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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, May 18, 2010, at 12:30 p.m.

Senate

MONDAY, MAY 17, 2010

The Senate met at 2 p.m. and was called to order by the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia.

PRAYER

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

Let us pray.

Almighty God, we can't begin this day in the forward march of history without You. Without the power of Your providential leading, we are like ships without a sail. If You don't lead us, we are certain to stray from the right path.

Renew our Senators with help and strength, infusing them with a spirit of self-sacrifice and service. Whatever may come with this day, O Lord, help them to live with joyful appreciation of Your guidance and love. When they face situations that leave them puzzled, show them what they should do.

We pray in Your merciful Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK R. WARNER 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 it 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. BYRD.)

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 17, 2010.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK R. WARNER, a Senator from the Commonwealth of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WARNER 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. Mr. President, following any leader remarks and morning business, the Senate will resume consideration of the Wall Street reform legislation. Today, the managers of the bill will continue to work toward an agreement to begin voting at 5:30 this afternoon in relation to several pending amendments. Senators will be notified when the votes are scheduled.

WALL STREET REFORM

Mr. REID. Mr. President, we all know how Wall Street brought our economy to the brink of collapse nearly 2 years ago. Our financial system let traders gamble away other people's money with little risk and large reward. The system said to big bankers: If you win, enjoy your jackpot. If you lose, don't worry; taxpayers will bail you out. It is quite a rewarding deal for Wall Street but a pretty raw deal for everyone else. We have seen firsthand the dangers of that arrangement. When the bottom collapsed, 8 million Americans lost their jobs. The typical family lost $100,000 in savings and home equity. The problem is that it is still the way the system works today, and every new day we don't act, we take the chance it will happen again.

The bill empowers consumers and holds Wall Street accountable to make sure history never repeats itself. Ours is a strong bill. The American people not only overwhelmingly support this legislation, it is legislation they loudly demand. But it won't do anyone any good until we send it to the President for his signature. If there is a strategy of delay involved in this—and I certainly hope there isn't—I have said before that as soon as tonight, we could file cloture and hold a final vote this week. This cannot be delayed any longer.

I appreciate the good work of so many Senators to make a tough Wall Street reform bill even tougher. I extend my appreciation to the Presiding Officer, who has been involved in a significant number of the amendments we have tried to work through. His experience in the business community has certainly strengthened the bill.

So far, the Senate has voted for amendments to strengthen the bill and has voted against efforts to weaken it. Democrats and Republicans have voted

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

for each other's amendments. This is the way it should be. However, the end must come. The time has come to begin work sending this to conference so we can have a bill to go to the President.

The Senate has voted to reject loopholes for Wall Street lobbyists. We rejected an amendment that would leave the door open for more taxpayer bailouts. We denied carve-outs for those who game the system for their own financial gain.

The message is clear: We must guarantee taxpayers that they will never again be asked to bail out big banks. We must protect families' life savings and seniors' pensions. We must ensure no bank can become too big to fail. And we must make sure the system is more transparent, which will let us rein in the risky bets before it is too late.

I remind all of my colleagues that the amendment process can continue after cloture is filed and after it is invoked. I hope the two managers of this bill, Chairman DODD and Ranking Member SHELBY, can continue working on amendments that will strengthen these urgent and overdue reforms.

Another reason we have to finish sooner rather than later is that we have such important work to do this month. At the top of that list is a new jobs bill—a jobs bill that will cut taxes for middle-class families and stimulate small businesses by giving small businesses tax cuts.

Also, we have two supplemental appropriations bills. Senator INOUYE and Senator COCHRAN are going to combine those, as the two managers of that legislation, so that when they come to the floor, there will only be one supplemental appropriations bill. They will join the FEMA supplemental—because of all of the natural disasters around the country—with the war funding bill we also need to do. We have scores of nominees awaiting confirmation. We hope to be able to complete some of that before we leave here for the recess, so I hope both sides can find a way to work together to get these bills done.

I repeat: We need to finish the bill that is on the floor. We need to do the war funding appropriations bill that is going to be combined with FEMA, and of course we have to do the jobs bill before the first of the month.

BP OIL SPILL

Mr. REID. Mr. President, Wall Street isn't the only place where a reckless pursuit of profits has proven destructive. In the weeks since the Deepwater Horizon explosion, as much as 20 million gallons have spewed into the Gulf of Mexico. To put that so it is more understandable, think of the Exxon Valdez. The Exxon Valdez was an awful spill, but it was only 11 million—I underline that, only 11 million—gallons. Already, the disaster in the gulf has been twice that big as far as the amount of oil spilled.

Last night's edition of ''60 Minutes'' reported damning evidence that the roots of this tragedy are in British Petroleum executives' efforts to pad their own wallets. The program was very direct and to the point. Their greed led to 11 horrific and unnecessary deaths. It has harmed an enormous tourism industry, weakened business at countless fisheries, and disrupted life for many along the gulf coast. As the pollution grows worse, those consequences will only compound.

It is the responsibility of Congress and the administration to investigate this disaster, and it is the responsibility of British Petroleum and anyone else found culpable to pay the price of those damages. By law, oil companies are liable for only $75 million in damages in instances such as these. This is clearly insufficient. One way Congress can act now is by raising that limit. Some believe it should be raised to $10 billion. Others support no cap at all. I certainly think a $10 billion cap is inadequate.

Whatever the final figure, the catastrophe that continues to poison our gulf coast is a wake-up call. We must make sure oil companies learn their lesson. While they spend record profits on finding more oil, they also must find safer ways to drill and to handle it. They must invest in rapidly developing clean domestic energy to protect our environment and increase our energy security.

Secretary Salazar and the President deserve credit for their continued efforts to clean up the previous administration's efforts to put oil company profits before people.

In the meantime, we and the Senate must also learn from the mistakes on Wall Street to the Gulf of Mexico. We have to work as quickly as possible to protect against it ever happening again.

I note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

RECOGNITION OF THE MINORITY LEADER

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

Mr. MCCONNELL. Mr. 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.

NOMINATION OF ELENA KAGAN

Mr. MCCONNELL. Mr. President, the American people are concerned with the direction the administration is trying to take this country. They are concerned about the government running banks, insurance companies, car companies, and the student loan business. And they are concerned about the way all this is being done as exemplified by the health care debate in which the administration and its allies in Congress defied the clear will of the people by jamming this partisan bill through Congress and stifling its critics along the way.

On this last point, I am referring, of course, to the gag order the administration imposed on insurance companies that wrote letters to seniors telling them how the health care bill could affect their benefits under Medicare Advantage. In issuing this gag order, the administration relied on the flimsiest of legal arguments. It said that regulations which allowed the Department of Health and Human Services to restrict how companies marketed their products could be used to impose a prior restraint on speech about an issue of public concern—namely, the pending health care bill. But the communications in question were not commercial speech; they were issue advocacy, which is the very type of speech the first amendment is intended to protect. That is why even the Clinton administration rejected the notion that its Department of Health and Human Services could restrict this kind of speech.

Nor was this the only time the Obama administration has attempted to use the government to stifle speech. Just 1 month prior to its issuance of this gag order, I had the opportunity to sit in the Supreme Court when the Solicitor General delivered her first oral argument in any courtroom. This was the Citizens United case, the same case that prompted the President to scold the Court during his State of the Union Address in January and a case that, if it had gone the other way, could have dealt a serious blow to the first amendment right of free speech.

For those who aren't familiar with the particulars of this case, Citizens United turned on the question of whether the Federal Government could ban a nonprofit corporation from producing a movie critical of former Senator Hillary Clinton and attempting to air it just prior to the 2008 Democratic primary.

Most people would probably be surprised to learn that in America, the Federal Government could ban a group from speaking because of who the group was and because of the type of speech being uttered, but that is precisely what Federal campaign finance law prohibited. So because this law constrained the exercise of its first amendment rights, this nonprofit, Citizens United, sued the government. The case made it all the way to the Supreme Court, and because the Federal Government was the defendant, the Solicitor General's Office—Ms. Kagan's office—handled the case, arguing in favor of prohibiting the advertising and airing of the film.

There were two oral arguments in this case, and during both of them, Solicitor General Kagan's office and Ms. Kagan herself argued that the Federal

Government had the power to regulate—and, if need be, to ban—large amounts of political speech. Indeed, the amount of power Ms. Kagan and her office argued the Federal Government had in this area was so broad—so broad—that both liberal and conservative Justices found their arguments jarring, given the reverence Americans of all ideological stripes have for the first amendment. But that was, in fact, their argument.

During the first argument, the Court asked Ms. Kagan's deputy whether the government had the power to ban books if they were published by a corporation, and if the books urged the reader to support or defeat a candidate for office. Incredibly, he said, yes, the government could ban a corporation from publishing a book—even if it only mentioned the candidate once in 500 pages.

Not surprisingly, this contention prompted quite a bit of discussion among the Justices. They wanted to be clear that that is actually what Ms. Kagan's office was proposing. So, to remove any doubt about their position, Ms. Kagan's deputy said he wanted to make it, in his words, ''absolutely clear'' that the government did, in fact, have the power to ban certain speakers from publishing books that criticized candidates. Justice Souter asked if that meant labor unions, too. Ms. Kagan's deputy said that indeed it did.

Well, so troubled was the Court by the contention of the Solicitor General's office that the government had a constitutionally defensible ability to ban certain books by certain speakers, that it ordered another argument in the case. This time, Ms. Kagan herself appeared on behalf of the government. And this time, it was Justice Ginsburg who noted that at the first argument, Ms. Kagan's office argued that the Federal Government could, in fact, ban books, such as ''campaign biographies,'' despite the protections of the first amendment.

Justice Ginsburg asked whether that was still the government's position. Ms. Kagan responded that after seeing the reaction of the Supreme Court to her office's argument, they had rethought their position. Ms. Kagan maintained that while the Federal law in question did apply to materials like ''full-length books,'' someone probably would have a good first amendment challenge to it.

So far so good.

But her fall-back position was that the same law gives the government the power to ban pamphlets, regardless of the first amendment's protection for free speech. This caused the Justices to bristle again. One Justice asked where, in Ms. Kagan's world, does one ''draw the line''?

First, her office says it is OK for the government to ban books if it doesn't like the speaker; then it says it is OK to ban pamphlets if the government doesn't like the pamphleteer—a proposition that would come as a shock to the Founders, who disseminated quite a few pamphlets criticizing the government of their day.

Not surprisingly, Ms. Kagan lost the case—and in my view, it is good that she did.

Now, I asked Ms. Kagan about her position in this case last week when we met in my office. She said she made the arguments she did because she had to defend the statute. And I understand that her office has to defend Federal law. But the client doesn't choose the argument, the lawyer does. And the argument Ms. Kagan and her office chose was that the Federal Government has the power to ban books and pamphlets. That was the position of the Solicitor General and her office.

Not only was this argument troubling to those who cherish free speech, it likely contributed to the government's defeat. But my concerns about Ms. Kagan's position in this case extend farther than the arguments she and her office made, however troubling they are.

Shortly after she and I met, the press reported that she had cowritten a memo on campaign finance restrictions when she was in the Clinton administration. In it, she says that ''unfortunately'' the Constitution stands in the way of many restrictions on spending on political speech, and she believes that the Supreme Court's precedents establishing protections from the government in this area are ''mistaken in many cases.''

And just last Thursday, she told one of our colleagues that the Court was wrong in Citizens United because it should have deferred more to Congress. But deferred to Congress on what? Deferred to Congress on a statute that is so broad that it encompasses ''full length books'' and ''pamphlets,'' as Ms. Kagan put it, and probably to a host of other materials as well? One can only assume that since Ms. Kagan was making these comments in her individual capacity, they provide a more complete picture of her views about the government's ability to restrict political speech.

No politician likes to be criticized in books, pamphlets, movies, billboards, or anywhere else, Mr. President, whether it is a President or a Senator.

But there is a far more important principle at stake here than the convenience and comfort of public officials. And that principle is this: in our country, the power of government is not so broad that it can ban books, pamphlets, and movies just because it doesn't like the speaker and doesn't like the speech. No government should have that much deference.

The administration has nominated one of its own to a lifetime position on the country's highest court. We need to be convinced that Ms. Kagan is committed to the principle that the first amendment is not, as she put it, just some ''unfortunate,'' impediment to the government's power to regulate. It applies to groups for whom Ms. Kagan and the administration might not have empathy. And it applies to speech they might not like.

So as this process continues, I look forward to learning more about Ms. Kagan's record and beliefs in area.

I yield the floor.

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, there will now be a period for the transaction of morning business until 3 p.m., with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arizona.

NOMINATION OF ELENA KAGAN

Mr. KYL. Mr. President I, too, would like to address the Supreme Court nominee. I associate myself fully with the remarks of Senator MCCONNELL, which raise an important point for us to consider. I will correct the record in a couple of situations because I think, as the debate unfolds, it is important for us to base our decisions on the same set of facts. These are not going to be particularly newsmaking or big surprises, but I think the record should be corrected.

I know our majority leader, for example, misspoke the other day in commenting about Justice Sandra Day O'Connor because there is some similarity—she being the first woman ever appointed to the Supreme Court. I wanted to make sure the record reflected the actual situation with respect to Justice O'Connor.

Leader REID, I totally agreed with when he described her as ''one of my favorite Court Justices.'' He said it is ''not because she is a Republican but because she was a good judge.'' I subscribe to that as well.

He said:

> She had run for public office. She served in the legislature in Arizona. That is why she could identify with many problems created by us legislators, and she could work her way through that.

For the record, I wanted to indicate her experience on the bench as a judge, since it is not the case that she did not have prior judicial experience when nominated to the Supreme Court. She was actually appointed to the bench by our Democratic Governor at the time, Bruce Babbitt. She was on the court of appeals and on the superior court bench before that. She served on the Maricopa County Superior Court bench from 1975 to 1979, and in 1979 Governor Babbitt appointed her to serve on the Arizona Court of Appeals. So she had extensive experience, from 1975 through 1981, as a judge, including in an appellate capacity.

Prior to that time, as Leader REID noted, she served in the Arizona State Legislature. In fact, she was the majority leader. She had an extensive legal career before that. She was a deputy county attorney. She was a civilian attorney. She was in the private practice of law. She was an assistant attorney general. Therefore, she had a very varied and rich experience both as a lawyer practicing law in regular situations in both criminal and civil context, as well as a trial court judge, which is great experience, I believe, and as an appellate court judge.

In many respects, it is almost a perfect resume for someone to demonstrate broad experience and who could understand what cases are all about when they come from Main Street, as opposed to some of the more high-profile cases that tend to come before the U.S. Supreme Court. By every measure, I think anybody would agree that her tenure on the Supreme Court reflected those values and the experience that she had when she came to the Court.

As I said, I know the majority leader simply misspoke when he suggested that she didn't have judicial experience. I did think it important to make that point.

Second point: There was a statement made on TV yesterday by some folks who were comparing Elena Kagan and Chief Justice John Roberts; in effect, that John Roberts only had 2 years on the appellate court, so they are pretty similar. In two respects that is not correct.

First, spending a couple a years on the court of appeals for the circuit court is extensive and important experience. It at least gave us an idea of how he approached judging. I think almost everybody in the Senate who voted on his confirmation understood that whatever his personal views were, he could clearly leave them behind and decide cases, as he referred to it, ''like an umpire calls the balls and strikes.'' That is one of the reasons he was overwhelmingly confirmed.

I also recall that Justice Roberts' prior legal experience represented numerous arguments before the courts of appeals and the U.S. Supreme Court. At the time of his confirmation, he had probably had more U.S. Supreme Court arguments than any other lawyer. So this was a lawyer experienced in appellate work and U.S. Supreme Court work.

In contrast—and this is not to take away from Ms. Kagan—the truth is, I don't think she ever tried a case or argued a case to an appellate court. She certainly hadn't argued before the Supreme Court until about 6 months ago in her capacity as Solicitor General. She has other positions in her background. She has been a law school teacher and a dean of a law school. But I submit that is hardly comparable to the litigation experience and, particularly, the appellate experience John Roberts had.

All I am suggesting is, when we make these comparisons to other people, we need to be accurate about it. It is taking away nothing from Elena Kagan, but she did not have the experience of Sandra Day O'Connor or John Roberts. That is something we have to deal with—something lacking in her record.

One other thing—and this is personal to me because my views were mischaracterized. I hope this will be seen as a favorable comment toward Elena Kagan. It was reported today by Al Hunt that I thought Elena Kagan was too young for the Supreme Court. No, I don't, and I never said that. He was wrong when he reported that.

I said she was relatively young for an appointment to the Supreme Court, and that is true. At this point, I think she is 49. She would be 50 if she is confirmed. That is a fine age to be on the U.S. Supreme Court. My point was, that means, assuming her health is good—and I believe it is—she could have many decades on the Court. That is all the more reason it is important that we know her approach to judging.

My only question about her judging has been whether she would leave her personal views behind as she approaches the decisions in cases that present two conflicting sides in adjudicating their dispute before the Court. It is not hard, when somebody has been an appellate court judge for years, to see how they approach judging and whether they can leave any of their personal views behind them.

Most judges can, and that is a great thing about our system. Occasionally, we find a judge who has a particular conservative or liberal bent, and it is pretty clear they have a hard time leaving their political views behind and that they tend to want to figure out how they would like a case to come out and then rationalize a way for it to come out that way. Any good lawyer or judge can probably find an argument to support a position. But that is not the way judging should occur.

My concern expressed about Elena Kagan is that there are a couple of things in her background that suggest that she might have a hard time leaving her political views behind and approaching cases, as Chief Justice Roberts said, as ''an umpire would call balls and strikes in a game.''

Remember, he was asked whether he would favor the little guy in a dispute or the big guy. He said if the law was on the little guy's side, he would favor the little guy but, if the law was on the big guy's side, he would favor the big guy.

Why is that important? We all know Lady Justice has on a blindfold, and there is a reason for that. The oath of office of a judge and our tradition in this country is for a judge to approach a case not based on how he wants that case to come out in his heart of hearts, not how he would write the law if he were a legislator but, rather, how he has to apply the law to the facts of that particular case.

Occasionally, a court will even say we do not necessarily like the way this case has to come out, and we invite the legislature to change the law. In fact, the Supreme Court did that in a bill which I sponsored recently. I regretted the way the case came out. I do not think the Court had to rule the way it did. But eight of the nine Justices believed that Congress had gone too far in prohibiting a certain kind of filmmaking activity called crush videos where usually a woman with high-heeled shoes is shown crushing a small animal to death.

That did not seem to me to be free speech, and it is something Congress could prohibit. But the Supreme Court disagreed. Eight of the nine Justices said: No, even though we do not necessarily like the way this case came out because we abhor that kind of thing, it is our view that the first amendment has to allow that kind of ''speech.''

Again, I disagree that it is speech, but I admire the Justices, both liberal and conservative, who decided they have to apply the law even though the result was not something they liked, and they invited the Congress to fix the law, giving us a little bit of instruction as to how we can do that.

I am working with colleagues in the House of Representatives to restructure the law so we can pass it again, overwhelmingly I am sure, and this time get it right within the first amendment because I do not, obviously, want to violate the first amendment.

The point here is that Justices can rule in ways that force them to make a decision even though they do not like the way the case comes out. Then the legislature, if it involves a law we have passed, can fix it. That is the way our system is supposed to work. Rather than—and I much prefer that even though, in effect, I lost the case. I would much rather that than the Justices say: We think these crush videos are terrible, and even though the first amendment probably protects it, we are going to try to craft an argument where we can declare this law valid because from a public policy standpoint, we think that is a better result. I am pleased they ruled against my bill by saying: No, we cannot do that. We have to adhere to the law, as we read it.

What I am going to be looking for in Elena Kagan is a judge who, despite her political views—and she has been candid about what they are and others have been candid as to what they are. One of her Harvard colleagues said her heart beats on the left. OK, I do not expect President Obama to appoint somebody whose heart beats on the right as mine does. He is going to appoint someone with his more liberal political views, and that is fine.

The question is: Can she then approach cases the same way the judges did in the Supreme Court case I just described where even though they did not like the result, they felt they had

to rule that way in order to remain consistent with their view of the first amendment.

There have been a couple of things in which her personal view clearly affected her judgment as, in this case, the dean of the Harvard Law School. The one case everybody is familiar with is she disagreed with the congressional policy on don't ask, don't tell. But instead of having a policy that said President Clinton, who signed the bill, was unwelcome on the Harvard campus or the Senators and Representatives who had passed the bill—by the way, it was a Democratic House and Senate—that they were not welcome on the campus, she wrote at the time extensively that this was a discriminatory policy of the military and that, therefore, the military would not be allowed on campus to recruit, as were all other businesses.

Eventually, she had to change her position because the Solomon amendment said the university would not get any Federal funding, and they got about 15 percent of their funding from the Federal Government. They finally, after about a year, went back to the policy of allowing military recruiters on campus.

In my view, she not only mischaracterized the situation by calling it the military's discriminatory policy, when the military is obviously simply following the orders of their Commander in Chief, President Clinton, and the law passed by the Congress, but also she discriminated by not criticizing or denying entry onto the campus the people who had passed and signed the law into effect but instead discriminated against the military who at the time was fighting a war. That represents a misjudgment on her part based on, obviously, her personal convictions. It interfered with the job she was supposed to be doing at the time.

Would she apply that same kind of rationale when she sits on the U.S. Supreme Court? She obviously has strong personal views about this issue. How will she apply those personal views in cases of, let's say, ''the don't ask, don't tell policy that may come before her or some other policy that she believed discriminated against gays or homosexuals. She will have to somehow find a way to demonstrate to us that she will not allow those personal convictions to color her judgment on the Court. It might be kind of hard, given it did color her judgment in this previous situation.

More recently, she wrote to Members of the Senate deeply critical of a bill Senator LINDSEY GRAHAM and I had introduced and was eventually passed by the Senate and signed into law that provided a mechanism for dealing with the terrorists at Guantanamo Bay. We defined ''military combatants'' in this legislation. We provided for a determination of their status, for a review of that determination of status, by a direct appeal to the District of Columbia Circuit Court of Appeals.

Nothing like that had ever been done, where after determination of status as an enemy combatant, those people would be able to go directly to a Federal court—and not just any Federal court, the DC Circuit Court of Appeals, which is one step below the Supreme Court—to have that determination reviewed. That was not sufficient for her. She said: No, this was discriminatory; that they had to have a right to appeal to other Federal courts any sentencing or determination of guilt, if they stood trial in military commissions. That has never been the law. The Supreme Court has never said that is the law. Yet she compared what we did in that bill to the discriminatory and unlawful actions of a dictator.

I do not like to be called or compared to a dictator, and I can assure my colleagues LINDSEY GRAHAM, my colleague who was primarily responsible for drafting that legislation, very much had in mind the best way to deal with this situation from a legal standpoint, as well as to protect American citizens. He was not trying to enact policies similar to dictators'.

In addition to the language being quite injudicious, it seems to me it raises questions about whether if these kinds of questions were posed to her in the future she could lay aside what are obviously her strong personal convictions about this issue.

There are bound to be cases involving enemy combatants and others in this war on terror that will continue to come to the U.S. Supreme Court. Will she recuse herself from these cases because she has expressed strong personal views? That would seem to me to be appropriate, unless she could somehow demonstrate she can put all that behind her and decide these cases strictly on the law, irrespective of her personal prejudices.

I hope I am not perceived by these comments to have made a judgment about Elena Kagan. When I voted for her confirmation as Solicitor General, I said I thought she was well educated, very intelligent, very personable, and I wanted her to have a chance to do the job as Solicitor General. I had hoped she would remain in the position for a little bit longer than a year before being nominated for a position as prestigious as the U.S. Supreme Court. Nonetheless, I am firmly committed to examining her record as thoroughly as possible and then making a judgment based on that entire record.

Despite the fact I have raised two questions, I do not want that to be suggestive of any conclusion I have reached because I have not reached a conclusion. In fact, I am a little bit critical of my colleagues who have immediately reached a conclusion without even examining the record. There is something like 160,000 pages of documents in the Clinton Library relative to her record as a policy adviser in the Clinton White House. Obviously, some of her views will be reflected in those documents and I think it is important to see what they say.

It may well be that she represents a very tempered thought that is pragmatic and not overly ideological and which appears to suggest that in the position she held, she could lay aside her personal views and give good advice. It is quite possible that is what those records will reflect. It may also reflect something different.

Until I have the benefit of reviewing those documents and then talking with her personally and hearing her testify, it seems to me a bit premature to be making a judgment about whether she should be confirmed.

Again, I wanted the opportunity to reassure all of my colleagues that Sandra Day O'Connor, the first woman appointed to the Supreme Court, did, indeed, have a good judicial experience on the bench prior to her nomination. That is not an absolute requirement, in my view, because her colleague from Arizona on the Court for a while, Chief Justice Rehnquist, had not had judicial experience. Every other nominee in the last 40 years has. He had not. Nonetheless, he had extensive experience of over 20 years in law practice, both in the private law practice as well as the Department of Justice. So he, too, had a very long record from which one could judge whether his personal views could be set aside in judging cases.

That, at the end of the day, is the test that should apply to all nominees, should apply to Elena Kagan. I am sure my colleagues and I will have ample time to review the report, reflect on it, discuss it with her, and then come to our judgments as to whether she satisfies that judgment.

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. INHOFE. Mr. 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.

GLOBAL WARMING

Mr. INHOFE. Mr. President, I ask unanimous consent to speak in morning business for such time as I may consume.

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

Mr. INHOFE. Mr. President, if you have been watching the global warming debate lately, you will notice the supporters of cap and trade are getting kind of nervous. They realize the political environment for cap and trade couldn't be more favorable—they have a majority of liberals in the Senate, a majority of liberals in the House, and liberals in the White House. But they also realize time is running out. The November elections are looming, and there are a lot of people coming up for reelection who don't want to go back to the electorate and say: Look at me;

aren't you proud; I voted for the largest tax increase in American history.

As Senator KERRY put it, this is the last call to pass the bill, and that is exactly what Senator KERRY is trying to do. But he will not get 60 votes. He will not get the support of the Democrats in the heartland, and he will not convince the American public they need this tax increase. I say this with confidence because the bill Senator KERRY introduced last week with Senator LIEBERMAN is the same old cap-and-trade scheme the Senate rejected in the McCain-Lieberman bill in 2003, the McCain-Lieberman bill in 2005, the Warner-Lieberman bill in 2008, and the Waxman-Markey bill in 2009. Let us keep in mind that cap and trade is cap and trade, and that is a very large tax increase.

Don't forget that the Senate support for cap and trade over that time has actually dropped. If you take it from 2003 to the present time, in 2003, they got 43 votes; in 2005, they got 38 votes; and in 2008, they got 48 votes. But you have to keep in mind that 10 of those were for a procedural vote and they said they wouldn't vote for it, so it went down to 38 votes at that time. So that is a far cry from the 60 that will be necessary.

The Kerry-Lieberman bill is not going to pass. However, those who still believe in the anthropogenic catastrophic warming—which I don't, but even if you did believe it—should keep in mind that this wouldn't solve the problem. What I am saying is this: There are a lot of people around—not nearly as many as 5 or 10 years ago—who believe that anthropogenic gases—CO_2, methane, carbon dioxide—are causing catastrophic global warming.

They are still here. They still believe that. But even if you believed it, passing this bill would not help the situation because in this bill, all it applies to is the United States of America. We could go ahead and restrict all the CO_2 we want to in the United States, it is not going to lower it at all.

I have a lot of respect for the new—not too new, now she has been here for a while—EPA Administrator, Lisa Jackson. I appreciate her honesty. I asked her the question back when we had the Waxman-Markey bill before the U.S. Senate Committee on Environment and Public Works, I said to the Administrator: In the event we were to pass any of these cap-and-trade bills in the United States, would it have the effect of lowering the CO_2 worldwide?

She said no, it wouldn't. In fact—we showed a chart. I should have it with me down here right now. She said it would not because this only applies to the United States.

I contend it would actually increase world emissions. The reason I say that is if we were to unilaterally do this, restrict our ability to build power in America, then our jobs would have to go to countries where the power is. Consequently, they would go to countries such as Mexico, China, and India, places where they do not have any meaningful restrictions on CO_2. That would have the effect of increasing it, not decreasing it.

I have a lot of respect for Lisa Jackson. I kind of abused her time during this oilspill. I called her many times. I know she is right on top of things and is doing a very good job.

Here we go again. Look closely at the Kerry-Lieberman bill. I am sure you have seen it before. It is the Waxman-Markey bill. You remember that. It passed in the middle of the night in the House of Representatives. We all remember that, passing by 219 to 212. Every kind of deal in the world was made and nobody knew it except the vote finally took place and they eked it out. Democrats, 44 of them, voted no because they knew the cost of the bill. The Waxman-Markey bill, according to the National Black Chamber of Commerce, would lead to a net reduction of 3.6 million jobs, raise electricity rates by 48 percent, and disproportionately affect the West, Midwest, South, and Great Plains, which rely heavily on fossil fuels.

The word about Waxman-Markey spread across the country and the American people were listening. Citizens at townhall meetings expressed their outrage. They said no to a bill that would give big government control over how we use electricity and how we live every day of our lives. That is what the public would get with Kerry-Lieberman.

They also get a gas tax or linked fee. This is Washington jargon for a thing like gas tax: they don't call it a gas tax, they call it a linked fee for transportation fuels. From what I understand, this linked fee is being pushed by a select group of big oil companies. That is right, oil companies. I said some time ago the only way they can somehow pass any kind of cap and trade is to somehow divide and conquer. In other words, go to some of the oil companies, gas companies, coal companies, nuclear companies, and tell them we are going to pick winners and losers, but guess what. You are a winner. We will pick you and everything is going to be wonderful. The public needs to know a lot of big oil companies are involved. They are pushing a tax they know will be paid for by consumers, the same consumers suffering from an economy with 10 percent unemployment. I will make myself clear: I stand with the consumers, and by that I mean farmers, families, truckers, businesses large and small in rural Oklahoma, who drive long distances. They don't need this tax increase now or ever.

It is a sad thing that we have to use those tactics. Then it is even not all that smart, when you stop and think that has not worked before. They tried the same thing, to divide and conquer, before. In this case they brought in some of the refiners and said if you will join with us, this will be fine with you. You have to raise your rates, but then you can pass that on to the consumers. Then we pass a gas tax increase and those consumers will be hit twice, but you will be all right.

That is not the way it works. The other provision is crafted and select business groups. Do they think a bill on cap and trade is good for the economy, good for your members? I don't think so.

Don't forget what happened with Waxman-Markey; some utilities thought they had a deal. When the language was actually drafted, the deal made WAXMAN and MARKEY happy but not the utilities.

This is interesting, because they had the great unveiling that took place last week but didn't have the bill language. It had an outline of some things but not the exact bill language. That is exactly what they tried to do with Waxman-Markey. This time we will insist on seeing the actual language.

I remind my colleagues of a pattern here. We had the Waxman-Markey vote under the cover of night. We had the ''Cornhusker'' kickback, with the Senate health care bill. Now we have secret meetings with stakeholders and CEOs. There is a sense that what they are doing has little support with the American people. They are hiding and obscuring and evading.

I suppose I can't blame them. Remember the August recess of last year? That was the beginning of what we call the tea party movement. This was interesting because this all happened during the August recess when those of us in the House and Senate were back in our States. The people of the tea party movement were objecting to four things. There are four things they are complaining about.

No. 1 was the runaway cost of government, the increased deficits. Let's stop and think about it. In the first year of the Obama administration the deficits increased by $1.4 trillion. That is what happened the first year. That was after the tea parties, the August recess of 2009.

The second issue then was not to have a government-run health care system. We temporarily lost that. There will be some changes in the Senate and House after the November elections. A lot of that can be corrected. Nonetheless, those are the first two issues of the tea partiers who are out there today. These are people who have not identified with any party but they want to save America from this socialist trend we have right now.

The third issue was complaining about the closing of Guantanamo Bay or Gitmo. I look at this and I wonder, we have a President with an obsession to close Gitmo, a place where we have been able to put people who do not fit into a prison system since 1903. It is one of the best deals the government has. I think we only pay a lease of $4,000 a year. It is just like it was in 1903. Here is a place where you can put terrorists, the terrorists who are the

detainees. These people are not criminals in the sense of our criminal code. These are terrorists. They don't fit in our court system. There is not an American out there who has not heard about what they are doing with the constitutional rights and Miranda rights and all that. That does not apply in these cases. It should not apply in these cases. But this President has wanted to bring these terrorists—close GITMO, with no place else to put them—bring them back to the United States for either trial or incarceration.

At the beginning the President had identified some 17 institutions in America where you could put these terrorists. One happened to be in my State of Oklahoma. It was Fort Sill. Fort Sill has a great artillery installation there and they do have a small prison. I went down after he had made these suggestions of putting terrorists throughout the United States and I talked to—there is a Sergeant Major Carter down there in charge of that prison. She said go back and tell those people in Washington keep GITMO open. She happened to have had two tours of duty in Gitmo. She said that is state of the art. People are treated well; they don't torture anyone; it is the only safe place to keep terrorists; they have a courthouse they can use for tribunals that cannot be found anyplace else in the United States.

The third issue of these tea partiers was to reject the idea that we should close Gitmo and bring these terrorists to the United States.

That comes to the fourth one, the one of our discussion today, and that is the fact that they were protesting cap and trade. Cap and trade is a tax increase. A lot of people say if you want to reduce CO_2 emissions, why don't you put a tax on CO_2 emissions? Some of the strongest supporters of the global warming concept are the ones who say let's have a tax on CO_2. Do you know why they don't? They don't have it because that way, people know what it costs, and they will reject it.

If you have cap and trade, that is a way you can pick winners and losers and convince everyone he or she is going to be a winner. So one of the things they were protesting during the August recess of 2009 was this thing that would result in being the largest tax increase in the history of the country.

I have often said the most egregious vote in this Senate's history, up to that time, up to October 1, 2008, was the $700 billion bailout. That led to the AIG bailout and the Chrysler bailout and the General Motors bailout. All of that took place and that was on October 1, 2008; $700 billion to have an unelected bureaucrat to do whatever he wanted without any constraints. As bad as that is, a cap-and-trade bill would end up—at least $700 billion, that is a one-shot deal. With the cap and trade it is every year.

I know it is difficult for people in America when you start talking about billions and trillions of dollars, so I always do my math in relation to the State of Oklahoma. In Oklahoma, I take the number of families who file a tax return and do the math. For example, the $700 billion came out that would cost each taxpaying family in Oklahoma about $5,000 for that. A cap-and-trade tax—they have actually done some calculations, the Wharton School of Economics, MIT, CRA, and other groups. The range is always between $300 and $400 billion, but that is every year. That would cost my people in Oklahoma, according to the calculations of CRA, a little bit over $3,100 a year and you don't get anything for it.

The opposition has only grown stronger and more intense. Thus, the back-room dealing and secret deals to get 60 votes are not going to work.

I should note, if Kerry-Lieberman were successful in passing, which it will not be, but if it were, it would go to conference—that is the way things are worked here—with the Waxman-Markey bill. If this bill passed the House, that would go to conference, and if this goes to conference that means that Waxman-Markey lives.

We all remember what it did, the Waxman-Markey bill. The authors of that bill, as well as Senators KERRY and LIEBERMAN, have argued that we need one standard, one framework to regulate greenhouse gases. However, the problem is in addition to imposing what would be the largest tax increase in history, these bills do not preempt other laws now being used to regulate greenhouse gases and drive up costs for industries. This would mean there would be multiple standards, multiple regulations, creating more confusion, more bureaucracy and, of course, more taxes.

But we still have a liberal press that is in denial, the same as some of the Senators who are promoting this. I picked up USA Today last Friday on my way back to Oklahoma and I think on page 3 at the top was this article talking about how the lizards are going to become extinct as a result of global warming. They don't say ''alleged global warming,'' they just say it is global warming. So a lot of people, even though they realize the truth of this, because the truth has come out with climate change and all that stuff, they keep reading this over and over so they assume it is true.

Today I should have been speaking in Chicago, at the Heartland Institute's climate conference, but because we had votes this afternoon I was not able to do it. I didn't want to miss these votes. I thank my former staffer Marc Morano, who will be speaking at the event, for his efforts at exposing global warming alarmism. At the Heartland Institute, it is my understanding, is the Fourth International Conference on Climate Change. It will be held in Chicago today, held as we speak. The theme of the ICCC–4 will be ''Reconsidering the Science and Economics.''

New scientific discoveries are casting doubt on how much of the warming of the twentieth century was natural and how much was manmade, and governments around the world are beginning to confront the astronomical cost of reducing emissions. Economists, meanwhile—

I am reading now from their statement—

are calculating that the cost of slowing or stopping global warming exceeds the social benefits.

The purpose of the ICCC–4 is the same as it was for the first three events, to build momentum and public awareness of the global warming ''realism'' movement, a network of scientists, economists, policymakers and concerned citizens who believe sound science and economics, rather than exaggeration and hype, ought to determine what actions, if any, are taken to address the problem of climate change.

They do not all agree on the causes and the extent, but it is kind of interesting because one of the attendees there came out—I just read this. I have it in front of me now. It is a geologist who is a very prominent U.S. geologist—urging the world to forget about global warming because global cooling has already begun.

Dr. Don Easterbrook's warning came in the form of a new scientific paper he presented to the fourth International Conference on Climate Change in Chicago . . .

That is today. Dr. Easterbook is an emeritus professor at Western Washington University, who has authored 8 books and 150 journal publications. His full resume is here.

So today the event is taking place. On his Web site, climatedepot.com, we highlight some of the details.

Over the next several weeks, I will be speaking on the EPA's so-called tailoring rule because this all goes back to the Clean Air Act and the Clear Air Amendments. What it says is, they are going to change that, since that belongs to—that would cover almost every church, every small business, everything in America, to only cover the great big giants.

It is not going to work. Everyone is going to be in on this deal. That would not be constitutional. I think everyone knows it. Along with the tailoring rule, I will continue to point out that the endangerment finding is based on IPCC's flawed science.

By the way, the IPCC is the Intergovernmental Panel on Climate Change. It is a part of the United Nations. They are the ones that started this whole thing back in 1988. The problem we have with that is they had an agenda when they started. I can recall, over the years, scientists coming to me and I would stand at this podium and I would make truthful statements about how the science is being fixed.

I have one, if anyone doubts my sincerity when I say this, it is on my Web site. You can look it up. Five years ago, I talked about how the top scientists in America were coming to me and saying: Look, they will not allow people who disagree with their hypothesis, who disagree with their opinions, to even be part of the IPCC.

Well, I was vindicated last December when the Climategate thing came out,

and all these people who had been sending stuff in, they uncovered some memos going back and forth on how they were going to try and make people believe that actually anthropogenic gases cause global warming. Anyway, that came at a very appropriate time. I think the people are aware of what is happening.

Let me make one last comment about this endangerment finding. We have tried—not ''we'' but those who are promoting the idea of the anthropogenic gases cause global warming, they have been trying to introduce the bills to have a cap-and-trade system for the United States. They have been doing this now about for about 9 years. It has not worked.

So President Obama has stated: All right, if the House and the Senate are not going to vote to do this, we will do it administratively. All we have to do is have an endangerment finding, which we could influence, and once the endangerment finding is there, then that would include, with the real pollutants, SO_X, NO_X, and mercury, CO_2. If they do that, then they can start regulating CO_2.

Well, it is not quite that easy. Lisa Jackson, I have already said some nice things about her, and I appreciated her honesty in response to this question. Right before Copenhagen, I suspected that the Obama administration was going to have an endangerment finding. When they did, I knew it had to be based on science, so I asked her: What science would this, by and large, be based on, if you have the endangerment finding.

She said the IPCC. Well, wait a minute. That is the same science that, through Climategate, has been totally rebuffed and no longer is legitimate, either in reality or in the eyes of the American people and people around the world.

So while I am concerned obviously that we should try to do something such as this through an endangerment finding, do administratively what he is unable to do through the House and Senate, that is not going to work. So I would only say, I know all the Tea Party people are still out there. Keep in mind, you lost your fight with the government-run health care, you lost your fight with the huge deficit, and so far we have not lost on the closing of Gitmo. I think we will be able to keep it open. But the one issue that is up for grabs right now is this endangerment finding.

Let's keep reminding all the people whom you meet with prior to the elections of November, and particularly during the upcoming August recess, that a cap-and-trade system would end up being the largest tax increase in the history of America and it would happen every year and it would not accomplish anything.

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. 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. Mr. President, I ask unanimous consent to be able to speak as in morning business but on an amendment that I will bring up later on the bill.

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

FINANCIAL REGULATORY REFORM

Mr. ENZI. Mr. President, I have had some concerns over the consumer protection part of the financial reform bill, mostly because I do not think there are very many limitations on it. Particularly in the area of personal privacy, I have some major concerns. So I have developed an amendment that I think will solve that. It is the kind of amendment I have often seen brought up by both sides of the aisle to make sure no agency is going through your personal finances without your permission or any other thing that is personal.

So if you think full-body scans at the airport security is bad, they do pale in comparison to the consumer protection provisions in the financial regulatory bill we are debating. Even if you are okay with the heightened airport security measures, will you be OK with a full scan of your financial records?

If left alone, this bill will set up a Federal bureaucracy that will be able to comb through the personal financial records of millions of Americans in the name of protecting consumers.

Also, in the name of protecting us from ourselves, this bill would require banks to keep and maintain records of all bank account activity and financial activity of their clients for at least 3 years, while also requiring this information to be sent regularly to the bureau for safekeeping.

I have serious concerns about our government collecting information on the daily activities of its citizens and equal concerns about the government approving or disapproving the financial choices of its citizens. For those who agree with me, and even those who disagree with me on the consequences or meaning of the language in this bill, I have a straightforward and easy solution.

My amendment, 4018, simply says that if the new bureau created in this bill wants to investigate a consumer's individual transactions, then the bureau must get written permission from that individual. All this means is that the bureau cannot investigate someone's banking activities or credit card purchases without that person's permission.

The bill is simply that. This is one page going into thousands of pages. It says:

Notwithstanding any other provision of this Act, any provision of the enumerated consumer laws or any provision of Federal law, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of that consumer.

It is pretty straightforward. It makes sure they aren't going to investigate a consumer's individual transactions without written permission from that individual, and they can't investigate someone's banking activities or their credit card purchases without that person's permission.

My amendment would also make it so that the government can't watch over my financial transactions without my saying so or without you saying so on yours. My amendment gives consumers a choice. I don't think the bureau should be allowed to look over my credit card statement to see if I am spending too much money. I don't think the bureau should be allowed to monitor my purchases and note that I bought a new car, a new boat, or a gun.

I recognize there are consumers out there who may want the government in their lives, monitoring their transactions. I don't claim to understand that desire. But my amendment would not take away their choice in the matter. In fact, as a consumer, if I get into credit card trouble and want the bureau's help, all I have to do is contact the bureau and give them permission to look at my financial documents. My amendment would also give consumers that ability. As long as the bureau has my written permission as a consumer, they can look at my financial past, present, and future.

Our State offices have that kind of a procedure when they do case work for individuals. Our State offices have a process where they will look into problems that an individual is having with the Federal Government. But in order to do that, they have to get a signed privacy release. That is so we can't just be looking into constituents' problems that we think might be a problem for them without their knowledge or their permission. That is all I am doing with this government bureau, is making sure the consumer knows that bureau will be going through their records with their permission.

In reality, this bill encourages consumers to rely on the government to protect them from bad decisions instead of empowering due diligence. The role of the Federal Government should not be to stand over our shoulders telling us if our decisions are right or good. I was here on the Senate floor just a few short days ago saying that you and I have the inherent freedom to make choices, even the freedom to make bad choices. In America, that is the way it works. Big Brother is not allowed to hang over your shoulder to decide whether you are making a poor decision.

Because of this bill and the actions of the current administration, people are more concerned about their freedoms right now than they ever have been,

and this underlying bill—specifically title X, with its ironic name, ''consumer protection''—would take away those freedoms without this amendment.

The Consumer Financial Protection Bureau created through this bill would suddenly become the most powerful agency within the Federal Government. By placing this bureau within the Federal Reserve, Congress's last ability to oversee this agency would be when the director of the bureau is nominated by the President and the Senate gets to vet that candidate. That is it. Congress would have no oversight of the bureau's budget. Congress would have no oversight of the rules created by the bureau either.

By the way, this bureau would not only have the authority to create its own rules for banks and consumers to follow, it would have the authority to enforce those rules as well. No other agency has that kind of unchecked power. Let me tell my colleagues, unchecked power does not lend itself to accountability.

Why am I so concerned about this supposed consumer protection bureau? I am concerned about our freedoms. I know the Federal Government should not operate with the belief that it always knows best. Protecting consumers doesn't always mean naming advocates to work on their behalf. It also means allowing them the freedom and power to advocate for themselves.

I mentioned this earlier, but I want to illustrate an example of why I am concerned about this bureau's unchecked power and why every citizen in the country should be up in arms, beating down the doors of Congress to keep big government powers from getting even bigger in their lives. The example I am about to give would be small compared to the powers of this proposed bureau.

Let me tell my colleagues, this is not a small issue to the public. Not too long ago, the Transportation Security Administration, TSA, announced its intention to put full body scanning into major airports. Let me remind my colleagues, this was not even in every major airport, only a few. Many may not have seen one of these scanning machines. Travelers go into a three-sided piece of equipment fully clothed, and the machine essentially creates an x-ray-like scan of the traveler. The resulting image from the scan can be used to determine whether someone is carrying an explosive, has objects hidden under their clothing, or merely had a joint replaced. This new step in security was all done in the name of protecting citizens from terrorists. This new measure was for our physical safety.

I have heard from hundreds of Wyoming citizens and from hundreds of citizens across the country desperate not to have the government intrude into their lives even in the name of physical safety from terrorism. There was such a rush of emotion from these folks, anger at the inconvenience and intrusion, nervousness and anxiety that the government would be able to image them for 30 seconds or the possibility that the government could keep the scanned image in a file. I even had some of the more middle-of-the-road folks tell me they just wanted a choice of whether to have the full body scan or simply an in-person screening. That is what is done over most of the country.

My point with this story is that with TSA screening, we are talking about a single image of a person as they travel through the Nation's airports. What the bureau of consumer protection proposes to do in the name of financial security is not just a snapshot of us during a single day of travel. What the bureau proposes to do is scrutinize the transactions of our daily lives, our spending habits, monitor our financial decisions as we plan for retirement, as we plan and spend for our families, and, as consumers, as we make choices on loans for education, vehicles, homes, and any other expenses. This isn't a single step encroaching on privacy like a body scan image. What the bureau proposes to do skips over the privacy boundary. It is not a single scan; it is a life audit.

This bureau may create some much needed protections for consumers, but it could also go much further. Without my amendment, the bureau will be required to collect daily transactional information on every consumer. The government would see every time you needed money for a college loan, for $20 from the nearest ATM. The bureau would require your community bank to not only keep all the information on file but to regularly share that data with the government.

Some may say they don't care if the government knows they buy groceries at Safeway every Tuesday, but I daresay allowing the government to assess and analyze every transaction could easily escalate beyond mundane details and consumer protection to truly having Big Brother watching over us. You may not care about the government knowing your shopping habits or how and when you fill your car with gas, but you will care if the government has the ability to say how, when, and why you spend your own money.

We already give the government control of our tax dollars. I would say that isn't going so well for us. A $12 trillion, almost $13 trillion deficit shows this. So why should the public be OK with allowing the Federal Government to watch over our shoulders, saying whether our financial decisions are OK? The point is that the Federal Government should not have this power, but this bill will be giving it unless we have this amendment.

I have risen to bring light and awareness to the additional, enormous unchecked power that would be given to the bureau of consumer protection in the name of protecting consumers. This power would be given not in the name of protecting us from physical threat or harm but in the name of making decisions for us.

I offer another choice to my colleagues and to the people. This choice allows consumers to let the bureau into their personal lives if they so choose. My amendment would not stop the bureau from existing. My amendment would not prevent the bureau from assisting consumers with their finances or debt. My amendment would simply require the bureau to get written permission from consumers. It is that simple. I urge colleagues to consider the amendment so that we are empowering consumers, not perpetuating big government growth in the name of protecting us from ourselves.

I ask unanimous consent that Senator SHELBY be added as a cosponsor to the amendment.

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

Mr. ENZI. I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, with the permission of the bill manager, I ask unanimous consent to set aside any pending amendments and to call up amendment No. 3986.

The ACTING PRESIDENT pro tempore. The bill is not yet pending.

Mr. CORNYN. Mr. President, I understand the bill has not yet been reported, but I would like to make a few comments on my amendment. As soon as the bill is reported, I will call up the amendment more specifically.

I ask unanimous consent to speak as in morning business for up to 15 minutes.

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

Mr. CORNYN. Mr. President, I am advised the bill is ready to be reported.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 3217, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3217) to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Pending:

Reid (for Dodd/Lincoln) amendment No. 3739, in the nature of a substitute.

Brownback modified amendment No. 3789 (to amendment No. 3739), to provide for an

exclusion from the authority of the Bureau of Consumer Financial Protection for certain automobile manufacturers.

Brownback (for Snowe/Pryor) amendment No. 3883 (to amendment No. 3739), to ensure small business fairness and regulatory transparency.

Specter modified amendment No. 3776 (to amendment No. 3739), to amend section 20 of the Securities Exchange Act of 1934 to allow for a private civil action against a person that provides substantial assistance in violation of such act.

Dodd (for Leahy) amendment No. 3823 (to amendment No. 3739), to restore the application of the Federal antitrust laws to the business of health insurance to protect competition and consumers.

Whitehouse amendment No. 3746 (to amendment No. 3739), to restore to the States the right to protect consumers from usurious lenders.

Dodd (for Rockefeller) amendment No. 3758 (to amendment No. 3739), to preserve the Federal Trade Commission's rulemaking authority.

Udall (CO) amendment No. 4016 (to amendment No. 3739), to improve consumer notification of numerical credit scores used in certain lending transactions.

AMENDMENT NO. 3986 TO AMENDMENT NO. 3739

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Mr. President, I ask unanimous consent to set aside any pending amendments and to call up amendment No. 3986.

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

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. CORNYN], for himself, and Mr. VITTER, proposes an amendment numbered 3986 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To protect United States taxpayers from paying for the bailouts of foreign governments)

On page 1565, after line 23, add the following:

TITLE XIII—MISCELLANEOUS

SEC. 1301. RESTRICTIONS ON USE OF FEDERAL FUNDS TO FINANCE BAILOUTS OF FOREIGN GOVERNMENTS.

The Bretton Woods Agreements Act (22 U.S.C. 286 et seq.) is amended by adding at the end the following:

''SEC. 68. RESTRICTIONS ON USE OF FEDERAL FUNDS TO FINANCE BAILOUTS OF FOREIGN GOVERNMENTS.

''(a) IN GENERAL.—The President shall direct the United States Executive Director of the International Monetary Fund—

''(1) to evaluate any proposed loan to a country by the Fund if the amount of the public debt of the country exceeds the gross domestic product of the country;

''(2) to determine whether or not the loan will be repaid and certify that determination to Congress.

''(b) OPPOSITION TO LOANS UNLIKELY TO BE REPAID.—If the Executive Director determines under subsection (a)(2) that a loan by the International Monetary Fund to a country will not be repaid, the President shall direct the Executive Director to use the voice and vote of the United States to vote in opposition to the proposed loan.''.

Mr. CORNYN. Mr. President, I continue to have deep concerns about the legislation we are debating. I mentioned some of those concerns last week, including the bailout provisions that still effectively remain in the bill and the so-called orderly liquidation process that could give some firms special treatment outside of the Bankruptcy Code.

I repeat my appreciation to Senator SESSIONS from Alabama for offering his amendment last week which would have corrected that. Unfortunately, it was defeated last Thursday, as most of the amendments have been.

At this time, I offer another amendment that would protect the American taxpayer from bailing out foreign governments. We all know that this scene, which we saw displayed across cable television and in the newspapers, is being played out now in Greece where literally a Greek tragedy is unfolding.

How did this happen? First, Greece's public debt was 115 percent of its gross domestic product, according to the International Monetary Fund. Putting that in context, according to the Congressional Budget Office report of March 2010, the public debt of the United States is currently 53 percent of our gross domestic product. However, the Congressional Budget Office, the official scorekeeper of the government, says, all else being equal—in other words, if nothing else happens—the baseline estimate for that debt in ten years will be 67.5 percent, up from 53 percent last year. Under the President's proposed budget, that number skyrockets to 90 percent of gross domestic product by 2020. While some may say here in America we are in relatively good shape because our debt is only 53 percent of our gross domestic product, the Congressional Budget Office estimates that under the President's own budget, that will soar from 53 percent of the gross domestic product to 90 percent of GDP by the year 2020, which makes that 115 percent number for Greece look not so much higher than what the American number will be come 2020.

Deficits are high in Greece for the same reason they are too high in the United States—too much government and too much reckless spending.

Similar to the U.S. Government, the Greek Government has been financing its operations by borrowing money. But over the last few weeks, the capital markets made clear investors—the people who buy that debt—do not trust the Greeks to be able to pay it back, hence, the need for these extraordinary bailouts by the International Monetary Fund.

But, again, the comparison is unavoidable. What happens if the United States does not change its current trajectory of going to 90 percent of our gross domestic product when it comes to our debt by 2020, as projected by the Congressional Budget Office? What do we do if we continue to borrow and spend? What do we do if China, for example—which is the primary country that buys that debt—either refuses to continue to finance our deficit spending and our debt or demands higher interest rates.

What is happening now in Greece with these kinds of demonstrations I do not think it takes a great imagination to say could happen in America if we are not more responsible in dealing with our out-of-control spending, our out-of-control debt—unless we say no to the President's proposed spending budget, which would grow that to 90 percent of our gross domestic product by 2020.

But back to my amendment. Why is it people are so upset about bailing out Greece, using the International Monetary Fund to do so? Well, I am referring to an article from the Associated Press entitled ''Europe bristles at paying for Greek retirement.'' Let me read a couple paragraphs:

In Greece, trombone players and pastry chefs get to retire as early at 50 on grounds their work causes them late career breathing problems. Hairdressers enjoy the same perk thanks to the dyes and other chemicals they rub into people's scalps.

Skipping down a couple paragraphs:

Like many [European Union] countries, the general retirement age in Greece is 65, although the actual average [retirement age] is about 61. However, the deeply fragmented system also provides for early retirement—as early as 55 for men and 50 for women—in many professions classified as ''arduous and unhealthy.''

So we see why people are reluctant, to say the least, to bail out Greece because of these reckless pensions that facilitate these early retirements under the thinnest of pretenses. But we know the European Union and the International Monetary Fund recently approved a $145 billion bailout for the Greek Government. Mr. President, $40 billion of that represents loan guarantees from the International Monetary Fund. Since the United States has funded about 17 percent of the IMF's budget, our share—that is, the American taxpayers' share—of that bailout would be at least $7 billion. That is right, U.S. taxpayers are on the hook to help bail out Greece to the tune of at least $7 billion.

We know a $1 trillion bailout fund is being discussed for other European nations. While the details are being discussed, once again, U.S. taxpayer funds could make their way through the International Monetary Fund to bail out irresponsible foreign governments.

As CNBC reported on Tuesday:

U.S. taxpayers could be on the hook for $50 billion or more as part of the European debt bailout, which is likely to be a close cousin to the strategy used to rescue the American financial system.

CNBC went on to say:

The entire bailout package has been nicknamed ''Le Tarp'' for its similarity to the Troubled Asset Relief Program that bailed out US companies with taxpayer-backed loans.

They are calling this bailout fund Le Tarp for a reason. Once again, billions

of dollars will be in the hands of government bureaucrats, and the U.S. taxpayer will be asked simply to trust those so-called experts who have let us down before and who seem to be making much of this up as they go along.

It is no surprise that 63 percent of respondents to a recent Rasmussen poll have said they oppose using U.S. taxpayer funds to bail out foreign governments. I am actually surprised it is only 63 percent.

American taxpayers should not be involved in bailing out foreign governments. As George Will pointed out last week in the Washington Post, Greece has a gross domestic product that is less than the Dallas-Fort Worth metropolitan area's. Greece is simply not, under any stretch of the imagination, too big to fail. If Greece defaults on its debt, then the European banks that bought the debt need do write it off. If the European governments want to bail out their banks or prop up their currency, let them do it without help from the American taxpayer.

American taxpayers simply should not be involved in this process. Our first priority should be to unwind all the bailouts we have, thanks to this administration, not to create new ones overseas.

Moreover, there is a good chance this Greek bailout is not even going to work; in other words, that we will not even be able to get our money back. It will not be a loan; it will be throwing more good money after bad.

The chief executive of the Deutsche Bank doubts the Greeks can even repay this debt. We have all seen pictures of these protests that have continued under the ''austerity measures'' that have now been imposed that the government was forced to make in order to secure the deal.

As one blogger recently put it:

> It was the Greeks who gave us the word for democracy. They also gave us the words for demagoguery, tyranny, crisis and chaos.

That is what this photograph looks like: chaos as a result of uncontrolled spending and out-of-control debt.

What we are seeing is what Robert Samuelson calls the ''Death Spiral of the [Modern] Welfare State.'' He said: ''The reckoning has arrived in Greece, but it awaits most wealthy countries,'' including, I might add, the United States of America—unless we change our ways.

The President of the European Council put it this way:

> We can't finance our social model anymore—with 1 percent structural growth we can't play a role in the world.

What my amendment—which will be among the four amendments voted on when we gather again at 5:30—does is, it says the American people are tired of bailouts, and Congress should protect the American taxpayer from bailing out foreign governments, particularly when we cannot get our money back afterwards.

My amendment would bring needed transparency and accountability to what the International Monetary Fund is doing with American taxpayer dollars, including the roughly $60 billion our country has already provided to the IMF over the years.

Specifically, this amendment would require the administration to look more closely at any proposed IMF loan to see if that country's debt exceeds its GDP; and when it does, as Greece's does, to certify to Congress that the loan will be repaid.

If the U.S. Executive Director of the IMF cannot certify to Congress that the loan will be repaid, my amendment would require the President of the United States to direct the Executive Director to vote against the bailout by the International Monetary Fund.

The logic of this amendment could not be more clear: Any country that owes more money than its entire economy produces is, by definition, a very bad credit risk, and the United States should not be loaning money to such a nation, unless we are absolutely confident our taxpayers are not subsidizing failure and will ultimately get their money back.

So I urge my colleagues to support this amendment. We must act quickly, so the amendment will apply to future bailouts of nations like Greece that have spent way beyond their means.

I yield the floor.

I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. WHITEHOUSE. Mr. 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.

AMENDMENT NO. 3746 TO AMENDMENT NO. 3739

Mr. WHITEHOUSE. Mr. President, I wish to say a few words on the amendment I have pending and that we will be voting on in the next 2 days that will restore the historic power of States to control interest rates they charge to their citizens.

One of the things I hear most about when I am home in Rhode Island is from folks who can't understand why their credit card interest rate suddenly jumped to over 30 percent. For a long time, the tricks and the traps in those long credit card contracts pitched people into these penalty rates. I think a lot of people don't read all the fine print and aren't sure exactly what it means. We have individual consumers up against the craftiest lawyers the credit card industry can hire, and the result is when they trigger one of these traps and they get caught by one of these little tricks, they end up being kicked into a very high penalty rate.

Recently, after the credit card reform bill passed a year ago, we saw the credit card industry actually not even waiting for the tricks or traps to be triggered. They just began to spontaneously raise people's interest rates; again, very often over 30 percent. The Presiding Officer and I are both of an age where we can remember a time when interest rates of that level would have been a matter to refer to the authorities, not a commonplace business practice of our biggest industries. When we think of the pain and the suffering and the economic stress families get put under when they fall into these burdensome, exorbitant penalty rates—I think we should do something about it. My amendment would allow us to do just that.

It doesn't take any new risks. It doesn't create dramatic new policy. It does things that my friends on the other side of the aisle have been supportive of over the years. It honors the independent authority of States to make decisions to protect their citizens. It supports consumers—the little guy—against the huge corporations, and it puts our local banks on a level playing field with these big out-of-State banks.

We got here because of an unusual loophole that the Supreme Court opened 30 years ago. We did not have a debate on the Senate floor saying: What should our policy be? Should we take away the rights of States to protect their consumers, to protect their citizens from exorbitant out-of-State interest rates? We never had that discussion. This happened inadvertently.

It happened as a result of a Supreme Court decision back in 1978 that said when a bank in one State and a consumer in another State have a transaction, it will be the laws of the home State of the bank that govern. It didn't look like a very big deal at the time. It didn't take the crafty bank lawyers long to see that it opened a very tricky loophole, and they could move to the States in this country that had the worst consumer protection legislation, and from there—from those outposts of the worst consumer protection—they could market into other States. The fact that the other State they were marketing into had good consumer protections and protected those State's citizen didn't matter. It didn't help because of the Supreme Court decision.

I submit if, as a Senate, we were to have debated that proposition, there would not have been many votes for the outcome. The notion of the policy of the United States on protecting consumers from interest rates should be that the rules of the worst State in the country trump every other State is a rule that nobody in their right mind would vote for. But because of this inadvertent Supreme Court loophole and because of the crafty work of these big national banks and their lawyers, we are now in that exact situation—a situation that none of us would ever have voted for and that we shouldn't tolerate now.

So I urge my colleagues on the other side of the aisle to vote for this amendment. I wish to thank Senator COCHRAN from the other side of the aisle for cosponsoring it, and I wish to ask his colleagues in the Republican caucus to join him in supporting it.

This bill we are looking at right now is very esoteric and technical. It is preventive medicine. It engages in things such as trying to rebuild the Glass-Steagall firewall, trying to promptly regulate collateralized debt obligations, trying to put appropriate leverage limitations on banks. That is all pretty arcane stuff.

The American people want this reform, and it should happen. But here is a deliverable they can take right home. They will see a difference as soon as their States respond. They can be protected from these outrageous 30-percent interest rates as a result of this bill. It is not a big Federal Government that is coming to do this; it is the State governments, State by State. Indeed, if a State wants to have no consumer protections and have its citizens vulnerable to these predatory and exorbitant credit card deals, fine. They can do that. There is nothing in my amendment that requires a State to do anything. It just empowers them with the same power they had at the founding, with the same power they had for 202 years, until 1978 came along and this peculiar Supreme Court decision.

So I think it will be a good argument to go home with, and as voters in this country look at what Congress has done leading up to the November elections, to be able to say: You know what. Those 30-percent rates we never saw when we were children and that our parents never had to pay, the rates that you as a head of a family are now having to deal with with these credit card companies from out of State that you can barely reach on the phone, and if you do, you get pushed from phone tree to phone tree, we have done something about that. We have helped you. We have put you in a position where the States are sovereign again over these big national corporations rather than vice versa.

Right now, we, the big credit card companies, are sovereign over our States. That is not the way things should be in America. That is not the way the Founding Fathers set it up. It is not right for consumers. It violates the principle of the States being laboratories of democracy, and it completely eviscerates consumer protection.

So I urge my colleagues to support it and to put themselves in a position to be able to go home to their voters and say: We did something tangible for you. We didn't create bigger government. We let your existing State government make the decisions that for two centuries they were capable of making to protect you from the worst practices of the out-of-State credit card companies. The alternative is to have to go back and explain why people are still paying 30 percent when you have the chance to do something about it; why you chose the big out-of-State corporations and exorbitant interest rates over your own home State's protection of your own home State's citizens.

I think the position my colleagues would want to be in on that one is with your home State, with the doctrine of federalism, with the traditions of the United States of America, and with your consumers, rather than on the other side with the big out-of-State banks that charge these exorbitant rates.

So I hope I will have support, and I look forward to working with anyone who has questions.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Idaho.

AMENDMENT NO. 4020 TO AMENDMENT NO. 3739

(Purpose: To limit further bailouts of Fannie Mae and Freddie Mac, to enhance the regulation and oversight of such enterprises, and for other purposes)

Mr. CRAPO. Mr. President, I ask unanimous consent to set aside the pending amendment and call up the Crapo amendment No. 4020.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAPO], for himself, Mr. GREGG, Mr. SHELBY, Mr. MCCAIN, Mr. VITTER, and Mrs. HUTCHISON, proposes an amendment numbered 4020 to amendment No. 3739.

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

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

(The amendment is printed in the RECORD of Thursday, May 13, 2010.)

Mr. CRAPO. Thank you very much, Mr. President.

This amendment includes Fannie Mae and Freddie Mac as part of the Federal budget as long as either of these two institutions is under conservatorship or receivership. I wish to thank Senators GREGG, SHELBY, MCCAIN, and VITTER, HUTCHISON, and CORKER for cosponsoring this amendment.

As I believe my colleagues will recall, several days ago we voted on a broader amendment which would actually have provided some significant coverage of Fannie Mae and Freddie Mac in this so-called financial regulatory reform legislation we are addressing on the floor of the Senate today.

That legislation would have provided a pathway for us to literally stop the bailouts of Fannie and Freddie and move us toward a path of resolving the continued taxpayer exposure to the excesses of Fannie Mae and Freddie Mac. But that amendment was defeated on the floor of the Senate—although I supported that amendment because now, since the amendment has been defeated, there is literally no piece of this legislation before us that addresses the core problem that started the entire collapse in our economy; namely, the securitization of the mortgage industry and the actions of Fannie Mae and Freddie Mac, which ran up so many of these toxic assets and helped to spread them throughout the globe.

As we debated then, the taxpayer is already on the hook for about $130 billion-plus for the problems Fannie and Freddie caused. Experts tell us, as we move forward, that liability to the taxpayer is likely to reach $380 billion to $400 billion. I personally think those are conservative estimates. When we get the full picture, I think the taxpayers will have been put on the hook for way more than that.

This amendment simply says: Let's tell the American public what's happening. Since we lost the fight last week to try to have the bill cover Fannie Mae and Freddie Mac and provide an exit strategy for the taxpayers to continue to bail them out, let's at least be open and clear about what we are doing with regard to Fannie and Freddie.

The purpose of this amendment is to show the American people the true picture of how much our national debt has increased as a result of the bailout of these two institutions—the bailout which I, again, point out is ongoing, uninterrupted in any way by this legislation.

According to the CBO Director Douglas Elmendorf:

After the U.S. Government assumed control in 2008 of Fannie Mae and Freddie Mac—two federally chartered institutions that provide credit guarantees for almost half of the outstanding residential mortgages in the U.S.—

This is his quote now, and because of what happened in the economy, Fannie and Freddie, together with the FHA, account for 96.5 percent of all of the residential mortgages in the U.S. Continuing with the quote:

the Congressional Budget Office concluded that the institutions had effectively become government entities whose operations should be included in the Federal budget.

What is the Director saying? He is saying that since the U.S. Government has now taken over control and management of Fannie Mae and Freddie Mac, and the taxpayer is on the hook for all of their debts and excesses, we ought to put it on budget and show the American people what is happening to our debt as a result of it, instead of using the creative accounting that we see here in Washington all the time, where we mount up spending and debt and figure out ways to keep it from showing up in the national debt or in the calculations of our spending.

At the end of 2009, per the financial statements, those figures that we are talking about, how much debt is not being reflected in our national debt because we don't choose to count it? Those figures are $774 billion for Fannie Mae and $781 billion for Freddie Mac, for a total of $1.555 trillion, which is out there for which the taxpayer is on the hook, and we have to figure out a way to pay it back. We as a Congress will not tell the American people that in the calculations of our national debt.

To put into perspective how large these entities are, their combined total books of business are nearly $5.5 trillion. As I indicated, they are currently run and operated by the U.S. Government.

Again, the amendment last week would have put us on a pathway to solve this and take the government out of the business, which should be a private sector business of mortgages. But at least this amendment would put us on record as telling the American people what exposure we are putting them to by not taking those actions.

By the way, the Congressional Budget Office has estimated that, in the wake of the housing bubble and the unprecedented deflation in housing values that resulted, the government's cost to bail out Fannie Mae and Freddie Mac will eventually reach, as indicated before, about $381 billion. I think that is too conservative.

On May 5, Freddie Mac reported losing another $8 billion in the first quarter and requested $10.6 billion from taxpayers, saying in the same breath they are going to need more in the future.

On May 10, Fannie Mae reported losing $11.5 billion, its 11th consecutive quarterly loss, and itself asked for another $8.4 billion more from the taxpayers. That is in addition to the $126.9 billion Fannie Mae and Freddie Mac already cost the taxpayers. Get this—there used to be some limits on this—$400 billion or $200 billion for each institution.

Last Christmas—literally on Christmas Eve—the Treasury announced that it was going to lift that $400 billion loss cap on these two companies, creating a potentially unlimited liability, and effectively providing the full faith and credit of the U.S. Government, the American taxpayers, for their unlimited debt. Now the limit, instead of $400 billion, which itself is unacceptable, is infinity. We will not even record it for the American people to see.

According to a January 2010 CBO background paper titled ''CBO's Budgetary Treatment of Fannie Mae and Freddie Mac,'' the Congressional Budget Office ''believes that the Federal Government's current financial and operational relationship with Fannie Mae and Freddie Mac warrants their inclusion in the budget.''

This isn't just my complaint. The CBO itself has said that now that the status is that the U.S. Government has taken control of the financing of and assumed the debt of the obligations and actions of Fannie Mae and Freddie Mac, we ought to recognize they are government entities, and we ought to include them in our budget. That is what we are seeking in this amendment.

By contrast, the current administration has taken a different approach by continuing to treat Fannie Mae and Freddie Mac as outside the Federal budget, recording and projecting outlays equal to the amounts of any cash infusions made by Treasury into the entities. They are creating the appearance that there is no debt here, no impact on our budget. That is the kind of nontransparency this amendment is aimed at stopping. We are seeking to create some kind of transparency that will at least allow Congress and the public to understand the finances we are now being engaged in and asking the American taxpayers to back.

The Office of Management and Budget, in contrast to the CBO, has said in their Budget of the U.S. Government for Fiscal Year 2011:

> Under the approach in the budget, all of the GSEs' transactions with the public are non-budgetary because the GSEs are not considered to be government agencies.

We have the President and the OMB at the White House saying that we don't need to count this in the budget because they are not government agencies. The CBO, however, is saying: Wait a minute, we own them, we run them, we are backing all of their debt, and essentially they are government entities. We can engage in debates about whether Fannie Mae and Freddie Mac are Government entities, but the bottom line question is: Who is responsible for their debt? Who is paying for their debt?

Nobody denies the answer to that question. It is the U.S. taxpayer. If the U.S. taxpayer is on the hook for their debt—and after what I call the ''Christmas Eve massacre'' of last Christmas—and there is no limit to the amount of that liability, we at least ought to put it on record.

CBO has included the GSEs in its budget baseline but does not include their debt in the computations of debt because CBO took a narrow view of the Federal debt. But as CBO's report says:

> CBO's treatment of the entities' debt does not constitute a statement about whether or not that debt should be considered Federal debt.

Figure that out. CBO is saying: We are not going to include this in the debt, even though we think they are government entities and we ought to put them on budget. Their words were ''CBO's treatment of the entities' debt''—meaning not counting it—''does not constitute a statement about whether or not that debt should be considered Federal debt.''

Maybe CBO is saying Congress needs to give us some direction. Whether that is what they are saying, Congress does need to give some direction here, and that is the purpose of the amendment.

In light of Treasury's Christmas Eve ''taxpayer massacre'' and the government's decision to back all losses of Fannie Mae and Freddie Mac, we should include Fannie Mae and Freddie Mac as part of the Federal budget—at least as long as they are in receivership or conservatorship and run and backed up by the American taxpayer.

The amendment would also do a few other things. It would reestablish the $200 billion cap per entity and accelerate the 10-percent reductions of the mortgage portfolios, effectively requiring the companies to shrink those portfolios by holding a combined $100 billion from their current levels.

This will also limit the losses that taxpayers will face as a result of the blank check given by the administration last December 24.

The amendment will also require the Secretary of the Treasury and the Director of the Federal Housing Financing Agency to testify before the Banking Committee each time an additional $10 billion or more in taxpayer funds is provided to Fannie Mae and Freddie Mac combined. In other words, the next time, under this amendment, we have a May like this May, where Fannie and Freddie have asked for more than $10 billion of additional taxpayer bailout, we at least ought to have the Secretary of the Treasury and the Director of the Federal Housing Finance Agency, who manage this, come before the Banking Committee and testify as to what is happening, why, and where we are headed.

This will provide at least an opportunity for congressional oversight, which is currently totally lacking in the process. All that happens now is that they issue a press release saying we need another $10 billion and they get it—no limits, no caps, no accountability, no counting of the debt, and no explanation to Congress. It seems to me a little transparency and honesty with the American people about what our finances are doing here is appropriate.

The amendment is also going to require the Secretary of the Treasury to post on the Treasury Web site, 1, the aggregate portfolio holdings of each enterprise and, 2, a weekly summary of taxpayer funds provided for and at risk for each enterprise.

Again, all we are asking is to have the kind of transparency that will allow the American people to understand what the Federal Government is up to with their money. It will also help explain why some of us don't believe the rhetoric about the bill before us today. There is a lot of talk about ending bailouts. There is a lot of talk about ''too big to fail'' is never going to be allowed again in America. There are some provisions in the bill that end some of the bailouts and that go quite a bit of the way down the road toward making it clear that a company cannot get too big to fail, and that we will try to move them into a resolution process if they do fail.

It is not ironclad, however, and there is still the possibility that we will see bailouts in the future—something in other amendments we have tried to tighten.

But let's not mistake the fact that the biggest bailouts of all are not even addressed in this legislation and are allowed to not only continue unabated but to continue without even telling the American public what the facts are. When I say the biggest bailouts of all, the last numbers I saw, if you take

the auto bailout and the financial bailouts everybody heard about, and total them all up, they won't even equal the amount of money being used to bail out Fannie Mae and Freddie Mac. Yet, Fannie and Freddie continue—because the government now owns them—to be untouched by this legislation.

It is time for true transparency as we debate these issues of bailouts and too big to fail. It is time for us to address the very core of the problem that caused so much of the economic disruption we are now dealing with—the financial mortgage industry and the securitization of those toxic mortgages.

Yet, again, what happens? We are simply asked, as American taxpayers, to pony up with a check for $10 billion here and $8 billion there, and we will continue to grow, unrestricted, uncontrolled, unnoticed, and unidentified, because we won't even put it on record and count it in our own budgeting.

It is time for us to include the obligations and the management of Fannie Mae and Freddie Mac in our Federal budget. I encourage all of my colleagues to support this amendment when we get an opportunity to vote on it.

Mr. President, I 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. ROCKEFELLER. Mr. 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.

AMENDMENT NO. 3758, AS MODIFIED

Mr. ROCKEFELLER. Mr. President, I call up Senator HUTCHISON's and my amendment No. 3758 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment is pending. Does the Senator wish it to be the pending question?

Mr. ROCKEFELLER. I ask unanimous consent to modify this amendment with the modification at the desk.

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

The amendment (No. 3758 as modified), is as follows:

On page 1191, line 5, strike ''(c)'' and insert ''(b)''.

On page 1191, line 10, strike ''6809);'' and insert ''6809) except for section 505 as it applies to section 501(b);'';

On page 1191, line 20, strike ''and''.

On page 1191, line 22, strike ''seq.).'' and insert ''seq.); and''.

On page 1191, between lines 22 and 23, insert the following:

(Q) section 626 of the Omnibus Appropriations Act, 2009 (Public Law 111–8).

On page 1192, line 5 after ''H.'' insert ''The term does not include the Federal Trade Commission Act.''

On page 1213, line 24 after ''database'' insert ''or utilizing an existing database''.

On page 1214, line 3, after ''with'' insert ''the Federal Trade Commission or''.

On page 1214, line 4, strike ''other Federal regulators,'' and insert ''such agencies,''.

On page 1215, line 11, after ''regulators,'' insert ''the Federal Trade Commission,''.

On page 1215, line 14, strike ''regulators'' and insert ''regulators, the Federal Trade Commission,'' .

On page 1221, line 8, after ''Trading Commission,'' insert ''the Federal Trade Commission,''.

On page 1237, line 6, strike ''law,'' and insert ''law and except as provided in section 1061(b)(5),''.

On page 1250, line 6, strike ''(a)'' and insert ''(a)(1)''.

On page 1250, line 20, strike ''(a),'' and insert ''(a)(1),''.

On page 1251, line 19, strike ''(a)'' and insert ''(a)(1)''.

On page 1251, line 24, strike ''(a)'' and insert ''(a)(1)''.

On page 1252, line 8, strike ''(a),'' and insert ''(a)(1),''.

On page 1252, line 22, strike ''(a)'' and insert ''(a)(1)''.

On page 1253, line 4, strike ''(a).'' and insert ''(a)(1).''.

On page 1253, line 13, strike ''(a)'' and insert ''(a)(1)''.

On page 1253, line 15, strike ''(a)'' and insert ''(a)(1)''.

On page 1253, line 18, strike ''(a),'' and insert ''(a)(1),''.

On page 1253, line 24, strike ''(a),'' and insert ''(a)(1),''.

On page 1254, line 13, strike ''EXCLUSIVE''.

On page 1254, strike lines 14 through 20 and insert the following:

(1) THE BUREAU TO HAVE ENFORCEMENT AUTHORITY.—Except as provided in paragraph (3) and section 1061(b)(5), with respect to any person described in subsection (a)(1), to the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law.

On page 1255, strike lines 5 through 18, and insert the following:

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall negotiate an agreement for coordinating with respect to enforcement actions by each agency regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1), or service providers thereto. The agreement shall include procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce any Federal law regarding the offering or provision of consumer financial products or services.

On page 1256, line 25, strike ''law,'' and insert ''law and except as provided in section 1061(b)(5),''.

On page 1257, line 3, strike ''(a)'' and insert ''(a)(1)''.

On page 1257, line 9, strike ''(a),'' and insert ''(a)(1),''.

On page 1257, line 12, strike ''(a)'' and insert ''(a)(1)''.

On page 1298, line 14, strike ''ensure that the rules—'' and insert ''ensure, to the extent appropriate, that the rules—''.

On page 1299, line 9, strike ''all''.

On page 1301, line 18, strike ''to establish'' and insert ''regarding''.

On page 1375, beginning with line 8, strike through line 5 on page 1376 and insert the following:

(A) TRANSFER OF FUNCTIONS.—The authority of the Federal Trade Commission under an enumerated consumer law to prescribe rules, issue guidelines, or conduct a study or issue a report mandated under such law shall be transferred to the Bureau on the designated transfer date. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission.

(B) BUREAU AUTHORITY.—

(i) IN GENERAL.—The Bureau shall have all powers and duties under the enumerated consumer laws to prescribe rules, issue guidelines, or to conduct studies or issue reports mandated by such laws, that were vested in the Federal Trade Commission on the day before the designated transfer date.

(ii) FEDERAL TRADE COMMISSION ACT.—Subject to subtitle B, the Bureau may enforce a rule prescribed under the Federal Trade Commission Act by the Federal Trade Commission with respect to an unfair or deceptive act or practice to the extent that such rule applies to a covered person or service provider with respect to the offering or provision of a consumer financial product or service as if it were a rule prescribed under section 1031 of this title.

(C) AUTHORITY OF THE FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—No provision of this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act or any other law, other than the authority under an enumerated consumer law to prescribe rules, issue official guidelines, or conduct a study or issue a report mandated under such law.

(ii) COMMISSION AUTHORITY RELATING TO RULES PRESCRIBED BY THE BUREAU.—Subject to subtitle B, the Federal Trade Commission shall have authority to enforce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) a rule prescribed by the Bureau under this title with respect to a covered person subject to the jurisdiction of the Federal Trade Commission under that Act, and a violation of such a rule by such a person shall be treated as a violation of a rule issued under section 18 of that Act (15 U.S.C. 57a) with respect to unfair or deceptive acts or practices.

(D) COORDINATION.—To avoid duplication of or conflict between rules prescribed by the Bureau under section 1031 of this title and the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act that apply to a covered person or service provider with respect to the offering or provision of consumer financial products or services, the agencies shall negotiate an agreement with respect to rulemaking by each agency, including consultation with the other agency prior to proposing a rule and during the comment period.

(E) DEFERENCE.—No provision of this title shall be construed as altering, limiting, expanding, or otherwise affecting the deference that a court affords to the—

(i) Federal Trade Commission in making determinations regarding the meaning or interpretation of any provision of the Federal Trade Commission Act, or of any other Federal law for which the Commission has authority to prescribe rules; or

(ii) Bureau in making determinations regarding the meaning or interpretation of any provision of a Federal consumer financial law (other than any law described in clause (i)).

On page 1382, beginning with line 5, strike through line 2 on page 1383 and insert the following:

(c) FEDERAL TRADE COMMISSION.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(1) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(2) existed on the day before the designated transfer date.

On page 1396, line 24, strike ''FTC''.

On page 1397, line 1, strike ''the Federal Trade Commission,''.

Mr. ROCKEFELLER. Mr. President, at its very core, this amendment is about protecting consumers. It is about making sure the Federal Trade Commission has the authority to act in coordination with the new Consumer Financial Protection Bureau, which is created in the underlying bill.

This amendment would equip the FTC to cover dangerous gaps in consumer protection and to go after dishonest, fly-by-night operators targeting our society's weakest members. In the Commerce Committee, we discovered those folks are frequent and everywhere.

For nearly 100 years, the FTC has been protecting consumers in the gray areas where other regulatory bodies have failed to act. This amendment will make sure the situation of the FTC and its ability to act does not change. Since 1914, the Federal Trade Commission has served the American public as our preeminent consumer watchdog. The Commission's core consumer protection mission is to enforce and regulate against ''unfair or deceptive acts or practices in or affecting interstate commerce.'' This broad prohibition is at the heart of the FTC's underlying authority under its authorizing statute, the Federal Trade Commission Act.

This bipartisan amendment is very simple. It is a savings clause. That is really all it is. It fully preserves the FTC's enforcement and regulatory authority under the FTC Act as it is today. The underlying bill creates a new consumer protection bureau within the Federal Reserve, and I fully support that effort. But creating that new bureau should not come at the expense of the FTC's mission, which is consumer protection, which is not, incidentally, a zero sum game.

I emphasize that this amendment is hardly a novel concept. Throughout the FTC's long, distinguished history, Congress has created new regulatory agencies that have overlapped with the FTC's core authority and jurisdiction. The list runs from the Securities and Exchange Commission and the Food and Drug Administration to the Environmental Protection Agency and the Consumer Product Safety Commission. But in order to maximize consumer protection, Congress has always preserved the FTC's authority under the FTC Act, and this latest effort should be no different. Yet the underlying bill currently strips the FTC of its authority and places it within the new bureau, undermining its consumer protection mission and creating, in this Senator's judgment, dangerous holes in our regulatory safety net. That is because the definition and boundaries of the term ''financial products and services''—the ruling definition—are entirely vast and entirely vague. Anyone can avoid enforcement simply by claiming they are beyond the FTC's or the new bureau's jurisdiction. Fraudsters and scam artists could and most certainly would tie the courts up in knots. Concurrent authority would solve this problem.

What is more, there is too much financial fraud out there to take a valuable cop off the beat. The FTC has particular expertise in cracking down on bad actors who fleece ordinary Americans of their hard-earned money.

I think it is clear that these small-time crooks would not be at the top of the new bureau's priority list. They will have many things to do. It is just common sense to preserve the FTC's existing authority against these people.

Simply put, the new consumer protection bureau cannot do everything. Neither can the FTC. There will be plenty of work to go around for both agencies.

I wish to be absolutely clear about something. This amendment would not subject businesses to dual regulations. As I said earlier, the FTC has always coexisted with newly created agencies, and they have avoided tripping over one another with conflicting regulations or enforcement actions. To make absolutely certain this does not happen, the amendment, as modified, directs the FTC and the new bureau to enter into a memorandum of understanding and coordinate their regulatory efforts. That is sensible. The bottom line is that businesses will not be subject to multiple layers of regulation or rules.

I close by thanking particularly Senator HUTCHISON, Senator DORGAN, and Senator PRYOR for their steadfast support and effort, and, of course, Chairman DODD, who has worked long and hard, it seems to me, for months on end, never moving from that seat. He has been crucial in working with me on this issue and with Senator HUTCHISON.

So many of the enormous economic problems we face today are a direct result of weak consumer protections in the financial sector. It is the hard-working families in places such as West Virginia and many other places all across the country who are hurt the most. They are struggling just to scrape by, to pay their bills, and to put food on the table. It is so hard to know, frankly, whom to trust. They need to know somebody is by their side looking out for them. The Restoring American Financial Stability Act of 2010 will be that safeguard. It is a profound achievement that will make a real and lasting difference in the lives of hard-working Americans for generations to come. Our amendment is a small but essential part of that work to make sure consumers are protected.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I will not go into the specifics of the Rockefeller-Hutchison amendment because the distinguished chairman of the Commerce Committee said it very well. Let me make a couple of other points to show what I think is the important reason for this amendment to be adopted.

Over the past 5 years the Federal Trade Commission has filed over 100 actions against providers of financial services, and in the past 10 years the Commission has obtained nearly $½ billion in redress for consumers of financial services. In 2009 alone, the FTC and the States, working in close coordination, brought more than 200 cases against firms that pedaled phony mortgage modification and foreclosure rescue scams. Despite these successes, the substitute that is before us would transfer all consumer protection functions of the FTC to the newly created Consumer Financial Protection Bureau.

The FTC, in a bipartisan letter signed by all five Commissioners, has expressed concern that the current Senate language could inadvertently restrict the ability of the FTC to work with this new financial protection bureau to stop unfair and deceptive practices that prey on consumers of financial products and services. The FTC has warned that the current bill, which grants the new agency exclusive rulemaking and enforcement authority in several areas, could even inhibit the FTC's authority in consumer protection with respect to consumer protection laws of nonfinancial products and services.

The bottom line is, I do not think it was the intention of the bill to take away from the FTC the authority and the record they have. It is important that they have a record in this area. They have experience. They have experienced staff. And we do not need to reinvent the wheel. We do not need another whole agency to do the same things the FTC already does.

It also is confusing to the regulator. It is confusing when they have two agencies. They may have conflicting rules. Sometimes, as a businessperson, I have been in a position where two agencies have rulings that if you do what one ruling says, the other agency's ruling would be violated. That is unfair to our small businesses. It is unfair to the regulated entities not to have one regulatory authority that does not in any way have a double burden or make a double burden on the regulated. We need to keep commerce going and we also need to protect consumers and our amendment will ensure that happens. So I am very pleased to be a cosponsor.

I will say the leadership for this amendment certainly resided with the chairman of the Commerce Committee, the distinguished Presiding Officer in the chair now, and also I appreciate that Chairman DODD and Ranking Member SHELBY worked on this amendment to make sure it was written in the correct way and that the FTC will keep its basic authority it has now. It will not get new authority, and it will not have authority taken away. It will

just be that their staff and their experience will be utilized—and certainly in a more fair way—and particularly in nonfinancial institutions consumers will have the protection of the FTC, where they are the relevant agency, rather than transferring to a new agency that is going to be set up and that doesn't even have rules yet, much less staff.

So I think it is a good amendment, and I appreciate the leadership of the distinguished chairman, Senator ROCKEFELLER.

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

The PRESIDING OFFICER (Mr. ROCKEFELLER). The clerk will call the roll.

Mr. DODD. Mr. President, I ask unanimous consent to withhold the quorum call.

The PRESIDING OFFICER. Without objection, it is withheld.

Mr. DODD. Mr. President, I wish to take a minute or so to thank both the Presiding Officer and the author of this amendment, along with his coauthor and my good friend, the distinguished Senator from Texas.

This is a good amendment, as my colleague from West Virginia has pointed out. The role of the Federal Trade Commission has been critically important and goes back a long time. I often cite to people that one of my favorite pieces of statuary is outside the Federal Trade Commission. It is an explanation of what the free enterprise system is and how it is supposed to work. It is a rather dated piece of sculpture, goes back I think to the Depression era, and it shows that very powerful horse straining at the bit, trying to charge forward, and a rather muscular farmer holding the horse back. You are not quite sure, looking at the piece of statuary, whether the horse is going to win or the farmer is going to win, which is about as good a visual expression as we have of our free enterprise system.

We want a robust free enterprise system that is charging forward, creating new ideas and innovations in order to allow jobs to be created and wealth to be created. At the same time, we realize we have to have that regulator in place to make sure it doesn't run wild, in the sense that everyone else could be adversely affected by it. So I have always thought that particular piece of statuary captured the essence of what our free enterprise system is that sits outside the FTC.

I think this amendment strengthens the bill and is a very worthwhile addition to it. So I thank both my colleagues for their indulgence and their patience as we took a little time to get to this.

Either we will have a recorded vote or a voice vote, as soon as the leadership decides how they want to handle that in the next hour or so.

Why don't we do this. If there is no objection, we will go to it, and I will call the question.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment, as modified.

The amendment (No. 3758), as modified, was agreed to.

Mr. DODD. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, 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. WHITEHOUSE. Mr. 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. 3746, AS MODIFIED, TO AMENDMENT NO. 3739

Mr. WHITEHOUSE. Mr. President, may I ask for regular order with respect to my pending amendment, No. 3746.

The PRESIDING OFFICER. The amendment is now pending.

Mr. WHITEHOUSE. Mr. President, I offer a modification.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 3746), as modified, is as follows:

On page 1320, strike line 23 and all that follows through the end of the undesignated matter on page 1321 between lines 17 and 18 and insert the following:

''(g) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update not less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter one of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136B the following new item:

''Sec. 5136C. State law preemption standards for national banks and subsidiaries clarified.''.

(c) USURIOUS LENDERS.—Section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) is amended—

(1) by striking ''Any association'' and inserting the following:

''(a) IN GENERAL.—Any association''; and

(2) by adding at the end the following:

''(b) LIMITS ON ANNUAL PERCENTAGES RATES.—Effective 12 months after the date of enactment of this subsection, the interest applicable to any consumer credit transaction, as that term is defined in section 103 of the Truth in Lending Act (other than a transaction that is secured by real property), including any fees, points, or time-price differential associated with such a transaction, may not exceed the maximum permitted by any law of the State in which the consumer resides. Nothing in this section may be construed to preempt an otherwise applicable provision of State law governing the interest in connection with a consumer credit transaction that is secured by real property.''.

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

AMENDMENT NO. 3884 TO AMENDMENT NO. 3739

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to call up the Cantwell-McCain amendment, No. 3884.

The PRESIDING OFFICER. Is there objection?

If not, the clerk will report.

The legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Ms. CANTWELL, for herself and Mr. MCCAIN, Mr. KAUFMAN, Mr. HARKIN, Mr. FEINGOLD, and Mr. SANDERS, proposes amendment No. 3884 to amendment No. 3739.

The amendment is as follows:

(Purpose: To impose appropriate limitations on affiliations with certain member banks)

At the end of subtitle C of title I, add the following:

SEC. 171. LIMITATIONS ON BANK AFFILIATIONS.

(a) LIMITATION ON AFFILIATION.—The Banking Act of 1933 (12 U.S.C. 221a et seq.) is amended by inserting before section 21 the following:

''SEC. 20. Beginning 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, no member bank may be affiliated, in any manner described in section 2(b), with any corporation, association, business trust, or other similar organization that is engaged principally in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail or through syndicate participation stocks, bonds, debenture, notes, or other securities, except that nothing in this section shall apply to any such organization which shall have been placed in formal liquidation and which shall transact no business, except such as may be incidental to the liquidation of its affairs.''.

(b) LIMITATION ON COMPENSATION.—The Banking Act of 1933 (12 U.S.C. 221 et seq.) is amended by inserting after section 31 the following:

''SEC. 32. Beginning 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, no officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve simultaneously as an officer, director, or employee of any member bank, except in limited classes of cases in which the Board of Governors of the Federal Reserve System may allow such service by general regulations when, in the judgment of the Board of Governors, it would not unduly influence the investment policies of such member bank or the advice given to customers by the member bank regarding investments.''.

(c) PROHIBITING DEPOSITORY INSTITUTIONS FROM ENGAGING IN INSURANCE-RELATED ACTIVITIES.—

(1) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and notwithstanding any other provision of law, in no case may a depository institution engage in the business of insurance or any insurance-related activity.

(2) DEFINITION.—As used in this section, the term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are

other persons authorized to act on behalf of such persons.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURRIS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent that at 5:30 p.m. today, the Senate proceed to vote in relation to the following amendments in the order listed; that after the first vote there be 2 minutes of debate prior to the succeeding votes, with the succeeding votes limited to 10 minutes in duration: the Crapo amendment, No. 4020; the Cornyn amendment, No. 3986; the Udall of Colorado amendment, No. 4016; provided further that no amendment be in order to any of the amendments covered in this agreement prior to a vote in relation thereto.

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

Mr. UDALL of Colorado. 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. DODD. I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 4020

Mr. DODD. Mr. President, I understand I have 2 minutes; is that correct?

The PRESIDING OFFICER. There is not a formal order.

Mr. DODD. Let me be brief.

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

Mr. DODD. Mr. President, I have a tremendously high regard for my colleague from Idaho. We serve on the Banking Committee together. He is more than just a member; he is an excellent member of the committee and brings great knowledge in the area of financial services. It is always with reluctance that one disagrees with someone they admire. I thank him for his work. For the last 38 or 39 months I have been chairman he has been a very valuable asset to our committee and a solid thinker.

We have had a couple amendments already—the Ensign amendment and the McCain amendments—on the GSEs. We have had three amendments because I offered a side-by-side amendment on the government-sponsored enterprises, including Fannie Mae and Freddie Mac. Clearly, all of us, without exception, understand we must have reform of the GSEs. We need an alternative to the housing financing system. The present one is not working. We also understand in the absence of it, we would be in deep trouble in terms of housing issues today.

The Senate has spoken on the importance of addressing the issue. My colleague from New Hampshire said it well when we were debating whether to include this. As he pointed out, this was so complex an issue, no one really had an alternative idea as to how to come up with a housing financing system, and to include one in this bill would have been difficult. We have debated that. But aside from the substantive issue, the pending amendment deals with a matter within the Budget Committee's jurisdiction.

Therefore, I raise a point of order that the pending amendment violates section 306 of the Congressional Budget Act of 1974.

For those reasons, the point of order should lie against this, aside from the substantive debate we have already had and the full awareness that we must address this issue in the coming Congress if we are going to be successful in dealing with Fannie Mae and Freddie Mac. For those reasons, I raise the point of order.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974 and section 4(g)(3)of the Statutory Pay-As-You-Go Act of 2010, I move to waive all applicable sections of those acts and applicable budget resolutions for purposes of my amendment and ask for the yeas and nays.

I also ask unanimous consent that I have an equivalent amount of time to respond on the amendment before we vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I oppose the Crapo amendment because of the limitations that it would impose on Fannie Mae and Freddie Mac.

These institutions have been very helpful to homeowners in West Virginia who are seeking home loan modifications. I do not believe this is the right time to be limiting the assistance that Fannie Mae and Freddie Mac can offer to struggling homeowners in paying for their mortgages and keeping their homes.

Mr. CRAPO. Mr. President, as the Senator from Connecticut indicated—and I appreciate his kind remarks—we have had several votes on the GSE issue. Remarkably, this Senate continues to refuse to deal with Fannie and Freddie, the core issue of the problem on the bill we are debating. Fannie and Freddie are nowhere to be seen in the legislation. Recognizing that the Senate has refused in its votes to allow us to try to focus on Fannie and Freddie, which are the biggest bailouts of all—in fact, the bailouts of Fannie and Freddie are more in volume and cost to the taxpayers than all other bailouts combined—this amendment simply says: Let's be honest with the American taxpayer and at least put the debt that Fannie and Freddie are now becoming responsible for on our calculations of the national debt.

CBO Director Douglas Elmendorf said:

> After the U.S. government assumed control in 2008 of Fannie Mae and Freddie Mac—two federally chartered institutions that provide credit guarantees for almost half of the outstanding residential mortgages in the U.S.—the Congressional Budget Office concluded that the institutions had effectively become government entities whose operations should be included in the federal budget.

This amendment simply says: Let's put the calculations of debt for which taxpayers are now on the hook, which now totals over $130 billion, which we are told is going to rise to $381 billion, and the debt, which is over $1.5 trillion, of these two institutions that is now on their books, let's put it in our calculation of the national debt.

We are not asking to solve the problem in the bill with this amendment. We fought that last week. This simply says let's put it on the national debt.

I urge colleagues to support the amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from Iowa (Mr. HARKIN), the Senator from Delaware (Mr. KAUFMAN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from New Hampshire (Mrs. SHAHEEN), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Alaska (Ms. MURKOWSKI) would have voted ''yea.''

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

The yeas and nays resulted—yeas 47, nays 46, as follows:

[Rollcall Vote No. 151 Leg.]

YEAS—47

Alexander	Crapo	Lugar
Barrasso	DeMint	McCain
Bayh	Ensign	McConnell
Bennet	Enzi	Nelson (NE)
Bennett	Feingold	Pryor
Bond	Graham	Risch
Brown (MA)	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hatch	Shelby
Burr	Hutchison	Snowe
Chambliss	Inhofe	Thune
Coburn	Isakson	Udall (CO)
Cochran	Johanns	Vitter
Collins	Kohl	Voinovich
Corker	Kyl	Wicker
Cornyn	LeMieux	

NAYS—46

Akaka	Boxer	Byrd
Baucus	Brown (OH)	Cantwell
Bingaman	Burris	Cardin

Carper	Klobuchar	Reid
Casey	Landrieu	Rockefeller
Conrad	Lautenberg	Sanders
Dodd	Leahy	Schumer
Dorgan	Levin	Stabenow
Durbin	Lieberman	Tester
Feinstein	McCaskill	Udall (NM)
Franken	Menendez	Warner
Gillibrand	Merkley	Webb
Hagan	Mikulski	Whitehouse
Inouye	Murray	Wyden
Johnson	Nelson (FL)	
Kerry	Reed	

NOT VOTING—7

Begich	Lincoln	Specter
Harkin	Murkowski	
Kaufman	Shaheen	

On this vote, the yeas are 47, the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained, and the amendment falls.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 3986

Mr. DODD. Mr. President, as I understand it, the next vote will occur on the Cornyn amendment.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote in relation to amendment No. 3986 offered by the Senator from Texas, Mr. CORNYN.

Mr. DODD. Mr. President, let me say, if I may—I am looking to the leader here, if I can find him—I believe this will be the last recorded vote this evening. There will be potentially a couple of voice votes after this on matters involving, one, Senator BOND's amendment that I am cosponsoring with him, along with Senator WARNER and Senator CORKER—this will be the last recorded vote, but there will be a voice vote on the angel investor amendment Senator BOND is interested in, and there will be a vote on the amendment offered by Senator UDALL of Colorado dealing with credit scores that I believe we all can support as well. Then we will be laying down a Lugar-Cardin or Cardin-Lugar amendment for discussion this evening, with a possible vote in the morning. Then we will be working this evening, Senator SHELBY and I, to try to lay out some amendments tomorrow to give people a clear picture as to what the roadmap will be for tomorrow as well.

So with that, I turn to Senator CORNYN.

Mr. CORNYN. Mr. President, I will make two points. No. 1: This amendment will help protect American taxpayers from bailouts of foreign governments. Greece is going to get $40 billion in loans from the IMF, out of which $7 billion is attributable to the contributions of the American taxpayer. They shouldn't have to do that unless we have an assurance we will be paid back.

The second point is that Greece's current public debt relative to its gross domestic product is 115 percent—meaning it owes more money than its entire economy produces.

Under the President's budget, in 2020, looking at the same metric for the U.S. Government—our debt will be 90 percent of our gross domestic product. If we are not careful, America will turn into Greece and need a bailout, except there won't be anybody there to bail us out, including the American taxpayer.

I ask my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I intend to support the Cornyn amendment, and I ask my colleagues to do so as well. Our colleague from Massachusetts, the chairman of the Foreign Relations Committee, Senator KERRY, has raised some very legitimate issues about the amendment that may need to be worked on as we move forward in our conference. But I believe the thrust of the amendment is a correct one. We are concerned about some very poor countries that may be in a different position, including some additional thought that may need to be put into that, and I respect the concerns raised by the Senator from Massachusetts.

I believe this is a good amendment deserving of our support; therefore, I ask for the yeas and nays and ask my colleagues to support the Cornyn amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH), the Senator from Iowa (Mr. HARKIN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from New Hampshire (Mrs. SHAHEEN), and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Alaska (Ms. MURKOWSKI) would have voted ''yea.''

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

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 152 Leg.]

YEAS—94

Akaka	Chambliss	Hagan
Alexander	Coburn	Hatch
Barrasso	Cochran	Hutchison
Baucus	Collins	Inhofe
Bayh	Conrad	Inouye
Bennet	Corker	Isakson
Bennett	Cornyn	Johanns
Bingaman	Crapo	Johnson
Bond	DeMint	Kaufman
Boxer	Dodd	Kerry
Brown (MA)	Dorgan	Klobuchar
Brown (OH)	Durbin	Kohl
Brownback	Ensign	Kyl
Bunning	Enzi	Landrieu
Burr	Feingold	Lautenberg
Burris	Feinstein	Leahy
Byrd	Franken	LeMieux
Cantwell	Gillibrand	Levin
Cardin	Graham	Lieberman
Carper	Grassley	Lugar
Casey	Gregg	McCain
McCaskill	Risch	Udall (CO)
McConnell	Roberts	Udall (NM)
Menendez	Rockefeller	Vitter
Merkley	Sanders	Voinovich
Mikulski	Schumer	Warner
Murray	Sessions	Webb
Nelson (NE)	Shelby	Whitehouse
Nelson (FL)	Snowe	Wicker
Pryor	Stabenow	Wyden
Reed	Tester	
Reid	Thune	

NOT VOTING—6

Begich	Lincoln	Shaheen
Harkin	Murkowski	Specter

The amendment (No. 3986) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, there are two amendments I am aware of. The next order of business is the amendment by the Senator from Colorado, Mr. UDALL.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate, equally divided, prior to a vote in relation to amendment No. 4016, offered by the Senator from Colorado, Mr. UDALL.

The Senator from Colorado is recognized.

Mr. UDALL of Colorado. Mr. President, we have had a lot of spirited debate on the floor about the Wall Street Accountability Act, and there have been some differences. One area we all agree on is that we ought to empower consumers with this important piece of legislation.

The amendment I am offering with Senator LUGAR does just that. It provides that if you are turned down for credit because you have applied for a loan or you have a higher loan rate, you will have access to your credit score, your FICO score.

I believe this will empower consumers, increase financial literacy in our country, and it is a win-win across the board. I want to thank the group of Senators—some 20-plus—who supported this amendment. I particularly thank the chairman, Senator DODD, for his yeoman's work. I urge an ''aye'' vote on this important amendment.

I yield the floor.

Mr. DODD. Mr. President, I thank Senator UDALL. He has done a great job on this with Senator LUGAR. They made an alternative suggestion that would allow the release of these credit scores on a transactional basis for the purchase of a automobile or a home, so you will get to know what the credit score is, and that will be a great value.

I urge adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

The amendment (No. 4016) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I believe the Bond-Warner-Corker amendment is next.

CLOTURE MOTIONS

Mr. REID. Mr. President, I have two cloture motions at the desk.

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Dodd substitute amendment No. 3739 to S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, Sheldon Whitehouse, John D. Rockefeller IV, Michael F. Bennet.

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 3217, the Restoring American Financial Stability Act of 2010.

Harry Reid, Christopher J. Dodd, Tim Johnson, Jack Reed, Jon Tester, Charles E. Schumer, Patty Murray, Daniel K. Inouye, Kent Conrad, John F. Kerry, Roland W. Burris, Mark R. Warner, Daniel K. Akaka, John D. Rockefeller IV, Sheldon Whitehouse, Michael F. Bennet.

Mr. REID. Mr. President, I have conferred with the Republican leader. We are going to process as many amendments tonight as we can, and all day tomorrow. Hopefully, we will be able to work on these Wednesday, also. I hope everybody considers this bill as not having been completed. We will move forward with whatever amendments are appropriate.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

AMENDMENT NO. 4056 TO AMENDMENT NO. 3739

Mr. DODD. Mr. President, I ask unanimous consent that the amendment offered by Senators BOND, WARNER, CORKER, and myself be considered.

The PRESIDING OFFICER. Is there objection?

Mr. WYDEN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent that the agreement be modified to include the Wyden-Grassley amendment No. 4019 to finally end secret holds and add that amendment to the list of amendments included in the agreement.

I point out that last Thursday, the Wyden-Grassley amendment was pending to the financial reform bill, and it was ready for a vote by the Senate. Then at the last minute, out of nowhere, this bipartisan effort was blindsided without any notice whatever by a second-degree amendment that effectively prevented a vote to open government and end secret holds.

In light of what happened, I think it is only fair that this bipartisan amendment be given the opportunity for a vote as part of this consent agreement.

I also wish to make it clear that, in my view, anyone who objects to adding the bipartisan Wyden-Grassley amendment to this agreement is objecting to ending secret holds. They are objecting to even have a vote in the Senate on ending secret holds, therefore, allowing the Senate to continue to operate in secret and against ending this indefensible denial of the public's right to know.

Therefore, I ask unanimous consent that the agreement be modified to add the Wyden-Grassley amendment to end secret holds, and it is No. 4019.

The PRESIDING OFFICER. Is there objection to the modification?

Mr. RISCH. Reserving the right to object, I do not have any problem with the substance, but I know Senator DEMINT has serious issues with it. We would like to have an opportunity to talk with him.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator does not have the floor.

Mr. RISCH. I object.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the original request of the Senator from Connecticut?

Without objection, it is so ordered.

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Connecticut [Mr. DODD], for Mr. BOND, for himself, Mr. DODD, Mr. WARNER, Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, and Mr. CORKER, proposes an amendment numbered 4056 to amendment No. 3739.

Mr. DODD. Mr. 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 improve section 412 and section 926)

On page 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER "BAD ACTORS" FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the

making of any false filing with the Commission.

Mr. BOND. Mr. President, I am pleased to rise today to discuss a bipartisan amendment critical to small business and job creation, amendment No. 4056.

Thank you to my friend and colleague Senator DODD for his leadership on this amendment. I am proud to cosponsor this amendment with Senators DODD, MARK WARNER, SCOTT BROWN, CANTWELL, BEGICH, and MURRAY.

Senators on both sides of the aisle agree that Wall Street needs to be reformed to protect Main Street from a future crisis.

Senators on both sides of the aisle can also agree that small business job creation is critical to our economic recovery and communities in my State of Missouri and across the Nation.

That is what this bipartisan amendment is all about—protecting the small business startups that are so vital to job creation and economic development.

Specifically, our amendment removes onerous regulations and restrictions in the financial reform bill that would have unintentionally stifled job creation.

The provision would have unintentionally threatened small business startups by delaying and limiting the availability of essential seed capital from qualified investors.

Our country's entrepreneurs need immediate access to capital as they work to move an idea from concept to production—especially when banks or traditional lenders may not be willing to extend large lines of credit to them.

We want to encourage—not discourage—investors to take a chance on these entrepreneurs by providing seed capital to startups in hopes that the business will flourish and remain a viable company.

Our amendment allows this investment and job creation to continue. With our amendment agriculture research and biotechnology startup companies like those in my State of Missouri, will continue to be the engine of job creation.

We all agree that we must reform Wall Street, but we must not punish Main Street and the very small business startups that are so critical to job creation.

This bipartisan amendment will help protect the small business startups vital to job creation across the country, and I urge my colleagues to support it.

Mr. DODD. Mr. President, what I would like to do, if I may, I would like to make a statement on the Bond, et al, amendment. If my colleague from Oregon would like to make some comments about this consent request he made, if it is not too long, then I will reserve my time.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 4019

Mr. WYDEN. Mr. President, I thank the chairman of the committee. I intend to be very brief in my comments tonight. I thank the chairman for his indulgence.

I note that Senator GRASSLEY, who is on the floor, and I have prosecuted this cause for more open government in the Senate for over a decade. Senator MCCASKILL is here. She has tried relentlessly to do the same thing. I think it is very regrettable, because we have seen, once again, tonight, as we did on Thursday, that defenders of secret holds in the Senate continue to pull out all the stops, employ every tool in the toolbox to throw a monkey wrench into the effort to open the Senate to transparency and accountability.

This has been a bipartisan effort. It has always been a bipartisan effort. I particularly credit my friend from Iowa, Senator GRASSLEY, because when we talked about this over a decade, the two of us said we are going to make this bipartisan every step of the way because sometimes in the Senate you are in the minority, sometimes you are in the Senate as part of the majority, but the cause of open and transparent government ought to be available all the time. It should not matter who is in the majority and who is in the minority.

I will say the American people are furious at the way business is done in Washington, DC. The fact that it has been impossible to even get an up-or-down vote on doing Senate business in public is a textbook case of why people are so angry.

It is my intent to come with colleagues to the floor again and again and try to make sure that once and for all we change this pernicious practice, a practice that, in my view, is an indefensible violation of the public's right to know.

At a minimum, every Senator ought to be on record publicly with respect to how they feel about doing the Senate's business in public. That is what this is all about.

This is not complicated. A hold is one of the most powerful tools a Senator has. With a secret hold, one colleague can keep the American people from even getting a peak at important Senate business. That is not right. That is not accountable government. That is not transparent government.

What we ought to do—and I commend particularly Senator GRASSLEY, Senator INHOFE, and Senator COLLINS on the other side of the aisle; Senator UDALL has joined me in this effort, Senator BENNET—we have made this bipartisan every step of the way. It is time for an up-or-down vote in the Senate with respect to ending secret holds.

We have not even been able to get a direct vote, though we have been working now for weeks and weeks on a measure that is bipartisan. The American people want public business done in public, and they certainly want Democrats and Republicans to come together. That is what Senator GRASSLEY and I have sought to do.

It is unfortunate that, once again, there has been an objection tonight to doing public business in public. That is something that ought to change around here. There is a bipartisan group of us who are going to stay with it until it does.

I particularly thank the bipartisan group of colleagues on the floor tonight, led by Senator GRASSLEY and Senator MCCASKILL. We will be back, and we will be back at it until there is the kind of transparency and openness in the way the Senate does business so, once and for all, every hold in the Senate has a public owner. That is what this is all about. If you want to put a hold on a bill or a measure, as Senator GRASSLEY has said, you ought to have the guts to go public. Every hold ought to have a public owner. We are going to stay with it until that happens.

I express my appreciation again to the chairman of the Banking Committee who has, at a time when he has a very important piece of legislation on the floor, indulged this Senator repeatedly in giving me the opportunity to be on the floor and prosecute this cause for more openness and transparency. I thank my good friend, the chairman of the committee. He has done an excellent job on this bill. I appreciate the time tonight.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to add Senator TESTER of Montana as a cosponsor of amendment No. 4056, the Bond-Dodd, et al, amendment.

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

Mr. DODD. Mr. President, I should point out that Senator BROWN of Massachusetts, Senator CANTWELL, Senator BEGICH, and Senator MURRAY are cosponsors of that amendment.

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

Mr. DODD. Mr. President, I ask unanimous consent that the following be the next amendments in order: Senator CARDIN and Senator LUGAR, amendment No. 4050, and an amendment of Senator CORKER of Tennessee regarding preemption, with a Senator CARPER amendment side by side to the Corker amendment.

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

AMENDMENT NO. 4056

Mr. DODD. Mr. President, I am pleased to join my colleagues Senators BOND, WARNER, BROWN, CANTWELL, BEGICH, MURRAY and TESTER in offering this amendment to sections 412 and 926 to protect investors and promote capital formation.

During the Banking Committee's hearings on the financial crisis, the North American Securities Administrators Association, NASAA, testified about a serious investor problem. A growing number of private placement are being used to defraud ''accredited investors.'' An investor is deemed ''accredited,'' or financially sophisticated and able to withstand investment losses, if he or she has $1 million in net

worth, including the value of his or her home, or $200,000 in annual salary, amounts that have not been changed since 1982. ''Accredited investors'' are presumed to be able to fend for themselves, receive fewer protections, and are eligible to invest in private placements.

Secretary William F. Galvin, the chief securities regulator of the Commonwealth of Massachusetts, stated that ''my office has seen a dramatic increase in the number of 506 [private placement] transactions sold to inexperienced investors who, on paper, may have met the accreditation standards but in reality didn't understand the investments, could not incur the risk of loss these transactions often entail and did not have the financial sophistication to monitor or evaluate their investments.''

The committee was concerned to protect such investors, particularly those who fall victim to sellers who repeatedly engage in securities fraud.

NASAA testified that:

These offerings enjoy an exemption from registration under federal securities law, so they receive virtually no regulatory scrutiny even where the promoters or broker-dealers have a criminal or disciplinary history. As a result, Rule 506 offerings have become the favorite vehicle under Regulation D, and many of them are fraudulent.

Regarding the ''accredited investor'' standard, NASAA testified that ''[I]nflation has seriously eroded the efficacy of the existing thresholds in the definition of 'accredited investor' since their adoption in 1982'' and supports periodic adjustments of these standards.

For the past several weeks, I have worked with and consulted the North American Securities Administrators Association, Angel Capital Association, Private Equity Council and others, and I thank them. We have crafted language suited to protect investors from those unscrupulous persons while encouraging capital formation.

New section 926 would disqualify felons and other ''bad actors'' who have violated Federal and State securities laws from continuing to take advantage of the rule 506 private placement process. This will reduce the danger of fraud in private placements.

New section 412 would amend the ''accredited investor'' wealth threshold by excluding the value of an investor's primary residence. For example, a widow whose financial wealth was $1 million but had the majority of that in the value of her home and had a salary of less than $200,000, would not be deemed to be an ''accredited investor.'' Instead, she would benefit from the broader range of protections available generally to investors. There are several reasons for this change:

The net worth test signals a person's ability to bear a loss. If the cushion for a loss is a person's home, a person making a bad investment could end up losing his or her home.

Net worth is intended to be a proxy for financial experience and sophistication. Some people who own valuable homes may not be sophisticated investors.

Furthermore, real estate prices have greatly appreciated since the net worth standard for accredited investors was adopted in 1982. Accordingly, many more investors are now able to meet the current thresholds based on the value of their homes than was the case in 1982, which is inconsistent with original regulatory intent.

Also, the SEC would be directed to review the financial standards at least 4 years to make sure the standards stay relevant.

I am pleased at the support the legislative proposals have received. The North American Securities Administrators Association on April 27, 2010 issued a letter stating,

We strongly support the adoption of a disqualification provision to prevent recidivists from conducting securities offerings under Regulation D, Rule 506 (a regulatory exemption for private placements). This change would provide much needed investor protection from securities law violators and would not prevent legitimate issuers, including small businesses, who use this exemption, to raise capital. Participants in the Regulation D offerings are ''accredited investors'' as established under SEC rules. The monetary standards for determining who qualifies for ''accredited investor'' status haven't changed since it was established in 1982 and inflation has rendered them almost meaningless. Therefore, we support, at a minimum, excluding the investor's primary residence from the net worth standard.

The Angel Capital Association on April 21, 2010 issued a statement saying that ''[t]hese amendments will ensure that high growth entrepreneurs have access to a strong pool of angel capital and that investors are better protected from fraud.''

The purposes of sections 412 and 926 of the bill have been to better protect investors while facilitating capital formation. This amendment more completely accomplishes these goals.

It is an important contribution Senator BOND has made, along with others, to this bill. It was never our intention at all. Startup companies need what are called angel investors who are critically important for startup ideas that do not necessarily attract the traditional capital to get behind them. People who step up and take a chance on new ideas deserve some special recognition. The fact is, they have played a very critical role in capital formation over the years.

Therefore, I was pleased to be able to accept the amendment and make it a part of this bill. This will allow for efficient capital access for entrepreneurs and also provide fraud protection for investors.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Angel Capital Association.

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

[From the Angel Capital Association, Apr. 21, 2010]

ANGEL CAPITAL ASSOCIATION SUPPORTS AMENDMENTS TO FINANCIAL REFORM BILL

SEN. DODD'S AMENDMENTS ALLOW FOR EFFICIENT CAPITAL ACCESS FOR ENTREPRENEURS AND ALSO IMPROVE FRAUD PROTECTION FOR INVESTORS

KANSAS CITY, MO.—The Angel Capital Association (ACA) supports two amendments that we understand will be offered by Sen Christopher Dodd on the Restoring American Financial Stability Act of 2010. These amendments will ensure that high growth entrepreneurs have access to a strong pool of angel capital and that investors are better protected from fraud.

ACA has been vocal in our concerns about this bill to date as two of the original sections had the potential of significantly reducing the number of accredited angel investors and creating complicated and potentially expensive regulations for entrepreneurs raising angel financing. ''It is clear that concerns conveyed by ACA and many others about hurting start-up businesses struck a chord with Sen. Dodd and his staff,'' said Elizabeth Karter, ACA's public policy committee chair and president of the Angel Investor Forum in Connecticut. ''They have worked hard to improve the bill so that it balances the importance of small business capital formation while protecting angels and other types of private investors from securities law violators.''

The amendments bring new meanings to two sections of the bill:

Section 412: Adjusting the Accredited Investor Standard.

The thresholds for ''accredited investor'' would stay the same as they are currently, although the standard for net worth of $1 million would now exclude the investor's primary residence. While ACA would have preferred no adjustment to the standard for angel investors, we believe this is a good compromise.

The act would also have the Securities and Exchange Commission review the thresholds at least every four years, with any adjustments considering the protection of investors, the public interest and the state of the economy. ''We appreciate the direction to consider the economic impact of any adjustments to accredited investor standards in the future, as we believe that innovative start-up businesses are some of the most important creators of high quality jobs in the country,'' said Karter.

Section 926. Regulation D Offerings.

The amendment deletes all previous language and disqualifies individuals who have been determined to be ''bad actors'' by Federal and State authorities from using Regulation D 506 private offerings (which include angel investments, but many other types of investments as well).

''ACA particularly likes this amendment because not only does it increase investor protections, but it ensures uniform regulation of these private offerings across the United States and it keeps the reporting requirements for entrepreneurs the same as they are currently. The current uniform system is efficient for small businesses that attract angel capital,'' said Marianne Hudson, executive director of ACA.

Mr. DODD. Mr. President, I thank Senator BOND. He is the initiator of the idea. Others joined with him. It is, again, a strong contribution to this bill.

I see my colleagues from Indiana, Kansas, and Maryland. I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to be added as a cosponsor of the Bond amendment.

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

AMENDMENT NO. 3789, AS FURTHER MODIFIED

Mr. BROWNBACK. Mr. President, I call up in the regular order my amendment No. 3789 and send a modification to the desk.

The PRESIDING OFFICER. The amendment No. 3789 is now pending. It is further modified.

The amendment, as further modified, is as follows:

(Purpose: To provide for an exclusion from the authority of the Bureau of Consumer Financial Protection for certain automobile manufacturers, and for other purposes)

At the end of subtitle B of title X, add the following:

SEC. 1030. EXCLUSION FOR AUTO DEALERS.

(a) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(b) CERTAIN FUNCTIONS EXCEPTED.—The provisions of subsection (a) shall not apply to any person, to the extent that such person—

(1) provides consumers with any services related to residential or commercial mortgages and self-financing transactions involving real property;

(2) operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(A) the extension of retail credit or retail leases are provided directly to consumers; and

(B) the contract governing such extension of retail credit or retail leases is not predominantly assigned to a third-party finance or leasing source; or

(3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.

(c) NO IMPACT ON PRIOR AUTHORITY.—Nothing in this section shall be construed to modify, limit, or supersede the rulemaking or enforcement authority over motor vehicle dealers that could be exercised by any Federal department or agency on the day before the date of enactment of this Act.

(d) NO TRANSFER OF CERTAIN AUTHORITY.—Notwithstanding any other provision of this Act, the consumer financial protection functions of the Board of Governors and the Federal Trade Commission shall not be transferred to the Director or the Bureau to the extent such functions are with respect to a person described under subsection (a).

(e) COORDINATION WITH OFFICE OF SERVICE MEMBER AFFAIRS.—The Board of Governors and the Federal Trade Commission shall coordinate with the Office of Service Member Affairs, to ensure that—

(1) service members and their families are educated and empowered to make better informed decisions regarding consumer financial products and services offered by motor vehicle dealers, with a focus on motor vehicle dealers in the proximity of military installations; and

(2) complaints by service members and their families concerning such motor vehicle dealers are effectively monitored and responded to, and where appropriate, enforcement action is pursued by the authorized agencies.

(f) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MOTOR VEHICLE.—The term ''motor vehicle'' means—

(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road;

(B) recreational boats and marine equipment;

(C) motorcycles;

(D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103 (d) of title 49, Code of Federal Regulations, or any successor thereto; and

(E) other vehicles that are titled and sold through dealers.

(2) MOTOR VEHICLE DEALER.—The term ''motor vehicle dealer'' means any person or resident in the United States, or any territory of the United States, who is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles.

Mr. BROWNBACK. Mr. President, I am not going to talk on this amendment now. This is the amendment about the auto dealers and that they only be regulated at one time and at one place. That is what we are trying to get to.

I hope we can get to a majority vote on this amendment. I think that would be appropriate. It is a major issue, and I look forward to, at some point in time, when we are considering this bill, having a vote on it with a majority, not a supermajority, requirement.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 4050 TO AMENDMENT NO. 3739

Mr. CARDIN. Mr. President, I call up amendment No. 4050.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. CARDIN], for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE, proposes an amendment numbered 4050 to amendment No. 3739.

Mr. CARDIN. Mr. 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 require the disclosure of payments by resource extraction issuers)

On page 1187, line 9, strike ''effective.'' insert the following: ''effective.

Subtitle K—Resource Extraction Issuers

SEC. 995. FINDINGS.

Congress finds the following:

(1) It is in the interest of the United States to promote good governance in the extractive industries sector. Transparency in revenue payments benefits oil, gas, and mining companies, because it improves the business climate in which such companies work, increases the reliability of commodity supplies upon which businesses and people in the United States rely, and promotes greater energy security.

(2) Companies in the extractive industries sector face unique tax and reputational risks, in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

SEC. 996. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or

entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—

''(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.''.

Mr. CARDIN. Mr. President, I wish to take a few minutes to thank Senator DODD for his extraordinary leadership on this bill. I know he is working through a lot of amendments. I know a lot of us have been urging him to allow us to present amendments. I know he has been challenged by the efforts on trying to schedule votes on amendments. I thank him, on behalf of all his colleagues in the Senate, for his extraordinary leadership in bringing this bill forward. I thank Senator SHELBY for working with Senator DODD. I know we are close to bringing this bill to completion. I am very proud to be a supporter of this bill. It is critically important that we do what we need to do in regulating Wall Street.

This amendment is a bipartisan amendment. Senator LUGAR has filed a bill, of which I am a proud cosponsor, that accomplishes basically the same purpose. He has been a real leader in the Senate Foreign Relations Committee on transparency in the oil industry and its contracts.

The nature of the oil, gas, and mining sector means that companies often have to operate in countries that are often autocratic, unstable, or both. Investors need to know the full extent of a company's exposure when they are operating in countries where they are subject to expropriation, political and social turmoil, and reputational risks.

In Nigeria, for example, American companies have taken oilfields offline because of rebel activity and instability in the Niger Delta. In 2009, Nigeria was producing almost 1 million barrels less than it is able to produce because of conflict and instability. With so much production offline, American oil companies, such as Chevron and Exxon, have lost jobs and have lost profits and are forced to pay higher production costs because of added security.

This amendment goes a long way in achieving that transparency by requiring all foreign and domestic companies registered with the U.S. Securities and Exchange Commission to report, in their annual reports to the SEC, how much they pay each government for access to their oil, gas, and minerals.

In short, this amendment is a critical part of the increased transparency and good governance we have been striving to achieve in the financial industry. We have been working with a lot of groups on perfecting this amendment, and we have made some changes that will give the SEC the utmost flexibility in defining how these reports will be made so that we not get the transparency we need without burdening the companies.

I thank all involved in the modifications that have been made to this amendment from how it was originally filed in order to make it not a burden on the industry but to provide the necessary information to investors.

This amendment also is about creating jobs and preserving jobs. This amendment is important because it will help create and preserve U.S. jobs in the oil, gas, and mining sector by improving the conditions in which oil and mining companies have to work.

Transparency will help create more stable governments, which in turn allows U.S. companies to operate more freely—and on a level playing field—in markets that otherwise are too risky or unstable.

This is a bipartisan amendment because Democratic and Republican colleagues both know we are creating a new standard of transparency that will apply to the world's extractive industries and is in the best interest of companies in competing on a level playing field. That has been what Senator LUGAR has been standing for within the Senate Committee on Foreign Relations, and I applaud him on his leadership.

In fact, this amendment would apply to all oil, gas, and mining companies required to file periodic reports with the SEC, which includes 90 percent of the major internationally operating oil companies and 8 out of the 10 largest mining companies in the world—only 2 of which are U.S. companies.

We currently have a voluntary international standard for promoting transparency. A number of countries and companies have joined the Extracted Industries Transparency Initiative, an excellent initiative that has made tremendous strides in changing the cultural secrecy that surrounds extractive industries. But too many countries and too many companies remain outside this voluntary system.

I had the honor of chairing the Helsinki Commission for this Congress. This has been one of our top priorities because it deals with good governance as well as investors knowing whether a company is making payments. The U.S. needs to take a leadership position in regard to the Extractive Industries Transparency Initiative. This amendment, attached to this bill, will go a long way in promoting that leadership for the United States.

The notion of transparency has been endorsed by the G8, the IMF, the World Bank, and a number of regional development banks. It is clear to the financial leaders of the world that transparency in natural resources development is key to holding government leaders accountable for the needs of their citizens and not just building up their personal offshore bank accounts.

I urge my colleagues to stand up for investors and citizens and give them the information they need to hold governments accountable. I urge my colleagues to join me and the other cosponsors of this amendment and support the creation of a historic transparency standard that will pierce the veil of secrecy that fosters so much corruption and instability in resource-rich countries.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I join my distinguished colleague in commending the work of Senator DODD and Senator SHELBY and the privilege of offering this amendment now with Senator CARDIN.

I rise to support the transparency amendment, No. 4050, introduced by Senator CARDIN on behalf of myself, Senator DURBIN, Senator SCHUMER, Senator FEINGOLD, Senator MERKLEY, Senator JOHNSON, and Senator WHITEHOUSE. This amendment builds on language introduced in the Energy Security Through Transparency Act of 2009. If passed, the amendment would help to reverse the ''resource curse'' by

revealing payments made here and abroad to governments for oil, gas, and minerals.

The Senate debate on financial regulatory reform has included a great deal of debate on transparency. Transparency empowers citizens, investors, regulators, and other watchdogs and is a necessary ingredient of good governance for countries and companies alike. Adoption of the Cardin-Lugar amendment would bring a major step in favor of increased transparency at home and abroad. Its passage would empower investors to have a more complete view of the value of their holdings. It would bring more information to global commodity markets, which would benefit price stability. More importantly, it would help empower citizens to hold their governments to account for the decisions made by their governments in the management of valuable oil, gas, and mineral resources and revenues.

In countries abundant in natural resources, corruption and authoritarianism, transparency is a vital tool. Yet in recent weeks we have also been reminded of the need for greater transparency in management at home. The amendment builds on the findings of a Senate Committee on Foreign Relations staff report entitled the ''Petroleum and Poverty Paradox: Assessing U.S. and International Community Efforts to Fight the Resource Curse,'' which noted that many resource-rich countries that should be well off are, in fact, terribly poor.

History shows that oil, gas reserves, and minerals frequently can be a bane, not a blessing, for poor countries, leading to corruption, wasteful spending, military adventurism, and instability. Too often, oil money intended for a nation's poor ends up lining the pockets of the rich or is squandered on showcase projects instead of productive investments. A classic case is Nigeria, the eighth largest oil exporter. Despite $½ trillion in revenues since the 1960s, poverty has increased, corruption is rife, and violence roils the oil-rich Niger Delta.

This ''resource curse'' affects us as well as producing countries. It exacerbates global poverty which can be a seedbed for terrorism, it empowers autocrats and dictators, and it can crimp world petroleum supplies by breeding instability.

The essential issue at stake is a citizen's right to hold its government to account. Americans would not tolerate the Congress denying them access to revenues our Treasury collects. We cannot force foreign governments to treat their citizens as we would hope, but this amendment would make it much more difficult to hide the truth.

Transparency also will benefit Americans at home. Improved governance of extractive industries will improve investment climates for our companies abroad, it will increase the reliability of commodity supplies upon which businesses and people in the United States rely, and it will promote greater energy security.

This amendment requires foreign and domestic companies listed on U.S. stock exchanges and exchanging American depository receipts to disclose in their regular SEC filings their extractive payments to governments for oil, gas, and mining.

Nothing in this amendment accuses companies of malfeasance. Quite the contrary. Several oil, gas, and minerals companies have taken important steps in this arena. The aforementioned Foreign Relations Committee minority staff report details several examples of individuals going the extra mile to convince governments of the importance of transparency and to provide training to meet international standards.

Yet the value of companies themselves can be negatively impacted when there is not transparency. As noted in the findings of this amendment:

> Companies in the extractive sector face unique tax and reputational risks in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

Many analysts say among the root causes of the current financial crisis was a failure by investors to have access to sufficient information about their investments and an excessive reliance on the judgments of the ratings agencies, which proved to be highly faulty. That experience argues strongly for more disclosure and information.

Considering the well-established link between oil payments and the business climate, many investors might be interested in this information—particularly socially responsible investors.

This domestic action will complement multilateral transparency efforts such as the Extractive Industries Transparency Initiative—the EITI—under which some countries are beginning to require all extractive companies operating in their territories to publicly report their payments.

We encourage the President to work with members of the G8 and the G20 to promote similar disclosures through their exchanges and their jurisdictions. As Secretary Clinton noted in her questions for the record on January 12, 2009:

> President-Elect Obama has put a high priority on promoting transparency in government more broadly. I look forward to working with the President-Elect and the Treasury Department to promote greater transparency at the G–8 and now the G–20 as well.

In developing this amendment, our staffs consulted with the Secretary, the Securities and Exchange Commission, the Treasury Department, the Department of the Interior, energy companies, mining companies, the industry representatives, and nongovernmental organizations.

When financial markets see stable economic growth and political organization in resource-rich countries, supplies are more reliable and risk premiums factored into the process at the gas pump are diminished. Information is critical to maintaining healthy economies and healthy political systems. I ask for your support on passage of this important amendment.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I am happy to come to the Senate floor and join in support of the Cardin-Lugar amendment. I am an original cosponsor along with Senators FEINGOLD, WHITEHOUSE, and others. It is very straightforward, as Senator LUGAR explained, and Senator CARDIN before him.

It would require companies listed on the New York Stock Exchange to disclose in their SEC filings extractive payments made to governments for oil, gas, and mining. This encourages greater corporate transparency, particularly in terms of those operating in countries where corruption and violence are rampant.

I would also say there is a complementary amendment, which I hope will be considered at the same time because it is in that same vein. It is amendment No. 3997, offered by Senators BROWNBACK, FEINGOLD, and myself, and it basically would make the same requirement related to extractive minerals.

Mr. President, I went to the Democratic Republic of Congo 5 years ago with Senator BROWNBACK. We visited Goma, and I returned to that location just a few months ago with Senator SHERROD BROWN of Ohio. On those two visits I saw a situation in Goma which is almost impossible to describe. Imagine one of the poorest places on Earth, where people literally are starving to death, where they are facing the scourge of disease, where malaria and AIDS cuts short the lives of far too many, where there are thousands who are bunched into these just desolate and desperate refugee camps, and then imagine nearby an active volcano. That is the situation in Goma.

If you think that is the combination that would be the worst on Earth, there is more. Superimpose on this misfortune an ongoing war and unrest that has been part of this section of Africa at least since the time of the Rwandan genocide—that long—more than 16 years ago. Unspeakable crimes are being committed, particularly against women in this region, and one of the major reasons is this turns out to be one of the most powerful sections of Africa. You will find Dian Fossey's gorillas, and you will find some of the richest stores of virgin timber and extractive minerals in the world. The fighting goes on every single day, and these poor people are caught in the crossfire of this terrible conflict. Armed militias—some left over from

the genocide in Rwanda—continue to operate in the region, terrorizing citizens and inflicting horrific brutality. The United Nations has a 20,000-member peacekeeping force, known as MONUC, but it isn't enough.

What is really behind this ongoing violence? Money. Some of it is a result of a weak Congolese state, and some of the problem is due to the large number of criminals who have invaded this nation. But what helps fund the continued violence is an illicit minerals trade that enriches and helps arm those who continue this mayhem.

Most people probably don't realize the products we use every day—from automobiles to cell phones—may use one of these minerals from this area of conflict and that there is a possibility it was mined from an area of great violence.

We can't begin to solve the problems of eastern Congo without addressing where the armed groups are receiving their funding, mainly from the mining of a number of key conflict minerals. We, as a nation of consumers as well as industry, have a responsibility to ensure that our economic activity does not support such violence.

That is why I join with Senators BROWNBACK and FEINGOLD to support the Congo conflict minerals amendment, which is now pending on this bill. It is a requirement that if a company registered in the United States uses any of a small list of key minerals from the Congo—minerals known to be involved in the conflict areas—then such usage must be disclosed in that company's SEC disclosure. Such companies can also include additional information to indicate the steps they have taken to ensure their minerals were mined and paid for legitimately and legally.

The requirement would sunset in 5 years unless the Secretary of State certifies that the violence continues to receive support from the mineral trade. It is a reasonable step to shed some light on this literally life-and-death issue, and it encourages companies using these minerals to source them responsibly.

I thank Senators DODD and SHELBY for their consideration of this amendment. I hope, like the Cardin-Lugar amendment, there will be a chance for this Brownback-Feingold-Durbin amendment to be considered before this bill is completed.

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

AMENDMENT NO. 4056

Mr. DODD. I, too, wish to make a comment, but before I do, I think the pending business before the Senate and the request consent is the Bond amendment. Has that been adopted? I urge the question, if I can.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is pending.

Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 4056) was agreed to.

Mr. DODD. I move to reconsider and lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4050

Mr. DODD. Mr. President, I would like to make a few comments on the two proposals. One is, I say to my good friend from Illinois, Senator SHELBY and I have agreed to accept the Brownback-Cardin—Cardin-Brownback-Durbin amendment. I am not sure who the principal authors are. Maybe we can do that on a voice vote. We submitted that as part of the managers' amendment but, given the pace of the managers' amendment, it may be necessary to deal with that separately. But I thank my colleagues for that.

I commend my good friends, Senator CARDIN and Senator LUGAR from Indiana, once again. He has taken a leadership role. I am struck by the fact that just a little while ago we adopted the Cornyn amendment. The Cornyn amendment puts restraints on the IMF's ability to accept that in some very poor countries they are going to have to repay their IMF obligations. That amendment needs some work. But having adopted that amendment almost unanimously it is now critically important we adopt this amendment, in my view, because it complements, in a sense, the Cornyn amendment. Many of these people living in poor countries have little ability—despite being mineral and resource rich—to accumulate the wealth so they can avoid having to have IMF assistance to bail them out or give them assistance during difficult times.

If we are truly interested in the language of the Cornyn amendment, then we must complement it, in my view, by accepting the Cardin-Lugar amendment because it goes beyond just the Congo. Despite the good work being done on that amendment, this goes beyond that.

So I thank Senators CARDIN and LUGAR for their important bipartisan amendment requiring additional disclosure to millions of investors who are making decisions about investing in the extractive industries—mainly oil, natural gas, and mining—around the world. And I thank them for modifying the original amendment to streamline the reporting requirements, adapt as far as practicable the voluntary Extractive Industries Transparency Initiative disclosure standards, and make other changes to ease implementation.

We have a similar but more targeted amendment from Senator BROWNBACK, Senator DURBIN, and Senator CARDIN, I think, focused on the Congo and adjoining countries, since mining operations there have for years helped fuel the brutally violent militias that have caused so much damage and heartbreak, and killed so many in that strife-torn region. Given the ongoing emergency in the Congo, I am glad that Senator SHELBY and I have been able to work out an agreement to adopt this Congo amendment.

This amendment by Senator CARDIN is much broader, and is designed to impose a new international transparency standard on companies listed and traded on US exchanges who are active in the oil and gas and mining industries. Senator CARDIN and Senator LUGAR have focused on these industries because in many places, especially in Africa, they involve unique exposures to country- and industry-specific risks—including reputational risks, tax and regulatory risks, expropriation risks, and others—as they conduct business operations in countries where governance and accountability systems are rudimentary, at best—and where corruption, secrecy and a lack of transparency regarding public finance are pervasive. Those risks are heightened by the very large multi-year investments that are required of this industry, their need to gain access to natural resources, and the often compelling national security considerations tied to the products developed by this industry.

In the last few decades many American investors have begun to consider more seriously the ethical and socially responsible implications of their investments, and this amendment is a part of that larger effort. It is also a part of broader international effort to combat corruption, poverty, hunger and disease throughout Africa, Asia and Central America by providing a mechanism to ensure greater transparency for the many ways in which sometimes corrupt and authoritarian governments in these regions take in huge revenue flows from oil and gas producers or mining companies, and then fail to adequately meet the needs of their own vulnerable populations with social spending funded by the income from those projects.

Let me remind my colleagues of the scale of this problem. A recent report by the Senate Foreign Relations Committee under the leadership of Senator LUGAR and Senator KERRY concluded that 3.5 billion people live in countries rich in extractive natural resources such as oil, gas, minerals and timber. With good governance and transparency, these resources can generate vast sums to foster growth and reduce poverty. Instead, many of these countries have weak governance and administrative systems, so the revenues have often served to actually worsen corruption and generate violent conflict.

It is known as the ''resource curse,'' or the ''petroleum and poverty paradox,'' where countries with huge revenue flows from energy development also frequently have some of the highest rates of poverty, corruption and violence. Where is all that money going? This amendment, the Lugar-Cardin Amendment, is a first step toward addressing that issue by setting a new

international standard for disclosure. I hope that other nations, and those in charge of major exchanges in London, Hong Kong and elsewhere, would follow our lead on this. There is some indication of interest there, especially in the British Parliament.

The amendment would require companies to better account for the risks associated with such investments by disclosing basic information about payments to governments. I believe that many Americans—including investors and other stakeholders in these firms—would consider this kind of information material and relevant to their decisions about whether or not to invest, or whether to divest their current holdings, from firms engaged in this sort of activity. On its face this interest appears not to rise to the level of materiality for investors that currently governs the disclosure requirements of public companies under Federal securities laws. That is a question we may want to look at more closely in the Banking Committee. There are also questions about the precedent this would set for Congress to require disclosures usually considered to be nonmaterial.

Currently, nearly thirty countries are participants in a voluntary program designed to increase transparency called the EITI. That is an important initiative, and I applaud it. Strengthening America's leadership in the program, with broad new requirements for greater disclosure by resource extractive companies operating around the world, would be an important step. Senators CARDIN and LUGAR have modified his amendment to base some of the reporting on the standards which have evolved within this initiative, supported by many oil, energy and mining companies, and many countries. I am not persuaded by the arguments some make that this would weaken the EITI and make some nations less prone to participate in it. To the contrary, I believe it would strengthen the initiative. And I believe those who have worked closely within EITI agree.

Because we have not yet been able to hold hearings on this measure this year—something which I had hoped to do in the Banking Committee once we had completed this historic financial reform measure—I am not sure we have all the precise details and the language exactly right, but the thrust is exactly right and, therefore, in my view, the amendment by Senators CARDIN and LUGAR ought to be adopted. We can work on the details, if we have to, later on, but we should not miss this opportunity provided by this legislation to make this historic contribution to something that not only benefits investors here at home but might make a huge difference in the wealth and opportunity in these countries.

Again, in some ways I didn't plan it this way, but the fact we have adopted the Cornyn amendment dealing with the International Monetary Fund—now, if you wanted to make a difference in all that, this amendment I think does all that.

I thank my two colleagues—Senator CARDIN, who is relatively new to this institution but has brought a history of his interest in this subject matter. Of course, my 30 years with Senator LUGAR have been among the most joyous of the relationships I have had in this body. He never ceases to amaze me in his commitment, his energy, and his passion on these issues, and we are a richer and better country because of his participation in these debates over many years. Again, I am delighted to be associated with him in an effort such as this. I urge my colleagues tomorrow, either on voice vote or recorded vote, to adopt the Cardin-Lugar amendment.

I would like to add Senators BAUCUS, and I believe I have, Senator TESTER, as cosponsors of the Bond-Dodd, et al., amendment, No. 4056.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. I commend the work of Senator DODD on this legislation. We have more work to do.

I rise to speak to an amendment I have filed, amendment No. 3891, the homeowners' relief and stabilization amendment.

The reason I rise is to speak about a topic we have all talked about and we have taken action about over the last couple years. We have had some progress made, but unfortunately not enough progress has been made. I speak tonight about foreclosures.

Foreclosures in America are still a huge problem for the American people. RealityTrac, one of the entities that keeps records on foreclosures and has been a leading source for this information, tells us that the numbers of U.S. residential properties receiving at least one foreclosure filing jumped 21 percent in 2009 to a record of 2.82 million housing units.

Foreclosure activity has increased sharply in March of 2010. The number of homes in some stage of the foreclosure process rose from the previous quarter.

Given the significant Federal response to the foreclosure crisis, it is disheartening—I think that is an understatement—that foreclosure filings in March of 2010 were up nearly 8 percent from March of 2009, the highest monthly total since RealtyTrac began reporting the numbers in January of 2005. So we have a ways to go on this very difficult challenge that our Nation has faced.

I commend the administration for using the so-called TARP funds, the Trouble Asset Relief Program funds, for initiatives to help homeowners, which I think indicates that the Federal Government is concerned about assisting those who have lost their jobs or have seen their home values plummet as a result of Wall Street recklessness.

You could add a few more words to ''recklessness,'' but in the interest of time, I will not.

Despite the actions of the Congress over the last several years, despite the actions of the prior administration and this administration especially, despite all that effort, according to the Congressional Oversight Panel of the Troubled Asset Relief Fund, as of February of 2010, 6 million borrowers were more than 60 days delinquent on mortgages and only 168,708 homeowners had received final 5-year loan modifications.

We have a long way to go and we have to implement, in my judgment, new and different and more effective strategies to deal with foreclosures. More must be done to stem this tide of foreclosures that has resulted not only from widespread subprime mortgages but also from increasing unemployment, which has devastated communities and neighborhoods across America.

This amendment—which I thank both colleagues from New York, Senators GILLIBRAND and SCHUMER, for cosponsoring—would also use TARP dollars to help unemployed homeowners. It is very simple: $3 billion would go into a HUD fund to establish a temporary emergency funding relief program based on a very successful program run in Pennsylvania since 1983. It has helped tens of thousands of homeowners in Pennsylvania.

This may be the most successful mortgage foreclosure relief program in the country, at least that I am aware of. Some may want to debate that. But I think in Pennsylvania we have a good track record. We need something akin to that, something very similar to that on a national scale.

This program and this idea are designed to respond to high unemployment situations where homeowners are temporarily unable to afford their monthly mortgage payment due to at least three conditions: unemployment, of course; underemployment is another situation; thirdly, a medical condition could also prevent someone from making their mortgage payment every month.

Subprime mortgage loans and predatory lending sparked a wave of foreclosures, as many borrowers defaulted on loans that they were sold using predatory practices, that they could never afford in the first place to make the payments for. Now the country finds itself in the midst of a second wave—a second wave of foreclosures, where prime borrowers struggle to make their monthly payments after a job loss or unsuccessful attempts at refinancing or modifications.

Despite all of the work that has been done here over the last couple of years, despite all of the work done by the administration, we still find borrowers, homeowners, who, because of a job loss or another adverse circumstance, cannot make their monthly payments. We need direct help for them. We do not need something around the margins; we need direct help for them.

The amendment provides for loans to homeowners only after determining the borrower has a reasonable prospect of being able to resume making full mortgage payments, and we will consider their ability to repay in establishing loan terms, conditions, or rates.

In addition to the individual homeowner problem—someone who has lost their job or has some circumstance that prevents them from making their payments—in addition to the individual, we have full neighborhoods across the country that continue to suffer from housing price declines, lost property tax revenues, abandoned properties, and, of course, blight. This amendment would also direct $1 billion of TARP funds to the Neighborhood Stabilization Program created by the Housing and Economic Recovery Act of 2008 to provide grants to State and local governments and eligible entities to purchase and redevelop foreclosed and abandoned properties with the goal of stabilizing communities. So this is a neighborhood problem in addition to being a problem with individual homeowners.

The language from this amendment was included in H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009 which passed the House of Representatives late last year.

In conclusion, I wish to reemphasize the need for this type of an amendment because we still, unfortunately, have not tackled the foreclosure problem in America. In fact, it is a foreclosure crisis which will prevent us from having an economy that is in full recovery. We did the right thing by making sure the TARP dollars were able to sustain what happened in the strategy to help our financial companies around the United States of America, especially those that were in real trouble in 2008 and 2009. We did the right thing on the recovery bill. We did the right thing on the HIRE Act a couple of months ago. We have taken a lot of steps to rescue and stabilize our economy. We are growing now. We have some growth. We have some employment growth. But unless we tackle completely the foreclosure problem with a very direct, focused effort, we are not going to fully recover and we are not going to have the kind of economic growth we should.

So I would urge my colleagues to join Senator SCHUMER, Senator GILLIBRAND, me, and others in voting for and seeking the passage of this amendment, No. 3791, the homeowners relief and neighborhood stabilization amendment.

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. DODD. Mr. 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. 4050

Mr. DODD. Mr. President, I ask for the yeas and nays on the Cardin-Lugar amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DODD. Mr. President, I ask unanimous consent that after a period of morning business on Tuesday, May 18, the Senate resume consideration of S. 3217, and there be 30 minutes for debate with respect to the Gregg amendment No. 4051 prior to a vote, with the time equally divided and controlled between Senators DODD and GREGG or their designees; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment, with no amendment in order to the amendment prior to the vote; that the Gregg amendment be subject to an affirmative 60-vote threshold, and if the amendment achieves that threshold, then it be agreed to, and the motion to reconsider be laid upon the table; that if it does not achieve that threshold, then it be withdrawn.

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

Mr. DODD. Mr. President, I ask unanimous consent that the amendment by Senator CORKER of Tennessee on preemption be in order, and that the side-by-side amendment offered by Senator CARPER be in order.

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

MORNING BUSINESS

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

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

HONORING OUR ARMED FORCES

LIEUTENANT BRANDON AARON BARRETT

Mr. BAYH. Mr. President, today I wish to honor the life of Marine LT Brandon Barrett from Marion, IN. Brandon was only 27 years old when he lost his life on May 5 while serving bravely in support of Operation Enduring Freedom in Afghanistan.

Lieutenant Barrett was assigned to the 1st Battalion, 6th Marine Regiment, 2nd Marine Division, II Marine Expeditionary Force at Camp Lejeune.

Today, I join family and friends in mourning his death who will forever remember him as a loving son, brother, and friend. He is survived by his mother, Cindy Barrett, his father, Brett Barrett, his sisters, Ashley and Taylor Barrett and his brother, Brock Barrett.

Brandon was a native of Marion. Prior to entering the Marine Corps in 2006, Brandon graduated from Marion High School and attended the U.S. Naval Academy. His family and friends describe him as a bright student, a gifted football and baseball star, and a proud Hoosier who courageously refused to take freedom for granted.

Brandon was deployed on his second tour of duty in Afghanistan. During his service, Brandon earned an array of awards, including the Navy and Marine Corps Achievement Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Afghanistan Campaign Medal and NATO International Security Assistance Force Medal.

While we struggle to express our sorrow over this loss, we take pride in the example of this American hero. We cherish the legacy of his service and his life.

As I search for words to honor this fallen Marine, I recall President Lincoln's words to the families of the fallen at Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.''

It is my sad duty to enter the name of Brandon Barrett in the RECORD of the U.S. Senate for his service to our country and for his profound commitment to freedom, democracy, and peace.

I pray that Brandon's family finds comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

TRIBUTE TO DR. JOSEPH BASCUAS

Mr. BROWN of Massachusetts. Mr. President, I would like to recognize Dr. Joseph W. Bascuas for serving as interim president of Becker College and for his dedication to high academic standards and expectations.

The Becker College board of trustees named Dr. Bascuas as interim president on September 26, 2008. Dr. Bascuas gave his leadership and support to the Becker College community in various ways during his tenure and succeeded in bringing a united vision to the college during a challenging time. Throughout his tenure as Becker College's interim president, Dr. Bascuas advocated strong steps to bolster transparency and the fiscal responsibility of the college, such as maintaining a budget surplus at a time of economic uncertainty. As president, Dr. Bascuas championed cost containment for working families by urging the trustees to freeze tuition and room and board for 2009–2010. He promoted high academic standards and expectations, thus increasing pride in the institution.

I have been proud to hear of the record of Becker College under his leadership. Becker College serves more than 1,700 students from 18 States and 12 countries and offers over 25 diverse,

top-quality bachelor degree programs in unique, high-demand career niches. Dr. Bascuas brought more than 25 years of experience in higher education to Becker College. In addition to his teaching and leading experiences, he has written and coauthored numerous papers on psychological topics and has presented at symposia and conferences. Dr. Bascuas utilized his great volume of experience and passion for quality higher education in his role as Becker College interim president.

I stand here today to congratulate Dr. Joseph W. Bascuas on the completion of his honorable work as Becker College's interim president. I ask my colleagues to join me in wishing Dr. Joseph W. Bascuas continued success.

VICTORIOUS SENATE PAGES

Mr. WARNER. Mr. President, on May 16, 2010, the Senate Pages played the House Pages in an annual ultimate Frisbee game on the National Mall. This year the Senate Pages won the game commandingly 6–3.

Congratulations Senate Pages.

ADDITIONAL STATEMENTS

REMEMBERING WALTER J. HICKEL

• Ms. MURKOWSKI. Mr. President, on Saturday morning, May 8, Alaskans awakened to the sad news that our beloved former Governor, Walter J. Hickel, passed away at the age of 90.

While those in my State viewed him as an Alaska legend, students of American political history may recall Governor Hickel more vividly as President Nixon's first Secretary of the Interior. They may recall that Hickel left that position after criticizing President Nixon for his handling of the Vietnam war and the student protests that gripped the Nation over our involvement in Southeast Asia.

In 1970, following what has come to be known as the ''Kent State Massacre,'' Secretary Hickel wrote a letter urging President Nixon to give more respect to the views of young people critical of the war. That letter included the passage, ''I believe this administration finds itself today embracing a philosophy which appears to lack appropriate concern for the attitude of a great mass of Americans—our young people.''

On November 25, 1970, Governor Hickel was fired over the letter. His firing came days after he told ''60 Minutes'' that he had no intention of quitting. He said he would only go away ''with an arrow in my heart, not a bullet in my back.'' The Nixon administration was all too pleased to oblige.

If President Kennedy were still alive, he surely would have viewed this series of events as a ''profile in courage.'' To this day, when Alaskans are asked for one word that describes Walter Hickel, the word ''backbone'' immediately comes to mind.

They may have fired Wally Hickel but they didn't silence him. Governor Hickel left the national political scene following this incident to focus on Alaska and the Arctic, and his independence, his judgment, and his backbone inspired leaders of Alaska for decades to come.

Governor Hickel appreciated that public policy is a team effort, not an individual sport. Two of Governor Hickel's enduring legacies to the State—Commonwealth North, Alaska's leading public affairs forum, and the Institute of the North, a public policy think-tank—continue to shape public discourse today. Governor Hickel would be proud that last week, even as Alaskans grieved his loss, the Institute of the North conducted its annual Emerging Leaders Dialogue in Sitka.

Governor Hickel's life was large, as large as all of Alaska. Alaska is one of the few corners of America in which legends can still be made. And Governor Hickel surely will go down in history as an Alaska legend.

Born August 18, 1919, in Kansas, Walter J. Hickel came to Alaska in 1940 with 37 cents in his pocket. As he sailed into Prince William Sound on the S.S. *Yukon*, overwhelmed by the breathtaking natural beauty, Hickel remarked, ''You take care of me, and I'll take care of you.''

The words were prophetic. After working as a bartender, a carpenter, and an aircraft inspector, Governor Hickel saved enough money to purchase a half-completed house. He finished building the house, sold it, and then built two more. Eventually, he built several hundred homes.

Long time Fairbanks newspaper columnist Dermot Cole recalls Governor Hickel's success in enlisting community support to build Fairbanks' first modern hotel in 1955. Fairbanks needed a hotel, and Governor Hickel needed financing. He asked the Fairbanks community to invest in its future by purchasing bonds to finance the project, and 583 bondholders invested in the project. The smallest investment was $10, the largest $25,000. The project was built in 7 months. The bondholders were paid back by 1960. And that hotel, The Travelers Inn, still greets visitors to Alaska's Golden Heart City. Today, it is known as the Westmark Fairbanks.

Governor Hickel went on to build Anchorage's Captain Cook Hotel, as a show of confidence in the economy of Southcentral Alaska following the 1964 earthquake. Today, the Captain Cook Hotel offers 547 rooms, in 3 towers, and is Alaska's member of the Preferred Hotel Group.

Alaska sure took care of Wally Hickel, and Governor Hickel more than fulfilled his promise to take care of Alaska, proving that economic development and environmental conservation are not mutually exclusive concepts. His life demonstrates that a developer can be a conservationist and a conservationist can be a developer. One is left to wonder which title he preferred.

Governor Hickel believed that economies can be grown through big projects. He certainly was not one who shared the view prevalent in some circles of the Lower 48, that Alaska should be locked up as a museum to compensate for poor land use decisions made elsewhere in America. During a 1978 interview, he referred to Alaska as a ''happy, young, vibrant country.'' Blunt and honest, he lamented those who argued, ''Don't walk here. Don't walk there. Don't step on the dandelions. You can't use this.'' He referred to this kind of thinking as ''What a bunch of bull.''

Yet this is the same Walter Hickel who dispatched legions of Interior Department employees to commemorate the first observance of Earth Day in 1969; the same Walter Hickel who told the National Petroleum Council in 1970, ''The right to produce [petroleum] is not the right to pollute. America must prove to itself as well as to others worldwide that it has the ability to clean up the garbage it has left in its wake.''

He insisted that those who benefited from the development of Alaska's resources pay Alaskans their due. And during Governor Hickel's second stint as Governor during the 1990s, the major oil companies were persuaded to pay the State more than $4 billion in disputed back taxes and royalties. Historian Stephen Haycox refers to this as ''a very significant legacy . . . because he forced the oil companies to acknowledge that they had a debt they owed to Alaska.'' In the wake of the Exxon Valdez oilspill, Governor Hickel used settlement funds to purchase land for Kachemak Bay State Park and Afognak State Park.

I could go on all day about the life of Wally Hickel. A man who constantly struggled with dyslexia, he authored several books and monographs and many articles. A self-educated individual, he received numerous honorary degrees and befriended foreign heads of state.

A fighter for Alaska's statehood, Hickel attended the birth of the State of Alaska. And history will remember that very little of significance happened in Alaska in the ensuing 50 years that Walter J. Hickel was not involved in. It is no overstatement to suggest that Governor Hickel had a substantial hand in Alaska's start, its present, and its future.

During Alaska's 50th anniversary of statehood celebration last year, I marveled at the fact that so many of the people who made our history are still alive and available to inspire succeeding generations of Alaskans as we continue to grow our State. I would like to think that giants such as Wally Hickel could live forever.

On behalf of all of our Senate colleagues, I extend condolences to Governor Hickel's wife Ermalee, his children, grandchildren, and great grandchildren. Thank you for sharing this

great American with Alaska and our Nation.●

TRIBUTE TO WALTER SCOTT, JR.

● Mr. NELSON of Nebraska. Mr. President, on the occasion of his 79th birthday, I want to take this opportunity to honor fellow Nebraskan Walter Scott, Jr. for his exceptional business and civic leadership and his significant contributions to the telecommunications, construction, and mining industries, as well as his community, State, and country.

Walter began his distinguished career at Peter Kiewit Sons' Inc., formerly Kiewit Construction, working during the summers for Kiewit's construction operations, where his father also worked. In 1953 after earning his civil engineering degree from Colorado State University, he became an engineer for Kiewit in Omaha. A year later, Walter joined the U.S. Air Force as an air installation officer, inspecting military construction projects. Upon returning to Kiewit after his service, Walter excelled in the company, being elected to the board of directors, then becoming vice president in 1964. In 1979 Walter was named president and, later that year, succeeded Peter Kiewit as chairman of the board.

Over the next decade, Walter used his leadership and keen insights to advance Kiewit and develop the company to its full potential. Foreseeing the needs of society, Walter began diversifying the company's investment to include mining, energy, and telecommunications interests. By 1992 this expansion had led to the division of Peter Kiewit Sons' Inc. into two major subsidiaries: Kiewit Construction Group, continuing the company's historical excellence in construction and mining; and Kiewit Diversified Group, later renamed Level 3 Communications, focusing on high-speed fiber optics networks and geothemeral powerplants. Kiewit is now a Fortune 500 company and is a recognized industry leader.

To this day, Walter remains engaged in the industries he helped to shape, continuing as director and chairman emeritus at Kiewit and serving as chairman of the board at level 3. Walter's numerous contributions to business have been acknowledged with dozens of accolades, including the Horatio Alger Award, the Golden Plate Award from the American Academy of Achievement, and induction into the Nebraska Business Hall of Fame.

Beyond his notable accomplishments in business, Walter's civic service and philanthropic contributions have enriched Nebraska and left a lasting impact on our home State. In 1996 Walter helped create the Peter Kiewit Institute, working with the University of Nebraska to provide tomorrow's leaders in information science, technology, and engineering with an unparalleled education. Walter has also given his service to numerous community and nonprofit organizations, including Creighton University, Joslyn Art Museum, Boys & Girls Club of the Midlands, Omaha Development Foundation, Omaha Zoological Society, and Nebraska Game and Parks Foundation. Additionally, I have had the pleasure of serving with Walter as a member of the Open World Board of Trustees, providing international leadership and building multi-national relationships to effect positive change in Eurasian countries.

In closing, Walter Scott's illustrious leadership and generous service has strengthened his community, state, and country. On behalf of our fellow Nebraskans and Americans, I thank Walter for his innovation and leadership and wish him the best for the future.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Pate, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Commerce, Science, and Transportation.

(The nomination received today is printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 2:06 p.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 959. An act to increase Federal Pell Grants for the children of fallen public safety officers, and for other purposes.

H.R. 5014. An act to clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 268. A concurrent resolution supporting the goals and ideals of National Women's Health Week, and for other purposes.

The message further announced that pursuant to Executive Order No. 12131, and the order of the House of January 6, 2009, the Speaker appoints the following Members of the House of Representatives to the President's Export Council: Mr. REICHERT of Washington and Mr. TIBERI of Ohio.

The message also announced that pursuant to section 301 of the Congressional Accountability Act of 1995 (2 U.S.C. 1381), as amended by Public Law 111–114, the Speaker and Minority Leader of the House of Representatives and the Majority and Minority Leaders of the Senate jointly reappoint on May 13, 2010, the following individuals to a 5–year term on the Board of Directors of the Office of Compliance: Ms. Barbara L. Camens of Washington, DC, as Chair and Ms. Roberta L. Holzwarth of Illinois.

The message further announced that pursuant to section 13101 of the HITECH Act (Public Law 111–5), and the order of the House of January 6, 2009, the Speaker reappoints the following member on the part of the House of Representatives to the HIT Policy Committee for a term of 3 years: Mr. Paul Egerman of Weston, Massachusetts.

ENROLLED BILLS SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that he had signed the following enrolled bills, which were previously signed by the Speaker of the House:

S. 1067. An act to support the stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 3333. An act to extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 959. An act to increase Federal Pell Grants for the children of fallen public safety officers, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 268. Concurrent resolution supporting the goals and ideals of National Women's Health Week, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, May 17, 2010, she had presented to the President of the United States the following enrolled bills:

S. 1067. An act to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 3333. An act to extend the statutory license for secondary transmissions under title 17, United States Code, and for other purposes.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM–100. A concurrent resolution adopted by the Senate of the State of Louisiana urging Congress to establish a National Military Family Relief Fund and create a simple and cost-effective way for taxpayers to lend a helping hand to military families in need; to the Committee on Armed Services.

SENATE CONCURRENT RESOLUTION NO. 43

Whereas, United States service members, especially national guardsmen and reservists, often face a significant salary reduction when called upon to serve our country; and

Whereas, recent studies show that fifty-five percent of married national guard members and reservists report a loss of income in relation to their civilian jobs when they are called to active duty, and fifteen percent experience a pay cut of thirty thousand dollars or more; and

Whereas, national guard members and reservists serving in the Global War On Terrorism make up a larger percentage of frontline fighting forces than in any other war in U.S. history; and

Whereas, all military families deserve thanks and recognition for their sacrifices, and helping to ease the financial pressures that challenge so many of America's finest families must be a top priority; and

Whereas, U.S. Congressman Bill Foster has introduced House Resolution 5941, legislation designed to provide relief for military families that would allow taxpayers to contribute to a National Military Family Relief Fund by filling a voluntary donation in a check-off box on federal income tax forms; and

Whereas, the individually determined donation for the National Military Family Relief Fund would be added to the supporter's tax bill or deducted from a rebate allowing U.S. citizens to support military families without placing any extra burden on the federal budget; and

Whereas, all service members and veterans who are serving, or have served, in Iraq or Afghanistan or other regions of service would be eligible for grants from the National Military Family Relief Fund; and

Whereas, military family relief funds have already been introduced or established in at least twenty-seven states with citizens, corporations and community organizations proving an eagerness to lend a helping hand by generously donating to military families in need. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to approve H.R. 5941 to establish a National Military Family Relief Fund and create a simple and cost-effective way for taxpayers to lend a helping hand to military families in need; be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–101. A concurrent resolution adopted by the Legislature of the State of Utah expressing support for policies that promote and foster energy innovation development in the state of Utah; to the Committee on Commerce, Science, and Transportation.

HOUSE CONCURRENT RESOLUTION NO. 15

Whereas, 23 U.S.C. Sec. 159 requires states to enact legislation requiring the revocation or suspension of an individual's driver license for at least six months upon conviction of any drug-related offense;

Whereas, 23 U.S.C. Sec. 159 requires withholding 10% of certain federal aid from states that fail to enact this legislation;

Whereas, the federal government should not dictate policy or legislation of this kind for the state;

Whereas, for Utah to be exempt from this federal requirement, the Governor must submit to the United States Secretary of Transportation a written certification that he is opposed to the enactment or enforcement of a law related to revocation of a person's driver license for any drug-related offense, and also submit a written certification that the Utah Legislature has adopted a resolution expressing opposition to the federal requirement; and

Whereas, the state of Utah shall enforce its own driver license law, which provides that Utah's Driver License Division is not required to suspend a person's license for a violation of certain drug-related offenses if the violation did not involve a motor vehicle and the convicted person is participating in, or has successfully completed, substance abuse treatment at a licensed substance abuse treatment program that is approved by the Division of Substance Abuse and Mental Health or is participating in, or has successfully completed, probation through the Department of Corrections Adult Probation and Parole: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, declare their opposition to the enactment or enforcement of a federal law mandating, in all circumstances, the revocation or suspension of an individual's driver license upon conviction of any drug-related offense; be it further

Resolved, That the Legislature and the Governor declare the state's determination to enforce its own law on the subject, which provides that persons convicted of certain drug-related offenses will not have their driver licenses revoked or suspended if the violation did not involve a motor vehicle and the convicted person is participating in, or has successfully completed, substance abuse treatment at a licensed substance abuse treatment program that is approved by the Division of Substance Abuse and Mental Health or is participating in, or has successfully completed, probation through the Department of Corrections Adult Probation and Parole; be it further

Resolved, That a copy of this resolution be prepared and delivered to the Governor of the state of Utah, and that the Governor submit a copy of the resolution to the United States Secretary of Transportation; be it further

Resolved, That a copy of this resolution be sent to the Utah Department of Transportation and to the members of Utah's congressional delegation.

POM–102. A concurrent resolution adopted by the Legislature of the State of Utah urging Congress to amend federal law to ensure that consumers have the right to access their Fair Isaac Corporation credit scores or any other source for credit scores used by Fannie Mae, Freddie Mac, or Ginnie Mae from the three major credit agencies annually at no cost; to the Committee on Banking, Housing, and Urban Affairs.

HOUSE CONCURRENT RESOLUTION NO. 7

Whereas, under the Fair and Accurate Credit Transactions Act of 2003, consumers are entitled to a free credit report once each year from any credit agency, including the nation's three major credit bureaus, which are Experian, Trans Union, and Equifax;

Whereas, the credit scores used in over 90% of financial transactions, including Fannie Mae, Freddie Mac, and Ginnie Mae, are a version of a Fair Isaac Corporation (FICO) credit score;

Whereas, FICO's website, www.MyFico.com, is the only location where consumers may access their true FICO credit scores;

Whereas, FICO takes the credit information furnished by Experian, Trans Union, and Equifax and calculates that information using an algorithm to develop the three credit scores;

Whereas, after Experian partially severed its relationship with FICO in 2009, consumers can no longer access their FICO/Experian credit score;

Whereas, now consumers can only access their Trans Union/FICO and Equifax/FICO credit scores on FICO's website, and they are charged $14.95 each, while lenders and other creditors can still access all three FICO credit scores from the three major credit agencies;

Whereas, although other companies have developed their own credit scores using their own formulas, ranges, and scores, lenders and creditors and other financial service companies generally do not consider them reliable;

Whereas, these scores generated by other companies are often found to be substantially different than the FICO credit scores, even though they are widely promoted as the actual consumer credit score;

Whereas, current federal law should be changed to address the consumers' right to access their FICO credit scores from the three major credit agencies once each year;

Whereas, when consumers access their free credit report from www.AnnualCreditReport.com, they should be given the right to their FICO credit scores annually at no cost;

Whereas, credit agencies should not be required to bear any pass through costs from FICO in providing free FICO credit scores once each year to consumers;

Whereas, credit agencies should allow consumers the right to access their credit scores from each major credit agency used by Fannie Mae, Freddie Mac, and Ginnie Mae; and

Whereas, by making it possible for consumers to access their credit scores, which are used in almost every financial transaction, true fairness will return to the credit scoring access system: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, urge the United States Congress to amend federal law to ensure that consumers have the right to access their Fair Isaac Corporation credit scores or any other source for credit scores used by Fannie Mae, Freddie Mac, or Ginnie Mae from the three major credit agencies annually at no cost; be it further

Resolved, That a copy of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–103. A concurrent resolution adopted by the Legislature of the State of Utah urging the President and Congress to refrain from designating new national monuments in the San Rafael Swell area, the Cedar Mesa area, and any other area in Utah; to the Committee on Energy and Natural Resources.

SENATE CONCURRENT RESOLUTION NO. 11

Whereas, the Antiquities Act, 16 U.S.C. Sec. 431, empowers the President of the United States to singlehandedly bypass congressional, state, and local land management policies and tie up any federal land in Utah through national monument declarations;

Whereas, a recent confirmed United States Department of Interior (DOI) internal memorandum declares that the 75-by-40 mile San Rafael Swell and surrounding ''canyons, gorges, mesas, and buttes,'' plus an area of unspecified size referred to as the Cedar Mesa area, among others, ''may be good candidates for National Monument designation under the Antiquities Act;''

Whereas, the San Rafael Swell and surrounding areas and the Cedar Mesa area described in the DOI memorandum are in Emery, Wayne, and San Juan Counties, Utah;

Whereas, Article I, Section 8, Clause 17 of the United States Constitution grants the United States government the power to exercise exclusive jurisdiction over the District of Columbia and over all ''places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings'';

Whereas, no lands in the San Rafael Swell and Cedar Mesa areas of Utah fit into this category;

Whereas, the United States Constitution delegates to the government of the United States no other power of exclusive jurisdiction over land in Utah, other than that referenced in Article I, Section 8, Clause 17;

Whereas, the Tenth Amendment to the United States Constitution states, ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States'';

Whereas, Article IV, Section 4 of the United States Constitution states, ''The United States shall guarantee to every State in the Union a Republican Form of Government'';

Whereas, the constitutional guarantee to Utah of a republican form of government is abrogated and violated when the President of the United States purports through the Antiquities Act, 16 U.S.C. Sec. 431, to exercise exclusive jurisdiction with the mere stroke of a pen over lands in the San Rafael and Cedar Mesa areas that do not fit the category of Article I, Section 8, Clause 17, exclusive jurisdiction land;

Whereas, lands in the San Rafael Swell and Cedar Mesa areas of Utah are currently managed by the United States Bureau of Land Management (BLM) pursuant to the Federal Land Policy Management Act (FLPMA) of 1976, and the Act directs the BLM to manage public lands according to Resource Management Plans (RMPs) which ''shall be consistent with State and local plans to the maximum extent [the Secretary of Interior] finds consistent with Federal law and the purpose of [FLPMA]'';

Whereas, the state of Utah and the counties of Emery, Wayne, and San Juan have recently completed an expensive and protracted multi-year FLPMA and National Environmental Policy Act (NEPA) process with the BLM and the public to revise and update the BLM's RMPs in planning areas which include the San Rafael Swell and Cedar Mesa areas;

Whereas, the revised RMPs do not call for the creation of national monuments in the San Rafael Swell and Cedar Mesa areas;

Whereas, creating national monuments in the San Rafael Swell and Cedar Mesa areas would violate and undercut the integrity of the RMPs revision process in Emery, Wayne, and San Juan Counties where the San Rafael Swell and Cedar Mesa areas are situated, and would be inconsistent with the plans and policies of the state of Utah and those counties and their duly elected governmental boards and leaders, all in violation of the constitutional guarantee of a republican form of government as well as violating federal statutory consistency requirements of FLPMA;

Whereas, a presidential proclamation declaring national monuments in the San Rafael Swell and Cedar Mesa areas would single-handedly bypass the revised RMPs and the universal opposition by the duly elected leaders of the state of Utah and the counties where those lands lie;

Whereas, a presidential proclamation of this type would constitute an illegitimate arrogation of exclusive jurisdiction over lands by the President, exceeding the bounds of legitimate and lawful authority permitted by the United States Constitution;

Whereas, the Antiquities Act states, ''The President . . . may reserve as a part [of a national monument] parcels of land, the limits of which in all cases shall be confined to the smallest areas compatible with the proper care and management of the objects to be protected. . . .''

Whereas, the size of the 1996 Grand Staircase National Monument in Garfield and Kane Counties far exceeded ''the smallest areas compatible'' with the feigned object of that monument;

Whereas, the size of the San Rafael Swell area stated in the DOI memo, namely 75-by-40 miles plus surrounding canyons, gorges, mesas, and buttes, is staggering in terms of a national monument;

Whereas, Utah favors protecting the remarkably scenic, recreational, and sensitive areas of the San Rafael Swell and Cedar Mesa areas, however highest and best use of vast tracts of land in those areas is continued grazing and environmentally sensitive energy and mineral development done in such a way as to protect and preserve the scenic and recreational values;

Whereas, as history has demonstrated in the case of the Grand Staircase National Monument, many thousands of acres of important grazing and mineral and other multiple use resources and values have been closed to reasonable development due to the multi-hundred thousand acre national monument designation;

Whereas, Senator Bob Bennett has introduced S. 3016 in the United States Senate, which would prohibit the further extension or establishment of national monuments in Utah, except by express authorization of Congress; and

Whereas, Utah's economy, industry, culture, way of life, and its viability as a sovereign state guaranteed a republican form of government depend on reasonable multiple-use access to the BLM lands in the San Rafael Swell and Cedar Mesa areas of the state, most of which will be taken away through national monument designation: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, express their opposition to the presidential creation of any large area national monument, as an abuse and violation of the Antiquities Act's smallest-area-compatible mandate; be it further

Resolved, That the Legislature and the Governor oppose the presidential creation of new national monuments in the San Rafael Swell area, Cedar Mesa area, and any other area of Utah; be it further

Resolved, That the Legislature and the Governor declare openly to the United States government that this unchecked exercise of power concentrated in the President portends serious consequences for Utah, as nearly 70% of the State is federally owned; be it further

Resolved, That the Legislature and the Governor declare openly to the United States government that the exercise of this power would essentially coronate the President, giving him the ultimate ability to determine the fate of nearly 70% of the entire state with the mere stroke of an unchecked presidential pen; be it further

Resolved, That the Legislature and the Governor urge Congress to check the President's ability to exercise such power by amending the Antiquities Act to clarify its actual intent, which is to establish small discrete monuments or memorials as existed in Utah prior to the unfortunate creation of the 1996 Grand Staircase National Monument; be it further

Resolved, That the Legislature and the Governor strongly urge the federal government to manage federal public lands in Utah according to state and local government plans, policies, and public input as promised by the Federal Land Policy Management Act of 1976 and the United States constitutional guarantee of a republican form of government on equal footing with all states in the Union, or otherwise convey the federal public lands to Utah for proper care and management, consistent with the original intent of the Constitution's Framers; be it further

Resolved, That the Legislature and the Governor express support for S. 3016, introduced in the United States Senate, which would prohibit the further extension or establishment of national monuments in Utah, except by express authorization of Congress; be it further

Resolved, That copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–104. A joint resolution adopted by the Legislature of the State of Utah expressing support for the Escalante Heritage/Hole-in-the-Rock Center Board's efforts to preserve the history of the Hole-in-the-Rock pioneers and the settlement of the Escalante area; to the Committee on Energy and Natural Resources.

SENATE JOINT RESOLUTION NO. 1

Whereas, in 1879, citizens of towns throughout Southern Utah answered the call of John Taylor, President of the Church of Jesus Christ of Latter-day Saints, to colonize one of the most remote parts of the Territory of Utah;

Whereas, taking what these colonizers thought would be a shortcut to the San Juan area, they traveled through the frontier town of Escalante, which was settled in 1876, to the Colorado River where they blasted and chiseled out a road in the crack of the canyon wall, descending one thousand feet to the Colorado River;

Whereas, while this was the most difficult part of the trek, it was only one of many difficulties they experienced before reaching their destination and establishing a settlement at Bluff, Utah;

Whereas, what they thought would be a six-week journey took six months;

Whereas, the road these individuals created on their journey became the first road in the Territory of Utah, traveling from west to east, to be funded by the Legislature, though it cost only a few thousand dollars to purchase dynamite to blast through the walls of the Hole-in-the-Rock;

Whereas, during the winter of 1879–80, 250 men, women, and children, trailing over 1,000 head of livestock, blazed a trail through 200 miles of the most rugged terrain in the West;

Whereas, Elizabeth Decker, a member of the colonizing party described it as ''. . . the roughest country you or anybody else ever saw. It's nothing in the world but rocks and holes, hills and hollows'';

Whereas, during their six-month journey, the San Juan colonizers were tempered like fine steel for the formidable task of tilling the land and establishing law and order;

Whereas, in reaching the San Juan area, the colonizers demonstrated unwavering

faith and devotion to duty and set the standard for future generations;

Whereas, in 2002, the Church of Jesus Christ of Latter-day Saints donated nine acres of land in Escalante to build a Heritage Center, and also donated a water meter, which was critical in allowing the project to move ahead;

Whereas, in 2007, the Richfield office of the Utah Department of Transportation granted the Escalante Heritage Center $125,000 to do a feasibility study, which was performed by Landmark Design of Salt Lake City and completed in 2008;

Whereas, in 2009, the Salt Lake City office of the Utah Department of Transportation granted the Escalante Heritage Center $500,000 to build the first of four phases of the project;

Whereas, the Escalante Heritage Center is a nonprofit corporation engaged in raising private and public funds to construct and maintain a center dedicated to preserving the history and heritage of the Hole-in-the-Rock pioneers and the Escalante area;

Whereas, the state transportation improvement program includes $200,000 for preliminary engineering to improve Hole-in-the-Rock Road;

Whereas, the Bureau of Land Management (BLM) has expressly recognized in an administrative determination in 1988 that Garfield County owns an R.S. 2477 right-of-way for the Hole-in-the-Rock Road;

Whereas, Garfield County, Kane County, and the state of Utah have valid documentation that this road has been in existence since 1879 and has been in continuous use for over 131 years;

Whereas, Garfield County, Kane County, and the state of Utah have expended public tax monies to improve and maintain this road and other R.S. 2477 roads in their respective counties for access to BLM and National Park Service-managed lands;

Whereas, Kane County has filed a Quiet Title Action to secure forever the property right to this road and other roads in the county;

Whereas, this case, called the Hole-in-the-Rock Quiet Title Action, will be heard in federal court in the near future;

Whereas, the Garfield County Commission fully supports this endeavor and is the government sponsor of the project;

Whereas, the Mayor and City Council of Escalante fully support the Escalante Heritage Center in its endeavor to preserve the history and heritage of the area;

Whereas, the Mormon Pioneer National Heritage Area project has declared the building of the Escalante Heritage Center its top priority project;

Whereas, the Escalante Heritage Center Board has received letters of support from officials of the Church of Jesus Christ of Latter-day Saints, the offices of both Senators Hatch and Bennett, and the office of Congressman Jim Matheson;

Whereas, the Escalante Heritage Center Board has the support of officials of the Grand Staircase Escalante National Monument, who feel that a science center on one side of the town of Escalante and a history center on the other side would represent bookends of learning for everyone visiting the area; and

Whereas, Garfield County has received a letter of support from the Grand Staircase Escalante National Monument for road improvements: Now, therefore, be it

Resolved, That the Legislature of the state of Utah expresses its support for the Escalante Heritage/Hole-in-the-Rock Center Board's efforts to preserve the history of the Hole-in-the-Rock pioneers and the settlement of the Escalante area, and to construct a building in which to tell the story of these historic pioneers and to improve the road over which they traveled; be it further

Resolved, That a copy of this resolution be sent to the Escalante Heritage Center Board, the Garfield County Commission, the Mayor and City Council of Escalante City, the Richfield and Salt Lake City offices of the Utah Department of Transportation, Landmark Design, the Church of Jesus Christ of Latter-day Saints, and to the members of Utah's congressional delegation.

POM–105. A joint resolution adopted by the Legislature of the State of Utah expressing opposition to participating in the Western Climate Initiative; to the Committee on Energy and Natural Resources.

HOUSE JOINT RESOLUTION NO. 21

Whereas, Utah's location and natural resources are an economic advantage and catalyst for economic growth and opportunity for Utah's citizens through abundant and affordable power, providing the seventh lowest electric rates in the nation;

Whereas, the nation's coal fired power plants provide for half of the United States' electricity demand, and power generated from Utah's abundant and clean burning coal provides for nearly 90% of the state's power needs;

Whereas, participation in the Western Climate Initiative (WCI) requires Utah, through public policy, to reduce carbon dioxide emissions without legislative consultation or public input;

Whereas, there has been no balanced and unbiased economic analysis of the costs associated with carbon reduction mandates, the economic impacts of participation in a regional cap and trade program, and the consequential effect of the increased costs of doing business in Utah;

Whereas, the credibility of global climate science, data, and modeling that cannot explain declining temperatures over the last decade, coupled with indications that the Intergovernmental Panel on Climate Change has incorporated flawed science to push policymakers, requires reevaluation of the ''consensus'' and full scientific scrutiny of the claims;

Whereas, forcing business, industry, and food producers to reduce carbon emissions through government mandates and cap and trade policies will increase the cost of doing business, push companies to do business with lower cost states or nations, and increase consumer costs for electricity, fuel, and food;

Whereas, the Congressional Budget Office warns that the cost of cap and trade policies under consideration for the WCI, and nationally, will be borne by consumers and will place a disproportionately high burden on poorer households;

Whereas, there are growing scientific concerns that simply implementing carbon reduction in Utah, the United States, or in the developed world will not have a significant impact while countries like China, Russia, Mexico, and India are greatly expanding their carbon footprints;

Whereas, carbon capture and sequestration are new technologies not yet proven, not yet commercially demonstrated, and facing legal and regulatory challenges;

Whereas, if all nations globally met a Kyoto-style carbon dioxide reduction, climate temperature would be reduced only 0.07 of a degree by 2050, and tremendous economic growth would be sacrificed for very little global warming gain; and

Whereas, no state or nation has enhanced economic opportunities for its citizens or increased Gross Domestic Product through cap and trade or other radical carbon reduction policies: Now, therefore, be it

Resolved, That the Legislature of the state of Utah urges the Governor to withdraw Utah from the WCI; be it further

Resolved, That a copy of this resolution be sent to Governor Herbert, the WCI, the Governor's Blue Ribbon Advisory Council on Climate Change, the International Panel on Climate Change, the United States Environmental Protection Agency, the Utah Department of Environmental Quality, and to the members of Utah's congressional delegation.

POM–106. A joint resolution adopted by the Legislature of the State of Utah urging the United States Environmental Protection Agency to immediately halt its carbon dioxide reduction policies and programs and withdraw its ''Endangerment Finding'' and related regulations until a full and independent investigation of climate data and global warming science can be substantiated; to the Committee on Energy and Natural Resources.

HOUSE JOINT RESOLUTION NO. 12

Whereas, proposed cap and trade legislation before the United States Congress, together with potential state actions to reduce carbon dioxide (CO_2), would result in significantly higher energy costs to American consumers, business, and industry;

Whereas, the United States Environmental Protection Agency's (EPA) ''Endangerment Finding'' and proposed action to regulate CO_2 under the Clean Air Act is based on questionable climate data and would place significant regulatory and financial burdens on all sectors of the nation's economy at a time when the nation's unemployment rate exceeds 10%;

Whereas, global temperatures have been level and declining in some areas over the past 12 years;

Whereas, the ''hockey stick'' global warming assertion has been discredited and climate alarmists' carbon dioxide-related global warming hypothesis is unable to account for the current downturn in global temperatures;

Whereas, there is a statistically more direct correlation between twentieth century temperature rise and Chlorofluorocarbons (CFCs) in the atmosphere than CO_2;

Whereas, outlawed and largely phased out by 1978, in the year 2000 CFCs began to decline at approximately the same time as global temperatures began to decline;

Whereas, emails and other communications between climate researchers around the globe, referred to as ''Climategate,'' indicate a well organized and ongoing effort to manipulate global temperature data in order to produce a global warming outcome;

Whereas, there has been a concerted effort by climate change alarmists to marginalize those in the scientific community who are skeptical of global warming by manipulating or pressuring peer-reviewed publications to keep contrary or competing scientific viewpoints and findings on global warming from being reviewed and published;

Whereas, the Intergovernmental Panel on Climate Change (IPCC), a blend of government officials and scientists, does no independent climate research but relies on global climate researchers;

Whereas, Earth's climate is constantly changing with recent warming potentially an indication of a return to more normal temperatures following a prolonged cooling period from 1250 to 1860 called the ''Little Ice Age'';

Whereas, more than $7 billion annually in federal government grants may have influenced the climate research focus and findings that have produced a ''scientific consensus'' at research institutions and universities;

Whereas, the recently completed Copenhagen climate change summit resulted in little agreement, especially among growing

CO_2-emitting nations like China and India, and calls on the United States to pay billions of dollars to developing countries to reduce CO_2 emissions at a time when the United States' national debt will exceed $12 trillion;

Whereas, the United States Department of Agriculture estimates that current legislation providing agriculture offsets and carbon credits to reduce CO_2 emissions would result in tree planting on 59 million acres of crop and pasture land, damaging America's food security and rural communities;

Whereas, according to the World Health Organization, 1.6 billion people do not have adequate food and clean water; and

Whereas, global governance related to global warming and reduction of CO_2 would ultimately lock billions of human beings into long-term poverty: Now, therefore, be it

Resolved, That the Legislature of the state of Utah urges the United States Environmental Protection Agency to immediately halt its carbon dioxide reduction policies and programs and withdraw its ''Endangerment Finding'' and related regulations until a full and independent investigation of climate data and global warming science can be substantiated; be it further

Resolved, That a copy of this resolution be sent to the United States Environmental Protection Agency and to the members of Utah's congressional delegation.

POM–107. A concurrent resolution adopted by the Legislature of the State of Utah urging the United States Government and the Secretary of the Interior to provide continued financial assistance to the unincorporated community of Dutch John, Utah; to the Committee on Energy and Natural Resources.

HOUSE CONCURRENT RESOLUTION NO. 13

Whereas, the Dutch John Federal Property Disposition and Assistance Act of 1998 disposed of certain federal properties located in Dutch John, Utah, and provided for assistance to Daggett County for the delivery of basic services to the Dutch John community, and for other purposes;

Whereas, for the purpose of defraying costs of administration and provision of basic community services, an annual payment of $300,000, as adjusted by the Secretary of the Interior for changes in the Consumer Price Index for all-urban consumers published by the Department of Labor, has been provided from the Upper Colorado Basin Fund authorized by Section 5 of the Act of April 11, 1956 (70 Stat. 107, chapter 203; 43 U.S.C. 620d), to DaggettCounty, Utah or in accordance with Subsection (c), to Dutch John, Utah, for a period not to exceed 15 years beginning the first January 1 that occurs after the date of the effective date of this resolution;

Whereas, these payments for the purpose of defraying costs of administration and provision of basic community services will terminate December 31, 2013;

Whereas, Dutch John was established in 1958 by the Bureau of Reclamation to provide housing and serve project construction needs for the construction of Flaming Gorge Dam;

Whereas, permanent structures for housing, administrative offices, maintenance, and other public purposes continue to be owned and maintained by the Bureau of Reclamation;

Whereas, during construction of the dam, more than 2,000 people were housed in the town;

Whereas, the Bureau of Reclamation and the United States Forest Service, responsible for land management at Dutch John and surrounding Flaming Gorge National Recreation Area, continue to provide basic services and facilities for the community;

Whereas, basic services for Dutch John, as well as the operating and administrative costs for the town prior to 1998, were financed by the Bureau of Reclamation and the United States Forest Service, then reimbursed by annual power sales revenue;

Whereas, the federal costs of providing the full range of community facilities and services in Dutch John had substantially grown over the years, and in 1998 approached $1 million annually;

Whereas, currently, Daggett County is providing these basic community services to Dutch John, such as road maintenance, water, and sewer;

Whereas, to offset these costs, while a traditional community tax base was being established in Dutch John, Daggett County received an annual subsidy that is to last for 15 years from public power revenues;

Whereas, the Dutch John Federal Property Disposition and Assistance Act of 1998 anticipated that in the initial 15-year period commercial developments would be established that would help finance local services; and

Whereas, the commercial developments that were anticipated to occur in Dutch John to help finance local services have not been established: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, urge the United States Government and the Secretary of the Interior to provide continued financial assistance to the unincorporated community of Dutch John, Utah, in the amount of at least $500,000 annually, as adjusted by the Secretary of the Interior for changes in the Consumer Price Index for all-urban consumers published by the Department of Labor, from the Upper Colorado River Basin Fund for a period not to exceed 15 years, for the purpose of defraying costs of administration and the provision of basic community services; be it further

Resolved, That a copy of this resolution be sent to the United States Secretary of the Interior, the members of Utah's congressional delegation, the United States Forest Service, the Bureau of Reclamation, and the Daggett County Commission.

POM–108. A concurrent resolution adopted by the Legislature of the State of Utah expressing support for the creation of the Statue of Responsibility Monument and recognizing the state of Utah's claim to the honorable moniker as ''Utah—Birth Place of the Statue of Responsibility''; to the Committee on Energy and Natural Resources.

HOUSE CONCURRENT RESOLUTION NO. 16

Whereas, forty years ago, Holocaust survivor and author of ''Man's Search for Meaning'', Dr. Viktor E. Frankl, declared that in order for freedom to endure generation after generation, our liberties need to be lived in terms of responsibleness;

Whereas, Dr. Frankl then challenged America to create a Statue of Responsibility on the West Coast to complement the message of the Statue of Liberty on the East Coast, and that these two monuments would forever stand as visual reminders of the two principles, liberty and responsibility, required to keep freedom's flame burning bright;

Whereas, for a nation to endure, at crucial times in its history, its core values must be revisited, reenergized, and reenthroned;

Whereas, in 1997, internationally renowned Utah sculptor, Gary Lee Price, was commissioned by the Statue of Responsibility Foundation to design the Statue of Responsibility;

Whereas, Mr. Price's design was approved by the Statue of Responsibility Foundation's Board of Trustees in 2005;

Whereas, the Statue of Responsibility Foundation has received over $700,000 of in-kind donation support from over 20 Utah companies for the completion of the project's initial phase, which was completed in 2008;

Whereas, Dr. Viktor Frankl's widow, Eleonore Frankl, along with other national and international dignitaries, sits on the Statue of Responsibility Foundation's International Board of Advisors;

Whereas, the Statue of Responsibility Foundation will begin its national public relations campaign once the host city has been awarded;

Whereas, much of the $300 million cost to build the Statue of Responsibility monument will be raised in the private sector by individuals, supportive non-profit organizations, and public and private corporations;

Whereas, the Statue of Responsibility Foundation is in the process of determining which potential host city on the West Coast will be chosen as the resting spot of the monument, and details of the Statue of Responsibility Monument project can be seen on www.SORfoundation.org;

Whereas, the Statue of Responsibility Foundation will gift to the state of Utah a 30-foot tall replica of the Statue of Responsibility to be located in an appropriate location in the state so that visitors to Utah will be able to see and be reminded of the historic role Utah played in the creation of this historic monument;

Whereas, the Statue of Responsibility Monument will become an educational and tourism landmark, equal to the Statue of Liberty, and their combined messages will stand as beacons of hope and lasting freedom to citizens of all nations;

Whereas, Utah will forever be able to lay claim to the moniker ''Utah—Birth Place of the Statue of Responsibility''; and

Whereas, the value of this moniker to the state of Utah will grow through the years as millions of world visitors tour both the 300-foot tall monument on the West Coast and the 30-foot tall replica in Utah: Now, therefore, be it

Resolved, That the Legislature of the State of Utah, the Governor concurring therein, express support for the creation of the Statue of Responsibility Monument; be it further

Resolved, That the Legislature and the Governor recognize the state of Utah's claim to the honorable moniker as ''Utah—Birth Place of the Statue of Responsibility;'' be it further

Resolved, That the Legislature and the Governor encourage concerned Utahns to assist in the building of what has been called ''the most compelling monument project to freedom of the 21st Century'' in ways that are unique to our private citizens and our corporate citizens; be it further

Resolved, That a copy of this resolution be sent to the Statue of Responsibility Foundation's organizational leaders, the Statue of Responsibility Foundation's Board of Trustees, and to the members of Utah's congressional delegation.

POM–109. A concurrent resolution adopted by the Legislature of the State of Utah urging the President and Congress to refrain from designating new national monuments in the San Rafael Swell area, the Cedar Mesa area, and any other area in Utah; to the Committee on Energy and Natural Resources.

HOUSE CONCURRENT RESOLUTION NO. 17

Whereas, the Antiquities Act, 16 U.S.C. Sec. 31, empowers the President of the United States to singlehandedly bypass congressional, state, and local land management policies and tie up any federal land in Utah through national monument declarations;

Whereas, a recent confirmed United States Department of Interior (DOI) internal memorandum declares that the 75-by-40 mile San Rafael Swell and surrounding ''canyons, gorges, mesas, and buttes,'' plus an area of unspecified size referred to as the Cedar Mesa area, among others, ''may be good candidates for National Monument designation under the Antiquities Act'';

Whereas, the San Rafael Swell and surrounding areas and the Cedar Mesa area described in the DOI memorandum are in Emery, Wayne, and San Juan Counties, Utah;

Whereas, Article I, Section 8, Clause 17 of the United States Constitution grants the United States government the power to exercise exclusive jurisdiction over the District of Columbia and over all ''places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings'';

Whereas, no lands in the San Rafael Swell and Cedar Mesa areas of Utah fit into this category;

Whereas, the United States Constitution delegates to the government of the United States no other power of exclusive jurisdiction over land in Utah, other than that referenced in Article I, Section 8, Clause 17;

Whereas, the Tenth Amendment to the United States Constitution states, ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States'';

Whereas, Article IV, Section 4 of the United States Constitution states, ''The United States shall guarantee to every State in the Union a Republican Form of Government'';

Whereas, the constitutional guarantee to Utah of a republican form of government is abrogated and violated when the President of the United States purports through the Antiquities Act, 16 U.S.C. Sec. 431, to exercise exclusive jurisdiction with the mere stroke of a pen over lands in the San Rafael and Cedar Mesa areas that do not fit the category of Article 1, Section 8, Clause 17, exclusive jurisdiction land;

Whereas, lands in the San Rafael Swell and Cedar Mesa areas of Utah are currently managed by the United States Bureau of Land Management (BLM) pursuant to the Federal Land Policy Management Act (FLPMA) of 1976, and, the Act directs the BLM to manage public lands according to Resource Management Plans (RMPs) which ''shall be consistent with State and local plans to the maximum extent [the Secretary of Interior} finds consistent with Federal law and the purpose of [FLPMA]'';

Whereas, the state of Utah and the counties of Emery, Wayne, and San Juan have recently completed an expensive and protracted multi-year FLPMA and National Environmental Policy Act (NEPA) process with the BLM and the public to revise and update the BLM's RMPs in planning areas which include the San Rafael Swell and Cedar Mesa areas;

Whereas, the revised RMPs do not call for the creation of national monuments in the San Rafael Swell and Cedar Mesa areas;

Whereas, creating national monuments in the San Rafael Swell and Cedar Mesa areas would violate and undercut the integrity of the RMPs revision process in Emery, Wayne, and San Juan Counties where the San Rafael Swell and Cedar Mesa areas are situated, and would be inconsistent with the plans and policies of the state of Utah and those counties and their duly elected governmental boards and leaders, all in violation of the constitutional guarantee of a republican form of government as well as violating federal statutory consistency requirements of FLPMA;

Whereas, a presidential proclamation declaring national monuments in the San Rafael Swell and Cedar Mesa areas would single-handedly bypass the revised RMPs and the universal opposition by the duly elected leaders of the state of Utah and the counties where those lands lie;

Whereas, a presidential proclamation of this type would constitute an illegitimate arrogation of exclusive jurisdiction over lands by the President, exceeding the bounds of legitimate and lawful authority permitted by the United States Constitution;

Whereas, the Antiquities Act states, ''The President . . . may reserve as a part [of a national monument] parcels of land, the limits of which in all cases shall be confined to the smallest areas compatible with the proper care and management of the objects to be protected.

Whereas, the size of the 1996 Grand Staircase National Monument in Garfield and Kane Counties far exceeded ''the smallest areas compatible'' with the feigned object of that monument;

Whereas, the size of the San Rafael Swell area stated in the DOI memo, namely 75-by-40 miles plus surrounding canyons, gorges, mesas, and buttes, is staggering in terms of a national monument;

Whereas, Utah favors protecting the remarkably scenic, recreational, and sensitive areas of the San Rafael Swell and Cedar Mesa areas, however the highest and best use of vast tracts of land in those areas is continued grazing and environmentally sensitive energy and mineral development done in such a way as to protect and preserve the scenic and recreational values;

Whereas, as history has demonstrated in the case of the Grand Staircase National Monument, many thousands of acres of important grazing and mineral and other multiple use resources and values have been closed to reasonable development due to the multi-hundred thousand acre national monument designation;

Whereas, Senator Bob Bennett has introduced S. 3016 in the United States Senate, which would prohibit the further extension or establishment of national monuments in Utah, except by express authorization of Congress; and

Whereas, Utah's economy, industry, culture, way of life, and its viability as a sovereign state guaranteed a republican form of government depend on reasonable multiple-use access to the BLM lands in the San Rafael Swell and Cedar Mesa areas of the State, most of which will be taken away through national monument designation: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, express their opposition to the presidential creation of any large area national monument, as an abuse and violation of the Antiquities Act's smallest-area-compatible mandate; be it further

Resolved, That the Legislature and the Governor oppose the presidential creation of new national monuments in the San Rafael Swell area, Cedar Mesa area, and any other area of Utah; be it further

Resolved, That the Legislature and the Governor declare openly to the United States government that this unchecked exercise of power concentrated in the President portends serious consequences for Utah, as nearly 70% of the State is federally owned; be it further

Resolved, That the Legislature and the Governor declare openly to the United States government that the exercise of this power would essentially coronate the President, giving him the ultimate ability to determine the fate of nearly 70% of the entire state with the mere stroke of an unchecked presidential pen; be it further

Resolved, That the Legislature and the Governor urge Congress to check the President's ability to exercise such power by amending the Antiquities Act to clarify its actual intent, which is to establish small discrete monuments or memorials as existed in Utah prior to the unfortunate creation of the 1996 Grand Staircase National Monument; be it further

Resolved, That the Legislature and the Governor strongly urge the federal government to manage federal public lands in Utah according to state and local government plans, policies, and public input as promised by the Federal Land Policy Management Act of 1976 and the United States constitutional guarantee of a republican form of government on equal footing with all states in the Union, or otherwise convey the federal public lands to Utah for proper care and management, consistent with the original intent of the Constitution's Framers; be it further

Resolved, That the Legislature and the Governor express support for S 3016, introduced in the United States Senate, which would prohibit the further extension or establishment of national monuments in Utah, except by express authorization of Congress; be it further

Resolved, That the Legislature and the Governor express strong opposition to presidential or congressional action that would unnecessarily restrict and reduce public access to federal lands; be it further

Resolved, That copies of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–110. A resolution adopted by the House of Representatives of the State of Utah expressing support for policies that promote and foster energy innovation development in the state of Utah; to the Committee on Energy and Natural Resources.

HOUSE RESOLUTION NO. 8

Whereas, energy innovation research and development is occurring in universities within the state dealing with creative and revolutionary ways of gathering and utilizing energy from a vast array of sources including solar power, get thermal power, bio fuels, oil shale, underground storage, hydrogen-upgrading, carbon sequestration, carbon capture, nuclear power, and computer simulation of the energy industry;

Whereas, many agencies and organizations in the state are developing and promoting energy innovation, such as the Utah Geological Survey, the State Energy Program, the Governor's Energy Office, USTAR, the Governor's Office of Economic Development, the Department of Workforce Services, the Department of Administrative Services' Division of Facilities Construction and Management, the Department of Natural Resources' Division of Oil, Gas, and Mining, the Utah Petroleum Association, and the Utah Mining Association;

Whereas, Utah has the potential to be a world leader in energy innovation and the potential to export its technological advances to other states and countries;

Whereas, Utah also has the potential to dramatically improve the health, well-being, and general quality of life for people not just in the state but across the world through implementing innovative new technologies and processes that have the capacity to produce cheap, reliable, and clean energy supplies;

Whereas, another part of Utah's energy policy is to promote the development of resources and infrastructure sufficient to meet the state's growing energy demands, while contributing to the regional and national energy supply and reducing dependence on international energy sources;

Whereas, another part of Utah's energy policy is to have adequate, reliable, affordable, sustainable, and clean energy resources;

Whereas, a focus on energy innovation, development, and commercialization in the state has the potential to create jobs and attract future business to Utah; and

Whereas, energy innovation has the potential to significantly increase the state's education fund through the wise use of the state's trust lands: Now, therefore, be it

Resolved, That the House of Representatives of the state of Utah expresses support for policies that promote and foster energy innovation development in the state of Utah to increase employment, potentially increase education funding, and make the state a national and international leader in new processes and technologies; be it further

Resolved, That a copy of this resolution be sent to Utah Geological Survey, the State Energy program, the Governor's Energy Office, USTAR, the Governor's Office of Economic Development, the Department of Workforce Services, the Division of Facilities Construction and Management, the Division of Oil, Gas, and Mining, the Utah Petroleum Association, the Utah Mining Association, and to the members of Utah's congressional delegation.

POM–111. A joint resolution adopted by the Legislature of the State of Utah urging recovery plan funds be spent on products made or services performed in the United States; to the Committee on Finance.

SENATE JOINT RESOLUTION NO. 5

Whereas, the nation's economic downturn is having a critical impact on everyday Americans who are struggling to maintain or find jobs in an increasingly difficult environment;

Whereas, these Americans are the taxpayers that provide the revenue needed to operate essential government services;

Whereas, Congress approved and President Obama signed into law a taxpayer-sponsored economic recovery package that will provide billions of dollars to help economically devastated cities and states immediately provide jobs to millions of out-of-work Americans through considerable infrastructure rebuilding, green energy projects, and other projects that will require manufactured components;

Whereas, taxpayer dollars should be spent to maximize the creation of American jobs and restore the economic vitality of our communities;

Whereas, any domestically produced products that are purchased with economic recovery plan monies will immediately help struggling American families and will help stabilize the greater economy; and

Whereas, any economic recovery plan spending should, to every extent possible, include a commitment from the citizens of Utah and its elected representatives to buy materials, goods, and services for projects from companies that produce within the United States, thus employing the very workers that pay the taxes for the economic recovery spending plan: Now, therefore, be it

Resolved, That the Legislature of the state of Utah endorses the efforts of its citizens and government, to work to maximize the creation of American jobs and restore economic growth and opportunity by spending recovery plan funds on products and services that both create jobs and help keep Americans employed; be it further

Resolved, That the Legislature of the state of Utah expresses its commitment to purchase only products and services that are made or performed in the United States whenever and wherever possible with any economic recovery monies provided the state of Utah by American taxpayers, as long as the cost of the product or service is competitive and its quality is equal or comparable to others; be it further

Resolved, That the Legislature of the state of Utah supports publishing any requests to waive these procurement priorities so as to give American workers and producers the opportunity to identify and provide the American products and services that will maximize the success of the nation's economic recovery program; be it further

Resolved, That a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–112. A concurrent resolution adopted by the Legislature of the State of Utah urging Congress to improve federal—state consultation on international trade, including improving the availability of data to states necessary to evaluate the impact of free trade agreements on economic development within the states and state authority; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 1

Whereas, the economic prosperity of the United States is best served by embracing free and fair trade in global markets, investing in innovative research and technologies, and providing assistance to workers impacted by technology and trade trends;

Whereas, expanding trade opportunities for American workers and businesses depends on cooperation between the federal government and the states;

Whereas, the trade liberalization efforts of the early 1990s and trade agreements such as the North American Free Trade Agreement and the World Trade Organization Uruguay Round agreements have increased the need for state policymakers to play a greater role in international trade decisions;

Whereas, trade liberalization has transformed the historical state-federal division of power into one of necessary and critical partnership, and thereby taxed state agency resources in determining the impact on state laws and regulations;

Whereas, state sovereignty should be preserved by the federal government in trade promotion activities;

Whereas, states often lack a clearly defined institutional trade policy structure and resources, making it difficult to handle requests from trading partners and federal agencies, and to articulate to a unified state stance on trade issues;

Whereas, recent trade agreements have proceeded beyond just discussion of tariffs and quotas and now substantially address and affect government regulation, taxation, procurement, and economic development policies that are historically legislated and implemented at state and local levels;

Whereas, recent trade agreements that proceed beyond tariffs and quotas intersect with traditional areas of state authority under the Tenth Amendment of the United States Constitution, such as regulating the environment, health, and safety and, thus, have a major impact on the states' continuing authority to legislate and regulate in these areas;

Whereas, international lawsuits may be brought against the United States alleging that its states and localities have violated trade agreements;

Whereas, international trade agreements must ensure that non-discriminatory state laws and regulations adopted for a public purpose and with due process are not preempted or otherwise undermined and weakened by international sanctions or penalties;

Whereas, states' interests must be paramount during the negotiation of international agreements given the direct impact on their police powers, policies, and programs;

Whereas, there is a need for a strong federal-state trade policy consultation mechanism;

Whereas, the Intergovernmental Policy Advisory Committee, a state-supported advisory committee to the United States Trade Representative, plays an important role in providing state input to the United States Trade Representative but which is limited in its effectiveness by an inability to share classified information with relevant state officials and members of the general public;

Whereas, compartmentalization of information within the Intergovernmental Policy Advisory Committee prevents members from gathering important and relevant information from those state officials and members of the general public;

Whereas, in August 2004, the Intergovernmental Policy Advisory Committee recommended that a federal-state International Trade Policy Commission would be an ideal resource for objective trade policy analysis and would foster communication among federal and state trade policy officials;

Whereas, the creation of an effective federal-state trade policy infrastructure would assist states in understanding the scope of federal trade efforts, would assist federal agencies in understanding the various state trade processes, and would give states meaningful input into the development and implementation of United States Trade Representative's activities;

Whereas, federal-state consultation should include the timely and comprehensive sharing of information on the substance and likely impact of trade agreements on state laws and regulations, appropriate use of the state single points of contact, improved trade data to assess the impact of proposed and existing agreements, and a reasonable opportunity for meaningful input by the states; and

Whereas, in 2006, the Utah State Legislature statutorily created the Utah International Trade Commission to study and make recommendations to the Legislature concerning the impact of international agreements adopted by the United States on the Legislature's constitutional power to regulate state affairs, public and private, and to promote Utah exports: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, urge Congress to improve federal-state consultation on international trade, including improving the availability of data to states necessary to evaluate the impact of free trade agreements on economic development within the states and state authority; be it further

Resolved, That copies of this resolution be sent to the members of Utah's Congressional Delegation, the Office of the United States Trade Representative, the Intergovernmental Policy Advisory Committee, the U.S. Senate Finance Committee, the U.S. House Ways and Means Committee, the Speaker of the U.S. House of Representatives, and the President of the U.S. Senate.

POM–113. A joint resolution adopted by the Legislature of the State of Utah urging Congress to refrain from instituting a new federal review, oversight, or preemption of state health laws, refrain from creating a federal health insurance exchange or connector, and refrain from creating a federal health insurance public plan option; to the Committee on Finance.

HOUSE JOINT RESOLUTION NO. 11

Whereas, the Tenth Amendment to the United States Constitution states, ''The

powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'';

Whereas, the states primarily regulate today's health insurance market, provide aggressive oversight on all aspects of this market, and enforce consumer protection as well as ensure local, responsive presence for consumers;

Whereas, the state-based system of health insurance regulation has served all interests well;

Whereas, the United States Congress is considering legislation that may impose restrictions on states' ability to regulate health plans, including overriding already adopted state patient protections;

Whereas, Congress is considering legislation that would mandate the purchase of health care insurance by all Americans and require those who do not comply to pay a fine, in effect unfairly forcing Americans to buy health insurance;

Whereas, the creation of a new federal system of regulation for health insurance would be inefficient, unnecessary, not cost-effective, and an additional burden on the health care delivery system;

Whereas, private sector health plans are leaders in innovations to improve quality, benefits, and customer service that government-sponsored health plans have been slow to adopt;

Whereas, Congress is considering legislation that would create a federal health insurance exchange or connector to facilitate the purchase of health insurance by individuals and small employers, including offering a new public plan option;

Whereas, a federal exchange would create conflicting state and federal rules, resulting in consumer confusion and leading to adverse selection;

Whereas, a federal exchange would require substantial resources to create a new federal entity that duplicates functions currently performed by states;

Whereas, a federal exchange would undermine states' oversight role in health insurance and cause a substantial shift in the regulation of the health insurance market from the states to the federal government;

Whereas, a federal exchange would undermine state authority to design programs that reflect local needs;

Whereas, a new public plan would not improve competition, but would result in an uneven playing field that would shift costs to the private sector and undermine private plans;

Whereas, a new public health insurance plan would be subject to constant federal changes; and

Whereas, a new public plan is unnecessary in light of the private sector's product offerings and innovations: Now, therefore, be it

Resolved, That the Legislature of the state of Utah urges the United States Congress to refrain from instituting a new federal review, oversight, or preemption of state health insurance laws, refrain from creating a federal health insurance exchange or connector, and refrain from creating a federal health insurance public plan option; be it further

Resolved, That copies of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–114. A concurrent resolution adopted by the Legislature of the State of Utah urging Congress to refuse to enact, and the President of the United States to refuse to sign, any legislation that imposes further restrictions on any state's ability to regulate the payment and delivery of health care, imposes additional financial burden related to health care on any state, or limits the ability of consumers and businesses to create innovative models for higher quality, lower cost health care; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 8

Whereas, people's health affects not only their sense of well being, but their capacity to contribute to their families, to their employers, and to society at large;

Whereas, the improvement and maintenance of individual health depends to a significant extent on the widespread availability of affordable, high quality health care;

Whereas, the widespread availability of affordable, high quality health care is threatened by long-term runaway spending in a system that too often delivers suboptimal care;

Whereas, runaway spending and suboptimal care are attributable to various factors, but are perpetuated to a large extent by a third-party payer system that fails to reward individual effort to preserve and improve one's health and that fails to reward delivery of the most effective care at the lowest cost;

Whereas, for many years, Utah has been laying the foundation for genuine long-term health system reform;

Whereas, this foundation includes the creation of the Utah Health Data Authority in 1990 and the subsequent collection and publication of hospital charges by facility and adjusted for risk;

Whereas, this foundation includes the establishment in 1993 of the Utah Health Information Network, a nationally recognized statewide system for processing health insurance claims at a small fraction of the cost often charged by other claims processors;

Whereas, this foundation includes the 2005 requirement that the Utah Health Data Authority publish reports that compare health care facilities based on charges, quality, and safety;

Whereas, this foundation includes the 2007–08 development of an all-payer database that will report payments, as opposed to charges, for entire episodes of medical care, and will ultimately allow consumers to choose from among competing providers of treatments for any particular condition based on outcomes, price, and other attributes important to the consumer;

Whereas, this foundation includes the 2008–09 creation of the first statewide system in the nation for standardized electronic exchange of clinical health information across provider systems, including exchange of diagnostic test results and electronic medical record information;

Whereas, this foundation includes the 2008 creation of the Health System Reform Task Force, a legislative body that has engaged consumers, employers, doctors, hospitals, and insurers in a voluntary, cooperative effort spanning two years, and involving thousands of hours, to develop a strategic plan for health system reform;

Whereas, this foundation includes the 2009–10 creation of payment and delivery reform demonstration projects designed to align third-party payment structures with provider practices that result in the highest quality of care for both chronic and acute conditions;

Whereas, this foundation includes the 2009 creation of the nation's second-only health insurance exchange, a virtual marketplace where employees may enroll under a defined contribution arrangement, select from a range of plans broader than what an employer traditionally offers, and fund premiums with contributions from multiple sources;

Whereas, this foundation outlined above is the result of an iterative process of creation and refinement that has relied heavily on the input of all major stakeholders in the health care system and has been established largely on the basis of cooperation and consensus rather than compulsion;

Whereas, many of the perverse incentives that plague our health care system are rooted in federal Medicare and Medicaid payment policies, which exert a disproportionate influence on the privately funded portions of our health care system;

Whereas, federal proposals for health system reform recently considered by Congress emphasize enrollment expansion rather than cost containment, much like boarding additional passengers on an already sinking Titanic;

Whereas, those proposals include laudable authorizations for payment and delivery reform demonstration projects but otherwise largely lack significant cost containment provisions;

Whereas, those proposals include many provisions to improve quality of care but fall short of the systemic changes needed to fully link outcomes and payment;

Whereas, states have consistently proven themselves laboratories of policy innovation, in spite of sometimes stifling federal regulatory restrictions;

Whereas, the best hope for health system reform lies with individual states, where an iterative process of experimentation, evaluation, and modification will minimize the unintended consequences of one-size-fits-all national policies and will produce results worth replicating; and

Whereas, states are in need of additional financial resources and flexibility to experiment rather than additional benefit mandates, Medicaid eligibility mandates, and rating restrictions, all of which will inevitably drive up health care spending and costs to states: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, urge Congress to refuse to enact, and the President of the United States to refuse to sign, any legislation that imposes further restrictions on any state's ability to regulate the payment and delivery of health care, imposes additional financial burden related to health care on any state, or limits the ability of consumers and businesses to create innovative models for higher quality, lower cost health care; be it further

Resolved, That the Legislature and the Governor urge that Congress pass, and the President sign, legislation that grants states greater flexibility under federal laws and regulations related to health care and encourages states to create health reform demonstration projects with the potential for replication elsewhere; be it further

Resolved, That the Legislature and the Governor urge that should Congress pass, and the President sign, legislation that further restricts states in any manner, the legislation recognize states' efforts to reform health care by grandfathering any state laws, regulations, or practices intended to contain costs, improve quality, increase consumerism, or otherwise implement health system reform concepts; be it further

Resolved, That a copy of this resolution be sent to the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, the President of the United States, and the members of Utah's Congressional delegation.

POM–115. A concurrent resolution adopted by the Senate of the State of Louisiana urging Congress to review the GPO and WEP Social Security benefit reductions and to consider eliminating or reducing them by enacting the Social Security Fairness Act of 2009, the Public Servant Retirement Protection Act of 2009, the Windfall Elimination Provision Relief Act of 2009, or a similar instrument; to the Committee on Finance.

SENATE CONCURRENT RESOLUTION NO. 6

Whereas, the Congress of the United States has enacted both the Government Pension Offset (GPO), reducing the spousal and survivor Social Security benefit, and the Windfall Elimination Provision (WEP), reducing the earned Social Security benefit for any person who also receives a public pension benefit; and

Whereas, the intent of Congress in enacting the GPO and the WEP provisions was to address concerns that a public employee who had worked primarily in federal, state, or local government employment might receive a public pension in addition to the same Social Security benefit as a person who had worked only in employment covered by Social Security throughout his career; and

Whereas,the purpose of Congress in enacting these reduction provisions was to provide a disincentive for public employees to receive two pensions; and

Whereas, the GPO negatively affects a spouse or survivor receiving a federal, state, or local government retirement or pension benefit who would also be entitled to a Social Security benefit earned by a spouse; and

Whereas, the GPO formula reduces the spousal or survivor Social Security benefit by two-thirds of the amount of the federal, state, or local government retirement or pension benefit received by the spouse or survivor, in many cases completely eliminating the Social Security benefit; and

Whereas, nine out of ten public employees affected by the GPO lose their entire spousal benefits, even though their spouses paid Social Security taxes for many years; and

Whereas, the GPO often reduces spousal benefits so significantly it can make the difference between self-sufficiency and poverty; and

Whereas, the GPO has a harsh effect on thousands of citizens and undermines the original purpose of the Social Security dependent/survivor benefit; and

Whereas, the GPO negatively impacts approximately 21,900 Louisianans; and

Whereas, the WEP applies to those persons who have earned federal, state, or local government retirement or pension benefits, in addition to working in employment covered under Social Security and paying into the Social Security system; and

Whereas, the WEP reduces the earned Social Security benefit using an averaged indexed monthly earnings formula and may reduce Social Security benefits for affected persons by as much as one-half of the retirement benefit earned as a public servant in employment not covered under Social Security; and

Whereas, the WEP causes hard-working individuals to lose a significant portion of the social security benefits that they earn themselves; and

Whereas, the WEP negatively impacts approximately 18,300 Louisianans; and

Whereas,because of these calculation characteristics, the GPO and the WEP have a disproportionately negative effect on employees working in lower-wage government jobs, like policemen, firefighters, teachers, and state employees; and

Whereas, many workers rely on Social Security Administration Annual Statements that fail to take into account the GPO and WEP when projecting benefits; and

Whereas, because the Social Security benefit statements do not calculate the GPO and the WEP, many public employees in Louisiana are unaware that their expected Social Security benefits shown on such statements will be significantly lower or nonexistent due to the service in public employment; and

Whereas, these provisions also have a greater adverse effect on women than on men because of the gender differences in salary that continue to plague our nation and the longer life expectancy of women; and

Whereas, Louisiana is making every effort to improve the quality of life of its citizens and to encourage them to live here lifelong, yet the current GPO and WEP provisions compromise that quality of life; and

Whereas, retired individuals negatively affected by GPO and WEP have significantly less money to support their basic needs and sometimes have to turn to government assistance programs; and

Whereas, the GPO and the WEP penalize individuals who have dedicated their lives to public service by taking away benefits they have earned; and

Whereas, our nation should respect, not penalize, public service; and

Whereas, the number of people affected by GPO and WEP is growing every day as more and more people reach retirement age; and

Whereas, the GPO and WEP are established in federal law and repeal of the GPO and the WEP can only be enacted by the United States Congress: Now therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to review the GPO and the WEP Social Security benefit reductions and to consider eliminating or reducing them by enacting the Social Security Fairness Act of 2009 (H.R. 235 or S. 484), the Public Servant Retirement Protection Act of 2009 (H.R. 1221, S. 490), the Windfall Elimination Provision Relief Act of 2009 (H.R. 2145), or a similar instrument; be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States Congress.

POM–116. A resolution adopted by the House of Representatives of the State of Utah strongly urging the President to submit the Comprehensive Test Ban Treaty to the United States Senate and the United States Senate to promptly give its advice and consent for ratification of the Comprehensive Test Ban Treaty; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 4

Whereas, a global halt to nuclear weapons testing has been a bipartisan objective of the United States since the late 1950s when President Dwight D. Eisenhower sought a comprehensive nuclear test ban;

Whereas, the United States has not conducted a nuclear weapons test since the United States suspended testing and joined with the Union of Soviet Socialist Republics in a nuclear weapons testing moratorium in September 1992;

Whereas, the Comprehensive Test Ban Treaty (CTBT) was opened for signature on September 24, 1996, and President Bill Clinton was the first head of state to sign the Treaty;

Whereas, no nuclear tests have been conducted since that time by the United States, Russia, or China;

Whereas, as of June 2009, 180 states have signed the CTBT and 148 have ratified it;

Whereas, ratification of the CTBT would signal a strong commitment by the United States to fulfill its obligations under the Nuclear Non-Proliferation Treaty, prompt ratification by other states which is necessary for the Treaty to enter into force, reinforce the global taboo against nuclear weapons testing, and set an example for the rest of the world;

Whereas, a global verifiable ban on nuclear weapons testing would prevent potential nuclear powers from proof testing smaller nuclear bombs that can be delivered on ballistic missiles;

Whereas, United States ratification of the CTBT would be a significant step towards preventing the spread of nuclear weapons, reducing nuclear weapons arsenals worldwide, and building confidence among nations that abolition of nuclear weapons can someday be achieved;

Whereas, after 1,030 nuclear test explosions, further nuclear weapons testing is not necessary to maintain the integrity, effectiveness, and deterrence value of the existing United States nuclear weapons stockpile, nor is there any new military requirement for new types of United States nuclear warheads;

Whereas, the United States government acknowledges that 433 of 824 United States underground tests have vented radiation to the atmosphere;

Whereas, as part of its recognition of the 50th anniversary of nuclear weapons testing at the Nevada Test Site, in the 2001 General Session, the 54th Legislature of the state of Utah expressed, ''the fervent desire and commitment to assure that such a legacy will never be repeated'';

Whereas, resumption of United States nuclear weapons testing would place persons downwind of the Nevada test location at risk of exposure to radioactive emissions from possible venting;

Whereas, citizens of Utah living downwind of the Nevada Test Site have already suffered significant health effects as a result of nuclear weapons testing;

Whereas, in the best interests of their children and grandchildren, Utah's remaining ''downwinders'' continue to fight the resumption of any nuclear weapons testing;

Whereas, past nuclear weapons testing at the Nevada Test Site has devastated the health and livelihoods of thousands of Utahns;

Whereas, in 2005, the 58th Legislature of the state of Utah voted in support of a Concurrent Resolution Opposing Nuclear Testing, articulating that, ''The state of Utah has an obligation to its citizens, especially those who have suffered so much, to do all in its power to ensure that the lingering wounds from nuclear testing are not reopened to afflict both current and future generations'';

Whereas, the Legislature of the state of Utah supports a strong military defense, but atomic weapons tests are not a necessary component of that defense;

Whereas, United States' citizens must not be subjected to the hazards of future nuclear weapons tests;

Whereas, the CTBT Organization effectively monitors compliance with the CTBT through an International Monitoring System, consisting of 337 stations using state-of-the-art seismic, hydroacoustic, infrasound and radionuclide technologies and capable of detecting and identifying a nuclear weapons test explosion anywhere in the world within hours;

Whereas, the CTBT is effectively verifiable and would improve the United States' ability to detect, deter, and respond to potential surreptitious nuclear weapons testing by other nations;

Whereas, Article 9 of the CTBT permits withdrawal by the United States in case extraordinary future developments, including

the need to respond to a violation by another nation, were to jeopardize our supreme national interests;

Whereas, independent expert assessments commissioned by the National Nuclear Security Administration have concluded that measures under the Stockpile Stewardship Program and Life Extension Program can support certification of today's nuclear warheads as safe, secure, and reliable for decades without the need to resort to underground nuclear weapons testing and

Whereas, the CTBT would increase international safety and security and is in the best interests of Utah, the United States, and the world: Now, therefore, be it

Resolved, That the House of Representatives of the state of Utah strongly urges the President of the United States to submit the Comprehensive Test Ban Treaty to the United States Senate; be it further

Resolved, That the House of Representatives of the state of Utah strongly urges the United States Senate to promptly give its advice and consent for ratification of the Comprehensive Test Ban Treaty; be it further

Resolved, That a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, and to Utah Senators ORRIN HATCH and BOB BENNETT.

POM–117. A concurrent resolution adopted by the Legislature of the State of Utah reaffirming friendship with the people of Taiwan and urging the Obama Administration to support Taiwan's meaningful participation in the United Nations specialized agencies, programs, and conventions; to the Committee on Foreign Relations.

HOUSE CONCURRENT RESOLUTION NO. 11

Whereas, July 23, 2010, will mark the 30th anniversary of a sister state relationship between Utah and Taiwan;

Whereas, for the past 30 years, four sister county and sister city relationships with Taiwan have also been strengthened, resulting in better mutual understanding of the economic, social, and cultural heritages of Utah and Taiwan;

Whereas, in 2008, Taiwan was Utah's third largest export market;

Whereas, Utah exports to Taiwan have reached $727,000,000, an increase of over 244% since 2007;

Whereas, Utah companies still have substantial opportunities to expand their businesses and cooperation with Taiwan;

Whereas, Utah has already attracted investment from several Taiwanese companies, and there is significant potential for Taiwanese enterprises to further boost investment and create jobs in Utah;

Whereas, in May 2009, the World Health Organization invited Taiwan to attend the 62nd World Health Assembly as an observer;

Whereas, this development raises the possibility for Taiwan to be meaningfully involved in other United Nations specialized agencies, programs, and conventions;

Whereas, Taiwan is a key air transport hub in the Asia-Pacific region, with approximately 2,600 weekly flights to and from neighboring countries;

Whereas, the Taipei Flight Information Region under Taiwan's jurisdiction currently serves 12 international and four domestic routes and has 1,350,000 controlled flights passing through every year;

Whereas, the 2008 statistics from Airports Council International ranked Taiwan's Taoyuan International Airport as the world's 11th largest airport by international cargo volume, and 19th in terms of international passengers services; and

Whereas, given Taiwan's prominent role in regional air control and transport services, it would be beneficial for Taiwan to have meaningful participation in the International Civil Aviation Organization, in order to safeguard the traveling of passengers from home and abroad: Now, therefore, be it

Resolved, That the Legislature of the state of Utah, the Governor concurring therein, reaffirm their friendship with the people of Taiwan and urge the Obama Administration to support Taiwan's meaningful participation in United Nations specialized agencies, programs, and conventions; be it further

Resolved, That the Legislature and the Governor express support for a strong and deepening relationship between Utah and Taiwan; be it further

Resolved, That copies of this resolution be sent to the President of the United States and to the government of Taiwan.

POM–118. A joint resolution adopted by the Legislature of the State of Utah expressing opposition to the establishment of a National Commission on State Workers' Compensation Laws; to the Committee on Health, Education, Labor, and Pensions.

HOUSE JOINT RESOLUTION NO. 10

Whereas, state workers' compensation laws should provide an injured worker with all reasonable and necessary medical treatment that promotes expeditious healing, a return to work, a fair level of income benefits during disability, and protection against lost wages;

Whereas, state workers' compensation laws should assure that employees receive just compensation at a cost affordable to employers;

Whereas, the state-based workers' compensation system has proven over the near-century of its existence to be an effective means of protecting injured workers against the costs of industrial injury, while protecting employers against the unlimited and unpredictable costs of workplace liability;

Whereas, a state-based benefit delivery system reflects the nature and cost of employment in individual states and is an exemplar of the federal system, in which power is dispersed among the states, facilitating timely response and the ability to tailor remedies to state-specific conditions;

Whereas, the imposition of federal oversight and development of federal mandates on the state workers' compensation system should be opposed, including any proposed legislation that would unnecessarily increase the federal bureaucracy and create federal regulation in an area where states are currently providing adequate oversight;

Whereas, federal requirements on the state-based system would create unnecessary imbalances and unintended consequences for a system that has been operating effectively for decades;

Whereas, a state workers' compensation system, its administration, legal precedents, funding, and fiscal accountability, which is intricately linked to each state's economy, is a much more effective approach m dealing with workers' compensation issues;

Whereas, the state-based system provides the ability to experiment creatively and borrow from experiences in other states without the burden of a rigid, nationwide, one-size-fits-all federal program that is slow to change and administratively cumbersome;

Whereas, the rights of states and their respective legislatures and stakeholders to review the performance of state-based workers' compensation systems should be preserved;

Whereas, it is not the province of Congress to interfere with the state administration of workers' compensation: Now, therefore, be it

Resolved, That the Legislature of the state of Utah expresses strong support for the current state-based workers' compensation system and opposes any proposed federal legislation that would lead to broadening the federal role in that system; be it further

Resolved, That the Legislature of the state of Utah opposes H.R. 635, introduced in the 111th United States Congress, that would establish a National Commission on State Workers' Compensation Laws, because the Commission's evaluation is intended, and will assuredly lead, to recommendations that would erode the independence of the state-based workers' compensation benefit delivery system, would seek to impose federal benefit delivery system rules, which Congress would be expected to approve, that inherently interfere with state benefit systems, would increase system costs nationwide, and would frustrate efforts of the states to contain costs; be it further

Resolved, That a copy of this resolution be sent to the President of the United States, the Majority Leader of the United States Senate, the Speaker of the United States House of Representatives, and to the members of Utah's congressional delegation.

POM–119. A joint resolution adopted by the Legislature of the State of Utah urging the United States Department of Veterans Affairs to prioritize Utah for the construction of another veterans' nursing home; to the Committee on Veterans' Affairs.

HOUSE JOINT RESOLUTION NO. 9

Whereas, there is greet need for the construction of an additional nursing home for veterans in Utah;

Whereas, Utah is still significantly below the nation's average for the total number of needed veterans' nursing homes statewide;

Whereas, due to the heavy numbers of veterans in the state of Utah, the United States Department of Veterans Affairs should prioritize Utah for the construction of an additional veterans' nursing home;

Whereas, Utah should also be prioritized based on the absolute promise of the United States Department of Veterans Affairs to reimburse the state for the Veterans' Nursing Home in Ogden;

Whereas, any and all efforts by the state of Utah to continue to help veterans acquire properties and build a home in central and southern Utah should be encouraged;

Whereas, the citizens of Utah and the citizens of the United States owe a debt to our veterans of the past, present, and future; and

Whereas, constructing an additional veterans' nursing home will demonstrate a measure of gratitude for their service: Now, therefore, be it

Resolved, That the Legislature of the state of Utah strongly encourages the United States Department of Veterans Affairs to prioritize Utah for the construction of another veteran' nursing home; be it further

Resolved, That the Legislature of the state of Utah encourages any and all efforts by the state of Utah to continue helping veterans acquire properties and build a veterans' nursing home in central and southern Utah; be it further

Resolved, That copies of this resolution be sent to the United States Department of Veterans Affairs, the Utah Department of Veteran's Affairs, and to the members of Utah's congressional delegation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. AKAKA, from the Committee on Veterans' Affairs, without amendment:

S. 3378. An original bill to authorize health care for individuals exposed to environmental hazards at Camp Lejeune and the

Atsugi Naval Air Facility, to establish an advisory board to examine exposures to environmental hazards during military service, and for other purposes (Rept. No. 111–189).

By Mrs. BOXER, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1214. A bill to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes (Rept. No. 111–190).

By Mr. INOUYE, from the Committee on Appropriations:

Special Report entitled ''Further Revised Budget Allocation to Subcommittees of Budget Totals'' (Rept. No. 111–191).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, without amendment:

S. 2868. A bill to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments (Rept. No. 111–192).

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. AKAKA:

S. 3378. An original bill to authorize health care for individuals exposed to environmental hazards at Camp Lejeune and the Atsugi Naval Air Facility, to establish an advisory board to examine exposures to environmental hazards during military service, and for other purposes; from the Committee on Veterans' Affairs; placed on the calendar.

By Mrs. BOXER:

S. 3379. A bill to amend the Clean Air Act to reduce carbon pollution and create clean energy jobs; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER (for himself and Mr. KERRY):

S. 3380. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of securities of a controlled corporation exchanged for assets in certain reorganizations; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. CRAPO, and Mr. TESTER):

S. 3381. A bill to amend the Clean Air Act to modify certain definitions of the term ''renewable biomass'', and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KERRY (for himself, Mrs. FEINSTEIN, and Mr. UDALL of Colorado):

S. Res. 532. A resolution recognizing Expo 2010 Shanghai China and the USA Pavilion at the Expo; to the Committee on Foreign Relations.

By Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. LEVIN, Mr. CARDIN, Mr. BEGICH, Mr. KERRY, Mr. INHOFE, Ms. COLLINS, Ms. SNOWE, Mr. BAYH, Mr. FRANKEN, Mr. AKAKA, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. NELSON of Nebraska, Mr. CASEY, Mrs. BOXER, Mr. SPECTER, Mr. COCHRAN, and Mr. LAUTENBERG):

S. Res. 533. A resolution recognizing National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system and encouraging Congress to implement policy to improve the lives of children in the foster care system; considered and agreed to.

ADDITIONAL COSPONSORS

S. 266

At the request of Mr. NELSON of Florida, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 266, a bill to amend title XVIII of the Social Security Act to reduce the coverage gap in prescription drug coverage under part D of such title based on savings to the Medicare program resulting from the negotiation of prescription drug prices.

S. 311

At the request of Mrs. BOXER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 311, a bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961.

S. 504

At the request of Mr. ROBERTS, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Missouri (Mr. BOND), the Senator from Ohio (Mr. BROWN), the Senator from Illinois (Mr. BURRIS), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Oklahoma (Mr. COBURN), the Senator from Mississippi (Mr. COCHRAN), the Senator from North Dakota (Mr. CONRAD), the Senator from Utah (Mr. HATCH), the Senator from Texas (Mrs. HUTCHISON), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Florida (Mr. LEMIEUX), the Senator from Indiana (Mr. LUGAR), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Alabama (Mr. SHELBY), the Senator from Maine (Ms. SNOWE), the Senator from Montana (Mr. TESTER), the Senator from Mississippi (Mr. WICKER) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 504, a bill to redesignate the Department of the Navy as the Department of the Navy and Marine Corps.

S. 632

At the request of Mr. BAUCUS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 634

At the request of Mr. HARKIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 634, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 831

At the request of Mr. KERRY, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 831, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of non—regular service retired pay.

S. 999

At the request of Mr. BINGAMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 999, a bill to increase the number of well—trained mental health service professionals (including those based in schools) providing clinical mental health care to children and adolescents, and for other purposes.

S. 1055

At the request of Mrs. BOXER, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1239

At the request of Mr. BINGAMAN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1239, a bill to amend section 340B of the Public Health Service Act to revise and expand the drug discount program under that section to improve the provision of discounts on drug purchases for certain safety net providers.

S. 2736

At the request of Mr. FRANKEN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2736, a bill to reduce the rape kit backlog and for other purposes.

S. 2749

At the request of Mrs. GILLIBRAND, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 2749, a bill to amend the Richard B. Russell National School Lunch Act to improve access to nutritious meals for young children in child care.

S. 3201

At the request of Mr. UDALL of Colorado, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 3201, a bill to amend title 10, United States Code, to extend TRICARE coverage to certain dependents under the age of 26.

S. 3206

At the request of Mr. HARKIN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3206, a bill to establish an Education Jobs Fund.

S. 3213

At the request of Mr. LEVIN, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 3213, a bill to ensure that amounts credited to the Harbor Maintenance Trust Fund are used for harbor maintenance.

S. 3234

At the request of Mrs. MURRAY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3234, a bill to improve employment, training, and placement services furnished to veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom, and for other purposes.

S. 3266

At the request of Mr. BENNET, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 3266, a bill to ensure the availability of loan guarantees for rural homeowners.

S. 3311

At the request of Mr. KERRY, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. 3311, a bill to improve and enhance the capabilities of the Department of Defense to prevent and respond to sexual assault in the Armed Forces, and for other purposes.

S. 3327

At the request of Mr. LIEBERMAN, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 3327, a bill to add joining a foreign terrorist organization or engaging in or supporting hostilities against the United States or its allies to the list of acts for which United States nationals would lose their nationality.

S. 3329

At the request of Mr. LAUTENBERG, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 3329, a bill to provide triple credits for renewable energy on brownfields, and for other purposes.

S. 3350

At the request of Mr. BINGAMAN, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 3350, a bill to amend the Internal Revenue Code of 1986 to permanently modify the limitations on deduction of interest by financial institutions which hold tax—exempt bonds, and for other purposes.

S. 3372

At the request of Mrs. BOXER, the names of the Senator from Maryland (Mr. CARDIN) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 3372, a bill to modify the date on which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels.

S. 3377

At the request of Mr. BURR, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3377, a bill to amend title 38, United States Code, to improve the multifamily transitional housing loan program of the Department of Veterans Affairs by requiring the Secretary of Veterans Affairs to issue loans for the construction of, rehabilitation of, or acquisition of land for multifamily transitional housing projects instead of guaranteeing loans for such purposes, and for other purposes.

AMENDMENT NO. 3746

At the request of Mr. WHITEHOUSE, the name of the Senator from Alaska (Mr. BEGICH) was added as a cosponsor of amendment No. 3746 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3883

At the request of Ms. SNOWE, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of amendment No. 3883 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3887

At the request of Mr. CARPER, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of amendment No. 3887 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3919

At the request of Mr. CONRAD, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of amendment No. 3919 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3920

At the request of Mr. HARKIN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 3920 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3931

At the request of Mr. MERKLEY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 3931 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3944

At the request of Mr. CORKER, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of amendment No. 3944 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3949

At the request of Mr. CARPER, the names of the Senator from Louisiana (Mr. VITTER) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of amendment No. 3949 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3986

At the request of Mr. CORNYN, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from Utah (Mr. HATCH) were added as cosponsors of amendment No. 3986 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4006

At the request of Mr. PRYOR, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of amendment No. 4006 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4008

At the request of Mr. DORGAN, the name of the Senator from Ohio (Mr.

BROWN) was added as a cosponsor of amendment No. 4008 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4016

At the request of Mr. UDALL of Colorado, the names of the Senator from Ohio (Mr. BROWN), the Senator from New York (Mrs. GILLIBRAND) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of amendment No. 4016 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4018

At the request of Mr. ENZI, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of amendment No. 4018 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 4036

At the request of Mr. BENNETT, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of amendment No. 4036 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself, Mr. CRAPO, and Mr. TESTER):

S. 3381. A bill to amend the Clean Air Act to modify certain definitions of the term ''renewable biomass'', and for other purposes; to the Committee on Environment and Public Works.

Mr. BAUCUS. Mr. President, I rise today to introduce legislation with my colleagues Senator CRAPO and Senator TESTER that will establish a single definition of renewable biomass for the purposes of the Renewable Fuel Standard, RFS, a future Renewable Electricity Standard, RES, and climate change legislation.

When I travel back to my hometown of Helena, MT, trees that line the roads there are turning red. Mountain pine beetles are killing Montana's trees at a terrible rate. Our legendary harsh winters once were enough to keep the beetles at bay, but no longer. Global warming has literally hit home for me. These thousands of acres of red, dead trees are virtually worthless under current law, serving as little more than kindling for wildfires.

This bill can help add value to this biomass while also creating a source of renewable domestic energy. It will establish a simple, broad, single definition for renewable biomass that is consistent with current law—the 2008 Farm Bill.

Some say this definition is too broad and fails to protect ecologically sensitive areas. In fact, there are many laws that dictate Federal forest management, and my amendment does nothing to change these laws. All projects that would create biomass due to my amendment would have to comply with the National Forest Management Act, the Endangered Species Act, the National Environmental Policy Act and others.

All projects on federal forests must go through NEPA where the land management agency must study potential environmental impacts and mitigate those impacts. The public has many opportunities to comment and shape these projects and nothing in my amendment changes these safeguards. Further, my amendment would do nothing to change designated Wilderness areas or Wilderness Study Areas or otherwise weaken the Wilderness Act.

Right now our national forests are growing 20 billion board feet per year. Eight billion board feet die every year and only two million board feet are removed. This has resulted in overstocked, unhealthy forests. We can either restore forest health, produce renewable energy and local high-wage jobs, or we can allow nature to impose its own will through wildfire and infestation.

I urge my colleagues to support this legislation, and I look forward to working with them to enact this bill this year.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 532—RECOGNIZING EXPO 2010 SHANGHAI CHINA AND THE USA PAVILION AT THE EXPO

Mr. KERRY (for himself, Mrs. FEINSTEIN, and Mr. UDALL of Colorado) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 532

Whereas Expo 2010 Shanghai China (Expo 2010) will take place May 1 through October 31, 2010 with the theme ''Better City, Better Life'';

Whereas Expo 2010 will be the largest such event in 150 years of Expo history with an estimated 70,000,000 visitors expected to attend, many of them from within China;

Whereas approximately 192 countries and 52 international organizations will be represented at Expo 2010;

Whereas Expo 2010 is the first world exposition hosted by China, representing an opportunity for the world to celebrate China's progress over the past 30 years and recognize the aspirations of the people of China to continue the process of ''reform and opening up'' launched by Chinese Premier Deng Xiao-ping in 1979;

Whereas Shanghai, the host city of Expo 2010, is the dynamic commercial and financial capital of China, noted in China as a cradle of innovation and openness;

Whereas Expo 2010 represents an unprecedented opportunity for the United States to promote understanding of American society, culture, ideas, and values with millions of Chinese citizens visiting the USA Pavilion;

Whereas United States participation in Expo 2010 demonstrates the United States commitment to a forward-looking, positive relationship with China;

Whereas the USA Pavilion theme ''Rising to the Challenge'' will entertain and educate audiences on the American spirit of innovation and community-building and celebrate the American ideals of collaboration, freedom, diversity, openness, optimism, achievement, and opportunity;

Whereas Expo 2010 will emphasize sound environmental conservation practices, including a solar energy system that will produce 5 megawatts of power and large rooftop canopies to collect rainwater to be purified for drinking;

Whereas support for the USA Pavilion's construction, staffing, operation, and thematic presentations was provided completely by private-sector and other partners consistent with United States law; and

Whereas many of the USA Pavilion's sponsoring partners are also playing an active role in the beneficial development of China's economy and society: Now, therefore, be it

Resolved, That—

(1) the Senate congratulates the people of China for hosting Expo 2010 and wishes them every success with this endeavor;

(2) it is the sense of the Senate that Expo 2010 constitutes an important step along the over 30-year path of reform and opening up in China, and serves as a significant reminder of what can be accomplished if China continues along this path;

(3) the Senate calls on the sponsors and operators of the USA Pavilion to make maximum use of this unique opportunity to showcase the very best attributes that the United States has to offer and to strengthen the cultural, scientific, educational, people-to-people, trade, and investment links between the people of the United States and the people of China; and

(4) the Senate acknowledges the more than 60 private-sector and other sponsor partners of the USA Pavilion for their invaluable contributions to the success of this important project and for providing a positive example of public-private partnerships.

SENATE RESOLUTION 533—RECOGNIZING NATIONAL FOSTER CARE MONTH AS AN OPPORTUNITY TO RAISE AWARENESS ABOUT THE CHALLENGES OF CHILDREN IN THE FOSTER CARE SYSTEM AND ENCOURAGING CONGRESS TO IMPLEMENT POLICY TO IMPROVE THE LIVES OF CHILDREN IN THE FOSTER CARE SYSTEM

Ms. LANDRIEU (for herself, Mr. GRASSLEY, Mrs. LINCOLN, Mr. LEVIN, Mr. CARDIN, Mr. BEGICH, Mr. KERRY, Mr. INHOFE, Ms. COLLINS, Ms. SNOWE, Mr. BAYH, Mr. FRANKEN, Mr. AKAKA, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. NELSON of Nebraska, Mr. CASEY, Mrs. BOXER, Mr. SPECTER, Mr. COCHRAN, and Mr. LAUTENBERG) submitted the following resolution; which was considered and agreed to:

S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children ''age out'' of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the agreement to this resolution, but the number of children who ''age out'' of the foster care system without placement with a permanent family has increased substantially, rising from 20,000 children in 2002 to 29,000 children in 2008;

Whereas children who ''age out'' of the foster care system lack the security or support of a biological or adoptive family and frequently struggle to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas, of the children who have ''aged out'' of the foster care system—

(1) 25 percent have been homeless;

(2) 51 percent have been unemployed for significant stretch of time, and

(3) only 2 percent have obtained a bachelor's degree or higher;

Whereas, by age 19, approximately 50 percent of young women who have been in the foster care system have been pregnant, compared to only 20 percent of young women who have been not in the foster care system;

Whereas research reveals that children born to teen parents are exposed to serious and high risks;

Whereas National Foster Care Month is an opportunity to raise awareness about the special needs of children in the foster care system and to recognize the important role that foster parents, social workers, and advocates have in the lives of children in foster care throughout the United States;

Whereas the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351; 122 Stat. 3949) provides for new investments and services to improve the outcomes of children and families in the foster care system; and

Whereas much remains to be done to ensure that all children have a safe, loving, nurturing, and permanent family, regardless of age or special needs: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system;

(2) encourages Congress to implement policy to improve the lives of children in the foster care system;

(3) supports the designation of a ''National Foster Care Month'';

(4) acknowledges the needs of the children in the foster care system;

(5) honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and

(6) recognizes the need to continue working to improve the outcomes of all children in the foster care system through title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other programs designed to help children in the foster care system—

(A) reunite with their biological parents; or

(B) if the children cannot be reunited with their biological parents, find permanent, safe, and loving homes.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, Ms. SNOWE, and Mrs. SHAHEEN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 4049. Mr. HARKIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4050. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4051. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4052. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4053. Ms. STABENOW (for herself and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4054. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4055. Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4056. Mr. BOND (for himself, Mr. DODD, Mr. WARNER , Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 4057. Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4058. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4059. Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, and Mr. BROWN of Ohio)) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4060. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4061. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 4062. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4048. Mrs. FEINSTEIN (for herself, Mr. LEVIN, Ms. CANTWELL, and Ms. SNOWE) submitted an amendment intended to be proposed to amendment

SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 699, strike line 20 and all that follows through page 704, line 13, and insert the following:

''(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

''(B) LINKED CONTRACTS.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(C) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraphs (A) and (B) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with subparagraphs (A) and (B) of subsection (b)(1).''.

SA 4049. Mr. HARKIN (for himself and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 656, strike line 20 and all that follows through page 657, line 12, and insert the following:

''(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

''(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term 'protected customer' means any entity that is—

''(i) a Federal agency;

''(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

''(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

''(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

''(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

''(B) PROHIBITION.—

''(i) IN GENERAL.—It shall be unlawful for a swap dealer that provides advice regarding, offers to enter into, or enters into, a swap with a protected customer—

''(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

''(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

''(III) if the swap dealer acts as a principal for the account of the swap dealer, to knowingly sell any swap to, or purchase any swap from, a protected customer, or if the swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any swap for the account of the protected customer, without—

''(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the swap dealer is acting; and

''(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

''(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

''(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

''(C) REQUIREMENTS.—

''(i) IN GENERAL.—A swap dealer that recommends a swap with a protected customer shall comply with clauses (ii) and (iii).

''(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any swap, a swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

''(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

''(I) information relating to—

''(aa) the financial status of the protected customer;

''(bb) the tax status of the protected customer; and

''(cc) the stated investment objectives of the protected customer; and

''(II) such other information that—

''(aa) is used or considered to be reasonable by the swap dealer in making recommendations to the protected customer; and

''(bb) the Commission may prescribe by rule or regulation.

''(iv) BUSINESS CONDUCT REQUIREMENTS.—A swap dealer shall satisfy each business conduct requirement described in paragraph (3).

''(D) WRITTEN REPRESENTATIONS.—

''(i) IN GENERAL.—Before entering into a swap with a protected customer, a swap dealer shall receive in writing a representation from the protected customer confirming that the swap transaction has been expressly authorized—

''(I) by an advisor that is independent of the swap dealer; and

''(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

''(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

Beginning on page 863, strike line 22 and all that follows through page 864, line 16, and insert the following:

''(2) SPECIAL RULE; DUTY TO PROTECTED CUSTOMERS.—

''(A) DEFINITION OF PROTECTED CUSTOMER.—In this paragraph, the term 'protected customer' means any entity that is—

''(i) a Federal agency;

''(ii) a State, State agency, city, county, municipality, or other political subdivision of a State;

''(iii) any employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002);

''(iv) any governmental plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); or

''(v) any endowment that is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

''(B) PROHIBITION.—

''(i) IN GENERAL.—It shall be unlawful for a security-based swap dealer that provides advice regarding, offers to enter into, or enters into, a security-based swap with a protected customer—

''(I) to employ any device, scheme, or artifice to defraud any protected customer or prospective protected customer;

''(II) to engage in any transaction, practice, or course of business that operates as a fraud or deceit on any protected customer or prospective protected customer;

''(III) if the security-based swap dealer acts as a principal for the account of the security-based swap dealer, to knowingly sell any security-based swap to, or purchase any security-based swap from, a protected customer, or if the security-based swap dealer acts as a broker for a person other than the protected customer, to knowingly effect any sale or purchase of any security-based swap for the account of the protected customer, without—

''(aa) before the completion of the transaction, disclosing to the protected customer in writing the capacity in which the security-based swap dealer is acting; and

''(bb) obtaining the consent of the protected customer in writing with respect to the transaction; and

''(IV) to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

''(ii) REGULATIONS.—As soon as practicable after the date of enactment of this subparagraph, the Commission shall issue rules and promulgate regulations to prescribe requirements that are reasonably designed to prevent acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

''(C) REQUIREMENTS.—

''(i) IN GENERAL.—A security-based swap dealer that recommends a security-based swap with a protected customer shall comply with clauses (ii) and (iii).

''(ii) REASONABLE GROUNDS.—In recommending to a protected customer the purchase, sale, or exchange of any security-based swap, a security-based swap dealer shall have reasonable grounds for believing that the recommendation is in the best interests of the protected customer.

''(iii) REASONABLE EFFORTS.—Before the execution of a transaction recommended to a protected customer under clause (ii), a security-based swap dealer shall make reasonable efforts to obtain such information as is necessary to determine whether the transaction is in the best interests of the protected customer, including—

''(I) information relating to—

''(aa) the financial status of the protected customer;

''(bb) the tax status of the protected customer; and

''(cc) the stated investment objectives of the protected customer; and

''(II) such other information that—

''(aa) is used or considered to be reasonable by the security-based swap dealer in making recommendations to the protected customer; and

''(bb) the Commission may prescribe by rule or regulation.

''(iv) BUSINESS CONDUCT REQUIREMENTS.—A security-based swap dealer shall satisfy each business conduct requirement described in paragraph (3).

''(D) WRITTEN REPRESENTATIONS.—

''(i) IN GENERAL.—Before entering into a security-based swap with a protected customer, a security-based swap dealer shall receive in writing a representation from the protected customer confirming that the security-based swap transaction has been expressly authorized—

''(I) by an advisor that is independent of the security-based swap dealer; and

''(II) in the case of an employee benefit plan subject to the fiduciary duty requirements under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), by a representative independent of the security-based swap dealer that is a fiduciary, as defined in section 3 of that Act (29 U.S.C. 1002).

''(ii) REGULATIONS.—Not later than December 31, 2010, the Commission shall issue rules or promulgate regulations to provide guidelines to determine qualifications for advisors that are authorized to provide advice under clause (i)(I).

SA 4050. Mr. CARDIN (for himself, Mr. LUGAR, Mr. DURBIN, Mr. SCHUMER, Mr. FEINGOLD, Mr. MERKLEY, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike ''effective.'' insert the following: ''effective.

Subtitle K—Resource Extraction Issuers

SEC. 995. FINDINGS.

Congress finds the following:

(1) It is in the interest of the United States to promote good governance in the extractive industries sector. Transparency in revenue payments benefits oil, gas, and mining companies, because it improves the business climate in which such companies work, increases the reliability of commodity supplies upon which businesses and people in the United States rely, and promotes greater energy security.

(2) Companies in the extractive industries sector face unique tax and reputational risks, in the form of country-specific taxes and regulations. Exposure to these risks is heightened by the substantial capital employed in the extractive industries, and the often opaque and unaccountable management of natural resource revenues by foreign governments, which in turn creates unstable and high-cost operating environments for multinational companies. The effects of these risks are material to investors.

SEC. 996. DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(p) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'commercial development of oil, natural gas, or minerals' includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

''(B) the term 'foreign government' means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

''(C) the term 'payment'—

''(i) means a payment that is—

''(I) made to further the commercial development of oil, natural gas, or minerals; and

''(II) not de minimis; and

''(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

''(D) the term 'resource extraction issuer' means an issuer that—

''(i) is required to file an annual report with the Commission; and

''(ii) engages in the commercial development of oil, natural gas, or minerals;

''(E) the term 'interactive data format' means an electronic data format in which pieces of information are identified using an interactive data standard; and

''(F) the term 'interactive data standard' means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

''(2) DISCLOSURE.—

''(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

''(i) the type and total amount of such payments made for each project of the resource

extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

''(ii) the type and total amount of such payments made to each government.

''(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

''(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

''(D) INTERACTIVE DATA STANDARD.—

''(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

''(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

''(I) the total amounts of the payments, by category;

''(II) the currency used to make the payments;

''(III) the financial period in which the payments were made;

''(IV) the business segment of the resource extraction issuer that made the payments;

''(V) the government that received the payments, and the country in which the government is located;

''(VI) the project of the resource extraction issuer to which the payments relate; and

''(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

''(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

''(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—

''(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

''(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.''.

SA 4051. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, between lines 17 and 18, insert the following:

SEC. 5. PROHIBITION ON THE USE OF FEDERAL FUNDS TO PAY STATE OBLIGATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no Federal funds may be used to purchase or guarantee obligations of, issue lines of credit to or provide direct or indirect grants-and-aid to, any State government, municipal government, local government, or county government which has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(b) LIMIT ON USE OF BORROWED FUNDS.—The Secretary shall not, directly or indirectly, use general fund revenues or funds borrowed pursuant to title 31, United States Code, to purchase or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government.

(c) LIMIT ON FEDERAL RESERVE FUNDS.—The Board of Governors shall not, directly or indirectly, lend against, purchase, or guarantee any asset or obligation of any State government, municipal government, local government, or county government or to otherwise assist such governments, in any instance in which the State government, municipal government, local government, or county government has defaulted on its obligations, is at risk of defaulting, or is likely to default, absent such assistance from the United States Government. Notwithstanding any other provision of law, no Federal funds may be used to pay the obligations of any State, or to issue a line of credit to any State.

SA 4052. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. REPRESENTATIONS AND WARRANTIES FOR POOL ASSETS.

(a) REPRESENTATIONS AND WARRANTIES.—

(1) DEFINITIONS.—In this subsection—

(A) the terms ''asset-backed security'', ''servicer'', and ''sponsor'' have the meanings given those terms under Regulation AB; and

(B) the term ''Regulation AB'' means subpart 229.1100 of title 17, Code of Federal Regulations, or any successor thereto.

(2) RULES REQUIRED.—

(A) COMPLIANCE.—Not later than 270 days after the date of enactment of this Act, the Commission shall issue rules, as the Commission determines is necessary and appropriate consistent with the protection of investors, that require any issuance of an asset-backed security to comply with paragraph (3).

(B) DEFINITION.—The Commission shall, by rule, define the term ''pool assets'' for purposes of this subsection.

(3) PERIODIC INDEPENDENT EVALUATION.—The pooling and servicing agreement for an asset-backed security shall contain provisions requiring the sponsor of the asset-backed security to furnish to the trustee of the asset-backed security, on a quarterly basis, a certificate or opinion from an independent evaluator that—

(A) identifies any pool assets that in the prior quarter, the trustee notified, or had the right to notify, the obligor that it had an obligation to repurchase or substitute under the terms of the pooling and servicing agreement because of a breach or violation of a representation or warranty; and

(B) includes facts supporting a finding as to whether any representation or warranty made with respect to any pool asset has been breached or violated.

(4) INDEPENDENT EVALUATOR.—For purposes of paragraph (3), an independent evaluator shall—

(A) be subject to removal upon the vote of 25 percent of the holders of outstanding shares of the asset-backed security; and

(B) have access to the pool asset records and related documents of any party to the pooling and servicing agreement and any person performing work on behalf of any party to the pooling and servicing agreement.

(5) EXEMPTIONS.—The Commission may, by rule, exempt a class of asset-backed securities from the rules issued under this subsection, if the Commission determines that the application of such rules to the class of asset-backed securities would cause undue disruption to a segment of the market affected by the class of asset-backed securities.

(b) DIRECT REVIEW.—An investor or group of investors that holds not less than 20 percent of the outstanding securities of an asset-backed security (including an asset-backed security that is not subject to the requirements under subpart 229.1100 of title 17, Code of Federal Regulations) that is issued or outstanding on or before the date of enactment of this Act shall have access to all loan documents and related documents of any servicer of the asset-backed security (including servicing records), unless otherwise prohibited in a contract with respect to the asset-backed security.

(c) ENFORCEMENT.—The Commission may enforce the rules issued under this section in the same manner as the Commission enforces rules issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

SA 4053. Ms. STABENOW (for herself and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 540, line 16, strike ''purchase'' and insert ''purchase or lease''.

On page 580, line 20, insert ''and involved in hedging activities related to'' after ''engaged in''.

On page 580, line 21, strike ''purchase'' and insert ''purchase or lease''.

On page 580, line 23, strike ''user'' and insert ''user (including any subsidiary of the commercial end user)''.

On page 580, lines 24 and 25, strike ''only if the affiliate'' and insert ''as can affiliates''.

On page 581, line 1, strike ''uses'' and insert ''using''.

On page 582, between lines 6 and 7, insert the following:

''(iii) TRANSITION RULE.—An affiliate or a wholly owned entity of a commercial end user that is predominantly engaged in providing financing for the purchase or lease of merchandise or manufactured goods of the commercial end user affiliate (including any subsidiary of the commercial end user) shall be exempt from the margin requirement described in section 4s(e) and the clearing requirement described in paragraph (1) with regard to swaps entered into to mitigate the risk of the financing activities for not less than a 3-year period beginning on the date of enactment of this clause.

''(iv) AUTHORITY OF COMMISSION.—On or prior to the date on which the 3-year period described in clause (iii) ends, the Commission may extend the exemption described in that clause for an additional 1-year period if the Commission—

''(I) determines the extension to be in the public interest; and

''(II) publishes in the Federal Register the order granting the extension (including the reasons for the extension).

SA 4054. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1052, line 3, strike ''**SEC. 942.**'' and insert the following:

SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING STANDARDS.

(a) STANDARDS ESTABLISHED.—Notwithstanding any other provision of this Act or any other provision of Federal, State, or local law, the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall jointly establish specific minimum standards for mortgage underwriting, including—

(1) a requirement that the mortgagee verify and document the income and assets relied upon to qualify the mortgagor on the residential mortgage, including the previous employment and credit history of the mortgagor;

(2) a down payment requirement that—

(A) is equal to not less than 5 percent of the purchase price of the property securing the residential mortgage; and

(B) in the case of a first lien residential mortgage loan with an initial loan to value ratio that is more than 80 percent and not more than 95 percent, includes a requirement for credit enhancements, as defined by the Federal banking agencies, until the loan to value ratio of the residential mortgage loan amortizes to a value that is less than 80 percent of the purchase price;

(3) a method for determining the ability of the mortgagor to repay the residential mortgage that is based on factors including—

(A) all terms of the residential mortgage, including principal payments that fully amortize the balance of the residential mortgage over the term of the residential mortgage; and

(B) the debt to income ratio of the mortgagor; and

(4) any other specific standards the Federal banking agencies jointly determine are appropriate to ensure prudent underwriting of residential mortgages.

(b) UPDATES TO STANDARDS.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development—

(1) shall review the standards established under this section not less frequently than every 5 years; and

(2) based on the review under paragraph (1), may revise the standards established under this section, as the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, determine to be necessary.

(c) COMPLIANCE.—It shall be a violation of Federal law—

(1) for any mortgage loan originator to fail to comply with the minimum standards for mortgage underwriting established under subsection (a) in originating a residential mortgage loan;

(2) for any company to maintain an extension of credit on a revolving basis to any person to fund a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan funded by such credit was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a); or

(3) for any company to purchase, fund by assignment, or guarantee a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a).

(d) IMPLEMENTATION.—

(1) REGULATIONS REQUIRED.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency, shall issue regulations to implement subsections (a) and (c), which shall take effect not later than 270 days after the date of enactment of this Act.

(2) REPORT REQUIRED.—If the Federal banking agencies have not issued final regulations under subsections (a) and (c) before the date that is 270 days after the date of enactment of this Act, the Federal banking agencies shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

(A) explains why final regulations have not been issued under subsections (a) and (c); and

(B) provides a timeline for the issuance of final regulations under subsections (a) and (c).

(e) ENFORCEMENT.—Compliance with the rules issued under this section shall be enforced by—

(1) the primary financial regulatory agency of an entity, with respect to an entity subject to the jurisdiction of a primary financial regulatory agency, in accordance with the statutes governing the jurisdiction of the primary financial regulatory agency over the entity and as if the action of the primary financial regulatory agency were taken under such statutes; and

(2) the Bureau, with respect to a company that is not subject to the jurisdiction of a primary financial regulatory agency.

(f) EXEMPTIONS FOR CERTAIN NONPROFIT MORTGAGE LOAN ORIGINATORS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, may jointly issue rules to exempt from the requirements under subsection (a)(2), mortgage loan originators that—

(A) are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(B) were in existence on January 1, 2009.

(2) DETERMINING FACTORS.—The Federal banking agencies shall ensure that—

(A) the lending activities of a mortgage loan originator that receives an exemption under this subsection do not threaten the safety and soundness of the banking system of the United States; and

(B) a mortgage loan originator that receives an exemption under this subsection—

(i) is not compensated based on the number or value of residential mortgage loan applications accepted, offered, or negotiated by the mortgage loan originator;

(ii) does not offer residential mortgage loans that have an interest rate greater than zero percent;

(iii) does not gain a monetary profit from any residential mortgage product or service provided;

(iv) has the primary purpose of serving low income housing needs;

(v) has not been specifically prohibited, by statute, from receiving Federal funding; and

(vi) meets any other requirements that the Federal banking agencies jointly determine are appropriate for ensuring that a mortgage loan originator that receives an exemption under this subsection does not threaten the safety and soundness of the banking system of the United States.

(3) REPORTS REQUIRED.—Before the issuance of final rules under subsection (a), and annually thereafter, the Federal banking agencies shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

(A) identifies the mortgage loan originators that receive an exemption under this subsection; and

(B) for each mortgage loan originator identified under subparagraph (A), the rationale for providing an exemption.

(4) UPDATES TO EXEMPTIONS.—The Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury—

(A) shall review the exemptions established under this subsection not less frequently than every 2 years; and

(B) based on the review under subparagraph (A), may revise the standards established under this subsection, as the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, determine to be necessary.

(g) RULES OF CONSTRUCTION.—Nothing in this section may be construed to permit—

(1) the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to make or guarantee a residential mortgage loan that does not meet the minimum underwriting standards established under this section; or

(2) the Federal banking agencies to issue an exemption under subsection (f) that is not on a case-by-case basis.

(h) DEFINITIONS.—In this section, the following definitions shall apply:

(1) COMPANY.—The term ''company''—

(A) has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)); and

(B) includes a sole proprietorship.

(2) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any company that takes residential mortgage loan applications and offers or negotiates terms of residential mortgage loans.

(3) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan''—

(A) means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) does not include a mortgage loan for which mortgage insurance is provided by the Department of Veterans Affairs or the Rural Housing Administration.

(4) EXTENSION OF CREDIT; DWELLING.—The terms ''extension of credit'' and ''dwelling'' shall have the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

SEC. 943. STUDY ON FEDERAL HOUSING ADMINISTRATION UNDERWRITING STANDARDS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study evaluating whether the underwriting criteria used by the Federal Housing Administration are sufficient to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) down payment requirements for Federal Housing Administration borrowers;

(B) default rates of mortgages insured by the Federal Housing Administration;

(C) characteristics of Federal Housing Administration borrowers who are most likely to default;

(D) taxpayer exposure to losses incurred by the Federal Housing Administration;

(E) the impact of the market share of the Federal Housing Administration on efforts to sustain a viable private mortgage market; and

(F) any other factors that Comptroller General determines are appropriate.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) that includes recommendations for statutory improvements to be made to the underwriting criteria used by the Federal Housing Administration, to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

SEC. 944.

SA 4055. Mrs. HUTCHISON (for herself, Mrs. HAGAN, and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, line 14, strike ''and'' and all that follows through line 25 and insert the following:

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

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SA 4056. Mr. BOND (for himself, Mr. DODD, Mr. WARNER, Mr. BROWN of Massachusetts, Ms. CANTWELL, Mr. BEGICH, Mrs. MURRAY, Mr. CORKER, Mr. TESTER, Mr. BROWNBACK, Mr. BAUCUS, and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 387, strike line 13 and all that follows through page 388, line 3, and insert the following:

SEC. 412. ADJUSTING THE ACCREDITED INVESTOR STANDARD.

(a) IN GENERAL.—The Commission shall adjust any net worth standard for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, so that the individual net worth of any natural person, or joint net worth with the spouse of that person, at the time of purchase, is more than $1,000,000 (as such amount is adjusted periodically by rule of the Commission), excluding the value of the primary residence of such natural person, except that during the 4-year period that begins on the date of enactment of this Act, any net worth standard shall be $1,000,000, excluding the value of the primary residence of such natural person.

(b) REVIEW AND ADJUSTMENT.—

(1) INITIAL REVIEW AND ADJUSTMENT.—

(A) INITIAL REVIEW.—The Commission may undertake a review of the definition of the term ''accredited investor'', as such term applies to natural persons, to determine whether the requirements of the definition, excluding the requirement relating to the net worth standard described in subsection (a), should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', excluding adjusting or modifying the requirement relating to the net worth standard described in subsection (a), as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

(2) SUBSEQUENT REVIEWS AND ADJUSTMENT.—

(A) SUBSEQUENT REVIEWS.—Not earlier than 4 years after the date of enactment of this Act, and not less frequently than once every 4 years thereafter, the Commission shall undertake a review of the definition, in its entirety, of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, to determine whether the requirements of the definition should be adjusted or modified for the protection of investors, in the public interest, and in light of the economy.

(B) ADJUSTMENT OR MODIFICATION.—Upon completion of a review under subparagraph (A), the Commission may, by notice and comment rulemaking, make such adjustments to the definition of the term ''accredited investor'', as defined in section 230.215 of title 17, Code of Federal Regulations, or any successor thereto, as such term applies to natural persons, as the Commission may deem appropriate for the protection of investors, in the public interest, and in light of the economy.

On page 388, line 14, strike ''1 year'' and insert ''3 years''.

On page 998, strike line 12 and all that follows through page 1001, line 25, and insert the following:

SEC. 926. DISQUALIFYING FELONS AND OTHER ''BAD ACTORS'' FROM REGULATION D OFFERINGS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue rules for the disqualification of offerings and sales of securities made under section 230.506 of title 17, Code of Federal Regulations, that—

(1) are substantially similar to the provisions of section 230.262 of title 17, Code of Federal Regulations, or any successor thereto; and

(2) disqualify any offering or sale of securities by a person that—

(A) is subject to a final order of a State securities commission (or an agency or officer of a State performing like functions), a State authority that supervises or examines banks, savings associations, or credit unions, a State insurance commission (or an agency or officer of a State performing like functions), an appropriate Federal banking agency, or the National Credit Union Administration, that—

(i) bars the person from—

(I) association with an entity regulated by such commission, authority, agency, or officer;

(II) engaging in the business of securities, insurance, or banking; or

(III) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct within the 10-year period ending on the date of the filing of the offer or sale; or

(B) has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing with the Commission.

SA 4057. Mr. ENZI (for himself and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 956, strike line 10 and all that follows through page 957, line 11, and insert the following:

SEC. 978. FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s), as amended by section 912, is further amended by adding at the end the following:

''(g)(1) The Commission may, subject to the limitations imposed by section 15B of the Securities Exchange Act (15 U.S.C. 78*o*–4) require a national securities association registered under the Securities Exchange Act of 1934 to establish—

''(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (hereafter referred to in this subsection as the 'GASB'); and

''(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

''(2) ANNUAL BUDGET.—For purpose of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the FAF's internal procedures.

''(3) USE OF FUNDS.—Any funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

''(4) LIMITATION ON FEE.—The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

''(5) RULES OF CONSTRUCTION.—

''(A) FEES NOT PUBLIC MONIES.—Accounting support fees collected pursuant to this subsection and other receipts of the GASB shall not be considered public monies of the United States.

''(B) LIMITATION ON AUTHORITY OF THE COMMISSION.—Nothing in this subsection shall be construed to—

''(i) provide the Commission or any national securities association direct or indirect oversight of GASB's budget or technical agenda; or

''(ii) affect the GASB's setting of generally accepted accounting principles.

''(C) NONINTERFERENCE WITH STATES.—Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.''.

(b) STUDY OF FUNDING FOR GOVERNMENTAL ACCOUNTING STANDARDS BOARD.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that evaluates—

(A) the role and importance of the Governmental Accounting Standards Board in the municipal securities markets;

(B) the manner and the level at which the Governmental Accounting Standards Board has been funded;

(2) CONSULTATION.—In conducting the study required under paragraph (1), the Comptroller General shall consult with the principal organizations representing State governors, legislators, and local elected officials and State and local finance officers.

(3) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the study required under paragraph (1).

SA 4058. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1223, line 5, strike ''and'' and all that follows through line 7, and insert the following:

(8) an Office of Management and Budget (hereafter in this section referred to as ''OMB'') analysis of the economic impact of all rules and orders adopted by the Bureau, as well as other initiatives conducted by the Bureau, during the preceding year, which shall include—

(A) the total costs of such rules, orders, and initiatives;

(B) the annual impact on employment, both nationally and by State;

(C) the estimated time for covered persons to comply with such rules, orders, and initiatives, both on average and by size of business covered; and

(D) the number of persons affected by each such rule, order, and initiative;

(9) an OMB analysis of the economic impact of all statutes, rules, regulations, and orders related to this Act, which shall include—

(A) a statement of the need for the proposed action and an analysis of whether there exists a market failure;

(B) an examination of alternative approaches, including a baseline case of not taking the regulatory action;

(C) a statement of the plausible scenarios for which the proposed action could lead to a Government failure;

(D) the total costs of all such rules and orders;

(E) the annual impact on employment nationally, by State, and by industry;

(F) the estimated time for covered persons to comply with all such rules, orders, and initiatives both on average and by size of business covered;

(G) the number of persons affected by each such rule, order, and initiative;

(H) an analysis of estimated effects on market efficiency and market competition, including a Regulatory Flexibility Act (5 U.S.C. chapter 6) analysis to assess the impact on small business and other small entities;

(I) an analysis of estimated effects on United States economic growth, United States economic competitiveness, and international trade;

(J) a Paperwork Reduction Act (44 U.S.C. chapter 35) analysis;

(K) a report of the precision of estimates and a statement of the key assumptions;

(L) a sensitivity analysis, based on plausible alternative assumptions for data, methodologies, and assumed levels of compliance and enforcement;

(M) any other economic analysis of regulatory actions required by Executive Order by the President of the United States;

(10) the annual compensation received by employees of the Bureau, including the total, the average, and the number of employees receiving salaries in excess of $100,000 and $200,000 and such calculation of compensation shall include the value of all non-salary compensation (including flex-time, vacation time, retirement benefits, and collective bargaining benefits);

(11) a copy of any collective bargaining agreements, or amendments to such agreements, entered into between the Bureau and its union during the preceding year;

(12) an analysis of the effectiveness of the Bureau, including evidence on whether each rule and regulation it has adopted during the preceding 10 years have produced a reduction in consumer complaints;

(13) a copy of any agreements with State attorneys, State regulators, private attorneys, or any other person or entity relating to the enforcement of consumer financial protection laws; and

(14) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

(d) ANNUAL REVIEW OF RULES AND REGULATIONS.—

(1) IN GENERAL.—OMB shall review, on a rolling-basis each statute, rule, regulation, and order related to this Act, to determine whether such statute, rule, regulation, order has achieved its intended result and whether such statute, rule, regulation, or order should be modified or repealed based on changes in the marketplace. Each such statute, rule, regulation, and order shall be reviewed not less frequently than once every 8 years.

(2) REPORT.—In connection with the review required under paragraph (1), OMB shall annually produce a report discussing its findings, including—

(A) providing evidence on whether each statute, rule, regulation, or order under review should be retained, modified, or repealed;

(B) a discussion of the original intent of each statute, rule, regulation, and order;

(C) an analysis of whether each such statute, rule, regulation, and order achieved its intended results; and

(D) a cost benefit analysis of such statute, rule, regulation, and order that estimates the actual costs imposed on the private sector, compared to the actual benefits to the private sector attained, which cost benefit analysis shall include the costs of complying with such statute, rule, regulation, and order, the impact on innovation, and actual litigation costs incurred by private and governmental parties in litigating such statute and regulation.

(3) NOTICE TO BUREAU.—If OMB determines under paragraph (2) that any regulation has

not yielded a positive cost-benefit result, the Bureau shall be promptly repealed such regulation or modify such regulation so that it is estimated to produce a positive cost-benefit result.

(4) NOTICE TO CONGRESS.—If OMB determines under paragraph (2) that any statute has not yielded a positive cost-benefit result, OMB shall notify Congress and provide a recommendation on whether the statute should be repealed or modified to produce a positive cost-benefit result.

SA 4059. Mr. REID (for Mrs. LINCOLN (for herself, Mr. CHAMBLISS, Mr. COCHRAN, and Mr. BROWN of Ohio)) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 565, between lines 2 and 3, insert the following:

(e) PRESERVATION OF OTHER REGULATORY AUTHORITY.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

''(vi) No provision of this Act shall be construed—

''(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

''(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission under the Acts described in subclause (I);

''(III) to affect the authority of the Federal Energy Regulatory Commission to approve, deny, or otherwise permit any rate or charge made, demanded, or received by any public utility or natural gas company for the transportation or sale of electric energy or natural gas subject to the jurisdiction of the Federal Energy Regulatory Commission; or

''(IV) to supersede or limit the authority of a State regulatory commission that has jurisdiction to regulate rates and charges for the transmission or sale of electric energy within the State, or restrict that State regulatory commission from carrying out the duties and responsibilities of the State regulatory commission pursuant to the jurisdiction of the State regulatory commission to regulate rates and charges for the transmission or sale of electric energy.

''(vii) Nothing in clause (vi) shall affect the Commission's exclusive jurisdiction under subparagraph (A) with respect to the trading, execution, or clearing of any agreement, contract, or transaction on or subject to the rules of a registered entity, including a designated contract market, derivatives clearing organization, or swap execution facility.''.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

''(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

''(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

''(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

''(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).

''(7)(A) Any person may apply to the Commission for an exemption from the requirements of this Act with respect to an agreement, contract, or transaction described in paragraph (6).

''(B) Not later than 1 business day after the date of receipt of an application described in subparagraph (A), the Commission shall notify, and provide a copy of the application to—

''(i) the Federal Energy Regulatory Commission; and

''(ii) with respect to an application filed with respect to paragraph (6)(B), the relevant State regulatory body or municipality.

''(C) The Commission shall provide not less than a 30-day period for public comment with respect to any application described in subparagraph (A).

''(D)(i) Not later than the date on which the public comment period described in subparagraph (C) expires, the Federal Energy Regulatory Commission (and the relevant State regulatory body or municipality with respect to an application filed with respect to paragraph (6)(B)) may provide to the Commission a recommendation regarding the application for exemption.

''(ii) The Commission shall give due consideration to any recommendation described in clause (i).

''(E) Not later than 120 days after the date of receipt of an application described in subparagraph (A), the Commission shall, by order—

''(i) grant an exemption in accordance with paragraph (6); or

''(ii) provide to the applicant a document that contains a description of each reason relied on by the Commission for not granting an exemption.''.

SA 4060. Mr. BROWN of Massachusetts submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 485, strike line 1 and all that follows through page 489, line 13, and insert the following:

(2) the term ''insured depository institution'' does not include an institution described in section 2(c)(2)(D) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)(2)(D));

(3) the term ''proprietary trading''—

(A) means purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company, for the trading book (or such other portfolio as the Federal banking agencies may determine) of such institution, company, or subsidiary;

(B) subject to such restrictions as the Federal banking agencies may determine, does not include purchasing or selling, or otherwise acquiring or disposing of, stocks, bonds, options, commodities, derivatives, or other financial instruments on behalf of a customer, as part of market making activities, or otherwise in connection with or in facilitation of customer relationships, including risk-mitigating hedging activities related to such a purchase, sale, acquisition, or disposal; and

(C) does not include the investments of a regulated insurance company, or a regulated insurance affiliate or regulated insurance subsidiary thereof, if—

(i) such investments are in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the Federal banking agencies, after consultation with the Council and the relevant insurance commissioners of the States and territories of the United States, have not jointly determined, after notice and comment, that a law, a regulation, or written guidance described in clause (i) is insufficient to accomplish the purposes of this section; and

(4) the term ''sponsoring'', when used with respect to a hedge fund or private equity fund, means—

(A) serving as a general partner, managing member, or trustee of the fund;

(B) in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or

(C) sharing with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

(b) PROHIBITION ON PROPRIETARY TRADING.—

(1) IN GENERAL.—Subject to the recommendations and modifications of the Council under subsection (g), and except as provided in paragraph (2) or (3), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit proprietary trading by an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), and any subsidiary of such institution or company.

(2) EXCEPTED OBLIGATIONS.—

(A) IN GENERAL.—The prohibition under this subsection shall not apply with respect to an investment that is otherwise authorized by Federal law in—

(i) obligations of the United States or any agency of the United States, including obligations fully guaranteed as to principal and interest by the United States or an agency of the United States;

(ii) obligations, participations, or other instruments of, or issued by, the Government National Mortgage Association, the Federal

National Mortgage Association, or the Federal Home Loan Mortgage Corporation, including obligations fully guaranteed as to principal and interest by such entities; and

(iii) obligations of any State or any political subdivision of a State.

(B) CONDITIONS.—The appropriate Federal banking agencies may impose conditions on the conduct of investments described in subparagraph (A).

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) may be construed to grant any authority to any person that is not otherwise provided in Federal law.

(3) FOREIGN ACTIVITIES.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibition under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(c) PROHIBITION ON SPONSORING AND INVESTING IN HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), and subject to the recommendations and modifications of the Council under subsection (g), the appropriate Federal banking agencies shall, through a rulemaking under subsection (g), jointly prohibit an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company, from sponsoring or investing in a hedge fund or a private equity fund.

(2) APPLICATION TO FOREIGN ACTIVITIES OF FOREIGN FIRMS.—An investment or activity conducted by a company pursuant to paragraph (9) or (13) of section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) solely outside of the United States shall not be subject to the prohibitions and restrictions under paragraph (1), provided that the company is not directly or indirectly controlled by a company that is organized under the laws of the United States or of a State.

(3) EXCEPTION.—Notwithstanding paragraph (1), an insured depository institution, a company that controls, directly or indirectly, an insured depository institution or is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any subsidiary of such institution or company may sponsor or invest in a hedge fund or a private equity fund, if—

(A) such institution, company, or subsidiary provides trust, fiduciary, or advisory services to the fund;

(B) the fund is sponsored and offered in connection with the provision of trust, fiduciary, or advisory services by such institution, company, or subsidiary to persons who are, or may be, customers or clients of such institution, company, or subsidiary;

(C) such institution, company, or subsidiary—

(i) does not acquire or retain an equity, partnership, or ownership interest in the fund; or

(ii) acquires or retains an equity, partnership, or ownership interest, if—

(I) on the date that is 12 months after the date on which the fund is established, the equity, partnership, or ownership interest is not greater than 5 percent of the total equity of the fund; and

(II) the aggregate equity investments by such institution, company, or subsidiary in the fund do not exceed 5 percent of Tier 1 capital of such institution, company, or subsidiary;

(D) such institution, company, or subsidiary does not enter into or otherwise engage in any transaction with the fund that is a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), except on terms and under circumstances specified in section 23B of the Federal Reserve Act (12 U.S.C. 371c–1);

(E) the obligations of the fund are not guaranteed, directly or indirectly, by such institution, company, or subsidiary any affiliate of such institution, company, or subsidiary; and

(F) such institution, company, or subsidiary does not share with the fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name.

SA 4061. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 539, strike line 14 and all that follows through page 584, line 7, and insert the following:

''(33) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, and—

''(i)(I) maintains a substantial net position in swaps for any of the major swap categories as determined by the Commission, excluding—

''(aa) positions held for hedging or mitigating commercial risk, including operating risk and balance sheet risk, of such person or its affiliates; and

''(bb) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; and

''(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

''(ii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate's merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds;

''(II) maintains a substantial net position in outstanding swaps in any major swap category as determined by the Commission; and

''(III) 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.

''(B) DEFINITION OF SUBSTANTIAL NET POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term 'substantial net position' to mean a position after application of legally enforceable netting or collateral arrangements that meets a threshold the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

''(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

''(D) CAPITAL.—In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a major swap participant.'';

(17) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

''(39) PRUDENTIAL REGULATOR.—The term 'prudential regulator' means—

''(A) the Office of the Comptroller of the Currency, in the case of—

''(i) any national banking association;

''(ii) any Federal branch or agency of a foreign bank; or

''(iii) any Federal savings association;

''(B) the Federal Deposit Insurance Corporation, in the case of—

''(i) any insured State bank;

''(ii) any foreign bank having an insured branch; or

''(iii) any State savings association;

''(C) the Board of Governors of the Federal Reserve System, in the case of—

''(i) any noninsured State member bank;

''(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

''(iii) any foreign bank which does not operate an insured branch;

''(iv) any agency or commercial lending company other than a Federal agency; or

''(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.); and

''(D) the Farm Credit Administration, in the case of a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).'';

(18) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking ''and'';

(D) by inserting after subparagraph (C) (as so redesignated) the following:

''(D) a swap execution facility registered under section 5h;

''(E) a swap data repository; and'';

(19) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

''(42) SECURITY-BASED SWAP.—The term 'security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(43) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).'';

(20) in paragraph (46) (as redesignated by paragraph (1)), by striking ''subject to section 2(h)(7)'' and inserting ''subject to section 2(h)(5)'';

(21) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

''(47) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction—

''(i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) that provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) that provides on an executory basis for the exchange, on a fixed or contingent basis, of 1 or more payments based on the value or level of 1 or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as—

''(I) an interest rate swap;

''(II) a rate floor;

''(III) a rate cap;

''(IV) a rate collar;

''(V) a cross-currency rate swap;

''(VI) a basis swap;

''(VII) a currency swap;

''(VIII) a foreign exchange swap;

''(IX) a total return swap;

''(X) an equity index swap;

''(XI) an equity swap;

''(XII) a debt index swap;

''(XIII) a debt swap;

''(XIV) a credit spread;

''(XV) a credit default swap;

''(XVI) a credit swap;

''(XVII) a weather swap;

''(XVIII) an energy swap;

''(XIX) a metal swap;

''(XX) an agricultural swap;

''(XXI) an emissions swap; and

''(XXII) a commodity swap;

''(iv) that is an agreement, contract, or transaction that is, or in the future becomes commonly known to the trade as a swap;

''(v) including any security-based swap agreement which meets the definition of 'swap agreement' as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein; or

''(vi) that is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (v).

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale of a commodity for future delivery (or option on such a contract), leverage contract authorized under section 19, security futures product, or agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i);

''(ii) any sale of a nonfinancial commodity or security for deferred shipment or delivery, so long as the transaction is intended to be physically settled;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to—

''(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

''(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to a foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a fixed basis that is subject to—

''(I) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

''(II) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security, as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a))) by the issuer of such security for the purposes of raising capital, unless the agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

''(ix) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the Federal Government, or a Federal agency that is expressly backed by the full faith and credit of the United States; and

''(x) any security-based swap, other than a security-based swap as described in subparagraph (D).

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'swap' includes a master agreement that provides for an agreement, contract, or transaction that is a swap under subparagraph (A), together with each supplement to any master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A).

''(ii) EXCEPTION.—For purposes of clause (i), the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction covered by the master agreement that is a swap pursuant to subparagraph (A).

''(D) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in section 3(a)(68)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)(A)) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

''(E) TREATMENT OF FOREIGN EXCHANGE SWAPS AND FORWARDS.—

''(i) IN GENERAL.—Foreign exchange swaps and foreign exchange forwards shall be considered swaps under this paragraph unless the Secretary makes a written determination that either foreign exchange swaps or foreign exchange forwards or both—

''(I) should be not be regulated as swaps under this Act; and

''(II) are not structured to evade the Wall Street Transparency and Accountability Act of 2010 in violation of any rule promulgated by the Commission pursuant to section 111(c) of that Act.

''(ii) CONGRESSIONAL NOTICE; EFFECTIVENESS.—The Secretary shall submit any written determination under clause (i) to the appropriate committees of Congress, including the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. Any such written determination by the Secretary shall not be effective until it is submitted to the appropriate committees of Congress.

''(iii) REPORTING.—Notwithstanding a written determination by the Secretary under clause (i), all foreign exchange swaps and foreign exchange forwards shall be reported to either a swap data repository, or, if there is no swap data repository that would accept such swaps or forwards, to the Commission pursuant to section 4r within such time period as the Commission may by rule or regulation prescribe.

''(iv) BUSINESS STANDARDS.—Notwithstanding clauses (ix) and (x) of subparagraph (B) and clause (ii), any party to a foreign exchange swap or forward that is a swap dealer or major swap participant shall conform to the business conduct standards contained in section 4s(h).

''(v) SECRETARY.—For purposes of this subparagraph only, the term 'Secretary' means the Secretary of the Treasury.

''(F) EXCEPTION FOR CERTAIN FOREIGN EXCHANGE SWAPS AND FORWARDS.—

''(i) REGISTERED ENTITIES.—Any foreign exchange swap and any foreign exchange forward that is listed and traded on or subject to the rules of a designated contract market or a swap execution facility, or that is cleared by a derivatives clearing organization shall not be exempt from any provision of this Act or amendments made by the Wall Street Transparency and Accountability Act of 2010 prohibiting fraud or manipulation.

''(ii) RETAIL TRANSACTIONS.—Nothing in subparagraph (E) shall affect, or be construed to affect, the applicability of this Act or the jurisdiction of the Commission with respect to agreements, contracts, or transactions in foreign currency pursuant to section 2(c)(2).

''(48) SWAP DATA REPOSITORY.—The term 'swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties.

''(49) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person who—

''(i) holds itself out as a dealer in swaps;

''(ii) makes a market in swaps;

''(iii) regularly engages in the purchase and sale of swaps to customers as its ordinary course of business; and

''(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

''(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

''(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer.

''(D) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person, unless it does so as a market maker and as a part of a regular business.

''(50) SWAP EXECUTION FACILITY.—The term 'swap execution facility' means a facility in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

''(A) facilitates the execution of swaps between persons; and

''(B) is not a designated contract market.''; and

(22) in paragraph (51) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking ''partipants'' and inserting ''participants''.

(b) AUTHORITY TO DEFINE TERMS.—The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term ''commercial risk''; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(c) MODIFICATION OF DEFINITIONS.—To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms ''swap'', ''swap dealer'', ''major swap participant'', and ''eligible contract participant''.

(d) EXEMPTIONS.—Section 4(c)(1) of the Commodity Exchange Act (7 U.S.C. 6(c)(1)) is amended by striking ''except that'' and all that follows through the period at the end and inserting the following: ''except that—

''(A) unless the Commission is expressly authorized by any provision described in this subparagraph to grant exemptions, with respect to amendments made by subtitle A of the Wall Street Transparency and Accountability Act of 2010—

''(i) with respect to—

''(I) paragraphs (2), (3), (4), (5), and (7), clause (vii)(III) of paragraph (17), paragraphs (23), (24), (31), (32), (38), (39), (41), (42), (46), (47), (48), and (49) of section 1a, and sections 2(a)(13), 2(c)(D), 4a(a), 4a(b), 4d(c), 4d(d), 4r, 4s, 5b(a), 5b(b), 5(d), 5(g), 5(h), 5b(c), 5b(i), 8e, and 21; and

''(II) section 206(e) of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note); and

''(ii) in subsection (c) of section 111 and section 132; and

''(B) the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)) if the Commission determines that the exemption would be consistent with the public interest.''.

(e) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) in item (cc)—

(i) in subitem (AA), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(ii) in subitem (BB), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(B) in item (dd), by striking ''section 1a(12)(A)(ii)'' and inserting ''section 1a(18)(A)(ii)''.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking ''section 1a(6)'' and inserting ''section 1a''.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking ''section 1a(9)'' and inserting ''section 1a''.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)''; and

(B) in subclause (II), by striking ''section 1a(12)'' and inserting ''section 1a(18)''.

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in section 402—

(i) in subsection (a)(7), by striking ''section 1a(20)'' and inserting ''section 1a'';

(ii) in subsection (b)(2), by striking ''section 1a(12)'' and inserting ''section 1a'';

(iii) in subsection (c), by striking ''section 1a(4)'' and inserting ''section 1a''; and

(iv) in subsection (d)—

(I) in the matter preceding paragraph (1), by striking ''section 1a(4)'' and inserting ''section 1a(9)'';

(II) in paragraph (1)—

(aa) in subparagraph (A), by striking ''section 1a(12)'' and inserting ''section 1a''; and

(bb) in subparagraph (B), by striking ''section 1a(33)'' and inserting ''section 1a'';

(III) in paragraph (2)—

(aa) in subparagraph (A), by striking ''section 1a(10)'' and inserting ''section 1a'';

(bb) in subparagraph (B), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)'';

(cc) in subparagraph (C), by striking ''section 1a(12)'' and inserting ''section 1a(18)''; and

(dd) in subparagraph (D), by striking ''section 1a(13)'' and inserting ''section 1a''; and

(B) in section 404(1), by striking ''section 1a(4)'' and inserting ''section 1a''.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting ''the Wall Street Transparency and Accountability Act of 2010 (including an amendment made by that Act) and'' after ''otherwise provided in'';

(2) by striking ''(c) through (i) of this section'' and inserting ''(c) and (f)'';

(3) by striking ''contracts of sale'' and inserting ''swaps or contracts of sale''; and

(4) by striking ''or derivatives transaction execution facility registered pursuant to section 5 or 5a'' and inserting ''pursuant to section 5''.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

''(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

''(1) shall not be considered to be insurance; and

''(2) may not be regulated as an insurance contract under the law of any State.''.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a swap; or''.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

''(i) APPLICABILITY.—The provisions of this Act relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

''(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

''(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Wall Street Transparency and Accountability Act of 2010.''.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subparagraphs (A), (B), (C), and (D) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(c)(2)(A)(ii), 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.

''(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.''.

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

''(h) CLEARING REQUIREMENT.—

''(1) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

''(A) prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization; and

''(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5b.

''(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or group, category, type, or class of swap is required to be cleared.

''(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

''(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

''(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

''(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

''(iv) The ability to value the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

''(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

''(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

''(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

''(C) SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(i) shall review each swap, or any group, category, type, or class of swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

''(ii) except as provided in paragraph (3), may require, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, that a particular swap, group, category, type, or class of swap must be cleared; and

''(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii).

''(D) EFFECT.—

''(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swaps.

''(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, or impair the financial integrity of the derivatives clearing organization.

''(iii) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of subparagraph (C), if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

''(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

''(i) the extent to which the terms of the swap, group, category, type, or class of swap are similar to the terms of other swaps, groups, categories, types, or classes of swap that are required to be cleared by swap participants under subparagraph (C); and

''(ii) whether there is an economic purpose for any differences in the terms of the swap or group, category, type, or class of swap that are required to be cleared by swap participants under subparagraph (C).

''(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a swap, group, category, type, or class of swap.

''(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require clearing of a particular swap, group, category, type, or class of swap or to use its authority under subparagraph (F) to rescind a requirement for swap participants to clear a particular swap, group, category, type, or class of swap.

''(H) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after considering whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.

''(3) END USER CLEARING EXEMPTION.—

''(A) DEFINITIONS.—In this paragraph:

''(i) COMMERCIAL END USER.—The term 'commercial end user' means any person who, as its primary business activity owns, operates, uses, produces, processes, develops, leases, manufacturers, distributes, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, biofuels, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

''(ii) FINANCIAL ENTITY END USER.—

''(I) IN GENERAL.—The term 'financial entity end user' means any person predominately engaged in activities that are financial in nature, as determined by the Commission.

''(II) EXCLUSIONS.—The term 'financial entity end user' does not include—

''(aa) any person who is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant;

''(bb) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 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)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets;

''(cc) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20));

''(dd) a commodity pool; or

''(ee) a commercial end user.

''(B) END USER CLEARING EXEMPTION.—

''(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

''(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

''(bb) may elect, prior to entering into the swap transaction, to require clearing of the swap; and

''(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

''(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating risk and balance sheet risk.

''(C) TREATMENT OF AFFILIATES.—

''(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominantly engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user) or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge or mitigate the commercial risk, including operating risk and balance sheet risk, of the commercial end user or the financial entity end user or other affiliate of the commercial end user or financial entity end user.

''(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

''(I) a swap dealer;

''(II) a security-based swap dealer;

''(III) a major swap participant;

''(IV) a major security-based swap participant;

''(V) 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)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets; or

''(VI) a commodity pool.

''(D) ABUSE OF EXEMPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).

''(4) REQUIRED REPORTING.—Each swap that is not cleared by any derivatives clearing organization shall be reported either to a registered swap repository described in section 21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

''(5) TRANSITION RULES.—

''(A) REPORTING TRANSITION RULES.—The Commission shall provide for the reporting of data, as follows:

''(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.

''(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than such time period as the Commission prescribe.

''(B) CLEARING TRANSITION RULES.—Swaps entered into before the effective date of any requirement under paragraph (2)(C) are exempt from the clearing requirements of this subsection.

''(6) REPORTING OBLIGATIONS.—

''(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (4) and (5).

''(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (4) and (5).

''(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (4) and (5).

''(7) TRADE EXECUTION.—

''(A) IN GENERAL.—With respect to transactions involving swaps subject to the clearing requirement established under paragraph (2), counterparties shall—

''(i) execute the transaction on a board of trade designated as a contract market under section 5; or

''(ii) execute the transaction on a swap execution facility registered under section 5h or a swap execution facility that is exempt from registration under section 5h(f).

''(B) EXCEPTION.—The requirements of clauses (i) and (ii) of subparagraph (A) shall not apply if no board of trade or swap execution facility makes the swap available to trade or in the case of a swap transaction for which a commercial end or financial entity user opts to use the clearing exemption under paragraph (3).

''(8) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of this subsection and any rules issued under this subsection, if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) will accept the swap from clearing.''.

SA 4062. Mr. WARNER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1204, line 25, strike ''or'' and all that follows through page 1205, line 4 and insert the following:

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media;

(iii) information products or services for identity authentication, fraud, or identity theft detection, prevention, or investigation, or anti-money laundering activities, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.); or

(iv) public records information or document retrieval or delivery services, unless such products or services are regulated under the Bank Service Company Act (12 U.S.C. 1861 et seq.).

NOTICE OF HEARING

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SCHUMER. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Wednesday, May 19, 2010, at 10 a.m., to hear testimony on hearing entitled ''Examining the Filibuster: The Filibuster Today and Its Consequences.''

For further information regarding this meeting, please contact Lynden Armstrong at the Rules and Administration Committee on 202–224–6352.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on May 17, 2010, at 2:30 p.m. to conduct a hearing entitled ''Gulf Coast Catastrophe: Assessing the Nation's Response to the Deepwater Horizon Oil Spill.''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate May 17, 2010, at 5:30 p.m.

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

RECOGNIZING NATIONAL FOSTER CARE MONTH CHALLENGES

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 533, submitted early today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 533) recognizing National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system and encouraging Congress to implement policy to improve the lives of children in the foster care system.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. 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 that any statements related to the resolution be printed in the RECORD.

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

The resolution (S. Res. 533) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 533

Whereas all children deserve a safe, loving, and permanent home;

Whereas approximately 500,000 children in the United States live in foster care each year;

Whereas children enter the foster care system for a variety of reasons, including inadequate care, abuse, or neglect by a parent or guardian;

Whereas the major factors that contribute to the placement of a child in the foster care system include substance abuse, mental illness, poverty, and a lack of education of a parent or guardian of the child;

Whereas a child entering the foster care system must confront the widespread misperception that children in foster care are disruptive, unruly, and dangerous, even though placement in the foster care system is based on the actions of a parent or guardian, not the child;

Whereas States and communities should be provided with the resources to invest in preventative and reunification services and post-permanency programs to ensure that more children in the foster care system are provided safe, loving, permanent placements;

Whereas the foster care system is intended to be a temporary solution, yet children remain in the foster care system for an average of 3 years;

Whereas children of color are disproportionately represented in the foster care system and are less likely to be reunited with their biological families;

Whereas the average child in the foster care system—

(1) is 10 years old; and

(2) will be placed in 3 different homes, leading to disruptive transfers to new schools, separation from siblings, and unfamiliar surroundings;

Whereas most children ''age out'' of the foster care system at the age of 18;

Whereas the number of children who enter the foster care system each year has declined over the decade preceding the date of the

agreement to this resolution, but the number of children who ''age out'' of the foster care system without placement with a permanent family has increased substantially, rising from 20,000 children in 2002 to 29,000 children in 2008;

Whereas children who ''age out'' of the foster care system lack the security or support of a biological or adoptive family and frequently struggle to secure affordable housing, obtain health insurance, pursue higher education, and acquire adequate employment;

Whereas, of the children who have ''aged out'' of the foster care system—

(1) 25 percent have been homeless;

(2) 51 percent have been unemployed for significant stretch of time, and

(3) only 2 percent have obtained a bachelor's degree or higher;

Whereas, by age 19, approximately 50 percent of young women who have been in the foster care system have been pregnant, compared to only 20 percent of young women who have been not in the foster care system;

Whereas research reveals that children born to teen parents are exposed to serious and high risks;

Whereas National Foster Care Month is an opportunity to raise awareness about the special needs of children in the foster care system and to recognize the important role that foster parents, social workers, and advocates have in the lives of children in foster care throughout the United States;

Whereas the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351; 122 Stat. 3949) provides for new investments and services to improve the outcomes of children and families in the foster care system; and

Whereas much remains to be done to ensure that all children have a safe, loving, nurturing, and permanent family, regardless of age or special needs: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes National Foster Care Month as an opportunity to raise awareness about the challenges of children in the foster care system;

(2) encourages Congress to implement policy to improve the lives of children in the foster care system;

(3) supports the designation of a ''National Foster Care Month'';

(4) acknowledges the needs of the children in the foster care system;

(5) honors the commitment and dedication of those individuals who work tirelessly to provide assistance and services to children in the foster care system; and

(6) recognizes the need to continue working to improve the outcomes of all children in the foster care system through title IV of the Social Security Act (42 U.S.C. 601 et seq.) and other programs designed to help children in the foster care system—

(A) reunite with their biological parents; or

(B) if the children cannot be reunited with their biological parents, find permanent, safe, and loving homes.

ORDERS FOR TUESDAY, MAY 18, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Tuesday, May 18; that following the prayer and the 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, and the Senate proceed to 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 and the Republicans controlling the final half; that following morning business, the Senate resume consideration of S. 3217, Wall Street reform, as provided under the previous order; that the Senate recess from 12:30 until 2:15 p.m. for the weekly caucus luncheons; that the filing deadline for first-degree amendments be 12 noon tomorrow. Finally, I ask unanimous consent that the mandatory quorums under rule XXII be waived.

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

PROGRAM

Mr. DODD. Mr. President, under the previous order, there will be at least one rollcall vote at approximately 11:45 a.m. That will be in relation to the Gregg amendment No. 4051.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. DODD. 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 7:55 p.m., adjourned until Tuesday, May 18, 2010, at 10 a.m.

NOMINATIONS

Executive nomination received by the Senate:

DEPARTMENT OF HOMELAND SECURITY

JOHN S. PISTOLE, OF VIRGINIA, TO BE AN ASSISTANT SECRETARY OF HOMELAND SECURITY, VICE EDMUND S. HAWLEY, RESIGNED.