Participants in ONAMI include Oregon's four largest public research universities, the National Science Foundation, the Departments of Defense, Energy, Commerce, and major corporations as well. What we have sought to do is to make sure in this extraordinarily exciting field we don't fall behind China and other global competitors. So there is huge potential. Federal efforts can support private sector initiatives in the nanotechnology field and together leverage U.S. advantages in innovation and technology and particularly facilitate job growth.

The Chair knows of Intel, which is a large employer in his State as in mine. That is the kind of company we are looking at for the future, where they pay good wages. We are seeing substantial growth, and they are looking to try to target nanotechnology in particular as a sunrise industry, as an area that is going to facilitate an opportunity for our country to lead.

America is in a fight for the future of nanotechnology. We are seeing China and a lot of our global competitors making major investments in this area. Our private sector is stepping up, but we ought to have the government partner as well. That is why EDA's support of nanotechnology and the innovation economy is so critical. They have partnered with the National Science Foundation and the National Institutes of Health to promote innovative approaches in health and science.

I am proud to say, as part of a major economic challenge grant, the Oregon Innovation Cluster, of which ONAMI is a part, was one of the award winners. My State is not the only place where nanotechnology investments are being made. The Economic Development Administration has invested in nanotechnology throughout the country—in Colorado, the Mid-Atlantic Nanotechnology Alliance; in Tennessee and in South Carolina with the Clemson University Research Foundation. These are just a few examples, from Oregon all the way to the east coast of the United States, where the Economic Development Administration has helped entrepreneurs work to create jobs in exciting fields such as nanotechnology and helped us commercialize leading-edge technologies.

I hope my colleagues will support this bill. I particularly commend the chairman of the committee, Senator BOXER. Nanotechnology and EDA are a partnership where high-tech industries can help create good, high-paying jobs in America. I hope we will support this particular legislation.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I rise to express my strong support for S. 782, the 5-year reauthorization of the Economic Development Administration, which I am proud to have cowritten.

Abraham Lincoln said:

> The legitimate object of government is to do for a community of people whatever they need to have done but cannot do at all, or cannot so well do for themselves, in their separate and individual capacities.

That is what the Economic Development Revitalization Act of 2011 will do. It authorizes and funds the EDA, a Department of Commerce agency, in order to help Americans achieve what they ''cannot so well do for themselves.''

EDA is the only Federal agency charged solely with job creation. Each

dollar of EDA funding leverages nearly $7 in private sector investment.

From 2005 to 2010, during the administrations of Presidents from each political party, EDA awarded $1.2 billion in construction-related and revolving loan fund projects. According to estimates, more than 314,000 jobs resulted from those investments.

EDA programs are critical to my home State of Montana, a State with lower per capita income but great 21st century potential. When the timber industry in the western part of the State suffered setbacks, we paired Federal EDA funding from the 2009 Recovery Act with State dollars to create an $11.7 million revolving loan fund. We enabled 34 companies to continue operating and supported nearly 2,000 jobs despite the economic downturn.

In the eastern part of the State, we experience outmigration where the problem is both people and jobs leaving the area altogether, which EDA can help us address in a new provision under this bill.

A key feature of this bill is the increased Federal share for areas that demonstrate unusually severe economic distress and unique circumstances.

For instance, in the event of a federally declared disaster, the Federal share is to be increased for 18 months. This applies to a nonweather event such as the September 11 attacks or a natural disaster such as we have experienced in Montana where we currently face severe flooding conditions.

Areas like Roundup, Lodge Grass, Harlem, Fort Peck, Rocky Boy's, Lewistown and elsewhere are confronted with a crisis of biblical proportions. I was in Montana last week witnessing the challenges that confront us. And I am working very hard to ensure that Federal resources will be available for those most in need, which is a legitimate object of government, as Lincoln observed. This Federal share provision is one more way to do that.

Also, we have established a minimum 75 percent Federal share under this bill to help Indian tribes lacking sufficient resources to provide the typical matching share—as is often the case in my home State of Montana.

I want to thank Chairman BOXER and Ranking Member INHOFE for their leadership and for working with me on this bill. I also commend and thank EDA Administrator John Fernandez for coming to Montana to meet with my constituents in Missoula and Butte last September to discuss opportunities that would help our State and the country.

In closing, this is a good bill with backing from both sides of the aisle. I urge my colleagues to support it. We talk a lot about helping job growth. Here is an opportunity to do so.

I yield the floor.

Mr. COONS. Mr. President, I rise in support of the amendment offered by the Senator from Montana.

I was an original cosponsor of Senator TESTER's bill, which forms the basis for this amendment, because I am concerned about consumers, credit unions, and the financial sector in Delaware. The Federal Reserve's proposed rule on interchange regulation does not guarantee consumers will benefit from reduced rates, and inadvertently creates a mechanism that could destabilize some of our small, community banking institutions. Because of these unintended consequences, I believe the Fed should go back to the drawing board and rethink the way it is going about setting interchange fees.

I know my friend, the Senator from Illinois, worked hard last Congress, bearing in mind the interests of all parties involved, to authorize the Fed to make such a rule on regulating these fees. The Durbin amendment included a well-intentioned provision to protect small banks by creating a carve-out exemption from certain interchange fee caps.

Unfortunately, I believe the Fed issued its proposed rule in haste, and it is becoming clear that this carve-out exemption threatens the competitiveness of smaller banks, community banks, and credit unions. A belief in the viability of this exemption was crucial in securing the votes necessary to include Senator DURBIN's amendment in the Dodd-Frank reform package.

When the Senator from Illinois wrote his amendment last year, I know he had the best of intentions when he directed the Fed to establish a debit rate that is ''reasonable and proportional'' to the ''incremental'' cost of an individual transaction. These criteria, however, have tied the Fed's hands and, essentially, prohibit the Fed from considering all costs associated with debit operations when regulating debit interchange fees.

Additionally, the two-tiered interchange system proposed by DURBIN's small bank exemption may be considered unworkable in practice and subject to market forces. The Chairman of the Federal Reserve, Ben Bernanke, admitted as much when he appeared before the Senate Banking Committee in February. He noted that ''there is a possibility . . . that, either because merchants wouldn't accept the more expensive cards or because networks would not be willing to have a two-tier pricing system, it's possible that in practice they would not be exempt from a lower interchange fee.''

I have met in recent months with a broad range of large and small banks, credit unions, card networks, retailers, merchants, and other concerned parties from Delaware and other States about the Fed's proposed rule. With their helpful input, and with our continued economic recovery foremost in mind, I have joined with a bipartisan group of Senators in support of this amendment, which would direct the Fed to study this issue further and come up with a rule that does not risk harming the small banks and credit unions that play such an important role in our communities.

At a time when large banks have been reluctant to lend capital, more and more new businesses and ventures are being started through loans from smaller community banks and credit unions. We cannot afford to undercut their lending ability through the losses they are likely to incur if the Fed's proposed rule becomes final. The effect that would have on our recovery could be harmful.

At a hearing held by the Banking Committee on May 12, Chairman Bernanke was asked what the effect of the small bank exemption would be if the proposed rule were implemented. He answered: ''It's going to affect the revenues of the small issuers, and it could result in some smaller banks being less profitable, or even failing.''

Furthermore, at the same hearing, Sheila Bair, Chairman of the FDIC, stated: ''I do think this is going to reduce revenues at a number of smaller banks, and they will have to pass that on to customers in terms of higher fees.''

Above all, we must not do harm to consumers—especially when so many have had to tighten their belts during the recession and are just starting to get back on their feet. The same goes for proprietors of small businesses. Delaware is home to so many hardworking small business owners, merchants who rely on the acceptance of debit card payments for daily transactions. I believe the Fed needs to create a rule that strikes a balance between supporting robust commercial activity for small businesses and their consumers and safeguarding the viability of small banks and credit unions.

Senator TESTER's amendment does just that. It calls on the Fed, the FDIC, the Comptroller of the Currency, and the National Credit Union Administration to make a determination whether a proposed rule does not include all fixed and incremental costs, whether it might adversely affect debit card consumers, or whether the small bank carve-out would be impractical.

This issue requires a closer and more careful look. Chairman Bair stated at the hearing in February that ''it was done very quickly,'' and ''who's paying for what, who's going to pay more, and who's getting to pay less under this is something that maybe wasn't dealt with as thoroughly as it might have been.''

This is why I am a cosponsor of Senator TESTER's amendment and why I will continue to work for interchange rules that are fair and do not harm a vital sector of our economy during these difficult economic times. We must continue to be relentless in our focus on economic recovery and job growth, and the Tester amendment does just that.

Mrs. FEINSTEIN. Mr. President, I rise today in opposition to Senator TESTER's amendment on debit card swipe fees.

Like many of my colleagues, I have received countless letters on this issue,

from consumers, financial institutions, retailers, labor unions, and other interested parties. As a Member of the Senate, I take very seriously our duty to ensure that the Nation's financial system functions fairly.

I am deeply concerned about protecting consumers and small banks from financial harm. This is a tough economy. I know that. I will do everything I can to make sure they are protected.

But my position on this issue has been unchanged from the beginning.

The Federal Reserve issued a proposed rule last December, and is in the process of considering over 11,000 comments submitted on that rule. Chairman Bernanke has said those comments have been informative, and the Federal Reserve will soon issue a final rule that should take into account concerns some have raised.

My position for a long time has been that we should not jump in the middle of that process. We should wait to see what the professionals at the Federal Reserve come out with, and then evaluate whether or not the final rule is fair and equitable for merchants, banks, and especially consumers.

It would be bad precedent for Congress to start cutting off that process in the middle. We don't want to go down that road.

The Federal Reserve is devoting substantial resources to this issue and are giving the comments careful consideration. We should let them finish their work.

Senator TESTER's legislation also is flawed in other respects.

The study it proposes only involves banking agencies. It excludes consumer protection agencies, like the Consumer Financial Protection Bureau and the Federal Trade Commission.

The intent of existing law is to benefit consumers. If the law is going to be studied, consumer agencies should be involved too. We need to make sure consumers' interests are protected.

Senator TESTER's legislation also requires that regulators evaluate whether the proposed rule meets certain tests. As I see it, the tests are so easily met that the final rule is almost guaranteed to be thrown out without being considered.

This is a problem for me.

If a study is to be done, it should be fair, impartial, and consider the interests of all affected parties.

The bottom line is that we don't know what the final rule issued by the Fed will be. I have heard a lot of conjecture from both sides on this issue, but no one has been able to convey any certainty.

I have heard from a number of constituents and national groups on this issue. They have expressed their views passionately, and I am grateful for their participation in this process.

I remain deeply committed to ensuring that small banks and consumers are protected. When the final rule is released, we should look at it carefully. And we should conduct a fair study of the rule if we need to do so.

But until that rule is released, we should allow the experts at the Federal Reserve to complete their work before we take any action.

Mr. JOHNSON of South Dakota. Mr. President, I want to express my support for the amendment by Senator TESTER.

Last year when Congress passed the debit interchange fee provision, I opposed the measure.

I was not convinced that the provision would work for small banks and credit unions, and I was not convinced that the benefits would be passed on to consumers.

My thinking has not changed.

Throughout this debate many studies have been cited, but none of those studies looked at the questions we have before us today—will a two-tier system work for small banks, credit unions, retailers and consumers, and what will the impact be on debit card users?

I remain concerned about the debit interchange provision. As I suspected last year, finding a workable solution is not easily or quickly accomplished.

As the Fed has worked on this issue and released its rule for public comment, it has become clear that there are many concerns about the rule's impact on consumers, small banks and credit unions. Chairman Bernanke and other regulators have voiced these concerns several times in recent months at hearings before the Banking Committee, which I chair.

While there may be a need for debit interchange reform, it should be done right. This amendment by Senator TESTER will give the Fed and other agencies more time to study this issue to find a workable solution, especially the small bank exemption that is intended to allow the community banks and credit unions to continue to serve consumers all across America. Let's be clear, the Tester amendment does not repeal the debit interchange provision, it simply asks for more time to study and get it right.

I thank Senator TESTER for his efforts to help produce a bipartisan compromise that works for our community banks and credit unions. Just like in his home State of Montana, the community banks and credit unions are important to my constituents in South Dakota.

As we saw in the last Congress, Senator TESTER is an effective legislator who does a great job building bipartisan consensus, and this latest effort of his is another commonsense proposal that bridges the gap on a complicated financial issue.

Debit cards are important to consumers and to the retail industry. This is not about picking sides—this is about creating a functioning payment system that works for all stakeholders. And I believe Senator TESTER's amendment will help us accomplish the goal of getting this right. I encourage my colleagues to support Senator TESTER's amendment.

The PRESIDING OFFICER. The junior Senator from Montana is recognized.

Mr. TESTER. Mr. President, let me take a moment here to clarify for my colleagues the intent of this amendment. Not surprisingly, a number of groups have made a number of claims about what this amendment ''is'' and ''is not.''

In drafting any regulations required by the amendment, any agencies involved are required to not only abide by the letter of the law but also the congressional intent of its authors.

Let me take a minute to try to make crystal clear what exactly the intent of this amendment is.

First of all, let me address some of the claims that have been made about the implementation date of debit interchange regulations. My amendment would direct the Fed to implement these provisions on a date of their determination.

Why was this language included in this way? The intent of this language is to provide the Fed with the discretion to implement these regulations as quickly as is practically possible for merchants, issuers and networks to prepare for such new regulations.

The hope with this language would be to avoid the situation we are in right now where parties impacted by these changes would likely have less than a month to implement significant changes to the debit interchange system.

To be clear, the Fed may not disregard implementation of debit interchange regulation, as some have articulated. They also may not arbitrarily decide to implement these rules 5 years from now. Any delay in implementation beyond a reasonable timeline of a few months would need to be justified by the Fed.

Let me also take a minute to address concerns that have been raised about the language we have used to describe what considerations the Federal Reserve must make if a determination is made in this amendment and the Federal Reserve is directed to rewrite the debit interchange rules.

The language states that the Federal Reserve shall ''consider''—again, shall ''consider''—all fixed and incremental costs in determining what is a reasonable and proportional interchange fee. Let me say this again. The Fed shall ''consider''—not include, not calculate, but shall consider—all fixed and incremental costs. That word is important because ''consider'' provides the Fed with the discretion to consider and determine, using their judgment, what is reasonable and proportional, meaning any costs considered would need to be justified to the Fed.

To further clarify, the language directs the Fed to consider ''all fixed and incremental costs associated with debit card transactions and program operations and allow incentives for a more innovative, efficient and secure payment card network.''

Why did we include all fixed and incremental costs? That is because the original statute limited the costs the Federal Reserve could consider to only those costs associated with the ''authorization, clearance or settlement of a particular electronic debit transaction.'' This language severely limits the costs to issuers that the Fed may consider in calculating reasonable and proportional rates and is in large measure why the Federal Reserve's proposed rule is currently at 12 cents.

There are a number of fixed costs associated with debit transactions, chief among them fraud costs, which are also arbitrarily limited in the original statute. The fraud language states that the Federal Reserve may—not must but may—allow for a fraud adjustment for costs associated with fraud prevention. Now, the Federal Reserve draft proposal did not include any fraud adjustment, and we have no idea what an adjustment might look like or whether the final rule would include one. But if it did, it could only include an adjustment related to fraud prevention but not the actual costs or losses associated with fraud.

Take for example the recent data breach by Michaels stores—a breach, by the way, which was the fault of the retailer, which had their debit kiosks compromised. What were the costs to the issuer of the cards that were compromised? They were significant.

First of all, it was a community bank in Illinois that had a fraud-monitoring program that identified the threat and alerted the retailer their kiosks had been compromised. Then there were the costs to these issuers of making their customers whole again for the losses they sustained by criminals removing funds directly from their bank accounts—$500 at a time. Additionally, issuers had to foot the costs associated with reissuing the cards and opening new accounts for customers with compromised accounts. But none of those costs—those associated with fraud and losses assumed by the issuers—could be calculated in the fraud adjustment under the current statute. That is why we included language directing the Federal Reserve to consider all fixed and incremental costs associated with debit card transactions and program operations to capture those costs. Fraud losses in monitoring programs are not associated with individual transactions, nor is the creation or reissuance of physical cards, account maintenance, or cardholder servicing.

Let me also say what we do not believe is included in any reasonable and proportional fixed and incremental costs associated with program operations. As a result of our conversations and consultation with the Feds, we do not believe rewards programs or miles would be nor should be considered as permissible costs, nor would or should any executive compensation, nor should the costs of maintaining ATM machines.

Why did we include the language allowing the Federal Reserve, in setting reasonable and proportional rates, to ''allow incentives for a more innovative, efficient and secure payment card network''? We added it because, in conversations with the Federal Reserve about what sorts of costs would be included in reasonable and proportional costs, they indicated that right now they do not have the ability to incentivize savings by issuers to make processing more efficient or secure. It seemed like a pretty good idea to Senator CORKER and me that we should give the Federal Reserve this kind of discretion and that issuers should be incentivized to lower costs below whatever the Federal Reserve determines to be reasonable and proportional; otherwise, the fee would likely stay the same for years to come as there would be no incentive to lower costs.

In addition to the flexibility provided to the Federal Reserve to set the rates, the amendment also intends to provide discretion to the Federal Reserve to include additional factors in the study, such as the overall impact of regulating interchange fees on small businesses and the economy, as well as discretion in the agencies the Federal Reserve may consult when drafting the study.

In addition, it is intended that the findings must be made public and that the Federal Reserve is not required to start from square one. The intent is for the Federal Reserve to be able to build upon the information and insights which they have gathered already and which are a part of the current record.

Finally, this amendment doesn't undermine or inhibit the Federal Reserve's ability to implement the routing and network exclusivity provisions in the underlying statute. In fact, it does quite the opposite. We sought to preserve this language and these provisions as they were originally included in the statute.

In the last couple of days, several Senators have suggested additional changes that would improve the consumer-related aspects of the study proposed by my amendment. I very much appreciate their concerns and their interest on this critically important point, and the changes they have suggested are certainly ones I and other cosponsors are open to. Unfortunately, the Senator from Illinois filed a second-degree amendment which essentially closed off any chance to make additional changes to the amendment once it was filed.

I am more than willing to work with my colleagues to find ways to continue to improve this amendment and to ensure that consumers, small businesses, small banks, and credit unions get a fair deal as we move to a regulated interchange marketplace. And that is what we will get out of this amendment—the same idea of regulation that 64 Members of this body supported last year.

The difference between my amendment and the current law is that we will ensure that the Fed's regulations do not set the price below the cost of doing business. The current law prevented the Fed from looking at any number of elements of the cost of interchange. Some fraud costs were allowed to be included but not others. Some technology costs were included but not others. Why? Because the Senate made those arbitrary decisions. The result is a proposed Fed rule that sets the debit interchange rate at 7 or 12 cents for all transactions—a level most folks agree is too low. Let's allow the Fed to find the actual correct number. As a farmer, I can tell you that if it costs me $3 to produce a bushel of wheat, it won't matter if I sell it for $2 or $1 or 50 cents, I will still go out of business because it is below my cost of doing business. And that is precisely what will happen to our smaller banks and credit unions.

With that, Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Mr. President, I have high regard for the Senator from Montana. He is my friend, and he will be my friend whatever the outcome of the vote happens to be, which will happen in about 40 minutes. But I do disagree with him on this issue.

I would like to make it clear from the start that the law on the books today specifically exempts community banks and credit unions—specifically those valued at $10 billion or less. That means 100 banks out of 7,000 in America are affected by this new law and 3 credit unions in all of America.

Now, the banks and credit unions have come here and said: Not enough protection because we can't be sure you will protect us from the credit card companies coming back on us and hurting us. OK, we can write in more protection, if necessary. But to argue that we are trying to save mom-and-pop banks here—from whom? We are trying to save them from the credit card giants that have created this price-fixing mess.

If you are an autograph seeker and you happen to want to meet CEOs of major corporations, you hit it rich today. Get over here and walk the halls of the Senate office buildings, and you will meet the CEOs of the biggest companies and banks in America. Why are they here today? Because of this 2 p.m. vote. Why is this 2 p.m. vote important to the three biggest banks in America—Chase, Bank of America, and Wells Fargo? Because right now what is at stake with the Tester-Corker amendment is $8 billion in fees they want to collect from consumers and businesses all across America—$8 billion.

When we got into the business of TARP—remember those days when the

banks had messed up the economy so badly that we had to come to their rescue with taxpayer money, and the average family across America watched the taxes they were paying this government going to the biggest banks on Wall Street? That was about $800 billion. The three biggest banks that will profit the most here from this amendment—Chase, Bank of America, and Wells Fargo—each was a beneficiary of that TARP money, that bailout money. Chase received $25 billion, $45 billion went to Bank of America, and $25 billion went to Wells Fargo. They did quite well. When we rescued them, they sent us a little thank-you card. Do you know what it was? It was a notice that they were giving their chief executives bonuses out of the tax money we were sending.

So the question is not whether we are going to do another TARP today but whether we are going to do a baby TARP. It is only $8 billion for these three big banks this time, but I think it is an outrage. It is an outrage to make consumers across America pay this. They pay it every time they use their debit cards, and the merchants and retailers that collect it have no voice in this process.

I wish some of the people who come to this floor and shed copious tears over community banks and credit unions that are already protected in this law would shed a few tears for the people who run the shops and businesses across America, the restaurants and the hotels. These are the people who are being hit by these debit card fees every single day. Where is the sympathy for small business on this floor? They are all over Illinois, they are all over America.

If we really believe the key to economic recovery is the strength of small business creating and expanding jobs across America, for goodness' sake, let's stand up for them. You can't vote at 2 p.m. for this pending amendment and say you are a friend of small business. No, you can't. Small business is lined up across America saying: For once, give us a break against these credit card companies and the big banks on Wall Street. Give us a break. Are we going to do it? I am afraid not, if we pass this amendment.

I look at this amendment and I think to myself, Why did the banks write it the way they did? They wrote it so they could include more costs into their calculation of the fee they charge on an interchange transaction with debit cards. I will tell you this: Based on the language that was just read to us, they will easily justify the 44 cents they are currently charging and more.

I respect my colleague from Montana when he says on the floor that he didn't mean to include certain things. I wish he had been specific. I think the language of this amendment is broad enough and wide enough to drive a truck through. The banks are going to come out quite well, thank you, at the end of the day. But don't they always? When it is all said and done, aren't they usually the winners around here?

Today, we have a chance to turn the tables, to really make the winners small businesses and consumers across America. That is why consumer groups support keeping the law as it is. That is why, when the banks wrote this, they said the four agencies that would decide what the fee was going to be would be four bank regulators. I am searching—searching, searching—for any reference to consumers or small businesses. Sorry, the banks couldn't include those people. They couldn't include those people in that calculation.

To say ''We are for the little guy, and that is why we need to vote for this amendment'' is to ignore the amendment's wording as written. If you are for the small businesspeople across America, there is only one vote, and it is a ''no'' vote.

Let the Federal Reserve issue this rule. Don't let the banks stop them in their tracks. That is exactly what they want to do. Let them issue this rule. If more needs to be done, I am on board. But the notion that we cannot even trust the Federal Reserve to come up with a rule on this that may protect small businesses and consumers across America is just plain unfair. It is wrong and we ought to know better.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I too echo the thoughts of the good Senator from Illinois. Senator DURBIN and I are friends. We may not sound like it today, but we are. We just happen to disagree on this particular piece of policy.

There is one premise that I think is being taken as a given that is not a given at all. It was in the original Durbin amendment. It said we were going to exempt banks of $10 billion and less and credit unions of $10 billion and less—so we are going to do that. A lot of folks voted for this amendment because they knew the small banks couldn't distribute their costs, and it would have undue harmful effects on the small banks, small credit unions, and community banks.

But the facts have borne out something different since the last year. They have not been borne out by stuff that I have made up. It comes from the regulators themselves.

I have said many times on this floor that every regulator I have talked to, State or Federal, has said the exemption for small banks and credit unions will not work. It will not work. We voted on something 1 year ago that we thought we had and it does not work. Let me read the quotes:

Fed Chairman Ben Bernanke:

We're still not sure whether it will work. There are market forces that would work against the exemption.

He said it May 12 of this year.

Another quote by Chairman Bernanke:

It is going to affect the revenues of small issuers and could result in some of the smaller banks being less profitable or even failing.

Once again, in the banking area, by FDIC Chairwoman Bair:

I do think this is going to reduce the revenues.

Let me say that again:

I do think this is going to reduce the revenues at a number of smaller banks and they will have to pass it on to their customers in terms of higher fees.

What does that mean? Checking, time getting the loan, fees, all that stuff. Money doesn't grow out of air. You have to have it, and if you don't have it and you are doing business, under the cost of doing business you have to make it up somewhere.

Another quote from Ben Bernanke, and it is about the two-tiered system that is unlikely to maintain—to protect smaller institutions. This is a quote:

A number of networks have expressed their interest or willingness to maintain a tiered interchange fee system, but of course it is not required.

Chairwoman Bair again:

If the Federal Reserve's view is there is no legal authority to require that, it does become more problematic.

The fact is, the two-tiered system is not going to work. Every regulator said it is not going to work. Its impacts are going to be on small community banks, not the Wall Street boys. They are fine. We agree on that. But the community banks and credit unions are going to have incredible impacts on our small businesses that we are trying to help get us out of this recession we are in.

This is not a bailout. This will ensure a regulated debit interchange system. By the way, I do not believe in bailouts. I didn't believe in the TARP bailout. I voted against it. I voted against the auto dealers' bailout. Right or wrong or indifferent, I do not believe in bailouts. I would not be supporting this if there were a bailout. I would not be offering it.

Wall Street banks are going to be just fine regardless of what happens, but the fact is, the exemption for banks under $10 billion will not work. That is why I am here. It is as simple as that.

I wish to close for now with a statement made by the ''Frank'' in Dodd-Frank, whom this bill is named after, BARNEY FRANK, who worked with Chris Dodd to craft this bill in the House and Senate. Here is what BARNEY FRANK says. Is today the 8th, by the way? He said it today, the 8th of June, speaking of the Tester-Corker-Hagan-Crapo-Bennet amendment, this amendment:

This is a good, balanced, compromised approach. I support it and I hope it will pass.

The author of this bill from the House thinks this is a good policy change to make Dodd-Frank better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. Mr. President, good to be with you again. I spent most of the morning with you and now part of the afternoon.

This is a difficult issue for a number of us in the Senate because we have friends on both sides of this issue. It is also a difficult issue for a lot of people because we do not want to be unmindful of the concerns raised legitimately by merchants for a number of years about debit charges they have had to pay, and we don't want to be unmindful of the concerns raised by banks, whether they be big or little, or by credit unions.

I was talking to one of my colleagues who said: I don't want to vote on this again. We had to vote on this once. I don't want to vote on this again. As one guy said: I certainly don't want to have to vote on it twice.

Another colleague said to me: I don't like the idea of just kicking the can down the road, having a 24-month pause and then maybe a new Congress and new administration and maybe it will all go away. That is not what I am interested in doing.

Another of my colleagues said to me: Why don't we fix this problem? Rather than kick the can down the road for 24 months, why don't we say: Let's fix this problem. As it turns out, four of our colleagues who voted with the Senator from Illinois, the author of the Durbin amendment, voted with Durbin originally when the amendment was first offered. They actually sat down, two Democrats and two Republicans, they and their staffs, hammered it out, worked with Senator TESTER and they worked with Senator CORKER as well and that is who wrote the bill. Did they get input from the merchants? I am sure they did. Did they get input from the banks? I am sure they did. I would hope so. That is the way this place ought to work, where Democrats and Republicans actually work together on legislation, and we seek input from not just banks, not just credit unions, not just merchants, but consumers as well.

I think back on the life I have been privileged to lead. I spent a lot of years in the Navy and had the privilege to serve my State as Governor and now in the Senate with my colleagues. I know any number of times in my life I have done things I was sure were the right thing to do but had an unintended consequence. I was sure I did the right thing, but as things turned out, there were consequences I didn't anticipate, and what I had to do was go back and help be part of the solution in addressing those unintended consequences.

Senator DURBIN put his finger on a big problem, and the problem he put his finger on is—actually, more than 1 year ago but a number of years ago—we have a situation with the use of debit cards where merchants are disadvantaged. They don't have a lot of options, and they end up having to pay large fees to banks—sometimes big banks but sometimes small banks—and they don't have that much choice. They don't like that. They would like to see us do something about it. So what Senator DURBIN proposed is a way to deal with that.

He intended in his legislation not only to try to help consumers and merchants, but he also tried to protect small banks, those with under $10 billion in assets, and to protect credit unions and their members.

I wish to see if we have a quote here. These banks have different regulators, credit unions have different regulators. I don't have quotes from all of them, but here is a quote Senator TESTER shared with us. Ben Bernanke, Chairman of the Federal Reserve, when he was talking about the unintended consequences. Here is what Sheila Bair of the FDIC said. She is talking about institutions, community banks, smaller ones, under $10 billion of assets.

> We are concerned that these institutions may not actually receive the benefit of the interchange fee limit exemption explicitly provided by Congress, resulting in a loss of income for community banks and ultimately higher banking costs for their consumers.

She said that in her testimony before the House.

John Walsh is the Comptroller of the Currency. He said:

> We believe the proposal takes an unnecessarily narrow approach to recovery of costs that would be allowable under the law and that are recognized and indisputably part of conducting a debit card business. This has long-term safety and soundness consequences—for banks of all sizes.

That is what they said. They think we have a problem. Their job is not to be the lapdog for financial institutions. Their job is to regulate financial institutions.

I tried to think about some times where we have abuses to clean up and how we go about doing it. This sounds strange for a guy from Delaware to say this. We had big abuses in credit cards. It was pretty much impossible for most people to get a credit card application in their mailbox, look at that application—maybe they got six of them that same week—and decide which of those four, five or six were actually in their best interest to fill out and submit. We had credit card banks taking advantage of people in ways that were untoward, I think unethical. What we did in the Banking Committee, where I served, is we held not just a hearing, we held extensive hearings for months—for months. We did the same thing in the House, and we asked the Government Accountability Office to help us with an in-depth study of the credit card industry to try to decide what changes were needed. There are watchdog agencies. They came back and said these are our recommendations. Out of all those hearings came a lot of ideas too.

The Senate passed legislation. They passed legislation in the House. The banking industry didn't like it much. They complained about it. We went to conference with the House and the Senate and worked out a compromise. The banking industry didn't like it much. The regulators of the banks were required to help us implement the legislation and they had to write regulations. They had to write regulations that were true and consistent with the underlying law and they did and the banks didn't like it much. They were promulgated, some immediately, some over several months, and eventually they got the job done. I think consumers are better off. Did banks make as much as they did on credit cards? No. We know that personally in our State. But are consumers treated fairly? Yes; they are. Part of what happened was extensive hearings involving GAO, getting input from a lot of folks with different views on this, and then acting in light of the process.

I think what is different in this case, I don't believe the Banking Committee—I can't speak for other committees in the last Congress, but I don't believe the Banking Committee or other committees in the House or Senate actually had the opportunity to hold hearings and bring people in, in the last Congress, and say this is what is good about the amendment proposed by our friend from Illinois and this is what is bad. I don't think we had GAO—GAO did not have the opportunity to come in and say we were never invited to come in. We never invited them to come in on the debit card side and, therefore, their voices were not available to us, and that is unfortunate.

Here is what happened. Legislation was passed. Senator DURBIN offered it with the best of intentions. He said: We have a problem. We should fix it. Here is my suggestion. He essentially said we should regulate the marketplace. We should regulate the marketplace for debit cards. The free marketers said: No; we ought to let market solutions work, harness market forces—something I generally agree with—but in this case they were not working so he came up with an alternative and said let's see if there is another way to do this. Unfortunately, with the best of intentions, we have these unintended consequences. The question is, What do we do about it?

We have a situation where I am not sure consumers are going to be advantaged by the current law as it reads. Big banks, they will be OK. They can take care of themselves. But a lot of smaller banks, the people squawking the loudest, the folks from the community banks, they have been beating on my doors and other doors, and the folks from the credit unions, they are less able, frankly, to look out for themselves, and that is despite the intent, the explicit effort by the author of the amendment, to provide them exemption. The regulators say, frankly: Sorry. It does not work.

That suggests to me that we hit a pause button, we hit a pause button not for 2 years but at least for the next as much as 6 months and say to the regulators: OK. Do now what we should have done a year or two ago. Complete an in-depth study, look at the concerns of the merchants, look at the concerns

of the consumers, look at the concerns of big banks, middle-size banks, small banks and credit unions, and come back to us with what you think to be a fair approach. You have 6 months to do it. If you can do it in less time, let's do that.

If they come back to us and say: Look, the legislation as written, current law, is fine for consumers, it is fine for institutions of all sizes and is fair to the merchants—if they come back and say this, basically, the Durbin language in the law prevails. If they say that is it, the regulators have spoken and we are done.

If they come back and say we have a problem here, these outfits, the regulators, have a period—I think it is up to 6 months—to figure out regulations that can then be implemented after the 6 months to fix the problem. Some will say how do we know they will do anything for consumers? They just did it for credit cards 2 years ago, and the bankers did not like it. They still do not like it. We have the pain in my State in the employment numbers to reflect that they didn't like it. We still live with that pain and discomfort, but who is better off? Consumers are better off. They are better off because Congress did its job. We were deliberate about it. We sought input from all sides. The regulators did their job, and it has been implemented in a prompt way.

I wish to close maybe with this thought.

There is an outfit called Michaels. We have a Michaels store not far, actually, from where my family and I live in Wilmington. They sell art supplies. It is a national chain and a pretty successful company. They were in the news big time recently—not because of a good story but because of a data breach story. A lot of folks who had accounts with them, their customer information was disclosed. There was great concern on the part of the consumers, the customers, that there had been this data breach and some of their sensitive information was going to be at risk. It involved hundreds of thousands, maybe millions of customers.

To whom did they turn to fix this problem? Did they turn to Michaels and say: You fix this problem. No, as it turns out, they didn't. Some probably did, but most probably didn't. Do you know to whom they turned? They turned to their banks. They turned to the issuers of the credit cards and said: You fix this problem. You issue a new credit card for us, and you cover this for us. And the banks did that. They were beholden to do that.

Finally, I am not here to carry the water for the banks. I think we are all here to do what we think is right. To my colleagues who are undecided on how to vote—I know some are. They don't want to choose between their two favorite children, whether it is the merchants on the one hand or the financial institutions, credit unions on the other hand. They don't have to choose between two children. They can ask themselves: What is the right thing to do? Try to understand what is in this amendment, a bipartisan amendment prepared by some of the people I most respect here in this body, and drill down on that. Listen to guys like BARNEY FRANK who don't have a dog in this fight but have a lot of knowledge, and try to make the decision they think is the right decision.

Thank you very much.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. How much time is remaining?

The PRESIDING OFFICER. There is 13 minutes 52 seconds.

Mr. DURBIN. Is there any time remaining on the other side?

The PRESIDING OFFICER. Zero.

Mr. DURBIN. Mr. President, if Senator TESTER returns to the floor and wants to speak before the vote, I will ask unanimous consent to each have 2 minutes for that purpose. Perhaps he is not going to, but I want to make this a matter of record here because I want to give him a chance to close.

Let me try to get down to basics. Have my colleagues ever pulled out one of these cards to pay for something? If you are my age, you don't pull it out as often as younger people. This morning, I was down in the carryout here, and a young woman who is a Capitol police officer bought a pack of chewing gum for $1.20 and handed over her debit card. The debit card was swiped. She took the chewing gum and walked away. The average amount that is charged by the issuing bank of her debit card is 44 cents for each transaction. How much money do we think the owner of the carryout made on that pack of gum this morning? The answer is nothing. Now repeat that over and over again across America.

What is happening is that the banks issuing these debit cards are imposing interchange fees, swipe fees, on these transactions, and the merchants and the retailers have no voice in the amount of that fee, no voice whatsoever.

The Federal Reserve did a study and asked: Well, how much does it actually cost them to process that debit transaction? The answer was 12 cents, in the range of 12 cents. The charge is 44 cents; the cost is 12 cents. Is there something wrong with this picture? It means every person buying goods at stores across America pays more to pay for this fee.

We have heard the plaintive cries of those offering this amendment of how we have to have some sympathy for these banks—these poor banks, struggling to survive. If they can't collect the maximum on their debit fee interchange fee, the swipe fee, what is going to happen to them? Well, we have already exempted, incidentally, all banks with values of $10 billion and less, so we are talking about the big boys, the big banks.

So let's ask a few basic questions.

How does the debit card interchange fee in America compare to other countries? Visa and MasterCard do business all around the world. Banks issue these all around the world. So how do we stack up? Where is the good old U.S. of A? Well, I will tell my colleagues where we stack up. We have the highest interchange fees charged by Visa and MasterCard anywhere in the world—the highest. Thank you. Can America express its gratitude any greater than to say thank you to the banks for charging us the most for using plastic?

So what do they charge in other countries? Debit interchange fees in the European Union are less than one-fifth the charge in the United States. So let's do the math: 9 cents a transaction in Europe, 44 cents here. We want to give a big, sloppy kiss to these big banks at 2 o'clock for the way they are going to treat us. But it gets better. When we go to Canada, the Visa and MasterCard debit interchange fee in Canada is zero. There is no interchange fee. Now we have people on the floor begging us to show some sympathy for these banks and give them an interchange fee, and they charge nothing in Canada—zero. That is the reality.

The biggest banks make the biggest money on this process, far and away—Chase, Bank of America, and Wells Fargo—to the tune of almost $8 billion a year. How long did they want to study interchange fees? If one is making $1.3 billion a month, one wants the study to go on for months, if not years. Get back to you later, we say to the banks. Yes, that is exactly what they want. At 2 o'clock, we will decide as a Senate whether we are going to give it to them.

This amendment, drawn up by the banks, compromises between the banks, gives to the banks exactly what they are looking for—a huge loophole to assess their interchange fees to justify what they are charging today and charge more. There is nothing in here—nothing—to protect consumers and businesses across America.

I got started in politics with a fellow named Paul Douglas. This goes back a few years. I was a college student. Douglas was a Ph.D. in economics—much smarter than I, for sure. He spent his whole life trying to pass something called truth in lending. All he wanted the banks to do was to tell their customers how much they were charging them and what interest rates. He spent 18 years battling that, and he left the Senate without getting it done. He couldn't finish it. Bill Proxmire of Wisconsin took up the battle and passed it. Paul Douglas fought those banks for 18 years.

It is a battle that has been going on a long time around here because, you see, there is a lot of power in this banking community, these financial institutions. When they come to the floor and say they want something, Congress decides, we better start talking. Rarely do they ever lose.

I guess we could say the Wall Street reform bill was a loss for them, but they deserved it. Look at the god-awful mess they put America into with their rotten practices, their stupidity and reckless conduct. We are still paying for that. We still have a lot of people out of work and businesses that failed. Many of the savings accounts of families across America are still suffering because those banks made those mistakes. And in the free market system, did they pay for their mistakes? No. The American taxpayers paid for their mistakes.

Giving credit where it is due to Senator TESTER, he voted against the TARP bill. He said it, and I want it to be on the record. I voted for it. I did because I was told by Ben Bernanke of the Federal Reserve and Hank Paulson of the Department of the Treasury: If you don't help these banks and they fail, you will see a worse depression than 1929. I bought it. I voted for it. Almost $800 billion in bailouts to these banks. I was seething to think we were going to spend taxpayers' money to help these banks be rescued from their own stupidity and their own greed. We did it.

The three biggest banks involved here—some $95 billion we sent to them. Well, they are back. They are looking for the second installment on their payment, this time not from the taxpayers, this time from consumers and businesses across America. What they are asking us for, the biggest banks, the three biggest ones, is almost $8 billion a year in these interchange fees.

We have a chance now to try to bring some balance to this conversation. We have a chance to finally stand up for small businesses and merchants and consumers across America who have been victimized by the credit card companies and the big banks for too long. Can this Senate stand up once a year, once a decade for consumers across America against these financial institutions? That is what is at stake with this amendment. I know it is going to be a heated vote because my poor colleagues have been beaten to a pulp by both sides by those who feel very intensely about this issue.

I wish to credit my colleague from Montana because he told me at the outside—when I said, JON, please don't do this, he said, I believe it. And, JON, I admire you for doing it. I still do. Even though I disagree with you, I admire you for doing it. You are a man of conviction and principle and a great Senator.

But this is a historic moment in the Senate. It is a moment where we will decide whether for once the big banks are going to lose and the consumers are going to win; whether we are going to reduce the cost of these transactions and help consumers across America and small businesses across America make the profit they need.

Some people say: Well, this hasn't been studied enough. For 11 months now, the Federal Reserve has been studying this, the best economists, the best minds there. They have entertained 11,000 comments. They have heard everything under the Sun. They have heard it all. In a matter of days, they are set to issue a rule—a rule which no one has seen, a rule which the banks don't want anyone to see. They don't want this rule to see the light of day, and that is why they are here today—to stop the Federal Reserve from issuing a rule that may cost them in terms of their bottom line.

It is our choice now. It is our choice whether these banks are going to prevail. History will record the strength of consumers and small businesses across America against the Wall Street banks that take away more than half of the interchange fees on debit cards that are collected across America.

I hope my colleagues will stand by the decision we made a year ago. I hope they will give each of us an opportunity to see this rule come into effect and from that build on it a stronger, growing economy, one that is fair—an economy where interchange fees have been dictated by the big banks and credit card companies for too long.

I reserve the remainder of my time. How much time do I have remaining?

The PRESIDING OFFICER (Mr. CARDIN). The remaining time is 3 minutes 55 seconds.

Mr. DURBIN. I mentioned on the floor earlier that I would like to give to my colleague 2 minutes, and then I will take 2 minutes, and that will be it. So I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. TESTER. Mr. President, just to clarify, I have 2 minutes, Senator DURBIN has 2 minutes, and then we vote?

The PRESIDING OFFICER. That is correct. That was the order just entered.

Mr. TESTER. God bless the U.S.A.

Mr. President, let me say this, first of all, to the folks in the gallery and the Members who are still in their offices. Look at me. Do I look like a banker? Senator CORKER and I drew up this amendment. The banks did not draw up this amendment. We drew it up with the help of Senators HAGAN, CRAPO, and BENNET.

As is usual, Senator DURBIN and I agree on 90 percent, and there is 10 percent on which we disagree. Do I think swipe fees need to be regulated? Of course. But the problem with his amendment is that the exemption on community banks and credit unions under $10 billion does not work. It doesn't work. I have read all the quotes from Bernanke and Bair and the head of the OCC and the NCUA and all of them. They have said that they don't know how to make a two-tiered system work because the free market system will overrule it, and that is the way it ought to be in this country.

So the bottom line is, I look at this from a rural perspective and the impact the Federal Government has on rural America, and while we are trying to solve one problem, we are creating two or three others. I could care less about the Wall Street banks. They are going to do fine. But I will tell my colleagues, if we lose the banks in our small towns in Montana or Wyoming or Tennessee, then we can put another nail in the coffin of rural America.

With that, I yield the floor to the good Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I couldn't agree more. It is amazing that we passed this 2,400-page bill a year ago, and on all the tough decisions, we deferred to the regulators. The regulators are now creating all kinds of rules because we knew they had some wisdom we didn't have. Yet, in this case, every single regulator involved is telling us that the way the Durbin amendment was written, we are going to damage the community banks and credit unions and that it won't work.

So it is amazing that in this case where the very people who regulate tell us to please change this, it won't work, we are saying no, we are not going to; this is going to benefit Wall Street. That is not the case. This amendment puts the Durbin amendment in the middle of the road where it needs to be, and I hope everyone will support it.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I understand I have 2 minutes?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. DURBIN. Mr. President, if my colleagues are interested in smalltown America, they should be interested in the businesses that operate in smalltown America, and they are begging us to vote no on the Tester-Corker amendment.

I happen to live in a town of 120,000 people. It is a little bit larger than my colleague's hometown in Montana, but I can tell you what the businesses there are saying. I can tell you what Wendy Chronister is saying, who owns the Qik-n-EZ gas stations. She is saying to me: Give me a break. They are hitting us so hard with these debit interchange fees.

We have letters put in the RECORD from military base exchanges which say this is the fastest growing, uncontrollable cost they are facing. This is a problem which the credit card companies and the banks have wanted to ignore and now this amendment wants to delay for 6 months, a year, or longer.

In terms of trusting the regulators, I am afraid the banking interests that wrote this amendment did not trust them to even issue the rule. You had to call this debate before they issued the rule. You do not know what the number is going to be on the interchange fee, but you had to stop them in their tracks.

If you will go look in the corridors and rooms around Capitol Hill, you will not find a lot of small town bankers.

You will find the biggest banks in America waiting in the wings, praying, putting in a billion dollars' worth of prayers that this amendment is going to pass.

I do not question the intentions or motives of Senators TESTER or CORKER. I never will. But I can tell you, the effect of this amendment is going to be giving to those big banks and those credit card companies a windfall of profit they do not deserve.

If the interchange fee is zero in Canada, why is it 44 cents here? Can we stand up, representing the people of this country, and say that is fundamentally unfair; you have to treat our consumers and merchants fairly? If we cannot stand up and do that, why are we here? To do the bidding of the banks and the credit card companies? I hope not. I hope we are here to stand up for economic fairness and for consumers and small businesses across America begging us to defeat this amendment.

I yield the floor.

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. CORKER. Mr. President, I would like to ask unanimous consent to——

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

The bill clerk continued with the call of the roll.

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

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

The Republican leader is recognized.

AMENDMENT NO. 390

(Purpose: To reform the regulatory process to ensure that small businesses are free to compete and to create jobs, and for other purposes)

Mr. MCCONNELL. Mr. President, on behalf of Senators SNOWE and COBURN, I ask unanimous consent to temporarily set aside the pending amendment so I may call up my amendment No. 390, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant bill clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Ms. SNOWE, for herself, Mr. COBURN, Mr. MCCONNELL, Mr. BARRASSO, Mr. BROWN of Massachusetts, Mr. MORAN, Mr. THUNE, Mr. ENZI, Ms. AYOTTE, and Mr. ISAKSON, proposes an amendment numbered 390.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD of June 7, 2011, under ''Text of Amendments.'')

AMENDMENT NO. 392

Mr. REID. Mr. President, it is my understanding the order before the Senate is that we are going to vote on the Tester amendment; is that right?

The PRESIDING OFFICER. The Senator is correct.

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

The PRESIDING OFFICER. The yeas and nays have already been ordered.

AMENDMENT NO. 393 WITHDRAWN

The PRESIDING OFFICER. The Durbin amendment is withdrawn.

VOTE ON AMENDMENT NO. 392

The PRESIDING OFFICER. The question is on agreeing to amendment No. 392.

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Connecticut (Mr. LIEBERMAN) is necessarily absent.

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

The result was announced—yeas 54, nays 45, as follows:

[Rollcall Vote No. 86 Leg.]

YEAS—54

Akaka	Hagan	Murkowski
Alexander	Hatch	Nelson (NE)
Ayotte	Heller	Nelson (FL)
Baucus	Hoeven	Paul
Begich	Hutchison	Portman
Bennet	Inhofe	Risch
Blunt	Johanns	Roberts
Boozman	Johnson (SD)	Rubio
Carper	Johnson (WI)	Schumer
Coats	Kirk	Sessions
Coburn	Kyl	Shelby
Cochran	Lee	Stabenow
Coons	Manchin	Tester
Corker	McCain	Thune
Cornyn	McCaskill	Toomey
Crapo	McConnell	Warner
DeMint	Mikulski	Webb
Gillibrand	Moran	Wicker

NAYS—45

Barrasso	Feinstein	Menendez
Bingaman	Franken	Merkley
Blumenthal	Graham	Murray
Boxer	Grassley	Pryor
Brown (MA)	Harkin	Reed
Brown (OH)	Inouye	Reid
Burr	Isakson	Rockefeller
Cantwell	Kerry	Sanders
Cardin	Klobuchar	Shaheen
Casey	Kohl	Snowe
Chambliss	Landrieu	Udall (CO)
Collins	Lautenberg	Udall (NM)
Conrad	Leahy	Vitter
Durbin	Levin	Whitehouse
Enzi	Lugar	Wyden

NOT VOTING—1

Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 54, the nays are 45. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is rejected.

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

● Mr. LIEBERMAN. Mr. President, I regret that for personal reasons I could not be present in the Senate for the vote on the Tester amendment No. 392 to the Economic Development Revitalization Act, S. 782. If I had been present, I would have voted in favor of the Tester amendment.●

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

Mrs. BOXER. I Object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued calling the roll.

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

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

Mr. REID. Mr. President, I have spoken with the chairman, Senator BOXER, and a number of other Senators, including Senator SNOWE, who has offered her amendment on this bill. She has not determined yet how much time she wants. We will work with her to make sure she has some time to speak on it.

Senator DEMINT has indicated that he has an amendment he wants to offer. Senator PAUL has indicated that he has an amendment he wants to offer. And Senator BOXER will give a statement for however long she feels is appropriate, as soon as the amendments are offered by Senators DEMINT and PAUL. They will debate those at a later time.

We also have people on our side who want to offer amendments. To keep this fairly orderly, we will have two amendments on our side to be offered, and then we will sit down and talk about it. At that time, there will be five amendments pending. We are trying to move forward with this bill.

Mr. President, I ask unanimous consent that Senator DEMINT be recognized to offer an amendment, and then that Senator PAUL be recognized to offer an amendment, and then Senator BOXER be recognized to speak for whatever time she feels is appropriate, and we will have a couple offered on the Democratic side, and then we will reassess where we are after that.

The only thing is, so that we know where we start on this, we want to make sure the amendments offered by our Republican colleagues and our Democratic colleagues initially be not divisible. I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 394

Mr. DEMINT. Mr. President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 394, and ask for its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 394.

Mr. DEMINT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To repeal the Dodd-Frank Wall Street Reform and Consumer Protection Act)

At the end, add the following:

SEC. 21. REPEAL OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203) is repealed, and the provisions of law amended by such Act are revived or restored as if such Act had not been enacted.

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

The PRESIDING OFFICER. The Senator from Kentucky.

AMENDMENT NO. 414

Mr. PAUL. Mr. President, I ask unanimous consent to set aside the pending amendment and call up amendment No. 414.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. PAUL] proposes an amendment numbered 414.

Mr. PAUL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To implement the President's request to increase the statutory limit on the public debt)

At the appropriate place, insert the following:

SEC. ___. INCREASE IN STATUTORY LIMIT ON THE PUBLIC DEBT.

(a) FINDING.—The Congress finds that the President's budget proposal, Budget of the United States Government, Fiscal Year 2012, necessitates an increase in the statutory debt limit of $2,406,000,000,000.

(b) INCREASE.—Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof ''$16,700,000,000,000''.

Mr. PAUL. Mr. President, this amendment will raise the debt ceiling by $2.4 trillion. This will comply with the President's budget. Many on the other side asked for a clean vote on raising the debt ceiling. Because I really want to get along and go along, I want to make this vote available for those who wish to raise the debt ceiling.

I will vote ''no,'' but I wanted this to be under consideration.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, let the games begin. That is what is going on here. I have full respect for my colleague, but you can tell from his tone and tenor that Senator PAUL finds it amusing he is offering a clean debt ceiling increase that he is voting against. He is offering an amendment he is voting against, when we know we are in discussions with the President, and with the Vice President, and discussions with the Gang of Six to try to figure out a way that we can come together, not have ''gotcha'' votes on the Senate floor. It is outrageous.

I will tell you why it is outrageous. We have an underlying bill here that you have been very helpful with, Mr. President—S. 782—the Economic Development Revitalization Act of 2011, which will reauthorize a very important program that has been in place in this great Nation since 1965. It was last passed when George W. Bush was President. It passed this Senate unanimously, without all these amendments that are going nowhere.

There are 27 amendments as of last night—actually, it is probably many more now. We know this game because we played it before, when Senator LANDRIEU stood where I am and tried to get a small business bill through here, which would have created thousands of jobs in this Nation.

Well, here we are. We have a bill that came out of the Environment and Public Works Committee with a strong vote. We had one dissent. Senator INHOFE is my primary cosponsor. For 50 years, this EDA program, the Economic Development Administration, has created jobs and spurred growth in economically hard-hit communities.

We know the struggle we are having in coming out of the greatest recession since the Great Depression. I remind the people within the sound of my voice that when President Obama took over, this country was bleeding almost a million jobs a month. We are getting back on our feet. We got the auto industry back on its feet. We are getting manufacturing back on its feet, but it is too slow. We have to do more. Once in a while, we get an opportunity to work with small businesses, the private sector, local government, and attract funds from nonprofit organizations and bring jobs and important work to our communities. This is one way.

An arm of the Chamber of Commerce wrote me a letter yesterday saying how important this work is. The Business Civic Leadership Center said:

EDA has served as a valuable partner in many communities that we have worked in including San Jose, California; Seattle, Washington; Cedar Rapids, Iowa; Mobile, Alabama; New Orleans, Louisiana; Atlanta, Georgia; Boca Raton, Florida; Minneapolis, Minnesota; Newark, New Jersey, and many others.

It was signed by Stephen Jordan, executive director of the Business Civic Leadership Center of the U.S. Chamber of Commerce.

This is a bill everybody wants, but games are being played in the Senate—I guess just for the fun of it, to stop us from doing our job. What is our No. 1 job? To create jobs. What does the AFL–CIO say? You have business and labor. They say:

EDA has established an admirable track record in assisting economically troubled low-income communities with limited job opportunities by putting their investments to good use in promoting needed job creation and industrial and commercial development.

That is signed by William Samuel, director, Government Affairs Department, AFL–CIO, and that is dated yesterday.

Why is business and labor supporting this bill? Why do they want us to stop the games and pass this bill? Because they want jobs for businesses, and businesses want the work.

Now let's take a look at other people who were supportive in addition to the Chamber of Commerce and AFL–CIO: U.S. Conference of Mayors, American Public Works Association, National Association of Counties—I was a county supervisor and belonged to that organization many years ago. If you want bipartisanship, go to the National Association of Counties. There are Democrats, Republicans, Independents—people of every stripe, liberal, moderate, conservative. They all come together. Why? Because business and labor are together, and everybody wants jobs.

Why do we have to face an amendment by my friend Senator OLYMPIA SNOWE on deregulation—a bill that hasn't had one hearing in any committee and will, in many ways, eviscerate the important rules and regulations that protect public health and the environment? We should have a hearing on that bill. I am sure we can work together and make it a wonderful bill. Instead, it is offered on this bill.

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

Mrs. BOXER. Not at this time, but I will yield when I conclude.

We have a bill that will create tens of thousands of jobs, and we have the first amendment offered by my good friend, which has not had one hearing, and it repeals all kinds of protections for the public health.

I don't get it. There is only one thing that I can get, with all these amendments, we have amendments on the debt ceiling that have nothing to do with this bill. This bill will create income for taxpayers, because when jobs are created and people work, they pay their fair share of taxes. This bill does not deserve to be treated this way when it passed almost unanimously out of the committee and it is totally bipartisan and has been in place for almost 50 years. Yet that is where we are.

Every Senator has the right to do what he or she wants. They can play games. They can have fun. But I care about the people I represent, and they need jobs. I care about them whether they are in Kentucky, California, or Maryland—any State in this Union. We are United States Senators. We should care about the people, not get up here and play games.

EDA uses limited Federal dollars to leverage large amounts of private sector investment. It is the little spark that creates economic activity in areas that are distressed, and it creates these jobs all across the country. Every dollar of EDA investment attracts nearly $7.

Let me show some other charts. When we vote for this bill—and this is an authorization, by the way, not an

appropriation. We have authorized it at $500 million. Historically, in the last couple of years, it has been funded at about $300 million, $250 million. But every dollar attracts $7 from the private sector, and that is a fact. It was documented in congressional testimony made on March 3, 2011. So that is the history of this EDA.

People say, well, how much, Senator, do these jobs cost—each job? Well, here is what we know. One job is created for every $2,000 to $4,000 invested. So it is an average of somewhere around $3,000 a job. That is a good return on our investment. We know that between 220 and 500 jobs are created for every $1 million of EDA investment.

Here is what we know. Between 2005 and 2010, 450,000 jobs were created by these investments and 85,000 jobs were saved. Everybody in this Senate, I think—though I could be wrong—if asked what is the most important thing we have to do today, would answer it is to help spur job creation in the private sector. Most of these are in cooperation with the private sector. Sometimes they are sewer projects or water projects that are needed by the private sector.

Let me cite some examples of that. Since we are authorizing this, at this stage, at $500 million, one might ask, how many jobs would be created each year. It looks as if it would create nearly 200,000 jobs per year and between 430,000 and 1 million jobs over the life of the bill.

But let me use some examples, because this isn't rhetoric. This is a program that has been in place since 1965. The city of Dixon, in my home State, got $3 million for a water system that will increase the city's water supply and their storage capacity, which will eliminate a major impediment to planned development and expansion of the city's commercial industrial areas. When you don't have enough water, you can't expand. I learned that when I was a county supervisor. You need to make sure there is adequate water, adequate electricity, and adequate sewerage. You have to make sure there are adequate roads. All these things are necessary for development and job creation.

This project is expected to create 1,000 jobs and leverage $40 million in private investment. So we have a $3 million investment to improve the water system and it is going to leverage $40 million. I call that a good deal for our taxpayers and a great deal for the American people to see jobs created. So we have 1,000 jobs—good jobs—created. That means 1,000 dads and moms bringing home paychecks for their families.

But what do we have here? The same thing Senator LANDRIEU had to put up with—amendment after amendment after amendment that has nothing to do with this bill. We even had an amendment from a Republican friend that would do away with this entire agency. Unbelievable.

The city of Shafter in my State, $2 million for sewer and water improvements to serve the East Shafter Logistical Center, which will allow development of an additional 600 acres to enable continued growth of the center and support a multimodal transportation hub. This project is expected to create 1,400 jobs and leverage $200 million in private investment. So that is a $2 million investment that is going to be leveraged, leveraged, leveraged.

We are going through a time when we have to cut spending, and I love when the Republicans lecture Democrats about that. Wait till you hear what goes on here. Guess which party was the only party that balanced the budget and created a surplus in recent memory. The Democrats, with Bill Clinton. So don't lecture us about how to balance budgets. We know how to do it. And guess what. We know how to do it while creating 23 million jobs. So I don't need to hear the lectures, because they are misplaced. Talk to yourself. You are the ones who didn't say a word when George Bush did a tax cut for billionaires and put it all on the credit card. Now you still want to extend those tax cuts and bleed the revenues.

Mr. PAUL. Mr. President, will the Senator yield for a question?

Mrs. BOXER. I will not yield. I have stated that before, but thank you for asking.

Here is where we are. I have to reiterate so I don't lose my place. Under Bill Clinton, the Democrats balanced the budget, created surpluses and 23 million jobs. George Bush came in and he held a press conference—I saw a rerun of it last night—and said, we don't need surpluses. This money belongs to the American people. Well, he didn't say what he meant. He meant it belongs to rich people—superrich people who earn over a billion and over a million dollars. He gave away the store. Then he went to war—two wars—and put that on the credit card. My friends on the other side never once said, Gee, I can't raise the debt ceiling to pay the debt. They all voted to pay. Almost to a person, they all voted to raise the debt ceiling, and it was doubled from when Bill Clinton was in office. But now, after George Bush left a mess—a god-awful mess in the debt and the deficit, and he handed President Obama a $1.2 trillion deficit—all of a sudden they blame President Obama for all of this.

The American people get it. They do not buy that. They understand this. They are not happy where we are, and they shouldn't be, but they know where the problem started. You know why. Because you can't rewrite history. You could try, but those deficits and those debts—those numbers—are in the books. Unless you erase them, they will remain in the books. I don't care whether it is talking about Paul Revere's ride or the deficits, that is history.

Let me show the deficits we had when we were in control. We got it down to zero, and we got surpluses and created 23 million jobs. That all was erased when we entered a situation in the last couple of years of the Bush administration, where jobs were bleeding at 800,000 a month, 700,000 a month, credit was frozen, and the automobile industry was in the tank. President Obama took action, but this recovery is tough. It has been the worst recession since the Great Depression.

This is what I know. We can do this if we work together, dare I say it? We can adopt a framework that understands billionaires and millionaires don't need their tax cuts now. We can get some more revenues in here and cut the fat and cut the duplication and go after the people who don't pay the taxes they owe. We can end the war in Afghanistan and save $1 trillion over 10 years. I can come up with $4 trillion easily. Allow Medicare to negotiate with the drug companies for lower prices. How is that—$200 billion?

But, no, instead, there is demagoguery and there are attempts to bring down bills such as this—clean, nice bills that will do everything we know we need to do now—leverage our spare dollars, attract public investment, create jobs and create jobs. But, no, we are facing a host of amendments, and I don't find it funny. I find it sad that we cannot come together.

I have a city in California, a very fast-growing city in the Silicon Valley—San Jose. We got them, through this program, $3 million for the renovation and expansion of the Center for Employment Training. What do they do there? They teach skills so when there are certain job losses going on, we have people with these new skills. We increased that center's capacity by 860 students. We expanded access to a GED, so people who didn't finish high school could get their diploma. We taught them how to speak better, how to read better, and we taught them small business entrepreneurship. This is what we are expanding to new people.

This project is going to create 4,900 jobs and leverage $3 million in private investment. This project was one to one. It was $3 million in public investment, $3 million in private investment, with 4,900 new jobs predicted.

By the way, these are not earmarks. We have six regional offices and there are applications made for these grants. They are made by the EDA and it is under the Commerce Department.

On the west coast, in 2003—to prove some points here—EDA invested $1.8 million in the construction of a water and energy technology incubator in the Central Valley of California. For those who don't know the Central Valley, it is where you get a lot of your fruits and vegetables. They are struggling in this downturn. In 2003, according to EDA, the incubator has housed more than 15 entrepreneurs since it opened, and those entrepreneurs have obtained over $17 million in private capital and created jobs for the Central Valley. So

a $1.8 million investment in the construction of a more than 2,300 square foot incubator for a water and energy technology business, and look what happened. From that small investment, it attracted $17 million. That is a huge leverage—a huge leverage.

You all know Boeing Company. In order to help mitigate the Boeing Company's decision to reduce manufacturing jobs in Renton, WA, EDA invested $2 million in 2006 to help build infrastructure to serve the commercial redevelopment of a 42-acre former aircraft manufacturing site. The redevelopment has created a mixed-use campus used by businesses focusing on commercial services, high-tech and life sciences, and helped create 2,500 jobs.

In the Midwest—I talked about this yesterday—in the city of Duluth, MN, they did something terrific there. They gave a grant of $3.5 million, matched by a city grant of $2.3 million, and they set up this aviation business—the Duluth Aviation Business Incubator at the Duluth Airport. This investment helped a company named Cirrus Aircraft grow from a handful of employees to a thousand employees by 2008. This incubator is now leased to Cirrus Design Corporation, which has the largest share of the worldwide general aviation market.

What we are talking about here is planting a seed of economic development, and that seed attracts more seeds from the private sector, from the local people, from the nonprofits. At the end of the day, what have we done by that little seed? It has grown. And this has been happening since 1965 when this program was created.

By the way, you will be shocked to know it was authorized at the same amount of money in 1965—$500 million. So the fact is this isn't a program that has grown and grown; it has stayed the same. That means, if you put inflation into the equation, it has been dramatically cut to a tiny part of what it once was for the country, but it is a beautiful part of our economic growth.

What do we need today? Jobs. What is the second thing we need? Jobs. And what is the third thing we need? Jobs. I am not amused by 27, 28, 29, 30 amendments, some of which have nothing to do with what we are talking about.

One of my friends on the other side of the aisle has an amendment that is pending to repeal banking reform—everything we did and worked on. I guess he wants to go back to the days when the banks got bigger, bigger, gambled with our money, and we almost lost capitalism in this country. OK, that is his right. Why is he doing it on this bill, without a hearing?

Another colleague has an amendment to end the regulations, I say to my friend, that protect the health and safety of the people. Not one hearing on it.

I think the American people have to wake up, so I am saying: Wake up, America, today. Wake up and pay attention to what is happening.

We have a bill on the Senate floor that is meant to do one thing—create jobs in areas that have been hard hit by this bad economy. Why are the Republicans stalling it, hurting it, putting forward amendments that have nothing to do with it? We have to ask that question. They voted for it under George Bush unanimously, the same program. They voted for it nearly unanimously out of our committee, I say to my friend who is a senior member and a great chairman of the subcommittee on our committee—they voted for it. Now they are delaying it and offering all these poison pill amendments to it.

This is the second time they have done it. America, you have to wake up. It is the second time they have done it. They did it to the small business bill. They hurt small business. They are doing it to this bill. They are hurting job creation, and they are hurting small business again, and they are hurting big business. I said before, one of the provisions helped Boeing.

Maytag, there is another company you know the name of. In 2007 the Maytag plant, headquartered in Newton, IA, which employed 1,800 factory workers, was closed. By 2008 the city identified two new manufacturing operations that could be located on the old site: TPI Composites, a wind turbine blade manufacturer, and Trinity Structural Towers, a manufacturer of massive steel towers for windmills.

Can I ask my friend if he would like some time on this? I am going to continue telling the Maytag story. When I finish, I am going to turn to a very important member of the committee, Senator CARDIN, for some remarks.

EDA invested $580,000 in 2008 for grading, site preparation, and surfacing for a wind tower storage facility that was leased to Trinity. That $580,000 attracted $21 million in public investment. That same year we saw other investments in Iowa.

I am going to stop and yield the floor so my friend can ask unanimous consent that he be recognized.

The PRESIDING OFFICER (Mr. MERKLEY). The Senator from Maryland.

Mr. CARDIN. Mr. President, I believe we are on the pending amendment?

Mrs. BOXER. Right now we are on the bill.

The PRESIDING OFFICER. That is correct.

Mr. CARDIN. Let me compliment Senator BOXER for her leadership on this bill. She pointed out this EDA bill brought forward is about jobs. It is about offering jobs in underserved areas. These are areas in which it is difficult to create jobs in good times, but in hard times they get hit even harder. The EDA program leverages a small amount of public support for private sector investment that creates jobs in underserved areas.

In my State of Maryland, EDA projects have been very successful in bringing jobs to the rural parts of Maryland—to western Maryland and to our eastern shore. They have leveraged private sector investment, and we maintained and created jobs.

Yesterday on the Senate floor I gave specific examples of EDA projects in western Maryland and on the eastern shore of Maryland. I talked about an old manufacturing plant that was saved under an EDA grant, leveraged 10 to 1 with private sector investment, saving over 100 jobs and creating another 20. These are jobs that are important for economic growth in our community.

We all understand this recovery has been a very difficult one for us to get moving at the pace of job growth that we know we need for this Nation. We all talk about what we can do for our budget deficit, but I hope we all would agree the most important thing we can do would be to create more jobs.

The majority leader has brought forward three major bills now to create jobs. We would like to have a little cooperation from the other side of the aisle so we can get these bills to the President for signature. The FAA bill, which deals with the modernizing of our air system, which will create jobs and will make air transportation safer, is caught up in conference. Let's get it done and bring it to the President. We had the SBIR bill before us that will help small businesses that are in innovation as far as job growth. We had so many nongermane amendments offered to it we could not get it to the floor of the Senate.

Now we have an EDA bill that came out of the Environment and Public Works Committee by a near unanimous vote, that over the history of the EDA has not been controversial in its reauthorization, and now it looks as if we are going to see numerous nongermane amendments offered in an effort, basically, to just ignore the importance of the underlying bill that can create jobs for our communities.

I urge my colleagues to, yes, come forward with their amendments. Let's debate them. If they are not relevant to creating jobs under the EDA bill, then let's be reasonable. Let's not have a whole series of amendments that are totally beyond the scope of this bill, such as the debt limit issue or repeal of our financial reform of last year. I don't mind debating those issues, but they should not be debated at this particular moment.

I do hope we will be able to get to the reauthorization bill. I pointed out yesterday that one of the highest priorities, from our local people in Maryland, on need was additional help from the Federal Government for planning dollars. Planning dollars allow local communities to develop a strategy that can help them with economic growth in a community.

I can tell you, having recently been out to Cumberland, MD—a great and beautiful part of our State of Maryland—they used to have a lot of manufacturing jobs. Many of those jobs have

moved on. They do have a strategy, but they need the planning help to put that together so they can come forward with a game plan, attracting more private sector interest in order to create more job opportunities for families to stay in the western part of our State. It is that type of assistance that is critically important to America.

I come back to the point Senator BOXER raised. The purpose of this bill is to create jobs—save jobs and create jobs. We need to get on with that business in the Senate. That is why I am proud to have worked on the Environment and Public Works Committee to bring this bill forward. I hope my colleagues will be judicious with their amendments so we can get this bill through the Senate, to the House, so we will have an opportunity to get this to the President in the very near future.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Maryland.

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

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

AMENDMENT NO. 407

Mr. CARDIN. Madam President, I ask unanimous consent that the pending amendment be set aside so I can offer amendment No. 407.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. CARDIN] proposes an amendment numbered 407.

Mr. CARDIN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require the FHA to equitably treat homebuyers who have repaid in full their FHA-insured mortgages)

At the end, add the following:

SEC. 22. PROHIBITION ON INTEREST CHARGES FOR ON-TIME PRINCIPAL PAYMENTS.

Section 203 of the National Housing Act (12 U.S.C. 1709) is amended by adding at the end the following:

''(z) PROHIBITION ON INTEREST CHARGES FOR ON-TIME PRINCIPAL PAYMENTS.—Each mortgagee (or servicer) with respect to a mortgage under this section may not impose, nor may the Secretary require the imposition of, any interest charge on such a mortgage as a result of the loss of any time period provided by the mortgagee (or servicer) within which the mortgagor may fully repay the principal balance amount of the mortgage, with respect to—

''(1) any days in the billing cycle that precedes the most recent billing cycle in which such amounts were repaid; or

''(2) any amounts repaid in the current billing cycle that were repaid within such time period.''.

Mr. CARDIN. Madam President, I will speak at a different point about this amendment, but it is an equitable amendment dealing with the interest charges on government loans that are paid off in the middle of the month to prorate the interest. It is a consumer issue. I think it will help American families. I will explain it in more detail in a later part of the proceedings.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

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

AMENDMENT NO. 428

Mr. MERKLEY. Madam President, I ask unanimous consent to set aside the pending amendment so I may call up amendment No. 428, which is at the desk.

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

The clerk will report.

The assistant editor of the Daily Digest read as follows:

The Senator from Oregon [Mr. MERKLEY], for himself and Ms. SNOWE, proposes an amendment numbered 428.

Mr. MERKLEY. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To establish clear regulatory standards for mortgage servicers, and for other purposes)

At the end, add the following:

TITLE _____—REGULATION OF MORTGAGE SERVICING

SEC. _____1. SHORT TITLE.

This title may be cited as the ''Regulation of Mortgage Servicing Act of 2011''.

SEC. _____2. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ALTERNATIVE TO FORECLOSURE.—The term ''alternative to foreclosure''—

(A) means a course of action with respect to a mortgage offered by a servicer to a borrower as an alternative to a covered foreclosure action; and

(B) includes a short sale and a deed in lieu of foreclosure.

(2) BORROWER.—The term ''borrower'' means a mortgagor under a mortgage who is in default or at risk of imminent default, as determined by the Director, by rule.

(3) COVERED FORECLOSURE ACTION.—The term ''covered foreclosure action'' means a judicial or nonjudicial foreclosure.

(4) DIRECTOR.—The term ''Director'' means the Director of the Bureau of Consumer Financial Protection.

(5) INDEPENDENT REVIEWER.—The term ''independent reviewer''—

(A) means an entity that has the expertise and capacity to determine whether a borrower is eligible to participate in a loan modification program; and

(B) includes—

(i) an entity that is not a servicer; and

(ii) a division within a servicer that is independent of, and not under the same immediate supervision as, any division that makes determinations with respect to applications for loan modifications or alternatives to foreclosure.

(6) LOAN MODIFICATION PROGRAM.—The term ''loan modification program''—

(A) means a program or procedure designed to change the terms of a mortgage in the case of the default, delinquency, or imminent default or delinquency of a mortgagor; and

(B) includes—

(i) a loan modification program established by the Federal Government, including the Home Affordable Modification Program of the Department of the Treasury; and

(ii) a loan modification program established by a servicer.

(7) MORTGAGE.—The term ''mortgage'' means a federally related mortgage loan, as defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602), that is secured by a first or subordinate lien on residential real property.

(8) SERVICER.—The term ''servicer''—

(A) has the same meaning as in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)); and

(B) includes a person responsible for servicing a pool of mortgages.

SEC. _____3. SINGLE POINT OF CONTACT.

(a) CASE MANAGER REQUIRED.—A servicer shall assign 1 case manager to each borrower that seeks a loan modification or an alternative to foreclosure.

(b) DUTIES OF CASE MANAGER.—The case manager assigned under subsection (a) shall be an individual who—

(1) manages the communications between the servicer and the borrower;

(2) has the authority to make decisions about the eligibility of the borrower for a loan modification or an alternative to foreclosure;

(3) is available to communicate with the borrower by telephone and email during business hours; and

(4) remains assigned to the borrower until the earliest of—

(A) the date on which the borrower accepts a loan modification or an alternative to foreclosure;

(B) the date on which the servicer forecloses on the mortgage of the borrower; and

(C) the date on which a release of the mortgage of the borrower is recorded in the appropriate land records office, as determined by the Director, by rule.

(c) ASSISTANCE FOR CASE MANAGERS.—A servicer may assign an employee to assist a case manager assigned under subsection (a), if the case manager remains available to communicate with the borrower by telephone and email.

SEC. _____4. DETERMINATION OF ELIGIBILITY FOR LOAN MODIFICATION PROGRAM OR ALTERNATIVE TO FORECLOSURE REQUIRED BEFORE FORECLOSURE.

(a) INITIATION OF COVERED FORECLOSURE ACTIONS.—A servicer may not initiate a covered foreclosure action against a borrower unless the servicer has—

(1) completed a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(2) made a reasonable effort to obtain the information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(3) offered the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for the loan modification or alternative to foreclosure.

(b) SUSPENSION OF COVERED FORECLOSURE ACTIONS.—

(1) IN GENERAL.—A servicer shall suspend a covered foreclosure action that was initiated

before the date of enactment of this title until the servicer—

(A) completes a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(B) notifies the borrower of the determination under subparagraph (A); and

(C) offers the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for a loan modification or an alternative to foreclosure.

(2) SUSPENSION.—During the period of the suspension under paragraph (1), a servicer may not—

(A) send a notice of foreclosure to a borrower;

(B) conduct or schedule a sale of the real property securing the mortgage of the borrower; or

(C) cause final judgment to be entered against the borrower.

(3) REASONABLE EFFORTS.—A servicer is not required to suspend a covered foreclosure action under paragraph (1) if the servicer—

(A) makes a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(B) has not received information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure before the end of the applicable period under subsection (c).

(4) RULE OF CONSTRUCTION.—Nothing in this section may be construed to require a servicer to delay a foreclosure that results from—

(A) a borrower abandoning the residential real property securing a mortgage; or

(B) the failure of the borrower to qualify for or meet the requirements of a loan modification program.

(c) REASONABLE EFFORT TO OBTAIN NECESSARY INFORMATION.—A servicer shall be deemed to have made a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure if—

(1) during the 30-day period beginning on the date of delinquency of the borrower, the servicer attempts to establish contact with the borrower by—

(A) making not fewer than 4 telephone calls to the telephone number on record for the borrower, at different times of the day; and

(B) sending not fewer than 2 written notices to the borrower at the address on record for the borrower, at least 1 of which shall be delivered by certified mail, requesting that the borrower contact the servicer;

(2) in the case that the borrower responds in writing or by telephone to an attempt to establish contact under paragraph (1), the servicer—

(A) notifies the borrower, in writing, that the servicer lacks information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure; and

(B) sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 30 days after the date on which the servicer sends the request;

(3) in the case that the servicer receives from the borrower some, but not all, of the information requested under paragraph (2)(B) on or before the date that is 30 days after the date on which the servicer sends the notice under paragraph (2), the servicer sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 15 days after the date on which the servicer sends the request; and

(4) in the case that the servicer does not receive from the borrower all information requested under paragraph (3) on or before the date that is 15 days after the date on which the servicer sends the request under paragraph (3), the servicer notifies the borrower that the servicer intends to initiate or continue a covered foreclosure action.

SEC. _____5. THIRD PARTY REVIEW.

Before a servicer notifies a borrower that the borrower is not eligible for a loan modification or an alternative to foreclosure, the servicer shall obtain the services of an independent reviewer to—

(1) review the file of the borrower; and

(2) determine whether the borrower is eligible for a loan modification or an alternative to foreclosure.

SEC. _____6. BAR TO FORECLOSURE ACTIONS.

(a) IN GENERAL.—Subject to subsection (b), a violation of this title shall be a bar to a covered foreclosure action.

(b) EFFECT OF SUBSEQUENT COMPLIANCE.—If a servicer is in compliance with this title, the servicer may bring or proceed with a covered foreclosure action, without regard to a prior violation of this title by the servicer.

SEC. _____7. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Director, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, shall issue regulations to carry out this title.

SEC. _____8. REPORT.

Not later than 1 year after the date of enactment of this Act, the Director shall submit to Congress a report that contains—

(1) an evaluation of the effect of this title on—

(A) State law; and

(B) communication between servicers and borrowers; and

(2) a description of any problems concerning the implementation of this title.

Mr. MERKLEY. Madam President, I wish to speak to the bill before us on the Economic Development Administration.

I rise specifically to talk about the issue that is on the minds of all Americans; that is, the topic of jobs. Unemployment is far too high. My home State unemployment is very high, and that is before we count all the folks who are underemployed—those who have found some type of part-time work, but it is not enough to support their families.

We all know how worried Americans are about this. It goes to the heart of their financial foundations, the success of their families, and it should be our top focus.

The good news is that the bill before us creates jobs and stimulates the economy in our towns and regions that need help the most. Economic Development Administration assistance is targeted to both rural and urban areas experiencing high unemployment, low income, a natural disaster or other severe economic distress. It does this at a low cost and gets the most bang for our buck.

The bill encourages private sector investment. Indeed, for every $1 the government spends on these projects, we leverage $7 in private investment. That is terrific leverage for our national investment.

With national unemployment still above 9 percent and with extreme storms causing destruction around the Nation, our support in these regions matters now more than ever. Whether a town is recovering from a plant closure or a flood, it is critical that the community invest in planning for their new economic future. The kind of assistance provided by the Economic Development Administration is critical to promoting economic growth and job creation, particularly in small communities.

I wish to share an example from my home State in the town of Vernonia, OR. It is a small community in the northern part of our State that was devastated by heavy flooding in 2007. Similar to many of the rural communities that are helped by these grants, Vernonia is too small to have dedicated staff to help them rebuild the local economy, and that is where the EDA has a great role to play. Through two EDA programs, the Federal Government was able to step in and help by partnering with local governments and private business, and today Vernonia is doing much better. As the executive director of that area's economic development district said: ''We would be lost without the EDA.''

Take another example regarding the timber industry in Oregon, hit hard by declining demand because the housing market is in the ditch. The timber companies and their workers are struggling, but they have two things on their side: great workers and great natural resources. With the help of grants from the EDA, one of those lumber mills on the Klamath Reservation has been turned into a new biomass plant, producing green energy for the region, bringing new economic activity to the Klamath Reservation and creating and saving jobs for Oregonians.

Furthermore, the EDA can continue to help our timber companies and other similar businesses plan for the future and play a key role in helping communities by coordinating between private companies and the Forest Service. The EDA can help these companies project what timber contracts are likely to come down the road and how they can tailor their business model to grow accordingly.

EDA investments are a proven path to retaining or creating new private sector job opportunities and helping small businesses diversify or expand. In fact, from 2005 to 2010, EDA projects led directly to the creation of more than 300,000 jobs—and this doesn't even count the many thousands more jobs that were created by those seven private dollars for every public dollar.

Without question, the EDA represents an efficient and cost-effective way to help distressed regions overcome the challenges they are facing and build a new foundation for job growth in our communities.

I urge my colleagues to pass this bill and to put our country back on the path to creating jobs.

Mr. CARDIN. Madam President, earlier today, I voted against the interchange fee amendment, Senate amendment No. 392 offered by the junior Senator from Montana and I would like to explain why. Before I do that, I would like to acknowledge two important points about Senator TESTER. First, I appreciate the fact that he made significant changes to his amendment in an attempt to reach a middle ground on this issue. And the concern he has for small community banks and credit unions is beyond question. Having said that, I did not reach the same conclusion he reached that we should delay the regulatory process with regard to interchange fees.

Most of the concern raised has been expressed against the Federal Reserve's December 2010 draft interchange fee rulemaking. It was a draft proposal. Let me repeat that: it was a draft proposal. The Federal Reserve received 11,000 comments on the draft rulemaking. The final rulemaking, due any day and scheduled to take effect in July, will reflect those comments and suggestions. We need to let the regulatory process work. If the final rule doesn't work as Congress intended, we have a number of options to fix it, up to and including a congressional resolution of disapproval. If the Senate had approved the Tester amendment, it may have been ''fixing'' a problem that doesn't exist.

The Federal Reserve's rulemaking was required by a provision contained in the Wall Street reform bill Congress passed last year. The senior Senator from Illinois was the author of that provision. He modified it to exempt smaller banks and credit unions with assets under $10 billion. Now we are being told the exemption is unworkable. Again, we haven't seen the final rule yet but I don't agree with the premise.

Andrew Kahr is a leading financial services expert. He was the founder and chief executive officer of First Deposit Corp, which later became Providian. He recently laid out the following arguments, which I find cogent, on the American Banker Web site:

> One argument is that the clearing networks, of which there are only four that matter, will not support the ''two-tier'' interchange system . . . Ridiculous. Visa is the largest of the networks. It's already announced that it will implement Durbin. (Maybe this is an object lesson as to why Visa remains No. 1.)
>
> For the small banks, MasterCard is the only other significant player. If MasterCard finds it politic not to add one more wrinkle to a skein of interchange levels that is already of Byzantine complexity, then let the small banks gravitate to Visa in order to benefit from Durbin.
>
> A second argument of the big-bank lobbyists is that merchants will reject the debit cards of small banks if these carry a 1 percent interchange cost, versus 0.3 percent for the large banks. Really? Then why don't these merchants reject all credit cards, with interchange of 2 percent or more, if the customer could instead use a debit card? When is the last time a merchant politely asked you whether you could pay with a debit card instead of a credit card?

Mr. Kahr concludes that if interchange fee revenue for the big banks drops but stays the same for the small banks and credit unions, the small banks will reap a competitive advantage. They will be able to impose lower fees, pay more interest, and give greater rewards to depositors. As he put it, ''anything that reduces revenue for big banks but not for small ones should help the latter compete more effectively against the former.''

Here is why I supported Senator DURBIN's amendment to the Wall Street reform bill to regulate these fees in the first place. Banks do not compete with each other on the fees that merchants pay them for debit card use. Instead, Visa and MasterCard fix fee rates on behalf of all banks. There is no naturally occurring market force that keeps interchange fees at reasonable levels. The Visa and MasterCard duopoly is so dominant that merchants cannot refuse to accept their cards. Consequently, Visa and MasterCard don't lower interchange fees—they raise them, to entice banks to issue more of their cards. Retail merchants have no leverage to stop this escalation. As a result, the U.S. has the highest debit interchange fees in the world, averaging 1.14 percent of each transaction and amounting to over $16 billion per year. These fees affect merchants, universities, charities, government agencies, and everyone else who accepts debit cards as payment. The fees end up getting passed on to consumers in the form of higher retail prices for everything from groceries to gas to textbooks.

The Durbin provision stipulated that fees set by Visa and MasterCard on behalf of big issuing banks must be reasonable and proportional to costs incurred by the issuer that are ''specific to a particular electronic debit transaction.'' Some argue this is too narrow. The problem with the Tester amendment, well-intentioned as it may have been, is that it was too broad. It directed the Federal Reserve to let Visa and MasterCard set fee rates to ''all fixed and incremental costs associated with debit card transactions and program operations.'' The term ''program operations'' wasn't further defined and could have created a potentially enormous loophole. Rates could actually go higher under this standard.

I appreciate the hard work the junior senator from Montana put into his amendment. If the Federal Reserve's final rule truly presents problems for community banks and credit unions, I will join him in the effort to fix it. For the time being, I think we should let the regulatory process proceed and that's why I opposed the amendment. We helped out the banks; now it is time to help out consumers and America's small businesses.

Thank you, Madam President, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

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

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

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

(The remarks of Mr. WEBB and Mr. CORKER pertaining to the introduction of S.J. Res. 18 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CORKER. Mr. President, 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. CORKER. 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. CORKER. Mr. President, noticing that there is nothing happening on the floor, I want to come down and talk a little bit about the vote that just occurred on the Tester-Corker amendment.

Obviously, I was on the losing side of this debate, but as we went back to our office, I did want to say that one of the folks I have worked with a long time noted that this may be the first time in a long time in the Senate where we had a real bipartisan debate, where we had people on both sides of the aisle, on both sides of the issue in large numbers. While we came up short from my standpoint on the vote—the other side obviously did not come up short—I want to say that I see a glimmer of hope in that regardless of how the outcome may have been on this particular vote—and again, I worked hard to try to pass an amendment that I thought was good policy—the fact is, if you really look at the vote count, I cannot remember in a long time a vote on a contentious piece of legislation such as this where there were so many people in the majority and minority, on both sides of the issue, just evaluating the policy on the grounds on which it was coming forward. So for what is it worth, I thought that was an interesting observation.

I want to say to those people who supported the Tester-Corker amendment that I thank them very much for listening and working with us to try to pass the legislation. And for those people who voted against it, I thank them for the way in which this debate was conducted. Again, it has been a long time since I remember something like this on the floor where you had such a split vote on both sides of the aisle. I

think that is progress. I just wanted to note that.

Certainly to all of those who were actively engaged in this debate on both sides of it, I think that in itself, while we did not prevail in the legislation itself, from the standpoint of the Senate, not myself, I think that is an accomplishment worth noting.

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. HATCH. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

BALANCED BUDGET AMENDMENT

Mr. HATCH. Madam President, our economic situation grows more dire by the day. Our unemployment rate has gone back up to 9.1 percent. Last month, only 54,000 jobs were created. You have to create over 125,000 to stay even. Housing prices remain in free fall. Since 2007, home values declined by more than they did during the Great Depression. In large part due to QE2, Americans are facing higher gas prices and higher food prices that are cutting into their family budgets. Now there is increasing pressure for a QE3, which would only accelerate commodity inflation.

Looming over all of this is our national debt. We have a national debt of nearly $14.5 trillion. That actually understates things. This is how USA Today calculated it earlier this week. This chart says it all. Let me read that: ''U.S. owes $62 trillion.''

Let me read that again so it sinks in: ''U.S. owes $62 trillion.''

Numbers such as this are frightening to the American people. They are numbers fit for a banana republic, not the great United States of America, and they are numbers that demand a balanced budget amendment to the U.S. Constitution.

I do not say this lightly. Our Constitution has served us well, working over more than two centuries to guarantee and extend liberty and equal rights of American citizens. But from time to time it has become apparent that the Constitution needs to be amended. The Founders themselves contemplated this eventuality, giving to the people's representatives in Congress and the people in the various States the opportunity to amend the Constitution. It has become so clear that our spending situation is so grim, and the President and some members of his party are so unwilling to rectify it, that a constitutional amendment is in order.

The bottom line is that Federal spending has become a threat to liberty. The inability to rein in Federal spending is effectively undermining the promises of the Declaration of Independence and the Constitution's preamble. Federal spending is a threat to this Nation's free men and women, slowly turning our fellow citizens into servants and stewards.

To restore the promise of the Constitution and the classical liberty the Founders sought to secure, we must amend the Constitution and we must do it now. We must amend the Constitution by voting on S. J. Res. 10, passing it and sending it to the people of the States for ratification. The people I serve in Utah are demanding this action and I know the citizens across this country are demanding it as well. They see the problems looming before them.

One of the first things I did at the beginning of this Congress was introduce S. J. Res. 3, a balanced budget amendment to the Constitution. It received the support of 32 Members of the Senate at that time. We didn't have time to get to the rest of them. But what is remarkable is what happened a few weeks later. All 47 members of the Republican caucus unified behind a single balanced budget amendment, S. J. Res. 10. I was proud to work with my colleagues of varied political beliefs from across the country to draft this amendment that announced loudly and clearly where the Senate Republican caucus stands on this issue.

When I introduced this amendment at the end of March, I was honored to stand beside MITCH MCCONNELL and my colleague from Utah, MIKE LEE, as well as my colleagues Senators CORNYN, TOOMEY, DEMINT, RUBIO, and many others who took a stand for putting Federal restraints on Federal spending and restoring the Constitution's original checks and balances.

I was honored by the support this amendment received from groups committed to taxpayers and limited government. Here is a list of some of the groups supporting S. J. Res. 10: 60 Plus, Americans for Tax Reform, Americans for Prosperity, Club for Growth, FreedomWorks, Americans for Limited Government, the National Taxpayers Union, the Council for Citizens Against Government Waste, the Pass the BBA Coalition, the National Taxpayer Limitation Committee, the American Council for Health Reform, Grassroot Voices, and Ending Spending. But most of all I was honored to be serving my constituents in Utah who told me this was a fight worth having.

I am under no illusions that this is going to be an easy fight. The bottom line is that some Members of Congress and certainly President Obama cannot be trusted to control Federal spending in the long term. Consider the issue of entitlement spending. Medicare and Social Security are bankrupt. The failure to put forward a plan that would address their permanent spending shortfalls is quite simply a plan for the destruction of Medicare and Social Security. The Democrats' commitment to the entitlement status quo is the commitment to national bankruptcy.

Don't take my word for it. Listen to what the Social Security and Medicare trustees had to say about those programs. In 2010, Social Security ran a $49 billion cash deficit. It is now permanently in the red, with the Federal Government forced to use general revenues to make up for these shortfalls. The trust fund will be completely exhausted in 2036, and we all know there is no real trust fund, just IOUs issued by the government. But even that will be exhausted in 2036.

What about Medicare? Not to be outdone, Medicare's trust fund is now permanently in the red as well, and will be completely depleted in 2024, if not before; that date keeps moving up because of the profligacy of people here in the Congress and the lack of leadership in the White House. These numbers are jarring. They demand a serious and an adult response.

But what is the reaction of our colleagues on the other side to these numbers, at least some of them? For too many, the strategy is one of deny and smear—deny there is a problem and smear those who attempt to fix this spending crisis.

The President's budget was a joke. His do-over budget was nothing more than a speech with some vague details. Before Memorial Day the Senate's Democratic leadership busied itself attacking Chairman PAUL RYAN's budget rather than offering up one of their own. Just before Memorial Day, that is what they did. At a time when leadership is called for, President Obama is missing in action and complicit in the demagoguery of his surrogates at the Democratic National Committee.

There is a reason the Democrats are reluctant to offer any way forward out of this mess. It is quite simple—they refuse to cut spending and reform entitlements. But they also refuse to tell the truth about the tax increases that would be necessary to balance the budget their way. The entitlements, of course, are Social Security, Medicaid, and Medicare, to mention a few.

The Democrats are content to be the tax collectors for the welfare state but they will not acknowledge what this entails—massive tax increases on America's families and on America's small businesses.

In his original budget, President Obama proposed $1.6 trillion in tax increases on all segments of our economy. In spite of these tax increases, his budget got nowhere close to balance. Before Memorial Day, Democrats attacked Chairman RYAN's budget and offered up as an alternative roughly $21 billion in tax increases on oil companies. To borrow from John McEnroe: They cannot be serious; $21 billion in tax increases when we have $62 billion in unfunded obligations. The United States owes $62 trillion. What a joke.

The experience of the last few decades and last few weeks demonstrates the need for a balanced budget amendment to the Constitution. Our spending is simply out of control, and President Obama and many of his allies refuse to address this spending in a meaningful

way. All they have in their bag of tricks are tax increases, but the tax increases that would be necessary to fill this deficit hole would crush the liberty and the livelihoods of the American people.

Rather than doing serious work and making the tough decisions necessary to right our fiscal ship—rather than engaging in true leadership—the President seems content to focus on the next election and leave the hard decisions for a later day. That is the best-case scenario. The worst-case scenario is that certain liberals are content to force a full-blown fiscal crisis—one that would make the economic collapse of 2008 and 2009 look like the minor leagues—and then hope all the pressure will be to institute a value-added tax that will be a permanently open spigot, filling the coffers of the bloated Federal Government. Neither of these scenarios is unacceptable.

The fact is, we are running out of time. The country needs to act now. Fortunately, in the absence of Presidential leadership, the constitution provides an opportunity for Congress, along with the people of the States, to amend the Constitution and solve our country's systemic fiscal imbalance, even when the President refuses to do so.

Getting a balanced budget amendment passed is going to be an uphill climb. We all know that. I know all too well the Democrats' calculated resistance to serious efforts to reduce Federal spending. In 1997, a balanced budget amendment I introduced and fought for fell short by just one vote in the Senate. We had 66 votes. We actually had 67 that morning, but one of our Senators was threatened by the unions and flipped and we lost by 1 vote. Fourteen years later, our national debt stands at $14 trillion, threatening our economic future, reducing our global competitiveness, and jeopardizing our national security. Can we imagine where we would be had we been successful in passing that amendment and had one more vote to do it back in 1997? We wouldn't be in the colossal mess we are in today. Yet the resistance to a balanced budget amendment is probably even stronger among Democrats now than it was in 1997.

Nonetheless, I am hopeful that if the citizens and taxpayers of Utah are in any way representative of the people in the rest of the country—and I think they are—it is clear they have had enough. The people of this country are not going to stand by any longer and wait for Congress to fix this situation. They understand the Constitution must be amended in order to revive the Founders' original limits on the size of the Federal Government. Passing a balanced budget amendment is not just a constitutional imperative, it is essential to the long-term fiscal health of this country.

In the coming weeks, the fight over the debt limit is going to come to a head. It is going to be a long, hot summer. But I, as will a lot of others who care for this country, will be itching for a fight, and I will go to bat for this balanced budget amendment. In this country, the people are sovereign, and it is well past the time we give them a balanced budget amendment to ratify.

I urge my colleagues who have not done so already to support S.J. Res. 10. I look forward to debating and voting on this resolution—and passing it—later this summer.

I believe the leadership on the other side should bring up the balanced budget amendment and have a full-scale debate before we lift the debt ceiling—if the debt ceiling is to be lifted—and I am not so sure it should be lifted without a balanced budget amendment. On the other hand, the very least that has to happen is to bring up this balanced budget amendment before we actually get into the fight over the debt ceiling. It would be very good for this whole body to have to defend itself and to have to make arguments, pro and con, with regard to a balanced budget constitutional amendment.

I believe when the American people see what terrible shape we are in—caused by terrible profligacy, caused by terrible spending by the Congress of the United States—when people start to understand this, they are going to get tremendously angry, and I think in every respect they are going to start saying we have had enough. We have had enough. It is time for you folks in the Congress to stand and pass a balanced budget amendment that we will have to live with in order to save this country and save it from the free fall we are in. I hope we can get our colleagues on both sides—we do have all 47 Republicans—I hope we can get our colleagues on the other side to think and look clearly toward a balanced budget constitutional amendment, S.J. Res. 10. I look forward to debating and voting on this amendment and passing it later this summer.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EDUCATION

Mr. HARKIN. Madam President, I wish to take a few moments to talk about the Republican budget, the so-called Ryan budget in the House. This has been widely condemned, of course, for its plan to end Medicare and for its radical cuts to Medicaid. But I have come to the floor to highlight yet another extreme element of that Republican budget—its unprecedented assault on education funding and the grave threat this poses to school reform efforts across the United States.

This Republican budget would slash funding for education by 15 percent next year—2012. Even more drastic cuts to education funding would come in each of the years to follow.

These Draconian cuts to education could not come at a worse time for America's public schools. The final budget agreement for the current fiscal year reduced education funding by $1.3 billion. It zeroed out, for example, the successful Striving Readers Initiative, the only comprehensive Federal program to help struggling adolescent readers. I might just add, that budget ended all literacy programs for kids in America funded by the Federal Government. The Federal Government now does not fund one literacy program in America. That is how bad it has gotten. Meanwhile, cash-strapped State and local governments are slashing school budgets and firing tens of thousands of teachers. In Texas, Gov. Rick Perry has called for a $10 billion cut in education funding. In New York City, the mayor, Mike Bloomberg, has proposed laying off 6,000 teachers.

I have an unusual perspective, as both the chair of the appropriations subcommittee that funds our Federal education programs as well as the chair of the authorizing committee, the Health, Education, Labor, and Pensions Committee, which authorizes education programs.

There is no question in my mind that combined Federal, State, and local budget cuts pose a grave threat to education reform efforts across the country, just as these efforts are reaching a critical mass. Here is why. Forty-eight States and the District of Columbia have collaborated to create high-quality common education standards for the first time. The Obama administration's Race to the Top Initiative has jump-started ambitious State-level reforms ranging from expanded charter schools to stricter teacher and prep school accountability. In the HELP Committee, Senator ENZI and I together are working on a bipartisan effort to reauthorize the Elementary and Secondary Education Act.

However, it is wishful thinking to expect improvements in school quality at a time when we are laying off teachers, increasing class sizes, and reducing instructional time. I am struck by the fact that the Republican budget's assault on education comes at a time when America's competitors are surging forward. For example, China has tripled its investment in education and is building hundreds of new universities. Even in times of austerity and shrinking budgets, smart countries don't just turn a chainsaw on themselves, they continue to invest in the future and, above all, they continue to boost investments in education.

So as we go forward with education reform in the United States, we are building on strength. Most kids in affluent communities already attend high-quality public schools and go on to higher education. Our challenge is to ensure that all American students have this opportunity, including the nearly 20 percent of children who live in poverty.

Again, certainly money is not the only factor in creating high-performing schools, but it does take money to modernize school facilities, to hire highly qualified teachers, to create effective assessment systems, and to provide appropriate instructions for students with special needs. To demand reform without resources is to set up students and teachers to fail. Let me repeat that. To demand reform without resources is to set up the students and the teachers to fail.

In the months ahead, Congress will be focused on reducing the deficit and trying to prevent a default on America's debt obligations. Of course, this is appropriate. But it must not preclude sustained, strong investments in education for our young people. We need to invest more, not less, in helping States and districts to close the gap between world-class schools that are in the affluent suburbs and the struggling schools in poor, urban, and rural communities. We need to provide resources to ensure that the goal of graduating students who are college and career ready applies equally to all students, including kids with disabilities, including English language learners. In the face of steadily rising college tuition, we must maintain the maximum Pell grant so kids from low-income families can achieve the American dream and get a college education.

Pundits have attributed the GOP loss in the special election in New York's 26th congressional district to voter anxiety because of the plan the Republicans have to end Medicare. So a lot of the pundits have said: Well, this recent election in New York's 26th congressional district is the result of that. But public dissatisfaction with the Republican budget goes way beyond Medicare. Americans see this budget as unbalanced and unfair, especially when it comes to education.

The American people are asking: Why do the Republicans insist that trillions of dollars are available for new tax cuts, mainly for big businesses and the wealthy, but supposedly we cannot afford to sustain funding for public education? This is a classic case of eating your seed corn. It is an approach that does not remotely reflect the priorities and values of the American people.

The Republican budget, as I have said before, is premised on the idea that America is poor and broke, that our best days are behind us, and that we have no choice but to slash investment required in order to keep our middle class strong. I totally disagree. Many Americans are hurting because of the struggling economy, but the United States overall remains a tremendously wealthy and resourceful nation. Quite frankly, we are the richest Nation on the face of the Earth. Even further, we are the richest Nation in human history. We have the highest per capita income in America of any major nation. So one has to ask the question, if we are so rich, why are we so poor? The question is not the lack of money. It is not the lack of wealth. It is because the system is broken. We have a system malfunction in this country, and we have to right that system. Because we are an optimistic, forward-looking people, we can do it. We can work together, and we can meet any challenge.

But we expect the government to be on our side—not holding us back, not dragging us down, not shorting our futures, not telling people who are low income or recent immigrants to this country or kids who do not have a good start in life that, sorry, we cannot give you a world-class quality education, we cannot afford to have the best teachers, we cannot afford to have good schools for you.

If you happen to be wealthy and live in a wealthy area that has high property taxes and you have a good school and you have good teachers, good for you. But if by happenstance of birth you are born to a family who does not have any money and maybe your parents never went to college—maybe, as I said, they are new immigrants to this country; maybe they do not speak English that well—if you are in a poor urban area or a poor rural area and you have low-quality schools, low-quality teachers, chances are you never had any early learning available to you. So when you started kindergarten, you were already way behind those kids in that affluent school in high-income areas.

Is that what we are about? Is that what we are trying to say, that we are going to have this kind of almost class warfare, that if you are born wealthy and stuff, you have it made but if you are born poor, forget about it when it comes to education? That is what the Republican budget says. We are not going to have quality public education for our kids.

As I said, this does not reflect the values of the American people. We want to make sure our public education system is good for all children, that they all have the best qualified teachers, that they have good schools, good facilities, the latest technology, that they are challenged to do their best, and that they know if they do their best and if they study hard and they get good grades, they will be able to go to college and not have a mountain of debt hanging over their heads when they graduate.

We have done great things as a society, things we have had to do together, which we could not do as individuals, such as building an interstate highway system, a rail system, mapping the human genome, and, again, creating world-class universities. We have done this. We have done this working together, as something we can do together as government that we cannot do as individuals.

Through our government, we come together to provide a ladder of opportunity to give every citizen a shot at the American dream—a ladder of opportunity that includes Pell grants, the GI bill, job training, early learning, and, yes, world-class schools.

I am convinced the great majority of Americans share this positive vision. Again, we are determined to bring deficits under control. But we cannot eat our seed corn. We have to make smart investments in education, and we refuse to be dragged backward into a winner-take-all society, where the privileged and the powerful seize an even greater share of the wealth, even as our schools are crumbling and our middle class is struggling and declining.

For nearly half a century, robust Federal investments in quality public schools and access to higher education have been a critical pillar undergirding the American middle class. The Republican budget will take a jack hammer to that pillar. This, I believe, is a grave mistake. The middle class is the backbone of our Nation. It is time our leaders show the backbone to defend it.

AMENDMENT NO. 390

Madam President, I would like to take this opportunity also to strongly oppose the amendment offered by the Senator from Maine. If passed, the amendment would impose severe and unnecessary burdens on agencies charged with protecting the American people and would severely weaken our vital health and safety protections.

My Republican colleagues have tried hard to make the word ''regulation'' into a bad word. They have created an absurd caricature: the nameless bureaucrat arbitrarily imposing random rules and regulations on businesses, and their sole purpose is making sure the business fails. That is ridiculous.

Most Americans understand this is grossly distorted. The truth is, the amendment offered by the Senator from Maine, Ms. SNOWE, is not about the government working more efficiently—a goal we all share—it is about using the sort of feel-good slogan of ''regulatory reform'' as cover for an effort to paralyze the ability of the government to enforce vital health and safety protections.

In effect, the Snowe amendment ought to be called the ''buyer beware'' amendment. Go back to the days when the snake oil salesman could sell you anything and you took it at your own risk, where we did not have safe drug laws and food safety laws and things such as that to protect people. It was just a buyer beware society. Do we want to go back to that?

I believe the American people want clean air and clean water and to know they are not adulterated. The Snowe amendment would weaken environmental protection.

I believe the American people want to make sure their children's toys are safe, that they are not loaded with mercury and other elements that will destroy their health. The Snowe amendment would mean weaker protection of toys and other consumer products.

I believe the American people want workers to come home safely at the

end of the day. The Snowe amendment would mean more injuries and deaths in mines and other hazardous workplaces.

I believe the American people want the food they eat to be safe and untainted. The Snowe amendment could mean we cannot enact implementing regulations for our recent bipartisan food safety bill, which we just passed last year—bipartisan. But when you pass a bill, obviously, the Food and Drug Administration is going to have to issue regulations. Well, the Snowe amendment would severely restrict that. Again, you would be playing Russian roulette with the food you eat. Maybe it is safe; maybe it is not—buyer beware.

I believe, in the wake of the financial meltdown of 2008, which almost caused another Great Depression, the American people want oversight and regulation of banks and other financial institutions. The Snowe amendment, again, could mean banks would remain free to do the same reckless, predatory practices that nearly wrecked our economy.

There are already important checks on regulatory authority. The law already requires agencies to perform comprehensive assessments of the impact of regulations on businesses and local government. There is an extensive notice and comment period under the Administrative Procedures Act, where those impacted by potential rules—including small businesses—are given an important say in regulation. Agencies already engage in regulatory flexibility analysis to ensure that their oversight does not needlessly overburden small businesses.

In contrast, the aim of the Snowe amendment is to impose additional hurdles to dramatically slow down the issuance of critically needed rules and, in many cases, stop the rulemaking process altogether. For example, the Snowe amendment would require an analysis of ''indirect'' impact on small businesses—''indirect'' impact, whatever that means. Well, let me cite perhaps an example.

Instead of the Mine Safety Health Administration spending its resources protecting our miners, the amendment could require the agency to determine whether a new mine safety standard indirectly harms, say, a small paper company that supplies paper to the mine's corporate offices. This is a ridiculous waste of resources and time. So we do not even know what the ''indirect'' impact means. That could mean almost anything.

Likewise, the amendment would permit businesses to sue to block a rule even before it is finalized. In other words, businesses could seek to litigate a proposed rule. I often hear my Republican colleagues speak against activist judges. I can think of few things more activist than for unelected judges to review a rule even prior to the agency performing the lengthy notice and comment process to finalize a rule. It already takes years for agencies to promulgate health and safety rules. This amendment would exacerbate the problem and further clog up the court system. Think about all the court cases that would be filed just on a proposed rule, before it even goes to the comment period, before it is even finalized.

Moreover, the bill requires an agency to review the impact of all—all—its current rules on small businesses to determine if a rule must be modified, rescinded or continued unchanged. In other words, rather than addressing new problems and implementing new acts of Congress, an agency would need to spend all its time reviewing past, settled regulations, some of which may have been in effect for the last 50 years.

To its credit, the Obama administration already is conducting a comprehensive, rigorous review of all rules in order to see which ones should be repealed, modified or kept in place. We should let this careful review take place before implementing severe constraints on agency rulemaking.

So the Snowe amendment would make government less responsive. It seeks to cripple the government's ability to make sensible lifesaving regulations.

Again, it ought to be titled the ''buyer beware'' amendment. If you like living in that kind of a society, I suggest you go to some Third World country, where you do not know what you eat or what you drink or whether the air you breathe and the water you consume is safe and healthy. If that is the kind of America you want, you should support the Snowe amendment. But if you want an America where our kids are safe from dangerous toys, where you know the food you eat is going to be safe and the water you drink and the air you breathe, where you know there are safety rules in place so you are not going to get unduly injured or harmed at the workplace, if you believe this is the kind of America that operates better and is more functionally productive than a buyer beware kind of society, then I suggest you should oppose the Snowe amendment.

Again, I urge my colleagues to oppose the Snowe amendment as ill-advised. Again, it is a part of a bill that has never gone through the committee hearing process. If nothing else, it ought to go through committee, have hearings, and let's see if it has any support at all out there before we bring it to the floor of the Senate. I urge my colleagues to defeat the Snowe amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Oklahoma.

Mr. INHOFE. Mr. President, with all due respect, I plan to support the amendment that has been addressed by my good friend from Iowa. Having come from the small business world, I am fully aware of the cost of these things, and tomorrow I will be introducing an amendment that is going to address something different, but really something with higher figures on it; that is, the cost of the EPA regulations.

This is something that is a little bit different than what my friend from Iowa has been talking about. When we stop and think about the regulatory things that are going on right now with the Clean Water Act and the Solid Waste Disposal Act—we are talking about greenhouse gas regulations, things that should be addressed by legislation but are not, so they are trying to do it through regulation: boiler MACT, that is the maximum-achievable technology; utility MACT; ozone, actually the changing of the ozone standards when they are not using—as the law requires—the newer, updated information; and particulate matter and coal ash and some of the rest.

But I am saving that for tomorrow. I am only saying that now because there is a cost to overregulation. That is what I know my friend, Senator SNOWE, is trying to get at. It is my understanding—correct me if I am wrong—that we are not trying to get recognized and move current amendments aside. Is that correct now? I will not try to do that.

However, I do want to mention that probably the most significant single amendment we are going to have on the EDA reauthorization bill would be the one to take down the maximum amount from $500 million to $300 million. It is kind of interesting because this program in my State of Oklahoma has been very successful. Believe it, time and time again, we have been able to do things, attract businesses and industry.

Down in a little town called Elgin, OK, adjacent to the Ft. Sill live range, we have been able to put together something that is going to attract about a 150,000-square-foot building, all of that with a very small initial grant. So it has worked well.

I understand some of the critics of this program. In some areas maybe it has not worked that well, if it has. However, I have noticed this, and since some of this jurisdiction is in the committee of which I am the ranking member, the Environment and Public Works Committee, it is important to look at these things.

In these difficult times, I think it is important not to authorize more than we could anticipate would be very prudently appropriated. Since we have been authorizing $400 million in the past, and the total amount is something less than $300 million, I am going to have an amendment that would take down the existing limit on this, which is $500 million, down to $300 million. That will be amendment No. 430. It is already submitted.

Interestingly enough, while I do not agree with President Obama on many things, he seems to agree on this, and I am going to read a statement he made: ''The Administration supports

the passage of S. 782.'' But down here it says:

However, the bill would authorize spending levels higher than those requested by the President's budget, and the administration believes that the need for smart investment to help Americans win the future must be balanced with the need to control spending and to reduce the deficit. The administration looks forward to working with Congress in reducing the limits of this bill.

So I am going to make it easy for the administration and introduce this amendment No. 430. It is submitted right now. We are hoping to be able, at some point, to start setting aside and getting up these amendments for votes. That is one of the major reasons, as one of the sponsors of this bill, we have a lot of things we need to be talking about on the Senate floor.

We have done nothing around here. We have not done appropriations. We have not done anything except a handful of noncontroversial judges—and some controversial, I might add. But, nonetheless, we should be talking about these things. There are a lot of things we want to get done, and certainly this is one of them.

The other amendment, though, that is a little less understandable because it involves something that I throw in the category of being just not believable. We have a critter in Oklahoma and it is also around other parts of the country. It is called a Lesser Prairie Chicken. Going all of the way back to my days in the State legislature—I am talking about a long time ago, before a lot of you guys were born—people were concerned about the Lesser Prairie Chicken and were always trying to protect it. Yet our farmers and ranchers had a problem with that because they burrow down and make holes and our cows and our horses will break legs and all of that kind of thing.

That has nothing to do with what is happening today except they are talking about having that—right now it is actually a candidate for an endangered species, and the reason is because they are claiming that, of course, the population is dwindling. Well, it is not. The problem is, we have too many of them. This is kind of interesting. The State—for those of you whose geography is not too good—immediately north of my State of Oklahoma is Kansas. In Kansas they have a hunting season for the Lesser Prairie Chicken, but you can go a mile south across the Oklahoma border and it would be protected. It is ludicrous that they would do that.

Here is another reason—a problem. First of all, federally mandated uses of alternative energy such as wind and all of that I think is inappropriate. We have all the resources we need in fossil fuels to run this country. We have the resources, in terms of oil, gas, and coal. We have enough to run this country for 100 years without being dependent on the Middle East.

These are things we should be doing. Well, when you have these mandated percentages, that means you have to go into other forms of energy where the technology is not quite there. Now, wind technology is there, although a lot has to happen before it is going to be in a competitive match and not have to be subsidized. Nonetheless, Oklahoma happens to be in the wind belt. You go through Oklahoma, you can see in northern Texas all the way through Oklahoma and southern Kansas, we are in the wind belt. The problem we have—I have airplanes. I have many vices; flying airplanes is one of them. So I am over the western part of Oklahoma almost every weekend.

When I take people who have not been there, they are amazed at the numbers of windmills. At any one place out there you can see 200 or 300. So it represents a huge investment. A lot of stakeholders are involved in it and they have said that certain things are going to happen. But wait a minute. If they end up listing the Lesser Prairie Chicken, that is going to all of a sudden put Fish and Wildlife in a position where they can stop this wind energy that is taking place right now. The reason they can, and it will not be their fault—they will say, well, it is a habitat. It is threatened because there are towers, and predators are on these towers and looking down. Then they would have to stop that from taking place.

They could conceivably have to take down millions of dollars' worth of investments that are there right now. So I have an amendment to this bill that is going to preclude them from being able to list it.

By the way, I have had a visit with the candidate who has been nominated to be Director of Fish and Wildlife, Dan Ashe. I had him, along with Secretary Ken Salazar, Secretary of the Interior, in my office. We talked at some length about some of these things, and he has made a commitment to come out to Oklahoma and to see what a hardship this would be.

So I think it would be an excellent idea to find some vehicle—and this vehicle seems to be the one that is being used right now to put such legislation on—that would preclude them from listing the Lesser Prairie Chicken.

The private investment in Oklahoma wind power is, of course—we are one of the top States—we are at No. 13 of all 50 States in terms of wind. It could be significantly curtailed. State Senator Bryce Marlatt in Oklahoma noted that it was already a $300 million investment just in the last 3 years. So we want to protect this investment.

We have OG&E, Oklahoma Gas and Electric, recently announcing the construction of a high-power line from Oklahoma City to Woodward. Woodward is kind of the mouth of the Panhandle. Then, eventually going into Guymon, all the way through what used to be called no man's land in the Panhandle of Oklahoma. These would be multimillion-dollar investments that could be severely challenged by the listing of the Lesser Prairie Chicken.

So I will be offering that amendment. I already submitted the amendment and would look forward to explaining that further as the time comes.

In the meanwhile, tomorrow I do want to get into the cost of the regulation. If we are really sincere in this country right now about doing something to promote business and industry, the first thing we need to do is get the bureaucrats off the backs of the businesses out there that are planning to expand and those that are in existence today. So we will be addressing that tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

TRIBUTE TO FRANKIE FREEMAN

Mrs. MCCASKILL. Mr. President, Missouri is full of amazing Americans. At the very top of this list is my friend, Frankie Muse Freeman. She has been selected to receive the extraordinary honor called the Spingarn Medal, the NAACP's highest national honor.

Each year, the NAACP selects only one person in this country to receive the prestigious Spingarn Medal in recognition of particularly outstanding achievement.

We in Missouri are so proud of Ms. Freeman for her many accomplishments, including receiving this most distinguished award. While I am honored to come to the floor and congratulate Frankie Freeman, I regret that I will not be able to be in St. Louis, at the St. Louis City and County Freedom Fund Dinner to deliver these remarks and celebrate this great woman and her many admirers and supporters in the St. Louis area.

Frankie Freeman is an amazing story. She is 94 years old and still has the passion to serve her community. At age 16, Ms. Freeman enrolled in her mother's alma mater, Hampton Institute. In 1947, before the Presiding Officer or I were ever born, she earned a law degree from Howard University Law School. During that time period, as one might imagine, there really were not law firms that hired either women or African Americans, much less an African-American woman.

So what did Frankie Freeman do? She decided to open her own law firm. She began her practice with divorce and criminal cases and with a huge dose of pro bono cases. After 2 years she became legal counsel to the NAACP legal team that filed suit against the St. Louis Board of Education in 1949. In 1954, Freeman was the lead attorney for the landmark case, Davis v. St. Louis Housing Authority, which ended legal racial discrimination in public housing in St. Louis.

In the almost 60 years since that decision, Ms. Freeman has tirelessly fought for civil rights at home in St. Louis and across the Nation. She has endured abuse and discrimination, but through it all she worked with intellect and dignity while employing one of her very best weapons, a warm and friendly personality and a very quick smile.

In 1964 President Lyndon Johnson appointed her to serve as the first woman on the U.S. Commission on Civil Rights. She continued to serve on the Commission under Presidents Nixon, Ford, and Carter.

Recognizing that there was still much work to do to end discrimination, Ms. Freeman joined with others to help form the bipartisan Citizens Commission on Civil Rights. Frankie Freeman's work has earned her many awards. She holds honorary degrees from multiple universities, including Hampton University, the University of Missouri, St. Louis University, Washington University, and Howard University. Now she has been inducted into the National Bar Association's Hall of Fame.

Despite this long history of accomplishments, Frankie Freeman still knows what is important—serving the community she loves.

At age 94, she remains active in her local community by volunteering at her church. Throughout her career, she has served on several local boards, including the National Urban League of Metropolitan St. Louis and the United Way of Greater St. Louis. Along the way, she also found time to write a book about her life, which I highly recommend to anyone for an inspiring story, a uniquely American story of a woman who had a vision at a time when women who looked like her weren't supposed to have a vision.

Ms. Freeman will become the 96th recipient of the Spingarn Medal this July when she is honored during the NAACP national convention in Los Angeles. Past Spingarn medalists include Maya Angelou, W.E.B. Du Bois, and Dr. Martin Luther King, Jr. This impressive list of exceptional Americans whose company Attorney Freeman will now join gives you a sense of the caliber of person Attorney Freeman is.

There is no doubt that attorney Frankie Freeman is deserving of this distinction. I am so proud of her for being honored with this recognition of her lifelong dedication to justice and civil rights. She is such an inspiration to me, and she has been an inspiration to thousands of young people during her life, an inspiration to so many Americans, regardless of race, an inspiration for what she stands for and what she has accomplished in her lifetime. I am so grateful to call her my friend, and I thank her for all she has done for the people of St. Louis, the people of Missouri, and the people of this great Nation. Congratulations and thank you, Frankie Freeman.

Mr. President, I will spend a few moments talking about the Economic Development Administration. There are lots of times we debate legislation on the floor, and we do it in almost an academic way. We think of the proposals in the abstract. Unfortunately, there are many times we don't think about the real consequences of legislation. This year, at this time, this legislation feels very consequential to me. It feels very consequential because of what my State has gone through.

The Economic Development Administration plays a substantial role in making Federal resources available to assist communities that are affected by disasters to rebuild and recover.

As my colleagues in this Chamber are well aware, the first half of this year has been devastating to my State. Since the start of the year, 28 States have suffered at least one federally declared major disaster.

Missouri has been particularly hard hit, starting with the severe storms on New Year's Eve. We also had severe flooding along the Mississippi River, multiple tornadoes, including one that struck and caused severe damage to St. Louis and, obviously, the historic tornado that has, in fact, done such damage to the community of Joplin. We are also expecting additional extensive flooding along the Missouri River in northwest Missouri. Many families there are steeling for the worst as we wait for the waters to arrive.

When disaster strikes, the Federal Government steps in, as it should, to support the efforts of State and local government, nonprofit groups, and the faith community to help communities recover and rebuild.

In Missouri, EDA works with all 19 regional planning commissions in a collaborative role to help carry out projects deemed important by local elected officials and community leaders, particularly in the event of a natural disaster.

The Economic Development Administration's explicit mission includes the assistance of regions ''experiencing sudden and severe economic dislocations, such as those resulting from natural disasters.''

I just visited with people from a radio station in Joplin. The man I visited there was on the air for 23 straight hours. This radio station turned out to be one of the few methods of communication that everybody could rely on in the immediate hours after the tragedy struck. Eight of the twenty-eight employees who work at that radio station lost their homes, including the man who was on the air for 23 straight hours. There has been severe dislocation that has occurred in Joplin, MO. Two thousand homes were wiped away, clean gone. Another 6,000 structures, including homes and businesses, were severely damaged and are uninhabitable. There are thousands and thousands and thousands of people in Joplin, MO, who woke up that Monday morning—in fact, hadn't been to sleep the night before because they were busy huddling in rubble or were camped out at a relative's home because they had no place to go.

In the past few years alone, EDA has provided similar assistance in Kansas, Oklahoma, Arkansas, Nebraska, and North Dakota after disasters hit communities in those States. EDA has already stepped up in Joplin and established a $3 million revolving fund to assist small businesses in the area, so that people have a place they can go back to, in terms of their work, after this kind of disaster.

We have a long history in this country of rolling up our sleeves and working together in difficult times. The Federal Government has always been a partner in those efforts, providing financial and technical support. The Economic Development Administration has been part of this support. It is my hope the EDA will continue to provide this invaluable service.

That is why this legislation is more important than words on a page. It could make the difference between someone being able to stay in the community, being able to go back to work, being able to put the pieces back together after a tragic loss. I hope my colleagues take this seriously and move quickly and promptly to support this legislation.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PORTMAN. 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. PORTMAN. Mr. President, I am here to talk about the legislation that is before us—that has been before the Senate today and likely to be before the Senate tomorrow—on economic development but specifically to talk about the interest of promoting economic development and job creation.

A couple of amendments I plan to offer will help give American employers some relief from regulatory mandates that are stifling economic growth and job creation.

I hear all the time in Ohio—I am sure my colleagues hear it in their States—employers saying: We would like to expand and begin hiring again, but one of the concerns is that there is regulation that affects us. Almost every business I meet in Ohio—and I was in Ohio last week meeting with businesses in the area of energy, both companies that produce energy and companies that use a lot of energy, including chemical companies and steel companies in Ohio—have stories about some of the regulatory burdens that are making it more difficult to get jobs back and to get our economy back on track. By all accounts, the regulatory burden on employers is growing. A recent study commissioned by the Small Business Administration estimates that the annual toll, now, of Federal regulations on the American economy has reached $1.75 trillion. By the way, $1.75 trillion is more than the IRS collects in Federal income taxes.

With the unemployment rate now at 9.1 percent and the unfortunate news we heard about last month's job numbers, it should be a wake-up call to us to focus on economic development—

specifically, how do we get businesses to do more in terms of hiring, spend less on redtape, less on bureaucracy, and reduce the regulatory burden in smart ways?

The current administration has said some of the right things but actually moved in the wrong direction. We have seen a sharp increase in the last couple of years in what are deemed to be major economically significant rules. That is defined as regulations that impose a cost on the economy of $100 million or more.

According to the administration's Office of Management and Budget, the current administration has been regulating at a pace of 84 major rules per year. By way of comparison, that is about a 50-percent increase over the regulatory output during the Clinton administration, which had about 56 rules per year, and an increase from the Bush administration as well. So we have seen more regulations and more significant regulations.

I was encouraged to hear President Obama's words when he talked about the Executive order in January, which is entitled ''Improving Regulation and Regulatory Review.'' But now we need to see action. We need to see it from the administration, from individual agencies to provide real regulatory relief for job creators to be able to reduce this drag on the economy.

One commonsense step we can take is to strengthen what is called the Unfunded Mandates Relief Act. It was passed in 1995. It was bipartisan. I was a cosponsor in the House of Representatives. It is an effort to require Federal regulators to evaluate the cost of rules, to look at the benefits and the costs, and to look at less costly alternatives on rules.

The two amendments I would like to offer over the next few days as we consider the legislation before us would improve this Unfunded Mandates Reform Act, and it would reform it in ways that are entirely consistent with the principle President Obama has laid out and committed to in his Executive order on regulatory review.

The first amendment would require agencies specifically to assess potential effects of new regulations on job creation—so focusing in on jobs—and to consider market-based and nongovernmental alternatives to regulation. This would broaden the scope of the Unfunded Mandates Relief Act to require cost-benefit analysis of rules that impose direct or indirect costs of $100 million a year or more. So, again, this is for major rules of $100 million or more. It would also require agencies to adopt the least costly or least burdensome option that achieves whatever policy goals have been set out by Congress. It seems to me it is a commonsense amendment. I hope we will get bipartisan support for it.

The second amendment would extend the Unfunded Mandates Relief Act to so-called independent agencies which today are actually exempt from the cost-benefit rules that govern all other agencies. In 1995, we had this debate and determined at that time we would not extend the legislation to independent agencies. In the interim, independent agencies have been providing more and more rules, have put out more and more regulations, and are having a bigger and bigger impact. An example of an independent agency would be the SEC, the Securities and Exchange Commission, or the CFTC, which is the Commodity Futures Trading Commission. These are agencies that, although independent in the executive branch, are very much involved in putting out major rules and regulations. It is sometimes called the ''headless fourth branch'' of government because their rules are not reviewed for cost-benefit analysis, even by the OMB, the Office of Management and Budget, in its Office of Information and Regulatory Affairs, so-called OIRA.

We have looked at some GAO data and put together various studies, and it appears to us that there are about 200 regulations that were issued between 1996 until today that would be deemed to have an impact of $100 million or more on the economy but were automatically excluded from the Unfunded Mandates Relief Act because they were deemed to be from independent agencies.

So it is basically closing a loophole and closing this independent agency loophole, which I believe is a sensible reform. It has been endorsed by many people, including, interestingly, the current OIRA Administrator and the President's regulatory czar, Cass Sunstein, who, in a 2002 Law Review article, talked about the fact that this is an area where UMRA ought to be extended because, again, there were so many independent agencies that were putting out regulations impacting job creation in this country.

No regulation, whatever its source, should be imposed on American employers or on State and local governments without serious consideration of the costs, the benefits, and the availability of a least-burdensome alternative. Both these amendments would move us further toward that sensible goal, and I hope the leadership will allow these amendments to be offered. I think they fit well with the underlying legislation. If they are offered, I certainly urge my colleagues on both sides of the aisle to support them.

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

The PRESIDING OFFICER. The clerk will call.

The bill clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. DURBIN. Mr. President, I ask unanimous consent that Senators be allowed to speak as in morning business for up to 10 minutes each.

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

TRIBUTE TO LOUIS E. GIVAN

Mr. MCCONNELL. Mr. President, I rise today to recognize a distinguished Kentuckian who has worked tirelessly on behalf of our Nation's soldiers, sailors and marines for more than 40 years. Louis E. Givan, a lifelong resident of my hometown of Louisville, has played a vital role in protecting the men and women of our Armed Forces and our country's defense.

Formerly a sailor himself in the U.S. Navy, he has served for the last 11 years as the general manager of Raytheon Missile Systems operations in Louisville. I was saddened to hear of his retirement from that position this coming July 5. He will certainly be missed.

Mr. Givan—or, to those who know him, Ed—was a 1966 graduate of St. Xavier High School in Louisville and in 1970 earned his bachelor of science degree in mechanical engineering from the J.B. Speed School of Engineering at the University of Louisville. In 1968, he began working at the Naval Ordnance Station in Louisville, and he stayed at that post until 1996, in various engineering and supervisory positions.

In 1996 the Naval Ordnance Station transitioned to private ownership, and Ed's leadership was crucial in making that transition a successful one. The facility eventually became part of Raytheon Missile Systems, and Ed was appointed general manager in 2000. As general manager, Ed has led Raytheon Missile Systems in Louisville to great success, success for both the company and for the local community. They design, develop, and produce vital weapons systems for our armed forces, enabling America to have the most formidable military force in the world. Weapons produced at the Louisville facility are used by our forces in all parts of the globe, including in Iraq.

Kentucky is lucky to have benefitted from Ed's dedication, commitment to excellence, and leadership for so many years. I am sure his wife Velma; his sons Eddie, Tony, and Chris; and his grandchildren Benjamin, Nathan, Isaac, Macy and Natalie are all very proud of what Ed has accomplished. I wish him the very best in retirement, and I am sure my colleagues join me in saying that this U.S. Senate thanks Mr. Louis E. ''Ed'' Givan for his faithful service.

CRIME VICTIMS' RIGHTS ACT

Mr. KYL. Mr. President, I ask unanimous consent that the following letter be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, June 6, 2011.

Hon. ERIC H. HOLDER, Jr.,
Attorney General, U.S. Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL HOLDER: I am writing about the Justice Department's implementation of the Crime Victims' Rights Act—an act that I co-sponsored in 2004. These questions relate to an Office of Legal Counsel (''OLC'') Opinion made public on May 20, 2011 and more broadly to concerns I have heard from crime victims' advocates that the Department has been thwarting effective implementation of the Act by failing to extend the Act to the investigative phases of criminal cases and by preventing effective appellate enforcement of victims' rights. I am writing to ask you to answer these questions and explain the Department's actions in these areas.

GOVERNMENT PROTECTION OF VICTIMS' RIGHTS DURING INVESTIGATION OF A CRIME

When Congress enacted the CVRA, it intended to protect crime victims throughout the criminal justice process—from the investigative phases to the final conclusion of a case. Congress could not have been clearer in its direction that using ''best efforts'' to enforce the CVRA was an obligation of ''[o]fficers and employees of the Department of Justice and other departments and agencies of the United States engaged in the *detection, investigation*, or prosecution of crime . . . .'' 18 U.S.C. §3771(c)(1) (emphasis added). Congress also permitted crime victims to assert their rights either in the court in which formal charges had already been filed ''or, *if no prosecution is underway*, in the district court in the district in which the crime occurred.'' 18 U.S.C. §3771(d)(3) (emphasis added).

Despite Congress' clear intention to extend rights to crime victims throughout the process, the Justice Department is reading the CVRA much more narrowly. In the recent OLC opinion, for example, the Department takes the position that ''the CVRA is best read as providing that the rights identified in section 3771(a) are guaranteed from the time that criminal proceedings are initiated (by complaint, information, or indictment) and cease to be available if all charges are dismissed either voluntarily or on the merits (or if the Government declines to bring formal charges after the filing of a complaint).'' The Availability of Crime Victims' Rights Under the Crime Victims' Rights Act of 2004, Memorandum from John E. Bies (Dec. 17, 2010, publicly released May 20, 2011) (hereinafter ''OLC Opinion''). Indeed, in that same opinion, I am surprised to see the Department citing a snippet from my floor remarks during the passage of the CVRA for the proposition that crime victims can confer with prosecutors only after the formal filing of charges. See id. at 9 (citing 150 Cong. Rec. S4260, S4268 (Apr. 22, 2004) (statement of Sen. Kyl).

I did want to express my surprise that your prosecutors are so clearly quoting my remarks out of context. Here is the full passage of my remarks, which were part of a colloquy with my co-sponsor on the CVRA, Senator Feinstein:

Senator Feinstein: Section . . . (a)(5) provides a right to confer with the attorney for the Government in the case. *This right is intended to be expansive.* For example, the victim has the right to confer with the Government concerning any critical stage or disposition of the case. *The right, however, is not limited to these examples.* I ask the Senator if he concurs in this intent.

Senator Kyl: Yes. The intent of this section is just as the Senator says. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, *victims are able to confer with the Government's attorney about proceedings after charging.*

150 Cong. Rec. S4260, S4268 (Apr. 22, 2004) (statements of Sens. Feinstein & Kyl) (emphases added). Read in context, it is obvious that the main point of my remarks was that a victim's right to confer was ''intended to be expansive.'' Senator Feinstein and I then gave various examples of situations in which victims could confer with prosecutors, with the note that the right to confer was ''not limited to these examples.'' It is therefore troubling to me that in this opinion the Justice Department is quoting only a limited portion of my remarks and wrenching them out of context to suggest that I think that crime victims do not have any right to confer (or to be treated with fairness) until after charging.

In giving an example that the victims would have such rights after charging, I was not suggesting that they had no such right earlier in the process. Elsewhere in my remarks I made clear that crime victims had rights under the CVRA even before an indictment is filed. For example, in the passage quoted above, I made clear that crime victims had a right to consult about both ''the case'' and ''case proceedings''—i.e., both about how the case was being handled before being filed in court and then later how the case was being handled in court ''proceedings.'' As another example, Senator Feinstein and I explained that we had drafted the CVRA to extend a right to victims to attend only ''public'' proceedings, because otherwise the rights would extend to grand jury proceedings. See, e.g., 150 Cong. Rec. S4260, S4268 (Apr. 22, 2004) (statements of Sens. Feinstein & Kyl). Of course, no such limitation would have been necessary under the CVRA if CVRA rights attach (as the Department seems to think) only after the filing of a grand jury indictment.

Courts have already rejected the Justice Department's position that the CVRA applies only after an indictment is filed. For example, in *In re Dean*, 527 F.3d 391 (5th Cir. 2008), the Department took the position that crime victims had no right to confer with prosecutors until after the Department had reached and signed a plea agreement with a corporation (BP Products North America) whose illegal actions had resulted in the deaths of fifteen workers in an oil refinery explosion. Of course, this position meant that the victims could have no role in shaping any plea deal that the Department reached. In rejecting the Department's position, the Fifth Circuit held that ''the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims' views on the possible details of a plea bargain.'' Id. at 394.

In spite of this binding decision from the Fifth Circuit, crime victims' advocates have reported to me that the Justice Department is still proceeding in the Fifth Circuit and elsewhere on the assumption that it has no obligations to treat victims fairly or to confer with them until after charges are formally filed. Given the Fifth Circuit's Dean decision, this position appears to place the Department in violation of a binding court ruling that extends rights to thousands of crime victims in Louisiana, Mississippi, and Texas. And more generally, the Department's position simply has no grounding in the clear language of the CVRA.

My first question: What is the Justice Department doing to extend to victims their right to fair treatment and their right to confer with prosecutors when the Justice Department is negotiating pre-indictment plea agreements and non-prosecution agreements with defense attorneys, including negotiations within the Fifth Circuit?

CRIME VICTIMS' RIGHT TO APPELLATE PROTECTION

Protection of crime victims' rights in appellate courts is an important part of the CVRA. As you know, when Congress passed the CVRA, the federal courts of appeals had recognized that crime victims could take ordinary appeals to protect their rights. See, e.g., *Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (rape victim allowed to appeal district court's adverse ''rape shield statute'' ruling); *United States* v. *Kones*, 77 F.3d 66 (3rd Cir. 1996) (victim allowed to appeal adverse restitution decision). Congress sought to leave these protections in place, while expanding them to ensure that crime victims could obtain quick vindication of their rights in appellate courts by providing—in §3771(d)(3)—that ''[i]f the district court denies the relief sought, the [victim] may petition the court of appeals for a writ of mandamus.'' 18 U.S.C. §3771(d)(3). Ordinarily, whether mandamus relief should issue is discretionary. The plain language of the CVRA, however, specifically and clearly overruled such discretionary mandamus standards by directing that ''[t]he court of appeals *shall take up and decide such application forthwith* . . . .'' 18 U.S.C. §3771(d)(3) (emphasis added). As I explained when the Senate considered the CVRA:

[W]hile mandamus is generally discretionary, this provision [18 U.S.C. §3771(d)(3)] means that courts *must* review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to *broadly defend* the victims' rights.

150 CONG. REC. S4270 (Apr. 22, 2004) (statement of Sen. Kyl) (emphases added). Similarly, the CVRA's co-sponsor with me, Senator Feinstein, stated that the Act would create ''a new use of a very old procedure, the writ of mandamus. This provision will establish a procedure where a crime victim can, in essence, immediately *appeal* a denial of their rights by a trial court to the court of appeals.'' 150 CONG. REC. S4262 (statement of Sen. Feinstein) (emphases added); see also id. (statement of Sen. Kyl) (crime victims must ''be able to have . . . the appellate courts take the appeal and order relief). In short, the legislative history shows that §3771(d)(3) was intended to allow crime victims to take accelerated appeals from district court decisions denying their rights and have their appeals reviewed under ordinary standards of appellate review.

In spite of that unequivocal legislative history, the Justice Department has in past cases asserted a contrary position. In *In re Antrobus*, 519 F.3d 1123 (10th Cir. 2008), Ken and Sue Antrobus sought to obtain appellate review of a ruling by a trial court that they could not deliver a victim impact statement at the sentencing of the man who sold the murder weapon used to kill their daughter. The Tenth Circuit ruled against them on the basis that the Antrobuses were not entitled to regular appellate review, but only discretionary mandamus review. See id. at 1124–25. The Tenth Circuit did not consider the legislative history in reaching this conclusion, leading the Antrobuses to file petitions for rehearing and rehearing en banc—petitions that recounted this legislative history. In response, the Justice Department asked the Tenth Circuit to deny the victims' petitions. Remarkably, the Justice Department told the Tenth Circuit that it could ignore the

legislative history because the CVRA ''is unambiguous.'' Response of the United States, *In re Antrobus*, No. 08–4002, at 12 n.7 (10th Cir. Feb. 12, 2008).

At the time that the Justice Department filed this brief, no Court of Appeals agreed with the Tenth Circuit. At the time, three other Circuits had all issued unanimous rulings that crime victims were entitled to regular appellate review. See *In re W.R. Huff Asset Mgmt. Co.*, 409 F.3d 555, 562 (2d Cir. 2005); *Kenna v. US. Dist. Ct. for the Cent. Dist. of Ca.*, 435 F.3d 1011, 1017 (9th Cir. 2006); *In re Walsh*, 229 Fed.Appx. 58, at 60 (3rd Cir. 2007).

My next question for you is, given that the Justice Department has an obligation to use its ''best efforts,'' 18 U.S.C. §3771(c)(1), to afford crime victims their rights, how could the Department argue in Antrobus (and later cases) that the CVRA ''unambiguously'' denied crime victims regular appellate protections of their rights when three circuits had reached the opposite conclusion?

GOVERNMENT'S RIGHT TO ASSERT ERROR DENIAL OF VICTIMS' RIGHTS

To further bolster protection of crime victims' rights, Congress also included an additional provision in the CVRA—§3771(d)(4)—allowing the Justice Department to obtain review of crime victims' rights issues in appeals filed by defendants: ''In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.'' 18 U.S.C. §3771(d)(4). The intent underlying this provision was to supplement the crime victims' appeal provision found in §3771(d)(3) by permitting the Department to also help develop a body of case law expanding crime victims' rights in the many defense appeals that are filed. It was not intended to in any way narrow crime victims' rights to seek relief under §3771(d)(3). Nor was it intended to bar crime victims from asserting other remedies. For instance, it was not intended to block crime victims from taking an ordinary appeal from an adverse decision affecting their rights (such as a decision denying restitution) under 28 U.S.C. §1291. Crime victims had been allowed to take such appeals in various circuits even before the passage of the CVRA. See, e.g., *United States v. Kones*, 77 F.3d 66 (3rd Cir. 1996) (crime victim allowed to appeal restitution ruling); *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004) (crime victims allowed to appeal restitution lien issue); *Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (crime victim allowed to appeal rape shield ruling).

As I explained at the time the CVRA was under consideration, this provision supplemented those pre-existing decisions by ''allow[ing] the Government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.'' 150 CONG. REC. S4270 (Apr. 22, 2004) (statement of Sen. Kyl).

I have heard from crime victims' advocates that the Department has not been actively enforcing this provision. Indeed, these advocates tell me that they are unaware of even a single case where the Department has used this supplemental remedy. My final question: Is it true that the Department has never used this provision in even a single case in the more than six years since the CVRA was enacted?

Sincerely,

JON KYL,
U.S. Senator.

HONORING OUR ARMED FORCES

SERGEANT VORASACK T. XAYSANA

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of SGT Vorasack T. Xaysana. Sergeant Xaysana, assigned to the Headquarters and Headquarters Company, 2nd Battalion, based in Fort Hood, TX, died on April 10, 2011. Sergeant Xaysana was serving in support of Operation New Dawn in Kirkuk, Iraq. He was 30 years old.

A native of Westminster, CO, Sergeant Xaysana enlisted in the Army in 2005. During over 6 years of service, he distinguished himself through his courage and dedication to duty. Sergeant Xaysana's exemplary service quickly won the recognition of his commanding officers. He earned, among other decorations, the Iraq Campaign Medal, the Global War on Terrorism Service Medal, and the Army Good Conduct Medal.

Sergeant Xaysana worked on the front lines of battle, serving in the most dangerous areas of Iraq. Mark Twain once said, ''The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.'' Sergeant Xaysana's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Iraq. Though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Sergeant Xaysana will forever be remembered as one of our country's bravest.

To Sergeant Xaysana's parents, Thong Chanh and Manithip, and to his entire family, I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Vorasack's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

GRAZING IMPROVEMENT ACT

Mr. BARRASSO. Mr. President, I rise today to submit for the RECORD an article written by Karen Budd-Falen and published May 28, 2011, in the Wyoming Livestock Journal. The article's title is ''Leveling the Playing Field: Support for the Grazing Improvement Act of 2011.''

The title of the article is instructive. Anyone living and working in rural communities knows the playing field is not level. The National Environmental Policy Act has become the preferred tool to delay and litigate grazing permit renewals for American ranchers.

Livestock grazing on public lands has a strong tradition in Wyoming and all Western States. Ranchers are proud stewards of the land, yet the permitting process to renew their permits is severely backlogged due to litigation aimed at eliminating livestock from public land.

During times of high unemployment and increasing food prices, we need to be encouraging jobs in rural economies. We need to be fostering an environment to raise more high quality, safe, American beef and lamb; not litigating less.

That is why I introduced the Grazing Improvement Act of 2011. This legislation will provide the certainty and stability public grazing permit holders desperately need in order to continue supporting rural jobs, providing healthy food, and maintaining open spaces for recreation and wildlife.

It is time to help level the playing field for hard working ranching families across the West. Their livelihood should not be held hostage by litigation and anti-grazing special interest groups. I thank my colleagues, Senators ENZI, CRAPO, HATCH, HELLER, RISCH, and THUNE, in supporting ranching families and this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I referred.

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

[From the Wyoming Livestock Roundup, May 28, 2011]

LEVELING THE PLAYING FIELD: SUPPORT FOR THE GRAZING IMPROVEMENT ACT OF 2011

(By Karen Budd-Falen)

If jobs and the economy are the number one concern for America, why are rural communities and ranchers under attack by radical environmental groups and overzealous federal regulators?

America depends upon the hundreds of products that livestock provide, yet radical groups and oppressive regulations make it almost impossible for ranchers to stay in business. Opposition to these jobs comes in the form of litigation by radical environmental groups to eliminate grazing on public lands, radical environmental group pressure to force ''voluntary'' grazing permit buyouts from ''willing sellers,'' and holding permittees hostage to the court deference given to regulatory ''experts.'' The playing field is not level and the rancher is on the losing side. The Grazing Improvement Act of 2011 will level the playing field. I urge your support.

The Grazing Improvement Act of 2011 does the following:

1. Term of Grazing Leases and Permits. Both BLM and Forest Service term grazing permits are for a 10-year term. This bill extends that term to 20 years. This extension does not affect either the BLM's or Forest Service's ability to make interim management decisions based upon resource or other needs, nor does it impact the preference right of renewal for term grazing permits or leases.

2. Renewal, Transfer and Reissuance of Grazing Leases and Permits. This section codifies the various ''appropriation riders'' for the BLM and Forest Service requiring that permits being reissued, renewed or transferred continue to follow the existing terms and conditions until the paperwork is complete. Thus, the rancher is not held hostage to the ability of the agency to get its

job done—a job that is admittedly harder because of radical environmental appeals, litigation and FOIA requests.

This bill also codifies the ability of the BLM and Forest Service to ''categorically exclude'' grazing permit renewal, reissuance or transfer from the paperwork requirements under National Environmental Policy Act (NEPA) if the permit or lease continues current grazing management on the allotment. Minor modifications to a permit or lease can also be categorically excluded from NEPA if monitoring indicates that the current grazing management has met or is moving toward rangeland and riparian objectives and there are no ''extraordinary circumstances.'' Finally, this section allows the BLM and Forest Service to continue to set their priority and timing for permit renewal or reissuance.

3. Applicability of Administrative Procedure Act. This provision is really what levels the playing field for the rancher, against the environmental ''willing buyer'' and the arbitrary decisions of the governmental regulator.

First, this provision applies a real decision making process, with an independent hearing officer or judge, to Forest Service administrative appeals. Currently, legal challenges to Forest Service decisions are heard by the ''next higher Forest Service line officer.'' There have long been allegations that this system is significantly skewed so that the Forest Service decision maker is ''almost always right.'' For example, out of the 28 decisions that were administratively appealed in Forest Service Region 2 (Wyoming, Colorado, Kansas, Nebraska, South Dakota) from 2009 to the present, only two were rejected as being legally or factually wrong. In that same time period, in California, out of 78 appeals, only 13 decisions were either rejected or withdrawn. In Arizona and New Mexico, the Forest Service ''independent review by the next higher line officer'' only found 15 out of 83 decisions were deficient. In other words, just considering these three Forest Service regions, the agency found itself right 85 percent of the time. In a fair and equal system, no one is right that many times!

This provision would change that pattern so that Forest Service grazing permittees would appeal the decisions they believed were legally, factually or scientifically wrong to an independent law judge and the Forest Service would have to show why its decision is right, rather than the permittee having to show why the decision is wrong. The permittee would also be able to cross-examine Forest Service ''experts'' on the reasons for the decision and the agency would have to supply some justification for its decision. It is critical that Forest Service permittees have the ability to protect themselves from arbitrary decisions—an ability they do not have now.

Second, this Act would level the playing field for BLM permittees. Like the Forest Service provisions discussed above, this bill ''changes'' the current appeals system by requiring the BLM to prove its decision is legally and scientifically correct, rather than forcing the permittee to prove why the decision is legally and scientifically wrong.

Additionally, the OHA has determined that when the BLM issues a decision adversely affecting a permittee's grazing privileges, the BLM decision can still be upheld, even if the BLM did not comply with all of the grazing regulations. In short, under the current appeals system, the permittee's experts have to show why the BLM experts are wrong (a burden that is very hard to carry) and the BLM decision can still be held to be correct, even if the BLM only substantially complied with its regulations. This is not a level playing field and a problem that absolutely needs corrected.

Finally, this section also returns to the law the ''automatic stay'' provisions eliminated by the Bruce Babbitt ''Range Reform '94'' regulations, except for decisions of a temporary nature and except in emergency situations.

In truth, this bill is more than mere technical changes to erroneous agency regulations—it gives some very real protection to the permittees. For example, the Ruby Pipeline ''donation'' to Western Watersheds Project to purchase grazing preferences on a ''willing seller'' basis only works if the permittee is honestly ''willing to sell.'' However, if the permittee is always behind the curve in protecting his grazing permit and the only way he can ''win'' is by ''voluntarily selling'' his permit for pennies on the dollar, the word ''willing'' is truly compulsion. And, in the case of the Forest Service, the current administrative appeals process is like asking your father to change the decision of your mother, when your mother and father agreed on the decision before it was dictated to you.

Finally, this bill reverses the U.S. Justice Department capitulations to environmental groups during the course of recent litigation. These ''settlements'' have significantly restricted the BLM's and Forest Service's ability to legitimately use categorical exclusions to renew grazing permits. Neither the Justice Department nor the federal bureaucrats should be allowed to make Congressional policy without the Congressional branch of government.

Make no mistake—this is not just a public lands ranchers' bill; this bill will help preserve family ranches, rural communities and the American beef supply. This is an American jobs bill! I urge your support and ask that you request your Congressional representatives support this bill.

ADDITIONAL STATEMENTS

30TH ANNIVERSARY OF THE GOOD SHEPHERD FOOD BANK

● Ms. COLLINS. Mr. President. In early 1981, JoAnn and Ray Pike of Lewiston, ME, became concerned about the growing number of families and elderly in their community who were going hungry. Inspired by a newspaper story about an organization in Kansas City that received food donations from the food industry to distribute to those in need, the Pikes and their home prayer group turned concern into action.

On Palm Sunday of that year, the people of the twin cities of Lewiston-Auburn joined in a walkathon and raised $6,000. The Good Shepherd Food Bank was born. Thirty years later, it serves all 16 Maine counties, providing nourishment and hope to more than 70,000 Maine people each month.

This remarkable story of compassion started small. The first food bank was located in an apartment and garage at the Pike home. Within 8 months, the quantity of donated food outgrew that space and the operation moved to a former textile mill in Lewiston. Today, the food bank has more than 100,000-square feet of warehouse space in Lewiston, Portland, and Brewer, enough to store 12 million pounds of food per year.

At first, a handful of food companies joined this effort. Word of the good work being done in Lewiston quickly spread, and food manufacturers, distributors, and supermarkets throughout Maine stepped forward—more than 200 companies now contribute to the food bank.

Getting so much food to so many people over such a large area is a great challenge. It is a challenge that has been met by volunteers. The Good Shepherd Food Bank has established partnerships with more than 600 organizations throughout Maine—churches, charities, and civic clubs—that form a vast distribution network. This results in an operation of extraordinary efficiency. For every $1 donated to support food bank operations, $8.50 worth of food is provided.

As a founding member of the Senate Hunger Caucus, I know we have done much here in Washington to ensure food security for all, but that there is more to do. I also know that so much of the real work of helping those in need is done in our communities by caring and dedicated citizens. The Good Shepherd Food Bank of Maine is a shining example of such caring and dedication, and I congratulate this wonderful organization and its many supporters on 30 years of inspiring service.●

TRIBUTE TO MALCOLM ROSS O'NEILL

● Mr. LEVIN. Mr. President, today I wish to recognize the distinguished career of a highly decorated soldier and accomplished public servant. Following decades of unwavering service to our Nation, Dr. Malcolm Ross O'Neill recently retired as the Assistant Secretary of the Army for Acquisition, Logistics & Technology, AL&T. In his capacity as the Assistant Secretary and Army acquisition executive, Dr. O'Neill led the Army's 41,000-member acquisition workforce in its vital mission to equip and sustain the world's most capable, powerful, and respected Army.

Dr. O'Neill has made significant contributions to our national security over the course of a career spanning nearly five decades. He proudly served 34 years on active duty as an Army officer, both in peacetime and in combat. Dr. O'Neill was commissioned in the U.S. Army as a field artillery officer in 1962 and served with the 82nd Airborne Division; as an adviser with the 21st Reconnaissance Company of the 21st Army of the Republic of Vietnam Division; and assistant chief of staff, Ammunition, with the Danang Support Command in Vietnam. His first acquisition job was as a member of the source selection team for what was then called surface-to-air missile, development—now the Patriot missile system. His extensive military experience includes service as commander, U.S. Army Laboratory Command; deputy director of the Strategic Defense Initiative Organization; and director of the Ballistic Missile Defense Organization.

Under Dr. O'Neill's leadership as Assistant Secretary of the Army, the

Army acquisition community has honored its paramount commitment to meet the needs of soldiers in combat missions today. However, Dr. O'Neill also reenergized the Army's efforts to develop advanced soldier capabilities for tomorrow's conflicts. He reminded us that scientific and technical advancements play a critical role in maintaining the Army's unparalleled preeminence in the future. As the lead Army acquisition official, Dr. O'Neill made significant progress in developing a vigorous and robust science and technology portfolio incorporating the combined efforts of Army scientists, labs, advisory boards and other stakeholders. These accomplishments will leave an indelible impact on the Army's warfighting capabilities.

Dr. O'Neill's emphasis on sound management and execution of major weapon systems has helped the Army to prioritize capabilities and modify existing programs to achieve long-term success. He has played a critical role in bringing the Army requirements, resourcing, testing, and acquisition communities together to make informed decisions and adjustments within key programs. As the Army and Department of Defense continue to transform through an era of limited resources, Dr. O'Neill championed the importance of wise investments, competition, and sound acquisition strategies to ensure that more money was spent on the warfighting capabilities of our soldiers and less on overhead. The Army is in a better position to adapt to an ever-changing environment of competing needs as a result of his efforts.

Three words define this dedicated public servant: honor, integrity, and courage. The Nation is in his debt for his many accomplishments during the long and distinguished career of Malcolm Ross O'Neill.●

100TH ANNIVERSARY OF CHALLENGE DAIRY PRODUCTS

● Mr. ROBERTS. Mr. President, I would like to bring to the attention of my colleagues a milestone that has been reached by an important cooperative association responsible for the marketing and distribution of dairy products from 450 California family-owned dairies.

Challenge opened for business under the name of Challenge Cream & Butter Association 100 years ago with four employees and a wagon. That first day, Challenge sold 12 pounds of butter. Today, Challenge Butter is the largest butter brand in the West, and Challenge Dairy is the leading dairy foodservice provider in California, with eight distribution centers spanning the State in Lodi, San Leandro, Monterey, Fresno, Santa Maria, Ventura, Los Angeles, and San Diego. Challenge directly employs over 175 hard-working California citizens and has aided thousands of California dairy farmers in their success over the years. Today, more than 450 dairies are part of Challenge's cooperative, putting tens of millions of dollars into California's economy annually.

Challenge's success is made up of dedicated California dairy farmers and employees who have ensured the quality of all products produced from each of its creameries. Early on, dairymen realized marketing was and remains to be key in successfully spreading the word about the quality of their products, which was why Challenge was conceived.

The benefits of farmer cooperation were so effective that the status of every single dairyman was materially improved, just from their existence. A leader in quality improvement, Challenge established the standards all other dairy organizations followed. Thus, Challenge has figuratively held a protective umbrella over farm endeavors, for the good of the farmers and the Nation, for more than a century.

By refusing to sell any item that didn't meet the highest standards, Challenge built a reputation for quality. That reputation has grown as Challenge led the way in the dairy industry with product and manufacturing innovations such as the aluminum butter churn, the first successful metal butter churn in the world.

Now a wholly owned subsidiary of California Dairies, Inc. CDI, California's largest dairy provider and the second largest in the country, Challenge has grown to represent more than 450 dairy farmers and markets nearly half of CDI's butter supply. CDI has six manufacturing facilities that are located throughout the central valley and directly employs over 740 people.

Challenge has operated through two World Wars and the Great Depression in addition to a number of other obstacles. Through it all, the company adapted and persevered to continue fulfilling the people's need for quality dairy products and support the dairy farmers behind producing products. We believe Challenge embodies the determination and the spirit of the people of California.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1945. A communication from the Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Oversight of Contractor Ethics Programs'' ((RIN9000–AL92)(FAC 2005–52)) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1946. A communication from the Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–52; Introduction'' (FAC 2005–52) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1947. A communication from the Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Prohibition on Contracting with Inverted Domestic Corporations'' ((RIN9000–AL28)(FAC 2005–52)) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1948. A communication from the Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Technical Amendments'' (FAC 2005–52) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1949. A communication from the Senior Procurement Executive, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Small Entity Compliance Guide'' (FAC 2005–52) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1950. A communication from the Chairman, Merit Systems Protection Board, transmitting, pursuant to law, a report entitled ''Women in the Federal Government: Ambitions and Achievements''; to the Committee on Homeland Security and Governmental Affairs.

EC–1951. A communication from the Executive Director, U.S. Election Assistance Commission, transmitting, pursuant to law, a report relative to action taken on audit reports (for the period October 1, 2010 through March 31, 2011); to the Committee on Homeland Security and Governmental Affairs.

EC–1952. A communication from the Under Secretary of Defense (Policy), transmitting, pursuant to law, a report relative to the Proliferation Security Initiative; to the Committee on Homeland Security and Governmental Affairs.

EC–1953. A communication from the Director, Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1954. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the Semiannual Report of the Inspector General and the Administrator's Semiannual Management Report to Congress for the period

from October 1, 2010 to March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1955. A communication from the Administrator of the U.S. Agency for International Development, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from October 1, 2010 to March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1956. A communication from the Federal Co-Chair, Appalachian Regional Commission, transmitting, pursuant to law, the Commission's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1957. A communication from the Secretary of Labor, transmitting, pursuant to law, the Department of Labor's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1958. A communication from the Secretary of Veterans Affairs, transmitting, pursuant to law, the Department of Veterans Affairs' Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1959. A communication from the Chairman of the National Endowment for the Arts, transmitting, pursuant to law, the Semiannual Report of the Inspector General, the Chairman's Semiannual Report on Final Action Resulting from Audit Reports, Inspection Reports, and Evaluation Reports for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1960. A communication from the Commissioners, U.S. Election Assistance Commission, transmitting, pursuant to law, the Commission's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1961. A communication from the Chairman, Railroad Retirement Board, transmitting, pursuant to law, the Board's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1962. A communication from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the Commission's Semiannual Report of the Inspector General and a Management Report for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1963. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department of Energy's Semiannual Report of the Inspector General for the period from October 1, 2010 to March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1964. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the Administration's Semiannual Report of the Inspector General and the Semiannual Management Report on the Status of Audits for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1965. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Department of the Interior's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1966. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the Commission's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1967. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department of Transportation's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1968. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Department of Health and Human Service's Semiannual Report of the Inspector General for the period from October 1, 2010 through March 31, 2011; to the Committee on Homeland Security and Governmental Affairs.

EC–1969. A communication from the Senior Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model 382, 382B, 382E, 382F, and 382G Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2009–1228)) received during adjournment of the Senate in the Office of the President of the Senate on June 2, 2011; to the Committee on Commerce, Science, and Transportation.

EC–1970. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, (13) reports relative to vacancies within the Department, received during adjournment of the Senate in the Office of the President of the Senate on June 2, 2011; to the Committee on the Judiciary.

EC–1971. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report relative to the Department's activities under the Civil Rights of Institutionalized Persons Act; to the Committee on the Judiciary.

EC–1972. A communication from the Staff Director, U.S. Sentencing Commission, transmitting, pursuant to law, a report relative to the compliance of federal district courts with documentation submission requirements; to the Committee on the Judiciary.

EC–1973. A joint communication from the Under Secretary of Defense (Personnel and Readiness) and the Deputy Secretary of Veterans Affairs, transmitting, pursuant to law, a report relative to the activities of the Center of Excellence in the Mitigation, Treatment, and Rehabilitation of Traumatic Extremity Injuries, and Amputations; to the Committee on Veterans' Affairs.

EC–1974. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Plants for Planting; Establishing a Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis'' ((RIN0579–AC03)(Docket No. APHIS–2006–0011)) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1975. A communication from the Chief of Planning and Regulatory Affairs, Food and Nutrition Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Supplemental Nutrition Assistance Program: Civil Rights Protections for SNAP Households'' (RIN0584–AD89) received in the Office of the President of the Senate on May 27, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1976. A communication from the Chief of Planning and Regulatory Affairs, Food and Nutrition Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Supplemental Nutrition Assistance Program: Privacy Protections of Information from Applicant Households'' (RIN0584–AD91) received in the Office of the President of the Senate on May 27, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1977. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bromoxynil; Pesticide Tolerances'' (FRL No. 8873–9) received during adjournment of the Senate in the Office of the President of the Senate on June 1, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1978. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Ethylene Glycol; Exemption from the Requirement of a Tolerance'' (FRL No. 8870–7) received during adjournment of the Senate in the Office of the President of the Senate on June 1, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1979. A communication from the Director of the Regulatory Management Division, Office of Policy, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pyraflufen-ethyl; Pesticide Tolerances'' (FRL No. 8873–5) received during adjournment of the Senate in the Office of the President of the Senate on June 1, 2011; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1980. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to a new Unified Command Plan approved by the President; to the Committee on Armed Services.

EC–1981. A communication from the Assistant Secretary, Bureau of Political-Military Affairs, Department of State, transmitting, pursuant to law, an addendum to a certification, transmittal number: DDTC 11–027, of the proposed sale or export of defense articles, including technical data, and defense services to a Middle East country regarding any possible affects such a sale might have relating to Israel's Qualitative Military Edge over military threats to Israel; to the Committee on Armed Services.

EC–1982. A communication from the Chairman of the Board of Governors, Federal Reserve System, transmitting, pursuant to law, the 97th Annual Report of the Federal Reserve Board; to the Committee on Banking, Housing, and Urban Affairs.

EC–1983. A communication from the Senior Vice President and Chief Financial Officer, Federal Home Loan Bank of New York, transmitting, pursuant to law, the Bank's 2010 Management Report; to the Committee on Banking, Housing, and Urban Affairs.

EC–1984. A communication from the Acting Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a six-month periodic report relative to the national emergency that was declared in Executive Order 12938 with respect to the proliferation of weapons of mass destruction; to the Committee on Banking, Housing, and Urban Affairs.

EC–1985. A communication from the Assistant General Counsel, General Law, Ethics,

and Regulation, Department of the Treasury, transmitting, pursuant to law, a report relative to a vacancy in the position of Assistant Secretary (Tax Policy), received in the Office of the President of the Senate on June 3, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–1986. A communication from the General Counsel of the Federal Housing Finance Agency, transmitting, pursuant to law, the report of a rule entitled ''Record Retention for Regulated Entities and Office of Finance'' (RIN2590–AA10) received in the Office of the President of the Senate on June 6, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–1987. A communication from the Associate Director, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Taliban (Afghanistan) Sanctions Regulations'' (31 CFR Part 545) received in the Office of the President of the Senate on May 31, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–1988. A communication from the Deputy Secretary, Enforcement Division, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934'' (RIN3235–AK78) received in the Office of the President of the Senate on May 27, 2011; to the Committee on Banking, Housing, and Urban Affairs.

EC–1989. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Wyoming Regulatory Program'' (Docket No. WY–038–FOR) received in the Office of the President of the Senate on June 6, 2011; to the Committee on Energy and Natural Resources.

EC–1990. A communication from the Assistant General Counsel for Regulatory Affairs, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Requirements for Bicycles'' (RIN3041–AC95) received in the Office of the President of the Senate on May 27, 2011; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of nominations were submitted:

By Mr. ROCKEFELLER for the Committee on Commerce, Science, and Transportation.

*National Oceanic and Atmospheric Administration nomination of Michael S. Devany, to be Rear Admiral (lower half).

*Coast Guard nominations beginning with Rear Adm. (lh) Vincent B. Atkins and ending with Rear Adm. (lh) Sandra E. Stosz, which nominations were received by the Senate and appeared in the Congressional Record on May 11, 2011.

Mr. ROCKEFELLER. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

*Coast Guard nominations beginning with Michael J. Plumley and ending with Mariette C. Ogg, which nominations were received by the Senate and appeared in the Congressional Record on May 2, 2011.

*Coast Guard nomination of Kristin L. Conville, to be Lieutenant.

*Coast Guard nomination of Edward L. Lacy, to be Lieutenant.

*Coast Guard nomination of Jason M. Biggar, to be Lieutenant Commander.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CASEY (for himself and Ms. MIKULSKI):

S. 1155. A bill to amend the Child Care and Development Block Grant Act of 1990 to improve access to high quality early learning and child care for low-income children and working families, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CASEY (for himself, Mr. BEGICH, Mr. FRANKEN, and Ms. MIKULSKI):

S. 1156. A bill to assist States in making voluntary high quality universal prekindergarten programs available to 3- to 5-year olds for at least 1 year preceding kindergarten; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. GILLIBRAND:

S. 1157. A bill to require the Secretary of Agriculture to provide retail establishments with information describing recalled meat, poultry, eggs, and related food products, to require the retail establishment to communicate the recall information to consumers, to require the Food Safety Inspection Service of the Department of Agriculture to protect against certain foodborne illnesses, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BENNET:

S. 1158. A bill to promote innovative practices for the education of English learners and to help States and local educational agencies with English learner populations build capacity to ensure that English learners receive high-quality instruction that enables English learners to become proficient in English and access the academic content knowledge that English learners need to meet State college and career ready academic content standards; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. GILLIBRAND:

S. 1159. A bill to require a study on the recruitment, retention, and development of cyberspace experts; to the Committee on Armed Services.

By Mr. BINGAMAN (for himself and Ms. MURKOWSKI):

S. 1160. A bill to improve the administration of the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WEBB (for himself and Mr. CORKER):

S.J. Res. 18. A joint resolution prohibiting the deployment, establishment, or maintenance of a presence of units and members of the United States Armed Forces on the ground in Libya, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KOHL (for himself and Mr. HATCH):

S. Res. 205. A resolution designating the period beginning on June 19, 2011, and ending on June 25, 2011, as ''Polycystic Kidney Disease Awareness Week'', and raising awareness and understanding of polycystic kidney disease and the impact such disease has on patients; considered and agreed to.

By Mr. ALEXANDER (for himself, Mr. INOUYE, Mr. HOEVEN, Mrs. FEINSTEIN, Mr. ROBERTS, Ms. LANDRIEU, Mr. BROWN of Massachusetts, Mrs. BOXER, and Mr. CORKER):

S. Res. 206. A resolution designating June 20, 2011, as ''American Eagle Day'', and celebrating the recovery and restoration of the bald eagle, the national symbol of the United States; considered and agreed to.

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 17, a bill to repeal the job-killing tax on medical devices to ensure continued access to life-saving medical devices for patients and maintain the standing of United States as the world leader in medical device innovation.

S. 76

At the request of Mrs. BOXER, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 76, a bill to direct the Administrator of the Environmental Protection Agency to investigate and address cancer and disease clusters, including in infants and children.

S. 119

At the request of Mr. VITTER, the names of the Senator from Mississippi (Mr. WICKER), the Senator from Utah (Mr. HATCH), the Senator from South Carolina (Mr. GRAHAM), the Senator from Idaho (Mr. CRAPO), the Senator from Kansas (Mr. ROBERTS), the Senator from Mississippi (Mr. COCHRAN), the Senator from Iowa (Mr. GRASSLEY), the Senator from Missouri (Mr. BLUNT), the Senator from Arizona (Mr. KYL), the Senator from Arkansas (Mr. BOOZMAN), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Texas (Mrs. HUTCHISON), the Senator from Pennsylvania (Mr. TOOMEY) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 119, a bill to preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.

S. 186

At the request of Mrs. BOXER, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 186, a bill to provide for the safe and responsible redeployment of United States combat forces from Afghanistan.

S. 192

At the request of Mr. DEMINT, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 192, a bill to repeal the job-killing health care law and health care-related provisions in the Health Care and Education Reconciliation Act of 2010.

S. 195

At the request of Mr. ROCKEFELLER, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of S. 195, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 196

At the request of Mr. GRASSLEY, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 196, a bill to amend the Patient Protection and Affordable Care Act to provide for participation in the Exchange of the President, Vice President, Members of Congress, political appointees, and congressional staff.

S. 299

At the request of Mr. PAUL, the name of the Senator from West Virginia (Mr. MANCHIN) was added as a cosponsor of S. 299, a bill to amend chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law.

S. 353

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 353, a bill to provide for improvements to the United States Postal Service, and for other purposes.

S. 362

At the request of Mr. WHITEHOUSE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 362, a bill to amend the Public Health Service Act to provide for a Pancreatic Cancer Initiative, and for other purposes.

S. 366

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 366, a bill to require disclosure to the Securities and Exchange Commission of certain sanctionable activities, and for other purposes.

S. 381

At the request of Mr. TESTER, the names of the Senator from Nevada (Mr. HELLER) and the Senator from Florida (Mr. RUBIO) were added as cosponsors of S. 381, a bill to amend the Arms Export Control Act to provide that certain firearms listed as curios or relics may be imported into the United States by a licensed importer without obtaining authorization from the Department of State or the Department of Defense, and for other purposes.

S. 384

At the request of Mrs. HUTCHISON, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 384, a bill to amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research.

S. 393

At the request of Mr. REED, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 393, a bill to aid and support pediatric involvement in reading and education.

S. 394

At the request of Mr. KOHL, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 394, a bill to amend the Sherman Act to make oil-producing and exporting cartels illegal.

S. 418

At the request of Mr. HARKIN, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of S. 418, a bill to award a Congressional Gold Medal to the World War II members of the Civil Air Patrol.

S. 470

At the request of Mr. CASEY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 470, a bill to establish an Early Learning Challenge Fund to support States in building and strengthening systems of high-quality early learning and development programs and for other purposes.

S. 556

At the request of Mrs. HUTCHISON, the name of the Senator from Pennsylvania (Mr. TOOMEY) was added as a cosponsor of S. 556, a bill to amend the securities laws to establish certain thresholds for shareholder registration, and for other purposes.

S. 598

At the request of Mrs. FEINSTEIN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 598, a bill to repeal the Defense of Marriage Act and ensure respect for State regulation of marriage.

S. 652

At the request of Mr. KERRY, the name of the Senator from Connecticut (Mr. BLUMENTHAL) was added as a cosponsor of S. 652, a bill to facilitate efficient investments and financing of infrastructure projects and new job creation through the establishment of an American Infrastructure Financing Authority, to provide for an extension of the exemption from the alternative minimum tax treatment for certain tax-exempt bonds, and for other purposes.

S. 668

At the request of Mr. CORNYN, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. 668, a bill to remove unelected, unaccountable bureaucrats from seniors' personal health decisions by repealing the Independent Payment Advisory Board.

S. 697

At the request of Mr. CASEY, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 697, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for amounts paid by a spouse of a member of the Armed Services for a new State license or certification required by reason of a permanent change in the duty station of such member to another State.

S. 722

At the request of Mr. WYDEN, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 722, a bill to strengthen and protect Medicare hospice programs.

S. 738

At the request of Ms. STABENOW, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Montana (Mr. TESTER) were added as cosponsors of S. 738, a bill to amend title XVIII of the Social Security Act to provide for Medicare coverage of comprehensive Alzheimer's disease and related dementia diagnosis and services in order to improve care and outcomes for Americans living with Alzheimer's disease and related dementias by improving detection, diagnosis, and care planning.

S. 752

At the request of Mrs. FEINSTEIN, the name of the Senator from Florida (Mr. RUBIO) was added as a cosponsor of S. 752, a bill to establish a comprehensive interagency response to reduce lung cancer mortality in a timely manner.

S. 792

At the request of Mr. PRYOR, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Utah (Mr. LEE) were added as cosponsors of S. 792, a bill to authorize the waiver of certain debts relating to assistance provided to individuals and households since 2005.

S. 815

At the request of Ms. SNOWE, the names of the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Alaska (Mr. BEGICH) and the Senator from Arkansas (Mr. BOOZMAN) were added as cosponsors of S. 815, a bill to guarantee that military funerals are conducted with dignity and respect.

S. 824

At the request of Mr. BROWN of Ohio, the name of the Senator from Oregon (Mr. MERKLEY) was added as a cosponsor of S. 824, a bill to provide for enhanced mortgage-backed and asset-backed security investor protections, to prevent foreclosure fraud, and for other purposes.

S. 829

At the request of Mr. CARDIN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 829, a bill to amend title XVIII of the Social Security Act to repeal the Medicare outpatient rehabilitation therapy caps.

S. 847

At the request of Mr. LAUTENBERG, the names of the Senator from New York (Mrs. GILLIBRAND) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 847, a bill to

amend the Toxic Substances Control Act to ensure that risks from chemicals are adequately understood and managed, and for other purposes.

S. 855

At the request of Ms. STABENOW, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 855, a bill to make available such funds as may be necessary to ensure that members of the Armed Forces, including reserve components thereof, continue to receive pay and allowances for active service performed when a funding gap caused by the failure to enact interim or full-year appropriations for the Armed Forces occurs, which results in the furlough of nonemergency personnel and the curtailment of Government activities and services.

S. 891

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 891, a bill to amend title XVIII of the Social Security Act to provide for the recognition of attending physician assistants as attending physicians to serve hospice patients.

S. 1025

At the request of Mr. LEAHY, the names of the Senator from Vermont (Mr. SANDERS), the Senator from Oregon (Mr. WYDEN) and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of S. 1025, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

S. 1027

At the request of Mr. BARRASSO, the name of the Senator from North Dakota (Mr. HOEVEN) was added as a cosponsor of S. 1027, a bill to provide for the rescission of certain instruction memoranda of the Bureau of Land Management, to amend the Mineral Leasing Act to provide for the determination of the impact of proposed policy modifications, and for other purposes.

S. 1030

At the request of Ms. SNOWE, the name of the Senator from Illinois (Mr. KIRK) was added as a cosponsor of S. 1030, a bill to reform the regulatory process to ensure that small businesses are free to compete and to create jobs, and for other purposes.

S. 1048

At the request of Mr. MENENDEZ, the names of the Senator from Wisconsin (Mr. KOHL), the Senator from Washington (Ms. CANTWELL) and the Senator from Florida (Mr. RUBIO) were added as cosponsors of S. 1048, a bill to expand sanctions imposed with respect to the Islamic Republic of Iran, North Korea, and Syria, and for other purposes.

S. 1096

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 1096, a bill to amend title XVIII of the Social Security Act to improve access to, and utilization of, bone mass measurement benefits under the Medicare part B program by extending the minimum payment amount for bone mass measurement under such program through 2013.

S. 1125

At the request of Mr. LEAHY, the name of the Senator from Kentucky (Mr. PAUL) was added as a cosponsor of S. 1125, a bill to improve national security letters, the authorities under the Foreign Intelligence Surveillance Act of 1978, and for other purposes.

S.J. RES. 17

At the request of Mr. MCCONNELL, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S.J. Res. 17, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

S. CON. RES. 7

At the request of Mr. BARRASSO, the name of the Senator from Nevada (Mr. HELLER) was added as a cosponsor of S. Con. Res. 7, a concurrent resolution supporting the Local Radio Freedom Act.

S. RES. 175

At the request of Mrs. SHAHEEN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. Res. 175, a resolution expressing the sense of the Senate with respect to ongoing violations of the territorial integrity and sovereignty of Georgia and the importance of a peaceful and just resolution to the conflict within Georgia's internationally recognized borders.

S. RES. 185

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. Res. 185, a resolution reaffirming the commitment of the United States to a negotiated settlement of the Israeli-Palestinian conflict through direct Israeli-Palestinian negotiations, reaffirming opposition to the inclusion of Hamas in a unity government unless it is willing to accept peace with Israel and renounce violence, and declaring that Palestinian efforts to gain recognition of a state outside direct negotiations demonstrates absence of a good faith commitment to peace negotiations, and will have implications for continued United States aid.

At the request of Mr. CARDIN, the names of the Senator from Rhode Island (Mr. WHITEHOUSE), the Senator from Michigan (Ms. STABENOW), the Senator from Utah (Mr. LEE), the Senator from Alaska (Mr. BEGICH), the Senator from Hawaii (Mr. INOUYE), the Senator from Colorado (Mr. UDALL) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. Res. 185, supra.

AMENDMENT NO. 390

At the request of Ms. SNOWE, the names of the Senator from Indiana (Mr. COATS), the Senator from Illinois (Mr. KIRK) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of amendment No. 390 proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

AMENDMENT NO. 392

At the request of Mr. TESTER, the names of the Senator from Nebraska (Mr. NELSON) and the Senator from Utah (Mr. LEE) were added as cosponsors of amendment No. 392 proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

AMENDMENT NO. 406

At the request of Mrs. HUTCHISON, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of amendment No. 406 intended to be proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself and Ms. MURKOWSKI):

S. 1160. A bill to improve the administration of the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, today I am introducing the Department of Energy Administrative Improvement Act of 2011. The bill makes several improvements to the way the Department of Energy, DOE, conducts its business and in doing so is designed to give taxpayers a better return on their investments in DOE programs. Senator MURKOWSKI, who is the ranking member of the Energy and Natural Resources Committee, is a cosponsor of this bill. These provisions were taken from the energy bill, S. 1462, reported out of the Energy and Natural Resources Committee last Congress. The provisions in this bill were adopted unanimously in the last Congress by members of the Committee as part of our work on S. 1462. Let me briefly highlight the sections of this bill.

Section 3 was taken from the recommendations of a 2009 report by the National Academy of Public Administration, which reviewed the business practices of the Department. Similar to the Department of Defense, it requires DOE to submit a 5-year budget profile for its programs with the DOE's annual budget submission to Congress. A 5-year estimate will encourage the Department to think about long-term budget implications of programs rather than on a year-to-year basis.

Section 4 replaces a provision enacted into law in the section 1007 of the Energy Policy Act of 2005, 42 U.S.C. 7256(g), relating to Other Transactions Authority. Section 1007 was based on

the similar authority applying to the Department of Defense. Section 4 is a fresh re-write of the authority so it is organic within the Department of Energy Organization Act and not the Department of Defense's authorities. The language is largely the same in content as that in section 1007 of the Energy Policy Act of 2005. The DOE went through an extensive comment period in developing rules for the use of this authority after it was enacted into law in 2005 to ensure transparency in its development and use. This section still contains reporting requirements to Congress on the use of this authority to ensure effective oversight. The Advanced Research Projects Agency—Energy has used this authority to initiate projects with energy companies that were not traditional government contractors and I believe this is a sound addition to the contracting authorities available to the Department.

Section 5 permits the DOE to designate and protect proprietary data for a period of 5 years for transactions entered into by the Department. Section 3001 of Energy Policy Act of 1992, 42 U.S.C. 13541, contained various provisions to protect results from industry partnerships with the Department of Energy. The 1992 data protection provision was carried forward implicitly in section 1005 of the Energy Policy Act of 2005, 42 U.S.C. 16395. This section gives the Secretary of Energy explicit authority to protect proprietary data in order to promote commercialization of new technology arising from the public-private partnerships in such areas as energy storage, smart grid and advanced nuclear technologies.

Section 6 gives the Department direct hire authority for a period of two years consistent with merit principles and public notice. Similar authority, known as excepted personnel authority, originally was available to the DOE's predecessor agency, the Atomic Energy Commission. That authority transferred to the Nuclear Regulatory Commission, NRC, but not the DOE. Interestingly, the NRC with its large scientific and engineering workforce has been rated as one of the best places to work in the federal government. While flexible personnel authorities are not singularly determinative of agency performance, I believe this pilot program will be an important tool for the Department to attract the best and brightest engineers, scientists and specialized technical personnel to work on its wide array of missions.

Section 7 gives the DOE critical pay authority to hire up to 40 highly skilled individuals for key or critical mission positions at the Department, for a period of up to 4 years. This will enable DOE to attract highly qualified individuals from industry and academia for positions within the Department typical of its complicated science and engineering missions.

Section 8 gives the DOE the authority to rehire retired DOE employees for mission-critical positions without impacting their retirement annuity. Many Department employees served in excess of 20 or 30 years in programmatic positions managing large, technically complicated projects. This authority will enable continuity of knowledge transfer as newer employees are hired.

Section 9 updates the list of DOE National Laboratories in section 2 of the Energy Policy Act of 2005, 42 U.S.C. 15801(3) to reflect the name change of the Stanford Linear Accelerator Center to ''SLAC National Accelerator Laboratory''.

The Department of Energy has one of the most technical and complicated missions in the Federal Government, which includes managing our Nation's nuclear stockpile, basic and applied energy research, environmental cleanup of former cold war nuclear weapons production sites, and finally the management of large contracts spanning decades. I hope that these provisions will be helpful to the Department to efficiently conduct its missions.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1160

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy Administrative Improvement Act of 2011''.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term ''Secretary'' means the Secretary of Energy.

SEC. 3. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.

(a) IN GENERAL.—Part C of title VI of the Department of Energy Organization Act (42 U.S.C. 7251 et seq.) is amended by adding at the end the following:

''SEC. 664. FUTURE-YEARS DEPARTMENT OF ENERGY PROGRAM.

''(a) IN GENERAL.—At or about the time the budget of the President is submitted to Congress for each year under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a future-years Department of Energy program (including associated annexes) reflecting the estimated expenditures and proposed appropriations included in the budget.

''(b) FISCAL YEAR.—Any future-years Department of Energy program submitted under subsection (a) shall cover—

''(1) the fiscal year with respect to which the budget is submitted; and

''(2) at least the 4 succeeding fiscal years.

''(c) CONSISTENT AMOUNTS.—

''(1) IN GENERAL.—The Secretary shall ensure that amounts described in paragraph (2)(A) for any fiscal year are consistent with amounts described in paragraph (2)(B) for that fiscal year.

''(2) AMOUNTS.—Amounts referred to in paragraph (1) are the following:

''(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31, United States Code, for any fiscal year, as indicated in the future-years Department of Energy program submitted pursuant to subsection (a).

''(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Energy included pursuant to section 1105(a)(5) of title 31, United States Code, in the budget submitted to Congress under that section for any fiscal year.

''(d) MANAGEMENT CONTINGENCIES.—Subject to subsection (c), nothing in this section prohibit the inclusion in the future-years Department of Energy programs of amounts for management contingencies.''.

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Department of Energy Organization Act (42 U.S.C. 7101) is amended by adding at the end of the items relating to part C of title VI the following:

''Sec. 664. Future-years Department of Energy program.''.

SEC. 4. OTHER TRANSACTIONS AUTHORITY.

(a) IN GENERAL.—Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by striking subsection (g) and inserting the following:

''(g) AUTHORITY TO ENTER INTO OTHER TRANSACTIONS.—

''(1) IN GENERAL.—In addition to any other authority granted to the Secretary to enter into procurement contracts, leases, cooperative agreements, grants, and certain arrangements, the Secretary may enter into other transactions with public agencies, private organizations, or other persons on such terms as the Secretary considers appropriate to further functions vested in the Secretary, including research, development, or demonstration projects.

''(2) ADVANCE PAYMENTS.—Notwithstanding any other provision of law, the Secretary may exercise authority provided under paragraph (1) without regard to section 3324 of title 31, United States Code.

''(3) RELATIONSHIP TO OTHER LAW.—The authority of the Secretary under paragraph (1) shall not be subject to—

''(A) section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); or

''(B) section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).

''(4) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, disclosure of information described in subparagraph (B) is not required, and may not be compelled, under section 552 of title 5, United States Code, during the 5-year period beginning on the date on which the information is received by the Department.

''(B) AWARD INFORMATION.—The information described in this subparagraph is information in the records of the Department that—

''(i) was submitted—

''(I) to the Department as part of a competitive or noncompetitive process with the potential to result in an award to the person submitting the information; and

''(II) in conjunction with a transaction entered into by the Secretary pursuant to paragraph (1); and

''(ii) is—

''(I) a proposal, proposal abstract, and supporting documents;

''(II) a business plan submitted on a confidential basis; or

''(III) technical information submitted on a confidential basis.

''(5) REQUIREMENTS.—

''(A) SELECTION PROCEDURES.—In entering into transactions under paragraph (1), the

Secretary shall use such competitive, merit-based selection procedures as the Secretary determines in writing to be practicable.

''(B) DETERMINATION.—Before entering into a transaction under paragraph (1), the Secretary shall determine in writing that the use of a standard contract, grant, or cooperative agreement for the project is not feasible or appropriate.

''(C) COST SHARING.—A transaction under paragraph (1) shall be subject to cost sharing in accordance with section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).

''(D) LIMITATION ON DELEGATION.—The authority of the Secretary under this subsection may be delegated only to an officer of the Department who is appointed by the President by and with the advice and consent of the Senate and may not be redelegated to any other person.

''(6) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of the Department of Energy Administrative Improvement Act of 2011 and annually thereafter, the Secretary shall submit to Congress an annual report on the transactions entered into by the Secretary pursuant to the authorities provided under this subsection.

''(7) REPORT.—

''(A) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this paragraph, the term 'nontraditional Government contractor' has the meaning given the term 'nontraditional defense contractor' in section 845(f) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

''(B) REPORT.—Not later than 2 years after the date of enactment of this subparagraph, and 2 years thereafter, the Comptroller General of the United States shall submit to Congress a report describing—

''(i) the use by the Department of authorities under this section, including the ability to attract nontraditional Government contractors; and

''(ii) whether additional safeguards are necessary to carry out the authorities.''.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—The final rule of the Department of Energy entitled ''Assistance Regulations'' (71 Fed. Reg. 27158 (May 9, 2006)) shall be applicable to transactions under section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) (as amended by subsection (a)).

(2) REGULATIONS.—The Secretary may revise, supplement, or replace such regulations as the Secretary determines necessary to implement the amendment made by subsection (a).

SEC. 5. PROTECTION OF RESULTS.

(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, during a period of not more than 5 years after the development of information in any transaction authorized to be entered into by the Department of Energy, the Secretary may provide appropriate protections against the dissemination of the information, including exemption from subchapter II of chapter 5 of title 5, United States Code.

(b) APPLICABLE INFORMATION.—This section applies to information that—

(1) results from a transaction entered into by the Secretary pursuant to this title or an amendment made by this title; and

(2) is of a character that would be protected from disclosure under section 552(b)(4) of title 5, United States Code, if the information had been obtained from a person other than an agent or employee of the Federal Government.

SEC. 6. DIRECT HIRE AUTHORITY.

(a) IN GENERAL.—Notwithstanding sections 3304 and 3309 through 3318 of title 5, United States Code, the Secretary may, upon a determination that there is a severe shortage of candidates or a critical hiring need for particular positions, recruit and directly appoint highly qualified scientists, engineers, or critical technical personnel into the competitive service.

(b) EXCEPTION.—The authority granted under subsection (a) shall not apply to positions in the excepted service or the Senior Executive Service.

(c) REQUIREMENTS.—In exercising the authority granted under subsection (a), the Secretary shall ensure that any action taken by the Secretary—

(1) is consistent with the merit principles of section 2301 of title 5, United States Code; and

(2) complies with the public notice requirements of section 3327 of title 5, United States Code.

(d) TERMINATION OF EFFECTIVENESS.—The authority provided by this section terminates effective on the date that is 2 years after the date of enactment of this Act.

SEC. 7. CRITICAL PAY AUTHORITY.

(a) IN GENERAL.—Notwithstanding section 5377 of title 5, United States Code, and without regard to the provisions of that title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 of that title (relating to classification and pay rates), the Secretary may establish, fix the compensation of, and appoint individuals to critical positions needed to carry out the functions of the Department of Energy, if the Secretary certifies that—

(1) the positions—

(A) require expertise of an extremely high level in a scientific or technical field; and

(B) the Department of Energy would not successfully accomplish an important mission without such an individual; and

(2) exercise of the authority is necessary to recruit an individual exceptionally well qualified for the position.

(b) LIMITATIONS.—The authority granted under subsection (a) shall be subject to the following conditions:

(1) The number of critical positions authorized by subsection (a) may not exceed 40 at any 1 time in the Department of Energy.

(2) The term of an appointment under subsection (a) may not exceed 4 years.

(3) An individual appointed under subsection (a) may not have been a Department of Energy employee within the 2 years prior to the date of appointment.

(4) Total annual compensation for any individual appointed under subsection (a) may not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3, United States Code.

(5) An individual appointed under subsection (a) may not be considered to be an employee for purposes of subchapter II of chapter 75 of title 5, United States Code.

(c) NOTIFICATION.—Each year, the Secretary shall submit to Congress a notification that lists each individual appointed under this section.

SEC. 8. REEMPLOYMENT OF CIVILIAN RETIREES.

(a) IN GENERAL.—Notwithstanding part 553 of title 5, Code of Federal Regulations (relating to reemployment of civilian retirees to meet exceptional employment needs), or successor regulations, the Secretary may approve the reemployment of an individual to a particular position without reduction or termination of annuity if the hiring of the individual is necessary to carry out a critical function of the Department of Energy for which the Department has encountered exceptional difficulty in recruiting or retaining suitably qualified candidates.

(b) LIMITATIONS.—An annuitant hired with full salary and annuities under the authority granted by subsection (a)—

(1) shall not be considered an employee for purposes of subchapter III of chapter 83 and chapter 84 of title 5, United States Code;

(2) may not elect to have retirement contributions withheld from the pay of the annuitant;

(3) may not use any employment under this section as a basis for a supplemental or recomputed annuity; and

(4) may not participate in the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code.

(c) LIMITATION ON TERM.—The term of employment of any individual hired under subsection (a) may not exceed an initial term of 2 years, with an additional 2-year appointment under exceptional circumstances.

SEC. 9. DEFINITION OF NATIONAL LABORATORY.

Section 2(3) of the Energy Policy Act of 2005 (42 U.S.C. 15801(3)) is amended by striking subparagraph (P) and inserting the following:

''(P) SLAC National Accelerator Laboratory.''.

By Mr. WEBB (for himself and Mr. CORKER):

S.J. Res. 18. A joint resolution prohibiting the deployment, establishment, or maintenance of a presence of units and members of the United States Armed Forces on the ground in Libya, and for other purposes; to the Committee on Foreign Relations.

Mr. WEBB. Mr. President, I am pleased to come to the Senate floor, along with my colleague, Senator CORKER, a fellow member of the Senate Foreign Relations Committee, to speak about a joint resolution we are introducing today that deals with the situation in Libya.

This is introduced as a joint resolution rather than as an amendment on the current legislation because I believe this matter is serious enough that our body should actually consider this as a stand-alone piece of legislation and coordinate it with the House and get this passed with due speed.

This resolution, first of all, contains a statement of policy that American Armed Forces should be used exclusively to defend and advance our national security interests.

Second, it prohibits the deployment, establishment, or maintenance of ground troops in Libya, with two notable exceptions. The first would be for the purpose of the immediate personal defense of American Government officials, including diplomatic representatives, which I believe would be an important exclusion once and if we decide to conduct negotiations or reestablish our Embassy inside Libya. The other exception would be for the purpose of rescuing members of our Armed Forces who would be in Libya and would be under imminent danger.

It also prohibits the awarding of a contract to private security contractors to conduct, establish, or maintain any activities on the ground in Libya.

This language in section 2 is similar to language that passed the House last week with a vote of 416 to 5.

Section 3 includes a sense of Congress that the President should request congressional authorization for the continuation of American involvement in

ongoing activities in Libya, and that the Congress, in its constitutional role, should debate and consider this matter expeditiously.

Sections 4 and 5 require the transmission of information to the Congress on a wide variety of information that, to this point, we have not been properly included on. That language, in some form, passed the House last Friday with a vote of 268 to 145.

Again, I appreciate very much Senator CORKER joining me as the principal cosponsor of this joint resolution.

I would like to explain why I believe it is important we take this measure as a body, as a Congress, in response to the actions the President took in Libya nearly 3 months ago.

First, we know, and we are reminded every day, that our economy is going through a terrible crisis, even as we are expending hundreds of billions of dollars every year on wars in the most vitriolic and contentious parts of the world.

Second, our military has been engaged in continuous combat operations for nearly 10 years. We still have 45,000 military members in Iraq despite a stated commitment for a full withdrawal by the end of this year. We have about 100,000 troops in Afghanistan, and the prospect for a meaningful withdrawal in the short term does not look good.

When we examine the conditions under which the President ordered our military into action in Libya, we are faced, in my view, with the prospect of a very troubling, if not downright odd, historical precedent that has the potential to haunt us for decades.

The issue in play is not simply whether the President should ask the Congress for a declaration of war, nor is it wholly about whether the President has violated the edicts of the War Powers Act, which, in my view, he clearly has. The issue for us to consider is whether a President—any President—can unilaterally begin, and continue, a military campaign for reasons that he alone defines as meeting the demanding standards of a vital national interest worthy of risking American lives and expending billions of dollars of our taxpayers' money.

What was the standard in this case? The initial justification was that a dictator might retaliate against people who rebelled against him. I do not make light of the potential tragedy involved in such a possibility, although it should be pointed out that there are a lot of dictators in this world and very few democracies in this particular region, which gives this standard a pretty broad base if a President decides to use it again. Then, predictably, once military operations began in Libya, the stated goal became regime change, with combat now having dragged on for nearly 3 months.

So in a world filled with cruelty, the question becomes whether a President—any President—should be able to pick and choose when and where to use military force using such a vague standard. Actually that is the most important question. Given our system of government, who should decide? Even if a President should unilaterally decide on the basis of overwhelming, vital national interests that requires immediate action, how long should that decision be honored, and to what lengths should our military go before the matter is able to come under the proper scrutiny and boundaries of our Congress?

Let's review the bidding. What did it look like when our President ordered our military into action in Libya, and what has happened since? Was our country under attack or under the threat of an imminent attack? Was a clearly vital national interest at stake? Were we invoking the inherent right of self-defense as outlined in the United Nations charter? Were we called upon by treaty commitments to come to the aid of an ally? Were we responding in kind to an attack on our forces elsewhere as we did in the 1986 raids in Libya when I was in the Pentagon, after American soldiers had been killed in a disco in Berlin? Were we rescuing Americans in distress as we did in Grenada in 1983? No, we were not.

The President followed no clear historical standard when he unilaterally decided to use force in Libya. Once this action continued beyond his original definition of ''days, not weeks,'' he did not seek the approval of Congress. While he has discussed this matter with some Members of Congress, he has not formally conferred with the legislative branch.

I believe it is appropriate to question on whose behalf this continuing action is being taken, and, most importantly at this point, what is going to be asked of our military in the coming months, assuming the Qadhafi regime does fall? This is not even a civil war.

As Secretary of Defense Gates commented to me when I asked him that question during a hearing on the Armed Services Committee recently: You don't have a civil war when there is no clearly formed opposition movement. It has been a random rebellion. We can empathize with the frustrations of this rebellion, but looking into the future, the only thing the opponents of the present regime all seem to agree on is that Qadhafi should go.

As I have said repeatedly over the past few months, this matters greatly when one considers what the aftermath of this action could entail for the international community.

An additional curiosity is that we still recognize this regime even as we have been participating for nearly 3 months in actions designed to destroy it. I have raised this matter repeatedly with our State Department. We have not severed relations with this regime, nor have we recognized a successor regime. We have merely suspended our relations. So we are looking at something of a historical anomaly. We are participating in attacks on a regime that we recognize, on behalf of rebel forces that are so amorphous that we don't, and we really do not know what is going to replace the regime that we recognize once it is gone.

Obviously, I am not raising these points out of any lasting love for Mr. Qadhafi or any hopes that he continues in his present position. But let's be very clear. This is a region rife with tribalism, fierce loyalties, and brutal retaliation. In this part of the world the lust for revenge upon those who try to destroy you is not a characteristic that is unique to Mr. Qadhafi. Whether Qadhafi stays or falls, that is very likely going to be the future at some level in Libya, and this is not a place for American troops to be sent in order to sort out this mess. If other nations decide to do so, I certainly have no objection. But our military is stretched too thin, our economy is too fragile, and the reasons for us to continue in this effort are too ill-defined.

So it is important for the Congress to step in and to clearly define the boundaries of our involvement. We should be saying without hesitation that no American ground personnel should be introduced into Libya, now or in the future. We should also be insisting on fair and open communication from this administration to the Congress rather than the stonewalling that has characterized the past 3 months.

This is not a political issue for me. Rather, it is an issue of how our government is structured. I would submit that this issue has historical consequences. Our three branches of government were carefully designed by the Founding Fathers to guard against hasty decisions or judgments that would not be fully in our national interest. For centuries, the English monarchs had been able to wage wars of choice, with the only restriction being whether Parliament would raise enough taxes to fund their adventurous armies. Our Founding Fathers said no. The Framers of the Constitution deliberately gave the Congress the specific power to rein in such conduct and to protect our people from unwise choices by insisting on a democratic consensus.

The structure of international relations has become much more complex since then, but the principle is still vital, and it still must hold.

Over the past 10 years, in pursuit of a workable formula with which to defend our Nation against legitimate threats, we have allowed the balance of power in our constitutional system to tilt far too heavily to the executive branch. There could be no clearer example of why the Congress must finally say ''enough is enough'' than the situation we now face in Libya. We must clearly say, as a governing body, that there are boundaries on the conduct of a President—any President—when it comes to his or her unilateral decision to use military force. We should be clear that American military forces—in uniform or not—do not belong on the ground in Libya.

We should make it clear that we will not be deterred in requests for information that allow us to perform our responsibilities. To do less than that would bring us back in time, to a system of government our forefathers risked their lives to improve upon. We are not the Parliament of King Charles. I believe my fellow Members would agree that our role as a legislative body is more than that of collecting taxes so that the President—any President—can raise armies and fight wars of his own choosing. And that is why I am asking every Senator to support this legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. CORKER. Mr. President, I am pleased to join the distinguished Senator from Virginia, the former Secretary of the Navy, in the introduction of this joint resolution, along with Senator LEE from Utah. I look forward to a debate of this resolution next week which I hope will end up passing both bodies and which calls for a number of answers we have been requesting to come forth.

I wish to discuss the ongoing situation in Libya where—specifically U.S. participation in NATO military operations authorized by the United Nations' Security Council resolution passed on March 17, 2011. For those of you listening, you heard me correctly. It was authorized by the United Nations, not the U.S. Congress. We are spending roughly $2 million per day on a mission on which the President has yet to broadly consult Congress.

I find it unbelievable that the President would seek the approval of the United Nations and the Arab League for military operations over Libya while sidelining the body that speaks for the American people, not even answering our questions. This is not consultation, nor is the President heeding the concerns of his own constituents.

For many weeks now, I and many colleagues, for that matter, have attempted to gain answers to some of the most basic questions about what we are doing in Libya. Through hearings in the Foreign Relations Committee, we have not received these answers. We have asked for specific witnesses and received no response. This is not consultation.

In my ongoing attempts to receive answers to these questions, I sent a letter to Secretary Clinton and Secretary Gates on April 14, 2011, specifically outlining five questions. I have the letter here and ask unanimous consent to have this letter printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 14, 2011.

Hon. HILLARY RODHAM CLINTON,
Secretary of State, U.S. Department of State, Washington, DC.

Hon. ROBERT M. GATES,
Secretary of Defense, U.S. Department of Defense, Washington, DC.

DEAR SECRETARY CLINTON AND SECRETARY GATES: It has now been nearly one month since the United States first engaged in coalition operations in Libya. Since that time, there has been relatively infrequent information sharing with the Congress regarding the full scope of U.S. involvement in the conflict. Administration officials have assured Congress that the United States was playing only a supporting role in ongoing operations in Libya, and those operations did not include kinetic operations. Yesterday, April 13, 2011, it was revealed during a Pentagon briefing that three U.S. aircraft assigned to NATO had fired ordnance. This seems contradictory to the information we have previously received and is an example of the disconnect between Congress and the administration on the nature of the U.S. role in Libya. To that end, I ask that you provide the following:

(1) A full accounting of U.S. assets assigned to the mission and how they are being utilized.

(2) Requests the U.S. has received from coalition partners and Libyan opposition forces for materiel and support—both fulfilled and denied.

(3) The contents of additional U.S. offers of assistance.

(4) Plans to offer additional assistance to Libyan opposition forces.

(5) All meetings that the administration has engaged in with coalition partners, the Libya contact group and the Libyan opposition forces to discuss the operations and political future of Libya.

I thank you for your service to our country, and I look forward to your prompt reply to my request.

Sincerely,

BOB CORKER,
U.S. Senator.

Mr. CORKER. Mr. President, today, 1 day shy of 8 weeks later, I finally received a response. This response did not come from Secretary Clinton. It did not come from Secretary Gates. This response came from the Acting Assistant Secretary of State for Legislative Affairs and only paid lipservice to one of my five specific requests for information.

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

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

U.S. DEPARTMENT OF STATE,
Washington, DC, June 6, 2011.

Hon. BOB CORKER,
U.S. Senate.

DEAR SENATOR CORKER: Thank you for your letter of April 14 regarding the State Department's effort to assist the coalition and support the people of Libya. The past three months have demonstrated Colonel Qadhafi's unrelenting efforts to kill those who wish to instill democracy in Libya and the use of barbarous, indiscriminant bombing of cities and vital civilian infrastructure. These acts further delegitimize Qadhafi as a leader of the Libyan people.

The State Department is working to ensure the coalition remains united behind the goal of protecting the people of Libya. We continue to work closely with coalition and regional governments to isolate Qadhafi and create support for the opposition. This effort includes the termination of diplomatic status for Libyan diplomats still supporting the regime and the freezing of all regime assets. As the situation evolves, we continue to evaluate further options to increase pressure on Qadhafi to step down. We are also considering options to provide the opposition the financial wherewithal it needs to support itself.

Along with looking at multiple ways to increase pressure on the Qadhafi regime, the State Department is looking at better ways to provide humanitarian assistance to civilians in conflict areas. We are assessing options for assistance we could provide to the Libyan people and are consulting directly with the opposition and our international partners. Some aid has been identified; the President directed up to $25 million in nonlethal items from U.S. government stocks, including medical supplies, uniforms, boots, tents, personal protective gear, and prepackaged rations.

We continue working with the international community to determine the best way to support the Transitional National Council (TNC) in meeting its financial needs. The May 5 Libya Contact Group meeting in Rome endorsed the creation of a Temporary Financial Mechanism, which will help facilitate and coordinate financial assistance. Additionally, the United States is providing $53.5 million in humanitarian assistance to support people affected by the crisis.

Chris Stevens, U.S. Envoy to the TNC, remains in Benghazi and continues to hold productive meetings with high-level members of the TNC. In addition to Secretary Clinton's meetings with TNC leadership, Mr. Stevens regularly meets with senior TNC leaders to better understand the steps they are undertaking to build a democracy based on universal principles of respect for human rights and rule of law. While we are working closely with the TNC, we also continue to meet with a broad spectrum of Libyans involved in the opposition writ large.

Thank you again for your interest and support for Libya. Please do not hesitate to contact us again if we can be of further assistance on this or any other matter.

Sincerely,

JOSEPH E. MACMANUS,
Acting Assistant Secretary, Legislative Affairs.

Mr. CORKER. Mr. President, this is unacceptable. This is an unacceptable way to treat a coequal branch of the U.S. Government that is granted certain responsibilities to our Armed Forces by the Founders of our country. Without these answers, Members of Congress are unable to assess critical questions and debate whether we should continue to engage in military operations in Libya.

That is why I am pleased to join my colleagues, Senator WEBB and Senator LEE, in introducing S.J. Res. 18 today. This is a joint resolution drawing on language that already passed the House of Representatives last week, and it requires the President to answer 21 questions critical to determining whether engagement in Libya is in the vital national interest of the United States.

This joint resolution further expresses the sense of Congress that the President should request authorization from Congress for the continuation of U.S. involvement in ongoing NATO activities in Libya.

It says Congress should fully debate and consider such a request in an expedient manner. I can't imagine there is anybody in this body who would not like to debate this issue on the floor, regardless of how they may feel about this conflict. We owe it to every man and woman who puts on a uniform to serve our country and to every taxpayer who funds the operation to be clear that our entry into any conflict has been thoughtfully considered, contains clear justification, a clear mission, and a clear debate of the risks and benefits. The information sought by this joint resolution will help us meet those obligations.

I look forward to the Senate considering this joint resolution in the near future—hopefully next week.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 205—DESIGNATING THE PERIOD BEGINNING ON JUNE 19, 2011, AND ENDING ON JUNE 25, 2011, AS ''POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK'', AND RAISING AWARENESS AND UNDERSTANDING OF POLYCYSTIC KIDNEY DISEASE AND THE IMPACT SUCH DISEASE HAS ON PATIENTS

Mr. KOHL (for himself and Mr. HATCH) submitted the following resolution; which was considered and agreed to:

S. RES. 205

Whereas polycystic kidney disease, known as ''PKD'', is one of the world's most prevalent life-threatening genetic diseases, affecting an estimated 600,000 people in the United States, including newborns, children, and adults regardless of sex, age, race, geography, income or ethnicity;

Whereas there are 2 forms of polycystic kidney disease, autosomal dominant (ADPKD), affecting 1 in 500 people worldwide, and autosomal recessive (ARPKD), a rare form, affecting 1 in 20,000 live births and frequently leading to early death;

Whereas polycystic kidney disease causes multiple cysts to form on both kidneys (ranging in size from a pinhead to a grapefruit), leading to an increase in kidney size and weight;

Whereas polycystic kidney disease is a systemic disease that causes damage to the kidneys and the cardiovascular, endocrine, hepatic, and gastrointestinal systems;

Whereas patients with polycystic kidney disease often experience no symptoms early in the disease, and many patients do not realize they have polycystic kidney disease until other organs are affected;

Whereas symptoms of polycystic kidney disease may include high blood pressure, chronic pain in the back, sides or abdomen, blood in the urine, urinary tract infection, heart disease, and kidney stones;

Whereas polycystic kidney disease is the number one genetic cause of kidney failure in the United States;

Whereas more than half of polycystic kidney disease patients will reach kidney failure and require dialysis or a kidney transplant to survive, thus placing an extra strain on dialysis and kidney transplantation resources;

Whereas there is no treatment or cure for polycystic kidney disease; and

Whereas there are thousands of volunteers nationwide dedicated to expanding essential research, fostering public awareness and understanding, educating patients and their families about polycystic kidney disease to improve treatment and care, providing appropriate moral support, and encouraging people to become organ donors: Now, therefore, be it

Resolved, That the Senate—

(1) designates the period beginning on June 19, 2011, and ending on June 25, 2011, as ''Polycystic Kidney Disease Awareness Week'';

(2) supports the goals and ideals of Polycystic Kidney Disease Awareness Week, to raise public awareness and understanding of polycystic kidney disease;

(3) recognizes the need for additional research to find treatments and a cure for polycystic kidney disease; and

(4) encourages the people of the United States and interested groups to support Polycystic Kidney Disease Awareness Week through appropriate ceremonies and activities, to promote public awareness of polycystic kidney disease, and to foster understanding of the impact of such disease on patients and their families.

SENATE RESOLUTION 206—DESIGNATING JUNE 20, 2011, AS ''AMERICAN EAGLE DAY'', AND CELEBRATING THE RECOVERY AND RESTORATION OF THE BALD EAGLE, THE NATIONAL SYMBOL OF THE UNITED STATES

Mr. ALEXANDER (for himself, Mr. INOUYE, Mr. HOEVEN, Mrs. FEINSTEIN, Mr. ROBERTS, Ms. LANDRIEU, Mr. BROWN of Massachusetts, Mrs. BOXER, and Mr. CORKER) submitted the following resolution; which was considered and agreed to:

S. RES. 206

Whereas on June 20, 1782, the bald eagle was officially designated as the national emblem of the United States by the founding fathers at the Second Continental Congress;

Whereas the bald eagle is the central image of the Great Seal of the United States;

Whereas the image of the bald eagle is displayed in the official seal of many branches and departments of the Federal Government, including—

(1) the Office of the President;

(2) the Office of the Vice President;

(3) Congress;

(4) the Supreme Court;

(5) the Department of the Treasury;

(6) the Department of Defense;

(7) the Department of Justice;

(8) the Department of State;

(9) the Department of Commerce;

(10) the Department of Homeland Security;

(11) the Department of Veterans Affairs;

(12) the Department of Labor;

(13) the Department of Health and Human Services;

(14) the Department of Energy;

(15) the Department of Housing and Urban Development;

(16) the Central Intelligence Agency; and

(17) the Postal Service;

Whereas the bald eagle is an inspiring symbol of—

(1) the spirit of freedom; and

(2) the democracy of the United States;

Whereas, since the founding of the Nation, the image, meaning, and symbolism of the bald eagle have played a significant role in the art, music, history, commerce, literature, architecture, and culture of the United States;

Whereas the bald eagle is prominently featured on the stamps, currency, and coinage of the United States;

Whereas the habitat of bald eagles exists only in North America;

Whereas, by 1963, the population of bald eagles that nested in the lower 48 States had declined to approximately 417 nesting pairs;

Whereas, due to the dramatic decline in the population of bald eagles in the lower 48 States, the Secretary of the Interior listed the bald eagle as an endangered species on the list of endangered species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas caring and concerned individuals from the Federal, State, and private sectors banded together to save, and help ensure the recovery and protection of, bald eagles;

Whereas, on July 20, 1969, the first manned lunar landing occurred in the Apollo 11 Lunar Excursion Module, which was named ''Eagle'';

Whereas the ''Eagle'' played an integral role in achieving the goal of the United States of landing a man on the Moon and returning that man safely to Earth;

Whereas, in 1995, as a result of the efforts of those caring and concerned individuals, the Secretary of the Interior listed the bald eagle as a threatened species on the list of threatened species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas, by 2007, the population of bald eagles that nested in the lower 48 States had increased to approximately 10,000 nesting pairs, an increase of approximately 2,500 percent from the preceding 40 years;

Whereas, in 2007, the population of bald eagles that nested in the State of Alaska was approximately 50,000 to 70,000;

Whereas, on June 28, 2007, the Secretary of the Interior removed the bald eagle from the list of threatened species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas bald eagles remain protected in accordance with—

(1) the Act of June 8, 1940 (16 U.S.C. 668 et seq.) (commonly known as the ''Bald Eagle Protection Act of 1940''); and

(2) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

Whereas, on January 15, 2008, the Secretary of the Treasury issued 3 limited edition bald eagle commemorative coins under the American Bald Eagle Recovery and National Emblem Commemorative Coin Act (Public Law 108–486; 118 Stat. 3934);

Whereas the sale of the limited edition bald eagle commemorative coins issued by the Secretary of the Treasury has raised approximately $7,800,000 for the nonprofit American Eagle Foundation of Pigeon Forge, Tennessee to support efforts to protect the bald eagle;

Whereas, if not for the vigilant conservation efforts of concerned Americans and the enactment of strict environmental protection laws (including regulations) the bald eagle would probably be extinct;

Whereas the American Eagle Foundation has brought substantial public attention to the cause of the protection and care of the bald eagle nationally;

Whereas November 4, 2010, marked the 25th anniversary of the American Eagle Foundation;

Whereas the dramatic recovery of the population of bald eagles—

(1) is an endangered species success story; and

(2) an inspirational example for other wildlife and natural resource conservation efforts around the world;

Whereas the initial recovery of the population of bald eagles was accomplished by the concerted efforts of numerous government agencies, corporations, organizations, and individuals; and

Whereas the continuation of recovery, management, and public awareness programs for bald eagles will be necessary to ensure—

(1) the continued progress of the recovery of bald eagles; and

(2) that the population and habitat of bald eagles will remain healthy and secure for future generations: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 20, 2011, as ''American Eagle Day'';

(2) applauds the issuance of bald eagle commemorative coins by the Secretary of the Treasury as a means by which to generate critical funds for the protection of bald eagles; and

(3) encourages—

(A) educational entities, organizations, businesses, conservation groups, and government agencies with a shared interest in conserving endangered species to collaborate and develop educational tools for use in the public schools of the United States; and

(B) the people of the United States to observe American Eagle Day with appropriate ceremonies and other activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 416. Mr. VITTER submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table.

SA 417. Mr. PORTMAN submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 418. Mr. PORTMAN submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 419. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 420. Mr. CARDIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 421. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 422. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 423. Mrs. HUTCHISON (for herself, Mr. BARRASSO, Mr. BURR, Mr. INHOFE, Mr. PORTMAN, Mr. RISCH, Mr. HATCH, Mr. ALEXANDER, Mr. KYL, and Mr. MORAN) submitted an amendment intended to be proposed by her to the bill S. 782, supra; which was ordered to lie on the table.

SA 424. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 425. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 426. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 427. Mr. MERKLEY submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 428. Mr. MERKLEY (for himself and Ms. SNOWE) proposed an amendment to the bill S. 782, supra.

SA 429. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 430. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 431. Mr. MORAN (for himself and Mr. INHOFE) submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 432. Mr. CASEY submitted an amendment intended to be proposed by him to the bill S. 782, supra; which was ordered to lie on the table.

SA 433. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 782, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 416. Mr. VITTER submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 22. STABILITY OVERSIGHT COUNCIL AUTHORITY.

(a) REPEAL OF ENHANCED SUPERVISION AUTHORITY.—The Financial Stability Act of 2010 (15 U.S.C. 5311 et seq.) is amended by striking sections 113 (12 U.S.C. 5323), 114 (12 U.S.C. 5324), 115 (12 U.S.C. 5325), and 165 (12 U.S.C. 5365).

(b) CONFORMING AMENDMENTS TO THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.—The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203) is amended—

(1) in section 2 (12 U.S.C. 5301), by striking paragraph (13);

(2) in section 102 (12 U.S.C. 5311)

(A) in subsection (a)(4), by striking subparagraph (D); and

(B) in subsection (c), by striking ''(other than section 113(b))'';

(3) in section 112(a)(2) (12 U.S.C. 5322(a)(2))—

(A) in subparagraph (H), by striking '', or because of their activities pursuant to section 113''; and

(B) in subparagraph (N)(iv), by striking ''section 113 or'';

(4) in section 117 (12 U.S.C. 5327)—

(A) in subsection (b), by striking '', as if the Council had made a determination under section 113 with respect to that entity''; and

(B) in subsection (c), by striking ''whether the company meets the standards under section 113(a) or 113(b), as applicable, and'';

(5) in section 120(a) (12 U.S.C. 5330(a)), by striking '', including standards enumerated in section 115,'';

(6) in section 121—

(A) by striking subsection (c); and

(B) by redesignating subsection (d) as subsection (c);

(7) in section 155(d) (12 U.S.C. 5345(d)), by striking ''based on the considerations for establishing the prudential standards under section 115,'';

(8) in section 166 (12 U.S.C. 5366), by striking ''or a bank holding company described in section 165(a)'' each place that term appears;

(9) in section 170 (12 U.S.C. 5370)—

(A) by striking subsection (b); and

(B) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively;

(10) in section 211(f) (12 U.S.C. 5391(f)), by striking '' or the Board of Governors under section 165''; and

(11) in section 716(i) (15 U.S.C. 8305(i)), by striking ''as regulated under section 113'' each place that term appears.

(c) CONFORMING AMENDMENTS TO THE FEDERAL RESERVE ACT.—Section 11(s)(2)(B) of the Federal Reserve Act (12 U.S.C. 248(s)(2)(B)), as added by section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended by striking ''; and'' and all that follows through the end of subparagraph (C) and inserting a period.

(d) CONFORMING AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended—

(1) by striking ''or a bank holding company described in section 165(a) of the Financial Stability Act of 2010'' each place that term appears; and

(2) by striking ''in accordance with section 165(d) of that Act''.

SEC. 23. REESTABLISHING THE FEDERAL RESERVE LENDER OF LAST RESORT FUNCTION.

(a) RULEMAKING REQUIRED.—Notwithstanding any other provision of law, the Board of Governors of the Federal Reserve System (in this Act referred to as the ''Board''), in consultation with the Secretary of the Treasury (in this Act referred to as the ''Secretary''), shall, not later than 12 months after the date of enactment of this Act, issue rules that shall govern the creation of any emergency stabilization actions by the Board.

(b) REQUIREMENTS.—At a minimum, rules required under this Act shall, with respect to emergency stabilization actions described in subsection (a), including with respect to debt guarantee actions by and lender of last resort functions of the Board, and any action of the Board under section 13(3) of the Federal Reserve Act (other than discount window lending)—

(1) prescribe under what circumstances the program may and may not be used in the future;

(2) prescribe how the program shall ensure that it will only be used by solvent companies and will not be used to prevent failure of otherwise failing firms;

(3) prohibit the use of equity as collateral, and determine what type of collateral the Board will accept against emergency lending to ensure that all lending is done against collateral adequate to prevent the Federal Reserve System from incurring losses on the loan;

(4) establish how the Board of Governors and the Secretary shall ensure that the program does not allocate credit involving significant amounts of funding to specific segments of the financial system through decisions based on criteria other than the values of collateral posted or artificially prop up certain segments of the economy;

(5) establish procedures by which the Board would promulgate initial rules, and modify and amend such rules, to ensure a proper notice and comment period, including publicly documenting the need for the rule change; and

(6) include any other factors that the Board, in consultation with the Secretary, deems appropriate.

SEC. 24. DISCLOSURES OF USE OF EMERGENCY LENDING AUTHORITY.

The Board shall promptly, not later than 1 year after the date of any determination by the Board on whether to exercise its emergency lending authority, including with respect to debt guarantee actions by and lender of last resort functions of the Board, and any action of the Board under section 13(3) of

the Federal Reserve Act (other than discount window lending), make available to the public on its website, information on each such exercise of the emergency lending authority of the Board, including—

(1) all terms of the loan;

(2) collateral pledged;

(3) the method of valuation of collateral;

(4) repayment information;

(5) such other information as is relevant to the program;

(6) the identity of all of the companies that were granted a loan; and

(7) the identity of all companies that were denied a loan and the reasons for such denial.

SA 417. Mr. PORTMAN submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. INCLUSION OF APPLICATION TO INDEPENDENT REGULATORY AGENCIES.

(a) IN GENERAL.—Section 421(1) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658(1)) is amended by striking '', but does not include independent regulatory agencies''.

(b) EXEMPTION FOR MONETARY POLICY.—The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) is amended by inserting after section 5 the following:

''SEC. 6. EXEMPTION FOR MONETARY POLICY.

''Nothing in title II, III, or IV shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

SA 418. Mr. PORTMAN submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. UNFUNDED MANDATES REFORM.

(a) REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.—

(1) REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.—Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) is amended—

(A) by striking the section heading and inserting the following:

''SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.'';

(B) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(C) by striking subsection (a) and inserting the following:

''(a) DEFINITION.—In this section, the term 'cost' means the cost of compliance and any reasonably foreseeable indirect costs, including revenues lost as a result of an agency rule subject to this section.

''(b) IN GENERAL.—Before promulgating any proposed or final rule that may have an annual effect on the economy of $100,000,000 or more (adjusted for inflation), or that may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more (adjusted for inflation) in any 1 year, each agency shall prepare and publish in the Federal Register an initial and final regulatory impact analysis. The initial regulatory impact analysis shall accompany the agency's notice of proposed rulemaking and shall be open to public comment. The final regulatory impact analysis shall accompany the final rule.

''(c) CONTENT.—The initial and final regulatory impact analysis under subsection (b) shall include—

''(1)(A) an analysis of the anticipated benefits and costs of the rule, which shall be quantified to the extent feasible;

''(B) an analysis of the benefits and costs of a reasonable number of regulatory alternatives within the range of the agency's discretion under the statute authorizing the rule, including alternatives that—

''(i) require no action by the Federal Government; and

''(ii) use incentives and market-based means to encourage the desired behavior, provide information upon which choices can be made by the public, or employ other flexible regulatory options that permit the greatest flexibility in achieving the objectives of the statutory provision authorizing the rule; and

''(C) an explanation that the rule meets the requirements of section 205;

''(2) an assessment of the extent to which—

''(A) the costs to State, local and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

''(B) there are available Federal resources to carry out the rule;

''(3) estimates of—

''(A) any disproportionate budgetary effects of the rule upon any particular regions of the Nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector; and

''(B) the effect of the rule on job creation or job loss, which shall be quantified to the extent feasible; and

''(4)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;

''(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

''(C) a summary of the agency's evaluation of those comments and concerns.'';

(D) in subsection (d) (as redesignated by paragraph (2) of this subsection), by striking ''subsection (a)'' and inserting ''subsection (b)''; and

(E) in subsection (e) (as redesignated by paragraph (2) of this subsection), by striking ''subsection (a)'' each place that term appears and inserting ''subsection (b)''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for the Unfunded Mandates Reform Act of 1995 is amended by striking the item relating to section 202 and inserting the following:

''Sec. 202. Regulatory impact analyses for certain rules.''.

(b) LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.—Section 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1535) is amended by striking section 205 and inserting the following:

''SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

''Before promulgating any proposed or final rule for which a regulatory impact analysis is required under section 202, the agency shall—

''(1) identify and consider a reasonable number of regulatory alternatives within the range of the agency's discretion under the statute authorizing the rule, including alternatives required under section 202(b)(1)(B); and

''(2) from the alternatives described under paragraph (1), select the least costly or least burdensome alternative that achieves the objectives of the statute.''.

SA 419. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. 22. PERMANENT REAUTHORIZATION OF EB–5 REGIONAL CENTER PROGRAM.

Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''pilot'' each place such term appears; and

(2) in subsection (b), by striking ''until September 30, 2012''.

SA 420. Mr. CARDIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ____. MATCHING FUNDS FOR APPALACHIAN DEVELOPMENT HIGHWAY PROJECTS.

Section 120(j)(1)(A) of title 23, United States Code, is amended by striking ''and the Appalachian development highway system program under section 14501 of title 40''.

SA 421. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. 22. BORDER FENCE COMPLETION.

(a) MINIMUM REQUIREMENTS.—Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subparagraph (A), by adding at the end the following: ''Fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under this subparagraph.'';

(2) in subparagraph (B)—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) not later than 1 year after the date of the enactment of the Economic Development Revitalization Act of 2011, complete the construction of all the reinforced fencing and the installation of the related equipment described in subparagraph (A).''; and

(3) in subparagraph (C), by adding at the end the following:

''(iii) FUNDING NOT CONTINGENT ON CONSULTATION.—Amounts appropriated to carry out this paragraph may not be impounded or otherwise withheld for failure to fully comply with the consultation requirement under clause (i).''.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the progress made in completing the reinforced fencing required under section

102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by subsection (a); and

(2) the plans for completing such fencing not later than 1 year after the date of the enactment of this Act.

SA 422. Mr. PAUL submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. _____. REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY.

(a) SHORT TITLE.—This section may be cited as the ''Regulations From the Executive in Need of Scrutiny Act of 2011'' or the ''REINS Act''.

(b) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress finds the following:

(A) Section 1 of article I of the United States Constitution grants all legislative powers to Congress.

(B) Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes.

(C) By requiring a vote in Congress, this Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the people of the United States for the laws imposed upon them.

(2) PURPOSE.—The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process.

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—Chapter 8 of title 5, United States Code, is amended to read as follows:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''§ 801. Congressional review

''(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule;

''(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within sections 804(2)(A), 804(2)(B), and 804(2)(C);

''(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

''(v) the proposed effective date of the rule.

''(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

''(i) a complete copy of the cost-benefit analysis of the rule, if any;

''(ii) the agency's actions under title 5 of the United States Code, sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions under sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, 1533, 1534, and 1535); and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

''(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

''(3) A major rule relating to a report submitted under paragraph (1) shall take effect upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.

''(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

''(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

''(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 802.

''(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

''(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

''(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

''(A) necessary because of an imminent threat to health or safety or other emergency;

''(B) necessary for the enforcement of criminal laws;

''(C) necessary for national security; or

''(D) issued pursuant to any statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

''(A) in the case of the Senate, 60 session days, or

''(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

''(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register on—

''(I) in the case of the Senate, the 15th session day, or

''(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

''(ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

''(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.

''(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

''§ 802. Congressional approval procedure for major rules

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced on or after the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress approves the rule submitted by the __ __ relating to __ __.' (The blank spaces being appropriately filled in).

''(1) In the House, the majority leader of the House of Representatives (or his designee) and the minority leader of the House of Representatives (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 legislative days after Congress receives the report referred to in section 801(a)(1)(A).

''(2) In the Senate, the majority leader of the Senate (or his designee) and the minority leader of the Senate (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 session days after Congress receives the report referred to in section 801(a)(1)(A).

''(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

''(2) For purposes of this section, the term 'submission date' means the date on which the Congress receives the report submitted under section 801(a)(1).

''(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

''(d)(1) In the Senate, when the committee or committees to which a joint resolution is

referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

''(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e)(1) In the House of Representatives, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 legislative days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the appropriate calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th legislative day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

''(2)(A) A motion in the House of Representatives to proceed to the consideration of a resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

''(B) Debate in the House of Representatives on a resolution shall be limited to not more than two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to reconsider the vote by which a resolution is agreed to or disagreed to.

''(C) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

''(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

''(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply with respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

''(1) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(2) the vote on final passage shall be on the joint resolution of the other House.

''(g) The enactment of a resolution of approval does not serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, does not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule.

''(h) This section and section 803 are enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''§ 803. Congressional disapproval procedure for nonmajor rules

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: 'That Congress disapproves the nonmajor rule submitted by the __ __ relating to __ __, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

''(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

''(2) For purposes of this section, the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the nonmajor rule is published in the Federal Register, if so published.

''(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

''(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

''(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

''(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

''(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

''(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

''(1) The joint resolution of the other House shall not be referred to a committee.

''(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

''(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(B) the vote on final passage shall be on the joint resolution of the other House.

''§ 804. Definitions

''For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1);

''(2) the term 'major rule' means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

''(A) an annual effect on the economy of $100,000,000 or more;

''(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

''(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets;

''(3) the term 'nonmajor rule' means any rule that is not a major rule; and

''(4) the term 'rule' has the meaning given such term in section 551, except that such term does not include—

''(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

''(B) any rule relating to agency management or personnel; or

''(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of nonagency parties.

''§ 805. Judicial review

''(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

''(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

''§ 806. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

''§ 807. Effective date of certain rules

''Notwithstanding section 801—

''(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

''(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.''.

SA 423. Mrs. HUTCHISON (for herself, Mr. BARRASSO, Mr. BURR, Mr. INHOFE, Mr. PORTMAN, Mr. RISCH, Mr. HATCH, Mr. ALEXANDER, Mr. KYL, and Mr. MORAN) submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page __, between lines __ and __, insert the following:

SEC. ___. EFFECTIVE DATE OF PPACA.

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of the Patient Protection and Affordable Care Act (Public Law 111–148) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), including the amendments made by such Acts, that are not in effect on the date of enactment of this Act shall not be in effect until the date on which final judgment is entered in all cases challenging the constitutionality of the requirement to maintain minimum essential coverage under section 5000A of the Internal Revenue Code of 1986 that are pending before a Federal court on the date of enactment of this Act.

(b) PROMULGATION OF REGULATIONS.—Notwithstanding any other provision of law, the Federal Government shall not promulgate regulations under the Patient Protection and Affordable Care Act (Public Law 111–148) or the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), including the amendments made by such Acts, or otherwise prepare to implement such Acts (or amendments made by such Acts), until the date on which final judgment is entered in all cases challenging the constitutionality of the requirement to maintain minimum essential coverage under section 5000A of the Internal Revenue Code of 1986 that are pending before a Federal court on the date of enactment of this Act.

SA 424. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. [2__]. MARGIN RULES; SECURITIES LAWS AMENDMENTS.

(a) MARGIN RULES.—

(1) CAPITAL AND MARGIN REQUIREMENTS.—Section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)) is amended by adding at the end the following:

''(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The margin requirements of this subsection shall not apply to swaps in which 1 of the counterparties is not—

''(A) a swap dealer or major swap participant;

''(B) an investment fund that—

''(i) has issued securities (other than debt securities) to more than 5 unaffiliated persons;

''(ii) would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) but for paragraph (1) or (7) of subsection (c) of that section; and

''(iii) is not primarily invested in physical assets (including commercial real estate) directly or through an interest in an affiliate that owns the physical assets;

''(C) a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502); or

''(D) a commodity pool.

''(5) MARGIN TRANSITION RULES.—Swaps entered into before the date on which final rules are required to be promulgated under section 712(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8302(e)) shall be exempt from the margin requirements under this subsection.''.

(2) MAJOR SWAP PARTICIPANT.—Section 1a(33)(A) of the Commodity Exchange Act (7 U.S.C. 1a(33)(A)) is amended by striking clause (ii) and inserting the following:

''(ii) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or''.

(b) SECURITIES LAWS AMENDMENTS.—

(1) MARGIN REQUIREMENTS.—Section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 780-10(e)), as added by section 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, is amended by adding at the end the following:

''(4) APPLICABILITY WITH RESPECT TO COUNTERPARTIES.—The margin requirements of this subsection shall not apply to security-based swaps in which 1 of the counterparties is not—

''(A) a security-based swap dealer or major security-based swap participant;

''(B) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)), but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)), that is not primarily invested in physical assets (including commercial real estate) directly or through interest in its affiliates that own such assets;

''(C) a regulated entity, as defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502); or

''(D) a commodity pool.

''(5) MARGIN TRANSITION RULES.—Security-based swaps entered into before the date on which final rules are required to be published under section 712(a)(5) of the Wall Street Transparency and Accountability Act of 2010 (15 U.S.C. 8302(a)(5)) are exempt from the margin requirements of this subsection.''.

(2) DEFINITIONS.—Section 3(a)(67)(A)(ii)(II) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67)(A)(ii)(II)), as amended to read as follows:

''(II) whose outstanding security-based swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets;''.

(c) EFFECTIVE DATE.—The amendments made by this section shall have the same effective date as provided in section 774 of the Wall Street Transparency and Accountability Act of 2010 (15 U.S.C. 77b note).

SA 425. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, insert the following:

SEC. _____. DECREASE SPENDING NOW ACT.

(a) SHORT TITLE.—This section may be cited as the ''Decrease Spending Now Act''.

(b) RESCISSION OF UNOBLIGATED DISCRETIONARY APPROPRIATIONS.—

(1) IN GENERAL.—Of the unobligated balances of discretionary appropriations on the date of enactment of this Act, $45,000,000,000 is rescinded.

(2) IMPLEMENTATION.—

(A) IN GENERAL.—The Director of the Office of Management and Budget shall determine which appropriation accounts the rescission under paragraph (1) shall apply to and the amount that each such account shall be reduced by pursuant to such rescission.

(B) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress listing the accounts reduced by the rescission in paragraph (1) and the amounts rescinded from each such account.

(3) EXCEPTIONS.—The rescission under paragraph (1) shall not apply to the Department of Defense, the Department of Veterans Affairs, or the Social Security Administration.

SA 426. Mr. RUBIO submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. 22. RESCISSION OF UNOBLIGATED DISCRETIONARY APPROPRIATIONS.

(a) IN GENERAL.—Of the unobligated balances of discretionary appropriations on the date of enactment of this Act, $3,000,000,000 is rescinded.

(b) IMPLEMENTATION.—

(1) IN GENERAL.—The Director of the Office of Management and Budget shall determine which appropriation accounts the rescission under subsection (a) shall apply to and the amount that each such account shall be reduced by pursuant to such rescission.

(2) REPORT.—Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress listing the accounts reduced by the rescission in subsection (a) and the amounts rescinded from each such account.

(c) EXCEPTIONS.—The rescission under subsection (a) shall not apply to the Department of Defense, the Department of Veterans Affairs, or the Social Security Administration.

SA 427. Mr. MERKLEY submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. IDENTIFICATION OF QUALIFIED CENSUS TRACTS BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

(a) DESIGNATION OF QUALIFIED CENSUS TRACTS.—Not later than 2 weeks after the date on which the Secretary of Housing and Urban Development receives from the Census Bureau the data obtained from each decennial census relating to census tracts, the Secretary of Housing and Urban Development shall identify census tracts that meet the requirements of section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 (determined without regard to Secretarial designation) and shall deem such census tracts to be qualified census tracts (as defined in such section) solely for purposes of determining which areas qualify as HUBZones under section 3(p)(1)(A) of the Small Business Act (15 U.S.C. 632(p)(1)(A)).

(b) EFFECTIVE DATE.—The Administrator of the Small Business Administration shall designate a date that is not later than 3 months after the date on which the Secretary of Housing and Urban Development identifies qualified census tracts under subsection (a) as the effective date for areas that qualify as HUBZones under section 3(p)(1)(A) of the Small Business Act (15 U.S.C. 632(p)(1)(A)).

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) the date on which a census tract is designated as a qualified census tract for purposes of section 42 of the Internal Revenue Code of 1986; or

(2) the method used by the Secretary of Housing and Urban Development to designate census tracts as qualified census tracts in a year in which the Secretary of Housing and Urban Development receives no data from the Census Bureau relating to census tract boundaries.

SA 428. Mr. MERKLEY (for himself and Ms. SNOWE) proposed an amendment to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ____—REGULATION OF MORTGAGE SERVICING

SEC. ____1. SHORT TITLE.

This title may be cited as the ''Regulation of Mortgage Servicing Act of 2011''.

SEC. ____2. DEFINITIONS.

In this title, the following definitions shall apply:

(1) ALTERNATIVE TO FORECLOSURE.—The term ''alternative to foreclosure''—

(A) means a course of action with respect to a mortgage offered by a servicer to a borrower as an alternative to a covered foreclosure action; and

(B) includes a short sale and a deed in lieu of foreclosure.

(2) BORROWER.—The term ''borrower'' means a mortgagor under a mortgage who is in default or at risk of imminent default, as determined by the Director, by rule.

(3) COVERED FORECLOSURE ACTION.—The term ''covered foreclosure action'' means a judicial or nonjudicial foreclosure.

(4) DIRECTOR.—The term ''Director'' means the Director of the Bureau of Consumer Financial Protection.

(5) INDEPENDENT REVIEWER.—The term ''independent reviewer''—

(A) means an entity that has the expertise and capacity to determine whether a borrower is eligible to participate in a loan modification program; and

(B) includes—

(i) an entity that is not a servicer; and

(ii) a division within a servicer that is independent of, and not under the same immediate supervision as, any division that makes determinations with respect to applications for loan modifications or alternatives to foreclosure.

(6) LOAN MODIFICATION PROGRAM.—The term ''loan modification program''—

(A) means a program or procedure designed to change the terms of a mortgage in the case of the default, delinquency, or imminent default or delinquency of a mortgagor; and

(B) includes—

(i) a loan modification program established by the Federal Government, including the Home Affordable Modification Program of the Department of the Treasury; and

(ii) a loan modification program established by a servicer.

(7) MORTGAGE.—The term ''mortgage'' means a federally related mortgage loan, as defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602), that is secured by a first or subordinate lien on residential real property.

(8) SERVICER.—The term ''servicer''—

(A) has the same meaning as in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)); and

(B) includes a person responsible for servicing a pool of mortgages.

SEC. ____3. SINGLE POINT OF CONTACT.

(a) CASE MANAGER REQUIRED.—A servicer shall assign 1 case manager to each borrower that seeks a loan modification or an alternative to foreclosure.

(b) DUTIES OF CASE MANAGER.—The case manager assigned under subsection (a) shall be an individual who—

(1) manages the communications between the servicer and the borrower;

(2) has the authority to make decisions about the eligibility of the borrower for a loan modification or an alternative to foreclosure;

(3) is available to communicate with the borrower by telephone and email during business hours; and

(4) remains assigned to the borrower until the earliest of—

(A) the date on which the borrower accepts a loan modification or an alternative to foreclosure;

(B) the date on which the servicer forecloses on the mortgage of the borrower; and

(C) the date on which a release of the mortgage of the borrower is recorded in the appropriate land records office, as determined by the Director, by rule.

(c) ASSISTANCE FOR CASE MANAGERS.—A servicer may assign an employee to assist a case manager assigned under subsection (a), if the case manager remains available to communicate with the borrower by telephone and email.

SEC. ____4. DETERMINATION OF ELIGIBILITY FOR LOAN MODIFICATION PROGRAM OR ALTERNATIVE TO FORECLOSURE REQUIRED BEFORE FORECLOSURE.

(a) INITIATION OF COVERED FORECLOSURE ACTIONS.—A servicer may not initiate a covered foreclosure action against a borrower unless the servicer has—

(1) completed a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(2) made a reasonable effort to obtain the information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(3) offered the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for the loan modification or alternative to foreclosure.

(b) SUSPENSION OF COVERED FORECLOSURE ACTIONS.—

(1) IN GENERAL.—A servicer shall suspend a covered foreclosure action that was initiated before the date of enactment of this title until the servicer—

(A) completes a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(B) notifies the borrower of the determination under subparagraph (A); and

(C) offers the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for a loan modification or an alternative to foreclosure.

(2) SUSPENSION.—During the period of the suspension under paragraph (1), a servicer may not—

(A) send a notice of foreclosure to a borrower;

(B) conduct or schedule a sale of the real property securing the mortgage of the borrower; or

(C) cause final judgment to be entered against the borrower.

(3) REASONABLE EFFORTS.—A servicer is not required to suspend a covered foreclosure action under paragraph (1) if the servicer—

(A) makes a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(B) has not received information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure before the end of the applicable period under subsection (c).

(4) RULE OF CONSTRUCTION.—Nothing in this section may be construed to require a servicer to delay a foreclosure that results from—

(A) a borrower abandoning the residential real property securing a mortgage; or

(B) the failure of the borrower to qualify for or meet the requirements of a loan modification program.

(c) REASONABLE EFFORT TO OBTAIN NECESSARY INFORMATION.—A servicer shall be deemed to have made a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure if—

(1) during the 30-day period beginning on the date of delinquency of the borrower, the servicer attempts to establish contact with the borrower by—

(A) making not fewer than 4 telephone calls to the telephone number on record for the borrower, at different times of the day; and

(B) sending not fewer than 2 written notices to the borrower at the address on record for the borrower, at least 1 of which shall be delivered by certified mail, requesting that the borrower contact the servicer;

(2) in the case that the borrower responds in writing or by telephone to an attempt to establish contact under paragraph (1), the servicer—

(A) notifies the borrower, in writing, that the servicer lacks information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure; and

(B) sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 30 days after the date on which the servicer sends the request;

(3) in the case that the servicer receives from the borrower some, but not all, of the information requested under paragraph (2)(B) on or before the date that is 30 days after the date on which the servicer sends the notice under paragraph (2), the servicer sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 15 days after the date on which the servicer sends the request; and

(4) in the case that the servicer does not receive from the borrower all information requested under paragraph (3) on or before the date that is 15 days after the date on which the servicer sends the request under paragraph (3), the servicer notifies the borrower that the servicer intends to initiate or continue a covered foreclosure action.

SEC. _____5. THIRD PARTY REVIEW.

Before a servicer notifies a borrower that the borrower is not eligible for a loan modification or an alternative to foreclosure, the servicer shall obtain the services of an independent reviewer to—

(1) review the file of the borrower; and

(2) determine whether the borrower is eligible for a loan modification or an alternative to foreclosure.

SEC. _____6. BAR TO FORECLOSURE ACTIONS.

(a) IN GENERAL.—Subject to subsection (b), a violation of this title shall be a bar to a covered foreclosure action.

(b) EFFECT OF SUBSEQUENT COMPLIANCE.—If a servicer is in compliance with this title, the servicer may bring or proceed with a covered foreclosure action, without regard to a prior violation of this title by the servicer.

SEC. _____7. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Director, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, shall issue regulations to carry out this title.

SEC. _____8. REPORT.

Not later than 1 year after the date of enactment of this Act, the Director shall submit to Congress a report that contains—

(1) an evaluation of the effect of this title on—

(A) State law; and

(B) communication between servicers and borrowers; and

(2) a description of any problems concerning the implementation of this title.

SA 429. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. [2__]. EXEMPTION OF LESSER PRAIRIE CHICKEN FROM ENDANGERED SPECIES ACT OF 1973.

Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) is amended by adding at the end the following:

''(j) EXEMPTION OF LESSER PRAIRIE CHICKEN.—This Act shall not apply to the lesser prairie chicken.''.

SA 430. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 27, line 6, strike ''$500,000,000'' and insert ''$300,000,000''.

SA 431. Mr. MORAN submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. PRESCRIBED FIRES IN FLINT HILLS REGION.

(a) FINDINGS.—Congress finds that—

(1) the Flint Hills Region of Kansas and Oklahoma contains the world's largest share of the remaining tallgrass prairie, and is the only place in which that habitat occurs in landscape proportions;

(2) only 4 percent of the presettlement tallgrass prairie in North America survives to this day, and 80 percent of that prairie is located in Kansas;

(3) the Flint Hills Region is also home to certain declining avian species, such as the greater prairie chicken and Henslow's sparrow, that cannot continue to exist without large expanses of native tallgrass prairie in an original state;

(4) the Flint Hills Region is a significant corridor for migrating shorebirds, such as the American golden plover, the buff-breasted sand-piper, and the upland sandpiper;

(5) beginning in the mid-19th century, cattlemen understood that the richness of the Flint Hills grasses depended on a good spring burn—something they learned from the Native Americans;

(6) fire still thrives in the Flint Hills because the ranchers, and others using the land, understand that the natural ecosystem depends on fire;

(7) ranchers, landowners, and conservation groups use prescribed burns to mimic the seasonal fires that have shaped the tallgrass prairie for thousands of years;

(8) areas not burned for several years develop mature grasses and thicker, thatch-like vegetation, a habitat that is preferred by invasive species;

(9) the Flint Hills Region is a place in the United States that is an example of the prevailing agricultural system working essentially in tandem with an ancestral native ecosystem, preserving most of the complexity and the dynamic processes that helped shape the area; and

(10) due to the uniqueness of the Flint Hills tallgrass prairie and the historic manner in which the tallgrass prairie has been managed by fire—

(A) prescribed burn practices used as of the date of enactment of this Act to manage the Flint Hills tallgrass prairie should be allowed to continue; and

(B) ambient air data resulting from fires used for that management should be not be included in determinations of compliance with the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) PRESCRIBED FIRES.—The Clean Air Act is amended by inserting after section 329 (42 U.S.C. 7628) the following:

''SEC. 330. PRESCRIBED FIRES IN FLINT HILLS REGION.

''(a) DEFINITIONS.—In this section:

''(1) FLINT HILLS REGION.—

''(A) IN GENERAL.—The term 'Flint Hills Region' means the band of hills located in eastern Kansas and north-central Oklahoma.

''(B) INCLUSIONS.—The term 'Flint Hills Region' includes—

''(i) Butler, Chase, Chautauqua, Clay, Cowley, Dickinson, Elk, Geary, Greenwood, Harvey, Jackson, Lyon, Marion, Marshall, Morris, Ottawa, Pottawatomie, Riley, Saline, Shawnee, Wabaunsee, Washington, and Woodson Counties in the State of Kansas; and

''(ii) Osage, Tulsa, and Washington counties in the State of Oklahoma.

''(2) PRESCRIBED FIRE.—The term 'prescribed fire' means a fire that is set or managed by a person with the goal of enhancing a fire-dependent ecosystem or enhancing the productivity of agricultural grazing land, irrespective of the frequency with which the burn occurs.

''(b) EXCLUSION OF DATA.—In determining whether, with respect to a specific air pollutant, an exceedance or violation of a national ambient air quality standard has occurred, or for any other purpose under this Act, a State and the Administrator shall exclude data from a particular air quality monitoring location if emissions from 1 or more prescribed fires in the Flint Hills Region cause a concentration of the air pollutant at the location to be in excess of the standard.

''(c) SPECIFIC LIMITATIONS.—If emission data is excluded under subsection (b) from a particular air quality monitoring station because of emissions from 1 or more prescribed fires in the Flint Hills Region—

''(1) the Administrator shall not, as a result of the emissions, find under section 113 that a State has failed to enforce, or that a person has violated, a State implementation plan (for national primary or secondary ambient air quality standards) under section 110; and

''(2) a State shall not, as a result of the emissions, find that a person has violated, or bring an enforcement action for violation of, a State implementation plan (for national primary or secondary ambient air quality standards) under section 110.

''(d) PROHIBITION AGAINST SMOKE MANAGEMENT PLANS.—The Administrator shall not require, and a State shall not adopt, a smoke management plan under this Act in connection with any prescribed fire in the Flint Hills Region.

''(e) NOT A STATIONARY SOURCE.—No building, structure, facility, or installation may be treated as a stationary source under this Act as a result of 1 or more prescribed fires in the Flint Hills Region.

''(f) NO TITLE V PERMIT REQUIRED.—No person shall be required to obtain or modify a permit under title V in connection with a prescribed fire in the Flint Hills Region.''.

SA 432. Mr. CASEY submitted an amendment intended to be proposed by him to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

On page 29, after line 20, add the following:

SEC. 22. MINORITY BUSINESS DEVELOPMENT PROGRAM.

(a) DEFINITIONS.—In this section:

(1) HISTORICALLY DISADVANTAGED INDIVIDUAL.—The term ''historically disadvantaged individual'' means any individual who is a member of a group that is designated as eligible to receive assistance under section 1400.1 of title 15, Code of Federal Regulations, as in effect on January 1, 2009.

(2) PRINCIPAL.—The term ''principal'' means any person that the National Director determines exercises significant control over the regular operations of a business entity.

(3) PROGRAM.—The term ''Program'' means the Minority Business Development Program established under subsection (b).

(b) PROGRAM REQUIRED.—The National Director of the Minority Business Development Agency shall establish the Minority Business Development Program to provide contract procurement assistance to qualified minority businesses.

(c) QUALIFIED MINORITY BUSINESS.—

(1) CERTIFICATION.—For purposes of the Program, the National Director may certify as a qualified minority business any entity that satisfies each of the following:

(A) Not less than 51 percent of the entity is directly and unconditionally owned or controlled by historically disadvantaged individuals.

(B) Each officer or other individual who exercises control over the regular operations of the entity is a historically disadvantaged individual.

(C) The net worth of each principal of the entity is not greater than $2,000,000. (The equity of a disadvantaged owner in a primary personal residence shall be considered in this calculation.)

(D) The principal place of business of the entity is in the United States.

(E) Each principal of the entity maintains good character in the determination of the National Director.

(F) The entity engages in competitive and bona fide commercial business operations in not less than one sector of industry that has a North American Industry Classification System code.

(G) The entity submits reports to the National Director at such time, in such form, and containing such information as the National Director may require.

(H) Such other requirements as the National Director considers appropriate for purposes of the Program.

(2) TERM OF CERTIFICATION.—A certification under this subsection shall be for a term of 5 years and may not be renewed.

(d) SET-ASIDE CONTRACTING OPPORTUNITIES.—

(1) IN GENERAL.—The National Director may enter into agreements with the United States Government and any department, agency, or officer thereof having procurement powers for purposes of providing for the fulfillment of procurement contracts and providing opportunities for qualified minority businesses with regard to such contracts.

(2) QUALIFICATIONS ON PARTICIPATION.—The National Director shall by rule establish requirements for participation under this subsection by a qualified minority business in a contract.

(3) ANNUAL LIMIT ON NUMBER OF CONTRACTS PER QUALIFIED MINORITY BUSINESS.—A qualified minority business may not participate under this section in contracts in an amount that exceeds $10,000,000 for goods and services each fiscal year.

(4) LIMITS ON CONTRACT AMOUNTS.—

(A) GOODS AND SERVICES.—Except as provided in subparagraph (B), a contract for goods and services under this subsection may not exceed $6,000,000.

(B) MANUFACTURING AND CONSTRUCTION.—A contract for manufacturing and construction services under this subsection may not exceed $10,000,000.

(e) TERMINATION FROM THE PROGRAM.—The National Director may terminate a qualified minority business from the Program for any violation of a requirement of subsections (c) and (d) by that qualified minority business, including the following:

(1) Conduct by a principal of the qualified minority business that indicates a lack of business integrity.

(2) Willful failure to comply with applicable labor standards and obligations.

(3) Consistent failure to tender adequate performance with regard to contracts under the Program.

(4) Failure to obtain and maintain relevant certifications.

(5) Failure to pay outstanding obligations owed to the Federal Government.

SA 433. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 782, to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. REPORT ON INVESTMENTS.

Not later than 180 days after the date of enactment of this Act, the Economic Development Administration shall submit to Congress a report that—

(1) describes the programs and investments carried out under the authority of the Economic Development Administration in areas that have been impacted by 3 or more natural or manmade disasters since January 1, 2005, including—

(A) the quantity of jobs created by the programs;

(B) the quantity of small businesses assisted by the programs; and

(C) any additional information the Economic Development Administration determines to be necessary; and

(2) includes any recommendations of the Economic Development Administration on additional methods to assist economic recovery in the areas described in paragraph (1).

NOTICE OF HEARING

COMMITTEE ON INDIAN AFFAIRS

Mr. AKAKA. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, June 16, 2011, at 2:15 p.m. in room 628 of the Dirksen Senate Office Building to conduct an oversight hearing entitled ''Finding Our Way Home: Achieving the Policy Goals of NAGPRA.''

Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on June 8, 2011, at 10 a.m. in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on June 8, 2011, at 9:30 a.m.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on June 8, 2011, at 2:30 p.m.

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

COMMITTEE ON THE JUDICIARY

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on June 8, 2011, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The President's Request to Extend the Service of Director Robert Mueller of the FBI Until 2013.''

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

COMMITTEE ON THE JUDICIARY

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on June 8, 2011, at 2:30 p.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Nominations.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. TESTER. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on June 8, 2011, in room 418 of the Russell Senate Office Building beginning at 9:30 a.m.

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

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY AND SUBCOMMITTEE ON CHILDREN'S HEALTH AND ENVIRONMENTAL RESPONSIBILITY

Mr. TESTER. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air and Nuclear Safety and the Subcommittee on Children's Health and Environmental Responsibility of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on June 8, 2011, at 10 a.m., in Dirksen 406 to conduct a hearing entitled, ''Air Quality and Children's Health.''

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

PRIVILEGES OF THE FLOOR

Mr. REED. Madam President, I ask unanimous consent that Robert Peak, a fellow in my office, be granted the privilege of the floor for the remainder of the 112th Congress.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that Nicholas Patterson, a detailee on the staff of the Subcommittee on Crime and Terrorism of the Committee on the Judiciary, be granted floor privileges for the remainder of the 112th Congress.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Rivka Jacobs, Katherine Klein, and Eric Stivers of my staff be granted floor privileges for the duration of today's proceedings.

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

POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 205 submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 205) designating the period beginning on June 19, 2011, and ending on June 25, 2011, as ''Polycystic Kidney Disease Awareness Week,'' and raising awareness and understanding of polycystic kidney disease and the impact such disease has on patients.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The resolution (S. Res. 205) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 205

Whereas polycystic kidney disease, known as ''PKD'', is one of the world's most prevalent life-threatening genetic diseases, affecting an estimated 600,000 people in the United States, including newborns, children, and adults regardless of sex, age, race, geography, income or ethnicity;

Whereas there are 2 forms of polycystic kidney disease, autosomal dominant (ADPKD), affecting 1 in 500 people worldwide, and autosomal recessive (ARPKD), a rare form, affecting 1 in 20,000 live births and frequently leading to early death;

Whereas polycystic kidney disease causes multiple cysts to form on both kidneys (ranging in size from a pinhead to a grapefruit), leading to an increase in kidney size and weight;

Whereas polycystic kidney disease is a systemic disease that causes damage to the kidneys and the cardiovascular, endocrine, hepatic, and gastrointestinal systems;

Whereas patients with polycystic kidney disease often experience no symptoms early in the disease, and many patients do not realize they have polycystic kidney disease until other organs are affected;

Whereas symptoms of polycystic kidney disease may include high blood pressure, chronic pain in the back, sides or abdomen, blood in the urine, urinary tract infection, heart disease, and kidney stones;

Whereas polycystic kidney disease is the number one genetic cause of kidney failure in the United States;

Whereas more than half of polycystic kidney disease patients will reach kidney failure and require dialysis or a kidney transplant to survive, thus placing an extra strain on dialysis and kidney transplantation resources;

Whereas there is no treatment or cure for polycystic kidney disease; and

Whereas there are thousands of volunteers nationwide dedicated to expanding essential research, fostering public awareness and understanding, educating patients and their families about polycystic kidney disease to improve treatment and care, providing appropriate moral support, and encouraging people to become organ donors: Now, therefore, be it

Resolved, That the Senate—

(1) designates the period beginning on June 19, 2011, and ending on June 25, 2011, as ''Polycystic Kidney Disease Awareness Week'';

(2) supports the goals and ideals of Polycystic Kidney Disease Awareness Week, to raise public awareness and understanding of polycystic kidney disease;

(3) recognizes the need for additional research to find treatments and a cure for polycystic kidney disease; and

(4) encourages the people of the United States and interested groups to support Polycystic Kidney Disease Awareness Week through appropriate ceremonies and activities, to promote public awareness of polycystic kidney disease, and to foster understanding of the impact of such disease on patients and their families.

AMERICAN EAGLE DAY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 206 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 206) designating June 20, 2011, as ''American Eagle Day,'' and celebrating the recovery and restoration of the bald eagle, the national symbol of the United States.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be laid upon the table.

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

The resolution (S. Res. 206) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 206

Whereas on June 20, 1782, the bald eagle was officially designated as the national emblem of the United States by the founding fathers at the Second Continental Congress;

Whereas the bald eagle is the central image of the Great Seal of the United States;

Whereas the image of the bald eagle is displayed in the official seal of many branches and departments of the Federal Government, including—

(1) the Office of the President;
(2) the Office of the Vice President;
(3) Congress;
(4) the Supreme Court;
(5) the Department of the Treasury;
(6) the Department of Defense;
(7) the Department of Justice;
(8) the Department of State;
(9) the Department of Commerce;
(10) the Department of Homeland Security;
(11) the Department of Veterans Affairs;
(12) the Department of Labor;
(13) the Department of Health and Human Services;
(14) the Department of Energy;
(15) the Department of Housing and Urban Development;
(16) the Central Intelligence Agency; and
(17) the Postal Service;

Whereas the bald eagle is an inspiring symbol of—

(1) the spirit of freedom; and
(2) the democracy of the United States;

Whereas, since the founding of the Nation, the image, meaning, and symbolism of the bald eagle have played a significant role in the art, music, history, commerce, literature, architecture, and culture of the United States;

Whereas the bald eagle is prominently featured on the stamps, currency, and coinage of the United States;

Whereas the habitat of bald eagles exists only in North America;

Whereas, by 1963, the population of bald eagles that nested in the lower 48 States had declined to approximately 417 nesting pairs;

Whereas, due to the dramatic decline in the population of bald eagles in the lower 48 States, the Secretary of the Interior listed the bald eagle as an endangered species on the list of endangered species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas caring and concerned individuals from the Federal, State, and private sectors banded together to save, and help ensure the recovery and protection of, bald eagles;

Whereas, on July 20, 1969, the first manned lunar landing occurred in the Apollo 11 Lunar Excursion Module, which was named ''Eagle'';

Whereas the ''Eagle'' played an integral role in achieving the goal of the United States of landing a man on the Moon and returning that man safely to Earth;

Whereas, in 1995, as a result of the efforts of those caring and concerned individuals, the Secretary of the Interior listed the bald eagle as a threatened species on the list of threatened species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas, by 2007, the population of bald eagles that nested in the lower 48 States had increased to approximately 10,000 nesting pairs, an increase of approximately 2,500 percent from the preceding 40 years;

Whereas, in 2007, the population of bald eagles that nested in the State of Alaska was approximately 50,000 to 70,000;

Whereas, on June 28, 2007, the Secretary of the Interior removed the bald eagle from the list of threatened species published under section 4(c)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1533(c)(1));

Whereas bald eagles remain protected in accordance with—

(1) the Act of June 8, 1940 (16 U.S.C. 668 et seq.) (commonly known as the ''Bald Eagle Protection Act of 1940''); and

(2) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);

Whereas, on January 15, 2008, the Secretary of the Treasury issued 3 limited edition bald

eagle commemorative coins under the American Bald Eagle Recovery and National Emblem Commemorative Coin Act (Public Law 108–486; 118 Stat. 3934);

Whereas the sale of the limited edition bald eagle commemorative coins issued by the Secretary of the Treasury has raised approximately $7,800,000 for the nonprofit American Eagle Foundation of Pigeon Forge, Tennessee to support efforts to protect the bald eagle;

Whereas, if not for the vigilant conservation efforts of concerned Americans and the enactment of strict environmental protection laws (including regulations) the bald eagle would probably be extinct;

Whereas the American Eagle Foundation has brought substantial public attention to the cause of the protection and care of the bald eagle nationally;

Whereas November 4, 2010, marked the 25th anniversary of the American Eagle Foundation;

Whereas the dramatic recovery of the population of bald eagles—

(1) is an endangered species success story; and

(2) an inspirational example for other wildlife and natural resource conservation efforts around the world;

Whereas the initial recovery of the population of bald eagles was accomplished by the concerted efforts of numerous government agencies, corporations, organizations, and individuals; and

Whereas the continuation of recovery, management, and public awareness programs for bald eagles will be necessary to ensure—

(1) the continued progress of the recovery of bald eagles; and

(2) that the population and habitat of bald eagles will remain healthy and secure for future generations: Now, therefore, be it

Resolved, That the Senate—

(1) designates June 20, 2011, as ''American Eagle Day'';

(2) applauds the issuance of bald eagle commemorative coins by the Secretary of the Treasury as a means by which to generate critical funds for the protection of bald eagles; and

(3) encourages—

(A) educational entities, organizations, businesses, conservation groups, and government agencies with a shared interest in conserving endangered species to collaborate and develop educational tools for use in the public schools of the United States; and

(B) the people of the United States to observe American Eagle Day with appropriate ceremonies and other activities.

ORDERS FOR THURSDAY, JUNE 9, 2011

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, June 9; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate proceed to a period of morning business for 1 hour, with Senators permitted to speak for up to 10 minutes each, with the time equally divided and controlled between the leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half; and that following morning business, the Senate resume consideration of S. 782, the Economic Development Revitalization Act.

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

PROGRAM

Mr. DURBIN. Mr. President, there are several amendments pending to the EDA bill on the floor. Senators will be notified when votes are scheduled.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:20 p.m., adjourned until Thursday, June 9, 2011, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

LT. GEN. CURTIS M. SCAPARROTTI

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF GENERAL IN THE UNITED STATES MARINE CORPS WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be general

LT. GEN. JOHN R. ALLEN