worry that has happened now. We have seen, for example, that the Department of Defense has had surveillance, has even recorded movies, of Quakers protesting war. Quakers always protest wars.

Madam President, I ask for 2 additional minutes, under the same agreement.

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

Mr. LEAHY. They always do this. We heard in the press that there has been surveillance of Vermonters who protested the war. I can save them money. Turn on C–SPAN. I do it all the time on the Senate floor, if they want to find a Vermonter who may protest the war.

The question here is a greater one. What right does our Government—our Government, which is there to serve all of us—have to spy on individual Americans exercising their rights? Of course, go after terrorists, but to go after terrorists, you can do it within the law.

The distinguished occupant of the chair, the Presiding Officer, is also a former prosecutor. She knows how we have to go to court and follow the law for search warrants or anything else. In this area of foreign intelligence, we have made it very easy and very quick for the government to go before special courts, FISA courts. Let's do that, because when this administration or any administration says they are above the law, they don't have to follow the law, they can step outside the law, they don't have to follow checks and balances, then I say all Americans, no matter what your political leaning might be, all Americans ought to ask why are they doing this, why are they doing this. Because it doesn't in the long run protect us, not if we let them take away our liberties.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007—Continued

AMENDMENT NO. 20

Mr. BENNETT. Madam President, I have an amendment, No. 20, which I have offered and which I believe we will be voting on at some point, if not today then tomorrow. I rise to discuss the amendment and to share with my fellow Senators comments that have been made about the amendment by those groups in the Nation that would be most affected by it.

My amendment is very simple. It is a single sentence. It strikes section 220 of the underlying bill. So the whole focus of this discussion has to be on section 220 and what is it and what does it do and why do I think it should be stricken.

If I can go back to the history of this bill, back to the Senate-passed bill we dealt with in the previous Congress, I can tell you where section 220 came from. It was an attempt to deal with what the press has labeled ''the astroturf groups.'' That is a little bit hard to understand.

What does astroturf have to do with anything here? There are grassroots lobbyists and then there are groups the press has decided are phony groups pretending to be grassroots lobbyists. And it is these phony groups that they have labeled ''astroturf lobbyists'' and they think something ought to be done about it.

Here is the theoretical definition of an astroturf lobbyist: An astroturf lobbyist is someone who gets paid, presumably by a large organization—a labor union, a corporation, a trade association, whatever it might be—to pretend there is a groundswell of grassroots support or opposition for or to a particular piece of legislation. So this hired gun, if you will, sends out letters, e-mails, faxes—whatever it is—to stir up phony grassroots support for or against the particular piece of legislation.

The idea was that this hired gun, this individual who does this is, in fact, a lobbyist, even though he or she never talks to a Member of Congress, even though he or she may not live in Washington, DC, or even come here, even though he or she has no connection with any Member of Congress or the staff, because he or she is trying to stimulate communications to Congress that have the effect of putting pressure on Congress. He or she is a lobbyist and, therefore, must register, must report who pays him or her, must go through all of the procedures connected with a lobbyist under the Federal Lobbying Disclosure Act.

Put in that narrow context, there may be some justification for section 220.

Now let's step out of that hypothetical context and go to the real world, and we discover that section 220 is pernicious in its effect, which is why it is opposed all across the political spectrum by those who are involved in trying to put pressure on Congress by virtue of communicating with their Members.

On the right-hand side of the slate we have the Eagle Forum, on the left-hand side of the slate, if you will, we have the ACLU, and all across the spectrum we have a number of groups that are saying: Wait a minute, the prohibitions on astroturf lobbyists or grassroots lobbyists, as they are called in the bill, are prohibitions that cut to the heart of the constitutional right of Americans to petition the Government for redress of their grievances.

I have a letter, a copy of which was sent to every Senator, from the ACLU. Knowing what I know about senatorial offices, I think most Senators will not see the letter, so I will quote from it and at the end of my presentation ask unanimous consent that it be printed in the RECORD so that all Senators and their offices can read it.

Here is what the ACLU has to say about this particular provision:

> Section 220, entitled ''Disclosure of Paid Efforts to Stimulate Grassroots Lobbying'' imposes onerous reporting requirements that will chill constitutionally protected activity. Advocacy organizations large and small would now find their communications to the general public about policy matters redefined as lobbying and therefore subject to registration and quarterly reporting. Failure to register and report could have severe civil and potentially criminal sanctions.

If I can end the quote there and insert this fact: When we adopted the Vitter amendment on January 12, we raised that fine to $200,000. Someone who gets his neighbors together and says, let's all write our Congressmen on this issue, and then spends some money doing it, under this provision becomes a paid lobbyist, and if he does not report and register would be fined $200,000 for having done that. The ACLU does not overstate the case when they say this would have a chilling effect on constitutionally protected activity.

If I can go back to the ACLU letter and continue quoting:

> Section 220 would apply to even small, state grassroots organizations with no lobbying presence in Washington. When faced with burdensome registration and reporting requirements, some of these organizations may well decide that silence is the best option.

I guarantee you that if this small organization has a lawyer, the lawyer will advise them that silence is the best option. The lawyer will say: You are exposing yourself to a $200,000 fine if you don't do this right, and if you don't have the capacity to go through all of the paperwork and be sure you do this right, the best thing to do is simply not try to stimulate anybody to write his Congressman or go visit the local congressional office.

Back to the letter from the ACLU:

> It is well settled that lobbying, which embodies the separate and distinct political freedoms of petitioning, speech, and assembly enjoys the highest constitutional protection.

And for every statement they make here, as you will see when you get the letter inserted in the RECORD, the ACLU gives Supreme Court decisions in support of the position, and in many instances they are quoting directly from the Supreme Court opinion and not paraphrasing.

Back to their letter:

> Petitioning the government is—

and this is a subquote from the Supreme Court—''core political speech,''—the ACLU again—

> for which the First Amendment protection is—the Supreme Court—''at its zenith.''

So we are talking about something the Supreme Court has ruled is at the zenith of protected political speech under the first amendment.

Now, back to another Supreme Court position, quoting again from the ACLU:

> Constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee. Further—from the Supreme Court—''the First

Amendment protects the right not only to advocate one's cause, but also to select what one believes to be the most effective means of doing so.'' That is from the Supreme Court decision: The right to not only advocate for the cause, but to select what one believes to be the most effective means of doing so.

A grassroots lobbying group decides in its neighborhood that the most effective means of influencing and speaking up on legislation is to send out letters to its membership, or perhaps it may decide the most effective means would be to buy a mailing list and send out letters to the people on the mailing list. As soon as they spend the money to buy the mailing list, there is a paid lobbyist involved, and if the registration is not correct, there is a $200,000 fine against that group, if we leave this provision in the bill as it is.

The ACLU goes on to make other compelling arguments, but I would like to add a few other comments from other sources to show that this is from across the board.

The National Right To Life Committee—not usually associated with the ACLU in most people's minds as being on the same side of an issue—they say:

> Section 220 defines the act of a constituent contacting a Member of Congress as an act of ''lobbying,'' specifically, ''grassroots lobbying.''

And then here is what section 220 has to say, quoting directly from the bill:

> Grassroots lobbying means the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials, or to encourage other members of the general public to do the same.

Let me stress that, again. This legislation says that grassroots lobbying is defined as members of the general public communicating with their Congressman or encouraging others to do the same.

I thought that is what we were all supposed to do. I was taught in civics class in high school that everyone had the right to do that, without being forced to register and report all of their connections if somebody pays for it. Again, the Supreme Court says, constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee. But if you mess up your forms, if you don't file them on time, if somehow they are confusing to you and you have contacted your neighbors or you have purchased a mailing list, whether you are Astroturf or grassroots, you are on the hook for $200,000, as the bill currently stands.

Bradley Smith, who is the former chairman of the FEC, along with Stephen Hoersting, who is Republican Senatorial Committee general counsel, two distinguished lawyers, had this to say on this issue:

> ''Grassroots lobbying'' is merely encouragement of average citizens to contact their representatives about issues of public concern. It is not ''lobbying'' at all, as that phrase is normally used outside the beltway, meaning paid, full-time advocates of special interests meeting in person with Members of Congress away from the public eye. Contact between ordinary citizens and Members of Congress, which is what grassroots lobbying seeks to bring about, is the antithesis of the lobbying at the heart of the Abramoff scandals. It is ordinary citizens expressing themselves. That they are ''stimulated'' to do so by ''grassroots lobbying activities'' is irrelevant. These are still individual citizens motivated to express themselves to Members of Congress.

The Right To Life letter goes on to say:

> Poorly paid, activist employees of such organizations could receive penalties of up to $200,000 per infraction, or even face a threat of criminal prosecution, even if they never set foot in Washington, D.C., or speak to a Member of Congress or congressional staff.

Yes, Senator BENNETT, that is all very well and good, but what about these Astroturf lobbyists? We have to get to that terrible evil. The people who say that, quite frankly, probably have never, ever served in a congressional office or held public office. And if they have, they were pretty unconscious while that was going on.

I first came to this town as a congressional staffer over 40 years ago. I served on the House side; I have served on the Senate side. I have been a lobbyist downtown. Yes, I have been one of these paid professionals, and I reported all of the things I was required to report—went through the whole situation. I was in the executive branch as a lobbyist. We didn't call it that. We pretend the executive branch doesn't lobby the legislative branch, so it is called ''congressional liaison'' or ''congressional relations.'' I was the Director of Congressional Relations at the Department of Transportation. I had exquisite timing. I left just before they had title inflation, and if I had been there a little later, I could say I was an Assistant Secretary.

I understand this. People who have been involved in this understand this. When somebody tries to create a truly phony outburst of public opinion, the people in the front office of a congressional staff recognize it in about 3 nanoseconds. The letters come in. They are all identical. You know they are not stimulated by the position of the people at home. You know they were written by some professional who is taking a fee as an Astroturf lobbyist, if you will. You can see through it in an instant. They all come in, almost always in one of these simulated kinds of campaigns and somebody ruins it. I have seen these postcards, and on one of them is written: Senator, my organization told me to send you this. I hope it is helpful. And you know the person who wrote that doesn't know what is on it.

Sometimes they come in and they say: I don't know anything about this issue, but I am being asked to send you this postcard. I trust your judgment, Senator, and I hope you do the right thing.

There were times when these phony Astroturf kinds of campaigns were so overwhelming in volume that in the office where I was working, we didn't read any of it. You identified it immediately, you put them in a separate mail sack, and you threw them away. I tell people when they come to me and say, What is the best way to influence a Member of Congress, it is to stay away from these people because we are smart enough to see through it.

In order to protect the Congress from these kinds of Astroturf campaigns, do we have to put a potential $200,000 fine on someone who uses his church list to send out a letter and urge people who receive the letter to write their Congressman on a particular issue? Do we have to expose every group, right and left, that does its best to stimulate some kind of interest in an issue to this sort of penalty? What about the Internet? What happens if someone goes on the Internet and urges everybody who sees his blog to write Congress and then makes the mistake of hiring somebody and paying him to write that notice on the blog? Has that not created a lobbyist for hire? Somebody finds out the man who created the message on the blog got paid and files a complaint. I don't know what the lawyers would do with it, whether he would end up paying the $200,000, but I do know what he would run up in legal fees to protect himself against that kind of situation.

This is simply something that has been created by virtue of a perception of the way grassroots works, a perception that is wrong. This should be stricken from the bill. This should not go forward. I speak not from my own experience, not from how I feel after 40 years of contact with this place in one way or another, but I speak for a vast number of groups who are involved in this on the far right, on the far left, on every stage of the political spectrum in between, including those who are strongly for this bill and including those who say we need more transparency, we need to do something about earmarks, we need to do something about the more traditional definition of lobbyists having undue access. People who say we are for the bill, we are for all of these wonderful things, but if you do this, put this in the bill, you are on very shaky constitutional ground.

I have no doubt that if section 220 survives in the bill and ends up in the law, it will be struck down as unconstitutional. But in order to have it struck down, someone will have to file a lawsuit. Someone will have to fund hundreds of thousands and probably millions of dollars to take it through a district court and a circuit court and up to the Supreme Court, although maybe not. I would think any district judge would take one look at this and strike it down. But life being what it is, you can never tell about that. The Supreme Court has spoken often and repeatedly on this issue. The Supreme Court position is very clear. Let's hear them and save the money for the group

that would have to take this to the Supreme Court to try to get it reversed. Let's reverse it in the Senate so it does not ever see the light of day. I urge all of my colleagues to support my amendment that would strike section 220 and reaffirm that the zenith of the Bill of Rights is free speech, the right to petition your Government for redress of your grievances, and the right to peacefully assemble, all of which is involved in grassroots lobbying and none of which should be criminalized as a result of the legislation that we are considering today.

Madam President, I ask unanimous consent to include these letters in the RECORD.

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

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, January 17, 2007.

DEAR SENATOR: On behalf of the ACLU, a non-partisan organization with hundreds of thousands of activists and members, and 53 affiliates nation-wide, we urge you to support Bennett Amendment S.A. 20 to S. 1, the ''Legislative Transparency and Accountability Act of 2007'' when it comes to the floor for a vote. This amendment would strike Section 220 of the underlying bill.

Section 220, entitled ''Disclosure of Paid Efforts to Stimulate Grassroots Lobbying'' imposes onerous reporting requirements that will chill constitutionally protected activity. Advocacy organizations large and small would now find their communications to the general public about policy matters redefined as lobbying and therefore subject to registration and quarterly reporting. Failure to register and report could have severe civil and potentially criminal sanctions. Section 220 would apply to even small, state grassroots organizations with no lobbying presence in Washington. When faced with burdensome registration and reporting requirements, some of these organizations may well decide that silence is the best option.

The right to petition the government is ''one of the most precious of the liberties safeguarded by the Bill of Rights.'' When viewed through this prism, the thrust of the grassroots lobbying regulation is at best misguided, and at worst would seriously undermine the basic freedom that is the cornerstone of our system of government.

It is well settled that lobbying, which embodies the separate and distinct political freedoms of petitioning, speech, and assembly, enjoys the highest constitutional protection. Petitioning the government is ''core political speech,'' for which First Amendment protection is ''at its zenith.''

Constitutional protection of lobbying is not in the least diminished by the fact that it may be performed for others for a fee. Further, ''the First Amendment protects [the] right not only to advocate [one's] cause but also to select what [one] believe[s] to be the most effective means of doing so.'' In Meyer, the Court emphasized that legislative restrictions on political advocacy or advocacy of the passage or defeat of legislation are ''wholly at odds with the guarantees of the First Amendment.''

Where the government seeks to regulate such First Amendment protected activity, the regulations must survive exacting scrutiny. To satisfy strict scrutiny, the government must establish: (a) a compelling governmental interest sufficient to override the burden on individual rights; (b) a substantial correlation between the regulation and the furtherance of that interest; and (c) that the least drastic means to achieve its goal have been employed.

A compelling governmental interest cannot be established on the basis of conjecture. There must be a factual record to sustain the government's assertion that burdens on fundamental rights are warranted. Here, there is little if any record to support the contention that grassroots lobbying needs to be regulated. Without this record, the government will be unable to sustain its assertion that grassroots lobbying should be regulated.

The grassroots lobbying provision is troubling for other reasons as well. First, the provision seems to assume Americans can be easily manipulated by advocacy organizations to take actions that do not reflect their own interests. To the contrary, Americans are highly independent and capable of making their own judgment. Whether or not they were informed of an issue through a grassroots campaign is irrelevant—their action in contacting their representative is based on their own belief in the importance of matters before Congress.

Second, it appears groups such as the ACLU may end up having to report their activities because of the grassroots lobbying provisions. A ''grassroots lobbying firm'' means a person or entity that is retained by one or more clients to engage in paid efforts to stimulate grassroots lobbying on behalf of such clients and receives income of, or spends or agrees to spend, an aggregate of $25,000 or more for such efforts in any quarterly period. ''Client'' under existing law includes the organization that employs an in-house staff person or person who lobbies. If, for example, the ACLU hires an individual to stimulate grassroots lobbying on behalf of the ACLU and pays that individual for her efforts in amounts exceeding $25,000, it appears that individual could be considered a grassroots lobbying firm, and have to register and report as such. The fact the ACLU employs that individual appears to be irrelevant to this provision. Unless this is the type of activity that the provision is intended to reach, there is no substantial correlation between the regulation and the furtherance of the government's alleged interest in regulating that activity.

Groups such as the ACLU could also be affected because of the definitions of ''paid efforts to stimulate grassroots lobbying'' employed in Section 220. For example, the ACLU maintains a list of activists who have signed up to be notified about pending issues in Congress. Not all of those activists are ''dues paying'' members who would be exempt from consideration for ''paid efforts to stimulate grassroots lobbying.'' Additionally, since there are 500 or more such individuals, sending out an action alert to ACLU activists could be deemed ''paid'' communication and subject to registration and quarterly reporting.

Because the grassroots lobbying provision is unsupported by any record of corruption, and because the provision is not narrowly tailored to achieve the government's asserted interest, the provision is constitutionally suspect. Requiring groups or individuals to report First Amendment activity to the government is antithetical to the values enshrined in our Constitution. If our government is truly one ''of the people, for the people, and by the people,'' then the people must be able to disseminate information, contact their representatives, and encourage others to do so as well.

Sincerely,

CAROLINE FREDRICKSON,
Director, Washington Legislative Office.
MARVIN JOHNSON,
Legislative Counsel.

NATIONAL RIGHT TO LIFE COMMITTEE, INC.,
Washington, DC, January 16, 2007.

Re Support Bennett Amendment No. 20 to avoid radical effects of Section 220 of S. 1 (substitute amendment)

DEAR SENATOR: The National Right to Life Committee (NRLC) urges you to support the Bennett Amendment (No. 20), which would strike Section 220 from the pending substitute amendment to S. 1. Because of the chilling effect that Section 220 could have on grassroots activism, NRLC may include any roll call on the Bennett Amendment in our scorecard of key votes for the 110th Congress.

While supporters of Section 220 say that it would only require ''disclosure'' of certain big-dollar lobbying campaigns, the actual language of Section 220 would place unprecedented burdens on issue-oriented citizen groups from coast to coast that seek to motivate the public on matters of federal policy. Any local activist who runs afoul of the new requirements could be subjected to crushing civil penalties, raised from $50,000 to $200,000 per infraction by adoption of the Vitter Amendment No. 10 on January 12, and even to intimidation by threat of the new criminal penalty of up to 10 years in prison created by Section 223 of the substitute bill. The net effect would be to chill activities that are essential to the healthy functioning of a representative system of government.

The reach of Section 220 would be far more expansive and drastic than has been acknowledged by any of the sponsors or advocacy-group backers of the provision. Some of the sweeping effects are clearly intended (if not acknowledged) by the provision's backers, but others may be the result of poor draftsmanship or poor understanding of the way Section 220 would alter the structure of the existing Lobbying Disclosure Act (2 U.S.C. Chapter 26).

CONSTITUTIONAL PRINCIPLE

Before discussing the specific regulatory burdens that would be imposed by Section 220, it is necessary to describe the pernicious premise that is at the heart of the proposal: Section 220 defines the act of a constituent contacting a member of Congress as an act of ''lobbying,'' specifically ''grassroots lobbying.'' In our view, petitioning elected representatives is at the very heart of representative democracy, is granted the highest degree of protection by the First Amendment, and ought to be encouraged rather than restricted and regulated. Yet Section 220 would enact into law a mind-set that encouraging citizens to contact their federal representatives is a type of influence-peddling, inherently suspect, and the proper subject for scrutiny regarding exactly how citizens were motivated to exercise their constitutional right to petition.

(We refer here to definition 17 in Section 220: ''GRASSROOTS LOBBYING. The term 'grassroots lobbying' means the voluntary efforts of members of the general public to communicate their own views on an issue to Federal officials or to encourage other members of the general public to do the same.'' Note that this definition is so expansive that it covers not only verbal and written communications sent by a constituent to an officeholder, but also such activities as holding placards at public demonstrations, submitting letters for publication in local newspapers, or offering comments on an officeholder's position on a call-in radio program.)

Bradley Smith, former chairman of FEC, and Stephen Hoersting, former Republican Senatorial Committee general counsel, last year explained in detail why ''grassroots lobbying'' should be protected from Congressional scrutiny and regulation (see ''Let the

Grassroots 'Lobbying' Grow,'' www.nationalreview.com/comment/smith_hoersting_200602210809.asp), They wrote:

''`Grassroots lobbying' is merely encouragement of average citizens to contact their representatives about issues of public concern. It is not 'lobbying' at all, as that phrase is normally used outside the beltway, meaning paid, full-time advocates of special interests meeting in person with members of Congress away from the public eye. . . . Contact between ordinary citizens and members of Congress, which is what 'grassroots lobbying' seeks to bring about, is the antithesis of the 'lobbying' at the heart of the Abramoff scandals. It is ordinary citizens expressing themselves. That they are 'stimulated' to do so by 'grassroots lobbying activities' is irrelevant. These are still individual citizens motivated to express themselves to members of Congress.''

We agree. We urge you to support the Bennett Amendment in order to reject the root concept that communications from constituents are a form of ''lobbying,'' or that what motivated a constituent is a proper subject for governmental inquiry—be it a mailing from an advocacy group, or a newspaper editorial, or a franked newsletter, or a conversation at a local gym.

SECTION 220—TWO DISTINCT WEBS OF NEW REGULATION

Beyond the fundamental constitutional objection, it is vital that you understand the actual legal effects of Section 220, which have been grossly understated (and are probably poorly understood) by many of the provision's supporters.

Section 220 would create many legal hazards for grassroots-based, actvist-staffed organizations throughout the country.

Section 220 creates two separate and distinct new webs of regulation. (These have been confused or conflated in some materials circulated by both supporters and opponents of the provision.) First, Section 220 greatly expands the universe of persons who must register and file detailed reports (henceforth, quarterly) as federal ''lobbyists,'' because Section 220 redefines ''lobbying activities'' to include ''paid efforts to stimulate grassroots lobbying.'' This would include many employees of state and local right-to-life organizations who are paid only small amounts and who seldom engage in true lobbying of members of Congress or their staffs. Second, Section 220 creates a new category, the ''grassroots lobbying firm,'' defined so broadly that even a single individual, employed by a state or local advocacy group and paid a nominal amount, could be forced to register as a ''grassroots lobbying firm'' if the organization purchased a single full-page ad in a newspaper on a federal legislative issue.

The primary impact of these regulations would not fall primarily on well-heeled ''K Street'' lobbyists or on professional public relations firms, which supporters of Section 220 claim are their targets. Most professional Washington lobbying firms and their vendors are well-equipped to deal with complex regulations—they can hire extra lawyers, bookkeepers, and support staff, and bill their clients for the additional expenses required to keep track of their centralized ''grassroots lobbying activities.''

The real burdens of Section 220 would fall on the thousands of low-paid employees of thousands of issue-oriented citizen groups across the land, of every ideological stripe, who try to motivate members of the general public to communicate with members of the U.S. Senate and House regarding pending legislation. If Section 220 is enacted, the activist will learn that she must register with the federal government as a ''lobbyist'' and file quarterly reports detailing her efforts to stimulate ''grassroots lobbying,'' of any dollar amount, if (1) she is paid any sort of salary, (2) spends more than 20 percent of her time on such grassroots activities, (3) presents the motivating communications to more than 500 persons who are not paying members of the organization, and (4) has communicated with a congressional office or Executive Branch official more than once during a calendar quarter (for example, by sending an e-mail or making a phone call advising a Senate office of the organization's position on a pending vote).

REGISTRATION/REPORTING BY ''GRASSROOTS LOBBYISTS'' WHO SPEND $1

Some defenders of Section 220 say that these requirements would apply only if the activist is an employee of an organization that spends more than $10,000 in a calendar quarter on such ''grassroots lobbying activity.'' Regrettably, they are mistaken—that may have been the intent, but it is not the language of Section 220. There is indeed a $10,000 minimum (per three-month period) threshold in the bill (which amends the $24,500 semi-annual threshold that applies under the current Lobbying Disclosure Act), but Section 220(b)(1) explicitly removes ''paid efforts to stimulate grassroots lobbying'' from the scope of this exemption. In other words, Section 220 creates an exception to the exemption. This means that under Section 220, even $1 per quarter spent to ''stimulate'' citizens to communicate with their representatives in Congress triggers the registration and reporting requirement, for an individual who meets the other four numbered criteria in our previous paragraph. (Note: The $10,000 minimum discussed here applies to registration as a ''lobbyist,'' and should not be confused with the $25,000 threshold that applies to the ''grassroots lobbying firm,'' the new entity created by Section 220, which is discussed on the final two pages of this letter.)

Some defenders of Section 220 also claim that the registration requirement would apply only to individuals or firms that are already required to register because they engage in extensive direct lobbying with members of Congress or congressional staff. In this, too, they are mistaken: Section 220(a)(1) explicitly adds ''paid efforts to stimulate grassroots lobbying'' to the list of activities that trigger the federal registration and reporting requirement Therefore, if a local issue-activist group has an employee who has spent any money to encourage more than 500 private citizens (not members of the organization) to write letters to their representatives, has spent 20% of his time on such activity, and has made as few as two contacts to congressional or Executive Branch offices urging action on a pending issue, that employee would be trapped by the registration and reporting requirements.

Defenders of Section 220 emphasize that communications to members of an organization (for example, members of a labor union) are exempt. But the First Amendment does not merely guarantee the right to communicate with those who pay dues for the privilege of receiving such communications. Even a small single-issue organization may have a large e-mail alert list (for example), made up of individuals who fall outside of the Section 220 definition of ''membership'' because they do not make contributions, but nevertheless have a strong desire to be kept informed of congressional legislative activities. In addition, the group may at times feel the need to reach out to the general public—for example, by purchasing an ad in a daily newspaper—to urge citizens to speak out on a timely issue.

''GRASSROOTS LOBBYING FIRM'' REGULATION WEB

The second and distinct web of regulation created by Section 220 applies to a new category of regulated entity, the so-called ''grassroots lobbying firm.'' Defenders of Section 220 talk about this provision in ''terms of so-called Astroturf'' operations, as if it applied to professional advertising or public relations firms, but the actual language is far more sweeping. Section 220 defines a ''grassroots lobbying firm'' as ''a person or entity'' [emphasis added] who is paid, by a ''client,'' to stimulate ''grassroots lobbying'' (as defined in Section 220), and who receives, spends, or agrees to spend $25,000 or more in a quarter for such activities. ''Client'' is defined in the existing law to include an organization that employs an in-house staff person who engages in ''lobbying activities,'' a definition that Section 220 would expand to include activities to motivate grassroots contacts to members of Congress.

(It is important to note that this $25,000-per-quarter threshold applies only to the new ''grassroots lobbying firm'' provision of Section 220, and not to the separate requirement that one engaged in ''paid efforts to stimulate grassroots lobbying'' must register and report as a ''lobbyist.'' As we have already explained, the lobbyist registration requirement is not confined by any dollar threshold with respect to ''paid efforts to stimulate grassroots lobbying.''

Thus, under Section 220, the executive director (for example) of a state or local affiliate of National Right to Life, even if she is part-time and paid only a nominal amount, and even if she seldom or never interacts directly with congressional offices, could be forced to register as a federal ''grassroots lobbying firm'' and file detailed reports on a quarterly basis, if she on behalf of the organization (the ''client'') spends more than $25,000/quarter on encouraging the general public to contact their federal elected representatives. Since a single full-page ad in a major metro newspaper typically costs more than $25,000, many part-time citizen activists would find themselves legally defined as ''grassroots lobbying firms.'' Note that in this scenario, it is not the organization that Section 220 defines as a ''grassroots lobbying firm,'' but the individual staff person as described. Also, note that this new regulation of ''grassroots lobbying firm(s)'' is not constrained by the language that limits the existing Lobbying Disclosure Act requirement to register as a ''lobbyist'' to persons who make at least two direct ''lobbying contacts'' and who spend more than 20% of their paid time on lobbying activities during a reporting period. Those limitations apply only to the Act's definition of ''lobbyist,'' and not to the new language of Section 220 defining ''grassroots lobbying firm.''

The ''grassroots lobbying firm'' provision of Section 220 has one additional side effect which has not been understood, or at least has not been acknowledged, by its supporters: The $25,000 threshold is an aggregate figure for a vendor, not a threshold that applies to each issue-oriented client organization. We illustrate the implications by the following scenario: In Anytown, 15 citizen-activist groups, none of which has any paid staff or engages in any direct contacts with members of Congress or congressional staff, all hire the same vendor to mail to various lists of citizens urging them to communicate with their elected representatives on different timely issues. No organization pays more than $2,000 for the use of any list, but the aggregate amount collected by the vendor for mailings to all lists exceeds $25,000 in a three-month period. Under Section 220, this local vendor would be required to register as

a ''grassroots lobbying firm'' and to report the details of his mailing activities for all 15 of his ''clients,'' even a group that merely paid $50 for the use of a list.

CONCLUSION

In summary, Section 220 is a poorly drafted provision. If enacted, it will disrupt the constitutionally protected activities of thousands of issue-oriented citizen groups from coast to coast, chill free speech by citizen activists on the issues of the day, and become a textbook example of the Law of Unintended Consequences.

We urge you to prevent these consequences by supporting the Bennett Amendment No. 20, which will strike Section 220 from the substitute to S. 1. Thank you for your consideration of our strong views on this issue.

Sincerely,

DOUGLAS JOHNSON,
NRLC Legislative Director.
SUSAN MUSKETT, J.D.,
Congressional Liaison.

JANUARY 16, 2007.

Hon. HARRY REID,
Majority Leader, U.S. Senate,
Washington, DC.
Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR MAJORITY LEADER REID AND MINORITY LEADER MCCONNELL: As leaders of advocacy organizations active on a broad variety of issues, we write to express our strong concerns regarding certain proposals that are being advanced that would establish, for the first time, congressional oversight of grassroots activity that is intended to encourage members of the public to communicate with Members of Congress about pending legislative matters—so-called ''grassroots lobbying.''

We take no issue with proposals that may be legitimate responses to allegations of certain unethical actions by Members of Congress, congressional staff and lobbyists. But nothing in those allegations provide any justification whatsoever for the notion that incumbent Members of Congress should seize authority to scrutinize and regulate the constitutionally protected efforts of groups such as ours to alert citizens regarding legislative developments in Congress and to encourage them to communicate their views to their elected representatives. That citizens are ''stimulated'' to contact their representatives by so-called ''grassroots lobbying activities'' is irrelevant. Newspaper editorials, op-eds, grassroots advertisements and e-mail alerts are all ways to influence people to contact their elected representatives on an issue. Just as it would be unconstitutional to monitor the press because of their influence over their readership, the First Amendment also protects the right of the people to ''petition the government for a redress of grievances.'' To monitor motivation as to why a citizen would contact Members on an issue is attacking that First Amendment right.

A prominent example of the type of provisions that we strongly oppose are found in the Legislative Transparency and Accountability Act of 2007 (S.1). We strongly oppose Section 220 of this legislation and any other proposals along these lines.

Section 220 requires ''grassroots lobbying firms'' to report to Congress within 45 days of agreeing to provide services related to grass roots lobbying (including filing of quarterly reports listing disbursements made in connection with such activities).

Section 220 exempts communications of an organization to its members from direct application of these requirements, but the bill ensures that all private contractors and vendors which we retain to help communicate with the general public, in order to encourage these citizens to contact their elected representatives in Congress, would be subject to the burdensome recordkeeping and reporting requirements. Moreover, since these activities must be reported according to when they are arranged (even before communications to the public actually occur), they would in effect require that we provide our opposition on any given issue with detailed information about the scope and location of our planned grassroots efforts.

Reasoned attempts to address the concerns emerging from Congressional scandals should not be used as an excuse for incumbent officer-holders to encroach upon our most basic Constitutional liberties. Therefore, we urge you to strongly oppose any legislative proposals that would establish federal oversight over grassroots lobbying activities. We fully support Amendment 20 to S. 1 filed by Senator Robert Bennett which would strike the section relating to disclosure of paid efforts to stimulate grassroots lobbying.

Respectfully,
Family Research Council
Focus on the Family
Family Protection Lobby
The Family Action Council of Tennessee
American Family Association
Illinois Family Institute
The Family Research Institute of Wisconsin
Free Market Foundation
Christian Civic League of Maine
The Center for Arizona Policy
Corner Institute of Idaho
South Dakota Family Policy Council
Georgia Family Council
The Minnesota Family Council
Mississippi Center for Public Policy
Men's Health Network
Family Leader Network
National Council for Adoption
Institute on Religion and Public Policy
Catholic Family & Human Rights Institute
American Association of Christian Schools
National Rifle Association
Coalition for Marriage and Family
Judicial Action Group
Coalitions for America
American Shareholders Association
Americans for Tax Reform
American Values
Catholic Exchange
Traditional Values Coalition
Tradition, Family, Property, Inc.
Family Resource Network/Teen Pact
Grassfire.org Alliance
Eagle Forum
Concerned Women for America
Christian Coalition of America
Fidelis
Citizens for Community Values
Population Research Institute
Home School Legal Defense Association
Southern Baptist Ethics & Religious Liberty Commission
Advance USA
Americans United for Life
Massachusetts Family Institute

Mr. BENNETT. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Madam President, I would like to make a very few comments in response to the ranking member's comments, and then I know the Senator from Pennsylvania would like to speak on another matter, so I ask unanimous consent that he be recognized.

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

Mrs. FEINSTEIN. Thank you very much. I know that Senator LIEBERMAN is going to speak on the specific provisions of section 220 in the base bill, S.1, at a later time. However, I would like to share with this body what I understand to be the facts. If I understand correctly what is attempted in the underlying bill, the goal is to compel disclosure, registration and reporting for those companies, individuals or organizations that say, We have a cause, this is the cause; we want to establish a grassroots lobbying organization. They go and hire organizations to get going and spent more than 25,000 a quarter. They say go ahead and organize a movement, but nobody ever knows who they are or who funds them. This is called astroturf lobbying. Some people refer these groups as ''sham'' or ''front'' organizations. I am not going to say they necessarily are, but they have been referred to as such. They seek to influence legislation through mass media, using campaign and issue ads, letters, phone calls, think-tank public policy papers, and public polls.

The problem is, these organizations are hired guns funded by undisclosed special interest corporations and public policy firms. They conduct grassroots organization lobbying efforts which are often very misleading or in some cases, deceptive. For example, an oil company hires a sham organization to promote the benefits of alternative fuels to big oil, or a cigarette company hires a front group to lobby for smoke-free environment—or whatever the popular cause may be. They go out to organize, make lobby contacts, and conduct other lobby activities on specific issues. Unlike genuine grassroots groups that tend to be money poor but people rich, astroturf campaigns are typically people poor and money rich.

Section 220 of the base bill contains the provisions on disclosure of paid efforts to stimulate grassroots lobbying. I am the first one to say these provisions could be more clearly written. Nonetheless, the section's goal is to close the loophole in current law that allows these groups to engage in lobbying contacts without any public disclosure or reporting whatsoever—like the paid lobbying contacts and efforts of Jack Abramoff and Ralph Reed.

The bill recognizes this increased type of lobbying—paid efforts to stimulate grassroots lobbying—and creates new disclosure and reporting rules for such activities. It makes clear that efforts by an organization to contact its own members as part of a grassroots lobbying campaign are not covered and are unaffected by these provisions unless some outside group paid the organization to do so.

The bill also requires a $50,000 quarterly threshold as a precondition of registration. This means that small and truly local efforts are not covered.

I do not agree with the comments made by the ranking member about this section 220. Non-profits will continue to be able to lobby under current

tax law that requires threshold disclosure and reporting. However, private sector groups and their paid lobbyists are not currently required to disclose, register or report and therefore would be under section 220. So this is the differentiation between the two groups.

The provisions would create a balanced playing field by opposing a sham grassroots lobbying operation while protecting legitimate grassroots lobbying organizations. This in essence is the purpose. If it does survive consideration here, we will take another look at it in conference with respect to narrow definitions, registration and the reporting trigger thresholds. I do believe if somebody goes out and creates one of these groups, pours a lot of money into it and then hires people for grassroots lobbying purposes, then this group should be required to disclose and report so the public knows exactly who the group is and who is financing the group. Is it an undisclosed oil company or is it really a legitimate Citizens for Alternative Fuels to Oil? I think that it is important to determine the credibility and legitimacy of these organizations involved in grassroots lobbying.

I know the ACLU is opposed to it. The ACLU is a group that has been around for a long time. I don't see them being affected by this at all because they would be covered under this other section of the law. I offer these comments in the interests of the purpose of section 220 in this legislation, which I think is bona fide, helpful, and overdue. Thank you, Madam President.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Madam President, I have a question of my distinguished friend from Pennsylvania. It is my understanding he is going to speak next; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Madam President, my request is to speak for about 10 minutes.

Mr. REID. My only question was how long he is going to speak. I will come back after that time. I appreciate the Senator allowing me to ask that question.

Mr. BENNETT. Madam President, may I make a quick response to the Senator from California before we hear from the Senator from Pennsylvania? I will not take more than a minute or two.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. I simply want to make this point with respect to the threshold that causes people to come under the provisions of the bill. There is, indeed, a $10,000 minimum for a 3-month period threshold in the bill, but section 220(b)(1) explicitly removes ''paid efforts to stimulate grassroots lobbying'' from the scope of this exemption. In other words, $1 per quarter spent to stimulate citizens to communicate with their representatives in Congress triggers the registration and reporting requirement for an individual who meets the other four numbered criteria.

I agree with the Senator from California. This is very badly drafted and needs an awful lot of work, which is why I think the best thing to do with it is simply strike it.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

NEW FOREIGN SURVEILLANCE POLICY

Mr. SPECTER. Madam President, I thank my colleagues for yielding this time. I have sought recognition to express my approval—I am glad to see that the Attorney General of the United States, in telephone calls to Senator LEAHY and myself and now in letters, has advised that there is a new procedure to have the requests for wiretaps on al-Qaida members submitted to the Foreign Intelligence Surveillance Court. On December 16, the New York Times broke the story that there were wiretaps going on under a Presidential order without complying with the customary requirement that probable cause be established and submitted to the court, which would authorize the issuance of a warrant, to authorize the wiretap.

On that day, Friday, we were in the final stages of floor debate on the PATRIOT Act, and the disclosure that morning that there were warrantless recordings going on was quite a shock and quite a problem, because I was managing that bill in my capacity as chairman of the Judiciary Committee.

I said on the floor at that time that there was a clear-cut violation of the Foreign Intelligence Surveillance Act, which provides that the Act is the exclusive way for having a wiretap for foreign intelligence surveillance. The President has sought to justify the surveillance under his article II inherent powers. That raises a complicated issue, which can only be determined by the courts by weighing the invasiveness of the wiretapping—invasiveness into privacy—contrasted with the importance of national security.

Most of last year found this item as the No. 1 priority of the Judiciary Committee and my No. 1 priority as chairman. We had a series of hearings, four hearings. I introduced legislation to try to bring the program at that time under the Foreign Intelligence Surveillance Act.

The administration had refused to disclose the details of the program to the Judiciary Committee. They maintained that attitude consistently up until today. They finally did submit it, after a lot of pressure, to the Intelligence Committees—first a subcommittee of the Senate Intelligence Committee, then when the House resisted only a subcommittee, it was finally submitted to the full committees—really it was only submitted when the time came for the confirmation of General Hayden for Director of the CIA.

I have not been privy to what was disclosed to the Intelligence Committee, but based on my chairmanship of that committee during the 104th Congress, I have some doubts as to the adequacy of the disclosure. I know when I was chairman, the chairman was supposed to be informed about those classified and secret programs, but that was in fact not the case.

When the matter later moved into litigation and the Federal court in Detroit declared the surveillance program unconstitutional, and then the appeal was taken to the Sixth Circuit, I introduced substitute legislation—S. 4051 last year, and I've reintroduced it already this year—which would have provided for expedited review in the Federal courts and mandatory review by the Supreme Court. The bill also would have required individualized warrants for calls originating in the United States, because the administration had disclosed that, if there were changes made in the Foreign Intelligence Surveillance Act, there could be a warrant for all outgoing calls but not incoming calls because there were so many.

I am glad to see that we may now have all of that resolved. We are not sure. I want to know the details of this program.

Senator LEAHY has already spoken on the subject today and has put into the RECORD a letter that he and I received today from the Attorney General. The key parts are as follows:

> I am writing to inform you that on January 10, 2007, a Judge of the Foreign Intelligence Surveillance Court issued orders authorizing the Government to target for collection international communications into or out of the United States where there is probable cause to believe that one of the communicants is a member or agent of al Qaeda or an associated terrorist organization. As a result of these orders, any electronic surveillance that was occurring as part of the Terrorist Surveillance Program will now be conducted subject to approval of the Foreign Intelligence Surveillance Court.

That language says there will be probable cause established. I think we need to know more about the procedures for the determination of probable case, whether it is on individualized warrants or it is a group program. We will need to know more about the determination of an individual being an agent of al Qaeda, and we will need to know more about what is meant by an associated terrorist organization, to see that probable cause has been established under the customary standards.

The letter from the Attorney General goes on to say:

> In the spring of 2005—well before the first press account disclosing the existence of the Terrorist Surveillance Program—the Administration began exploring options for seeking such FISA Court approval.

It would have been my hope that the Attorney General, in our oversight hearings, where he was called and asked about this program, would have made that disclosure. A lot of time and effort went into the Judiciary Committee hearings and went into the

drafting of legislation. I personally met with the President last July 11 and secured his agreement to submit this program to the Foreign Intelligence Surveillance Court. For a variety of reasons, which I shall not detail now, that legislation did not move forward.

Then, as I've noted, there was substitute legislation when the Federal court in Detroit declared the program unconstitutional and the matter came before the Sixth Circuit.

The Attorney General's letter says, as is appropriate, that the program will have ''the speed and agility necessary to protect the Nation'' from terrorist attack—and that has always been a major concern: that we be protected, but that we be protected with an appropriate balance, so that there not be an intrusive wiretap without the customary court approval.

The Attorney General had advised me that there would be a meeting today, which I am just informed has been canceled, but there needs to be oversight beyond what has been disclosed in this letter. But at least there is a very significant first step. It is regrettable that these steps were not taken a long time ago. I would like to have an explanation as to why it took from the spring of 2005, and at least from December 16, 2005, until now, when there has been such public furor and public concern.

Further, the letter of the Attorney General says:

> Accordingly, under these circumstances, the President has determined not to reauthorize the Terrorist Surveillance Program when the current authorization expires.

It would be my hope that the program is terminated now, since there is an alternative method which the Attorney General has announced. I do not know when the program will expire. They have it in place for 45-day periods. We do not know when the last one started, so we do not know when this one will end. But, with an alternative program in place, it ought to be terminated now—to have the regular procedures for the establishment of probable cause, to protect civil liberties. And, as the Attorney General says, to address concerns in taking care of the protection of the country.

Again, Madam President, I thank my colleagues for yielding the time.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Madam President, I have been in Government all my adult life. Until I came back here, all my jobs were part time, and I practiced law. I say as sincerely as I can to anyone within the sound of my voice, I am so disappointed in the conversation I had with my Republican counterpart, Senator MCCONNELL, a few minutes ago. I was told that this ethics bill is not going to get the support of the Republicans. They are going to bring this bill down, defeat this bill.

Why? Listen to this. Because they are not going to have a vote on line-item veto. I told the distinguished Republican leader yesterday that we were willing to give the Republicans a vote on this prior to the Easter recess—up-or-down vote. We would have their bill, our bill, two competing votes, with 60 vote margins.

It is very clear what is going on with this bill. Keep in mind, Madam President, that we have had in Washington a culture of corruption. For the first time in 131 years, someone was indicted working in the White House. He is now in trial as we speak. The head of Government contracting appointed by the President, Mr. Safavian, is led from his office in handcuffs for sweetheart deals he had with Abramoff and others.

The majority leader of the House of Representatives was convicted three times of ethics violations in the House within 1 year. And then, of course, he was indicted in Texas on more than one occasion.

A House Member from California is in prison now as we speak for accepting more than $2 million in bribes.

A Congressman now is awaiting trial.

Staff members have been convicted of crimes from the House.

Talk about a culture of corruption, the American people deserve ethics and lobbying reform. That is why I brought to the floor S. 1. It is very clear that the minority does not want a bill. They have tried a number of different things to defeat this bill, offered all kinds of amendments, thinking we would oppose them. We supported those amendments. The only one that was a little blip in the road was a DeMint amendment, but we thought it should be stronger rather than weaker, so we added tax provisions to that. That has now passed.

Line-item veto has nothing to do with ethics and lobbying reform—nothing, zero. If the majority felt so strongly about line-item veto, which I am sure they do, I have agreed to give them a vote. This is a pretext. They could not kill the bill by offering amendments, thinking we would oppose them, so now they have come up with a new idea: We cannot do this because you will not give us a vote on a nongermane, nonrelevant amendment—line-item veto.

Line-item veto has nothing to do with ethics and lobbying reform. If the line-item veto is so important to the minority, why didn't the Republicans get a vote on it last year when they controlled this Chamber? This is very difficult to comprehend.

The bill that is before the Senate was sponsored, for the first time in 30 years, by the two leaders. And then the substitute was sponsored by the two leaders. The two leaders agreed to bring this bill to the floor. Now they are going to bring down the bill that their leader cosponsored?

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

Mr. REID. I will be happy to yield for a question.

Mr. DURBIN. Madam President, I would like to ask the distinguished majority leader if he would recount for us what happened 2 years ago when we faced passage of an ethics reform bill, with an overwhelming bipartisan vote, when the Republicans were in control of the House and Senate.

Mr. REID. They would not take it to conference. We never got it done.

Madam President, this bill is very strong. It is something the American people want. I say to my distinguished counterpart, and all the minority Senators, they are going to vote against cloture on this bill? We hear people say, in passing, here: Well, that is a 30-second spot. Voting against cloture on this is not a 30-second spot. It is a 30-minute spot.

This bill prohibits lobbyists from giving gifts to lawmakers and their staffs. It prohibits lobbyists from paying for trips or taking part in privately funded congressional travel. It requires public disclosure of earmarks. It slows the revolving door by extending to 2 years the ban on lobbying by former Members of Congress.

It makes pay-to-play schemes such as the K Street Project a violation of Senate rules. It makes lobbying more transparent by doubling the frequency of reporting and requiring a searchable electronic database.

It would require for the first time the disclosure of shadowy business coalitions that engage in so-called Astroturf lobbying campaigns. These big companies pay these people to come out and do grassroots stuff. You never know who is paying for it. Under this bill you would.

But even though we have under S. 1, as we introduced it, a lot of good things, it is even stronger because we offered a substitute amendment to make it even stronger. There are new protections to prevent dead-of-night additions to conference reports. We added new rules to say Members may not engage in job negotiations with the very industries they regulate.

There is fuller discloser by lobbyists. We ensure proper evaluation of tickets to sporting events. We make sure that Senate gift and travel rules are enforceable against lobbyists. And we toughen criminal penalties for corruption violations of the Lobbying Disclosure Act.

Since that was offered by me and the distinguished Republican leader, we have had a debate in the Senate that has strengthened the bill even more.

The Senate has adopted other amendments on a bipartisan basis: Senator KERRY's amendment to strip pensions from Members convicted of corruption; Senator SALAZAR's amendment to ensure public access to committee proceedings; and two amendments by Senator VITTER to strengthen enforcement of ethics rules. And I might add, there are other amendments out there waiting to be voted on if, in fact, cloture were invoked on the substitute.

Finally, we voted overwhelmingly to invoke cloture on an amendment to prevent the things that we did before

with airplanes. It strengthens the gift ban even further.

The underlying bill generally prohibits gifts from lobbyists. The amendment I offered broadens the gift ban to prevent gifts from companies and other entities that even hire or retain a lobbyist.

We did an excellent job, I repeat, on the travel. It is common sense. It broadens the provision by generally prohibiting congressional travel paid for by companies and other entities who hire or retain a lobbyist.

The amendment provides exceptions for 1-day participation at events—speech, conference, convention—and for de minimis lobbyist involvement. It requires advanced approval by the Ethics Committee for all privately funded travel, pursuant to guidelines issued by the committee.

Madam President, I believe we have done yeoman's work. I think it is so unfortunate that I have been told that the minority would not support cloture. We will find out. We have a vote scheduled for 12:38 tonight. And if the minority desires, we will certainly agree to an earlier vote. But I have been told we will not get the additional 16 votes required. We need 66 votes on this—66 votes on this.

But I want the world to know that this bill is being brought down not on a matter of principle because there is no one in the Senate I have more respect and admiration for than the Senator from New Hampshire, Senator JUDD GREGG. He is a wonderful man, a fine person, and he believes in this line-item veto. I understand that. But I have told the Republican leader that my friend from New Hampshire or whoever else is interested in this issue can have a full debate on it. We will give them time to do it.

But this is not the place. This is not the place. This has nothing to do—we are going to vote. If cloture were invoked, we would vote on I think it is 16 germane amendments. Those are germane. This is not germane. It falls. This has nothing to do with ethics and lobbying reform.

So I would hope that there would be another view taken of this. This bill is being brought down because people do not want to comply with ethics and lobbying reform. That is what it is all about. All the rest is game playing.

This is a tough bill. It would drastically change the way we do business in Washington for the better. The American public deserves this. I think they are going to demand this. And I think it is a sad day for the American people that this bill is going to be brought down. Because it will. We can only supply 50 votes. That is all we have. And we need 66.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Madam President, you are new to the Senate and, therefore, you were not here during this debate last year. But all this sounds quite familiar.

I remember last year we had this very bill on the floor, and our colleagues on the other side were voting against cloture on this very bill last year for the very same reason that we will now vote against cloture on the bill this year, in order to ensure that more amendments are voted upon.

How many times have we heard the distinguished majority leader and the distinguished majority whip remind us that the Senate is not the House. One of the frustrations of being in the majority here is that you have to give the minority votes in order to advance legislation.

No one seriously believes—no one—that Republicans do not want to pass this legislation. That is not credible, I would say to my good friend on the other side of the aisle. We passed it 90 to 8 last year when my party was in the majority. So no amount of spin is going to convince anyone that the Republicans do not want to pass this bill. We do. We want to pass it after a fair process. And having nongermane amendments on legislation in the Senate is about as common as the Sun coming up every 24 hours.

Now, we have been working, in fact, in a bipartisan fashion on this legislation. Our two managers, Senator BENNETT and Senator FEINSTEIN, have been working their way through this. We would like to finish the bill. We would like to finish it this week.

With respect to the senior Senator from New Hampshire, he is on the floor and would be glad to describe his amendment and how he believes that it is certainly related to this legislation. In fact, his amendment has been pending, since last Wednesday. A full week in the Senate, he has been waiting to get a vote.

I do not believe that cloture is necessary on this bill, and I am prepared to enter into a unanimous consent agreement which will limit the number of amendments and move us toward completion of the bill. We are not in favor of having an unlimited amount of amendments but a reasonable number. We have had 10 rollcall votes on the bill to this point, not an incredible number. And allowing us to process the remaining amendments is something that simply the minority frequently insists on in the Senate.

Mr. GREGG. Madam President, will the Republican leader yield for a question?

Mr. MCCONNELL. I yield for a question.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. MCCONNELL. I am sorry, I did not yield the floor.

The PRESIDING OFFICER. There is a question from the Senator from New Hampshire.

Mr. MCCONNELL. I did not yield the floor, Madam President.

Mrs. FEINSTEIN. I beg your pardon. I thought you did.

The PRESIDING OFFICER. I understand.

Mr. MCCONNELL. And I yield to the Senator from New Hampshire for a question.

Mr. GREGG. So I can understand the parliamentary situation, I did offer this amendment last Wednesday. It does deal with earmarks. We have, as I understand it, spent 8 days of legislative time on this bill, of which almost 4 days have been consumed in a discussion of earmarks with the majority—not the majority but the plurality of amendments that we have actually voted on dealing with earmarks.

Now, in that context, I guess my question would be this: Why would you have to pull the bill down in order to take this amendment up later?

Why in 15 minutes is it not possible to dispose of this amendment? It requires a supermajority because it is subject to a point of order. That saves the majority leader time wherever he wants to give us time later. Why do you have to pull a bill down to dispose of an amendment which is pretty relevant to what we have been discussing and you can do it in 15 minutes?

Mr. MCCONNELL. I say to the Senator from New Hampshire, there is no reason to take this bill down. In fact, Republicans hope the bill will not be taken down. What we are asking for is a vote on the Gregg amendment, not an unreasonable request to the Senate. We see on it virtually every piece of legislation week in and week out.

Mr. GREGG. If I may ask further, this amendment, which I call a second look at waste, and some people have characterized it as enhanced rescission and others have called it the line-item veto, essentially allows the President to send up a package of rescissions, which I presume he would have taken out of omnibus bills, which I presume will be mostly earmarks for us to take a vote on. Isn't that something we have been discussing, this concept of earmarks, throughout the debate on this lobbying bill? And isn't this lobbying bill very much tied into the earmark issue? Isn't one of the real issues of lobbying the ability to establish earmarks by using influence?

Mr. MCCONNELL. I say to the Senator from New Hampshire, he is precisely correct. We have spent a substantial amount of time during debate on this bill discussing that very issue.

Mr. GREGG. My final question would be, why don't we just vote on this amendment and get it over with? I presume the good leader from the Democratic Party, who is an exceptional leader and does a great job, will probably beat me on this amendment. It will be over in 15 minutes, because he has kept the votes to 15 minutes. And we can wrap this baby up.

Mr. MCCONNELL. I thank my friend.

I repeat, there is no good reason why we couldn't finish this bill tomorrow night. We are in the process now of surveying the number of amendments over here that need to be offered. Obviously,

at the top of that list is the Gregg amendment. I would hope we could continue our discussion about how we might wrap this bill up.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The majority leader.

Mr. REID. The fallaciousness of this argument is astounding. Line-item veto, the last time it left this body, it went to the U.S. Supreme Court. It was argued before the Supreme Court, dealing with the separation of powers doctrine. Fifteen minutes dealing with the very fiber of our society, our constitutional requirement of separation of powers, the legislative, the executive, and judicial branches of Government? This has implications with the separation of powers between the administration, the White House, and this Congress. To think we could do this in 15 minutes is not fair. I have said, if we want to have a debate on this, I am willing to do that, but not on this bill. This is an effort to bring down this bill. To say that nongermane amendments come just like the sun comes up every day is not reasonable or rational or sound.

We have worked through this bill. We have worked on nongermane amendments, germane amendments, trying to work things out. We are now in a parliamentary structure where at 12:38 tonight, the Senate would dispose of the Reid amendment No. 4 and then vote to invoke cloture on the substitute amendment. At that time, if cloture were invoked, we would have a number of amendments. As I indicated, I think there are 16 that would require votes because they are germane. My friend from New Hampshire can talk about having laid this amendment down 5 days ago or whenever he wants to say he laid it down. I don't know when he did. But the fact is, it is a nongermane amendment. It is not on this bill. It should not be on this bill.

I have told the distinguished Republican leader, if they want some time to do this, we will set other things aside and do it. But this is an attempt to bring down this bill. To think that you could do this in 15 minutes is absolutely unreasonable. Senator LEVIN, Senator BYRD, and others filed the case. It went before the U.S. Supreme Court the last time the line-item veto came before this body. Senator BYRD gave 10 hours of speeches on the line-item veto here on the Senate floor.

To think we could do this in 15 minutes—

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

Mr. REID. I am happy to yield for a question.

Mr. GREGG. I wasn't referring to 15 minutes as the time for debate. I was referring to it as the time that you allow votes on the floor and that the votes on the floor have been condensed and they are efficient. I respect the leader's accomplishing that in such short order. The debate has actually occurred. Senator CONRAD gave a very impassioned response to the amendment. I understand Senator CARPER has an amendment similar to my amendment. So, yes, it might take a little time to debate it, but I believe we could still deal with it promptly.

Mr. REID. Mr. President, I direct, without my losing the floor, a question to the former chairman of the Budget Committee, someone who knows money as well as anybody in this body. Why couldn't we do this at a later time? I will give you whatever time you want that is reasonable. If you want to spend 2, 3, 4 days on this, I am happy to do that. We need time to prepare for this. This new in the session is not the time to do this. I wish to get this ethics bill done. I think I am being about as reasonable as I can be to set aside a significant amount of time prior to the Easter recess to give you an opportunity to do the line-item veto. And prior to that time, we could have a couple of hearings on this. I also recognize that we have a process in the Senate where bills can be amended. Sometimes they don't have to be relevant or germane. But I think you have to be in the ballpark.

We have a CR coming up. We have the supplemental coming up which is money matters that you could file this on. I think people would have trouble objecting to it procedurally being improper. But right now, this isn't the time to do it. We are talking about doing something to make this body and the House better places to look at from an ethics and morality standpoint. I think your forcing us to go forward on this, which we are not going to do, makes it very difficult. I say this without pointing at anyone in particular, Democrat or Republican. Anyone who votes against cloture is creating some real political problems for himself. I think the American people think that something should be done with this culture of corruption we have back here.

Mr. GREGG. Was that question directed at me initially?

Mr. REID. Yes, it was. Why can't we do this at a later time when you have all the time you need? I have told the distinguished Republican leader, we will have your amendment. We will have Carper or something like that. I am not sure Carper is what we want to go with but something like that, where we can debate it, have a good debate on it, have you and Senator CONRAD leading the debate. Others will want to join in, Senator BYRD and Senator LEVIN who were plaintiffs in the case. And we can move forward on it. Why couldn't we do that it way?

Mr. GREGG. I guess I would ask the inversion of that question which is why not do it now? The amendment has been pending. It has been debated. People are fairly sophisticated about this amendment since it has been an issue that has been around here for awhile. I think it could be easily moved forward and discussed and voted on in a very prompt way.

But independent of that, the reason why I think we should proceed is, I can't imagine bringing the bill down over an amendment like this which is not a partisan amendment. It has always been bipartisan and it has substance to it. It would seem appropriate. But independent of that, as you know, the ability to amend this vehicle gives me a vehicle with this amendment which, first off, the amendment is relevant. It may not be germane, but it is certainly relevant, considering the fact that it deals primarily with earmarks. But it gives me a vehicle with which to go to conference, and I want to at least get this thing to conference. Granted, the House will probably stand in disagreement, and you will control the conference. And you may decide that you are not going to take it and you will recede to the House. But at least I will have gotten to the conference with what I consider to be a fundamental reform, which goes to the issue of ethics, which is when the President sees something in a bill which he thinks inappropriate and it probably got in there through lobbying, he can send it back for another look by us. That is my primary concern.

If the position of the Democratic leader is that you will give us time on the floor and if we succeed, we will have a commitment to go to conference, assuming we can conference—I mean, is the House going to pass a bill that we get into a position where it can get to conference somehow—that is something I would consider.

Mr. REID. You are talking about if we do this at another, subsequent time?

Mr. GREGG. Yes, if I had a commitment that we would somehow get it to conference.

Mr. REID. I am going to meet the distinguished Speaker of the House in 20 minutes. I will be happy to visit with her about that. I don't see why we couldn't have some assurance that it would go to conference. As you know, I believe in conferences. I think they should go forward. I would work very hard to get that done. I would say to my friend and those who can hear me that you can see through this a thousand miles. I am sure there are Senators who are overjoyed that this matter won't become law; I mean the ethics legislation. This matter, the line-item veto, is not a simple procedure, as my friend indicates. I repeat, it has very difficult constitutional problems, as indicated when the Supreme Court knocked it out last time. We can't debate this in a few minutes. I am willing to spend whatever time and give the Senator whatever assurances I can that we will try to move this on, move this beyond where we are here to conference.

I say this: There are people who are Democrats who have some degree of confidence in being able to do something that is a line-item veto. Senator CARPER has something. You might not like what he has done. I am not an expert on what he has done, but he is

proud of it. Senator CONRAD had some other ideas. We would agree on one. We would match it with yours. It would take us a few weeks to come up with that. But as I told the distinguished Republican leader, we will bring this up at a specific time, not a hit-or-miss time, prior to the recess we are going to have for Easter. I think that is reasonable.

Mr. GREGG. If the Senator will yield for a further question. If the Senator could in the same unanimous consent give me some sort of safe harbor that I will get to conference with my language, I think we might be on to something.

Mr. REID. I can give you this assurance: I will do everything I can to get this to conference. I have not discussed this with the distinguished Speaker or anyone over there, but I will be happy to work to see that that is done. As the distinguished Senator knows, I will work to get it to conference, but as we have learned—and if we get it to conference, it will be a public conference. It will be one where Democrats will be there and Republicans will be there from both the House and the Senate. But as you know, we have more votes than you have, so I can't guarantee what would happen in conference. But I will do everything I can to get it to conference.

Mr. GREGG. If the leader would yield further, I don't think this should be characterized as an amendment to bring down the bill. That is sort of a unilateral authority of the leader, of course. But it is certainly not my intention with this amendment, nor was it my intention with this amendment. I simply want to move this item along. I think this is an appropriate vehicle. But it sounds to me as if there might be a framework here for some progress. I will leave it to the good leaders to discuss this.

Mr. REID. I want the record to reflect that the Senator from New Hampshire offered this—and I said this in my remarks—because he believes in it. This is something he believes in. It was not offered by the Senator from New Hampshire to bring down the bill. But that is what is happening. I am sorry to say there are other Senators who see this as an opportunity to bring down the bill. I would hope we can work something out on this. I want to move forward on this legislation. I want the Senator from New Hampshire to move forward on his legislation.

As the Senator from New Hampshire knows, I don't agree with your legislation. But I will work, as I have indicated before to whoever is watching this Senate proceeding, to do everything I can to get a conference and have an open public conference. If we pass something here, of course.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I want to point out, I was on the floor when this item was discussed, when the Senator from New Hampshire offered his line-item veto amendment. I was also on the floor when Senator CONRAD, who is our side's budget expert, came forward and debated it.

There was a rather fulsome debate. I want to recount what Senator CONRAD said about his belief about the amendment, that not only does it raise serious constitutional concerns, but it would allow the President to unilaterally block enacted funding, even if Congress rejects a proposed rescission. In addition, rather than strengthening fiscal discipline, the amendment could lead to more spending, not less. He pointed out how it could be used to eliminate entire new programs or improvements to benefits such as Medicare and Social Security. The President would have a year after a bill's enactment to propose a rescission. The President could package rescissions as he or she wishes and could combine rescissions that have been enacted in several different pieces of legislation. Senators would be forced to vote on the package with little opportunity for public notice or input and no opportunity to offer amendments, nor would there be any opportunity to filibuster proposed rescissions. The new power would make it much easier for a President to eliminate new Medicare or Social Security benefits to which he objects.

Now, I agree very much with what the majority leader said. This is a very problematic amendment. It was debated on the floor of the Senate. It needs further refinement if anybody is going to move ahead with it. Clearly, it is a major amendment. Clearly, it is a real problem for our side. But for the minority to take down the bill over this amendment when the amendment is not germane to the bill, when I have tried very hard to keep matters that are not within the scope of the bill off the bill, including a matter I myself very much wanted to present, I think makes no sense.

The minority leader pointed out that this bill passed before, 2 years ago, by a vote of 90 to 8. The whole point of this legislation is to show that the two sides can come together, be bipartisan, and enact a bill that will bring about ethics, lobbying, and earmark reform. And we have done that.

As Senator BENNETT, the ranking member, and I have sat on this floor, there has been ample time for Members to bring their amendments to the floor. I assure you that there has been a lot of time when we have just sat here in a quorum call. To allow this bill to be pulled down at this time is just a special matter of some kind of pique, when we know that the line-item veto amendment is extraordinarily problematic and deserves another venue, deserves more scrutiny, and should take some time before it is passed in any way, shape, or form.

So I am fully in support of what the majority leader had to say. It makes no sense for the other side to take down this bill over it. I hope the proposal made by the majority leader will be accepted. I believe he will keep his word. I will help in any way I possibly can to see that that is, in fact, the case. But we are so close to getting this bill done, and it has some momentous things in it that represent a total change of the way these bodies operate, and they are important, significant, and timely. We ought to pass this bill. We ought to show the American people that we can work together, Republicans and Democrats, for a common purpose. So I just want to say that after a week and a half, I am profoundly disappointed that this has come about. I really thought we were going to be able to work together and pass a strong, bipartisan bill. And, in fact, most of the amendments have passed by huge majorities. I think there have only been two that have been relatively close.

I urge the Republican side to reconsider. There are so many positive elements of this bill, and the American people will be so shortchanged if we cannot solve whatever problem there is between us and pass a bill that we voted on 90 to 8 some time ago, which has even been strengthened by some of the eight members who voted against it because they didn't think it was strong enough. This is a very strong measure.

Those of us who will work in conference will work to smooth out any bumps. We will work in an open way, and no side will be shut out of the conference. I pledge it will be a collegial conference. This is our opportunity to set an agenda for the 110th Congress. Please, please, please, let us not reject this.

I yield the floor.

The PRESIDING OFFICER. The assistant majority leader is recognized.

Mr. DURBIN. Mr. President, we have been working for a week and a half on this bill, S. 1, which is the highest priority of the Democratic majority in the new Congress because we believe, as it says, providing greater transparency in the legislative process is a starting point. Trying to restore public confidence in the way we work here is a starting point.

I was heartened by the fact that this bill, as well as the substitute amendment and other amendments offered, has largely been bipartisan. Most of the debate has been bipartisan in nature. With few exceptions, the rollcalls have been bipartisan. It troubles me that we have reached this procedural impasse with the minority that, with the power given to it in the Senate, is threatening to bring down this bill. I am searching my mind to understand why they would want to bring down a bill that would clean up this culture of corruption in Washington and make substantial ethical changes.

I have come to the conclusion that it has to do with indigestion. What I am referring to is this: For every decision in political life there is usually a good reason and a real reason. The good reason stated by the Republican side—or

one they portray as a good reason—is they want to offer an amendment, which is characterized as a simple amendment. The bill is 55 pages long; the amendment is 24 pages long—almost half the size of the bill. It is not simple; it is very complex. It is on the legislative line-item veto.

Senator REID, as majority leader, has already made a good-faith offering even before we came to the floor to the Republican minority and said that it is important and deserves its day on the Senate floor. We will guarantee you that we will debate this bill before the Easter recess, a like bill to be offered on the Democratic side. Let's bring it to a debate and a vote and see which, if either, prevails and take it from there. That was a good-faith offering.

So the so-called good reason the Republicans are threatening to bring down the ethics bill just doesn't hold. We have already made the best offer that the minority could ever expect, and I know that having served in the minority for most of my time in the Senate.

But there is also a real reason they are trying to insert line-item veto into this ethics bill. Sadly, I am afraid it is because as they sat together over lunch and read the provisions of this bill that will now likely pass, it caused indigestion among the Republican ranks and, as a consequence, they said we need a reason to stop this bill. Well, the reason turned out to be the legislative line-item veto.

For those who follow what happens in Washington, it is my belief that somewhere in the White House the President has a veto pen. I don't know if it is one pen or many pens, but my guess is if it is one pen, most of us know already that there is a lot of ink left in this pen. For over the 6 years the President has been in the White House he has only vetoed one bill, and that was the stem cell research bill. He has never vetoed a spending bill in the entire 6 years that he has served as President.

The suggestion by the Republicans now that this President has been longing for the chance to veto spending bills to show how fiscally conservative he is is not supported by the evidence. Time and again, this President signed appropriations bills without hesitation. Now we are being told if he just had this new power, he could bring spending under control. We know better. We know spending starts with the President's budget. We know that year after year, the President has taken us away from the surplus of the Clinton years into the deepest deficits in the history of the United States.

Now we are being told the reason we cannot address ethics is we need to give the President a new power to veto spending bills for the first time in over 6 years. It doesn't really stand the test of scrutiny for us to consider this as a suggestion that is based in fact. It clearly is a reason to stop the ethics bill.

I urge my colleagues on the other side of the aisle, let's not give up on this bipartisan effort and see this ethics bill go down. Yes, as the minority, you have the power to bring the bill down. Perhaps you believe the legislative line-item veto is the way to bring it down, but the American people are not going to buy it. They understand that strengthening disclosure on earmarks, eliminating dead-of-night provisions in conference reports, respecting minorities in conference committees, and ensuring proper valuation for gifts and meals and tickets that Members of Congress receive, closing the loophole and the revolving door as Members leave public life and go into the private sector, negotiating for lobbying jobs while still in Congress, enhancing the oversight of staff level job negotiations, enhancing fiscal transparency and lobbyist disclosure, lobbyist certification and compliance with gift rules—these are powerful. They are big changes and they are long overdue. We tried a year ago under Republican leadership and failed. I hope we don't fail again because the Republican minority wants to bring the bill down. I hope that my colleagues on the other side of the aisle will reconsider their position. I hope they will come back and join us in passing this bipartisan bill, making sure we do the people's work before we leave this week.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I don't want to get deep into this confrontation between the two leaders, but I say to my good friend from Illinois—and he is my good friend—that I was present at the Republican luncheon and there was no indigestion on this bill. I was asked by the Republican leader to present where we are on the floor to the members of the conference. By the way, our rule is that we don't discuss anything that happens in the Republican conference, so I am bending that rule. We are allowed to at least discuss what we personally say. So I will not disclose what anybody else said, but I will bend the rule a little to characterize it.

I made the presentation as to where we were on the floor. There was no pushback whatsoever to the idea that we should pass this bill. There was no suggestion from any Member of the Republican conference that this bill should be taken down by some subterfuge.

The Senator from New Hampshire has gone to the leader and made a request. The leader has responded to the request, feeling that the Senator from New Hampshire is entitled to a vote. We are where we are. The leaders will make their decision and have their discussion. I want to make the record as clear as I possibly can that any Republican who wants to use this as a subterfuge to take down the bill has not made his or her position known to me or to the leader. There is no suggestion of that at all of which I am aware.

Mr. GREGG. Will the Senator yield?

Mr. BENNETT. Yes, I yield the floor.

Mr. GREGG. If I may follow up on the Senator's comments, it is obvious that the only person who can bring the bill down is the Democratic leader, if that is his choice. His choice appears to be based on the fact that he doesn't want to vote on the second look at waste amendment or enhanced rescission, which is tied into this bill.

As I mentioned earlier, almost 30 percent of the amendments offered have dealt with earmarks, and half of the time of the debate here in the last 8 days has been on earmarks. So it is not as if this is something that is totally off track or truly outside the realm. This isn't a farm amendment on the lobbying bill; this is a lobbying amendment on the lobbying bill. It doesn't have germaneness because that is a very narrow test, but it is sure relevant and on point. It clearly deals with earmarks, and it also deals within appropriate actions from lobbyists who get earmarks into the bills and bury them in omnibus bills. That is the purpose.

So the idea that this amendment is some sort of poison pill to the bill, it wasn't offered for that purpose and doesn't have that as its purpose. The Republican membership is ready to go forward and vote and is ready to either win or lose on this amendment.

The language of the assistant Democratic leader is such that it sounds to me as if maybe they don't want the bill. Maybe they concluded they don't want the bill because they are the only ones talking about pulling the bill down. We are not talking about pulling the bill down. We are talking about getting a vote on a reasonable amendment. Independent of that, I have made an offer——

Mrs. FEINSTEIN. Mr. President, will the Senator yield for a question? Maybe I am misinterpreting something. Will the Senator yield for a question?

Mr. GREGG. Yes, I will.

Mrs. FEINSTEIN. Through the Chair, I thought what was said was that if the Senator from New Hampshire doesn't get a vote on his amendment, that his side will vote ''no'' on cloture. That was clearly what I heard. Am I wrong?

Mr. GREGG. No, that is absolutely true. We should have a vote on our amendment, and as soon as we get a vote on our amendment, we can go to final passage. What is wrong with that?

Mrs. FEINSTEIN. Mr. President, I will tell the Senator what is wrong with it.

Mr. GREGG. I have not yielded the floor.

Mrs. FEINSTEIN. The amendment is a very complicated amendment. It is impossible to understand, it is a lengthy amendment, and all of the reverberations. I contend and say that it is out of the scope of this bill, and we hope to keep the bill away from these kinds of contentious matters but pass those items within the scope of the bill. I thought there was general agreement with that position. I thought the

Senator would recognize, based on the debate Senator GREGG had with Senator CONRAD that there were real questions with the amendment that took further study. My impression was the Senator from New Hampshire was willing to go through that process at the time.

Mr. GREGG. Mr. President, if I may reclaim my time, I have actually suggested to the Democratic leader and have taken him up on his suggestion as a way we can pursue this issue. I hope it will be done that way and that will resolve the matter. But I continue to hear, even after making that suggestion to the assistant leader, that we on our side of the aisle are attempting to bring the bill down. That is not a defensible position because the only people who can bring this bill down are on your side. You can take it off the floor. We can insist on our right to a vote, which we have every right to do, and it is reasonable to do, and especially reasonable to do in the context of this amendment which the Senator claims is complicated. It is not; it is fairly straightforward. In fact, it is much more straightforward and less complicated than the substitute amendment which has never gone through committee. It came here as a substitute amendment, drafted by the two leaders out of their offices. It is a very complex amendment—in fact, so complex that I heard both sides of the leadership of the bill trying to explain certain sections of it and they had different explanations as to how it affected, for example, private citizens who happen to be married to Members of Congress. It is extremely complex language.

My language at least has pretty much been vetted. It has been vetted all the way to the Supreme Court. It has gone through subcommittee, committee, it has been on the floor, debated, it has been debated again, it has been debated, and it was offered—in fact, my language was actually offered, in essence, by the Democratic Party as their substitute to the original line-item bill. In fact, the Senator from California supported the language when it was offered back in 1995. The Senator from California said:

> I believe that what a line-item veto essentially does is encourage caution on the part of both the Chief Executive and the legislative branch. I think the time has come for fiscal discipline and, as I said, I sincerely believe the line-item veto can help us achieve that goal.

So this matter has been debated extensively on the floor. It has been voted on before. It is not a matter of first impression. It is a matter of considerable discussion, and it is not unique. It is related to this bill.

The Senator from California used the term ''scope.'' Were the term ''scope'' applied to postcloture standing of an amendment, this amendment would stand. But scope is not the operative language. Germaneness is, and germaneness is a much narrower test in postcloture, as we know it is extraordinarily difficult to get germaneness with any amendment that has any breadth to it. That is the reason it falls postcloture, and that is the reason why it should be taken up and voted on before cloture. But I am willing to push the vote off if we are guaranteed what the Democratic leader has suggested he will guarantee us. I won't put words in his mouth. I think what he said was: You will get the vote on your amendment; you will have an amendment from your side; they will both be subject to 60 votes, with time limit on debate, and it will go to conference.

In that context, I think we can resolve this matter. But I take a little bit of umbrage at the idea that the other side of the aisle continues to characterize, even after that presentation had been worked out, our side of the aisle as trying to bring this bill down because the only person who has the right to bring this bill down right now is the majority leader. He controls the floor, he decides what is on the floor, and he can bring it down if he wishes.

We do not wish to bring this bill down. We simply wish to get a vote on a reasonable amendment that won't survive germaneness postcloture; therefore, it has to be voted before cloture. It is an entirely reasonable position for the minority to take, especially since the amendment has been aggressively vetted by having been through this process so many times and actually has been pretty well defined by the Supreme Court as to what rights we have and what rights we don't have. That is why it is structured the way it is so it is constitutional.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, parliamentary inquiry: What is the pending business at this point?

The PRESIDING OFFICER. The pending amendment is the Nelson amendment No. 71.

Mr. LOTT. Mr. President, if I may proceed to speak on this overall issue that has been going back and forth for quite some time, I find myself somewhat amused. I don't quite understand what all the fuss is about. I have been through this before. I have been in the position of resisting an amendment such as this. I have been in the position of advocating an amendment such as this. Everybody is getting their press releases ready now to go out to put their spin on this issue. I wish to make a brief effort to try to put it into proper perspective.

First, the idea or the suggestion that Republicans don't want to get this to conclusion is not credible because I managed this bill last year. We did it in a bipartisan way. As Senator MCCONNELL has said, we got an overwhelming vote. I think it was 90 to 8, and it had tough provisions in there, including most of what is in this bill.

Keep in mind, the underlying bill from last year was introduced by a bipartisan group, leaders on both sides, to begin this debate. Then there was a substitute laid down with some additional changes. Then we went forward with the amendments.

I don't think it is fair to characterize this as one side or the other trying to stop a result. As a matter of fact, I thought our leaders were going to come together. It is OK, we are going to identify a number of amendments about which Members are serious, and we could have votes on them this afternoon and Thursday and finish up Thursday night or Friday. Now I guess there is a little bit of a manhood thing here where one side is going to show the other.

Again, having been through this, when Senators do feel strongly about an issue, who have done the kind of work Senator GREGG has done, they are going to get a vote and they should get a vote. It is very simple. We could get a time agreement. Obviously, Senator GREGG would be prepared to come up with a reasonable time agreement. It is an important issue, but it certainly has been debated.

I have been on all sides of this issue over the last 10 years or so, and we could have a vote on a few other amendments and complete our work and then await conference, by the way, which won't occur until some time in March or April because the House action which has been described basically as getting the job done was only a rules change in the House. They didn't do anything about lobby reform, and they are not going to do so until March. It is not that we are in a tear to catch up with the House. We are going to complete this in a reasonable time, and then we will wait, but we are going to get a result because there are things we need to do with ethics, lobbying reform.

We can do it. We should do it. Some have gotten out of control. Now we are in a long process of self-flagellation without getting to cleaning up some things that need to be changed.

With regard to the specifics of this amendment, I was involved in the process in the nineties when we passed the line-item veto. I was very much an advocate of it. I remember we had a bipartisan group that did that. I know Senator BYRD spoke vigorously against it. We got it done, and it went to the Supreme Court. Before it went to the Supreme Court, President Clinton used the line-item veto for the first time, and I was pretty shocked by the list he came up with. Then I thought: Well, maybe I was wrong after all to support this power of the President.

This is not the same thing. This has been developed by Senator GREGG specifically addressing questions or problems of the line-item veto. I don't want to give Presidents, as they have had, by the way, and used for years, a summary rescission. This is a process, and I looked at it carefully.

I had reservations about the draft we were talking about last year. I don't

particularly like giving the President four bites of the apple. But I do like the fact that if we have some rescissions that go to reduce the deficit, Presidents can't put the same rescission project multiple times. He gets a shot at it, and then he can come up with a different list.

I am a cosponsor of this legislation. I think it will help to bring spending under control. I do think it will allow the President, when there is a project that cannot be defended in the light of day, a chance to take it out, and then we have to vote on it. And, by the way, it is not in perpetuity. It is for 4 years. This President will have this authority for 2 years, and the next President will have this authority for 2 years. Is that the correct timing on this amendment?

It has a sunset. We will see how it works. If we don't like it, if we don't agree with it, if we are embarrassed by the result, it will sunset, and then that will be the end of it unless we extend it. Is that a correct interpretation?

Mr. GREGG. Mr. President, that is correct. This is 4 years, but this President probably won't get 2 years of it. He will probably get a year and a half.

Mr. LOTT. That is correct. I don't know why we have all this huffing and puffing. Let's set it up, have some debate, have a vote, and let's move on. By the way, I believe Senator REID has the majority, and as Senator GREGG pointed out, it takes 60 votes to get this through. I don't think it is going to happen.

Senator GREGG has been willing to work out any and all kinds of agreements. I don't know how in the world the leader could keep a commitment to get it in conference out of whole cloth. Maybe he has some plan afoot.

So far we have worked pretty good. I was a little embarrassed last week. We had one of our Members offer an amendment. I voted against it, but he won fair and square. And then we went through this exercise where we were going to strong-arm Members into switching their vote. Our Members said, wait a minute, including me. I was going to switch back the other way because I thought that a mistreatment. All he was trying to do on earmarks was put us in line or in sync with what the House had passed.

I still don't particularly like that language. I think it is going to create some problems, but I thought it was a very good amendment. Basically, that put us in a holding pattern for the rest of the week or 3 or 4 days.

Hopefully the Democratic leadership will quit trying to fix blame and come up with a way we can complete this good work. The managers have been dealing with it and moving it along. I looked at the list of amendments. I don't see too many amendments that will be a problem in terms of time and debate and completing the work. Let's find a way to get this done, then await further House action, and then see if we can come up with a good product that is in the best interest of this institution and the American people. I believe this rescission package would help us get to that point.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I thank my friend from Mississippi for that explanation. I simply want to add a little bit of history, which I did previously, to his comments. He said when he saw how President Clinton used the line-item veto he began to wonder if he hadn't, in fact, made a mistake by supporting it. I supported the line-item veto. When I saw how President Clinton used it, I was sure I had made a mistake. Here on the floor and in the debate with Senator Moynihan and Senator BYRD, I made the commitment that I would never support the line-item veto again because it was used in a way I had not anticipated. It was used in a way very different from the way State legislatures have dealt with the line-item vetoes that Governors had. That was my rationale for supporting it. I said: The Governors have it and it works; why shouldn't the President have it? That is because I didn't understand the way the Congress really works. So I said I will never support a line-item veto again.

When the White House called me and said, We need your vote on this, I said, You won't get it. And then when I saw the details of what the Senator from New Hampshire has crafted, I realized, as he has pointed out, that it is crafted with the Supreme Court rescission in mind, with the history of the experience with President Clinton in mind, and I am now willing to support the enhanced rescission legislation the Senator from New Hampshire has proposed because, as he has said, this is not the line-item veto.

Our friends in the press like a quick headline that they think everybody can understand, and they use the headline ''line-item veto,'' and then it sticks. In fact, that is not what it is, and a careful reading of the bill makes it clear that is not what it is. If, indeed, that were what it was, I would vote against it.

But I am hoping the Democratic leader, the majority leader, can work out something which can give the opportunity for this to be brought forward, debated, and then voted on. I do note, as the Senator from New Hampshire has noted, that in order for it to pass, it would require 60 votes. So if, indeed, there are 41 votes against it, the logical thing to do is bring it up, kill it, and let us move forward. But apparently there are not 41 votes against it. I don't know, but I am guessing. So we are where we are. I am hoping it all gets worked out because I think we are close to getting this bill done. I think it is a bill that both sides can vote for overwhelmingly. I have enjoyed working with the chairman of the committee in getting reasonable adjustments in the bill, and it would be a shame to see all of that hard work go down the drain if we can't get this resolved.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLARD. 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. ALLARD. Mr. President, I understand we are having a discussion on the floor about the amendment being proposed by Senator GREGG from New Hampshire, known as the second look at wasteful spending amendment, to the pending legislation, which is called the Legislative Transparency Act of 2007. I spoke on this particular amendment offered by Senator GREGG last week, and I came to the Chamber and expressed my strong support for what Senator GREGG is trying to do. For the life of me, I don't understand why we would want to put an issue such as this off, because it adds transparency to the process. That is the name of the bill we have before us: the Legislative Transparency Act of 2007.

What the Gregg amendment would do is to allow the President to identify certain items in bills that are earmarks or may be classified as pork barrel spending. Then once those provisions have been identified, they would get singled out, and then, the President can bring those forward and allow the House and the Senate to vote on those separately.

What happens so many times in legislation that comes before the Congress is a process which is called logrolling. It is an old term; it has been around for a long time. You just keep adding issues in there and adding issues in there and make a piece of legislation bigger, and you pick up votes, and the bill gets so big and cumbersome that it is difficult to find people who are going to vote against it because there are so many issues in there they support. So what Senator GREGG does to bring transparency to this process is to take out those single issues, give the President an opportunity to pull those out and send them back to both the House and the Senate, and we vote on them as a separate issue. That creates a clear position on that particular issue from the House and the Senate. I daresay if we do that, we will cut back on a lot of spending, for those of us who are concerned about the mounting deficits in our Federal budget, who are concerned about accountability, and who are concerned about the process around here, both in setting up a budget and then the appropriations bills that come forward.

I think it is an accountability issue, and I hope we can bring this up and have a vote, in my view, the sooner the better because right now we are involved in an appropriations process that got bogged down from the last session because of earmarks and those

kinds of spending provisions, and we are getting ready to go into a budget process and then right back into appropriations. So the sooner we can deal with this type of legislation, the better.

I am hoping the leadership here in the Senate would consider and eventually allow us to bring this up, and as I say, the sooner the better because it brings accountability to the budget process. That is something we have all been talking about, those of us who are serious about getting the deficit under control, those of us who are serious about some accountability in the budgeting process. If I secure funding for a project in an appropriations bill, I don't have any problem letting people know about it because what I do is I go through the process of getting it authorized; that is, the authorizing committee has looked at it and they have verified that whatever it is that is in the amendment is legitimate, they have reached a consensus on what needs to be done to bring accountability to that particular project or program. Then you take it to the Appropriations Committee, and they allocate the money and they keep allocating the money, and by holding on to the purse strings, they continue to make that an accountable process. If we have any shortfall in what is going on, it is a lack of accountability in the budgeting process and in the appropriations process. I don't believe this makes it any more complicated. I myself think it is pretty straightforward, and I think it is constitutional.

Now, we had sort of a line-item rescission process this Congress passed a number of years back with a large reform. The courts looked at it and decided it was unconstitutional. But in this legislation the final decision is made by the Congress. We leave control of the purse strings here in the Congress. The President just delineates a few of these programs or projects and then brings them back to the Senate, and we vote on them separately.

So I just felt compelled to come to the floor and reemphasize how very important I believe it is that we step forward and we begin to act on these kinds of commonsense solutions Senator GREGG has offered. He was chairman of the Budget Committee. He has worked hard on this issue. I supported his Stop Overspending Act of 2006 when he introduced it in the last Congress. It had a similar provision in there. This is important. I hope we can get an opportunity to act on this particular provision before we move off of this piece of legislation. I ask my colleagues here in the Senate to join us in trying to bring excessive spending under control.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LIEBERMAN. Mr. President, I know we are in an unfortunate gridlock at the moment, but earlier in the afternoon my friend from Utah, Senator BENNETT, rose to indicate that he intended, at some point in the debate, to move to strike a section of the bill regarding so-called grassroots lobbying. It requires disclosure of people doing paid grassroots lobbying exceeding a certain threshold of spending every year. And this provision is part of the title of the bill before us that came out of the Homeland Security and Governmental Affairs Committee, of which I am privileged to chair and of which I am privileged to have the distinguished Presiding Officer as a new member of.

I wish to respond to several statements that Senator BENNETT made. We will have a fuller debate, I am sure, before he asks for a vote on his amendment. But for the record, for the information of my colleagues, I wish to speak in favor of what I believe is one of the most important elements of this lobbying reform legislation.

The original provision, sponsored in committee by my friend from Michigan, Senator LEVIN, and myself, requires, for the first time, disclosure of so-called paid grassroots lobbying. Much has been said—I fear, too much of it not on point—about this provision and its purported impact on free speech. I wish to reassure my colleagues that those claims about this provision are not true.

This grassroots lobbying provision would do nothing to stop, deter or interfere with individuals exercising their constitutional rights to petition our Government for redress. We are talking about disclosure, not censorship, not limits in any way on lobbying. We are talking about disclosure of large sums of money spent by professional organizations. We are not talking about barring any organization from conducting a grassroots lobbying campaign. And we are not talking about small grassroots lobbying efforts.

We are talking about major media campaigns, mass mailings, large phone banks, designed for the purpose of influencing Members of Congress or the executive branch on specific issues. There is nothing wrong with that. But it has become, as I will discuss in a moment, an ever-increasing, evermore expensive part of the way in which people use their constitutional right to petition their Government, and it has, unfortunately, been abused, particularly in the Abramoff case. This provision would shine the disinfecting, the edifying, the illuminating, the educating sunshine of public disclosure, but would impose no limitation on constitutional rights.

Our former colleague, the late Senator Lloyd Bentsen of Texas—a wonderful man and a great Senator—once referred to this kind of paid grassroots lobbying as ''astroturf lobbying'' because it was not real grassroots lobbying. It was generated, manufactured, and not self-grown. It, to me, defies logic to require a company to disclose—as we do in law now, and would even more according to the underlying bill, S. 1—to require a company to disclose its direct lobbying of Members of Congress, while giving that same company a pass by not requiring it to disclose anything with regard to its efforts to manufacture and generate thousands of pieces of mail and calls for the same purpose.

To avoid confusion, I want my colleagues to understand what this provision does and what it does not do. It does not ban or restrict grassroots lobbying of any kind in any way. That would be wrong. Grassroots lobbying is an important way for people to get involved and contact their Members of Congress or the executive branch. There is nothing wrong with astroturf lobbying, as Senator Bentsen described it, either. It is not self-generated grass, but it is appropriate, constitutional and legal and nothing in this provision of S. 1 would stop it.

This legislation simply requires disclosure of the amount of money spent on grassroots lobbying when it is conducted by professional organizations. The opponents of this measure would have us believe we are trying to amend the first amendment. That is not true. Our Senate phones are often jammed with callers expressing their points of view and all giving the exact same message. That comes from somewhere, is paid for by somebody and is part of an organized effort, and the public and the Members have a right to know who is paying and how much.

I wish to note this provision responds directly to one element of the Abramoff scandal. Mr. Abramoff funneled money from one of his clients, the Mississippi Choctaw Indians, to a grassroots lobbying firm run by Ralph Reed to oppose pro-gambling measures. The Choctaws were particularly interested in stifling competition to their gambling activities. Well, it seems to me in that case the public had a right to know the anti-gambling campaign was funded by those trying to protect—which is their right—their own position in the gambling industry from further competition.

Mr. Abramoff also directed his clients—and here is where we get into big problems—to pay millions of dollars to grassroots lobbying firms controlled by himself and his associate Michael Scanlon, fees that were in part directed back to Mr. Abramoff personally but never known by the public as direct fees. If the disclosure requirements that we are proposing here had been in place, Mr. Abramoff and Mr. Scanlon would have had to have disclosed these multimillion dollar fees they passed through this grassroots lobbying operation and, therefore, I believe they probably would not have been able to pull that particular scam off so easily.

In crafting this provision, Senator LEVIN and I have been careful to listen to grassroots organizations and have incorporated several safeguards to make sure we do nothing to inhibit their exercise of free speech. We make clear, for example, that the grassroots lobbying effort must be in support of a direct lobbying effort. Grassroots activities without connection to lobbying do not trigger a reporting requirement in and of themselves. So no matter what is being said here, I assure my colleagues that if this bill passes with this provision in it, anyone picking up their phone of their own free will to tell their Member of Congress how they feel about an issue is not going to face any requirements under our amendment.

Here is another threshold the amendment requires. Some people say: What if an organizational leader writes to his Members or a clergyman writes to his church to urge them to express an opinion on a particular matter to Members of Congress? It wouldn't be covered by this. We exclude efforts that are not professional, that are not paid for, and we exclude all efforts that cost less than $25,000 per quarter. That is a significant exemption, and it means that an organization can spend up to $100,000 a year on paid grassroots lobbying without triggering the disclosure requirement. Again, we also exclude communication made by organizations to their own members. And we exclude any communication directed at less than 500 members of the general public.

So what we are asking for is disclosure of spending over $25,000 per quarter to get others to engage in grassroots lobbying, and we are asking them to report just one number rounded to the nearest $20,000. Eleven years ago, Senator LEVIN unsuccessfully fought for a grassroots lobbying disclosure provision when Congress originally passed the Lobbying Disclosure Act. At the time he said, to the best of his knowledge, grassroots lobbying campaigns spent about $700 million a year. To the best of my knowledge, though obviously we don't know because there is no disclosure, that figure has multiplied probably into the billions per year, and the public has no accurate picture of who is spending what to influence others to lobby Congress. That is what this provision would do.

My friend from Utah, Senator BENNETT, pointed out that the first amendment protects the right of every American to petition Government for redress of grievances. Of course, that is true, and lobbying is part of that. As I said in my opening statement on this bill, it is a constitutionally protected right. The Senator further pointed out that the Supreme Court has said this right is not diminished if performed for others for a fee. That is also correct. I agree. Nothing about disclosure, however, is inconsistent with that first amendment right. Requiring disclosure under certain narrow circumstances is all our grassroots provision would try to do. The fact is, the Supreme Court has upheld disclosure requirements for direct lobbying. I am confident that the Court's reasoning applies equally to the disclosure we are proposing for paid efforts to stimulate grassroots lobbying.

In the leading case on lobbyist disclosure, which is U.S. v. Harriss, decided in 1954, the Supreme Court considered the Federal Regulation of Lobbying Act which at that time required every person ''receiving any contributions or expending any money for the purpose of influencing the passage or defeat of any legislation by Congress'' to report information about their clients, their contributions, and their expenditures. The Supreme Court upheld in that case disclosure requirements for the Court's narrow definition of lobbying, which included not only direct communications with legislators but also their artificially stimulated public letter campaigns to Congress. Two courts of appeals have also upheld grassroots lobbying disclosure requirements. In Minnesota State Ethical Practices Board v. the National Rifle Association, decided by the Eighth Circuit Court in 1985, that circuit upheld the State statute requiring disclosure of grassroots lobbying, even when the activity at issue was correspondence from a national organization to its members. In other words, the Eighth Circuit upheld a statute that goes even farther than we are going because we are exempting communications made by organizations to their own members.

In the other case, the 11th Circuit, in a case known as Florida League of Professional Lobbyists, Inc. v. Meggs, decided about 10 years ago in 1996, upheld a Florida law which required disclosure of expenditures both for direct lobbying and indirect lobbying activities.

Astroturf lobbyists who don't like this legislative provision may well challenge it in court. That could be said of most pieces of legislation that Congress considers. But I believe the weight of precedent of both the Supreme Court and the two explicit circuit court cases on grassroots lobbying should give us confidence that extending the essential disclosure requirements of lobbying to paid efforts to stimulate grassroots lobbying would be upheld as constitutional.

I hope more broadly that we can proceed with this bill. It is an important reaction to the voices of the people that we have all heard who are offended by the ethical scandals here in Congress over the last few years, as we all, each Member of Congress, are embarrassed by those scandals. This underlying bill, S. 1, is a very strong response to them. I hope it does not fall by the wayside in what may appear to observers to be the first partisan gridlock of this session of Congress. Surely we can figure out a way to proceed to consider the issue that is the subject of the gridlock at some point in the Senate and then proceed rapidly to consider the other amendments pending on S. 1, adopt the bill, and go forward.

I thank my colleagues.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. 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. BENNETT. Mr. President, I listened with interest on the television when my friend from Connecticut was responding to my amendment, talking about the grassroots or astroturf kinds of lobbyists. I was struck as usual with my friend's good intentions. I am reminded once again of a comment I made, which the Presiding Officer heard me make, which is hard cases make bad law.

The Abramoff situation was clearly a matter of money laundering. It had little or nothing to do with lobbyists. He found a way to use a particular activity in order to channel contributions from one of his clients back to himself in fees that would be hidden. That is being offered as a reason why we need to adopt this amendment with respect to grassroots organizations.

My friend from Connecticut talked about simply disclosure. Everybody who does this ought to say what they are doing, and we are not stopping them. Yes, they have their constitutional right to do this. And yes, it is a proper thing for them to do, so long as it all gets disclosed. Because if Abramoff had been forced to disclose, he wouldn't have been able to launder the money. That sounds enormously reasonable. But as I listened to the details, comparing them to my knowledge of the underlying bill, I realized, once again, this is being crafted with an eye toward the astroturf lobbyists, without an understanding of how chilling an effect it will have on genuine grassroots kinds of activities.

As the ACLU pointed out in its letter, the reporting requirements are so heavy and so onerous and now, as a result of an amendment we have previously adopted, carry with them a $200,000 fine, if they are inadvertently broken, that it will have a chilling effect on many groups who will decide they simply don't want to run the risk. We simply don't want to expose ourselves to this. Someone who inadvertently violates the law or violates the reporting requirements which we would be putting into the law, who accepts a relatively small amount of money for his services but somehow triggers the amount listed in the bill, finds himself or herself subject to a $200,000 fine for each incident. And even if that individual goes to court and gets it set aside, the legal costs will clearly go above $200,000.

To what end? Members of Congress are fully aware of how these astroturf campaigns are mounted. We understand when we are the target of one of

these. I don't know a single Member of Congress who can be swayed by this kind of thing, if, in fact, the underlying legislation is bad legislation in the opinion of the Member of Congress. I know many of these people do this to make a living, and they convince their Members that it is a worthwhile kind of thing. They will still continue to do that, the big ones. This is not something that is part of any culture of corruption. We cannot point to anybody who has been overwhelmed by these and, therefore, changed his mind on a particular piece of legislation.

Let's have a little understanding of the way the system works and a little common sense about how Congress responds, about how people try to bring particular pressure points upon them.

I respect my friend from Connecticut. I think his reading of the law is obviously very careful. But I come back to exactly the same position I did before in my earlier statement. This will have a chilling effect on honest, responsible, legitimate grassroots kind of activity, because the people who engage in that kind of activity will be afraid that their exposure to a $200,000 fine is too great. And it will be easier for them to say: Never mind.

People who do the astroturf kind of thing, where they are big enough and they have enough money, they have enough legal background, file all their reports and will continue to do it. The reports will be filed, and no one will pay any attention to them. I often say the best place to hide a leaf is on the floor of the forest surrounded by all of the other leaves. There will be a blizzard of reports coming from the big people who can afford to do this, and there will be a chilling effect on the little people who will be very nervous about the exposure we have built into this bill.

In the previous bill passed by the Senate that had this provision in it, the fine was $50,000. That was serious enough. Now that the fine is $200,000, I am getting all kinds of concern from all kinds of groups that are not professional astroturf lobbyists but legitimate grassroots groups that are very anxious that this is going to, in effect, hamper their ability to exercise their constitutional rights. Will it legally prevent them from exercising their rights? No, it won't. Will it practically prevent them from doing so? Yes, in all probability, it will. And the result is simply not worth that kind of risk to run.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FEINGOLD. 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. FEINGOLD. Mr. President, I strongly oppose Senator BENNETT's amendment to strike section 220 from the bill. The debate about section 220 is essentially a debate about the openness of the legislative process. It is a debate about the right of the American people to know who is spending money to influence their elected representatives and how that money is being spent.

It is important not to be misled by the use of the term grassroots lobbying in section 220. We aren't talking here about constituents reading the newspaper and deciding to call their Member of Congress to weigh in on the issue of the day. No, what section 220 deals with is paid grassroots lobbying, the spending of money to try to get the public to contact Congress. It is estimated that grassroots lobbying is a billion dollar business. That is a billion undisclosed dollars spent by special interests to influence the legislative process. We should keep in mind as well that in 2005 a few million of those undisclosed dollars went to Grassroots Interactive, a so-called ''grassroots'' lobbying firm controlled by Jack Abramoff. E-mails made public by the Indian Affairs Committee indicate that Abramoff and his accomplice Michael Scanlon prided themselves on being able to make it appear as if there was significant public concern over an issue. Further, those e-mails suggest that Abramoff and Scanlon used the grassroots lobbying firm as a way to avoid public scrutiny of their activities because current law does not require disclosure for grassroots lobbying firms. For example, Jack Abramoff reportedly paid Ralph Reed $1.2 million to use his Christian Coalition network to stimulate public opposition to a tribal casino; under current law, Ralph Reed's supporters were completely in the dark about the fact that their antigambling efforts were being funded by a competing tribal casino.

The lobbying disclosure law, as it stands now, contains a billion dollar loophole. All section 220 does is close that loophole.

I am going to address some of the claims made by the Senator from Utah, but first let me explain what section 220 does. First, it requires registered lobbyists to report how much they spend on efforts to stimulate grassroots lobbying on the lobbying disclosure reports that they are already required to file. Second, it requires large professional so-called grass roots lobbying firms to report on the amount they receive for their services, just like any other lobbyist. And that is it, that is all section 220 does. Organizations do not have to report on the amounts they spend to communicate with their own members, and they only have to report on the cost of their communications with the general public if they are required to register and file under the Lobbying Disclosure Act.

By the way, communications to fewer than 500 people are not considered by section 220 to be communications to the general public. And here is the important thing private citizens can still call, write, e-mail, fax, or visit their Senators anytime they want, in response to a call from a telemarketer or an e-mail from an organization they belong to, or because they read something in the morning paper, without ever have to report anything at all. Citizens are completely unaffected by this provision.

Some groups, especially the ACLU, have raised concerns that section 220 will intrude on Americans' freedom of speech and right to petition the Government. I appreciate the ACLU's concerns and am grateful for its vigilance in protecting our civil liberties, but in this case its reservations are unfounded. In 1954, in United States v. Harriss, the Supreme Court upheld the constitutionality of disclosure requirements in the Federal Regulation of Lobbying Act, stating that Congress is entitled to require a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. That is exactly what section 220 does. Without disclosure, the Court warned, ''the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal.'' Paid grassroots lobbying is a billion dollar business. It will not be chilled or discouraged by the very reasonable disclosure requirements in section 220.

While the ACLU's opposition to section 220 is honest and heartfelt, the same cannot be said of attacks made by some other groups. Their claims are so outrageous, so manifestly untrue, so unhinged from any connection to the reality of this bill, that I would like to assume that they have been misinformed about the details of the section, or that perhaps they are mistakenly referring to an entirely different piece of legislation. Unfortunately, I think it is more likely that they are engaged in a campaign of deliberate misinformation about the details of section 220. And of course, because of the loophole they are trying to protect, we may never know who is spending big money to try to convince the public to tell us to oppose this provision.

I certainly would not claim that the Senator from Utah is deliberately trying to mislead the Senate. But his statement today shows a deep misunderstanding of how section 220 works. So let me address several of the claims he made.

First, the Senator from Utah said the following:

> Someone who gets his neighbors together and says, let's all write our congressmen on this issue and then spends some money doing it, under this provision, becomes a paid lobbyist and if he does not report and register, would be fined $200,000 for having done that.

That is simply not true. The definition of lobbyist and the requirements for registration are not changed by this bill or section 220. A lobbyist doesn't have to register under the Lobbying Disclosure Act unless he makes a lobbying contact on behalf of a client and

receives over $5,000 for lobbying activities engaged in for a particular client. So the person who gets his neighbors together as described by the Senator from Utah and spends some money getting them to write some letters is not a lobbyist and does not have to register—before this bill or afterwards. That is not just a matter of interpretation of the statute; it is the undisputed meaning of the Lobbying Disclosure Act.

The Senator from Utah also said the following in his statement yesterday:

A grass-roots lobbying group decides in its neighborhood that the most effective means of influencing and speaking up on legislation is to send out letters to its membership. Or perhaps it may decide the most effective means would be to buy a mailing list and send out letters to the people on the mailing list. As soon as they spend the money to buy the mailing list, there is a paid lobbyist involved. And if the registration is not correct, there is a $200,000 fine against that group if we leave this—this provision in the bill as it is.

Again, that is not true. Unless an organization makes direct contact with a Member of Congress and spends more than $10,000 in a quarter on lobbying activities, then it does not have to register. And if it does not have to register, it does not have to report its spending on that mailing list. In addition, and this is very important, a group's spending to communicate with its own members is not considered grass roots lobbying at all.

The only way that this group would have to register is if it makes direct contact with a Member of Congress and spends over $10,000 in a quarter on lobbying activities, not including communicating with the general public to try to get the general public to contact the Congress. If the group does that, then it is not a small grassroots lobbying group. And yes, it has to register and report. I think that is the correct result.

I have taken a fair amount of time to respond to the Senator from Utah because this legislation is too important to let mistaken discussions of this provision stand without an answer.

Some of section 220's opponents have claimed that it is designed to keep the public in the dark about the legislative process, that it targets individual citizens and small grassroots organizations, that it will prevent organizations from communicating with the public, and that it will smother lobbyists in miles of redtape.

None of these claims are true. Not one. I suppose the groups spreading this information are so afraid of section 220 that they are willing to say anything to try to stop it. But I wonder exactly what they are afraid of. Section 220 only applies to registered lobbyists and large grassroots lobbying firms, and it does not prohibit or restrict their activities in any way. In fact, section 220 merely makes public how much money they spend and how they spend it. Surely these groups that have tried to convince people to contact their offices with mistaken claims about the bill aren't afraid of a little sunlight—or maybe they are.

We are so close to passing the kind of ethics bill that the public wants, that the 2006 elections endorsed, and that our democracy needs. Defeating this amendment will bring us closer to the day we can go back to our States and tell our constituents that we actually delivered real bipartisan lobbying reform. But what will our constituents say if this amendment succeeds and the Senate votes to reopen a billion-dollar loophole in the lobbying disclosure law?

I urge my colleagues not to be fooled by the phony arguments being advanced by the opponents of this provision. I ask my colleagues to please vote no on the amendment of the Senator from Utah.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, to bring everyone up to date as to where we are, I made a good-faith offer to the minority that we will put the line-item veto off to another day. Senator BYRD was not agreeable to that. I talked to Senator BYRD on more than one occasion this evening, the last time for a significant amount of time, and he simply believes this line-item veto is a matter of great constitutional import, that for us to agree at this time to debate this would be wrong and that he simply will not do that.

Having said that, I still say I think it is a terribly unfortunate day for this Senate that a bipartisan piece of legislation dealing with ethics and lobbying reform that has been cosponsored for the first time in three decades as the first bill brought before the Senate by the two leaders, Democratic and Republican leader, is not going to be allowed to go forward based on the Republicans not being able to have a vote on a matter that is not germane or relevant to this legislation.

We have done so much with this legislation. We introduced the bill that passed this Senate last year by a vote of 98. We strengthened that significantly with the substitute. A number of amendments were offered by my Republican colleagues and Democratic colleagues. There are those who say that Senators thought those amendments would not be agreed to. They have been agreed to, with rare exception.

We have 15 or so amendments that would be postcloture germane on the substitute if cloture were invoked. We have agreed those amendments should go forward.

The point I am making is it is too bad that it appears this bill is not going to pass because of a line-item veto. That is what it is all about. Members can talk about things in here that may apply, and the Parliamentarian says it is not germane. To think we can dispose of this piece of legislation in a few minutes is not sensible. This is something that will take a lot of debate. Senator CONRAD, alone, would take a number of hours. Senator BYRD would take a number of hours. Senator LEVIN, who is one of the plaintiffs taking this to the Supreme Court, would take a significant amount of time.

I hope my friends on the other side of the aisle would reconsider. After what has gone on in Washington, in the courts alone, this requires our doing something. We, in good faith, have moved forward on this, playing by the Senate rules. I hope people of good will on the other side of the aisle vote to invoke cloture. If not, as I said earlier today, there is only one reason this bill is going to not pass. It is because the minority does not want it to pass, period, underscore, exclamation point.

So, Mr. President, I ask unanimous consent that the Lott amendments Nos. 78 and 79 be withdrawn, that at 9 o'clock p.m. tonight all time postcloture be yielded back, and without further intervening action or debate, the Senate proceed to vote in relation to the following: Feingold amendment No. 65; Bennett amendment No. 81, as modified; Reid amendment No. 4, as amended, if amended; motion to invoke cloture on the Reid substitute amendment; provided further that there be 2 minutes of debate equally divided between each vote.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Is there objection?

The Republican leader.

Mr. MCCONNELL. Mr. President, reserving the right to object, I might say in response to my good friend, the majority leader, there is no particular reason these votes could not be held in the morning. It is clear we are at an impasse. That frequently happens in the Senate. It is not at all unusual. It is also not at all unusual to have nongermane amendments offered on bills. They are offered on virtually every bill that goes through the Senate. So there is nothing extraordinary happening on this bill that we do not see in the Senate with great repetition on bill after bill after bill after bill.

We have been working in good faith to reach an agreement with respect to Senator GREGG's amendment on enhanced rescission. I wish to thank the Senator from New Hampshire for his patience in that regard. He was here early on this bill. He offered it a week ago—it has now been pending for an entire week—and is prepared for a vote.

Now, the majority leader, to his credit, was attempting to reach an agreement to allow for a vote on this issue at a later date. He mentioned it needed to be sufficiently debated. Of course, at a later date, in the context in which he

and I and Senator GREGG were discussing it, there would be plenty of time for debate, adequate time to make the arguments on both sides to fully consider this important measure, with plenty of time for everyone to have their fair say about it.

Unfortunately, the majority leader has an objection on his side, and therefore it appears we will not be able to finish this bill this week. I hope we can continue to work on a path toward finishing the underlying bill. It passed last year 90 to 8, after the then-minority defeated cloture on one occasion in order to do exactly what this minority is going to do to defeat cloture on one occasion, which is to guarantee consideration of additional amendments.

So I would have hoped we could have had these votes in the morning because not much progress will be made tonight in this regard.

Having said that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there objection?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, reserving the right to object, I just want to thank the Republican leader and the majority leader for their efforts to try to move forward with my amendment. There was a lot of work done, and we had, I thought, a reasonable understanding as to how to proceed, which was outlined on the floor earlier in a colloquy between myself and the Republican leader and the Democratic leader and the assistant Democratic leader.

I regret that there is an objection on the other side. But I appreciate the Republican leader's willingness to protect my rights by maintaining my ability to amend this bill, if I cannot get this amendment up at a later date under a time certain, as we had an understanding at least between the four of us.

I have no objection.

The PRESIDING OFFICER. Is there objection?

The majority leader.

Mr. REID. Mr. President, the unanimous consent request is agreed to; is that right?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 78 and 79) were withdrawn.

Mr. REID. Mr. President, what I want to say is, I do not want anyone to be disabused that the only problem we had with our conversations was the time. As I indicated, I thought it would be appropriate to have a time certain to do this, but there were other issues that became involved in this also about how we would get to conference and other matters that were somewhat complicating, which certainly I did not have an opportunity to even discuss with Senator BYRD. But there were other hurdles we had to jump through. So it is not just as simple as that.

The point is, it was not done. I think that is unfortunate. But the issue before this Senate tonight is whether we are going to move forward with the most significant lobbying and ethics reform, by a large margin, since Watergate. It would be historic legislation. I would remind everyone the legislation that passed last year, 90 to 8, was the original bill we laid down. So everyone understands, it was held up because of the Dubai Ports issue, which was resolved quite quickly.

Mr. President, I yield to my friend from Illinois.

The PRESIDING OFFICER. The assistant majority leader.

Mr. DURBIN. Mr. President, for the record, a year ago when we debated ethics reform, the cloture motion was opposed on the Democratic side after we considered one amendment—one amendment. We have considered 12 amendments to this bill to this point, plus there have been others that have been accepted by the managers. So our objection a year ago was the fact that we had not opened it to an amendment process. I do not think anyone can argue that point this evening when the minority decides, if they do, to oppose the motion to invoke cloture.

I do not want to read too much into this. I hope this is just a bump in the road. But this is going to be a long journey of 2 years, and it does not start well when a bipartisan bill sponsored by the two leaders—the Democratic and Republican leaders—a substitute cosponsored by both leaders, and amendments cosponsored on both sides of the aisle are not enough impetus for us to pass a bill which is long overdue.

We considered this bill a year ago. It has been set over and over again, but nothing happened. We were determined with the mandate of the last election to see some change on the floor of the Senate. I thought we were off to the right start with a bipartisan measure, an effort to cooperate, an effort to compromise—and there have been many compromises on the floor. To think it is going to break down this evening because we refuse to consider a measure which is not even part of this bill, not even relevant to this bill, not even germane to this bill, tells me that we have reached a bad spot in the road. I hope we can get beyond it. We have a lot of work we need to do in the time to come. I hope it starts off in the same bipartisan manner, but I hope it ends better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 81, AS MODIFIED

Mr. BENNETT. Mr. President, I am grateful to the majority leader for scheduling a vote on my amendment No. 81. I wish to inform the Members of the Senate that Senator FEINSTEIN and I have been working to get this worked out in such a fashion that a recorded vote would not be necessary.

I raised the issue because lawyers on our side examined the underlying legislation and said the way it was worded, it could, in fact, be interpreted to prevent the 501(c)(3) activity that is purely educational and not connected with lobbying in any way, in which many of us participate.

The flagship example of that is the Aspen Institute and their Congressional Program. I am told the Aspen Institute has approved the language that is in the underlying bill. But I am convinced from the analysis of the lawyers that someone who wanted to do that program harm could, in fact, take the language of the underlying bill and attack the Aspen Institute Congressional Program.

Furthermore, while the Aspen Institute is perhaps the best known and the best supported, there are a number of other purely educational programs conducted by groups that have some connection with lobbyists. They do not take lobbyists on the trip. The lobbyists do not use the trip in any way. But because the organization has some connection to a lobbyist—may have employed a lobbyist for some issue unrelated to the trip or may, as in the case of the Aspen Institute, have lobbyists on its board—I am told that someone who wanted to disrupt those programs could challenge them.

So we have tried to work out a way to carve out this area reasonably and clearly, and we thought we had a deal. We had approval from both sides of the aisle by Senators who looked at it and said: Yes, this is exactly right. This is something we can certainly live with. We were, frankly, within minutes of having a voice vote on this, and then an objection was raised. The Senator who raised the objection has refused to budge. He has refused to compromise.

I have modified our original proposal in an effort to get compromise and have been unable to get it. So we will be voting on it. I would hope everyone would understand, when the time comes to vote on the Bennett amendment No. 81, that we are not, in fact, as some might allege, creating any kind of a loophole. The Ethics Committee will be involved to review all of these programs in advance, to make sure they are, in fact, educational programs. Lobbyists will not be allowed to travel or be present at any of the meetings.

We are talking about the kinds of things we should have more of in the Congress rather than less—opportunities across the aisle to get together under the sponsorship of a neutral organization, in a neutral location, and talk through the various problems.

Again and again, as I have been involved in these things, people say to me: Why can't we have more of this in Congress? The way the underlying bill is written contains the potential of having less of it. My amendment is structured to see to it that we are able to preserve those connections and relationships we already have. And if some future foundation decides to fund a 501(c)(3) for an additional one, they will not be prohibited from doing so just because someone on the foundation's

board happens to be a lobbyist. They will not be prevented from doing so just because someone connected with the 501(c)(3) happens to be a lobbyist, totally removed and apart from anything the 501(c)(3) is trying to do.

I believe very strongly this is the way we ought to go. I am grateful to my chairman, Senator FEINSTEIN, for her willingness to cooperate in a compromise. I am sorry we have been unable to work it out so that it is necessary for us to have a vote.

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

The PRESIDING OFFICER. The majority leader.

VOTE ON AMENDMENT NO. 65

Mr. REID. Mr. President, I ask unanimous consent that the vote begin now and be discontinued at 20 after the hour.

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

Under the previous order, the question occurs on agreeing to amendment No. 65 offered by the Senator from Wisconsin.

Mr. DURBIN. 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 clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Missouri (Mr. BOND), the Senator from South Carolina (Mr. DEMINT), the Senator from Nebraska (Mr. HAGEL), and the Senator from Alabama (Mr. SESSIONS).

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

The result was announced—yeas 89, nays 5, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—89

Akaka	Dodd	Lugar
Alexander	Dole	Martinez
Allard	Domenici	McCain
Baucus	Dorgan	McCaskill
Bayh	Durbin	McConnell
Bennett	Ensign	Menendez
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murkowski
Boxer	Graham	Murray
Brown	Grassley	Nelson (FL)
Brownback	Gregg	Nelson (NE)
Bunning	Harkin	Obama
Burr	Hatch	Pryor
Byrd	Hutchison	Reed
Cantwell	Inouye	Reid
Cardin	Isakson	Roberts
Carper	Kennedy	Rockefeller
Casey	Kerry	Salazar
Chambliss	Klobuchar	Sanders
Clinton	Kohl	Schumer
Cochran	Kyl	Shelby
Coleman	Landrieu	Smith
Collins	Lautenberg	Snowe
Conrad	Leahy	Specter
Corker	Levin	Stabenow
Cornyn	Lieberman	Stevens
Craig	Lincoln	Sununu
Crapo	Lott	Tester
Thune	Vitter	Webb
	Warner	Whitehouse

NAYS—5

Coburn	Inhofe	Voinovich
Enzi	Thomas	

NOT VOTING—6

Bond	Hagel	Sessions
DeMint	Johnson	Wyden

The amendment (no. 65) was agreed to.

Ms. STABENOW. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 81, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, there is now 2 minutes equally divided prior to a vote in relation to amendment No. 81, offered by the Senator from Utah.

The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, for the information of Senators, on this amendment I wish to give them the names of the groups that would likely be prohibited from sponsoring educational travel, unless this amendment is adopted: Aspen Institute, Transatlantic Policy Network, Save the Children, CARE, Global Health Council, Population Action International.

For those who think this is a loophole that Jack Abramoff could drive through, I point out that the amendment requires the Ethics Committee to vet each program in advance, examine who is going, whether there would be a lobbyist present, and what the purpose is. If you vote against this amendment, in my view, you are expressing a vote of no confidence in the chairman and ranking member of the Ethics Committee, Senators BOXER and CORNYN. I urge adoption of the amendment.

Mr. REID. Mr. President, I yield 1 minute to the Senator from Wisconsin, Mr. FEINGOLD.

Mr. FEINGOLD. Mr. President, the Reid amendment draws a bright line. Groups that employ or retain lobbyists could not provide trips of over 1 day. The Bennett amendment allows 501(c)(3)s that lobby to provide trips. There is a limitation that will prevent this amendment from becoming a loophole that will lead to kinds of abuses we saw with Jack Abramoff and his trips to Scotland. If these groups don't lobby, there is no limitation; they can do this. That means, unlike what the Senator from Utah said, the Aspen Institute would not be prohibited under the Reid amendment. We must defeat this amendment to keep our rules parallel to the House rules and prevent lobbyists from funding these trips.

The PRESIDING OFFICER. All time is expired. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Nebraska (Mr. HAGEL).

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

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—51

Alexander	DeMint	McCain
Allard	Dole	McConnell
Bennett	Domenici	Mikulski
Brownback	Ensign	Murkowski
Bunning	Enzi	Nelson (NE)
Burr	Graham	Roberts
Carper	Gregg	Sessions
Chambliss	Hatch	Smith
Coburn	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Isakson	Stevens
Collins	Kyl	Sununu
Conrad	Landrieu	Thomas
Corker	Leahy	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner

NAYS—46

Akaka	Feinstein	Obama
Baucus	Grassley	Pryor
Bayh	Harkin	Reed
Biden	Inouye	Reid
Bingaman	Kennedy	Rockefeller
Boxer	Kerry	Salazar
Brown	Klobuchar	Sanders
Byrd	Kohl	Schumer
Cantwell	Lautenberg	Shelby
Cardin	Levin	Stabenow
Casey	Lieberman	Tester
Clinton	Lincoln	Webb
Dodd	McCaskill	Whitehouse
Dorgan	Menendez	Wyden
Durbin	Murray	
Feingold	Nelson (FL)	

NOT VOTING—3

Bond	Hagel	Johnson

The amendment (No. 81), as modified, was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, it is my understanding there are two more votes; is that right?

The PRESIDING OFFICER. There are two more votes.

Mr. REID. I ask unanimous consent that the votes be 10 minutes in length.

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

Mr. REID. I am sorry, I should have suggested that on the last vote, but I just didn't do it.

AMENDMENT NO. 4, AS MODIFIED AND AMENDED

The PRESIDING OFFICER. Under the previous order, there is 2 minutes equally divided before a vote on amendment No. 4, as modified and amended, offered by the Senator from Nevada, Mr. REID.

Mr. REID. I yield back my minute.

The PRESIDING OFFICER. The majority leader yields back his minute. Who seeks time in opposition?

Mr. BENNETT. I yield back my time.

The PRESIDING OFFICER. The Senator from Utah yields back his time. All time is yielded back.

The question is on agreeing to amendment No. 4, as modified and amended.

Ms. SNOWE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Nebraska (Mr. HAGEL).

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

The result was announced—yeas 88, nays 9, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—88

Akaka	Dorgan	Mikulski
Alexander	Durbin	Murray
Allard	Enzi	Nelson (FL)
Baucus	Feingold	Nelson (NE)
Bayh	Feinstein	Obama
Bennett	Graham	Pryor
Biden	Grassley	Reed
Bingaman	Gregg	Reid
Boxer	Harkin	Roberts
Brown	Hatch	Rockefeller
Brownback	Hutchison	Salazar
Bunning	Inouye	Sanders
Byrd	Isakson	Schumer
Cantwell	Kennedy	Sessions
Cardin	Kerry	Shelby
Carper	Klobuchar	Smith
Casey	Kohl	Snowe
Chambliss	Kyl	Specter
Clinton	Landrieu	Stabenow
Coleman	Lautenberg	Sununu
Collins	Leahy	Tester
Conrad	Levin	Thune
Corker	Lieberman	Vitter
Cornyn	Lincoln	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	Webb
DeMint	McCain	Whitehouse
Dodd	McCaskill	Wyden
Dole	McConnell	
Domenici	Menendez	

NAYS—9

Burr	Ensign	Murkowski
Coburn	Inhofe	Stevens
Cochran	Lott	Thomas

NOT VOTING—3

Bond	Hagel	Johnson

The amendment (No. 4), as modified and amended, was agreed to.

Mr. DURBIN. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes equally divided on the motion to invoke cloture on the Reid substitute. Who yields time?

Mr. REID. Mr. President, this is the vote. People who do not vote to invoke cloture are not in favor of doing away with the culture of corruption we have here in Washington. This is good legislation. It is the most significant reform since Watergate by many degrees. I hope people will vote for cloture.

Mr. MCCONNELL. Mr. President, the minority will hopefully vote against cloture, just like the minority last year voted against cloture on the very same bill, or a very similar bill for the very same reason: to guarantee the opportunity to offer additional amendments. I urge all of our colleagues to vote no.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, by unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule 22 of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the Reid substitute amendment No. 3 to Calendar No. 1, S. 1 Transparency in the Legislative Process.

Harry Reid, Dianne Feinstein, Joseph Lieberman, Tom Carper, Ken Salazar, Robert Menendez, Patty Murray, Jon Tester, Jack Reed, Joe Biden, Debbie Stabenow, Daniel K. Akaka, Barbara Mikulski, Benjamin L. Cardin, Dick Durbin, Ted Kennedy.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3 offered by the Senator from Nevada, Mr. REID, an amendment in the nature of a substitute, shall be brought to a close?

The yeas and the nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from South Dakota (Mr. JOHNSON) is necessarily absent.

Mr. LOTT. The following Senators were necessarily absent: the Senator from Missouri (Mr. BOND) and the Senator from Nebraska (Mr. HAGEL).

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

The yeas and nays resulted—yeas 51, nays 46, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—51

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Kennedy	Pryor
Brown	Kerry	Reed
Byrd	Klobuchar	Rockefeller
Cantwell	Kohl	Salazar
Cardin	Landrieu	Sanders
Carper	Lautenberg	Schumer
Casey	Leahy	Smith
Clinton	Levin	Stabenow
Coleman	Lieberman	Tester
Conrad	Lincoln	Webb
Dodd	McCaskill	Whitehouse
Dorgan	Menendez	Wyden

NAYS—46

Alexander	Burr	Corker
Allard	Chambliss	Cornyn
Bennett	Coburn	Craig
Brownback	Cochran	Crapo
Bunning	Collins	DeMint
Dole	Kyl	Snowe
Domenici	Lott	Specter
Ensign	Lugar	Stevens
Enzi	Martinez	Sununu
Graham	McCain	Thomas
Grassley	McConnell	Thune
Gregg	Murkowski	Vitter
Hatch	Reid	Voinovich
Hutchison	Roberts	Warner
Inhofe	Sessions	
Isakson	Shelby	

NOT VOTING—3

Bond	Hagel	Johnson

The PRESIDING OFFICER. On this vote, the yeas are 51, the nays are 46. A quorum being present, two-thirds of the Senators voting not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. REID. Mr. President, I enter a motion to reconsider that vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. REID. I ask unanimous consent that the cloture vote on the bill be delayed to occur only if cloture is invoked on the substitute.

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

Mr. REID. 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. BYRD. 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 Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak as in morning business.

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

Mr. BYRD. Mr. President, I rise tonight at this late hour. The hour is late and the night is black. I rise tonight to shine a bright light on political chicanery that is playing out on the Senate floor.

In November, America voted for a change. The people sent a strong signal that they wanted less partisanship and more accountability in Washington. In response to the voters, Senator REID, Senator FEINSTEIN, and Senator MCCONNELL put before the Senate an ethics reform bill that would add transparency and accountability to the legislative process. They should be proud of their product, and the Senate has had a good debate thus far on the bill.

But wait, wait, wait 1 second. Before we can clear the way for greater accountability and sunshine into the way work gets done in these halls, the Senate is being blackmailed into an assault on the Congress's single most precious and most powerful authority—the power of the purse. That is the most powerful authority we have: the power of the purse.

Tonight, this reform bill is threatened by an effort by our colleagues on the other side of the aisle to give the President line-item veto authority. No vote on the line-item veto, they say,

and no ethics reform. That is nothing more than legislative blackmail, and I, for one, will not pay the price. No one should stand still when this Constitution, which I hold in my hand, is the hostage. No one should stand still, I repeat, when this Constitution, which I hold in my hand, is the hostage.

This line-item veto authority would grant tremendous and dangerous new power to the President. He would have unchecked authority to take from the Congress the power of the purse, a power that the constitutional Framers thought was absolutely vital to protecting the people's liberties.

It was just 8 years ago that the U.S. Supreme Court decided that the line-item veto was unconstitutional. Now our colleagues—some of them—on the other side of the aisle are threatening to hold up the ethics reform bill in an effort to hand the President another line-item veto authority. Are the memories around here so short?

Are the memories around here so short?

We have a President who already has asserted too much power. This is a blatantly gross attempt to take even more power for the President and strip away power from the people.

This President claimed the unconstitutional authority to tap into the telephone conversations of American citizens without a warrant or court approval.

This President claimed the unconstitutional authority to sneak and peek, to snoop and scoop, into the private lives of the American people.

This President has taken the Nation to a failed war based on faulty evidence and the misrepresentation of facts. And many Senators voted not realizing that was what was being done when we voted on the war resolution.

So I say, this President has taken the Nation to a failed war based on faulty evidence and an unconstitutional doctrine of preemptive strikes. More than 3,000 American sons and daughters have died in Iraq in this crazed Presidential misadventure.

And what is the response of the Senate? To give the President even more unfettered authority? To give him greater unchecked powers? We have seen the danger of the blank check. We have lived through the aftermath of a rubberstamp Congress. We should not continue to lie down for this President or any other President.

Of course, this President wants to take away Congress's power of the purse. When Congress has the sole ability to shut down these unconstitutional practices, when Congress is asking tough questions and demanding truthful answers about this war, when Congress is taking a hard look at finding ways to begin to bring our troops home, over the objections of this administration, the President's response is to demand that the Congress give away its most crucial power. Silence the Congress. Ignore the people. Strip away our constitutional protections and one may just as well strip away the people's liberties lock, stock, and barrel. Strip away the power of the Congress, the power of the people, and amass all power behind the fences and secret doors of the White House.

No Senator should vote to hand such power to the President. No American should stand for it—not now, not ever.

If our colleagues on the other side of the aisle want to stop the Senate's effort to add transparency and accountability to the legislative process, that is their right and their choice. But I will not blink. I cannot look the other way. We should get on with the business at hand and pass meaningful ethics reform legislation. But we should never, never, hand away those precious constitutional powers—the last protections of the people's liberties, vested in the people's representatives in this Congress—to any President.

We have each taken an oath to protect and defend this Constitution of the United States. Here it is. I hold it in my hand. I say again, we have each taken an oath to protect and defend this Constitution of the United States. And it is about time we did protect and defend that Constitution of the United States.

Mr. President, I thank the Chair. I thank all Senators.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. REID. I ask unanimous consent that there now be a period of morning business with Senators allowed to speak therein for a period of up to 10 minutes each.

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

MARTIN LUTHER KING, JR.

Mr. DURBIN. Mr. President, I rise today to honor Dr. Martin Luther King, Jr., a great man who inspired ordinary African Americans to demand equal rights as American citizens. This year, we celebrate what would have been Dr. King's 78th birthday and his dream for equality and justice for all that remains our Nation's moral compass.

In honoring Dr. King on this particular anniversary of his birth, we remember that it has been a year since we lost his wife and indispensable partner, Coretta Scott King, who died on January 30, 2006. Mrs. King was a woman of quiet courage and great dignity who marched alongside her husband and became an international advocate for peace and human rights. She had been actively engaged in the civil rights movement as a politically and socially conscious young woman and continued after her husband's death to lead the country toward greater justice and equality for all, traveling the world on behalf of racial and economic justice, peace and nonviolence, women's and children's rights, gay rights, religious freedom, full employment, health care, and education.

Much has improved since 1966, when Martin Luther King, Jr., and Ralph Abernathy organized marches and protests in Chicago. Today, 80 percent of African Americans older than 25 have earned their high school diploma, and there are 2.3 million African American college students, an increase of 1 million from 15 years ago. In addition, there are 1.2 million African-American businesses across the country that generate $88.6 billion in revenues.

This important day calls us to recognize the challenges that remain and the work that still must be done to move closer to Dr. King's dream. If he were alive today, Dr. King would undoubtedly be dismayed by injustices large and small, including the violence in Iraq, the deepening divide between those who have and those who do not, and the prohibitive cost of higher education, which is now out of reach for many African-American and Hispanic families. In the wealthiest Nation on Earth, 37 million people live in poverty, 47 million people do not have health insurance, and millions more are underinsured.

Our Nation is a better one thanks to Dr. King and the sacrifices he and others made during the 1950s and 1960s. I remembered that as I walked in some of those same footsteps when I joined U.S. Representative JOHN LEWIS' pilgrimage to Selma and Montgomery, Alabama. Although there is much of Dr. King's dream that remains to be fulfilled, I have faith that we will continue to move toward the equality and justice that he sought. As a nation, we must and we shall.

Mr. KYL. Mr. President, on January 15, our Nation commemorated the birthday of the Reverend Dr. Martin Luther King, Jr. Every year we pay tribute to the life of this great American. But, in honoring Dr. King, we celebrate more than his life; we celebrate the legacy of his words and deeds, and the virtues that he embodied.

Today, we remember Dr. King because he represents the best of the American spirit: someone who is compassionate, devoted, courageous, and hopeful. His compassion drew him to the plights of the poor and oppressed, and his devotion led him to champion their cause. His courage led him to act on this devotion, countless times placing himself in harm's way. Indeed, it was because of his courage that he fell to an assassin's bullet in 1968. And, his hope sustained him, even in the face of bitter racism.

All of these virtues—compassion, devotion, courage, and hope—propelled