

FINANCIAL SERVICES ACT OF 1998—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 5:30 having arrived, or 5:36, the clerk will report the motion to invoke cloture on the motion to proceed to H.R. 10.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 588, H.R. 10, the financial services bill.

Trent Lott, Alfonse D'Amato, Wayne Allard, Tim Hutchinson, Dan Coats, Rick Santorum, Robert F. Bennett, Jon Kyl, Gordon Smith, Craig Thomas, Pat Roberts, John Warner, John McCain, Frank Murkowski, Larry E. Craig, and William V. Roth, Jr.

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate be brought to a close? The yeas and nays are required.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Utah (Mr. HATCH) and the Senator from Pennsylvania (Mr. SANTORUM) are necessarily absent.

Mr. FORD. I announce that the Senator from California (Mrs. BOXER), the Senator from Illinois (Mr. DURBIN), the Senator from Ohio (Mr. GLENN), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "aye."

The yeas and nays resulted—yeas 93, nays 0, as follows:

[Rollcall Vote No. 297 Leg.]

YEAS—93

Abraham	Faircloth	Lott
Akaka	Feingold	Lugar
Allard	Feinstein	Mack
Ashcroft	Ford	McCain
Baucus	Frist	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Breaux	Grassley	Nickles
Brownback	Gregg	Reed
Bryan	Hagel	Reid
Bumpers	Harkin	Robb
Burns	Helms	Roberts
Byrd	Hutchinson	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Sarbanes
Cleland	Inouye	Sessions
Coats	Jeffords	Shelby
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Specter
Craig	Kerry	Stevens
D'Amato	Kohl	Thomas
Daschle	Kyl	Thompson
DeWine	Landrieu	Thurmond
Dodd	Lautenberg	Torricelli
Domenici	Leahy	Warner
Dorgan	Levin	Wellstone
Enzi	Lieberman	Wyden

NOT VOTING—7

Boxer	Hatch	Santorum
Durbin	Hollings	
Glenn	Moynihan	

The PRESIDING OFFICER. On this vote, the yeas are 93, the nays are 0.

Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I know that a number of my colleagues are on the floor who want to make statements. I see Senator DOMENICI is here, and he indicated to me that he wanted to speak for several minutes. I am wondering if my colleagues would agree to let Senator DOMENICI make his statement, and then I would like to address the vote that has just taken place. I am not going to spend too much time. If there is no objection, I will yield to Senator DOMENICI without losing my right to simply speak to this vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Mexico is recognized.

KOSOVO

Mr. DOMENICI. Mr. President, I will take just a couple of minutes. I want to comment on the administration's discussions with us regarding Kosovo and just make one statement that I feel compelled to make on the Senate floor, which I have made to the administration and to a number of Senators.

First of all, from this Senator's standpoint, it will be extremely difficult to support any kind of military action in Kosovo unless the President of the United States requests of us significant increases to the defense budget to address the shortfalls in military readiness, personnel, and modernization recently acknowledged by the Joint Chiefs of Staff.

From my standpoint, we ought not be supporting additional military action and putting our men and our equipment in harm's way unless and until we have a game plan to put adequate resources into our Defense Department for the readiness shortfalls that already exist.

The crisis in military preparedness that has only belatedly been acknowledged by the President and his administration is very grave.

To support ongoing operations around the world, our men and women in uniform are deployed far away from their homes and their families for unprecedented lengths of time. Morale among many of our troops is suffering, and recruiting and retention statistics are dangerously low. Modernization of our force is seriously underfunded across the services. Training in many of the combatant commands must halt well before the end of the fiscal year due to funding and supply shortfalls. Nearly 12,000 military families are once again on food stamps. And failing to provide additional funding for potential costly military operations in Kosovo while United States forces are about to complete 3 years in Bosnia at a cost of nearly \$10 billion will, in my

opinion, severely and perhaps irreparably exacerbate the critical readiness crisis that exists.

In summary, if the President expects this Senator to support Kosovo action—and I am not sure the administration seeks a resolution—I have just stated succinctly what I believe is an absolute necessity on the part of the President and his administration; that is, tell us how you are going to make our military ready again before you send them into harm's way again, when we already know that we are short of much of the equipment and parts and our military is in many respects lacking and deficient in readiness.

I think it is a simple proposition. I think they have time to do it. I think it is serious. I think when many Senators find out about the readiness issues, they are going to be saying the same thing: Let's see how we are going to fix that before we engage in another battle.

I yield the floor. I thank the Senator.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

THE FINANCIAL SERVICES MODERNIZATION BILL—MOTION TO PROCEED

Mr. D'AMATO. Mr. President, first of all, let me commend my colleagues for the overwhelming vote on H.R. 10, the financial services modernization bill, which passed 93 to 0, in terms of moving forward. It was a motion to proceed to consider. I know it wasn't on the bill itself, and I know that there are some Members who do not agree and some who oppose very strongly various provisions of the bill. That is understandable, because it is a major piece of legislation.

I thank the majority and the minority leaders for their support and for their help in getting this bill to this point, facilitating it, and the members of the Banking Committee and the ranking member, Senator SARBANES of Maryland, who have worked in the most constructive of manners, putting the interests and needs of the financial services community of this great Nation of ours—the capital formation system that is so important—putting those interests and needs first.

I have to tell you that this is not a partisan matter, that the Senate has addressed this in the uniquely bipartisan way that reflects very, very credibly upon this institution, again, recognizing the fact that Members certainly cannot agree with all of the provisions that may be contained in this very comprehensive bill.

Mr. President, the need for legislation to modernize the financial services industry is obvious. The existing legal framework has been for some time fundamentally outdated, and this body itself has recognized the existing laws are part of the statutory framework built largely in the 1930s and they just do not fit the realities of today's financial marketplace.

Congress has been attempting to pass legislation to modernize this system for almost 25 years. The only barrier to success now is the Senate of the United States. We really are at a historic moment.

Let me cite the views of Paul Volcker, a former Chairman of the Federal Reserve, to place our deliberations in some kind of historical perspective. No one can say it is turf as it relates to Mr. Volcker and what his position may or may not be. He says:

Over the long years of debate, it typically has been the U.S. Senate that has been in the vanguard in seeking reform, and it was the House that could not reach satisfactory consensus. Now, after extended hearings and debate, with strong leadership support, a coherent and responsible bill has emerged from that body. This month the Senate has a unique opportunity to complete the process, ending years of frustration for the markets and for Congress alike. At issue is not just the matter of American banking legislation and certainly not a narrow political calculation of what parochial industry position is most completely satisfied. This is a time for the United States in much easier circumstances to demonstrate that we are capable of enacting ourselves the kind of reforms we press on others.

Mr. President, how cogent these words and these observations are. Indeed, Mr. Volcker wrote this article and submitted it, and it has been carried in a number of news media across the country some weeks before the full extent of what is taking place in the world banking community and the financial services industry has been understood, before it has become even more important and paramount that the kinds of reforms that are so necessary and that many other countries have been avoiding are reforms that we ourselves must and should undertake, instead of having a piecemeal approach in a haphazard way, of whether the regulator at the Fed or the Treasury in terms of the Comptroller undertaking changes leaves us in a situation where I can truthfully say we have abdicated our responsibility. I hope that we will not lose this opportunity to discharge our responsibilities in a manner that will reflect credibly on this body and the Congress of the United States and on each and every Member.

Mr. President, the fact is that this bill is a good bill. The fact is that we have been able to get together, for the first time, in an unprecedented fashion, a broad consensus for the need for financial modernization by the players themselves, by the people who are actually in this area. Virtually all of the financial services community has endorsed this legislation.

Indeed, let me just list a number of those groups. The American Community Bankers. How often have we heard it said, "Oh, the little bankers are opposed to this." Indeed, the American Community Bankers are in favor of this legislation. The American Bankers Association. Now we are talking about the larger banks. They have signed on. So from community bankers to large money center banks. The American

Council of Life Insurance Companies. Imagine, when did we ever have the life insurance industry and the Congress working together with their banking contemporaries? There has been such fierce estrangement of the issues. The Financial Services Council, the Independent Bankers Association of America, the Independent Insurance Association. Now we are talking about those people who are out there selling and who heretofore have been adamantly opposed; we have them supporting this. The Investment Companies Institute, the securities industry, the BOND Market Association, the National Association of Multiple Insurance Companies, and most executives of major financial companies have been strongly supportive.

Mr. President, no less than former Chairman of the Federal Reserve Board Volcker—and I read his remarks—is totally supportive because it is long overdue. Our present Chairman, Alan Greenspan, one of the world's most respected bankers, says this is a good bill and is supportive. The Securities and Exchange Commission and their Chairman, Arthur Levitt, are supportive of this bill.

Yes, there is room for reasonable people to have differences over various aspects of this bill. I suggest to you that some of those differences can and should be debated, the time can be provided, and that we can vote on them, and let the will of the Congress decide and not let the clock of a late session be the enemy of progress. Let's not let the quest for perfection stop that which is an excellent bill. Let's not look for 100 percent when we can get 99 and be doing the business of the people.

I am not going to argue the merits of some of those positions that my friends have—friends on my side of the aisle. Indeed, when it comes to various issues, reasonable people can disagree, but the question is, are we going to undertake our responsibilities in a manner which befits the great office and the prestige of U.S. Senators or are we going to say, no, unless I get it my way 100 percent, dot the i, cross the t, we are going to kill that which would otherwise advance the interests of all of our people, all of our citizens?

I hope that we can move to a higher level. I am not prepared to, nor will I, debate the relative merits of the changes that some of my colleagues are suggesting are necessary to earn their support. Indeed, I am not going to defend those who may have used the present law in a manner never intended to gain their way, to gain financial advantage for themselves as opposed to their community. If and when that takes place, it is wrong. It should be stopped.

But I suggest that if we look at the totality of this bill, to say that, unless we can deal with this particular abuse, we are not going to have financial reform, would be a mistake. I am not going to defend those who have used the law inappropriately, those who in

essence violate the spirit, yes, and I think the actual law that exists today.

Do I think that we could do better? Yes, if we had sufficient time. Do I think we could bring together and put together a coalition that could pass this bill if, indeed, we adopted some of the changes that my colleagues and friends might want to see? And I am talking specifically about the area of CRA, the Community Reinvestment Act. The answer is no; it would be the death of the bill.

Now, Mr. President, I could understand my colleagues'—and I do understand—strong revulsion for the manner in which CRA may have been used in particular cases that they are conversant with, familiar with, and that they have put forth to this body. I understand that. But I do have difficulty understanding how and why at this time, when we can achieve such great progress in dealing with 90-plus percent of the problems that exist today, where we can make the kinds of fundamental changes that almost everyone agrees are necessary so that we can meet our obligations here at home and in the world of finances, we would sacrifice that gain because we can't get perfection at this point in time.

Wouldn't it be better to improve the situation dramatically by passage of this bill notwithstanding that it may not deal with an area that is as contentious as CRA? I suggest to you that if we had a great and strong bill, a platform by which we could see that our financial services could operate without having to go to the regulator, to the nameless, faceless regulator day in and day out to get various exemptions that may favor one over another, that is not in the interest of this country.

The piecemeal legislation, day in and day out, how do we better ourselves by that? What kind of an example do we set for the rest of the world when we say we can't even agree on a fundamental operation? Because we want perfection? Because we want to cure that deficiency that is there, that some have been evil in using and may be, in quoting the words of some of my friends, using to extort? I do not condone that, but you are not going to cure it here. And what we will be doing is killing an opportunity to make substantial progress. That is what we are doing. And you have to weight that up. Are you going to achieve substantial progress? And if you can make that cure, I will be with you. But you can't. Understand it.

Now, if the managers of the bill said under no circumstances are we going to permit you to offer amendments, we want to go right to cloture to cut off your amendments and your right to offer amendments and your right to debate them and to let people hear what is taking place, then I could understand using every parliamentary procedure to stop this bill.

That is not the case. This Senator would be willing to say, and I know because I have discussed it with the ranking member, Senator SARBANES, we

would offer any reasonable time for Members of this body to offer amendments dealing with the problems that may exist in CRA, dealing with possible solutions, and having votes, whether they are up or down, without amendments, to see if we can't get a consensus. I don't believe you can. And if you can't get your position today, at least to give the people of the United States an opportunity to have a banking bill which people understand clearly and not one that is manipulated day in and day out by the various needs and exigencies of the financial services community so that they have to come pleading: "Oh, well, will you let me sell insurance? Oh, well, will you let me do securities? Oh, well, can I do it in the bank or outside the bank? Oh, well, is this legal or is that legal?"

While one group is receiving permission to do something, others are left behind. That is not the way for this country to be operating. It is wrong, and it is, indeed, an abrogation of our responsibility—an abrogation.

I hope, even at this late hour, notwithstanding the deep feelings that my colleagues have, related to the abuses that have taken place, that they would say the greater picture is one of doing the most good for the most people. That is what we are talking about.

This is an opportunity to do the most good—not for one industry over another but for our great country, and to see to it that there is a law that everyone sees clearly, where we reduce the necessity of having major financial institutions and parts of our industry being placed at competitive disadvantages because one gets a certain permission and another is left behind and then quickly must move to deal with that. That is not what competition in America can and should be about.

I have heard my colleagues raise this argument. I have been critical, yes, of the regulators for what I thought was absolutely going beyond what Congress had ever given to them. But the courts have said, and I think they have done it on a practical basis, that if you, the Congress, do not stop them with legislation, or you do not pass legislation that sets the ground rules, why, it is obvious that in the manner in which the law should be administered.

I do not think that is responsible. I really do not believe our forefathers ever thought or intended for us to operate in this manner, under these conditions. I certainly think that, looking at the world economic situation today, this does not create stability, if we fail to complete this. I say "fail to complete" because there are those who can run the clock out, run it out on our American citizens, because that is who is going to be deprived. Yes, all of our citizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I will be brief. I simply want to, first of all, commend the distinguished chairman

of the committee for the very effective work I think he has done in bringing this to this point. I think it is important to understand we have not reached the bill yet. We are now actually postcloture on the motion to proceed to the bill. I do not think it is clear at this point yet exactly how many of these procedural hoops we will have to go through in order to finally get to the substance of the bill and in order, in the end, to have a vote up or down on the bill. I hope the leadership could commit to staying with this process as long as is necessary in order to reach that point, because I think there is overwhelming support for this legislation in this body—overwhelming support.

I think the Financial Services Act of 1998, which has been brought out of the Senate Banking Committee, is a carefully balanced piece of legislation. It would finally respond to an issue we have been wrestling with for years and years. I say to the chairman of the committee, we have been dealing with this issue for a very, very long time, and finally we have brought it to the point where we have an opportunity, I think, to put into law important legislation for the operation of the financial services industry.

This legislation would permit banks to affiliate with securities firms and insurance companies within a financial holding company structure, regulated by the Federal Reserve. The Banking Committee held four hearings in preparation for marking up this legislation after it passed the House. It passed the House by just one vote. We are informed, and I believe reliably informed, that the vote in the House on this legislation as is now being presented to the Senate would produce a very substantial majority. In other words, well above, clearly well above the vote that it obtained in just managing to get through the House and coming over to the Senate. The changes we have made have generally been met with favor on the other side of the Capitol.

We heard from the administration, the financial regulators, the various industry groups, public interest and consumer groups, and in the end the bill was brought out of the Banking Committee on the 11th of September by a broad, bipartisan majority of 16 to 2. The legislation, as I indicated, is balanced. It would expand the range of permissible financial activities for commercial banks while preserving the safety and soundness of the financial system, providing adequate consumer protections, and expanding access to the financial system for all Americans.

This bill has received unprecedented support across the entire range of the financial services industry. Just last Wednesday, the American Bankers Association, the Independent Bankers Association, the American Council of Life Insurance, the Independent Insurance Agents of America, the American Insurance Association, the Securities Industry Association, the Investment

Company Institute and the Financial Services Council sent a joint letter to the two leaders—to Senators LOTT and DASCHLE—saying:

The Senate Banking Committee, through its actions on H.R. 10, the financial modernization bill, in its discussions with a wide variety of parties including both Members of Congress and representatives of the private sector, has now produced a carefully negotiated product.

They indicated their very strong support for the package which we are bringing to the Senate. Last Friday, the American Community Bankers, who represent the thrift industry, sent a letter to the two leaders expressing support of H.R. 10, and stating:

ACB supports the bill as a generally constructive measure.

These letters obviously reflect a very broad consensus that has been put together around this bill. Obviously, it is my hope we will be able to move it through the Senate over the next few days and move it on towards enactment into law. It is interesting to note, since I have colleagues on the other side who are raising the CRA issue, that the industry groups affected by the CRA issue are in favor of this bill. The community groups, I have to tell you because I am very much aware of it, are opposed to this bill, because they think it is inadequate on CRA. You know, they are making that concern very clear.

So I say to my colleagues on the other side who come along and they say, "We are going to attack CRA," that the very people affected by it, the industry groups, say, "We can live with this." The community groups are very unhappy with it. So we have that situation here.

In addition, and I am going to talk later in more detail about the separation between banking and commerce, which I think is an important aspect of this bill and one that Paul Volcker wrote a very thoughtful op-ed piece about in the Washington Post, on September 10. Let me just quote that and then I will not develop that issue any further tonight:

A convincing argument can be made for combinations of banking, securities and insurance companies—under appropriate regulatory and supervisory safeguards. What cannot be defended is reshaping the financial services industry by ad hoc regulatory decisions, manipulating or manufacturing loopholes in plain contravention of the intent of the unchanged law.

The proposed legislation will maintain and strengthen elements of financial regulation and oversight essential to the overall stability of the system. Specifically, H.R. 10 would reinforce the long-standing policy of the United States against the combination of banking and "commerce," broadly defined.

As I indicated, I will come back to many other commentators who have stressed the importance of that aspect of this legislation, and I think one of its major accomplishments is to draw that line and draw a clear line and avoid this sort of fudging that has been taking place in this area.

On the safety and soundness, let me say I think the regulatory structure put in place by this legislation is important and would permit the formation of financial holding companies. These financial holding companies would be able to engage in any activity that is determined to be financial in nature or incidental to such financial activities.

Thus, the holding company could include a commercial bank, securities firm, mutual fund or insurance company. Each entity within the holding company would be regulated by its existing regulator. Thus, a commercial bank would be regulated by its bank regulator, whether that is the Comptroller of the Currency, the FDIC or the Federal Reserve. The securities firm and the mutual fund would be regulated by the SEC and by the appropriate State securities regulators, and the insurance company would be regulated by State insurance regulators, as is now the case. So you have functional regulation of each entity within the new financial holding company.

In addition, the Federal Reserve would serve as the so-called umbrella regulator of the financial holding company. The Federal Reserve would have authority to set capital at the holding company level. It would have authority to conduct examinations and request reports from subsidiaries of the financial holding company if it determines they are necessary to assess a material risk to the bank holding company for its subsidiaries.

I think this balance is an effective approach to protecting the safety and soundness of the financial system and most independent observers, with respect to safety and soundness questions, agree with that evaluation.

There are also important consumer protections contained in the legislation with respect to the sale of uninsured financial products, and I am sure we will have a chance to develop those in some detail.

Where we find ourselves procedurally is the next vote, obviously, will be on the actual motion to proceed to the bill. At that point, the bill would then be before us and open to amendment. I subscribe to the position put forward by the chairman of the committee that Members ought to have a chance to offer an amendment; we ought to have reasonable debate on them and then move to vote on them, one way or another, and work through the legislation in that fashion.

It has been a long road to reach this point. I think it is important to try now to conclude deliberations on this important legislation in an orderly and rational fashion, and I think the approach the chairman has outlined certainly accommodates that.

We hear stories or rumors that people are out to simply try to delay this as long as they can in order to, in effect, sink the legislation. I very much hope that doesn't happen. An awful lot of work has gone into bringing us to

this point, as is reflected by the comments of the various parties who have been deeply interested and affected by this legislation. I, frankly, think the Congress now has an opportunity to finally come to grips with an issue—this issue is being dealt with on an ad hoc basis. No one thinks it should be done that way. No one. At least I don't think anyone. I don't want to speak for all of my colleagues, but that is true of all of the regulators, all of the commentators. They say the way to deal with this is to do it statutorily through enactment by the Congress. So we will just have to see as we move ahead whether we can come to closure on this important issue. I very much hope it will be possible to do so. Mr. President, I yield the floor.

Mr. GRAMM addressed the Chair.

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

Mr. GRAMM. Mr. President, let me begin by congratulating the chairman of our committee, Senator D'AMATO. I have had an opportunity to serve both in the House and in the Senate. I have worked with many great legislators in that process. But I have to say that the job Senator D'AMATO has done in putting this bill together, in bringing together people with very different starting points to a unity among the variety of interests that are concerned about this bill, represents one of the most outstanding and, I think, one of the most miraculous legislative achievements that I have seen in my service in the House and the Senate. I congratulate him. I congratulate Senator SARBANES, the ranking member, for his work.

Certainly our colleagues are right when they say that all the interests are for this bill, but I think it is fair to say that Senator SHELBY and I are not here today to represent any particular interest or even the collection of all interests. We are here today representing what we believe is a fundamental principle. Where I come from, when interest comes up against principle, then interest loses.

We have a fundamental issue before us. I believe that perhaps the greatest national scandal in America is not the scandal that is being covered every day at the White House. It is a scandal where a law is being used in such a way as to extract bribes and kickbacks and in such a way as to mandate the transfer of literally hundreds of millions of dollars and to misallocate billions and tens of billions of dollars of credit. I believe that this represents something that should be stopped.

Perhaps some word of explanation should be given. If the people who are being extorted, if the people who are being blackmailed are not objecting, why are we objecting? My response to this is to point out that when the mob was engaged in the protection racket, the little merchant who was afraid generally did not object. But we don't generally accept that in America anymore because there have been police officers

and there have been prosecutors who did object on their behalf.

Senator SHELBY and I are here to object on behalf of bankers and small community banks that, in many cases, are afraid to object on their behalf.

I have related to the Senate on many occasions, and we are going to have an opportunity to debate this at length, the abuses under the Community Reinvestment Act, or CRA. I want to make a couple of points related to it.

No. 1, the so-called Community Reinvestment Act and the provisions contained in it was voted on only once in the Congress. It was voted on in 1977 in the Senate Banking Committee on a motion to strip the provision from a proposed housing bill, and that motion failed on a tie vote, 7 to 7, in 1977, which means for half of the Members to vote to strip the provision when the Republicans were in the minority, there had to be a bipartisan vote.

So far as I have been able to find, that is the only vote that ever occurred on this provision of law.

The logic of this provision, which came from the former chairman of the Banking Committee, Senator Proxmire, was to require banks to make loans in areas where they operated. The concern expressed at the time was that banks weren't serving their communities, and, therefore, the Government took upon itself to impose on the banks the necessity of lending in their local community.

I am not going to debate tonight the wisdom or lack of wisdom of that, but as I have pointed out on many occasions, what has happened is that CRA has taken on a meaning that has nothing to do with lending.

It has now become common practice in CRA for professional protest groups to protest a bank's "community service record" and, in turn, use the leverage of those protests to extract bribes, kickbacks, set-asides in purchases and quotas in hiring and promotion, none of which has anything to do with CRA and the lending practices of banks in the communities they serve.

All of this is made possible by the banking regulators in enforcing this law, who respond to the protests by holding up action which banks wish to undertake and often are under immense pressure to undertake once it has been announced. Professional groups here in Washington that you can hire will go to your community and protest against the bank, even dump garbage on the property, make all kinds of statements, claims and demands and, in turn, extract resources for themselves and for others. So strong is the growing resentment against this provision of the law, that when proponents of the provision sought to put it in the credit union bill, it was defeated on the floor of the Senate.

When consideration on this bill began in the Senate Banking Committee, Senator SHELBY and I, and others, offered an agreement which was—this is

a very contentious issue, so let us call a truce on it and leave it alone for now. I want to repeal this provision of law. I want to end this scandal. I want to stop this extortion. Others want to expand it, expand this provision of law.

Knowing that we would never be able to compromise on this issue within the very limited time that we had to enact this important financial services legislation, I sought to come up with a solution. And the solution was to treat it as slavery was treated by Abraham Lincoln in his campaign in 1860. That was, where the evil existed, leave it alone, but do not expand it into new areas.

On that basis, if we had left CRA out of this bill, we could have moved together, we could be at this moment united for this bill, and this bill, in my opinion, would be on the way to becoming law. But that is not what has happened.

There has been great confusion about what is actually contained in the bill. So I want to take a few minutes and go over what is in current law and what this bill actually does.

In current law, there are really only two provisions related to CRA. First, bank regulators consider how a bank has been meeting the local credit needs only when a bank applies to open a new bank, a branch or engage in a merger. Second, bank regulators may deny applications for these activities based on the record of the bank in community lending. That is the current law.

Based on this, all over the country banks that have exemplary records in community lending and that have received the highest ratings on CRA are routinely shaken down every time they want to open a branch, every time they want to start a new bank, every time they want to engage in a merger. They end up having to make cash payments, kickbacks, establish quotas in hiring, and many other things, because the regulator simply holds up approval of the action, even though the bank may have a perfect record on CRA.

In fact, we discussed on the floor the record of Bank of America. It was brought up by proponents as an exemplary bank in CRA. I pointed out how professional protest groups had said they were going to shut down the bank in California when it sought to merge with NationsBank if it did not make more concessions to them.

Those are the abuses under the current law. But look what is added by this bill. When you listen to proponents of the bill, it is as if there are no CRA provisions of any significance in it. In fact, we just heard that the so-called community groups, whoever they are, that they did not get—what?—they did not get enough of what they wanted. I submit they never get enough of what they want nor will they ever get it until we redistribute wealth in America.

Here are the provisions that are added:

The first provision added, the third that would become a part of the law, is

that officers and directors can be fined up to \$1 million per day for CRA noncompliance—a totally new provision of law.

The new fourth provision that is proposed: Banks can be fined up to \$1 million a day for CRA noncompliance.

The fifth provision: cease and desist authority for CRA noncompliance.

Sixth provision: the Federal Reserve may place any restrictions on any banking activity for CRA noncompliance.

Seventh provision: the Federal Reserve may place any restriction on any insurance activity for CRA noncompliance.

Eighth provision: the Federal Reserve may place any restrictions on securities activities for CRA noncompliance.

Ninth provision: the Federal Reserve may place any restriction on any other activity of the holding company for CRA noncompliance.

Tenth provision: Any violation by any one bank in the holding company triggers the penalties that I have listed above against the entire company.

The eleventh provision would place in law sanctions affecting insurance sales.

The twelfth provision: CRA is applied to uninsured, wholesale financial institutions.

If we have the abuse that we have under current law with two simple provisions that have no enforcement mechanism whatsoever against a bank, unless it is seeking to acquire a new bank, to merge, or to branch, can you imagine what will occur when the officers of a bank can be fined \$1 million a day for noncompliance? Or can you imagine the perpetual shake down of a national, nationwide bank, with 1,000 branches, when the entire company receive those penalties if one branch is found to be or accused to be out of compliance? So this is a very, very big issue.

Here is where we are. We have rules in the Senate. And those rules were designed to protect the rights of the minority. And basically, my position, and Senator SHELBY's position, is that the expansion of CRA by these provisions will greatly increase the opportunity for extortion and kickbacks and the imposition of coercive agreements, such as those whereby companies in the past have agreed to give protest groups a percentage of their profits, have agreed to hire protesters as advisors on dealing with these provisions of law—things that turn your stomach and that in any other area would call for prosecutors and would send the police out to do something about it.

We are now condoning it by law with very weak enforcement provisions. If we have a \$1 million-a-day fine, we are going to have an explosion of these kinds of activities.

I have talked to Federal Reserve Board Chairman Alan Greenspan and I have talked to the Secretary of the Treasury about this whole problem

area. And I have proposed yet another compromise. The easiest thing to do would be to leave CRA out of the bill. But I have recognized that the President has said that he would not support leaving it out. We have colleagues who would not support leaving it out. So here is the compromise that Senator SHELBY and I want to propose as an alternative, as another option: Expand CRA to the new financial service holding companies so that the laws that apply now to other banking entities will apply in the same way to the new banking entities. But also add two provisions of law to check abuses.

First, we want a simple, well-defined antiextortion, antikickback provision that focuses CRA on lending and not on cash payments, or quotas, or set-asides, or giving protesters a percentage of your profits for a certain number of years.

Second, if a bank is in compliance with CRA in its last examination, then that compliance should mean something. It should remain in force until the next regularly scheduled exam. Then we could end the double-jeopardy situation where the officers and directors are in a position where they can be extorted—even if they have a perfect CRA record—the moment they apply to open a new bank, to merge, or to open a new branch, even though they have an exemplary CRA record.

If we could do these three changes—expand CRA to address the requests those who want to expand it, joined together with those two checks against abuse, one on bribery and extortion, and the other on eliminating double jeopardy—I believe we could have a bill.

Let me make this clear. Obviously, many people are for this bill. All the interests are for this bill. But there is a strong principle at stake here, and I am not for this bill. Senator SHELBY is not for this bill. We believe that using our rights under the rules of the Senate we can probably stop this bill. We will, if we can, stop this bill unless some accommodation is made on the effort to expand CRA. We will not let this bill go forward with these massive expansions in CRA power.

We are in a position where one side is not willing to let the bill go forward with these massive expansions in CRA; the other side says they will kill the bill if these expansive provisions are taken out. So that is where we are.

I want people to understand, if you are for this bill, don't waste your time calling Senator SHELBY and me. We will not be moved. If you are for this bill, call those who are for expansion of CRA and ask them what is wrong with a simple expansion of CRA and a simple amendment dealing with bribery and extortion and a simple provision establishing that if a bank is in compliance, it is in compliance.

I urge those that are for this bill to let their views be known on this issue. I understand some banks in this country are willing to go on paying these

bribes and keep quiet about it because there are other provisions of the bill they want. This is a wrong that is bigger than dollars and cents, and it needs to be stopped. I remind my colleagues that the clock is running and will run out, and this bill will die unless an accommodation is made on this issue.

If you care about this bill, if you really believe that this bill is important—and I believe it is important, but I don't buy into the logic that we are not going to pass the bill early in the next session if we don't pass it here this week, but some people believe we won't—what I am saying is for those who want the bill now, there is one thing you have to do to get this bill. You will have to do something about the expansive CRA provisions.

Finally, let me say even if you fix CRA, the clock is running out, and if you are going to fix it, you better do it fast. That, I think, is the essence of our message.

I yield the floor.

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

Mr. SHELBY. Mr. President, I will take just a minute tonight. I associate myself with Senator GRAMM. We worked on this together in the Banking Committee and we will be working together on this for a long time. I will take a minute to inform the Senate of my objections to H.R. 10.

I believe that members of the Senate have not had the proper time to study and debate this matter. Most do not even know what is in this bill. This is a very complicated bill. There are a lot of good things in it, but there are some things that Senator GRAMM has raised and I will raise as the debate goes along that we need to debate and we need to take out of this bill. I believe Senators are just being told basically that this is a historical opportunity, you must pass H.R. 10.

Think about it tonight. We make history in this Chamber, the U.S. Senate, every day. If we pass H.R. 10 just because everyone on Wall Street tells us to pass H.R. 10, this will, indeed, be a historical moment. But I don't believe that is going to happen, not with a lot of the provisions that are now in the bill.

If H.R. 10 is so great, why is everyone reluctant to debate the bill? How come the members of the Senate Banking Committee were not permitted to read, study, or share the manager's amendment until the morning of the markup? Is that the way a Committee is supposed to function? What is hidden in this bill?

I'll tell you one thing that is in this bill—so well hidden, not one of the bank trade associations—not the American Bankers Association, the Independent Bankers Association of America, America's Community Bankers, the Bankers Roundtable or even the Consumer Bankers Association knew the implications of the CRA expansion in this bill until Senator

GRAMM and I sent around a "Dear Colleague" about a week and a half ago. None of those associations realized that they were subjecting member bank officers and directors to million-dollar-a-day civil money penalties for CRA noncompliance.

Why didn't the associations realize this? These associations are caught up in the rush to judgment. They have not given proper consideration to this bill, and neither have we.

With less than a week to go in this Congress, H.R. 10 is being jammed through the Senate. The Senate is supposed to be the deliberative body.

There are many good things in H.R. 10, Mr. President, but there are also many bad things in H.R. 10. Currently, community groups and even labor unions use CRA to protest the merger of financial institutions. Most of the time, the merging institutions are forced to pay off the protest groups just in order to consummate the merger. Make no mistake about it, this is legalized extortion, one that the U.S. government is aiding and abetting.

The financial institutions who support this bill are used to paying off consumer groups. Nationsbank and BankAmerica have committed \$350 billion to CRA in order to merge. Citibank and Travelers Group have committed over \$100 billion to CRA in order to merge. These large institutions are used to paying a toll every time they want to do business.

That may be fine for Wall Street, but that is not fine for Main Street. Not every financial institution around the country has \$350 billion to buy off consumer groups and labor unions.

Who do you think pays for this legalized extortion? I'll tell you who: all the paying customers in this country. Everybody is complaining about large institutions charging more and more fees at higher rates, ATM fees, late fees and the like. It takes a lot of fees to pay for a \$350 billion CRA commitment.

Senator GRAMM and I have consistently stated our position since the Banking Committee first held a hearing on H.R. 10 several months ago. We will not seek to repeal, reduce or eliminate the CRA as it stands in its current form. However, we will not agree to expanding either the scope or the enforcement authority of CRA in H.R. 10.

Now, some have insisted on expanding both the scope and enforcement authority of CRA in H.R. 10. In this bill, some even delink CRA from deposit insurance and subject bank affiliated wholesale financial institutions woofies to CRA. The interesting thing about this is the woofies do not take deposits of less than \$100,000 and are not insured by the Federal Government.

I guess, we could roll over like all the banks before us who have paid off the consumer groups. But, I for one, will not succumb to that kind of extortion, and I will fight this thing as long as it stays in the bill. Government mandated credit allocation is wrong. Legalized extortion is wrong.

Last week, Senator GRAMM said that this is a principled objection. It is. We will not be bought off by Wall Street. Wall Street does not have the best interest of Americans in mind in this bill. The only thing they understand is dollars and cents. The principle they understand is profit. The interest of Wall Street is not always the interest of Main Street.

Here is a message for Wall Street in terms I hope they can understand: If you really want to pass financial modernization, in order to consummate mergers and make money off of every American by offering a vast array of services, go to those that are insisting on expanding CRA and ask them to work with Senator GRAMM and myself in making H.R. 10 CRA neutral. Otherwise, I believe this bill will ultimately fail. There may be some late nights and strong words, but I, for one, am committed to ensuring this bill will not become law.

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

#### UNANIMOUS CONSENT AGREEMENTS

Mr. HAGEL. Mr. President, on behalf of the leader, I ask unanimous consent that notwithstanding rule XXII, that the Senate proceed to vote on adoption on the motion to proceed at 10 o'clock a.m. on Wednesday. Before the Chair grants the consent, for the information of all Senators, immediately following the adoption of the motion to proceed to H.R. 10, the cloture vote with respect to S. 442 would occur under the provisions of rule XXII.

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

Mr. HAGEL. Mr. President, on behalf of the leader, I further ask consent that it be in order for the majority leader, after notification of the Democratic leader, to move to proceed to any available appropriations bills, conference reports, or resume the Internet bill prior to the 10 a.m. Wednesday vote, notwithstanding the invoking of cloture.

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

#### ORDER OF PROCEDURE

Mr. HAGEL. For the information of all Senators, in light of this agreement, the leader expects the Senate to resume the agriculture appropriations conference report tomorrow morning. In addition, tomorrow afternoon, the leader expects the Senate to resume the Internet tax bill. Therefore, votes could occur with respect to that bill, as well. A cloture vote on the Internet tax bill will occur Wednesday at 10 a.m.

Assuming cloture is invoked, the Senate would then remain on the Internet tax bill until disposed of. Therefore, votes can be expected throughout the day and evening on Wednesday.

Having said all of that, there will be no further votes this evening, and Members can expect votes prior to noon tomorrow.