So what we are proposing to do here is to rectify that wrong. This amendment is in the great traditions of ADAM SMITH, pure capitalism. Some have said we ought to eliminate the fees. Some have said we ought to cap the fees. My view is to let the free market prevail. Let people see what the fee is before they enter into the transaction and then they can make a decision. That is the way it ought to work in capitalism, in free market enterprise. So that is what this amendment does.

Last year, a record $124 billion was generated in all-fee income. That is up 18 percent in 1 year from banks. The fees are going up. This amendment will not take away a penny of that, except from knowing consumers who decide not to enter into this transaction. We must do this. Awhile ago we forewent this amendment because most banks promised they were not going to impose surcharges, and to their credit for a few years they did not. But now they all do. It is time we have disclosure so when they say that they will always disclose, because some do it voluntarily, I simply say, ''trust but verify.''

This is a simple, straightforward, reasonable, balanced amendment. I hope it will pass without hesitation.

Mr. President, I yield my time. Is someone available to just accept it?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the Senator from Texas is unable to be here. He has been gone for a couple of minutes. I am aware of his willingness to accept the amendment, and there is no objection on our side. I indicate that on behalf of Senator GRAMM.

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

The amendment (No. 314) was agreed to.

Mr. SCHUMER. Mr. President, I move to reconsider the vote.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask consent I be permitted to speak for 7 minutes in morning business.

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

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI and Mr. DODD pertaining to the introduction of S. Res. 98 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Thank you, Mr. President. I thank the Chair and I thank the Senator from Texas for letting me talk about the tragic death of two great Americans.

TRIBUTE TO TWO BRAVE AMERICAN SOLDIERS

Mr. VOINOVICH. Mr. President, yesterday, our Nation suffered our first casualties in the war of Yugoslavia. An Apache helicopter crashed in the Albanian mountains on what has been called a ''routine training mission.''

Two brave American soldiers—Chief Warrant Officer Kevin L. Reichert and Chief Warrant Officer David A. Gibbs—lost their lives for our Nation. They are heroes.

Kevin Reichert, 28 years old, was born in Chippewa Falls, WI, and David Gibbs hailed from Massillon, OH, which is west of Canton and about an hour or so south of Cleveland. He was 38 years old, married and had three children.

David joined the Marine Corps right out of Washington High School back in 1980. After 4 years of service, he left the Marines, only to enlist in the Army 18 months later.

His mother, Dorothy Gibbs, said he enlisted in the Army so he could fly helicopters. She said it was ''his dream'' and ''he was so happy when he flew.'' She also said he hoped to retire in 2 years to pursue a career in airport management.

From all accounts, David had accepted the dangers of flying military aircraft. He knew there was a chance there could be a problem.

David told his mother that he was so concerned about his mission in Kosovo, and she is quoted as saying:

> He didn't feel prepared enough because he didn't know enough about the terrain.

She also said:

> He hadn't gotten the terrain map and he was concerned about that.

A couple of weeks ago, I spoke to the Senate Armed Services Committee chairman, Senator WARNER, and I expressed my concern to him about the number of Ohioans who have been killed in helicopter accidents.

To illustrate, since 1991, 32 men and women from Ohio have died serving their Nation, not counting the Persian Gulf war. Of this number, 11 died in helicopter crashes. That is 34 percent of them. Why so many deaths from helicopters? All these deaths, but for one, were in noncombat situations.

Our military operates sophisticated machinery. Our mechanics are the best trained in the world. Our pilots are trained to meet and respond to all contingencies. Again, the question is: Why so many deaths due to helicopter accidents?

Remember, this is the second such accident in 9 days involving Apache helicopters in Albania. Are we giving our pilots specific and correct intelligence so they can avoid accidents or, worse, possible enemy fire?

Mr. President, I will not go into what is right or wrong about being in Yugoslavia, but we are at war and we have to ensure that our men and women have all the necessary tools to do their job and that the equipment they use is the best and we have the finest maintenance.

In the investigation that will follow the accident, I think it is imperative—in fact it is essential—that we find out whether there was a problem with the equipment in the helicopter or, in the alternative, whether it had proper maintenance.

War is serious business. People's lives are on the line, and there can be no room for error. If faulty equipment, lack of equipment, lack of communications, or improper information led to the death of these two men, it is critical that our military take necessary steps to correct such errors.

I am heartened in the knowledge that a peaceful settlement of this war appears to be in the works. However, I am saddened that it could not have come sooner to prevent the deaths of these two brave men and the destruction of Yugoslavia.

The United States owes David and Kevin a debt of gratitude that we will never be able to repay for they have paid the ultimate sacrifice. As John says in chapter 15:13, ''Greater love has no man than this, that a man lay down his life for his friends.''

Our thoughts and our prayers go out to David's family and especially to his wife Jean and three children, Allison, Megan, and David, and also his mother Dorothy, who lost David's father just this past Christmas.

As one who has lost a child, I know the days and months ahead will be difficult as the family deals with their grief and the absence of the physical presence of their father. I pray that the words of Matthew 5:4, ''Blessed are they that mourn, for they shall be comforted,'' apply to their family.

Thank you, Mr. President.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from South Dakota, Mr. JOHNSON, has 3 minutes.

AMENDMENT NO. 309, AS MODIFIED

Mr. JOHNSON. Mr. President, I have a modification of my amendment at the desk and I ask unanimous consent that it be so modified.

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

The amendment, as modified, is as follows:

On page 149, strike line 12 and all that follows through page 150, line 21 and insert the following:

SEC. 601. PREVENTION OF CREATION OF NEW S&L HOLDING COMPANIES WITH COMMERCIAL AFFILIATES.

(a) IN GENERAL.—Section 10(c) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)) is amended by adding at the end the following new paragraph:

''(9) PREVENTION OF NEW AFFILIATIONS BETWEEN S&L HOLDING COMPANIES AND COMMERCIAL FIRMS.—

''(A) IN GENERAL.—Notwithstanding paragraph (3), no company may directly or indirectly, including through any merger, consolidation, or other type of business combination, acquire control of a savings association after May 4, 1999, unless the company is engaged, directly or indirectly (including through a subsidiary other than a savings association), only in activities that are permitted—

''(i) under paragraph (1)(C) or (2) of this subsection; or

''(ii) for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956.

''(B) PREVENTION OF NEW COMMERCIAL AFFILIATIONS.—Notwithstanding paragraph (3), no savings and loan holding company may engage directly or indirectly (including through a subsidiary other than a savings association) in any activity other than as described in clauses (i) and (ii) of subparagraph (A).

''(C) PRESERVATION OF AUTHORITY OF EXISTING UNITARY S&L HOLDING COMPANIES.—Subparagraphs (A) and (B) do not apply with respect to any company that was a savings and loan holding company on May 4, 1999, or that becomes a savings and loan holding company pursuant to an application pending before the Office on or before that date, and that—

''(i) meets and continues to meet the requirements of paragraph (3); and

''(ii) continues to control not fewer than 1 savings association that it controlled on May 4, 1999, or that it acquired pursuant to an application pending before the Office on or before that date, or the successor to such savings association.

''(D) CORPORATE REORGANIZATIONS PERMITTED.—This paragraph does not prevent a transaction that—

''(i) involves solely a company under common control with a savings and loan holding company from acquiring, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company; or

''(ii) involves solely a merger, consolidation, or other type of business combination as a result of which a company under common control with the savings and loan holding company acquires, directly or indirectly, control of the savings and loan holding company or any savings association that is already a subsidiary of the savings and loan holding company.

''(E) AUTHORITY TO PREVENT EVASIONS.—The Director may issue interpretations, regulations, or orders that the Director determines necessary to administer and carry out the purpose and prevent evasions of this paragraph, including a determination that, notwithstanding the form of a transaction, the transaction would in substance result in a company acquiring control of a savings association.

''(F) PRESERVATION OF AUTHORITY FOR FAMILY TRUSTS.—Subparagraphs (A) and (B) do not apply with respect to any trust that becomes a savings and loan holding company with respect to a savings association, if—

''(i) not less than 85 percent of the beneficial ownership interests in the trust are continuously owned, directly or indirectly, by or for the benefit of members of the same family, or their spouses, who are lineal descendants of common ancestors who controlled, directly or indirectly, such savings association on May 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999; and

''(ii) at the time at which such trust becomes a savings and loan holding company, such ancestors or lineal descendants, or spouses of such descendants, have directly or indirectly controlled the savings association continuously since March 4, 1999, or a subsequent date, pursuant to an application pending before the Office on or before May 4, 1999.''.

(b) CONFORMING AMENDMENT.—Section 10(o)(5)(E) of the Home Owners' Loan Act (15 U.S.C. 1467a(o)(5)(E)) is amended by striking '', except subparagraph (B)'' and inserting ''or (c)(9)(A)(ii)''.

Mr. JOHNSON. Mr. President, financial modernization should go forward but without mixing financial services and commerce. Preserving the unitary thrift loophole should not be allowed. Who believes this should be closed? Chairman LEACH, Chairman of the House Banking Committee, Fed Chairman Greenspan, and former Fed Chairman Volcker, Treasury Secretary Rubin, and banking and consumer organizations. There is bipartisan and, frankly, overwhelming support for loophole closure. I think there is a sense we do not want to go down the road of financial services and commerce mixing at this particular juncture. Allowing financial modernization to go forward should occur, but allowing unitary thrifts to merge with other financial institutions is the road to go rather than allowing merger with commerce at large.

I think we need to heed the urgent warnings of our Nation's leading economic minds. We appreciate that this issue is arcane in the minds of many in this body, no doubt. But when we have the support for closure of this loophole coming from the chairman of the House Banking Committee, Mr. Greenspan, Mr. Rubin, and Mr. Volcker, I think that ought to be compelling support for taking this step to make sure, in fact, we get a financial modernization bill out of this body that will, in fact, be signed by the President and will serve this country in good stead.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I yield my 3 minutes to Senator GORTON.

Mr. GORTON. Mr. President, financial modernization should be about expanding chartering options and choices for consumers, not about stripping away the fundamental characteristics of consumer-oriented institutions. It is a paradox that the banks that are here seeking more powers wish to restrict the powers of their competitors in the same bill and are using this amendment to do so.

Proponents of this amendment contend that the unitary thrift charter is a ''loophole'' that allows for the mixing of banking and commerce. Those concerns are both misplaced and impossible under the very conditions of charter.

Federal law now expressly prohibits a unitarian thrift from lending to a commercial affiliate. By law, a thrift must focus on providing mortgage, consumer, and small business credit, and its commercial lending is severely restricted.

The thrift charter is unique. Martin Mayer, who is a guest scholar at the Brookings Institution and a foe of mixing banking and commerce, supports the commercial ownership of thrifts because of their unique lending focus on consumers and small businesses. In the more than 3 decades that unitary thrift charters have existed, there is a total absence of any evidence that unitary thrifts' commercial affiliations have either led to a concentration of economic power or posed a risk to the consumer or the taxpayer. To the contrary, the FDIC has testified that limits such as those proposed in this amendment would restrict ''a vehicle that has enhanced financial modernization without causing significant safety-and-soundness problems.''

The issue under debate is not the creation of a banking-commerce Frankenstein. It is, rather, about the proper treatment of longstanding institutions focused on serving local communities. Congress should not limit the authorities of existing consumer-oriented companies without a compelling reason. To do so would be anticompetitive and anticonsumer.

I am adamantly opposed to any initiative that eviscerates the unitary thrift charter and urge Senators to oppose the Johnson amendment as a serious step backwards in our efforts to modernize our Nation's financial services laws.

I yield back the remainder of my time, and I move to table the Johnson amendment.

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table amendment No. 309. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

The result was announced—yeas 32, nays 67, as follows:

[Rollcall Vote No. 103 Leg.]

YEAS—32

Akaka	Enzi	McConnell
Allard	Gorton	Murray
Bennett	Gramm	Nickles
Breaux	Hagel	Reed
Bunning	Inouye	Robb
Campbell	Kyl	Roth
Chafee	Lieberman	Smith (NH)
Cochran	Lott	Smith (OR)
Coverdell	Lugar	Stevens
Dodd	Mack	Warner
Domenici	McCain	

NAYS—67

Abraham	Daschle	Hutchison
Ashcroft	DeWine	Inhofe
Baucus	Dorgan	Jeffords
Bayh	Durbin	Johnson
Biden	Edwards	Kennedy
Bingaman	Feingold	Kerrey
Bond	Feinstein	Kerry
Boxer	Frist	Kohl
Brownback	Graham	Landrieu
Bryan	Grams	Lautenberg
Burns	Grassley	Leahy
Byrd	Gregg	Levin
Cleland	Harkin	Lincoln
Collins	Hatch	Mikulski
Conrad	Helms	Moynihan
Craig	Hollings	Murkowski
Crapo	Hutchinson	Reid

Roberts	Shelby	Torricelli
Rockefeller	Snowe	Voinovich
Santorum	Specter	Wellstone
Sarbanes	Thomas	Wyden
Schumer	Thompson	
Sessions	Thurmond	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. GRAMM. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAMM. Mr. President, I ask unanimous consent to vitiate the order for the yeas and nays.

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

The question is on agreeing to the amendment.

The amendment (No. 309), as modified, was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. SHELBY. 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. 315

Mr. SHELBY. Mr. President, I send an amendment to the desk on behalf of myself, Senator DASCHLE, Senator GRAMS, Senator REED, Senator BENNETT, Senator EDWARDS, Senator HAGEL, and Senator LANDRIEU.

The PRESIDING OFFICER (Mr. HUTCHINSON). The clerk will report.

The legislative assistant read as follows:

The Senator from Alabama (Mr. SHELBY), for himself, Mr. DASCHLE, Mr. GRAMS, Mr. REED, Mr. BENNETT, Mr. EDWARDS, Mr. HAGEL, and Ms. LANDRIEU, proposes an amendment numbered 315.

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

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

The amendment is as follows:

Redesignate sections 123, 124, and 125 as sections 125, 126, and 127 respectively, strike section 122, and insert the following:

SEC. 122. SUBSIDIARIES OF NATIONAL BANKS AUTHORIZED TO ENGAGE IN FINANCIAL ACTIVITIES.

Chapter one of title LXII of the revised statutes of United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A (12 U.S.C. 25a) as section 5136B; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

''SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.

''(a) ACTIVITIES PERMISSIBLE.—

''(1) IN GENERAL.—A subsidiary of a national bank may—

''(A) engage in any activity that is permissible for the parent national bank;

''(B) engage in any activity authorized under section 25 or 25A of the Federal Reserve Act, the Bank Service Company Act, or any other Federal statute that expressly by its terms authorizes national banks to own or control subsidiaries (other than this section); and

''(C) engage in any activity permissible for a bank holding company under any provision of section 4(k) of the Bank Holding Company Act of 1956 other than—

''(i) paragraph (4)(B) of such section (relating to insurance activities) insofar as such paragraph permits a bank holding company to engage as principal in insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or to engage as principal in providing or issuing annuities; and

''(ii) paragraph (4)(I) of such section (relating to insurance company investments).

''(2) LIMITATIONS.—A subsidiary of a national bank—

''(A) may not, pursuant to subparagraph (C) of paragraph (1)—

''(i) underwrite insurance other than credit-related insurance;

''(ii) engage in real estate investment or development activities (except to the extent that a Federal statute expressly authorizes a national bank to engage directly in such an activity); and

''(B) may not engage in any activity not permissible under paragraph (1).

''(b) REQUIREMENTS APPLICABLE TO NATIONAL BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) IN GENERAL.—A financial subsidiary of a national bank may engage in activities pursuant to subsection (a)(1)(C) only if—

''(A) the national bank meets the requirements, as determined by the Comptroller of the Currency, of Section (4)(l)(1) of the Bank Holding Company Act of 1956 (other than subparagraph (C));

''(B) each insured depository institution affiliate of the national bank meet the requirements, as determined by the Comptroller of the Currency, of Section (4)(l)(1) of the Bank Holding Company Act of 1956 (other than subparagraph (C)); and

''(C) the national bank has received the approval of the Comptroller of the Currency by regulation or order.

''(2) CORRECTIVE PROCEDURES.—

''(A) IN GENERAL.—The Comptroller of the Currency shall, by regulation prescribe procedures to enforce paragraph (1).

''(B) STRINGENCY.—The regulation prescribed under subparagraph (A) shall be no less stringent than the corresponding restrictions and requirements of section 4(m) of the Bank Holding Company Act of 1956.

''(c) DEFINITIONS.—For purpose of this section, the following definitions shall apply;

''(1) AFFILIATE.—The term 'affiliate' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(2) FINANCIAL SUBSIDIARY.—The term 'financial subsidiary' means a company that—

''(A) is a subsidiary of an insured bank; and

''(B) is engaged as principal in any financial activity that is not permissible under subparagraph (A) or (B) of subsection (a)(1) of this section.

''(3) SUBSIDIARY.—The term 'subsidiary' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

''(4) WELL CAPITALIZED.—The term 'well capitalized' has the same meaning as in section 38 of the Federal Deposit Insurance Act.

''(5) WELL MANAGED.—The term 'well managed' means—

''(A) in the case of an insured depository institution that has been examined, the achievement of—

''(i) a composite rating of 1 or 2 under the Uniform Financial Instutitions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the insured depository institution; and

''(ii) at least a rating of 2 for management, if that rating is given; or

''(B) in the case of an insured depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.''.

SEC. 123. SAFETY AND SOUNDNESS FIREWALLS BETWEEN BANKS AND THEIR FINANCIAL SUBSIDIARIES.

(a) PURPOSES.—The purposes of this section are—

(1) to protect the safety and soundness of any insured bank that has a financial subsidiary;

(2) to apply to any transaction between the bank and the financial subsidiary (including a loan, extension of credit, guarantee, or purchase of assets), other than an equity investment, the same restrictions and requirements as would apply if the financial subsidiary were a subsidiary of a bank holding company having control of the bank; and

(3) to apply to any equity investment of the bank in the financial subsidiary restrictions and requirements equivalent to those that would apply if—

(A) the bank paid a dividend in the same dollar amount to a bank holding company having control of the bank; and

(B) the bank holding company used the proceeds of the dividend to make an equity investment in a subsidiary that was engaged in the same activities a the financial subsidiary of the bank.

(b) SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

''SEC. 45. SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO SUBSIDIARIES OF BANKS.

''(a) LIMITING THE EQUITY INVESTMENT OF A BANK IN A SUBSIDIARY.—

''(1) CAPITAL DEDUCTION.—In determining whether an insured bank complies with applicable regulatory capital standards—

''(A) the appropriate Federal banking agency shall deduct from the assets and tangible equity of the bank the aggregate amount of the outstanding equity investments of the bank in financial subsidiaries of the bank; and

''(B) the assets and liabilities of such financial subsidiaries shall not be consolidated with those of the bank.

''(2) INVESTMENT LIMITATION.—An insured bank shall not, without the prior approval of the appropriate Federal banking agency, make any equity investment in a financial subsidiary of the bank if that investment would, when made, exceed the amount that the bank could pay as a dividend without obtaining prior regulatory approval.

''(b) OPERATIONAL AND FINANCIAL SAFEGUARDS FOR THE BANK.—An insured bank that has a financial subsidiary shall maintain procedures for identifying and managing any financial and operational risks posed by the financial subsidiary.

''(c) MAINTENANCE OF SEPARATE CORPORATE IDENTITY AND SEPARATE LEGAL STATUS.—

''(1) IN GENERAL.—Each insured bank shall ensure that the bank maintains and complies with reasonable policies and procedures to preserve the separate corporate identity and legal status of the bank and any financial subsidiary or affiliate of the bank.

''(2) EXAMINATIONS.—The appropriate Federal banking agency, as part of each examination, shall review whether an insured

bank is observing the separate corporate identity and separate legal status of any subsidiaries and affiliates of the bank.

''(d) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section, the term 'financial subsidiary' has the same meaning as section 5136A(c)(2) of the Revised Statutes of the United States.

''(e) REGULATIONS.—The appropriate Federal banking agencies shall jointly prescribe regulations implementing this section.''.

(c) LIMITING A BANK'S CREDIT EXPOSURE TO A FINANCIAL SUBSIDIARY TO THE AMOUNT OF PERMISSIBLE CREDIT EXPOSURE TO AN AFFILIATE.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d), the following new subsection:

''(e) RULES RELATING TO BANKS WITH FINANCIAL SUBSIDIARIES.—

''(1) FINANCIAL SUBSIDIARY DEFINED.—For purposes of this section and section 23B, the term 'financial subsidiary' has the same meaning as section 5136A(c)(2) of the revised statutes of the United States.

''(2) APPLICATION TO TRANSACTIONS BETWEEN A FINANCIAL SUBSIDIARY OF A BANK AND THE BANK.—For purposes of applying this section and section 23B to a transaction between a financial subsidiary of a bank and the bank (or between such financial subsidiary and any other subsidiary of the bank that is not a financial subsidiary), and notwithstanding subsection (b)(2) and section 23B(d)(1)—

''(A) the financial subsidiary of the bank—

''(i) shall be deemed to be an affiliate of the bank and of any other subsidiary of the bank that is not a financial subsidiary; and

''(ii) shall not be deemed a subsidiary of the bank; and

''(B) a purchase of or investment in equity securities issued by the financial subsidiary shall not be deemed to be a covered transaction,

''(3) APPLICATION TO TRANSACTIONS BETWEEN FINANCIAL SUBSIDIARY AND NONBANK AFFILIATES.—

''(A) IN GENERAL.—A transaction between a financial subsidiary and an affiliate of the financial subsidiary (that is not a subsidiary of a bank) shall not be deemed to be a transaction between a subsidiary of a bank and an affiliate of the bank for purposes of section 23A or section 23B of this Act.

''(B) CERTAIN AFFILIATES EXCLUDED.—For purposes of this paragraph, the term 'affiliate' shall not include a bank, or a subsidiary of a bank that is engaged exclusively in activities permissible for a national bank to engage in directly or authorized for a subsidiary of a national bank under any federal statute other than section 5136A of the Revised Statutes of the United States.''.

SEC. 124. FUNCTIONAL REGULATION.

(a) PURPOSE.—The purpose of this section is to ensure that—

(1) securities activities conducted in a subsidiary of a bank are functionally regulated by the Securities and Exchange Commission to the same extent as if they were conducted in a nondepository subsidiary of a bank holding company; and

(2) insurance agency and brokerage activities conducted in a subsidiary of a bank are functionally regulated by a State insurance authority to the same extent as if they were conducted in a nondepository subsidiary of a bank holding company.

(b) FUNCTIONAL REGULATION OF FINANCIAL SUBSIDIARIES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), is amended by inserting after section 45 (as added by section 123 of this subtitle) the following new section:

''SEC. 46. FUNCTIONAL REGULATION OF SECURITIES SUBSIDIARIES AND INSURANCE AGENCY SUBSIDIARIES OF INSURED DEPOSITORY INSTITUTIONS.

''(a) BROKER OR DEALER SUBSIDIARY.—A broker or dealer that is a subsidiary of an insured depository institution shall be subject to regulation under the Securities Exchange Act of 1934 in the same manner and to the same extent as a broker or dealer that—

''(1) is controlled by the same bank holding company as controls the insured depository institution; and

''(2) is not an insured depository institution or a subsidiary of an insured depository institution.

''(b) INSURANCE AGENCY SUBSIDIARY.—Subject to Section 104 of the Act, an insurance agency or brokerage that is a subsidiary of an insured depository institution shall be subject to regulation by a State insurance authority in the same manner and to the same extent as an insurance agency or brokerage that—

''(1) is controlled by the same bank holding company as controls the insured depository institution; and

''(2) is not an insured depository institution or a subsidiary of an insured depository institution.

''(c) DEFINITIONS.—For purposes of this section, the terms 'broker' and 'dealer' have the same meanings as in section 3 of the Securities Exchange Act of 1934.''.

Mr. SHELBY. Mr. President, I rise today to offer this amendment, entitled the American Bank Fairness Amendment, to S. 900, the pending bill.

This amendment, which, as I have said, is cosponsored by Senator DASCHLE, the minority leader, and Senators GRAMS, REED, BENNETT, EDWARDS, HAGEL, and LANDRIEU, would permit national banks to conduct equity securities underwriting and merchant banking activities in an operating subsidiary, much as their foreign bank competitors that are allowed to conduct such activities in the United States today. I note that six of the seven sponsors of this amendment are members of the Banking Committee.

We are talking this afternoon about defining a fair and an efficient framework to allow all—yes, all—financial institutions to better provide service to their customers in America. This country needs financial modernization. I support national modernization.

I have great respect for the chairman, the Senator from Texas, Mr. GRAMM, and I supported the chairman in the committee. He helped to get this bill to the floor.

Unfortunately, this bill does more for the institutions in the top world financial centers—New York, Hong Kong, London—than it does for the average bank that serves the average person in America. That is the issue at hand.

I know many of my colleagues have made up their mind on this issue. Besides, in all honesty, the chairman of the Federal Reserve, Alan Greenspan, may not even be the Chairman of the Federal Reserve after next year, although I wish that he would continue. It is often reported in the press that Laura Tyson, Alice Rivlin, or even Catherine Bessant will be the next person President Clinton nominates to the Federal Reserve Board. Therefore, I do not believe it is fair for the issues of this debate to revolve around any one individual, although it is an individual I hold in great respect.

The truth is, we are here today to write the laws that will determine the future of the American financial system for the next 60 years. We are talking about the issues of banking law, corporate law, industrial organization.

Senators GRAMS, REED, and BENNETT have been the lead proponents of the operating subsidiary for several years and they should be commended for their deep understanding of the issue and the banking expertise they bring to the Senate Banking Committee.

Let me say from the very beginning, this debate is not about Chairman Alan Greenspan. It should never be. As I said, I have a deep respect for Chairman Greenspan. I hold him in very high regard. He is a tremendous central banker. I am not here to dispute that in any way.

The operating subsidiary amendment is not about monetary policy. Let me repeat, the operating subsidiary amendment is not about monetary policy. It is not about inflation, the money supply, or even the unemployment rate. I plead with Senators to listen to the facts. The key banking committee Senators supporting this amendment are not from big cities. They are not doing this for Citigroup or Merrill Lynch, Dean Witter, or Chase Manhattan Bank. The truth is, the large financial institutions want a bill so badly, they have forced their associations to oppose this amendment based on press reports that this bill will be pulled if it passes. We all know it is the multibillion-dollar financial institutions that control the associations, and they are the ones pushing this bill.

I just do not believe that, in passing a financial modernization bill, we should forget about the smaller, midsized, and regional banks that serve our local communities and our States. Those banks—the smaller, midsized, and regional banks—are the ones that are not being heard on this issue. They are being shut out and they have been discounted.

I am sorry, but I do not believe financial modernization should be only for the folks on Wall Street. I do not understand why this body would knowingly pass a financial modernization bill that would intentionally discriminate against domestic banks in favor of foreign banks.

If you want to talk about competition, free markets, and fair and equal treatment under the law, Senators should seriously consider the amendment that is before the Senate. The Shelby-Daschle and others amendment would provide more fair and equitable treatment of our national banks in comparison with our foreign competitors.

The American Bank Fairness Amendment, as we called it, would ensure

that foreign banks receive no competitive advantage over our banks here in America.

S. 900, at the moment, as it is written, discriminates against domestic banks. Ask yourself, Why are we even here in the first place? Why are we even considering financial modernization, if it is to be globally competitive? Is it to ensure that our banks can compete on an international scale?

I received a letter from John Reed and Sanford Weill, cochairmen of Citigroup, this morning. They wrote to inform me that passage of financial modernization is imperative.

They said,

> As our financial services firms contort to comply with the current legal and regulatory structure, we become much less competitive with our non-U.S. counterparts. Our country's competitive position as the world's leader in financial services is at risk of being lost if we don't act now.

So, according to our friends at Citigroup, it appears we have become less competitive with our foreign competitors, and that our position as a world leader is at risk.

I received a similar letter from Phil Purcell, chairman of Morgan Stanley Dean Witter & Co. He said that Congress needs to pass this bill because:

> Financial modernization legislation is critical to the maintenance of the preeminence of American financial firms in global markets.

American preeminence, Mr. President? Is that the reason we are considering this legislation? If these are, indeed, the reasons, I must confess I am really confused. The reason for my confusion is S. 900, the bill we are debating today actually discriminates against domestic banks in favor of foreign banks. Simply put, national banks are not allowed to conduct merchant banking activities or equity underwriting activities in an operating subsidiary. Foreign banks, however, can conduct those activities today, and will actually expand their range of activities to include insurance underwriting, if this bill becomes law.

I actually have some charts to share with you to help demonstrate the blatant discriminatory treatment of our own national banks versus those of foreign banks' operating subsidiaries in America. Under current law, national bank subsidiaries are not permitted to conduct merchant banking activities. Merchant banking basically means that banks are permitted to make investments in a company subject to conditions designed to maintain the separation between banking and commerce. Foreign subsidiaries operating today in America can, however. Under current law, national bank subsidiaries are not permitted to underwrite any deal in equity securities. However, foreign bank subsidiaries can.

The last row under the ''current law'' is blank. That is, neither foreign bank subsidiaries nor national bank subsidiaries may underwrite noncredit-related insurance.

Let's look at a chart of permitted subsidiary activities that I have here if this financial modernization bill were enacted into law. Please notice that under the first column, here, national bank subsidiaries still will not enjoy the ability to conduct merchant banking activities or conduct equity securities underwriting. Foreign bank subsidiaries will not only be allowed to conduct those activities—merchant banking, underwriting and dealing in equity securities and insurance underwriting, as shown on the chart—but S. 900, as currently written, will actually expand their permissible activities to include noncredit-related insurance underwriting. This completely undermines the whole rationale for the bill.

That is the major flaw with this bill. How can the supporters of this bill say this will help our national banks compete when they are clearly put at a disadvantage by their own Federal Government? How can we in good conscience support a bill that discriminates against our own national banks?

Senator GRAMM and Chairman Greenspan say if national banks are allowed to conduct such activities in an operating subsidiary, these banks would have a funding advantage over their competitors because of an alleged ''subsidy.''

However, neither Senator GRAMM nor Chairman Greenspan can reconcile this argument with the competitive advantage of foreign bank subsidiaries. Since 1990, the Federal Reserve Board has issued approvals for 18 foreign banks to own subsidiaries that engage in securities underwriting activities in the United States. In fact, the size of these subsidiaries exceeds $450 billion in assets. The Federal Reserve admits that foreign banks may enjoy a ''home country'' subsidy. In approving the section 20 subsidiary application for the Canadian Imperial Bank of Commerce in 1990, the Federal Reserve noted:

> Although as banks, applicants [that is foreign banks] are not supported to any significant extent by the U.S. federal safety net, they have access to any benefits that are associated with their respective home country safety nets, from which they may derive some competitive advantage over U.S. bank holding companies operating under the section 20 framework or other U.S. securities firms.

Not only does the board basically admit there may be home country advantages, they also admit:

> . . . a foreign bank may establish and fund a section 20 subsidiary, while a U.S. bank may not.

Further, in their 1992 joint report on foreign bank operations entitled ''Subsidiary Requirements Study,'' the Federal Reserve Board and the Department of Treasury agreed that, ''. . . subject to prudential considerations, the guiding policy for foreign bank operations should be the principle of investor choice. The right of a foreign bank to determine whether to establish a branch or a subsidiary is consistent with competitive equity, national treatment and equality of competitive opportunity.''

Why is investor choice the guiding principle for foreign banks but not for our domestic banks? Why do foreign banks have the right to choose their own corporate structure but domestic banks do not?

The Federal Reserve Board stated that while a subsidy for foreign banks may exist:

> [T]he Board believes that any advantage would not be significant in light of the effect on them of the overall section 20 framework and the circumstances of these cases, and should not preclude foreign bank ownership of section 20 subsidiaries.

Basically, that means the rules and the regulations that apply to foreign section 20 subsidiaries should contain any possible subsidy.

Why do the rules and regulations in place contain any possible subsidy for foreign banks but not domestic banks, our banks? Why should any alleged subsidy preclude operating subsidiaries for U.S. banks but not for foreign subsidiaries? Fundamental fairness would suggest that foreign banks not be allowed to have a competitive advantage over domestic banks. It just makes no sense. Fundamental fairness suggests domestic banks should also have the choice of an operating subsidiary that our foreign banks have.

Critics of the operating subsidiary have voiced concerns about safety and soundness. But this is a red herring, I believe, and really no issue at all. Even Chairman Greenspan testified that safety and soundness is really not the issue with regard to operating subsidiaries, when asked by Congressman Bentsen in the House. I will quote the chairman:

> My concerns are not about safety and soundness. It is the issue of creating subsidies for individual institutions which their competitors do not have. It is a level playing field issue. Non-bank holding companies or other institutions do not have access to that subsidy, and it creates an unlevel playing field. It is not a safety and soundness issue.

The amendment before us, the operating subsidiary proposal, includes the same safety and soundness protections and lending restrictions as the Federal Reserve imposes on section 20 subsidiaries. But to further address any safety and soundness concerns, the amendment would also require that the parent bank deduct—yes, deduct—its entire equity investment in the subsidiary from its own capital and still remain well capitalized.

Furthermore, under the operating subsidiary, any alleged ''subsidy'' transferred to the subsidiary would be identical to that transferred to an affiliate because investments in the subsidiary would be limited to that which the bank could transfer to holding company affiliates in the form of dividends.

Lastly, the current Chairman of the Federal Deposit Insurance Corporation and three former chairmen—two Democrats, two Republicans—have stated that the operating subsidiary is more safe and more sound than the affiliate structure.

The FDIC chairmen argue that forcing activities in an affiliate actually exposes insured banks to greater risks than that of an operating subsidiary.

I want to respond to a letter Chairman Alan Greenspan wrote to Chairman GRAMM on May 4 in response to my ''Dear Colleague'' dated May 3. I believe this is a great letter in support of the operating subsidiary. In Chairman Greenspan's effort to explain why foreign bank subsidiaries do not have a competitive advantage and are justified, he actually makes the case for an operating subsidiary and confirms everything proponents have been saying all along.

In paragraph 2, Chairman Greenspan says that the International Banking Act requires foreign banks be allowed to operate in this country through operating subsidiaries. His major point is that it is not his choice, but that the law makes him do it, and this is due to the national treatment principles to which he refers in paragraph 3.

I understand the national treatment principles. However, those principles are not and should not be interpreted to mean that foreign banks be given advantages over U.S. banks.

In both the International Banking Act and the Bank Holding Company Act, the Federal Reserve Board is mandated to deny an application by a foreign bank to establish a U.S.-subsidiary if the Board finds that the proposal will result in ''decreased or unfair competition, conflicts or interests, or unsound banking practices.''

This is a very important point, I submit to my colleagues. By law, the Federal Reserve must have determined that foreign bank subsidiaries conducting securities underwriting and equity underwriting does not result in unsound banking practices.

Otherwise, the Federal Reserve would be in violation of the International Banking Act and the Bank Holding Company Act. That very fact supports our argument that conducting such activities in an operating subsidiary is both safe and sound.

In the third paragraph, Chairman Greenspan says:

> In the absence of any evidence that foreign banks are using their government subsidy to an unfair competitive advantage in the United States, there does not seem to be any compelling reason to abandon the current approach to foreign bank participation in this country.

Chairman Greenspan once again admits there is a government subsidy for foreign banks. He confirms what I shared with everyone in my ''Dear Colleague'' letter in the Senate. He then changes the subject to say there is no reason to abandon foreign banks subsidiaries. I never suggested such a thing in my ''Dear Colleague'' letter. In only asked that if it is appropriate for foreign banks, why isn't it appropriate for national banks?

The fifth paragraph of the letter states that, ''foreign banks have not been able to exploit their home country subsidy . . .'' and that foreign bank subsidiaries ''have substantially underperformed U.S. owned section 20 companies.'' He actually admits that ''the subsidy does not travel well.'' In other words, foreign banks have not been successful transferring their home country subsidy to their subsidiary in the U.S.

But wait a minute. You cannot have it both ways. I do not care who you are.

Chairman Greenspan just presented evidence to us in the fifth paragraph that foreign bank subsidiaries, which in the third paragraph he admits receive a home country subsidy, underperform their American competitors. Thus, if there is a subsidy, it must either be (1) insignificant, and not enough to affect market performance or (2) contained in the section 20 regulatory framework and therefore not an issue. In either case, the Chairman has just confirmed the arguments that proponents of operating subsidiaries have made.

To sum up, Chairman Greenspan, just 2 days ago, confirmed that: foreign bank subsidiaries receive home country subsidies; conducting such activities in a subsidiary does not result in unsound banking practices, otherwise the Fed is violating the law with regard to foreign bank subsidiaries; and the subsidiary does not ''travel well,'' that is, it is not easily transferred from the bank to the sub.

The logic and the evidence presented by Chairman Greenspan in defense of foreign bank subsidiaries is the exact same logic and evidence that supports the Shelby-Daschle operating subsidiary amendment.

To be honest, I am quite surprised at the Chairman's uncompromising position on the issue. As a student of Public Choice economics, I am sure he is aware of the benefits of competition among regulators. I am surprised he supports making the Federal Reserve the monopoly umbrella regulator. Monopolies restrict output and increase prices.

There is no doubt in my mind that making the Federal Reserve the monopoly regulator will create even more bottlenecks in bank applications thereby increasing the regulatory cost of banks doing business with the Federal Reserve.

For the sake of competition, for the sake of free markets, for the sake of choice, I respectfully request that you support the Shelby amendment.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Texas.

Mr. GRAMM. Mr. President, I think if anyone knows me and knows RICHARD SHELBY, they know that we came to Congress on the same day. We served on the House Energy and Commerce Committee together. We were both Democrats then. We both changed parties. We both ran for the Senate. And RICHARD and I have been very close friends since the first day we came. I think you always regret when you have these kinds of tough battles, but this is a tough battle. This is vitally important.

Let me basically outline what I want to say and then let me go about trying to say it.

First of all, there has been some speculation about whether or not, as chairman of the Banking Committee and a new chairman, chairman only for a few months, whether or not I would pull my own bill, which, as the Presiding Officer knows as a member of the committee, has been a great labor of mine for all these many months and has been the labor of Congress for 25 years. As to whether I would pull the bill over this issue, let me leave no suspense: I will pull this bill if the Shelby amendment is adopted.

You might think that is a very strong statement to make, but I think when you hear my presentation, you will understand why I make it, because with all the good things in the bill, I want people to understand that all of them combined together would not undo the harm that would be done by this amendment.

What I will do is answer Senator SHELBY on foreign banks. I will then go through and talk about the real issue: What is the issue for Democrats who are hearing from the Secretary of the Treasury? What is the issue for Republicans who are hearing from big banks? What is the public interest?

I will try to answer those issues. Let me begin with the foreign banks.

Senator SHELBY would have us believe that we need to start subsidizing American banks because foreign banks are subsidized. He would have us believe that somehow we have given foreign banks a different set of regulations to abide by in America than American banks have had and that therefore we need to do something about it.

Let me address that. And I want to address it first by reading Alan Greenspan's thoughtful letter. Interestingly enough, Senator SHELBY referred to part of it. But I think it goes right to the heart of the issue.

Reading his letter of May 4:

> First, the Board did not simply choose to let foreign banks operate in this country through subsidiaries. The law required it. The International Banking Act . . .

That was passed in 1978—

> . . . provides that a foreign bank shall be treated as a . . . holding company for purposes of nonbanking acquisitions.

That is the law of the land. That was adopted by Congress. That was signed by the President. The Chairman of the Board of the Federal Reserve had nothing to do with that. He simply had the responsibility of implementing it.

> Therefore, when the Board allowed U.S. bank holding companies to own securities companies, the Board was required to permit foreign banks that met the statutory conditions also to acquire such companies.
>
> The law treating foreign banks as holding companies was a practical response to an existing situation: most foreign banks do not have holding companies.

And I will get to that point in a minute because it is important.

Without the [International Banking Act's] approach, foreign banks generally would be excluded from the U.S. market, in violation of the national treatment principles embedded in U.S. law. . . .

The Board stated it would monitor, and in fact has monitored, this situation to assure that foreign banks do not in fact operate to the detriment of U.S. banking organizations. . . .

A recent Federal Reserve study of the performance of section 20 companies over the last eight years demonstrates that foreign bank-owned section 20 companies have substantially underperformed U.S.-owned section 20 companies. . . .

To cite the fact of foreign bank structure to support a similar structure in the United States is not only misleading, it is potentially harmful.

Let me explain what all that means in English. What it means is, we passed a law, and the law said that since foreign banks do not use holding companies—they use operating subsidiaries because it is permitted under their law—that for treatment purposes, they would be treated as holding companies in the United States. Senator SHELBY says this is unfair.

I would like to note that the Federal Reserve, noting a potential problem with it, set out a monitoring process to see if these foreign banks are benefiting relative to our banks in promoting unfair competition.

What the Fed found in 1995 was that not only were they not benefiting, but they lost 11 percent. In 1996, their rate of return was minus 8 percent. In 1997, their rate of return was 18 percent. And in 1998, their rate of return was 25 percent.

So the plain truth is, these foreign banks are poorly run, their subsidiary operations are a disaster, but if they were well run, and if they were getting a competitive advantage, we would do something about it. The point is, it has not created a problem.

Nineteen of these foreign banks are in the securities business. Together, they make up less than 2.6 percent of the American market. In terms of underwriting revenues, they earn 3.8 percent of the revenues. So the point is, these foreign banks are not effective in competing against American banks. The point is, because foreign governments subsidize their banks, do we want to subsidize our banks? As chairman of the Banking Committee, I can tell you, if these foreign subsidies started having an unfair effect in our market, we would take action to change the law and prevent this advantage.

But we have allowed this situation to exist for two reasons: One, it has not done us any harm, and, two, we sell $10 of financial services abroad for every $1 of financial services sold in America. So the last thing we wanted to do is get into a trade war in banking, because we are the world's greatest bankers, we are the world's greatest exporters of banking services. And so it was to our advantage to allow this to happen as long as it was doing no harm.

What is the real issue at stake in this amendment? I want to begin with a quote from Secretary Rubin. In fact, many people on the Democrat side of the aisle have been called by Secretary Rubin in the last few days. Some people on our side of the aisle have been called. I want to read you a quote from Secretary Rubin. And then I want to pose a question: What could this quote possibly be referring to?

This is a quote from the Secretary of the Treasury, Robert Rubin, on May 5, 1999, before the Finance Subcommittee of the House Commerce Committee. And I will read you the quote:

[O]ne of an elected Administration's critical responsibilities is the formation of economic policy, and an important component of that policy is banking policy. In order for the elected Administration to have an effective role in banking policy, it must have a strong connection with the banking system.

I remind my colleagues that the Comptroller of the Currency, who works for Robert Rubin, regulates national banks. And national banks make up 58 percent of the assets in American banks. Why isn't that ''an effective role in banking policy''? Why is it not ''a strong connection with the banking system''? I can tell you, Secretary Rubin is right: It is not a strong connection. The Comptroller of the Currency is an accountant. Banking policy is run by the Federal Reserve. And I thank God for that every single day.

I thank God every single day that in 1913, after the Treasury had run monetary policy in this country—we had a giant panic in 1907; the country had gone through continuing economic convulsions—the Congress put an end to it by setting up an independent monetary authority called the Federal Reserve.

The Federal Reserve, with an independent board—appointed by the President, confirmed by the Senate for very long terms—exercises independent monetary policy. So when the President wants to inflate the economy to get reelected, the Fed says no. When Congress feels we need to print more money to get things moving to help them in their elections, the Fed says no. We have an independent monetary authority.

So while the Comptroller of the Currency is an accountant that primarily audits national banks, he has no policy authority at all. Why? Because the Federal Reserve regulates the holding companies, and there are 6,867 holding companies in America that together make up about 96 percent of bank assets.

So sure enough, the Treasury sends out all of the accountants and auditors, but the Federal Reserve sets the policy. And what Robert Rubin is saying, in the clearest possible terms, is he wants to set banking policy, he wants to set monetary policy. That is exactly what he is saying.

The question is, Do we want to put the Treasury back in the position of setting banking policy in America? Do we want the President to have the ability to use banking policy as a political tool? Are we not talking about repealing the Federal Reserve Act?

Now, how all this comes about is a little complicated, but with a teeny bit of detective work, it becomes very, very clear.

Remember, the Fed does not regulate banks. Not a single bank in America is regulated directly by the Fed. But it regulates holding companies that control banks, and those holding companies have 97 percent of the assets of banks. Why do they have it? Because our law requires that banks not provide other financial services within the bank, for safety and soundness reasons, and so big banks and banks that have large assets are holding companies and they come under the Federal Reserve.

Now, if we adopted the Shelby amendment, let me read what Alan Greenspan and the Board of Governors of the Federal Reserve say would happen:

As I have testified, if profit is their goal, there is no choice. Because of the subsidy implicit in the Federal safety net, profit-maximizing management will invariably choose the operating subsidiary. As a consequence, the holding company structure will atrophy in favor of bank operating subsidiaries. Our [and ''our'' being the Federal Reserve] current ability rests principally on our role as holding company supervisor.

So here is the point: If you let banks perform these services within the bank itself, their securities affiliate or, in the future, their insurance affiliate or any other thing you allow them to do can get the advantage of the bank's FDIC insurance and the ability to borrow money from the Fed, which is the lowest interest rate in the world, and if they can use the Fed wire, the Fed has estimated that doing these things within the bank creates about a 14 basis points advantage over doing them outside the bank. Those little margins make a very big difference.

So, obviously, the Treasury and the Federal Reserve believe and both agree that if you let banks perform these functions inside the bank, banks will tend to close down their holding companies and bring these functions inside the bank.

Now, I am going to talk about that issue separately. But what does that mean in terms of monetary policy? It means that the Comptroller of the Currency, who will be regulating banks that will no longer be holding companies, will become the banking authority in the country, and the Federal Reserve will see the number of holding companies it regulates decline, decline, decline, and decline.

Now, interestingly, the Treasury and the Shelby amendment, one and the same, recognize this. They say, OK, for the 43 largest holding companies, we will force them to maintain their holding company, so that the Fed will continue to regulate them. That means that 6,824 other holding companies will be allowed to change their structure. They will be driven by the profit motive to do it. Therefore, over time the

control of banking policy and ultimately monetary policy—because bank regulation is a source of strength for the Fed in implementing much of its policy—will shift from the Federal Reserve to the Treasury, from an independent agency to an arm of the President of the United States.

Now, you might say, well, the Federal Reserve still regulates 43 holding companies. But the holding companies have every incentive to conduct all of their activities within the bank, so the holding companies, the 43 left that the Fed would regulate, will be empty shells.

The Fed's power comes from the power to regulate banks. Their ability to get banks together to prevent a financial collapse—such as the Long Term Capital Management case in New York—was their ability, using moral suasion by the fact that they regulated the holding companies that were involved, to get people together and basically nudge them, encourage them, and, if you like, pressure them into dealing with that crisis before it got moving.

Now, I ask my colleagues on the first point: Do you want this administration, or any administration, to control banking policy? The Secretary of the Treasury says they should; it is part of the tools they say they need to conduct economic policy.

Let me tell you something, Mr. President. We had this debate in 1913. We decided we didn't want the President, in 1913, controlling banking policy. We have decided we do not want any President or did not want any President since that time.

Would we have been better off in the last 2 years of the Reagan administration if the Treasury had controlled banking policy instead of the Federal Reserve? I do not think so. When the Bush administration was in a reelection campaign and losing the election because the economy was recovering slowly, would we have wanted the Secretary of the Treasury and the Comptroller of the Currency—appointed by the President, removable by the President—would we have wanted them to have the ability to turn on the printing presses or to use expansionary policy with the banks? I do not think we would.

Do we want this President to have the ability to control banking policy when he orders the Comptroller of the Currency, who would be the new central banking regulatory authority under the Shelby amendment, to come to the White House for a fundraiser with bankers?

This is not a partisan matter. Bill Clinton is going to be President for 18 more months. We may well then have a Republican President. I hope so. But I do not want a Republican or Democratic President to control banking policy. We set up an independent Fed to do that, and I want them to do it. Have no doubt about it, when Robert Rubin is saying that this amendment is a way of expanding the administration's effective role in banking policy, he means transferring from the Fed to the Treasury the ability to set banking policy.

Now, if you are for that, if you believe the executive branch of American government ought to set banking policy, you should vote for the Shelby amendment. But if you believe we have done pretty well under Alan Greenspan and the Federal Reserve, if you believe that since 1913 the American economy has performed pretty well by taking banking policy away from Congress and away from the executive branch of government and putting it in an independent agency, if you believe that, do not vote for this amendment. This amendment is clearly an effort to transfer regulatory authority over banking from the Federal Reserve to the Treasury. That would be a disaster for America. That would be far more important in its negative impact than anything we could possibly do in terms of letting banks get into a few other areas of providing services.

This is a fundamental issue. I urge my colleagues not to get caught up on the Democrat side of the aisle with the fact that there is a Democrat President or that we have a very friendly, nice, and competent Secretary of the Treasury who is calling them up and saying, ''We need you to vote with us.'' This is not a partisan matter. An independent control of banking policy in America, an independent agency controlling banking policy, is not a partisan matter, it is a matter that this Congress, on a bipartisan basis, has stood for since 1913. I don't want to take any step, and I don't believe America, if it understood this issue, would want to take a step backward from that.

Let me talk to my Republican colleagues. We have written a bill, and I think it is a good bill. I had a lot to do with writing it, so obviously I think that. But I think other people are beginning to think it, too. This is a big bank, big securities, big insurance bill. That is just a reality. And I have to say that there is something a little bit obscene about big banks calling up Members of the Senate and saying: ''Well, you know we only got 95 percent of what we wanted in that bill. We could get another 15 percent and go up to 110 percent if you could let us provide these services within the bank, rather than doing it outside the bank.''

Now, the banks are not caught up in who is going to conduct banking policy. They are caught up in the fact that they are going to make more money if they can provide these services inside the bank, because they get the subsidies from the FDIC insurance, the Fed window and the Fed wire.

I don't so much complain about them taking this sort of narrow self-interested view as I complain about our responding to it, let me say. We have all heard: What is good for General Motors is good for America. That is not right. What is good for America is good for General Motors. I just say to my colleagues, whatever commitments you have made on this, whatever partisanship you feel on this, ask yourself a question: Is it good for America to give the Treasury—an agency controlled by the President—control over banking policy in this country and take that control, at least partially, away from the Federal Reserve?

Do we want monetary policy to continue to be based on an objective set out to maintain stable prices and economic growth, or do we want to bring politics into it? Obviously, Secretary Rubin wants the administration to conduct banking policy, and that is why he asked for this amendment. He says it in clear English. I don't want this administration to conduct banking policy, but at least you have to say I am a little broad-minded. I don't want any administration to conduct monetary policy.

To try to summarize, because it gets complicated: The Secretary of the Treasury wants this amendment adopted because banks, by providing these new services inside the bank, will find it cheaper to do that, more profitable, and they will fold their holding companies, which they only set up because the law required them for safety and soundness to undertake these riskier activities outside the bank. As they fold up these holding companies, the Federal Reserve loses regulatory control over them and the Comptroller of the Currency, and therefore the President, gains regulatory control over them. So what Secretary Rubin is talking about is basically giving the Treasury regulatory authority that the Federal Reserve now has.

Nothing in our bill takes power away from the Treasury. A lot of people have gotten confused that this is just a power struggle, where this bill would give the Federal Reserve more authority, and the Treasury wants to share it, or the Treasury wants more. Look, the Fed regulates bank holding companies. Virtually all the wealth is already in bank holding companies. The Comptroller audits national banks. There is no shift in the regulatory authority in our underlying bill.

But the amendment that Senator SHELBY has offered with Senator DASCHLE, supported by the Clinton administration, is the biggest regulatory shift, the biggest power grab, by a Federal bureaucracy that I have seen in my 20 years in Congress. And it is absolutely critical that we slam the door on this power grab, not because Rubin is a bad guy and Greenspan is a good guy, but because Rubin is a political appointee controlled by a President who, by the very nature of the Presidency—whether it is President Ronald Reagan or President William Clinton—he has political concerns to deal with, as he should.

We decided in 1913 to take banking policy out of the hands of politicians and put it into the Federal Reserve. We dare not take action to take it back.

Maybe Robert Rubin would do a good job with it. Maybe Bill Clinton might fire Rubin and appoint somebody else, or maybe Rubin might leave. But the point is, the Fed, whoever is there—and I hope Alan Greenspan will be there forever—will be independent, with a long term, and will be independent of the President, and so will the board members who share that power.

If this issue doesn't move you, then I have done a poor job, because I have been standing on the floor for 3 days and I am tired. If this issue doesn't move you, it is not because the issue is not moving; it is because I am not moving. I want to urge my colleagues to think long and hard before we take an action that, in reality, is a step toward repealing the essence of the Federal Reserve Act.

Let me turn to the other side of the story. It is an important story. I have explained first how this amendment is a step toward repealing the Federal Reserve Act by giving the control of bank regulation to the Treasury instead of the Federal Reserve. But let me explain that, for safety and soundness, for the well-being of the taxpayer, and for competition, this amendment is also a bad thing. Banks receive a subsidy from the Government because they have their principal asset—deposits—insured by the FDIC. They have deposit insurance. No other nonbanking institution has that guarantee. Your insurance salesman doesn't have it. Your securities broker doesn't have it. The stock exchange doesn't have it. The bank has it.

The bank also has the ability to go to the Federal Reserve and borrow at the lowest interest rates in the country. And they have the ability to use the Fed wire to transfer money that is guaranteed. What all that means is that if you let banks provide broad-based financial services, which this bill does—but it requires them to do it outside the bank—if you let them do it inside the bank, these huge banks with massive capital, when they are selling securities or underwriting them—or, ultimately, because if you let them do securities today, in 5 or 10 years, you are going to let them do insurance within the bank, and we all know it—these banks will have an enormous and unfair competitive advantage due entirely to the Federal subsidies they are receiving.

When they are selling securities, or selling insurance or underwriting it, they are going to have a competitive advantage because they can borrow money more cheaply than an insurance company or an independent stockbroker. So what is going to happen over time is, with that competitive advantage, they are going to end up dominating the securities industry, and in the long run, dominating the insurance industry.

I ask you the question: Do we want a banking industry that dominates the entire financial services industry? I helped write this bill to promote more competition. I did not write this bill so that 20 years from now we look like Japan, with 10 banks dominating the entire financial services area. I know about the Presiding Officer, but I don't know about other people. I happen to love my independent insurance agents and they love me, and I appreciate it. I happen to love my little independent stockbroker in my hometown; he was my campaign manager the first time I ever ran for Congress. I don't want to force these people out of business by giving an unfair competitive advantage to banks.

We are not talking about foreign banks who don't know how to do it, even with a Government subsidy; we are talking about American banks that know how to do it.

Now, Mr. President, the next problem is that we are going to create an unlevel playing field, and banks are going to dominate these industries not because they are better, but because their structure of being able to provide these services within banks is one that is cheaper to operate in.

The third and final problem is selling insurance—underwriting insurance—which ultimately will happen if we go this direction with op-subs on securities—selling securities; underwriting securities is risky business.

What we are doing, if we put that power within the structure of the bank, is that taxpayers are underwriting it, at least implicitly with Federal deposit insurance. So we are putting the taxpayer on the hook.

The alternative in the bill is, except for very small banks that can't afford to have holding companies, to require banks that have holding companies—and they are large enough to have them, they can provide all these new services—but they have to do them outside the banks. So the taxpayer is not on the hook for the deposit insurance for these activities, and the banks don't get a subsidy to conduct these activities due to the fact that capital is cheaper inside the bank, and we don't create a structure where the Treasury—a political institution—exercises more banking regulation and the Fed less.

Alan Greenspan, testifying before the House Commerce Committee last week, made a very strong statement. Those of you who know Alan Greenspan know that he is not prone to get to the point. In fact, we have reporters in this town who have become very successful by figuring out what Alan Greenspan is saying. He will go around the barn and the outhouse, and all over the barnyard, before he finally gets to the point. And, if he is saying something that he knows somebody isn't going to like, he is even more roundabout so as not to hurt anyone's feelings. Quite frankly, he does it perfectly. Every central banker in the world models himself after Alan Greenspan, who is the greatest central banker probably in the history of the world.

But he wasn't beating around the bush when he talked to the House Commerce Committee. He said, ''I and my colleagues''—he means members of the Federal Reserve Board—''are firmly of the view that the long-term stability of U.S. financial markets and the interests of the American taxpayer would be better served by no financial modernization bill rather than one that allows the proposed new activities to be conducted by the bank. . . .''

This is not just an average kind of Joe talking.

It is interesting to me that we talk to a few bankers on the telephone, and all of a sudden we think we know as much about banking policy as Alan Greenspan. This is the most successful central banker in history who is saying that when you look at the three problems with this approach, one, you put the taxpayer on the hook in a risky business that ought not to be inside the bank; that, two, you create an unfair playing surface that will create unfair competition and hurt the economy, and make the economy more vulnerable; and, finally, you transfer control of bank regulations from an independent agency—the Fed—to the Treasury and, therefore, to the President.

Based on those three things, Alan Greenspan—who is a strong supporter of this bill; he is for this bill; at the end of the last Congress, he spent numerous hours trying to get it passed, and he is for it now—says, if you adopt this amendment then the country would be better off with no bill at all.

My colleagues, it has been a long 3 days of debating. I never challenge anybody's sincerity. But I want to urge my colleagues, my Democrat colleagues who are getting all this pressure now, you know—Republicans have won on many of these issues, this is an opportunity for Democrats to win; the Secretary of the Treasury has said that the President will veto the bill if you do not give the Treasury control over banking policy. And I know that my Democrat colleagues are under a lot of pressure.

But I want to urge my colleagues to look at what we are doing here in terms of moving away from an independent banking authority toward putting the control of banking policy under the President. It is a very, very dangerous thing to do.

I urge my colleagues to resist the pressure and vote against this. Ordinarily two-thirds of the Democrat Members of Congress would oppose this amendment. But what is happening here, in part because the issue has become so partisan—and I am partly to blame for this—but what is happening is we have a dynamic where an amendment that should not be even seriously considered is going to have a very, very close vote, and could very well pass.

I just urge my colleagues, if you are not swayed by risk to the taxpayer, if you are not swayed by unfair competition and concentration of industry—and many of my Democrat colleagues are swayed by those things in most of the issues—if you are not swayed by

that, be swayed by Secretary Rubin who thinks the administration ought to control banking policy. We decided in 1913 not to let him do it. Do we want to go back and change that decision today? I don't think so.

I want to conclude by saying to my Republican colleagues—I know Senator SHELBY is very persuasive. That is one of the reasons that I love him and that we are very good friends. I know a lot of people have been torn with me grabbing them and screaming in one ear, and Senator SHELBY grabbing them and screaming in their other ear. I know they are ready for this thing to be over. But this is not a parochial issue, or a personal issue, or a regional issue.

When we are talking about reversing a policy established in 1913 for independent banking authority because the Secretary of the Treasury wants the President to conduct banking policy, something we rejected in 1913, this goes way beyond hearing from your bank back home that says, ''Gee, I would rather do it this way. I appreciate the bill. You have done it. It is going to help me. But you could help me more by letting me do it this way.'' I think we have to resist that siren song.

I don't want to sound too preachy, so let me just stop and urge my colleagues to give some long and prayerful deliberation on this amendment, because I think it is very important. I know it is a hard vote. I wish it weren't so hard.

But I think it is a very clear vote. I think if you stand back and look at it, it is hard to think of a vote we have cast around here that was much clearer in terms of what is the national interest. It can't be good for your bank back home if it is bad for America. I think that is the key issue I would like people to remember.

Mr. President, can you tell me how much time I have left, and how much time Senator SHELBY has?

The PRESIDING OFFICER. The Senator from Texas has 19 minutes 53 seconds; the Senator from Alabama has 37 minutes.

Mr. GRAMM. I had better let him talk more. I yield the floor.

Mr. SHELBY. Mr. President, I yield such time as the Senator may consume to the distinguished Senator from Rhode Island, Mr. REED.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I thank the Senator for yielding. I am pleased to support his amendment, together with Senator DASCHLE.

I think it underscores the bipartisan nature of this amendment that both Senator SHELBY and Senator DASCHLE are here today to advance a very important issue. It is a very important issue that I have been working on for over a year.

In fact, in the last Congress, I had an amendment in the Banking Committee that was very similar to this, and my impetus is to suggest this amendment was based upon my experience as not only a Senator but also as someone who was a lawyer and involved in banking matters in my home State of Rhode Island.

It is very important to clear up a misconception that might be operating at the moment that the Federal Reserve is the exclusive repository of banking direction and regulation in the United States. Such a claim is just wrong. Banking policy in the United States is the province of many different organizations. The Federal Reserve principally, starting in 1956 with the Bank Holding Company Act, regulates the operations of bank holding companies.

Here is a simple schematic of what a bank holding company is. It is a holding company—a corporation under State law usually owning a bank, and also owning the other affiliates.

This bank holding structure became an issue in the 1950s, and as a result the Federal Reserve was empowered by Congress—I should emphasie ''by Congress,'' not by its own direction—to regulate bank holding companies. But long before that, beginning in the 1860s, national banks were regulated under the Department of the Treasury and the Comptroller of the Currency. Indeed, other financial entities, other depository entities, are regulated by the Office of Thrift Supervision.

We should be very clear. This is not an attempt to wrench away from the Federal Reserve their exclusive prerogative to run the banking system in the United States. This amendment is attempting to provide flexibility to banking organizations so they can conduct a limited range of activities in either a subsidiary of the bank or an affiliate of the bank.

If they are conducted in the affiliate, they will be regulated under current law and under our anticipated legislation by the Federal Reserve; if they are conducted in the subsidiary, they will be regulated by the Office of the Comptroller of the Currency or the other regulator of this particular bank.

It is also important to note that there are only two rather narrowly defined activities that could be conducted under the Shelby-Daschle amendment: Securities underwriting or merchant banking activities. I should hasten to add that these two activities would also be regulated by the functional regulator. If it is securities activities, it would be regulated by the Securities and Exchange Commission. We are talking about a very narrow band of activities. It is important to keep that in mind.

We are in no way talking about displacing the Federal Reserve as a principal regulator of bank holding companies. What we are talking about is giving banking organizations the flexibility to decide, based upon their own analysis, whether they want to conduct these two limited activities, either an affiliate or a subsidiary of the bank.

What the underlying legislation, S. 900, would do essentially is give the Federal Reserve all the authority. It would cut out effectively what currently exists, the regulating authority of the Comptroller of the Currency to determine a limited range of activities that either could or could not be done either in the bank itself or a subsidiary bank.

Many have described this as a turf fight. I don't think that is a proper description. What we should be doing and what the Shelby amendment is attempting to do is to provide the type of regulatory balance necessary, first, to guarantee safety and soundness; and, second, to give banking institutions the flexibility to conduct the business the way they decide rather than the way we might dictate here in Washington.

Now, one of the interesting things to know is that we are attempting to change a high bond regulatory structure that was erected in the wake of the 1930s. I note that the Senator from Texas noted that all of our financial problems were solved in 1913 when we created the Federal Reserve, but there was a brief interlude in the 1930s where the economy was in disarray during the Depression.

As a result of that, we created the Glass-Steagall Act that separated various activities. We now recognize, because of many different factors, that we should in fact undo this very rigid structure and provide flexibility for a combination of different financial activities—insurance activities, security activities, depository activities. However, this amendment, the Shelby-Daschle amendment, goes to the heart of that flexibility by providing the kind of business flexibility that banks should have in this new, very fast paced international economic environment.

I explained basically the structure of the typical bank holding company, and I think that is useful because for the last several weeks we have been hearing jargon such as ''op-sub'' and ''affiliate,'' et cetera. It is exactly what I suggested before: A bank holding company, a company that is typically a commercial enterprise, a State-chartered company, owns a depository institution; in turn, they operate some activities and subsidiaries throughout the affiliate. That is basically what we are talking about now.

The question is, What should we do to ensure that, first, safety and soundness is protected; and, two, that the banks have the kind of flexibility they need and the corporate governance to operate effectively?

What we are proposing with this amendment is that in these two limited activities—securities activities and merchant banking—the bank holding company have the choice of either doing it in a subsidiary or affiliate. As I understand it, the underlying legislation would allow a very small bank holding company to conduct these activities in a subsidiary. So this is, in some respects, an issue of size. But the

principle already exists within the context of the underlying legislation that these activities can, in fact, be conducted in subsidiaries.

Looking ahead at what the amendment requires, it is very important to note that in order to conduct these activities a bank would have to meet certain tests. First of all, the bank would have to be well managed and well capitalized. This is a requirement that would be similar on bank holding companies.

In addition to this, the bank would also have to do specific things to allow or qualify for the conduct of these activities. First of all, if the bank was going to conduct the activities in a subsidiary, it would have to deduct its equity investment in the subsidiary from its own equity. As a result, this provides protections for the bank and for the overall depository system. In addition, it would have to remain well capitalized after the equity deduction.

The point here is that the regulators essentially could be satisfied that even as this subsidiary failed, even if the whole investment were lost, it would not adversely affect the capital bank, which is at the heart of their notion of protecting safety and soundness.

In addition to that, they would be limited to the amount of money they could invest in a subsidiary. It would be limited to this same amount of money they could ''dividend upwards'' to the bank holding company—another check on the safety and soundness provisions in this legislation.

Moreover, if these activities are conducted in a subsidiary, the whole relationship would be governed by section 23(a) and 23(b) of the Federal Reserve Act. These two sections govern transactions between bank affiliates and other holding company affiliates. Essentially, it requires that there be arm's-length dealing between these two entities.

For example, section 23(a) imposes a percentage cap on transactions between a bank and our operating subsidiary—the subsidiary cannot be the exclusive source of business for the bank, and vice versa. In addition, section 23(a) provides safeguards with respect to collateral that could and must be used for lending transactions between the bank and subsidiary. In sum, there are provisions in the amendment to guard against the self-dealing that would lead to breaches of safety and soundness.

All of these things together suggest very strongly that what we are proposing is entirely consistent with the safety and soundness of the banking system. Indeed, that should be our primary legislative motivation, to be sure that whatever we do here is consistent with safety and soundness.

There has been a great deal of discussion about the mysterious subsidy that Chairman Greenspan is talking about, the fact that ''...the reason I oppose this is because of this hidden subsidy,'' because of this transfer.

In his words, ''My concerns are not about safety and soundness.'' I am glad, because I think we have convinced or at least we have suggested that we have considered very thoroughly and carefully the safety and soundness issues.

It is the issue of creating subsidies for individual institutions which their competitors do not have. It is a level playing field. . ..

The subsidy, as explained before, rests upon essentially the guarantee of deposit by Federal deposit insurance.

Now, what we have done, first, is protected safety and soundness; second, these subsidies are frequently offset in discussions—indeed, many times complaints—about the restrictions that go along with the depositor insurance. We debated yesterday at length about CRA. That adheres to a bank because of its deposit insurance. That is a cost that other competitors could not have.

So when we look at this whole notion of subsidy, there is a very real argument, when it is balanced out, that this subsidy is not particularly significant, that in the margin it will not make a difference whether you conduct this activity in a subsidiary or in an affiliate. Moreover, when a bank holding company is attempting to go to the equity markets to raise equity through stock offerings or through commercial debt paper, no one looks exclusively, uniquely, solely at the bank; they look at the combined activities of the holding company.

So if there is a subsidiary at the bank, that all washes out through the bottom line of the bank holding company balance sheet. This notion that the subsidiary is the driving force I don't think is entirely correct.

Moreover, when you look at experts who have dealt with this whole issue of whether or not these activities should be conducted in a subsidiary, those in fact who have been responsible for the operation of the FDIC, most of the recent chairpersons—Ricky Halperin, William Isaac, and William Seidman—have argued very strongly and forcefully that in fact placing these activities into a subsidiary would, in fact, be a beneficial and not a detrimental aspect and, in fact, potentially could be a plus for the Bank Insurance Fund.

It would be so because if, in fact, there was a troubled bank with a healthy subsidiary, either in the securities business or in the merchant banking business, those healthy assets would be a source of funds to cover depository losses, potentially in the bank. Such coverage from a subsidiary would offset the need for a contribution by the taxpayer-supported deposit insurance fund.

It has been mentioned before that foreign banks, in fact, have these powers within the continental United States because of international banking agreements. In fact, there are 19 foreign banks with securities underwriting subsidiaries in the United States and these banks have about $450 billion in assets and they would be allowed to continue their operations under the S. 900 bill, the underlying legislation. As Senator SHELBY pointed out, this is on the surface a disparate treatment between domestic banks and foreign banks, but I think it reveals something else. It goes right back to that issue of: Is there a subsidy? Because these foreign banks are also subsidized by deposit insurance, in most cases, in their country of origin, the country of incorporation. And they are also subsidized in the same way as are our banks, by government policies, by access to the central bank's discount window, by a whole series of governmental programs that assist banking institutions.

If you put back Chairman Greenspan's words—again, let me remind you, he is not talking about safety and soundness. He is talking about this mysterious subsidy. Those are his words, but what are the actions of the Federal Reserve when it comes down to approving the applications of these foreign banks to operate security subsidies in the United States?

First of all, the Federal Reserve, in the applications they had to approve, looked at the whole subsidiary issue. And they found that technically there was probably a subsidy to the subsidiaries. But what they suggested in approving these applications, which they did, is that by essentially imposing restrictions, as we have done, in terms of capital contributions, in terms of the possible transactions between the bank and subsidiary—that they would be offset. So essentially what the Chairman says and what the Federal Reserve does are two different things. He says this is a dangerous subsidy, yet when they have to approve an application of a foreign bank to operate a subsidiary in the United States, they say they can control that subsidy, essentially, by the same means that we are suggesting—capital contributions and other techniques.

So, if you listen to what is being said but look at what is being done in the world, I think, deeds speak louder than words. And the deeds are that this subsidy issue is a false one. Any subsidy is either dissipated through the holding company system or is offset in our amendment by the requirements to deduct capital, by the requirements to limit the investment into a subsidiary to the amount that you could upstream to a holding company for further investment in an affiliate.

There is another aspect which I think is telling with respect to the Federal Reserve, their position. I think this could come as a surprise to lots of people. American banks today can own operating subsidiaries and do own operating subsidiaries which can in fact perform merchant banking activities and securities activities—the activities that we are authorizing in this amendment. But they can only have these subsidiaries overseas, and interestingly enough, these subsidiaries are regulated by the Federal Reserve Bank. They are called Edge Act companies.

So what we are proposing today in this amendment is no novel redistribution of regulatory opportunities or banking opportunities, really. What we are saying, essentially, is if the Federal Reserve can regulate and authorize American banks through foreign subsidiaries to conduct insurance activities and securities activities and merchant banking activities overseas, why do they object to American banks doing the same thing in the United States? The same thing—limited, of course, to securities activities and merchant banking.

There are, as we estimated, subsidiaries with $250 billion in assets, subsidiaries of American banks operating overseas, subject to the regulation not of the Securities and Exchange Commission, but whatever foreign regulator is looking at their operation. Of course, the Fed concludes—they must conclude—this does not pose a threat to the safety and soundness of American banks. Of course, they must conclude that whatever subsidy they are getting through deposit insurance, it is not unfair for them to apply that overseas to invest in foreign subsidiaries to conduct these activities. In fact, the operations of these banks' subsidiaries overseas, these Edge Act companies, are far less regulated than what we are proposing in our amendment. These are not bound by section 23 (a) and (b). They are also not bound by our restrictions, by the amount of money that can be invested in the subsidiary.

So I think the Federal Reserve position—in terms of the facts, not the rhetoric, not the appeals to the history—is very weak indeed. The facts establish, No. 1, that in fact they have no objection to American banks' operating subsidiaries' overseas securities activities. It does not pose a threat to safety and soundness in their view. It is not an unfair use of the subsidy if that subsidy exists.

So I think we have to be very careful to conclude that what we have here is an amendment that gives banks flexibility, that does not implicate the safety and soundness of the banking system, that does not in any way distort the monetary policymaking role of the Federal Reserve. That in fact is consistent with over 100 years of banking regulation in the United States, which is a shared function between many different banking regulators in the United States. In fact, it is something that will provide the flexibility that is at the heart of this legislation.

I hope we will, in fact, support this amendment. It represents a bipartisan attempt to be consistent with the overall theme of this legislation, which is to unshackle our banking institutions from the hidebound rules of the Glass-Steagall Act, to give them an opportunity to compete but to do so in a way that does not implicate, intimidate or, undermine the safety or soundness of the banking system which is our ultimate responsibility.

I hope, again, we will accept, adopt and support this amendment. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRAMM. Mr. President, I yield 5 minutes to the distinguished Senator from Wyoming.

(Mr. GRAMM assumed the chair.)

Mr. ENZI addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank you for the opportunity to address what we have been looking at in the Banking Committee now for a couple of years. We have had very detailed hearings, where both Alan Greenspan and Secretary Rubin have presented their case. I have to admit, during most of those everybody has said: What kind of a turf battle are we looking at here? The comments have been kind of mixed because it is an extremely difficult area to understand. It is an area between the Federal Reserve and the Treasury. But it is an area that affects the ways that banks will operate. We are trying to design, under this bill, a mechanism for the American banking system to succeed, to provide for security and soundness for the banking system, to provide for safety. Now, is that done under the Treasury or is it done under the Federal Reserve?

As one of those accountants, I suggest that the Treasury handles the accounting function very well. They do an excellent job of auditing our banks. They do an excellent job of overseeing the accounting aspects of the bank. But the Federal Reserve does the outstanding job of overseeing the banking policy for our country. If we begin to establish a system where the administration, who can reflect to times of election, has control over the banks and the banking establishment and the banking policy, our country could be in trouble.

If the banking policy is established by the administration with the benefit of the Federal wire and the Federal funds and the lower loan rates, our country could begin to react more to elections than to the economy.

We have had a fantastic system that has brought our economy to new heights, and it has been working under the Federal Reserve System. Let's not shift all of this around and allow the banks to have another technique where they can put businesses under their bank and have transactions—and I think everybody realizes that the transactions, while there are generally accepted accounting principles for how those are done, they are not nearly as much in the open under a subsidiary as they are under an affiliate.

We have some accounting techniques here that provide daylight for the banking industry which provide safety and soundness for the banking industry and the consumers.

I suggest that Alan Greenspan and whoever holds that position has to have enough ability to control the economy of the banks and the power of the banks to keep the economy of this Nation going.

This is an issue that is extremely difficult to understand. After all of the hearings we have held on it, it is possible to see it still is under a cloud of misunderstanding. I hear the terms brought out about how foreign banks are involved and how foreign banks are allowed to operate. The foreign banks are not the ones providing the Federal Deposit Insurance Corporation money. They are not the ones insuring the money of the consumers of this country. I opt for the safety and soundness provided by the Federal Reserve. I ask that you defeat the amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. What is the parliamentary situation?

The PRESIDING OFFICER. The authors of the amendment have 16 minutes, and the opponents of the amendment have 15 minutes.

Mr. SARBANES. Will the Senator yield me 4 minutes?

Mr. REED. I do not control time.

Mr. SARBANES. Will the Senator yield me 4 minutes?

Mr. SHELBY. I yield to the Senator from Maryland 4 minutes.

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the Senator from Maryland for 4 minutes.

Mr. SARBANES. Mr. President, in view of the comments that were just made by my able colleague from Wyoming, I want to address this safety and soundness issue. The Federal Deposit Insurance Corporation, to which he referred, the regulatory agency with the most at stake in terms of protecting the deposit insurance funds, sees the op-sub as equivalent to the holding company structure for safety and soundness reasons.

The argument was just made that there are some safety and soundness problems. The FDIC Chairman, Donna Tanoue, wrote a letter to the Banking Committee:

> With the appropriate safeguards, the operating subsidiary and the holding company structures both provide adequate safety and soundness protection. We see no compelling public policy reason why policymakers should prefer one structure over the other. And absent such a compelling reason, we believe the Government should not interfere in banks' choice of organizational structure.

That is the current Chairman of the FDIC. Lest someone says that is only the current Chairman, let me refer to an article written by three previous FDIC Chairmen, both in Democratic and Republican administrations: Ricki Tigert Helfer, William Isaac, and William Seidman, all of them with many years of direct experience in this area. They all agree with the current FDIC Chairman and have offered strong support for the operating subsidiary approach.

In fact, I will quote from their article. I ask unanimous consent that this article be printed in the RECORD at the conclusion of my statement.

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

(See Exhibit 1.)

Mr. SARBANES. The article says:

The debate on banks conducting financial activities through operating subsidiaries has been portrayed as a battle between the Treasury and the Federal Reserve. The Treasury believes banks should be permitted to conduct expanded activities through direct subsidiaries. The Fed wants these activities to be conducted only through holding company affiliates.

Curiously, the concerns of the Federal Deposit Insurance Corp. have been largely ignored. The FDIC, alone among the agencies, has no ''turf'' at stake in this issue, as its supervisory reach extends to any affiliate of a bank. The FDIC's sole motivation is to safeguard the nation's banks against systemic risks.

They go on to say:

Every subsequent FDIC chairman, including the current one, has taken the same position . . .

In other words, allowing with the view toward bank subsidiaries conducting these activities.

In fact, they point out that requiring the bank-related activities be conducted in holding companies will place insured banks in the worst possible position. They will be exposed to the risk of the affiliates' failures without reaping the benefits of the affiliates' successes.

It is very clear that the regulator concerns of the Federal Deposit Insurance Corporation are supportive of doing it either way.

Will the Senator yield me 1 more minute?

Mr. SHELBY. I will be glad to yield 1 minute.

Mr. SARBANES. Mr. President, let me quickly run through some important safety mechanisms that are in the Shelby-Daschle-Reed amendment:

One, a full capital deduction for investments in subsidiaries so that all such investments would be fully deducted from the bank's regulatory capital. Banks must remain well capitalized after this deduction, meaning even if the subsidiary fails, the bank's capital will remain intact.

Two, downstream investments in subsidiaries be no greater than the total amount that a bank could upstream as a dividend to a holding company. So they have exactly the same extent to which they can engage in new financial activities between the subsidiary or the affiliate.

We remove any advantage for subsidiaries in terms of transactions with their parent banks by applying sections 23(a) and 23(b) of the Federal Reserve Act to subsidiaries, just like affiliates. It would require the maintenance of subsidiaries as separate corporate entities.

The bank's credit exposure to a subsidiary be no greater than it could have been to an affiliate.

Real estate investment and insurance underwriting is not permitted in the subsidiary.

All of these features, I think, go to ensuring the safety and soundness of the approach contained in the Shelby-Daschle-Reed amendment, and I am supportive of this amendment.

I thank the Senator for yielding time.

EXHIBIT 1

[From the American Banker, Sept. 2, 1998]

EX-FDIC CHIEFS UNANIMOUSLY FAVOR THE OP-SUB STRUCTURE

(By Ricki Tigert Helfer, William M. Isaac, and L. William Seidman)

The debate on banks conducting financial activities through operating subsidiaries has been portrayed as a battle between the Treasury and the Federal Reserve. The Treasury believes banks should be permitted to conduct expanded activities through direct subsidiaries. The Fed wants these activities to be conducted only through holding company affiliates.

Curiously, the concerns of the Federal Deposit Insurance Corp. have been largely ignored. The FDIC, alone among the agencies, has no ''turf'' at stake in this issue, as its supervisory reach extends to any affiliate of a bank. The FDIC's sole motivation is to safeguard the nation's banks against systemic risks.

In the early 1980s, when one of us, William Isaac, became the first FDIC chairman to testify on this subject, he was responding to a financial modernization proposal to authorize banks to expand their activities through holding company affiliates.

While endorsing the thrust of the bill, he objected to requiring that activities be conducted in the holding company format. Every subsequent FDIC chairman, including the current one, has taken the same position, favoring bank subsidiaries (except Bill Taylor who, due to his untimely death, never expressed his views). Each has had the full backing of the FDIC professional staff on this issue.

The bank holding company is a U.S. invention; no other major country requires this format. It has inherent problems, apart from its inefficiency. For example, there is a built-in conflict of interest between a bank and its parent holding company when financial problems arise. The FDIC is still fighting a lawsuit with creditors of the failed Bank of New England about whether the holding company's directors violated their fiduciary duty by putting cash into the troubled lead bank.

Whether financial activities such as securities and insurance underwriting are in a bank subsidiary or a holding company affiliate, it is important that they be capitalized and funded separately from the bank. If we require this separation, the bank will be exposed to the identical risk of loss whether the company is organized as a bank subsidiary or a holding company affiliate.

The big difference between the two forms of organization comes when the activity is successful, which presumably will be most of the time. If the successful activity is conducted in a subsidiary of the bank, the profits will accrue to the bank.

Should the bank get into difficulty, it will be able to sell the subsidiary to raise funds to shore up the bank's capital. Should the bank fail, the FDIC will own the subsidiary and can reduce its losses by selling the subsidiary.

If the company is instead owned by the bank's parent, the profits of the company will not directly benefit the bank. Should the bank fail, the FDIC will not be entitled to sell the company to reduce its losses.

Requiring that bank-related activities be conducted in holding company affiliates will place insured banks in the worst possible position. They will be exposed to the risk of the affiliates' failure without reaping the benefits of the affiliates' successes.

Three times during the 1980s, the FDIC's warnings to Congress on safety and soundness issues went unheeded, due largely to pressures from special interests:

The FDIC urged in 1980 that deposit insurance not be increased from $40,000 to $100,000 while interest rates were being deregulated.

The FDIC urged in 1983 that money brokers be prohibited from dumping fully insured deposits into weak banks and S&Ls paying the highest interest.

The FDIC urged in 1984 that the S&L insurance fund be merged into the FDIC to allow the cleanup of the S&L problems before they spun out of control.

The failure to heed these warnings—from the agency charged with insuring the soundness of the banking system and covering its losses—cost banks and S&Ls, their customers, and taxpayers many tens of billions of dollars.

Ignoring the FDIC's strongly held views on how bank-related activities should be organized could well lead to history repeating itself. The holding company model is inferior to the bank subsidiary approach and should not be mandated by Congress.

Mr. SHELBY. Mr. President, how much time do I have left?

The PRESIDING OFFICER (Mr. BENNETT). Ten minutes 30 seconds.

Mr. SHELBY. I yield 5 minutes to the distinguished Senator from Minnesota.

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

I rise in strong support of the Shelby amendment and urge the Senate to approve this amendment today. I say this with utmost respect for my committee chairman, Senator PHIL GRAMM. As you know, I support PHIL GRAMM and we agree on so many issues across the board, but this is one time when I have to disagree with my chairman. As I say, even his lovely wife Wendy disagrees with Senator PHIL GRAMM on a few issues. I hope he realizes the respect I have for him and his arguments on this amendment, but I feel that I have to support this.

As a Senator who worked on a bipartisan basis last year with Senator REED of Rhode Island to draft a compromise operating subsidiary amendment, I have invested a great deal of time studying the pluses and minuses of this option. I have come to the conclusion that it is appropriate for national banks to conduct full financial activities, with the exception of insurance underwriting and real estate development in the operating subsidiary.

This amendment preserves corporate flexibility by allowing subsidiaries of well-capitalized and well-managed national banks to conduct many of the same activities—such as securities underwriting and merchant banking—as bank holding companies and foreign bank subsidiaries.

I would like to note that insurance underwriting and real estate development are not permitted in the subsidiary.

Although some have claimed that the subsidiary approach could lead to a competitive advantage for banks, the amendment prevents competitive advantages by imposing the same prerequisites for conducting new financial

activities on national banks as are placed on bank holding companies.

The subsidiary also is safer for national banks. First, the amendment includes a number of appropriate safety and soundness ''firewalls'' to ensure that the subsidiary remains an asset to—and not a liability of—the bank.

These firewalls include: one, requiring that capital invested in the subsidiary be deducted from the capital of the bank and that the bank remains well-capitalized after the deduction; two, prohibiting the consolidation of assets of the subsidiary and the bank; three, limiting the investment the bank may make in the subsidiary to the same amount that the bank could ''upstream'' to holding company affiliates by way of dividends; four, requiring the bank to maintain procedures for identifying and managing financial and operational risks posed by the subsidiary; five, requiring the bank to maintain—and regulators to ensure—a separate corporate identity and separate legal status from the subsidiary; and six, imposing the lending restrictions found in Sections 23A and 23B of the Federal Reserve Act on extensions of credit from the bank to the subsidiary—total extensions of credit to any one subsidiary may not exceed 10 percent of the bank's capital and total extensions of credit to all subsidiaries may not exceed 20 percent of the bank's capital.

The operating subsidiary approach adds another safety and soundness element because the subsidiary could be used as an asset to protect the taxpayer if the bank runs into trouble.

FDIC Chairman Donna Tanoue—the Federal Government's point person protecting the taxpayer against claims on the deposit insurance fund—testified that:

> From a safety and soundness perspective, both the bank operating subsidiary and the holding company affiliate structure can provide adequate protection to the insured depository institution from the direct or indirect effects of losses in nonbank subsidiaries or affiliation.
>
> Indeed, from the standpoint of benefits that accrue to the insured depository institution, or to the deposit insurer in the case of a bank failure, there are advantages to a direct subsidiary relationship with the bank.
>
> When it is the bank that is financially troubled and the affiliate/subsidiary is sound, the value of the subsidiary serves to directly reduce the exposure of the FDIC.
>
> If the firm is a nonbank subsidiary of the parent holding company, none of these values is available to insured bank subsidiaries, or to the FDIC if the bank should fail. Thus, the subsidiary structure can provide superior safety and soundness protection.

The last point made by FDIC Chairman Tanoue actually argues against the purported subsidy argument point put forward by some. Take for example two identical banks—Bank A and Bank B.

Bank A conducts its nonbank activities in a subsidiary and Bank B conducts its nonbank activities in the holding company.

In this case, the FDIC's exposure in Bank A is less than in Bank B because the amount of capital which could be raised either from the sub's assets or from the sale of the sub would actually reduce the losses of Bank A.

Thus, the FDIC's exposure in Bank B is higher because, as proven in the Bank of New England case, the sale of the affiliate cannot be counted on to reduce the banks losses.

Since both banks are identical and thus, have paid identical FDIC insurance premiums, Bank B receives a higher subsidy from deposit insurance because their return on FDIC insurance premiums paid is higher than Bank A, whose losses were lessened by the amount of capital raised by the sub.

Therefore, the operating subsidiary structure is safer from a safety and soundness perspective.

The amendment also removes the arbitrary $1 billion cap which is contained in the underlying bill. FDIC Chairman Donna Tanoue testified before the Senate Banking Committee that ''There is no valid reason to threat national banks differently on the basis of size or holding company affiliation.''

Another benefit of this amendment is that it provides competition among regulators. And that is so important. A recent conversation I had with a banking lawyer convinced me that this amendment is prudent public policy.

The attorney shared with me that in his dealings with the Federal Reserve Board and the Office of the Comptroller of the Currency, one of the agencies had been cooperative in helping his client work through issues and find creative ways to deal with their problems while the other had done nothing to help.

If we were to eliminate the competition, regulators would have no incentive to be responsible to the institutions they regulate and American banks would have nowhere to turn if they are unhappy with their treatment.

In closing, I think this amendment should not be portrayed as a killer amendment. And I hope and I urge the chairman and the majority leader to accept the will of the Senate and to allow the vote. Whether the amendment passes or fails, I pledge to vote for the bill—no matter how the amendment turns out.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. I yield 5 minutes to the Senator from New Mexico, Mr. DOMENICI.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I thank the Senator. I thank the Presiding Officer for recognizing me.

First, I compliment Senator GRAMM on the marvelous work he has done on a very complicated bill. And I hope we get new legislation in this area before the week is out. Coming out of conference, I hope that we will have something fundamentally positive for the banking industry of the United States.

Mr. President, I have been in the Senate about 27 years. And I guess I would have to say, the institution of the United States for which I have the most respect is the Federal Reserve Board. In fact, I marvel at the 1913 act, the Federal Reserve Act. Frankly, I marvel at the caliber of people that have chaired the Fed and who act with total independence once they are appointed. Only one time in my 27 years have I thought that the Federal Reserve Board Chairman and the President of the United States were negotiating among themselves about interest rates and the like. For the most part, the Federal Reserve has been a marvelous institution for stability and nonpolitical involvement in the banking industry of America and for conducting the monetary policy of America.

I see this issue as a very simple one. Do you want the Federal Reserve Board to continue to be a major, major player in the banking system of the United States or do you want to send responsibility over to the White House?

When Congress created the Federal Reserve Board, there was a different problem. But we decided to create the Fed independent of the White House and keep it out of politics. Now we are here engaged in a fight, in an argument, in a close vote on sending a big part of the Federal Reserve Board's responsibility back to the White House. This amendment would allow a substantial portion of bank policy to be dictated by the White House. I do not believe it belongs there.

I am not saying this because of Secretary Rubin. I have agreed with almost all of his policies. As a matter of fact, I have said his economic policies remind me of Republicans and that probably is what saved the President in terms of the policies that he has put into effect. I have told the Secretary that. I do not know whether he was pleased or not so pleased to hear that, but I congratulated him nonetheless.

Essentially, this is the issue: Do you want to take a big piece of American banking policy and put it back in the political arena? Because no matter what we think of the Comptroller of the Currency, he is a political appointee. And it is most amazing, in the hierarchy of those who have power in America, it is not even a powerful position. It will be powerful if the amendment before us passes, because we will be giving the Comptroller tremendous control over our banking policy instead of vesting it where it truly belongs, with the most significant independent group in America's economic recovery since 1913—the Federal Reserve Board and its Chairman. I hope we do not do that.

I am amazed. It seems as though the White House believes that this is one of

the most important issues it has ever faced. The lobbying pressure is enormous, with different levels of White House people—not the President,—but in the White House, Secretaries, Cabinet members. Maybe it is because they like Mr. Rubin so much they do not want him to lose this one. Maybe that is it. But it can't be that kind of issue unless it is seen by the executive branch as involving such power that Presidents might want to have it, rather than leave that power in the hands of the independent, successful management of the Federal Reserve Board.

I thank you for yielding me time, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SHELBY. How much time do I have?

The PRESIDING OFFICER. Five minutes.

Mr. SHELBY. How much time does the Senator from Texas have?

The PRESIDING OFFICER. Eleven minutes, give or take a few seconds.

Mr. GRAMM. Let me yield 5 minutes to the distinguished Senator from Florida, Mr. MACK.

The PRESIDING OFFICER. The Senator from Florida.

Mr. MACK. Thank you, Mr. President. And I thank Senator GRAMM for yielding me time.

This was an issue that I did not expect to be drawn into as far as the debate was concerned. But as I have listened to it, and as I have observed my colleagues over the last several days, as the lobbying on both sides of this issue has been going on, and seeing people move back and forth, I have become concerned about how people are making decisions.

Finally, we have gotten down to the crux of the matter here, and that is, at least in my opinion, how monetary policy in the United States is going to be carried out.

I believe it is so important that we focus on the issue of monetary policy, because one of the underlying strengths, one of the major factors in the economic growth that we have experienced for almost 16 years is the role of the Federal Reserve, a Federal Reserve that has been committed to price stability. To do something that will weaken the influence of the Federal Reserve with respect to monetary policy would be a tragic mistake.

Here is my reasoning as to how this will come about. The Treasury is selling their idea to Members that all we really want to do is give the bankers a choice—that seems to be a fair and reasonable thing to do—let them decide.

I was in the banking business. This is really not a choice. You are saying to the bankers, you make a choice about where you are going to put this. They know where the cost of capital is the cheapest, and the cost of capital is going to be the cheapest in an operating subsidiary.

Why is the operating subsidiary going to be the cheapest cost to them? Because there is a subsidy attached to the bank, and so the bankers naturally will go to where their costs are the cheapest. They will, in fact, put these new powers into an operating subsidiary. Having done that, there is no longer a need for them to be involved in a holding company. The holding company is the vehicle, if you will, that allows the Federal Reserve to carry out its monetary policy.

The second thing that is going to occur is by voting for the use of an operating subsidiary, you are really saying you want the taxpayers to expand the subsidy that goes into the banking industry or into the financial services industry. That is an individual decision that people can make. But I think it is wrong to try to approach this question about whether I am for the bankers or whether I am not for the bankers. This is an issue about whether you want to have a monetary policy that is of value to this country.

I ask Members to consider what has happened in this country in these past 16 years as far as growth is concerned. The foundation of that growth has been the commitment that this Federal Reserve, and Alan Greenspan in particular, has had to the objective of price stability. We have finally reached the point where we have attained price stability, and we are talking about tinkering around with legislation that could lessen the influence of the Federal Reserve.

As Senator DOMENICI indicated earlier, as you lessen that influence, you are going to increase the influence in the executive branch over the banking industry and monetary policy in this country. That would be a tragedy.

I ask my colleagues who may be wavering on this issue, this is not a choice between Secretary Rubin or Alan Greenspan or commercial banks. This is a decision about monetary policy in this country and who should, in fact, have control of it.

I ask you to support the position outlined by the chairman of the Banking Committee, Senator GRAMM.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Alabama.

Mr. SHELBY. How much time do I have?

The PRESIDING OFFICER. Four minutes 53 seconds.

Mr. SHELBY. Mr. President, I will be brief.

First, I point to the fifth paragraph of the Greenspan letter to Chairman GRAMM. It says, basically, that foreign bank-owned section 20 companies have substantially underperformed U.S.-owned section 20 companies. He goes on to say, ''The subsidy does not travel well.''

Are you suggesting the subsidy travels from New York to London but not London to New York? In other words, not from foreign banks to the United States? The Federal Reserve's own letter says the subsidy is nontransferrable.

Safety and soundness? In Chairman Greenspan's own words, he says:

> My concerns are not about safety and soundness. It is the issue of creating subsidies for individual institutions which their competitors do not have. It is a level playing field issue. Nonbank holding companies or other institutions do not have access to that subsidy, and it creates an unlevel playing field. It is not a safety and soundness issue.

That is Chairman Greenspan's own words.

Lastly, is this a power grab? This legislation makes the Federal Reserve the monopoly umbrella regulator. I do not have to educate the distinguished chairman, who is a smart Ph.D. economist, on the abuses of a federally sanctioned monopoly. He has talked about it since I have known him, and he is right on that.

My amendment would allow for competition for banks to choose their regulator. It does not mandate that any bank in the United States must conduct such activities in an operating subsidiary. It allows the bank to choose.

I am sure a free market economist like Senator GRAMM understands more than I do the benefits of market discipline. Competition among regulators will not allow a national bank regulator to run amok.

Does Chairman Greenspan support the bill? Of course. We are granting him a monopoly. We are granting his successor a monopoly, whoever that is. I can't believe that Chairman GRAMM, a distinguished economist in his own right, is advocating a monopoly.

This amendment I am offering will promote competition. It promotes choice. I hope my colleagues will support it.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I guess the best place to conclude is to quote the principals in this debate. Secretary Rubin before the House Commerce Committee said:

> [O]ne of an elected Administration's critical responsibilities is the formation of economic policy, and an important component of that policy is banking policy. In order for the elected Administration to have an effective role in banking policy, it must have a strong connection with the banking system.

What is being said here is that the Secretary of the Treasury believes that the President should exercise more control over the banking system. Now, if you believe the time has come to turn back the clock to 1913 and take banking policy away from the independent Federal Reserve, you agree with Secretary Rubin. I do not agree with Secretary Rubin. The fact that I do not agree has nothing to do with the fact that he is a Democrat and Bill Clinton is President. I do not believe any President should have control of banking policy. We decided in 1913 to put it in an independent agency, and that should not change.

All of you know that Alan Greenspan is not prone to overstatement—quite

the contrary—but Alan Greenspan has said that he and every member of the Board of Governors of the Federal Reserve, most of them appointed by President Clinton, are firmly of the view that the long-term stability of U.S. financial markets and the interests of the American taxpayer would be better served by no financial modernization bill rather than adopting this amendment.

Now, that is as clear as you can make this debate. It is partly about risk. It is riskier to be in the securities business inside a bank than it is outside the bank, when the taxpayer guarantees the bank depositors. That is part of the reason to vote no on the Shelby amendment. You do get a subsidy for a bank when they are doing activities inside the bank, instead of having to take capital out and investing it like everybody else. And if you are worried about a level playing surface, that is a reason to vote against the SHELBY amendment. But finally, if you believe that the Federal Reserve ought to conduct banking policy, and not the Treasury, that is the strongest reason to vote against the Shelby amendment.

Finally, two points: No. 1, if my colleagues will vote to table the Shelby amendment, we will work in conference to preserve the primacy of the Fed to deal with problems of unfair competition and subsidy, and yet try to find a way to let banks choose between operating subsidiaries and affiliates, to do these activities inside the bank or out.

Secondly, as hard as I have worked on this, and as strongly as I feel about it, given Alan Greenspan's position and given that I believe he is right, we are not going to pass this bill tonight if we adopt the Shelby amendment. So I urge my colleagues, if you want this bill, if you want an independent banking policy, give me an opportunity in conference to sit the Secretary of the Treasury down and sit the head of the Federal Reserve down and give us a chance to come up with ways to do opsubs without letting the Treasury take over banking policy.

We can do that by simply not changing the regulator based on whether you have a holding company or not, or what the holding company does. And we can find ways to require banks to have good capital and to see that the subsidy doesn't exist. But to do that, we need to defeat this amendment and pass this bill.

I know my colleagues are tired of being cajoled. They think a lot of overstatements have been made. I simply would like to say, from my part, I believe this is a critical vote. If you think passing the Federal Reserve Act was a good thing, if you think we prospered under an independent banking authority—and I do—then you want to vote ''no'' on this amendment.

That doesn't mean that we can't later come up with a way of trying to do this that works, and I pledge to my colleagues my best effort in conference to do that. But we can't do that if we can't pass this bill. And we can't pass this amendment and pass this bill. So that is where we are. I know people have commitments out everywhere, and they are going to make somebody mad no matter what they do. But there is an old adage my grandmother used to say: ''If you are going to catch hell no matter what you do, do the right thing.'' That is what I ask my colleagues to do—the right thing.

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

The PRESIDING OFFICER. All time has been yielded back.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

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

Mr. SARBANES. I object.

The PRESIDING OFFICER. The clerk will continue to call the roll.

The legislative assistant continued with the call of the roll.

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

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

Mr. DASCHLE. Mr. President, I will use my leader time to make a few remarks on this amendment prior to the time we have our vote.

I am very appreciative of the efforts made by the distinguished Senator from Alabama and the Senator from Maryland and for their extraordinary leadership in offering this amendment. I am proud to be a cosponsor.

We call this proposal the American Bank Fairness Amendment. It is cosponsored by a number of our colleagues on both sides of the aisle. On this side, the Senator from Rhode Island, Mr. REED, is a leading expert and a long-time champion of this measure. We are grateful to him for the work he has done.

In a nutshell, this amendment, as my colleagues have noted, would give American banks the freedom to organize their activities in a way that makes the most sense to them. That is basically what it is. It is that simple. Let's give the banks the freedom and the opportunity to make their own choice. We are not going to have Government tell them what is the best choice; we are going to let them make up their own minds. Instead of forcing the banks to organize using an expensive holding company structure, as the underlying bill does, our proposal simply gives banks an option. They can conduct activities through a holding company, or they can conduct their activities through an affiliated operating subsidiary.

By giving banks this choice, our amendment will lead to better services at lower costs for all sorts of financial services, from banking to brokerage services to insurance.

I want to talk about two specific points—two specific and substantial ways in which our amendment improves on the pending bill.

On the issue of safety and soundness, our proposal is actually stronger than the bill offered by the chairman. That is not my assertion. The current Chairman of the FDIC and his four predecessors—three Republicans and two Democrats—all agree. They say that banks face greater risks if forced to use the holding company structure.

I think everybody ought to know here that we are talking about an entirely new system. We are talking about moving into uncharted waters. We are talking about making sure that each financial institution has the best option available to it to make the best choice. What we are saying is that as a financial institution makes the choice as it goes into all these uncharted waters, the most important thing we can do is guarantee its safety and soundness.

What are we getting? We are getting a virtually unanimous report from the FDIC Chairmen—the current one and four predecessors—that we are using an option here advocating a position that creates more safety and soundness than we have in this bill.

So if you want safety and soundness, vote for this amendment.

Mr. President, the chairman's bill exposes banks. And I have to say because it exposes banks, it exposes taxpayers to greater risks than our alternative.

There are two reasons for that. First, subsidiaries are assets of the bank. They can be sold to satisfy creditors. Affiliates are not considered bank assets.

The second reason subsidiaries are safer is because profits from a successful bank subsidiary accrue to that bank. But the profits from a company that is part of a holding company do not directly benefit the bank.

Mr. President, it is no secret that of all the issues pending before us, one of those issues into which our Treasury Secretary has put the greatest amount of time and the greatest amount of effort, because he is so concerned about safety and soundness, is this. He wants a tough bill when it comes to safety and soundness. He agrees with the FDIC Chairman and her predecessors, that if we are going to have strong safety and soundness, it is absolutely critical that we ensure we have the structure available to make it happen.

Even Fed Chairman Greenspan, who the chairman likes to cite in connection with this bill, agrees that safety and soundness is not the issue here.

In his exact words, ''My concerns are not about safety and soundness. . . . It is not a safety and soundness issue.''

Our proposal corrects a second serious flaw in the underlying bill as well. It does so by giving American banks the same freedom as foreign banks to choose their operating structure.

It is absolutely astounding to me that the chairman, who talks so passionately about free markets, actually

dictates in his bill how financial services companies must organize their activities. He gives them one—and only one—choice, which means he gives them no choice at all.

Forcing activities into affiliates would place American banks at a competitive disadvantage not only in the international markets; it would actually place American banks at a disadvantage in America.

We already give foreign banks the freedom to choose the structure that best serves the business plan. Since 1990, the Federal Reserve has issued approvals for 18 foreign banks to own subsidiaries that engage in securities underwriting activities in the United States. All told, I am told these foreign-owned subsidiaries exceed $450 billion in assets.

In a 1992 joint report on foreign bank operations, the Federal Reserve Board and the Treasury Department agreed that ''subject to prudential considerations, the guiding policy for foreign bank operations should be the principle of investor choice.''

The bottom line, therefore, Mr. President, is this: The chairman's bill discriminates against American banks in favor of foreign banks. We say that is wrong. Our amendment levels the playing field. Safety and soundness, basic fairness, these are the important issues that are underlying this amendment that we will be voting on in just a couple of minutes.

There is one other important point we need to consider. The President made it absolutely clear that he will veto the financial services modernization bill unless we fix the problem with operating subsidiaries. So the choice is ours—or perhaps I should say it is the chairman's choice.

Does he really want a bill badly enough to negotiate and find some solution? Does he want a bill badly enough to give up some potential leverage he might get in conference to deal with this legislation in a way that allows us to focus on the real problems?

I hope he will reconsider what threats he has made to pull this bill if his position does not prevail on this amendment.

Let's recognize for the good of our country, for the good of our financial institutions, for the good of choice, for the good of safety and soundness, for moving this bill along, that we only have one choice. It is to pass this amendment, and I hope we will do it tonight.

I yield the floor.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I move to table the Shelby amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas to table the amendment of the Senator from Alabama. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

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

The result was announced—yeas 53, nays 46, as follows:

[Rollcall Vote No. 104 Leg.]

YEAS—53

Abraham	Frist	Nickles
Allard	Gorton	Roberts
Ashcroft	Gramm	Roth
Bond	Grassley	Santorum
Brownback	Gregg	Schumer
Bunning	Helms	Sessions
Burns	Hutchinson	Smith (NH)
Byrd	Hutchison	Smith (OR)
Chafee	Inhofe	Snowe
Collins	Jeffords	Specter
Coverdell	Kyl	Stevens
Craig	Lott	Thomas
Crapo	Lugar	Thompson
DeWine	Mack	Thurmond
Domenici	McCain	Voinovich
Dorgan	McConnell	Warner
Enzi	Moynihan	Wellstone
Feingold	Murkowski	

NAYS—46

Akaka	Edwards	Leahy
Baucus	Feinstein	Levin
Bayh	Graham	Lieberman
Bennett	Grams	Lincoln
Biden	Hagel	Mikulski
Bingaman	Harkin	Murray
Boxer	Hatch	Reed
Breaux	Hollings	Reid
Bryan	Inouye	Robb
Campbell	Johnson	Rockefeller
Cleland	Kennedy	Sarbanes
Cochran	Kerrey	Shelby
Conrad	Kerry	Torricelli
Daschle	Kohl	Wyden
Dodd	Landrieu	
Durbin	Lautenberg	

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was agreed to.

Mr. GRAMM. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MACK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, while there are so many Members on the floor, I want to engage the chairman of the committee in a discussion and maybe we can let Members know where we are going.

This was the last of the very large—I do not want to suggest that any amendment any Member has to offer is not a large amendment; I recognize that, but this was the last of a series of large amendments that we had lined up. I know the chairman and leader's intention is to try to finish this evening. As I understand it, there are some amendments around. I guess we will find out very shortly. Maybe we can dispose of them or deal with them in a fairly reasonable way in a short period of time and then go to the final vote on this bill.

As I understand it, the leader said that if we voted final passage tonight, there would be no votes tomorrow. Members, I think, would have to figure whether it is worth investing a little more time this evening in order to finish up. That is how I see the lay of the land. I just ask the chairman to comment.

Mr. GRAMM. We have a cleanup amendment. I think it is ready. We can do it. I hope there are no other amendments, and I am ready to vote. I yield to Senator BRYAN.

Mr. BRYAN. If I may engage the floor manager and the distinguished chairman, I have an amendment, and I would like about 10 to 15 minutes. I do not intend to ask for a rollcall vote.

Mr. GRAMM. Can the Senator let us move ahead for the convenience of everybody who have flights and have you do that after the vote? If the Senator can do that, it would be very much appreciated.

Mr. BRYAN. I want to accommodate the Senator in any way I can. I want to make sure what I am agreeing to. There are several other Senators who may have amendments. I do not want to be at the end. I am simply willing to yield for the purpose of the amendment.

Mr. GRAMM. If there is no other amendment, if the Senator can do that, I am sure Members will accommodate and I will stay and listen to it if he would like me to.

Mr. BRYAN. I am not sure I understand. I want to offer the amendment before we have a final rollcall vote itself.

Mr. GRAMM. Can the Senator offer it and, if he is going to withdraw it, withdraw it and then speak after the vote? Can that be done? If not, let's go ahead and start.

Mr. BRYAN. I am willing to enter into an agreement of 10 minutes.

Mr. GRAMM. All right. Whatever works, I am willing to do.

Mr. WELLSTONE. Before my colleague starts, I do have an amendment.

The PRESIDING OFFICER (Mr. ENZI). There is a pending amendment, the Dorgan amendment No. 313.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. BENNETT. I have two amendments at the desk that I believe will be accepted by both sides after modification. I would like the opportunity to call those up before the final vote.

Mr. GRAMM. If the Senator will let us just work on them and put them in the managers' package and we will do them all at once, if he can get those to us.

Mr. BENNETT. I will do that.

Mr. LEVIN addressed Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I have an amendment which I am likely to offer, but I need to engage in some floor discussion with the managers prior to making that decision. I think it may take about a half an hour to an hour to go through a discussion with the managers on this subject.

It is a very important subject. It has to do with whether or not the SEC is going to be able to regulate the purchase and sale of stock when they are done by banks. The SEC sent me a letter yesterday strongly objecting to language in this bill, and what they are pointing out is that the language in the committee report is different from the language in the bill.

I want to talk to the managers about an amendment which would incorporate in the bill what the committee report says is the intent of the bill. It is possible that this will be accepted because this is committee report language which I am trying to get into the bill, but I do not know until after we go through the discussion process on the floor. I just want to alert colleagues that could take perhaps a half an hour to an hour.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, just on the order of business, I have an amendment I was going to offer with Senator HARKIN. I know colleagues want to leave. I need to talk with Senator HARKIN and make a decision as to what we want to do here, if the manager can give us a couple of minutes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have spoken to both managers of the bill. Senator DORGAN and I have an amendment. It is simple in nature. I think it is something that should be accepted. It is something that could be reviewed in conference. It would require an independent audit of the Federal Reserve Board. Otherwise, we will offer that amendment. It will not take long.

Mr. GRAMM. If the Senator will give us that amendment and let us look at it, we might be able to include it in the managers' package.

Mr. SARBANES. I suggest to the chairman, maybe if we take about 5 or 10 minutes to engage in a discussion with the people who have these amendments, we can find a way to perhaps accept some of them and go to conference with them at least and deal with the others, and then we can still move to final passage this evening and complete this legislation, which I think is highly desirable.

Mr. GRAMM. I agree with that. The thing to do is to plow ahead. Is the distinguished Senator from Nevada going to withdraw the amendment?

Mr. BRYAN. Yes.

Mr. GRAMM. Can I suggest, again, the Senator offer the amendment and speak for a couple of minutes and withdraw it, and then after the vote, if he wants to speak longer on it, he can. Will that work? If not, go ahead and speak.

Mr. BRYAN. Mr. President, I will be willing to do that. Can I have a little flexibility, if you are still trying to work things out. I am not trying to delay this.

Mr. GRAMM. Let's just start.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 316

(Purpose: To give customers notice and choice about how their financial institutions share or sell their personally identifiable sensitive financial information, and for other purposes)

Mr. BRYAN. Procedurally, I ask unanimous consent to lay aside the pending amendment, and I ask that an amendment dealing with personal privacy be sent to the desk for immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. BRYAN] proposes an amendment numbered 316.

Mr. BRYAN. 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:

On page 150, after line 21, add the following:

TITLE VII—FINANCIAL INFORMATION PRIVACY

SEC. 701. SHORT TITLE.

This title may be cited as the ''Financial Information Privacy Act of 1999''.

SEC. 702. DEFINITIONS.

In this title—

(1) the term ''covered person'' means a person that is subject to the jurisdiction of any of the Federal financial regulatory authorities; and

(2) the term ''Federal financial regulatory authorities'' means—

(A) each of the Federal banking agencies, as that term is defined in section 3(z) of the Federal Deposit Insurance Act; and

(B) the Securities and Exchange Commission.

SEC. 703. PRIVACY OF CONFIDENTIAL CUSTOMER INFORMATION.

(a) RULEMAKING.—The Federal financial regulatory authorities shall jointly issue final rules to protect the privacy of confidential customer information relating to the customers of covered persons, not later than 270 days after the date of enactment of this Act (and shall issue a notice of proposed rulemaking not later than 150 days after the date of enactment of this Act), which rules shall—

(1) define the term ''confidential customer information'' to be personally identifiable data that includes transactions, balances, maturity dates, payouts, and payout dates, of—

(A) deposit and trust accounts;

(B) certificates of deposit;

(C) securities holdings; and

(D) insurance policies;

(2) require that a covered person may not disclose or share any confidential customer information to or with any affiliate or agent of that covered person if the customer to whom the information relates has provided written notice, as described in paragraphs (4) and (5), to the covered person prohibiting such disclosure or sharing—

(A) with respect to an individual that became a customer on or after the effective date of such rules, at the time at which the business relationship between the customer and the covered person is initiated and at least annually thereafter; and

(B) with respect to an individual that was a customer before the effective date of such rules, at such time thereafter that provides a reasonable and informed opportunity to the customer to prohibit such disclosure or sharing and at least annually thereafter;

(3) require that a covered person may not disclose or share any confidential customer information to or with any person that is not an affiliate or agent of that covered person unless the covered person has first—

(A) given written notice to the customer to whom the information relates, as described in paragraphs (4) and (5); and

(B) obtained the informed written or electronic consent of that customer for such disclosures or sharing;

(4) require that the covered person provide notices and consent acknowledgments to customers, as required by this section, in separate and easily identifiable and distinguishable form;

(5) require that the covered person provide notice as required by this section to the customer to whom the information relates that describes what specific types of information would be disclosed or shared, and under what general circumstances, to what specific types of businesses or persons, and for what specific types of purposes such information could be disclosed or shared;

(6) require that the customer to whom the information relates be provided with access to the confidential customer information that could be disclosed or shared so that the information may be reviewed for accuracy and corrected or supplemented;

(7) require that, before a covered person may use any confidential customer information provided by a third party that engages, directly or indirectly, in activities that are financial in nature, as determined by the Federal financial regulatory authorities, the covered person shall take reasonable steps to assure that procedures that are substantially similar to those described in paragraphs (2) through (6) have been followed by the provider of the information (or an affiliate or agent of that provider); and

(8) establish a means of examination for compliance and enforcement of such rules and resolving consumer complaints.

(b) LIMITATION.—The rules prescribed pursuant to subsection (a) may not prohibit the release of confidential customer information—

(1) that is essential to processing a specific financial transaction that the customer to whom the information relates has authorized;

(2) to a governmental, regulatory, or self-regulatory authority having jurisdiction over the covered financial entity for examination, compliance, or other authorized purposes;

(3) to a court of competent jurisdiction;

(4) to a consumer reporting agency, as defined in section 603 of the Fair Credit Reporting Act for inclusion in a consumer report that may be released to a third party only for a purpose permissible under section 604 of that Act; or

(5) that is not personally identifiable.

(c) CONSTRUCTION.—Nothing in this section or the rules prescribed under this section shall be construed to amend or alter any provision of the Fair Credit Reporting Act.

Mr. BRYAN. I thank the Chair.

Mr. President, earlier today, the Senate adopted an amendment offered by the distinguished chairman of the Banking Committee dealing with the fraudulent procurement of personal information by information brokers. Last Congress, Senator D'Amato and I offered an identical provision, and we were successful in incorporating that in last year's financial modernization bill, H.R. 10.

Unfortunately, that measure died along with H.R. 10 which was filibustered at the end of the last session. I commend the Senator from Texas. The antifraud provision is a good first step, but as Senator SARBANES articulated earlier today, it is in no way a substitute for meaningful privacy protections.

The Gramm amendment deals with a small, but pernicious, group of information brokers that obtain personal information under false pretenses. This practice should be shut down. In fact, the Federal Trade Commission recently brought action against such practices.

While thousands of Americans are harmed by fraudulent information brokers, each and every American who has a bank account, stock portfolio or an insurance policy is subject to a massive invasion of his or her personal privacy that cries out for legislative remedy.

I applaud the fact that the chairman has indicated we are going to hold a series of hearings.

I applaud the chairman's promise to hold a series of hearings on the financial privacy issue. Many of us who worked on the Community Reinvestment Act would have hoped we might have had similar opportunities before moving forward with the CRA changes in this bill.

While the chairman's amendment and his hearings are good first steps, I encourage us to take one more step that Senator SARBANES and Senator DODD and I have been urging for some time.

My amendment is quite simple. What we are talking about is financial privacy. I want to make it very clear that I am a strong supporter of the restructuring bill that is before us, the financial modernization. I freely acknowledge and recognize that we need a regulatory framework which comports with the realities of the marketplace today.

So my purpose in offering this amendment is in no way to denigrate the need to make the kind of changes which essentially are outlined in S. 900, or a part of H.R. 10 in the previous session. But I think my colleagues and the American people would be absolutely shocked if they knew how little privacy they have in their personal financial information with the very people who are going to be players in this financial reorganization—banks, security brokerages, and insurance.

Here is what the American people have to say on the issue of privacy. When asked recently: ''Would you mind if a company you did business with sold information about you to another company?'' Ninety-two percent said yes, they would object to it. The source of that information is the AARP.

Let me cite an illustration of precisely what does occur and will continue to occur. This is a financial transaction, I say to my colleagues, that occurred at a bank. A lady came in and deposited $109,451.59. At this bank, teller No. 12 made the following notation: ''She came in today,'' referring to the depositor, ''and wasn't sure what she would do with her money.'' That is the bank teller.

This bank has a relationship with a brokerage house. Here is what the teller then did. The teller then contacts ''David''—David is the individual with the brokerage house—and says, ''See what you can do! Thank you.''

So in effect the privacy of this individual's personal bank account is compromised, as the bank teller then notifies the brokerage house: ''You'd better get ahold of this lady. She has $109,000. She doesn't know what she wants to do with it. You contact her.''

This is a real-life situation. Under the current law—under the current law—your information with respect to your insurance accounts may be freely sold to a third party, or maybe transferred to an affiliate under the proposed arrangements that are contemplated in this bill. Your bank account information can be sold to a third party—a total stranger to you and to your financial transaction.

So you have a situation in which all of a sudden you have a certificate of deposit that is coming due next month, and you start to get a stream of information from vendors who are marketing financial services and saying, ''Mrs. Smith,'' ''Mr. Jones, I know your certificate of deposit is due next month. Let me show you what our financial package can provide for you.'' And you are saying, ''How does this outfit know that I've got a certificate of deposit that is maturing next month?'' And the answer is, that information can be sold to a third party, and that information is valuable to a particular vendor of services.

So the amendment that we propose does two things: No. 1—and I do not see how you can argue against this proposition—

The PRESIDING OFFICER. The Senate is not in order. If conversations do not relate to the bill at hand, would you please take them into the other room. The Senator deserves consideration. Would conversations near the Senator please cease.

Mr. BRYAN. I thank the Presiding Officer.

The point that I was making is that your financial information with respect to insurance brokerage accounts and bank accounts is not protected under the present law. That information can be sold or marketed to a total stranger. An outfit, for example, that may be selling penny stocks all of a sudden contacts you and says, ''Look, I know you've got a certificate of deposit or bank account with a sufficient balance involved.''

So what we are proposing in this amendment is something very hard to argue against. We are saying that with respect to these financial organizations—banking, insurance and brokerage—that they cannot sell to a total stranger, a third party, without your consent. What is wrong with that?

So rather than being able to sell to any vendor your very personal and private information—your insurance coverages, whatever information might be available about any medical condition that you might have, your brokerage account, your bank account—cannot be sold to a third party without your prior consent. I suspect if you ask the American people—Democrat, Republican, independent, whether they are to the right of center or to the left of center or in between—you would get almost a unanimous vote that would say, ''That is what I want as a protection for my privacy.''

I understand that in this modern consolidation of financial services the thrust of this bill is going to permit banks and insurance and brokerage to be involved in affiliated relationships. I understand that. So we are told, ''Do not, Senator, do anything that would impair or compromise the synergy of the marketplace. Don't do that.''

Well, this is what we propose with respect to those affiliate arrangements. This would not be a total stranger or a third party. If they are going to transfer and make available that information, they need to notify you and give you the opportunity to opt out. They do not have to get your prior consent, but they have to give you the right to opt out.

That concept is recognized in the law. Many of you will recall that I took the lead some years back in securing amendments to the Fair Credit Reporting Act. And we said there, with respect to information that is collected, with respect to your credit history, that before that information can be made available for marketers and others, they need to notify you where that information came from and that you had the right, after receiving a solicitation, to say, ''Look, no more. Take me off the list'' in effect the right to opt out.

So that is what we are proposing in this amendment—An absolute requirement that if the information is made available to a total stranger, a third party, that has no affiliate relationship, a vendor of any number of financial services, they must obtain your prior consent; that if the information, the financial information, is to be transferred from one of their affiliates, they need to give you the opportunity to opt out if you choose to avail yourself of that option. Now, I am hard pressed to understand why anybody would object to that. I think any one of us would be somewhat surprised to know that our bank accounts, our insurance, and our brokerage accounts

can be made available to anyone under the existing law. If we are going to provide these new financial services, which I believe we ought to provide to recognize the change in the marketplace, that does not strike me as being an unreasonable proposition to advocate.

So this is a provision that I think needs attention. I must say that the ranking member has taken a lead on this. He has been a strong advocate, as has the senior Senator from Connecticut. I know he had a question or two to which I would be happy to respond.

Mr. SARBANES. If the Senator will yield, I commend the Senator for his very strong statement. This is an extremely important issue. I appreciate the Senator speaking out on it. We have joined together, actually, in introducing legislation on this privacy question, along with Senators LEAHY and DODD and HOLLINGS. Earlier today we raised the issue with the chairman.

I think it would probably be helpful if the chairman could provide—the Senator may want to question him himself—the similar assurances he gave earlier about the committee committing itself to examining this issue in a comprehensive way, with hearings and with the idea in mind, of course, to try to bring forth legislation that will address what the chairman himself has conceded is an important issue that needs to be addressed.

Mr. GRAMM. Will the Senator yield?

Mr. BRYAN. The Senator is pleased to yield.

Mr. GRAMM. The Senator was not on the floor today when I offered the amendment which adopted the provisions that were in the Sarbanes substitute. I said at the time that I did not believe it solved the problem. I committed to hold extensive hearings. I committed to allow anyone who had any kind of substantive opinion to express it, and I committed that we would take a hard look at it.

This whole issue is a very serious issue, and it is one we have to learn to live with. It is one about which I share a great deal of concern with others.

Mr. BRYAN. Mr. President, I appreciate the Senator's commitment. If I might engage the distinguished chairman in a follow-up inquiry—I know the Senator is trying to process this bill. As Henry VIII said to his third wife, I shall not keep you long—the question I have of the able chairman is, Would the Senator not agree that before a financial services institution sells personal information about your bank accounts, your insurance policies, about your brokerage accounts, it is not unreasonable that they get your consent before doing so?

Mr. GRAMM. Well, if the Senator will yield, first of all, we adopted some provisions today from the Sarbanes substitute that were a first step.

Mr. BRYAN. Yes.

Mr. GRAMM. But I made it clear they were only a first step. I believe as a matter of principle they should. If the Senator will take yes for an answer, I will say yes.

Mr. BRYAN. The Senator is delighted to take yes for an answer. I am most appreciative of the response.

If the able chairman is saying that perhaps my time has expired, I will be happy to yield the floor in just a moment. I inquire whether or not the ranking member has further colloquy he wishes to engage me in.

Mr. SARBANES. I simply want to underscore, the importance of this issue and the contribution which the very able Senator has made to it. Isn't it correct, most people don't realize these things can happen?

Mr. BRYAN. I say to the senior Senator from Maryland, not only do they not realize it, they are absolutely dumbfounded and amazed. Most people believe that in the world of high finance, brokerage accounts, insurance and banks, there is a system of Federal law that protects their privacy. I say to the Senator from Maryland, we all recognize that we are entering a new era of financial transactions, the Internet; computers have transformed the way in which we transact our business; the old green eyeshade guys are gone.

Today the right of privacy as we know it in America is threatened, I say to my friend from Maryland. More than a century ago the able, later Justice of the U.S. Supreme Court advocated, in a Harvard Law Review article, a right of privacy. That right was later enshrined in subsequent opinions of the U.S. Supreme Court.

I think the very essence of a right of privacy ought to be your personal financial information—how much money you have in your bank account; to whom you choose to make payments; your insurance coverages; any medical conditions that might be a part of that insurance record; what stocks and bonds and securities you hold; when those certificates of deposit might mature. To say that all of that can be sold, transferred without your knowledge, without your consent, to some total stranger who may not, I say to my friend from Maryland, be a legitimate vendor—we don't know who these guys might be. All of a sudden you get a ton of mail coming in and saying: Mrs. Smith, I know your husband just died last year, and I know you have some certificates of deposit. They are getting a 5-percent return. As a widow, you need to know, if you invest with us, we can quadruple that rate of return.

That is what is happening, I say to my friend from Maryland. That is something that I think is appropriate for the Congress and the Federal Government to say, that is wrong.

I appreciate the leadership of the ranking member on this. This is something that ought not to divide us, Democrat or Republican, liberal or conservative.

Mr. SARBANES. The Senator is absolutely right. I want to make it very clear, the provision that was adopted earlier today was an antifraud provision. It was designed to get at people who get this information by fraud. The fact of the matter is, under the current arrangements there is no restriction that precludes a financial institution from providing this information or selling this information to others.

I think you are absolutely right; people would be dumbfounded to know that this information they are giving to their financial institution has no privacy protections around it. I think it is extremely important, as the Senator has emphasized, to establish such protections.

It has an issue of some complexity to it. We need to work through it. I think the hearings that have now been committed to will give us the opportunity to do it. There are many members on the committee on both sides of the aisle who are interested in this issue. I hope we can move forward and bring a significant piece of legislation to the floor of the Senate.

Mr. BRYAN. I look forward to working with the senior Senator from Maryland on this.

Let me say, I am going to withdraw this amendment, because of the lateness of the hour and because we want to move forward to process this.

I say to my friend from Maryland—I know he feels this very strongly—the word should go out tonight from this Chamber to the industry groups that believe this is an issue that is going to go away. It is not going to go away. What we are talking about is the essence of reasonableness and fairness. If you are talking about selling some information or making it available to a total stranger, you as an individual ought to have the right to make that decision. That is something that is fundamental and basic. As an accommodation to these new affiliate arrangements that can be entered into under this new legislation, we say, with respect to any transfers between the affiliates, an opt-out provision is a reasonable compromise.

I encourage our friends from the industry to work with us on this. I say to the Senator from Maryland, because this is not going to go away, we are going to address this issue, and the American people are going to be thoroughly outraged when they become aware that these new arrangements permit this continuation of an invasion of their privacy in the most personal way possible.

Mr. SARBANES. If the Senator will yield, I echo his observation that this is not an issue that is going to go away. Those who are involved need to take a constructive attitude in arriving at effective ways to protect the privacy of the American people. There is no doubt about it.

Mr. BRYAN. I thank the Senator from Maryland. I am prepared to yield the floor.

Mr. President, from a procedural point of view, I would like to withdraw

the amendment. May I do so, or do I need unanimous consent?

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I was going to introduce an amendment tonight with respect to low-cost lifeline bank accounts with Senator HARKIN from Iowa and my colleague, Senator SCHUMER from New York. This amendment would require banks that establish a bank holding company under the S. 900 guidelines to offer low-cost banking services to their customers.

I am not going to talk about this amendment at all tonight, except to say I think this is a most important consumer amendment; it is very important to senior citizens and very important to low- and moderate-income citizens.

My understanding, with my colleague from Texas, the chairman, is that we will have an opportunity to bring this amendment up when another banking-related bill comes to the floor, and we will be able to debate this and have an up-or-down vote; am I correct, I ask my colleague from Texas?

Mr. GRAMM. Mr. President, I told both of my colleagues that because in the past when they and others had sought to offer an amendment parliamentary maneuvers had been made to prevent that, on a future banking bill—and as Senator SARBANES noted, we already have reported three banking bills out of the committee. So we will have banking bills—I will guarantee them an opportunity to offer the amendment and to have an up-or-down vote on it.

Mr. WELLSTONE. I thank the chairman. I yield to my colleague from Iowa.

Mr. HARKIN. I thank the Senator from Texas for the assurance that we can offer this amendment later on. Again, this is an important amendment and we can't let it go too much longer. So I hope we will have some kind of banking bill this year. I hope it doesn't go into next year, because consumers are getting gouged. Most people don't carry more than $1,000 in their checking accounts and they are the ones who have to pay the fees. In all my life until just recently, checking accounts used to be free. Now if you have less than $1,000, you pay fees. Who has less than $1,000? It is the elderly, the low-income people; they have to pay the fees to keep the checking accounts. It is not fair.

Mr. SARBANES. If the Senator will yield, the committee has brought out—in fact, it is on the calendar—a regulatory relief bill to lessen the regulatory burdens on the financial institutions, and it seems to me in that spirit of lessening burdens, this basic banking amendment would certainly be an opportune amendment to offer to that bill when it is before the Senate. I am pleased that the chairman has committed to having an up-or-down vote.

I think the Senators are onto a very important issue, and it really is just a basic issue of equity and fairness for small people. I very much appreciate not only their raising it, but insisting that at some reasonable point we be given an opportunity to vote up or down on this important matter.

Mr. HARKIN. I thank the Senator from Maryland.

Mr. WELLSTONE. Mr. President, I also thank the Senator from Texas and the Senator from Maryland. We will certainly bring this amendment to the floor.

Mr. CHAFEE. Mr. President, last night the Senate approved a motion to table the Bryan CRA amendment by a vote of 52–45. I voted in favor of the tabling motion, and would like to take a moment to outline my position on this matter.

What did Senator BRYAN propose in his amendment? The Bryan amendment would have stricken two provisions in the underlying bill related to the Community Reinvestment Act, as follows: (1) the so-called CRA integrity provision and (2) the exemption for small, rural banks. In addition, the Bryan amendment would have conditioned approval of a bank's affiliation with a securities firm or insurance company on CRA compliance.

On this last point, linking approval of new financial activities to CRA compliance, I want to acknowledge Senator BRYAN's efforts to develop a pragmatic approach to this issue. Unlike some of the more far-reaching proposals that have been put forward, this provision would not have expanded CRA to apply to nonbank institutions, nor would it have required holding companies to divest themselves of a bank that falls out of compliance. Despite the relative appeal of this portion of the Bryan amendment, however, I found myself unable to support the overall package.

With regard to the integrity provision, I have long thought that banks that do a good job under CRA should get some credit for it. Under current law, however, a bank with an outstanding CRA rating that seeks to merge or expand potentially is subject to the same challenges from community groups as a bank with a rating of substantial noncompliance. This situation simply is not fair, in my judgment.

Now, the opponents of this provision point out that 97 percent of the banks receive a satisfactory CRA rating, and thus the bill offers the protection of the ''substantial, verifiable information'' standard to nearly every institution in the country. Admittedly, I would prefer to see the integrity provision deal only with ''outstanding'' banks. Unfortunately, the procedural situation did not permit an opportunity to make such a change.

Turning to the small bank exemption, only one financial institution in my state fits the bill's description of a small, rural bank. Nevertheless, I'm sympathetic to the hundreds of tiny banks across the country—institutions with only a handful of employees—that face a daunting, expensive regulatory burden in terms of CRA recordkeeping. In addition, I found particularly persuasive Senator GRAMM's observation that of the 16,380 audits of these small, rural banks in the past nine years, only three have been found to be substantially out of compliance.

I fully recognize the important role CRA has played in expanding the availability of credit in Rhode Island and across the nation. Small business owners, homebuyers, and renters alike have benefitted from the pressure CRA exerts on banks to make loans in neighborhoods they might otherwise overlook. At the end of the day, however, I determined that Senator GRAMM's proposed CRA reforms had some merit to them. For these reasons, I voted against the Bryan amendment.

Mr. MOYNIHAN. Mr. President, we have been debating the subject of banking in the Senate since the 18th century. We began to ask ourselves a question, could we have a national bank, which Mr. Hamilton, of New York, thought we could do and should do. We created one. It had a very brief tenure. It went out of existence just in time that the Federal Government had no financial resources for the War of 1812. So it was reinstituted, as I recall, in 1816 for 20 years, and went out of existence just in time for the panic of 1837. We went through greenbacks. There must have been a wampum period. We went to gold coinage. Then a free coinage of silver dominated our politics for almost two decades, as farmers sought liquidity and availability of credit. Finally, at the end of the century of exhaustive debate, we more or less gave up and adopted what we now call the Federal Reserve System.

To say we debated this matter for a century is certainly true. In the past few years, we have turned our focus to the nonbank bank. You are really reaching for obscurity when you define an issue as we have done, and yet that seems to be the term with which we have to deal.

The issue of the nonbank banks, also referred to as financial modernization, is facing the Senate today. As we consider Chairman PHIL GRAMM's (R-TX) bill I would like to make two points. The first being that we need financial modernization, that depression era banking laws need to be amended. We all agree on that. The second point that I would like to make is that we must do this in a prudent manner—preserve the things which need to be preserved, and remedy the things which need to be remedied.

It strikes me as odd that most corporations are free to engage in any lawful business. Banks, by contrast, are limited to the business of banking. It is generally agreed that the Glass-Steagall Act of 1933 and the Bank Holding Company Act of 1956 need to be

amended. Banks, security firms, and insurance companies should be allowed to offer each other's services. They already do by finding loopholes in the law. Congress must catch up, and pass a law that condones this activity. London does it. Tokyo too. Why not New York, which, if I may say, is one of the world's banking capitals?

This is a real problem for the existing banks which find themselves under serious constraints they have lived with under depression-era banking laws. Suddenly, they find that their activities are encroached upon and they are not able to do things that they ought to do, that they are going to need to do, if they are going to survive in a competitive world economy.

Now is the time to modernize our financial institutions. But the bill before us has certain problems. The most serious of which is that it weakens the Community Reinvestment Act. The CRA, enacted in 1977, has played a critical role in revitalizing low and moderate income communities. New York has benefited from this. A Times editorial states that ''in New York City's South Bronx neighborhood, the money has turned burned-out areas into havens for affordable homes and a new middle class. The banks earn less on community-based loans than on corporate business. But the most civic-minded banks have accepted this reduced revenue as a cost of doing business—and as a reasonable sacrifice for keeping the surrounding communities strong.''

It is for this reason that I cannot support Chairman GRAMM's bill. I voted for the Democratic substitute which was offered by Senator SARBANES. This bill too amends Glass-Steagall and the Bank Holding Company Act. But it preserves the CRA. I want financial modernization as much as the next person. But we cannot do it at the detriment of the CRA.

I ask unanimous consent that the New York Times editorial from March 17, 1999 be printed in the RECORD.

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

[The New York Times, Wednesday, March 17, 1999]

MISCHIEF FROM MR. GRAMM

Cities that were in drastic decline 20 years ago are experiencing rebirth, thanks to new homeowners who are transforming neighborhoods of transients into places where families have a stake in what happens. The renaissance is due in part to the Federal Community Reinvestment Act, which requires banks to reinvest actively in depressed and minority areas that were historically written off. Senator Phil Gramm of Texas now wants to weaken the Reinvestment Act, encouraging a return to the bad old days, when banks took everyone's deposits but lent them only to the affluent. Sensible members of Congress need to keep the measure intact.

The act was passed in 1977. Until then, prospective home or business owners in many communities had little chance of landing loans even from banks where they kept money on deposit. But according to the National Community Reinvestment Coalition, banks have committed more than $1 trillion to once-neglected neighborhoods since the act was passed, the vast majority of it in the last six years.

In New York City's South Bronx neighborhood, the money has turned burned-out areas into havens for affordable homes and a new middle class. The banks earn less on community-based loans than on corporate business. But the most civic-minded banks have accepted this reduced revenue as a cost of doing business—and as a reasonable sacrifice for keeping the surrounding communities strong.

Federal bank examiners can block mergers or expansions for banks that fail to achieve a satisfactory Community Reinvestment Act rating. The Senate proposal that Mr. Gramm supports would exempt banks with assets of less than $100 million from their obligations under the act. That would include 65 percent of all banks. The Senate bill would also dramatically curtail the community's right to expose what it considers unfair practices. Without Federal pressure, however, the amount of money flowing to poorer neighborhoods would drop substantially, undermining the urban recovery.

Mr. Gramm argues that community groups are ''extorting'' money from banks in return for approval, and describes the required paperwork as odious. But community organizations that build affordable housing in Mr. Gramm's home state heartily disagree. Mayor Ron Kirk of Dallas disagrees as well, and told The Dallas Morning News that he welcomed the opportunity to explain to Mr. Gramm that ''there is no downside to investing in all parts of our community.''

In a perfect world, lending practices would be fair and the Reinvestment Act would be unnecessary. But without Federal pressure the country would return to the era of redlining, when communities cut off from capital withered and died.

Mr. SANTORUM. Mr. President, I rise today in support of the Senate Banking Committee's bill, the Financial Services Modernization Act of 1999, S. 900.

As a new member to Banking Committee, I am pleased to be part of the Committee's effort to bring this bill to the floor. First, let me commend the Chairman for his hard work and heavy-lifting in crafting a bill that will frame the way financial activities are conducted as we move into the next century. The Chairman began this effort during a very busy and trying time for this body at the beginning of the 106th Congress, and I appreciate his leadership in keeping the Committee focused on our priorities and the work at hand.

Considering the scope of activities covered by a financial services modernization bill, crafting a piece of legislation to update 60 year old laws while allowing flexibility for forward-thinking products is a Herculean task. At the heart of the bill is the matter of addressing structure and regulation of financial services firms. Even a casual observer has taken notice of the changing face of our domestic financial sector over the past several months. While merger-mania has dominated the news, other forces such as changing regulation, court decisions, and market innovation have outpaced current law. And although S. 900 is a work in progress, with accommodations to be made by all interested parties, I believe the time is ripe to pass legislation that allows for the affiliation among the various sectors of the financial services industry. This legislation provides a constructive framework to tackle the issue of financial services modernization while also including appropriate safeguards.

As with most major legislative initiatives, this bill has not been without controversy. Specifically, there has been an ongoing debate about provisions in the bill pertaining to the Community Reinvestment Act (CRA). As many know, the Community Reinvestment Act was enacted by Congress in 1977 and required federally-insured banks and thrifts to make loans in their service areas, including low- and moderate- income communities, consistent with safe and sound banking practices. Compliance with CRA requirements can encompass loans made for the purposes of mortgage lending; business lending; consumer credit; and community investments. The benefit of capital investment and financing in such communities has strengthened parts of our nation that may not have otherwise known their current prosperity. To date, CRA lending has surpassed the $1 trillion mark for investment in low- and moderate-income communities while private sector lending has increased 45% from 1993 to 1997. As I have heard from many community reinvestment groups located throughout the Commonwealth of Pennsylvania, there has been one very positive additional benefit that numbers can't quantify: the relationships formed between members of the banking community and those advocating on behalf of their neighborhoods and communities. These working relationships now aim to meet the mutual goal of jumpstarting the economic viability of urban and rural regions across the United States.

For those very reasons, I chose not to support the amendment offered during mark-up of S. 900 that would have exempted small, rural banks with less than $100 million in assets from CRA requirements. I certainly appreciate the very real concern of added regulatory and paperwork burdens that banks assume to comply with this law. In fact, reforms made in 1997 to the CRA recognized this very problem and streamlined the examination process for small banks with less than $250 million in assets. However, I could not support a wholesale exemption from this Act.

As the Chairman outlined from the beginning of the process of developing a financial services modernization bill, the role of the CRA will be further examined by the Committee in a separate forum. I suspect that a thorough evaluation of CRA successes and shortcomings will be addressed within the context of oversight hearings, and I look forward to participating in that process. While CRA has made significant contributions to the empowerment of marginalized communities, I

believe we still need to find the right balance to ensure prosperity for low- and moderate- income neighborhoods and the flexibility for lenders to meet community needs.

Mr. President, while the future of this bill has been linked to the resolution of certain issues, like the CRA, I believe the heart of the debate, financial services modernization, is larger than partisanship. The time has come to make commonsense reform of our nation's financial structure a reality in order to remain the strong competitive force in world markets that our country has so capably demonstrated.

Mr. REID. I rise before you today, not to complicate an already controversial bill, but instead to try to accomplish what I have tried to do through legislation in past years.

This is, to pass legislation requiring an independent audit of the Federal Reserve System, as is standard in every other Government entity in this country.

In fact, back in 1993, Senator DORGAN and I, requested a GAO investigation of the operations and management of the Federal Reserve System.

We were concerned because no close examination of the Fed's operations had ever been conducted.

As you may recall Mr. President, we found out quite a bit about the Federal Reserve.

We found, among other things, that the Fed has a 'slush fund', or what they refer to as a 'rainy day fund,' that they have kept there for over 80 years.

At the time of the GAO investigation, the Fed has squirreled away $3.7 Billion in taxpayer money.

The last report that I have from January 1998, shows that this fund has reached $5.2 billion.

You can bet that figure has gone up since then.

The Fed claims that this 'slush fund' is needed to cover system losses.

Since its creation in 1913, however, the Fed has never operated at a loss.

The report that Senate DORGAN and I requested in 1993 also found that the Interdistrict Transportation Service had been engaging in questionable business activities.

These activities included the awarding of non-competitive contracts for the implementation of Interdistrict Transportation Services, gifts of payments for missing backup and grounded aircraft to nonperforming contractors and a pattern of studied indifference by supervisors to clear evidence of waste, fraud and abuse within its operations.

It was further troubling to find that the activities sanctioned by the Federal Reserve supervisors, was intended to have the practical effect of distorting marketplace behavior by competing unfairly against private sector companies in the air courier business.

In what remains as the first and only independent comprehensive review of the Federal Reserve System, the conclusions reached by the GAO paints a dreary picture of internal Federal Reserve operations and budgeting procedures.

This GAO report that I am referring to, makes a strong case for increased Congressional oversight of the Federal Reserve System operations that are unrelated to monetary policy.

Furthermore, only 1,600 out of nearly 25,000 Federal Reserve employees deal with monetary policy.

I have a Wall Street Journal article and I ask unanimous consent it be printed in the RECORD.

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

[From The Wall Street Journal, Sept. 12, 1996]

SHOWING ITS AGE: FED'S HUGE EMPIRE, SET UP YEARS AGO, IS COSTLY AND INEFFICIENT

IT HAS FAR TOO MANY BANKS, OFTEN IN WRONG PLACES; LOSSES IN CHECK-CLEARING

''POST OFFICE PROBLEM'' LOOMS

(By John R. Wilke)

MINNEAPOLIS.—Construction cranes rising above the Mississippi River hoist the final stone blocks for the elegant new Federal Reserve Bank headquarters here, the latest monument to the U.S. central bank's immense wealth and power.

The $100 million building site on nine acres of prime riverfront, with a 10-story stone clock tower overlooking terraces and gardens. It will offer fortress-like security and robot-attended, automated vaults, plus an indoor pistol range, a fitness center and subsidized dining. The Fed's construction boom also includes the lavish new $168 million Dallas Fed and a planned $178 million Atlanta Fed.

Located in a dozen cities—with branches in another 25—the Fed's palatial banks suggest permanence and importance. They operate with great independence far from the Fed's power center in Washington and, with $451 billion of assets, are staggeringly wealthy. Their job is to run the basic plumbing of the nation's economy by monitoring local banks, distributing currency, processing checks and settling interbank payments.

But the plumbing at the Fed banks seems to be getting rusty, despite their heavy spending. Rapid changes in technology, consolidation in banking and rising competition in some of their basic services threaten to make Fed banks costly relics. Except for the New York Fed, the system's link to world markets, many Fed functions could be centralized at far less cost and some Fed banks could be closed, federal auditors say.

''It's not about saving nickels and dimes,'' says James Bothwell, a General Accounting Office auditor who recently completed a two-year study of the Fed's books. ''There are serious, long-term questions about their mission and structure.''

The Fed's best-known mission—steering U.S. monetary policy and thus charting the course of the economy—isn't at issue. Even its critics hail the Fed's success in holding down inflation.

What concerns some in Congress and its GAO watchdog agency is the sprawling Fed empire, which reaches far beyond its marble headquarters in Washington to maintain a presence in most major American cities. The Fed has 25,000 employees, runs its own air force of 47 Learjets and small cargo planes, and has fleets of vehicles, including personal cars for 59 Fed bank managers. It publishes hundreds of reports on itself each year—even Fed comic books on monetary policy for kids. A full-time curator oversees its collection of paintings and sculpture.

Yet Fed spending gets little public scrutiny, even as the rest of the federal government struggles to tighten its belt. That's because the Fed funds itself from the interest on its vast trove of government securities acquired in its conduct of monetary policy. Last year, it kept $2 billion of those interest earnings for itself and returned the rest, $20 billion, to the Treasury. Thus, every dollar spent on a new building in Minneapolis—or anything else—is a dollar that could have been used to cut the federal deficit. Unlike every other part of government, the Fed doesn't have to ask Congress for money, and that's the key to its independence from political interference on monetary-policy issues.

The Minneapolis Fed would seem a prime candidate for downsizing. Its spending is in striking contrast to the cutbacks and consolidations at many of the commercial banks it serves; only two major banks are left in its six-state district. And its biggest job, processing and clearing checks for local banks, is under increasing pressure from private competitors and new electronic payment technologies.

Without check-clearing, the Minneapolis Fed might not need its costly new building and the hundreds of employees who work three shifts shuffling checks. It could eliminate huge overhead costs and focus on distributing U.S. currency and monitoring the local economy.

The basic structure of the Federal Reserve System has changed little since it was created in 1913, despite huge shifts in the nation's population and economy. Back then, Fed banks were sited according to the politics of the day and the quaint principle that a commercial banker should be able to reach a Fed branch within one-day train ride, in case he needed cash for unexpected withdrawals.

Today, these locations make little sense. Missouri, once an economic and political power because of its riverboat economy, has two Fed banks; booming Florida has none. California and its vast economy have only one Fed bank—which also serves eight other states and covers 20% of the U.S. population. Yet when Fed policy makers meet in Washington, the San Francisco Fed president can vote only one year of three, less often than the presidents from Cleveland or Chicago.

''It reflects the economy and politics of a long time ago,'' says Robert Parry, the San Francisco Fed's president. ''If you were doing it today, you'd do it differently.'' Michael Belongia, a University of Mississippi professor and former Fed economist, says that three Fed banks and 16 branches could be closed and that four other banks could be downsized to branches. He calculates the savings at $500 million a year, even without trimming back the check-clearing businesses.

''The taxpayer pays billions of dollars for this monolithic system that isn't efficient anymore,'' he says.

Fed Chairman Alan Greenspan rejects many GAO findings, especially the idea of closing some Fed banks. He says it would take years to recoup the cost of closing one. ''We're strongly committed to ensuring that the Federal Reserve System is managed efficiently and effectively,'' he said in recent congressional testimony. Most important, he defends the Fed banks' independence as crucial to keeping the Fed free of political interference and aware of regional economic conditions.

Yet he has expressed some misgivings about Fed spending. With the new Dallas building, for example, he said, ''My first reaction was, 'For God's sake, why do you have to build a new building'? Dallas is in a state of commercial real-estate recession. You

should be able to pick and choose at zero cost. But he added that he was ultimately persuaded that no existing building met the bank's special needs.

The Fed banks are even less accountable to Congress than the Fed Board of Governors in Washington, whose seven members are appointed by the president and confirmed by the Senate. The 12 Fed bank presidents, by contrast, are chosen by their private-sector boards, though their annual budgets and building plans are subject to review by the governors in Washington. Congress has no say over who runs the regional banks, despite their important role in running the nation's monetary system.

Congress doesn't even set the regional presidents' salaries. The Minneapolis president gets $195,000 a year, and others range as high as $229,000, far exceeding Chairman Greenspan's $133,100.

Even so, only 1,600 Fed employees, including a stable of economists and statisticians, work on monetary policy. Most of the rest, and the lion's share of the Fed's $2 billion budget, go to the Fed banks' check-clearing and other services—the jobs under the most pressure from competitors and changes in banking. The Fed banks also process Treasury checks, but a new law mandating electronic distribution will eliminate 400 million Treasury checks annually in three years.

As their workload dwindles, Fed banks could be left with what insiders delicately term ''the Post Office problem'': They will be handling checks for mostly small, high-cost customers such as rural banks. Already, less than 25% of Fed customers create 95% of check volume. So, the Fed is vulnerable as major banks begin processing more checks through private clearinghouses or other cheaper alternatives, such as Visa International.

At the Minneapolis Fed, check-clearing already resembles the work inside the city's main Post Office nearby. Every day, trucks back up to the Fed's loading dock and drop off pallets of checks. Workers feed them into 25-foot-long automated sorters, and the checks, guided by codes identifying the paying bank, cascade into pouches. Lately, many of the tens of thousands of checks have been small—$2 razor-blade rebates and $4.69 drafts cashed by Huggies diaper customers. Minneapolis handles three million checks a day—a low-margin, labor-intensive business, not unlike delivering the mail.

In most countries, private companies or banks handle check-processing, with central banks playing a supervisory role to ensure the payment system is sound. In the U.S., new players ranging from Microsoft Corp. to Merrill Lynch & Co. are racing to offer electronic alternatives to bank-based payment systems, and some bankers fear the Fed's dominance will impede innovation and leave them behind.

Lee Hoskins, who once ran the Cleveland Fed and now heads Ohio's Huntington National Bank, says the Fed should get out of check-clearing. ''The central bank no longer has a legitimate role as a provider of payment services,'' he says.

Huntington helped start the National Clearinghouse Association, which includes most large U.S. banks and has begun competing head-on with the Fed at lower prices. The Fed is fighting back with a new, lower-priced national check-sorting service and has cut prices in some cities where it is losing market share. As the Fed's volumes have declined, Fed officials concede, its check-clearing failed to cover costs two years ago and fell short again last year. But they say it turned the corner in the first half of 1996.

Despite its problems, the Fed is a tough competitor and has continued investing in check-clearing and other services. It changed the formula used to figure whether or not it is making a profit and made unusual transfers, including some $36 million a year from an overfunded pension plan, into the check business, federal auditors say. It also let at least one Fed bank defer the huge cost of a new computer system so the outlay wouldn't be included in profit calculations, effectively understating the cost of clearing checks.

The Fed has also squeezed smaller firms that haul bank checks in competition with the Fed's own transport service, which flies pouches of checks overnight from bank to bank. It tried to force an aggressive rival, the U.S. Check unit of AirNet Systems Inc., of Columbus, Ohio, from the Florida market by providing its own contractor with subsidized jet fuel, according to documents and depositions collected by Rep. Henry Gonzalez. The Texas Democrat, a longtime Fed critic, says the Fed also subsidizes its higher costs by putting other cargo, such as its own interoffice mail, on its planes, and charging Fed banks for the service.

''I'm not saying they are competing unfairly, but I'd like to know how they cut prices when they're losing money,'' says Andy Linck, administrator at the National Clearinghouse. Under a 1980 law, the Fed is supposed to price services by commercial standards, but its rivals are reluctant to complain. ''We're forced to compete with our own regulator,'' says an executive of a major Western bank with a big check business. ''They can make life pretty difficult for us if we make trouble.''

Fed officials say they play by the rules and use appropriate bookkeeping.

''We're competing fairly—and we're doing it with one arm tied behind our backs,'' says Ted Umhoefer, a check-clearing manager at the Minneapolis Fed. ''I have to charge the same price to the Citizen's State Bank of Pembina, North Dakota, that I charge to them,'' he says, waving toward a big commercial bank in a nearby skyscraper. ''Yet my counterparts in the private sector can cut volume deals with other big banks, leaving us with all the junk they can't make money on.''

In Washington, Fed officials reject the suggestion they should leave check-clearing to private companies. ''That's how the Fed banks make their living,'' says Edward Kelley, the Fed governor who oversees many Fed bank activities and is leading an effort to improve planning and efficiency. ''We'll be in that business until checks disappear or the Congress takes us out of it.'' The Fed grosses nearly $800 million a year from check-clearing and bank services.

Until recently, Chairman Greenspan spent almost all his time on monetary policy and rarely focused on Fed operations. But in recent testimony before Congress, he said he is now ''actively reviewing the appropriate infrastructure for providing certain financial services, taking into consideration both cost efficiency and service quality.'' He said that although he believes the Fed should have a continuing role in the payments system to ensure its integrity—particularly the wholesale cash-transfer system known as Fedwire, which handles $1.5 trillion a day—he hinted for the first time that the Fed might privatize or downsize its retail check business.

''It is quite possible, if not likely, that as changes occur in the financial services marketplace . . . our role in providing other services such as check collection may change.'' But he said something will have to be done to ensure that small banks have access to check services ''because I don't think that they believe they're going to be able to pay the prices (they) will be forced to pay by the market.'' He said Congress may be asked to subsidize these small-bank services so that bank customers in small towns don't have to pay higher check fees.

Officials say the Fed banks already are taking steps to scale back check-clearing and have cut 600 jobs at various locations. But Fed critics contend that the institution is unlikely to undertake the fundamental reform they say is needed because it could require thousands of layoffs—and the loss of substantial prestige.

Prestige seemed important in Minneapolis when Fed officials decided to abandon their grand looking but poorly designed downtown tower. They considered moving to a cheaper, more convenient site by the airport, but that idea was dropped after it raised eyebrows at the Fed in Washington. ''What would we have called it, the Federal Reserve Bank of Eagan, Minnesota?'' one official asks. ''The location is written into the law, and changing it would have required an act of Congress.''

Indeed, that may be what the Fed fears most. ''Do we really want to have 435 congressmen tinkering with what is supposed to be an independent institution?'' asks Ernest Patrikis, first vice president of the New York Fed. Arthur Rolnick, research director at the Minneapolis Fed, says Congress ''didn't have economic efficiency in mind when it created the Fed.'' Above all, he says they wanted a decentralized institution, independent of both big banks and politicians.

''I wouldn't be surprised if a hard look at the system shows that some of Fed branches should be closed,'' Mr. Rolnick adds. ''The market has changed, and the technology has changed. . . . [But] do we really want to fool around with the Fed's independence just to save a few hundred million dollars a year?''

Mr. REID. In this article, it states that the rest of these 25,000 employees deal with the Federal banks' check-clearing and other services.

Also cited in this article is another example of extreme waste by the Federal Reserve—that is, that the Federal Reserve has a fleet of 47 Learjets and small cargo planes.

Furthermore, the Fed publishes hundreds of reports on itself each year that includes something that strikes me as an absurd waste of funds—the Fed publishes a comic book for children on monetary policy—now, Mr. President, I know that we have advanced children in this country, and I'd like to think of my grandchildren as being part of that group, but I don't know many children that have an interest in the Federal Reserve's monetary policy, nor do I know any that would understand it.

Mr. President, this amendment, in requiring a yearly audit, would help ensure, to the American taxpayers, and my constituency in Nevada, that the Federal Reserve is run more efficient and responsibly.

This amendment intentionally leaves monetary policy to Chairman Greenspan and his team.

It is my belief that the economy is great and that Chairman Greenspan is doing a great job.

In fact, many would say that our economy has never been better, which brings to mind the saying ''if it ain't broke, don't fix it.''

Well, Mr. President, while the economy is not broken, much of the inner workings of the Federal Reserve is, and I, along with many others, intend to fix it.

Again, I want to make it very clear—I do not rise before this body today to meddle with monetary policy.

I am not attempting to interfere with, or impugn, the monetary policy of the Fed.

I am seeking greater accountability in the operating expenses and internal management of one of our more influential institutions.

This amendment simply requires a yearly audit that covers the operations of each Federal Reserve bank, the Federal Reserve Board of Governors, and the Federal Reserve System in the form of a consolidated audit.

As my good friend and colleague Senator BENNETT pointed out to me last night, an audit of each of the 12 regional reserve banks is conducted now—however, these audits are not conducted in accordance with generally accepted accounting principles.

For the audits that take place now, the accounting information is given to the auditor by the regional bank staff and the banks basically say, ''accept our figures, that's all you get.''

In short, this amendment requires the Fed to use an independent auditor and for that auditor to use generally accepted accounting practices.

This amendment also requires that the report be made available to Congress, in particular the Committee on Governmental Affairs in this body and the Committee on Governmental Reform in the House of Representatives.

I believe that the Federal Reserve could do more to increase its cost consciousness and to operate as efficiently as possible.

This amendment will be one step closer to that end.

I encourage all Senators to support this amendment and to show our bosses, the American taxpayers, that we are looking out for them by ensuring accountability at the Federal Reserve.

Mr. DODD. Mr. President, I congratulate Chairman GRAMM for the fairness in which these proceedings have been held, and my colleague from Maryland, Senator SARBANES should also be commended for his leadership.

We will soon vote on final passage of S. 900, the Financial Services Modernization Act. I will, unfortunately, be unable to support what I believe in many ways is a very good product.

I am a strong supporter of financial modernization. If the anti-CRA provisions were corrected, I would help to lead the charge in supporting this bill. There are important differences of opinion on various facets of this legislation. We have had good debates on many of these facets.

Although I did not support the amendment offered by Senator JOHNSON to restrict the transferability of unitary thrifts, He should be congratulated for his fine work on the amendment. It is an important issue that I am sure that we will revisit in conference.

The chairman earlier today staked his support of this bill on the outcome of the operating subsidiary amendment which was narrowly defeated. I admire the stand he took and the conviction with which he made his arguments. He should be congratulated for prevailing on his point of view.

I would also like commend Chairman GRAMM for broaching one of the most critical issues that Americans face as we approach the dawning of the new millennium, and that is the steady erosion of the privacy of consumers' personal, sensitive financial information. Although I supported the chairman's amendment that addresses the subject of pretext calling, I believe that it simply does not go far enough.

Several factors have contributed to the erosion of financial privacy. We must examine each of these factors in order to craft legislation that will protect financial privacy in a meaningful, effective way.

Although advances in technology have produced many positive results and benefits for our economy over the years, one of the potential drawbacks has been that they have also facilitated the collection and retrieval of a vast amount and array of citizens' financial information. That personal information has become a very valuable commodity and is being sold and traded among businesses all over the world.

In addition, the formation of new, diversified business affiliations has allowed companies quick access to personal data on each other's customers. Financial modernization legislation, if it becomes law, will only make it easier for companies to share their customers' personal data.

Much of the data ''mining''—searching, collecting, and sorting—and actual use of that personal data is nearly imperceptible to the consumers whose very own information is being conveyed. Companies do not generally tell their customers about the personal data they obtain and they sell or rent.

Current Federal law permits bank affiliates to share information from credit reports and loan applications as long as the customer gets one opportunity to notify the bank not to disclose the information. Most consumers are unaware of this opportunity because the one notice that the company gives them is buried in the fine print in lengthy materials mailed to the customer that most never read.

An even more critical factor causing the erosion of privacy rights is that no current federal law prevents banks from disclosing ''transaction and experience data,'' which includes customers account balances, maturity dates of CDs, and loan payment history.

This erosion of the privacy of our most personal, sensitive financial information can and must be stopped. And we must take action to stop it.

We should have hearings to address these issues so that we may take a very careful look at all of the factors involved, so that we may address them in a careful, thoughtful and meaningful way. I was pleased to hear Chairman GRAMM this morning commit to holding such hearings in the Senate Banking Committee.

I am a coauthor of Senator SARBANES' Financial Information Privacy Act, S. 187, introduced this Congress. This important legislation would require banks and securities firms to protect the privacy of their customers' financial records: their bank account balances, transactions involving their stocks and mutual funds, and payouts on their insurance policies. Customers would be given the important opportunity to prevent banks and securities firms from disclosing or selling this information to affiliates. Before banks or securities firms could disclose or sell the information to third parties, they would be required to give notice to the customer and obtain the express written permission of the customer before making any such disclosure.

I look forward to working with Senator GRAMM and Senator SARBANES on this important issue.

But like my good friend from Texas did for me earlier today, I would like to make something very clear to him—I will not support any bill that weakens the Community Reinvestment Act. Also, I will promise him that no bill that weakens CRA will become law. If we do pass this bill out of this body, let me assure you that as hard as I will fight for financial services modernization, I will fight even harder for preserving CRA.

I know how strongly the chairman feels against the CRA. Let me tell him, that if it is possible, I feel even stronger about preserving the CRA.

I urge my colleagues to reject any and all legislation that fails to preserve CRA.

BLUE CROSS/BLUE SHIELD OF NORTH CAROLINA

Mr. EDWARDS. Mr. President, I have a particular situation in my State of North Carolina that I want to make sure is not going to be affected by some of the insurance language in this bill.

A few years ago, Blue Cross/Blue Shield of North Carolina was considering converting from non-profit status to for profit. The North Carolina legislature looked into the plan, and decided that if Blue Cross were to convert to for-profit, it should be required to set up a charitable foundation as part of the process. It did so in order to make sure that funding for medical expenses would be available to many North Carolinians who had benefited from the services of the non-profit Blue Cross. During the Banking Committee's consideration of the bill, I was concerned that the earlier insurance language would have preempted the North Carolina law if a bank wanted to affiliate or purchase Blue Cross after the conversion.

As a result of the Senator's amendment during the committee markup, the insurance language in the bill now is quite different. But I want to make sure that my concern about the Blue Cross/Blue Shield of North Carolina conversion law is addressed by the new language in S. 900.

Mr. BRYAN. Mr. President, I believe the situation the Senator describes would fall under Section 104(c)(2) of the bill. That language allows states to take action on required applications or other documents concerning proposed changes in or control of a company that sells insurance, unless the action has the practical effect of discriminating against an insured depository institution.

The concern the Senator voiced is one of the situations we envisioned when we made the changes from the earlier text, and it is my intent that the current language would protect the North Carolina state law on the Blue Cross/Blue Shield of North Carolina conversion agreement.

LOW-INCOME HOUSING

Mr. JEFFORDS. Mr. President, I thank Senator GRAMM for allowing me to discuss an important issue that is quickly becoming a serious national problem—American families, elderly and disabled are increasingly unable to afford, or continue to live in, privately-owned housing units.

Several recent studies have shown that low-income housing opportunities are on the decline nationwide. In Vermont, rents for housing have increased 11 percent in three years, making it increasingly difficult to find affordable shelter. The need to also expand the number of housing units for low-income families is critical as the vacancy rate in areas such as Burlington has fallen to less than one percent. On any given day there are only 60 available rental units in a city of over 40,000 people, making it simply impossible to find a place to live, much less one that is affordable. Such problems are reflected in increased rates of homelessness, as the number of families seeking help from Burlington's emergency shelter rose from 161 in 1997 to 269 in 1998. Even though additional Section 8 federal subsidies will be available next year, the 800 Vermonters on the Section 8 waiting list would be hard pressed to find somewhere to use this voucher should they receive one.

Fewer opportunities for affordable housing are also due to inadequate maintenance. Vermont and the nation desperately need legislation that increases new low-income housing opportunities—whether through new housing construction, rehabilitation of existing housing, additional incentives to keep landlords in the Section 8 market, and expansion of existing tax incentives such as the Private Activity Bond Cap and the Low-Income Housing Tax Credit.

Mr. GRAMM. I thank the Senator from Vermont for his thoughtful remarks. As Chairman of the Committee on Banking, Housing and urban Affairs, which has jurisdiction over federal housing programs, I very much appreciate the Senator's strong interest in affordable housing.

I commend Senator JEFFORDS for bringing to our attention housing conditions which are national in scope and affect rural and urban areas alike. It is very important that we protect our nation's vulnerable populations, particularly the elderly and disabled living on fixed incomes. It is also extremely important that we preserve the American taxpayer's existing investment in affordable housing. Congress must seek to preserve our existing housing stock and protect current residents first.

Mr. JEFFORDS. Mr. President, I am developing legislation that will help preserve existing low-income housing stock, promote the development of new affordable housing, and increase opportunities for the purchase of housing projects by resident councils through a dollar-for-dollar matching grant program. My bill will establish a grant program for states to promote cooperation and partnership among Federal, State and local governments, as well as between the private sector in developing, maintaining, rehabilitating, and operating affordable housing for low-income Americans. These types of initiatives are critical components to meet the growing needs of low-income housing in Vermont and the nation.

While the State of Vermont has largely avoided an overwhelming dislocation of tenants from opt-outs and mortgage prepayments, it is unable to accommodate the hundreds of families that seek new federally subsidized housing opportunities in the State. Reform efforts must focus both on preservation of existing federally subsidized housing units, as well as the creation of new opportunities for families seeking an affordable place to live.

Mr. GRAMM. Mr. President, I applaud Senator JEFFORDS for stepping forward with legislation to address affordable rental housing needs. It is my understanding that the bill which he plans to introduce will present several options for approaching solutions to complex housing problems.

I pledge to work with the Senator from Vermont, Housing and Transportation Subcommittee Chairman ALLARD, and Members of the Senate and House to craft comprehensive solutions to our nation's housing ills. It is imperative that any legislative solutions be fiscally responsible.

Mr. ALLARD. I would like to reiterate Senator GRAMM's remarks and thank Senator JEFFORDS for his interest and insights. As chairman of the Subcommittee on Housing and Transportation, I plan to hold a hearing to examine the need for preservation of affordable rental housing. Specifically, I will focus on the Department of Housing and Urban Development (HUD) Section 8 program with particular attention to prepayment and opt-out issues. I also plan oversight of HUD's implementation of the Multifamily Assisted Housing Reform and Affordability Act.

I would like to invite Senator JEFFORDS to testify at this hearing. I share many of his concerns and appreciate his willingness to work with me on these important issues.

Mr. GRAMM. I thank Senator ALLARD for his diligence and effectiveness as Subcommittee Chairman. The Subcommittee Chairman and I both welcome Senator JEFFORDS' willingness to be a leader for affordable rental housing and look forward to working with him throughout the legislative process.

Mr. JEFFORDS. Mr. President, I look forward to working with the chairmen of the Banking Committee and the Housing Subcommittee to address this growing problem. I thank Senator GRAMM and Senator ALLARD for their kind remarks and I appreciate the opportunity to discuss this issue on the floor today.

Mr. GRAMM. Mr. President, we now have one outstanding matter. We are looking at several amendments. I urge staff to get together on these. Senator LEVIN is trying to work out his language right now.

I would prefer to go ahead and pass the bill tonight rather than put it off. We are going to try to do it quickly. But I hope we don't lose so many people that we would end up not passing the bill. I guess we could move to reconsider and bring it back. But I urge my colleagues with outstanding matters to move quickly. I am going to be here all night. I would be willing to stay here and talk to anybody. A lot of people want and need to leave, but I am not going anywhere. So I am not asking you to accommodate me but to accommodate both our Democrat and Republican colleagues. Please give me your language in the next few minutes so we can move ahead and pass the bill.

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

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

Mr. GRAMM. Mr. President, let me yield to our distinguished colleague from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, in a moment I am going to send an amendment to the desk. But I want to explain exactly the reason for this amendment.

A couple of days ago, I wrote to the Securities and Exchange Commission and asked them what their reaction was to the bill as drafted in terms of protecting investors. The answer that I got back from Arthur Levitt dated May 5 is that the provisions of the bill raise serious concerns about investors' protection, and, if adopted, could hamper the Commission's effective oversight of U.S. security markets.

The letter also indicated that:

> A loophole exempting bank trust activities from Federal securities laws would, therefore, seriously weaken the commission's ability to protect investors.

And:

> Adoption of the bank trust exemption in S. 900, in addition to other securities provisions

in the bill, would undermine the important investor protections that make our markets the most transparent, most liquid in the world. It is for these reasons that the commission strongly opposes the bill.

Mr. President, I ask unanimous consent that the letter from Mr. Levitt be printed in the RECORD.

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

SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, May 5, 1999.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: Thank you for your letter of May 4 requesting the SEC's analysis of provisions in S. 900 related to bank trust activities. As currently drafted, these provisions raise serious concerns about investor protection, and, if adopted, could hamper the Commission's effective oversight of U.S. securities markets.

The bank trust activities provisions in S. 900 would permit banks to act as ''fiduciaries'' without being covered by Federal securities laws. Virtually all bank securities activities will be able to be labeled ''fiduciary'' under the bill, and banks will be able to charge commissions for those securities transactions without being subject to SEC regulation. Under S. 900, a bank and its personnel could have economic incentives—a so-called ''salesman's stake''—in a customer account, without being subject to the strict suitability, best execution, sales practices, supervision, and accountability requirements under Federal securities laws. Fiduciary law also varies by state, and, in many cases, permits investor protections to be lessened, if not eliminated entirely, by contractual provisions. In addition, while broker-dealers are also ''fiduciaries,'' Congress has determined that securities laws should apply to them to provide customers with full investor protections. A loophole exempting bank trust activities from Federal securities laws would therefore seriously weaken the Commission's ability to protect investors.

My main concern with any financial modernization bill is the consistent regulation of securities activities, regardless of where they occur. Adoption of the bank trust exemption in S. 900, in addition to other securities provisions in the bill, would undermine the important investor protections that make our markets the most transparent, most liquid in the world. It is for these reasons that the Commission strongly opposes this bill. Moreover, as I have testified, the securities provisions in all of the bills currently under consideration in both the House and the Senate have been so diluted that the Commission opposes all of them. I appreciate your continued interest in financial modernization legislation and look forward to working with you as the bill moves forward.

Sincerely,

ARTHUR LEVITT,
Chairman.

Mr. LEVIN. Mr. President, I also received a letter from the North American Securities Administrators Association. This is the association that was organized in 1919, and consists of the 50 States' securities agencies that are responsible to protect investors.

The letter from the North American Securities Administrators Association indicates very strong problems with this bill, because, in its words, sections 501 and 502 would allow the bank to act as an investment adviser if the bank receives a fee, and ''as currently drafted, despite the claim that S. 900 would facilitate functional regulation of the securities activity in banks, banks will remain largely exempt from regulation as either a broker or dealer under the Securities and Exchange Act of 1934.''

This is very, very troubling. This is a very big issue, because it is stated in the report which accompanies the bill that the bill generally adheres to the principle of functional regulation, which holds that similar activities should be regulated by the same regulator, and that the bill is intended to ensure that banking activities are regulated by bank regulators, securities activities are regulated by securities regulators, and insurance activities are regulated by insurance regulators.

The report that accompanies the bill indicates that the intent is to adhere to the principle of functional regulation, which would mean that securities regulators would indeed regulate securities transactions, but the securities regulators write us that that is not what the bill does because of the way in which the exemption is drafted in the bill; that in effect all purchases and sales of stock by banks could be run through a trust department and be exempt from the Securities and Exchange Commission protection and from local regulations.

That is a major problem with the bill. When you are a securities regulator, and when the people who are there intending to protect the public who are buying stocks indicate strong opposition to the bill based on that, it seems to me that some alarm bells ought to be going off in this Chamber.

Mr. President, I ask unanimous consent that the letter from the North American Securities Administrators Association be printed in the RECORD.

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

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.,
Washington, DC, May 5, 1999.

Hon. CARL LEVIN,
Washington, DC.

DEAR SENATOR LEVIN: Thank you for requesting the views of the North American Securities Administrators Association (''NASAA'') on proposed Sections 501 and 502 of S. 900, the Financial Services Modernization Act, and specifically, the extent to which these bill provisions would exempt bank securities transactions from state securities regulation and oversight.

Cumulatively, the above-referenced provisions, in conjunction with the proposed repeal of the Glass Steagall Act, would permit banks to offer and sell securities on bank premises through bank employees almost exclusively outside of the purview of federal or state securities regulations. As you have correctly pointed out, Section 502 of the bill proposes to exempt from the definition of securities ''dealer'' activities of a bank generally involving the buying or selling of securities for investment purposes in a fiduciary capacity. The bill goes on to define ''fiduciary capacity'' to include wide-ranging activities that far exceed activities performed under the common law concept of ''fiduciary duty'' traditionally tied to persons acting as trustees. Specifically, in Sections 501 and 502, the term ''fiduciary capacity'' is defined to permit, among other things, a bank to act as ''an investment adviser if the bank receives a fee for its investment advice or services.'' A similar exemption exists from the definition of ''broker.''

Thus, as currently drafted, despite the claim that S. 900 would facilitate functional regulation of the securities activities of banks, banks will remain largely exempt from regulation as either a broker or dealer under the Securities Exchange Act of 1934. In fact, banks will be permitted to conduct ongoing and unlimited investment advisory activities well outside traditional trust department activities, yet will continue to be excluded from regulation as an ''investment adviser'' under the Investment Advisers Act of 1940. Banks would no longer need to establish separate investment advisory affiliates or subsidiaries and would perform such activities in-house.

S. 900 purports to implement and foster functional regulation of banks engaging in securities activities. The reality is that given the breadth of the trust activities exception, there will not be any such activities to functionally regulate. The exception is so broad that all the securities activities in which a bank may wish to engage could be classified as ''trust activities,'' so that the exception would consume the rule. Securities regulators would have nothing to regulate. The ''trust activities'' exception should be limited to those traditional banking activities by a trustee involving fiduciary duty and nothing more. Retail securities business should be conducted by and through registered licensed broker-dealers, investment advisers and their representatives regulated by state and federal securities regulators.

Thank you for your consideration of this very important matter.

Respectfully,

PHILIP A. FEIGIN,
Executive Director.

Mr. LEVIN. Mr. President, I ask unanimous consent that the testimony of the Secretary of Treasury Rubin before a House commerce subcommittee be printed in the RECORD.

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

EXCERPTED TESTIMONY OF TREASURY SECRETARY ROBERT RUBIN BEFORE HOUSE COMMERCE SUBCOMMITTEE, MAY 5, 1995

Representative DIANA DEGETTE. [I]n your prepared testimony you say that you continue to believe that any financial modernization bill must have adequate protections for consumers, and you point out that you are hoping that this committee will add additional protections over the bill that came out of the Banking Committee. Are you talking specifically there about the Federal Home Loan bank system and the other issue on affiliations between commercial firms and savings associations, or are there additional consumer protections you would like to see?

Secretary RUBIN. I was referring there primarily to trying to work with the SEC in order to better enable them to perform their function of regulation. Look, the SEC has concerns, and I think they're well taken.

Representative DEGETTE. Me, too.

Secretary RUBIN. I think they're well taken. As you know, this bill was designed to eliminate the exemption from the SEC of these various securities activities they conduct in banks at the same time. Then there are all sorts of exceptions to the exemptions. And the exceptions to the exemptions—(laughs)—could be read so broadly as to reestablish the exemption. And that's a concern

the SEC has. We share that concern, and what we'd like to do, if there's a way that it can practically be done, is to work with the SEC on these issues. And that was my primary reference.

Mr. LEVIN. Mr. President, Senator SCHUMER is a cosponsor of an amendment which I am now offering which reads as follows. It is fairly short. I simply want to read this amendment. Then I will send it to the desk.

The amendment has now been accepted by the manager of the bill. I think it will help somewhat to allay some concerns in this area. But the critical issue is what will come out of conference. That, of course, we don't know. But this is the language of the amendment, which I will be sending to the desk on my behalf and on behalf of Senator SCHUMER.

It is the intention of this act, subject to carefully defined exceptions which do not undermine the dominant principle of functional regulation, to ensure that securities transactions affected by a bank are regulated by securities regulators notwithstanding any other provision of this act.

The intention is to keep the principle that securities transactions will be regulated by securities regulators, and acknowledges that there could be some carefully drafted exceptions which do not undermine the dominant principle.

That, it seems to me, would be an improvement in this area.

I want to again thank my friend from Texas for looking at this language, indicating that it would be acceptable to him, and then, of course, the proof of the pudding as to whether we are really protecting purchasers of stock through the regulators who are there to protect purchasers and sellers of stock will be determined in conference. But the general principle enunciated in this amendment would go to conference as the principle that is governing this bill.

I also want to thank my good friend from New York, because he has worked so closely with me on this issue.

I can't yield the floor to him. But I will yield the floor. But, before doing so, and I know he does wish to speak for a few minutes, I will send the amendment to the desk.

AMENDMENT NO. 317

(Purpose: To ensure bank securities activities are regulated by securities regulators)

Mr. LEVIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside, and the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan (Mr. LEVIN), for himself, and Mr. SCHUMER, proposes an amendment numbered 317.

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

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

The amendment is as follows:

On page 124, line 25, before ''Section'' insert the following:

''(1) It is the intention of this Act subject to carefully defined exceptions which do not undermine the dominant principle of functional regulation to ensure that securities transactions effected by a bank are regulated by securities regulators, notwithstanding any other provision of this Act.

(2)''.

Mr. LEVIN. I yield the floor but hope the Senator from New York will be recognized briefly for a comment.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the President, and I thank both my colleague from Michigan and my colleague from Texas, the chairman, for their work.

It is a very important amendment. In fact, if this amendment had not been adopted, we might have seen the virtual unraveling of the strong framework of securities law that we have built up in this country since the 1940s.

When I see my friends on Wall Street sometimes complaining about the SEC—and they can be very, very strict and sometimes hardheaded on specific issues—I remind them that in the general framework of regulation, a tough and strong disclosure has made our securities markets the strongest in the world. It is the reason that billions of dollars come from overseas to the United States, because they know basically that our markets are on the level.

This bill, while in the report language said that we wish to have what is called ''functional regulation,'' that is, having the correct regulator for the type of function, not by the type of institutions, and therefore if a bank gets securities regulation it would be regulated by the SEC, just as if a securities firm did securities regulation it would be regulated by the SEC. It is a fundamental principle, particularly if this bill becomes law, which, if we change CRA, I hope it will.

It means very simply that if you underwrite securities, if you sell a security, you must abide by the SEC strict disclosure. The banking regulators have never been very good at this type of regulation, and weren't intended to be.

The securities regulators—the SEC—have always been the tough guy who is an adversarial regulator. The banking regulators have always been a friendly regulator, sort of akin to a big brother making sure the banks didn't get too far into trouble—for two good reasons: One, the banking industry had Federal insurance, and we had to protect that investment; and, two, the banks were engaged traditionally in not very risky activity.

The securities markets have no Federal insurance. They are raw capitalism, and they have had risky activities. Therefore, you really need full disclosure.

The amendment which the Senator from Michigan has put forward, which I am proud to cosponsor, is a very simple one. It says keep that functional regulation.

Let me explain to my colleagues just in a brief minute, because I know we all want to hurry, what would have happened if this amendment had not been adopted.

First, the whole regulation—the whole SEC regimentation of regulation—would not have been applied to banks as they entered the securities industry, and they will enter it massively. Then securities firms, being put at an unfair competitive disadvantage because their banks would not be regulated, would start having their securities activity occur under a bank holding company.

The entire structure of regulation which has worked so well—and every person on Wall Street I know admits it; it is tough, it is strong, but it keeps our markets on the level—would have unraveled. This bill in effect had a Trojan horse.

The amendment being proposed by the Senator from Michigan and myself closes that door. We will have to work out the language in conference, but I for one, if I am lucky enough to be a conferee, or even if I am not, I am going to work very hard to see whatever loopholes are placed in there are very narrow and very limited.

I know the hour is late but this amendment may be the most important amendment we are adding to the entire bill. It keeps the structure of functional regulation there. It has securities-type activities, wherever they be done, be regulated by the SEC. It is a system that has worked. We should not undo it right now as our capital markets are enjoying the tremendous success they have.

I yield back the remainder of my time.

The PRESIDING OFFICER. The question in on agreeing to the amendment.

The amendment (No. 317) was agreed to.

Mr. LEVIN. I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I thank my friend from Texas, as well as the Senator from Maryland, for their work, but particularly the Senator from New York.

AMENDMENT NO. 310, AS MODIFIED

Mr. GRAMM. Mr. President, I have a little technical correction that has been cleared, as I understand. I call up amendment No. 310 and ask unanimous consent that amendment No. 310 be modified by the text I am sending now to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for Mr. BENNETT, proposes an amendment numbered 310, as modified.

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

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

The amendment (No. 310), as modified, is as follows:

At the appropriate place in the bill, insert the following:

Section 23B(b)(2) of the Federal Reserve Act (12 U.S.C. 371c–1) is amended to read as follows:

''Subparagraph (B) of paragraph (1) shall not apply if the purchase or acquisition of such securities has been approved, before such securities are initially offered for sale to the public, by a majority of the directors of the bank based on a determination that the purchase is a sound investment for the bank irrespective of the fact that an affiliate of the bank is a principal underwriter of the securities.''

Mr. SARBANES. Mr. President, what did this deal with?

Mr. BENNETT. Mr. President, it is my understanding that this amendment has been cleared on both sides.

It addresses the CRA issue in what I hope is a noncontroversial way in that it calls for reporting of what happens to the CRA loans. Many of these loans are being made now with no regulation at all and no public understanding of what is happening. I, for example, asked a simple question as I went through the CRA debate. I said, What is the rate of default of CRA loans compared to non-CRA loans? And, specifically, what is the rate of default of those loans that are made through the advocacy groups that become loan brokers?

I was told the rate of failure for CRA loans generally is about six or seven times higher than normal loans but there was no information as to the rate of default among those loans that were made through the advocacy groups that have become loan brokers. I think we are entitled to know that.

This is simply a sunshine amendment that will report the facts. It does not change the regulatory situation in any way, it does not damage CRA in any way; it simply says the Congress will know what is happening with respect to CRA loans that are currently being made in the dark.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 310), as modified, was agreed to.

Mr. GRAMM. Mr. President, 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. GRAMM. Mr. President, I ask unanimous consent further proceedings under the quorum call be dispensed with.

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

AMENDMENT NO. 318

Mr. GRAMM. On behalf of Senator SARBANES and myself, I send managers' amendments to the desk. I ask they be considered en bloc and adopted en bloc, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas (Mr. GRAMM), for himself and Mr. SARBANES, proposes an amendment numbered 318.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

THE PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 318) was agreed to.

The motion to reconsider the motion to lay on the table was agreed to.

Mr. GRAMM. It is my understanding we are now ready for a vote on final passage. I thank everyone for their assistance and patience.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I guess I should state I am going to vote against this bill on final passage. We have had a very spirited debate. We have had a number of very close votes on important amendments, and in my view the bill has not been improved sufficiently to warrant an affirmative vote, therefore I intend to vote against it. I am not, obviously, going to lay out all the reasons at this hour of night because I know we want to go to a vote here.

Mr. GRAMM. Mr. President, there are two Dorgan amendments that are pending. We had an agreement to have a voice vote.

I ask that occur now.

VOTE ON AMENDMENT NO. 313

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

The amendment (No. 313) was rejected.

VOTE ON AMENDMENT NO. 312

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

The amendment (No. 312) was rejected.

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

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

Mr. GRAMM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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

The Democratic leader.

SENATOR JOSEPH BIDEN CASTS HIS 10,000TH VOTE

Mr. DASCHLE. Mr. President, today I join my colleagues in recognizing a historic achievement by one of the Senate's most remarkable Members. With the vote we are about to cast, Senator JOE BIDEN becomes the youngest Member of this body ever to cast 10,000 votes.

It should come as a surprise to none of us that Senator BIDEN should set such a record. He has always been a few steps ahead of the crowd. In 1972, at the age of 29, he mounted his first Senate campaign against a popular incumbent, Republican Senator J. Caleb Boggs. No one—not even his own Democratic party—thought he could do it. But in 1973 he was sworn in as the second-youngest person ever to be popularly elected to the Senate.

The first issue Senator BIDEN tackled was campaign finance reform—as we all know, this is a difficult issue for anyone, much less a first-year member. But as we also all know, JOE BIDEN has never shied away from a fight. His candor, strength of character and commitment to principle have led him through many battles over the years.

As chairman and ranking member of the Judiciary Committee, Senator BIDEN helped this institution, and this nation, sort through the complexities of the most controversial issues of our day—from flag burning, to abortion and the death penalty,

Senator BIDEN also presided over perhaps the most contentious Supreme Court nominations hearings in history. In the midst of the controversy surrounding nominee Robert Bork, Senator BIDEN maintained a level of intellectual rigor that raised the bar for committee consideration of all future nominations.

We also recall his leadership and doggedness in crafting what may well be the most difficult and important pieces of legislation in recent years, the Violent Crime Control and Law Enforcement Act. This included the Violence Against Women Act, the very first comprehensive piece of legislation to specifically address gender-based crimes.

He was also instrumental in creating the position of national ''Drug Czar,'' which has been invaluable in our fight against illegal drugs. His commitment to keeping drugs off the streets remains steadfast.

The Senate and this nation have also benefitted from Senator BIDEN's leadership in the foreign policy arena. As ranking member on the Foreign Relations Committee, he is widely regarded as one of the Senate's leading foreign policy experts.

He was one of the first to predict the fall of communism and anticipate the need to redefine our policies to fit a post-cold war world. And, as far back as early 1993, Senator BIDEN called for active American participation to contain the conflict in Bosnia. In his public service and personal life, JOE BIDEN sets a high standard we can all admire.

His steel will, dedication and compassion, reinforcing a powerful intellect and impressive communication skills, have made Senator BIDEN an exceptional Senator and friend. The number of people he has inspired through his commitment to his family, his values and his beliefs is legion.

Mr. President, it is indeed a pleasure to serve with JOE BIDEN, and to count him as a friend. On behalf of all the Members of this Senate, I congratulate JOE on this historic achievement and thank him for his numerous contributions to the United States Senate and to his country.

I yield the floor.

Mr. LOTT. Mr. President, I am pleased to congratulate my good friend and colleague, Senator JOE BIDEN, on casting his 10,000th vote in the United States Senate.

All of us who have listened—and listened—to Senator BIDEN on the Senate floor have come to deeply respect his leadership and commitment to causes of concern.

He led the historic effort for NATO expansion with courage and conviction.

He has a deep concern for America's role in the world and is a true leader of our foreign policy establishment.

Senator BIDEN has been a champion of victims of crime, particularly crimes against women.

Most of all, those of us who know him, have watched his grace and courage through personal suffering and serious illness.

I join my colleagues in recognizing Senator BIDEN's contributions to the Senate and extend my congratulations to him.

I congratulate the Senator from Delaware. I note he is only 56. I am 1 year older and he has already cast 10,000 votes. What an achievement.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to pay Senator BIDEN a tribute. He is an outstanding Senator and an outstanding man.

When anyone reflects on their life, they do so by thinking about significant personal and professional benchmarks and milestones. Today, one of our colleagues—and my good friend—JOE BIDEN is marking just one such accomplishment, his 10,000th career vote in the Senate.

Casting your 10,000th vote is a momentous occasion for many reasons. Beyond being an indication that a Senator has served in this body for a substantial period of time, casting 10,000 votes is a testament to an individual's commitment to public service. Furthermore, it is proof that a Senator is doing a good job, for his or her constituents have seen fit to keep an official in office long enough to achieve this accomplishment. Then again, given the type of person JOE BIDEN is, it should come as no surprise to us that the people of Delaware have repeatedly sent him to the Senate since 1972. He is a man who is motivated by a desire to help others and is dedicated to serving the people of his state and our nation. JOE BIDEN clearly entered his life in public service for the proper reasons and with the best of motives, and he is an individual who represents all that is positive about those who seek elected office.

I have had the good fortune of knowing JOE BIDEN from the beginning of his Senate career and it is hard to believe that almost thirty years could have elapsed so quickly. During the course of his tenure, I have watched JOE establish an impressive and respected record of work. He has distinguished himself in the fields of the judiciary and foreign affairs, and he is considered a forceful, passionate, and articulate advocate on both these issues. Though he is often sought for analysis and insight regarding international developments, making our streets safe, or any number of other issues before the Senate, JOE BIDEN first and foremost works tirelessly to serve the people of Delaware. The people of his state are indeed fortunate to be represented by such a capable individual.

As most of you already may know, JOE and I have worked closely together for years as members of the Judiciary Committee. We have both served as each other's chairmen and ranking members of this very important committee and I have the highest regard for JOE's intellect, leadership, and ability. Ironically, we not only sat next to each other on the committee for years, but we have been neighbors in the Russell Building for many years as well, our offices being literally right next to one another. You would be hard pressed to find a finer, more dedicated, or more friendly group of people than those who work for JOE BIDEN and I hope that he stays my neighbor for as long as he is in the Senate.

Beyond being a congenial colleague and a good neighbor, JOE BIDEN is my friend. He is someone whose word can be trusted, who wants to do what is right, who is devoted to his family, and whose heart is good. These are rare qualities in any individual, but they can be especially scarce in this town. That JOE has not changed over the years is testament to the man he is and the son his parents raised. I am proud to call JOE BIDEN my friend as I know each of my colleagues is as well.

I do not think I am going out on a limb when I predict that JOE BIDEN is going to be in the United States Senate for a long time to come, and that as long as he is a Member of this body he will continue to make valuable contributions to public policy and the nation. JOE, I thank you for your service, I thank you for all your assistance, and most of all I thank you for your many years as a loyal and kind friend.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I join in the felicitations of our distinguished colleague from Delaware. He suffered as a young lad a handicap of stuttering. He tried to overcome that by addressing the student body. We in the Senate can well attest to the fact that he has overcome it. He has led the way in foreign policy for NATO and in judicial matters.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I add my words of praise for the Senator from Delaware and make a point that he is going to be here a long time. If he matches his current record—he took office in 1973—if he does this, he will be only 82 when he casts approximately his 20,000th vote, and he will then be a kid compared to Senator THURMOND, who will be there at the time congratulating him on his 20,000th vote.

JOE BIDEN has been such a good friend to me.

When I was in the House, I asked him to introduce the Senate companion bill to my legislation to protect dolphins.

JOE did not hesitate, and he enthusiastically took up the cause—with the strong support of his beautiful daughter Ashley! And he has been a steadfast ally in that important environmental fight. He was the Senate sponsor of my Ocean Protection Act. I was the House sponsor of his VAW Act.

I am now a proud member of the Foreign Relations Committee, where JOE BIDEN shows why he is one of the most respected foreign policy experts in the country.

Congratulations, I say to my good friend, and many, many more years of success and happiness with your good friends and colleagues here and your wonderful family at home in Delaware.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the distinguished Senator from Delaware is the only person in this body who is younger than I am but senior to me at the same time. I congratulate him on his 10,000th vote. I jumped over the cliff with him on more than a few of those votes. I look forward to the day when I might match his record.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I know everybody wants to go home, but let me say, if we tried to review JOE BIDEN's accomplishments, it would take all night. Let me put it this way: I opposed most of them.

(Laughter.)

Furthermore—this is serious—JOE BIDEN is a caring person. I work with him on the Foreign Relations Committee. He is great to work with. JOE, I am proud of you.

(Applause.)

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, this next vote is a milestone for a friend of mine—a distinguished colleague and a leader in this chamber. It represents the ten-thousandth vote cast by JOE BIDEN, and I would like to take a moment not only to bring it to the attention of our colleagues, but to reflect on a career that has been—and continues to be—a bright legacy of service.

To put this vote into perspective, Mr. President, only twenty Senators in history have reached this milestone—only twenty Senators out of the 1,851 who have had the honor of serving in this distinguished body. Each of us who has the honor of representing our state in the Senate understands what a rare privilege it is to cast a vote on this floor. In fact, the first vote we cast ranks among the most memorable moment in our lives—a moment not to be forgotten.

I'm sure that when JOE cast his first vote on January 23, 1973—over twenty-five years ago—he could not have foreseen this moment. Through the years, he has achieved many distinguished honors. He has gained national stature, as a candidate for President. He has established himself as a foremost expert on judicial and foreign policy matters. And though I know that we often differ philosophically, I can say that each vote JOE has cast, his focus has been on doing what's best for Delaware and our Nation, at large.

JOE, on this special occasion, I salute you. Ten thousand votes speak volumes about a life dedicated to public service. On behalf of our colleagues I congratulate you. And on behalf of our friends and neighbors in Delaware I thank you.

For me, it has been an honor, a pleasure, and a privilege to serve these many years with Senator BIDEN. He always does what he thinks is in the best interests of our country and our people of Delaware. I am proud to count him a friend.

Mr. KENNEDY. Mr. President, I join in commending our colleague from Delaware on reaching this major milestone in his brilliant Senate career.

For nearly three decades, he has done an outstanding job serving the people of Delaware and the Nation in the Senate. He has been an effective leader on a wide range of issues in both domestic policy and foreign policy.

It has been a special privilege for me to serve with our distinguished colleague on the Senate Judiciary Committee, and I particularly commend his leadership over the past quarter century on the many law enforcement challenges facing the nation. It is a privilege to serve with Senator BIDEN—and I am sure he will compile an equally outstanding record on his next 10,000 votes.

Mr. BIDEN. Mr. President, I will respond after everyone votes so I get to cast my 10,000th vote.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, unlike Senator BIDEN, I don't have a lot to say.

I ask unanimous consent that all Senators have until the close of business next Thursday, a week from today, to insert their statements in the RECORD and that all statements that are submitted appear at one place in the RECORD.

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Oklahoma (Mr. INHOFE) is necessarily absent.

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 105 Leg.]

YEAS—54

Abraham	Frist	McConnell
Allard	Gorton	Murkowski
Ashcroft	Gramm	Nickles
Bennett	Grams	Roberts
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Helms	Smith (NH)
Chafee	Hollings	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Jeffords	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	Mack	Voinovich
Enzi	McCain	Warner

NAYS—44

Akaka	Edwards	Lieberman
Baucus	Feingold	Lincoln
Bayh	Feinstein	Mikulski
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Inouye	Reed
Breaux	Johnson	Reid
Bryan	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

ANSWERED ''PRESENT''—1

Fitzgerald

NOT VOTING—1

Inhofe

The bill (S. 900), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

MORNING BUSINESS

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

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

TRIBUTE TO SENATOR JOSEPH R. BIDEN ON HIS 10,000th VOTE

Mr. HATCH. Mr. President, I rise today to recognize a very dear friend of mine in the Senate and his historic 10,000th vote. His name is Senator JOSEPH BIDEN of Delaware, a friend and colleague whose distinguished career has elevated both the quality and stature of the Senate. The number 10,000 is an important landmark in a career that has many milestones, but I believe Senator BIDEN will be best remembered for the significance of his varied votes. I have seen many of those notable votes cast.

In every one of those votes he was careful, deliberate, and respectful of his duty to the people of Delaware. JOE and I have served in the Senate for roughly the same amount of time. He has been here a couple of years longer than I. We have worked closely together in the Senate Judiciary Committee, which he chaired and which I now chair. On occasion we have agreed to disagree. In fact, I wish he had cast more of those 10,000 votes with me. In all seriousness, however, JOE and I have found many areas where we strongly have agreed.

JOE has long been a leader on the issue of youth violence, an issue which has affected countless lives in Delaware, Utah, and the rest of the Nation. In 1974, he was the lead sponsor of the Juvenile Justice Prevention Act. In 1992, he sponsored the Juvenile Justice Prevention Act Amendments, which provided States with Federal grants for a complete and comprehensive approach to improve the juvenile justice system and controlling juvenile crime.

He has long advocated a tough stand against illegal drugs. He authored the law creating the Nation's drug czar, and in 1986, he was the guiding force for the enactment of groundbreaking drug legislation. He has probably done as much if not more than anybody in the Senate with regard to the antidrug stances that we all should support and that we all appreciate today.

With regard to juvenile justice, next week we bring up a juvenile justice bill. Senator BIDEN has been a mainstay in helping to resolve conflicts that we have in that bill and hopefully helping it to become a bipartisan bill that all of us can support. What I admire most about JOE is the fact that he is the staunchest defender of his party's beliefs, yet he does not hesitate to cross party lines to forge a consensus position when he believes it is the right thing to do. Nowhere is that more evident than with the issue of juvenile crime.

JOE has a history of standing up for what is right when it comes to juvenile crime, and I believe he will continue to do so. We look forward to working with him next week.

While chairman of the Judiciary Committee, he authored the Violent