Second, any bill that comes out of the Senate must actually address the core problems that led to the crisis. This should be obvious, but the fact is, a lot of people are increasingly concerned that this bill could actually miss the mark completely, not just as a result of what it does, but as a result of what it fails to do.

On example is Federal housing policy, as embodied by the government-sponsored enterprises Fannie Mae and Freddie Mac. In my view, it is simply not acceptable for some on the other side to suggest that we have to rush this particular bill through Congress, but that it is OK to wait another year to address the GSEs, which we all know played a central role in the financial crisis.

So Republicans will work to make sure this bill actually addresses the problems at hand, and that in an effort to rein in Wall Street, this bill doesn't actually end up hurting those who had nothing to do with this crisis.

I suggest the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

SCHEDULE

Mr. DODD. Mr. President, as I understand it, the Senate is now going to resume consideration of S. 3217, the Wall Street reform bill, and I am told there will be no rollcall votes during today's session of the Senate.

The ACTING PRESIDENT pro tempore. That is correct.

RESERVATION OF LEADER TIME

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The bill clerk read as follows:

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

Pending:

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

Reid (for Boxer) amendment No. 3737 (to amendment No. 3739), to prohibit taxpayers from ever having to bail out the financial sector.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

GULF COAST DISASTER

Mr. SANDERS. Mr. President, before I talk about financial reform, I did want to say a word about the disaster on the gulf coast now and the oil spillage there. Obviously, all of our hearts go out to the families of the 11 workers who lost their lives and to the thousands and thousands of employees in the region who are going to lose their jobs as this terrible contamination spreads all over the gulf coast.

But I hope very much we comprehend, in the midst of the disaster, that when we are dealing with technologies such as offshore drilling or, in fact, nuclear energy, we cannot be 99.99 percent successful. Unfortunately, as human beings, 100 percent success is a goal we often do not reach. That is why, in my view, as someone who has long opposed offshore drilling, I think it is absolutely imperative we understand as a nation if we move aggressively to energy efficiency, if we move aggressively to such clean, sustainable energies as wind, solar, biomass, and geothermal, we can, in fact, break our dependence on foreign oil and on fossil fuel in general, and we can create millions of jobs as we become energy independent without having to deal with the calamities we are experiencing today.

Mr. President, either tomorrow or shortly after—I hope tomorrow—I will be offering an amendment which deals with transparency at the Fed. I did want to say a few words about that.

At a time when many Americans are dispirited by the intensity of the partisanship which they see in Congress, this amendment, demanding transparency at the Federal Reserve, does something which is quite unusual. It brings together some of the most progressive Members of the U.S. Congress—and I consider myself in that fold—with some of the most conservative. It also brings together some of the strongest grassroots progressive organizations in the country with some of the most conservative. So what we are seeing in this amendment is a coming together of millions of Americans who have very different political ideologies but who agree it is absolutely imperative we bring transparency to the Fed.

This amendment is virtually identical to legislation I have offered on the subject that now has 33 cosponsors. In order to give an indication of the diversity of ideological position, let me read who they are. They are Senators BARRASSO, BENNETT, BOXER, BROWNBACK, BURR, CARDIN, CHAMBLISS, COBURN, COCHRAN, CORNYN, CRAPO, DEMINT, DORGAN, FEINGOLD, GRAHAM, GRASSLEY, HARKIN, HATCH, HUTCHISON, INHOFE, ISAKSON, LANDRIEU, LEAHY, LINCOLN, MCCAIN, MURKOWSKI, RISCH, SANDERS, THUNE, VITTER, WEBB, WICKER, and WYDEN. That is a very broad cross section of ideological opinion in the Senate.

In the House of Representatives, a similar process has taken place, and this concept has been cosponsored by 320 Members of Congress. That is a lot. That very rarely happens. That legislation was authored by Republican Congressman RON PAUL and Democratic Congressman ALAN GRAYSON.

The amendment I will be bringing to the floor of the Senate has 15 cosponsors—Republicans and Democrats alike—and I very much appreciate their support. This amendment is simple and it is straightforward. At a time when the Federal Reserve has provided over $2 trillion in zero or near zero interest loans to some of the largest financial institutions in this country, this amendment requires the Fed to tell the American people who got the money. I do not think that is a very radical concept.

This amendment would simply do two things: No. 1, require the nonpartisan GAO, the Government Accountability Office, to conduct an independent and comprehensive audit of the Fed within 1 year; and, secondly, require the Federal Reserve to disclose the names of the financial institutions that received over $2 trillion in virtually zero interest loans since the start of this recession.

In terms of progressive grassroots organizations, this amendment enjoys the strong support of Americans for Financial Reform, a coalition of over 250—250—consumer, employee, investor, community, and civil rights groups, including the AFL–CIO, which represents millions of American workers, and the AARP, which is the largest senior group in this country representing tens of millions of seniors. So what we are looking at are grassroots organizations representing a huge part of our population that say it is time for transparency at the Fed.

There are also many conservative grassroots organizations that are supporting this amendment, including the Campaign for Liberty, the Rutherford Institute, the Eagle Forum, and many other groups.

This amendment is not a radical idea. As part of the budget resolution debate in April of 2009, the Senate voted overwhelmingly in support of this concept by a vote of 59 to 39. That is a strong sign that this Senate wants transparency.

In the House of Representatives, this concept passed the House Financial Services Committee by a vote of 43 to 28 and was incorporated into the House version of the Wall Street reform bill that was approved by the House last December. So a provision very similar to what I am offering is already in the House bill. So we are not talking about some kind of fringy idea. It has widespread support in the Senate. It is already, to a significant degree, incorporated into the House bill.

This concept has the support of the Speaker of the House, NANCY PELOSI, who has said Congress should ask the Fed to put this information ''on the

Internet like they've done with the recovery package and the budget.'' In other words, what she is saying is, if we look at the TARP bailout, we have all the information we want—from who received that money, how it was paid back, et cetera, et cetera—it is out there on the Internet of the Treasury Department. That is where it should be. We want to bring that same type of transparency to the Fed.

This concept, interestingly enough, has already been supported by two Federal courts—two Federal courts—that have ordered the Fed to release all of the names and details of the recipients of more than $2 trillion in Federal Reserve loans since the financial crisis started as a result of the Freedom of Information Act lawsuit filed by Bloomberg News.

The Fed has argued in court that it should not have to release this information, citing, according to Reuters, ''an exemption that it said lets federal agencies keep secret various trade secrets and commercial or financial information.''

However—this is important; this is not BERNIE SANDERS speaking, but this is a Federal court—the U.S. Appeals Court in New York disagreed with the Fed's assertion. Here is what a unanimous—underline ''unanimous''—three-judge appeals court panel wrote in their opinion. I quote them:

> [T]o give the [Fed] power to deny disclosure because it thinks it best to do so would undermine the basic policy that disclosure, not secrecy, is the dominant objective. If the Board—

The Fed—

> believes such an exemption would better serve the national interest it should ask Congress to amend the statute.

That is what a three-judge U.S. appeals court panel unanimously said. This appeals court decision upheld an earlier ruling by the Southern Federal District Court of New York that also ordered the Fed to release this information.

In other words, we now have 59 Senators, 320 Members of the House of Representatives, and 2 U.S. courts who have all told the Fed, in no uncertain terms: Give us transparency. Tell us what happened when you put at risk trillions of dollars of taxpayer money.

Based on the kind of grassroots support that exists in support of my amendment, I think the overwhelming majority of the American people want that transparency, and it is our job to give it to them.

I do understand this amendment will not be supported by every Member of the Senate. Some of them may come up and say: Well, it is not accurate, so I want to deal with this right now. They may state that this amendment would take away the independence of the Fed and put monetary policy into the hands of Congress. Every other day, there could be a great debate here about whether we raise interest rates and that we get involved in every detail of monetary policy. That is absolutely not what this amendment does, and the language in the amendment is very, very clear.

This amendment does not take away the court-appointed independence of the Fed, and it does not put monetary policy into the hands of Congress. This amendment does not tell the Fed when to cut short-term interest rates or when to raise them. It does not tell the Fed what banks to lend money to and what banks not to lend money to. It does not tell the Fed which foreign central banks they can do business with and which ones they cannot do business with. It does not impose any new regulations on the Fed, nor does it take any regulatory authority away from the Fed. In fact, the amendment prohibits Congress and the GAO from interfering with or dictating the monetary policy decisionmaking at the Fed. We are very clear about this in the amendment. This amendment simply requires the GAO to conduct an independent audit of the Fed and requires the Fed to release the names of the recipients of more than $2 trillion in taxpayer-backed assistance.

There is a lot more to say, and I look forward to saying it when the amendment gets to the floor. Let me conclude by saying this: I don't remember the exact date—perhaps a year or so ago—when, as a member of the Budget Committee, we were addressed by Ben Bernanke, the Chairman of the Fed. When he came before the committee, I asked Mr. Bernanke if he would release the names of the financial institutions that received trillions of dollars on near zero interest loans. He said he would not do that. On that day, I introduced the legislation which now has 33 cosponsors.

So I look forward to hopefully tomorrow bringing this amendment to the floor. I am proud of the kind of tripartisan support we have gotten. I am proud of the fact that we have people from every conceivable ideology who are fighting for transparency, and I hope we can win this amendment and let the American people get an understanding of who received trillions of dollars of their money during the bailout period.

Mr. President, with that, I yield the floor and note the absence of a quorum.

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

The bill clerk proceeded to call the roll.

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

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

Mr. KYL. Mr. President, let me address the amendment which we are going to be taking up first, I gather, on the so-called financial regulatory reform bill, the Boxer amendment.

The Boxer amendment, as I understand it, is a declarative statement that taxpayers will not be responsible for any Wall Street bailouts. My understanding is that it is not a provision that would enforce itself or would in any way be enforceable in the legislation, but it certainly expresses a sentiment I assume every Senator would share. The problem, however, is not just the fact that we are concerned that taxpayers will be responsible for bailouts but the fact that bailouts will exist in any event and how that might affect people who have invested in or lent to an institution, what authority it would give the U.S. Government, and whether such a provision would apply as well to perhaps the biggest miscreants here: Fannie and Freddie, the two government-sponsored enterprises that hold the vast majority of the mortgages that are unsound or on less than strong financial footing—I will put it that way. So the question is not so much whether taxpayers' dollars will be used—though this amendment, while expressing a good sentiment, doesn't operatively prevent that—but just as much whether Wall Street will still be bailed out but in a different way. Will the appropriate policies and institutions that should be in place to prevent this be amended into the legislation?

If all we want to do is ensure failing institutions are liquidated, then of course we can have a bankruptcy regime, and many people believe that is the appropriate regime because it is a tradition of law. Everyone knows exactly how it works, where you stand, and it ordinarily has been successful in liquidating firms that cannot pay their obligations.

After the Lehman bankruptcy and the contagion effects which surrounded that, some believe bankruptcy wasn't really well suited to these kinds of large financial institutions, and it may well be that traditional bankruptcy would have to be modified in some respects in order to easily apply to the liquidation of a financial institution that large.

One of the things, though, we need to do in figuring out exactly what the right process should be is to make sure creditors aren't receiving special treatment—for example, the way they did when the auto companies were bailed out and when other firms were bailed out. Otherwise, we will actually be increasing moral hazard rather than decreasing it, which is, of course, part of the exercise here.

A government-compelled fund that takes money from successful firms and transfers it to a failed firm, for example, regardless of how you seek to justify it—as an assessment or a recruitment or a tax or whatever you might call it—is still a bailout. Ultimately, the question is not only who will pay for it but also, how does it scramble the obligations and the prioritization of obligations compared to what bankruptcy would do?

The people who bear the cost of propping up a failed firm, for example, have nothing to do with the fact that firm failed or with the poor decisions of that

firm. So if, instead of the American people, you are going to make other entities in its area—for example, a bank begins to fail, so you are going to make the other banks prop that bank back up. How is that fair to the shareholders or investors in the bank that has to do the propping up, or the groups of banks? They didn't have anything to do with the poor decisions made by the management of the failed firm, whereas you can argue that the lenders to the failed firm, the people who invested in the failed firm, and certainly the managers of the failed firm all had something to do with the direction the failed firm took. Because of that fact, the bankruptcy laws have set out priorities as to who ends up bearing the risk of the failure of that firm. The lenders and the investors in failing companies lose control of the money they invested, and whatever resources remain are channeled by the bankruptcy court into productive endeavors or to pay the people who have lent the money to the firm. That is exactly the opposite of what a government-sponsored fund does in transferring resources from a productive to unproductive purpose. Here, if it is not the taxpayers who fund it, then it is fellow banks, let's say, or fellow financial institutions—again, people who had nothing to do with the failure of the entity that is being acted upon.

Fortunately, there is a process that can address the problem of failing firms, that does move resources into more productive areas and at the same time holds those directly responsible for the mistakes accountable. There are different names for this and it can take different forms. One of them is called speed bankruptcy—in other words, a form of bankruptcy that recognizes that in certain institutions you are going to need to quickly take hold of them and, in order to prevent contagion in the market, shore up their financial situation so they cannot infect others and therefore cause a larger failure than just relates to that particular company.

We should describe bankruptcy, first of all, to appreciate what this does. A firm becomes insolvent when its liabilities—which could be payments to bondholders, it could be payments to suppliers, it could be repaying loans—are worth more than the assets the company has, assets such as land, capital, accounts, the value of intangibles, and even things like reputation.

Over the last couple of years, we have seen the collapse or near collapse of several well-known firms—for example, the GM and Chrysler auto companies, as I mentioned, Bear Stearns, AIG, the big insurance companies. We have also seen Fannie Mae and Freddie Mac, which are projected to be dependent on government assistance for the foreseeable future—and by government assistance, of course, ultimately we mean the taxpayers of this country. In the examples I cited above, the government response was in effect to prop up the failed firm with taxpayer funds.

This so-called speed bankruptcy and iterations of the idea would instead convert a portion of the existing longer term debt of the company into equity. There are a lot of benefits, as you can see, to such a proposal. For example, with a large, complex firm that is in financial trouble, a lengthy process could create the kind of uncertainty that would otherwise undermine the ability of the company to continue once it exits the resolution process and, as I said, could also infect others in these areas. A speed bankruptcy, on the other hand, would permit the firm to remain in operation, to keep running.

There is a paper that has been written on this that I think is very interesting. Garret Jones at the George Mason University Mercatus Center writes that this kind of proposal actually leaves bondholders with something of value so they are not entirely wiped out and retain the potential to make up for some of their losses if the equity shares they receive in lieu of their bonds once again gain value. Here is what he writes in this recent paper:

> Friday's bondholders become Monday's new shareholders, and the banking conglomerate can continue borrowing and lending much as before, with little possibility of a short-run crisis.

It is a little bit like debt or possession financing in a bankruptcy, but it matters where you get the financing, and in this case creditors of one kind become creditors of a different kind, trading, in this case, bond for equity in the firm.

Second, unlike government-sponsored bailouts, investors directly tied to the troubled firm bear the financial costs of the restructuring of the firm.

Third, since many of the bonds are publicly traded and are therefore liquid, the process would be entirely transparent, and the reason the process could occur so quickly is because of that conversion.

Fourth, a debt-to-equity conversion leaves deposits untouched, avoiding a potential run on the bank in the case of banks and financial institutions.

What steps and operations would be necessary to make this work?

First, an insolvent firm would be able to convert an amount of its long-term debt specified in advance into stock in order to recapitalize and strengthen the institution. Under such a proposal, regulators would first need to declare that the institution is the risk.

Second, the firm would need to breach a certain specified capital level to actually trigger the conversion. Once this process occurred, the restructured firm would emerge healthier, with less debt, with more equity, without any taxpayer money being used and without any money being used from other banks or other financial institutions.

For example, Pershing Square Capital Management released a proposal to convert $75 billion of Fannie Mae's $750 billion senior unsecured debt into equity. For every dollar of senior unsecured debt, the bondholder would receive 90 cents in new senior unsecured debt and 10 cents in value of new, common equity. As a result, the new Fannie could take advantage of its new capital. It has a dollar to expand its underwriting. It can utilize increased cash flow to absorb expected losses and, in the future, once conditions improve, to reduce its balance sheet by gradually selling some of the mortgage assets on its books.

John B. Taylor writes today in the Wall Street Journal how to avoid a bailout bill:

> You do not prevent bailouts by giving the government more power to intervene in a discretionary manner. You prevent bailouts by . . . making it possible for failing firms to go through bankruptcy without causing disruption to the financial system and the economy.

Here is the summary of what I am saying. Most of us here do not want to see taxpayer bailouts of these firms that have made poor management decisions, have invested poorly, and have made mistakes for which taxpayers should not be responsible.

That is the genesis of the Boxer amendment. But for the Boxer amendment to be effective, two things will have to be done, and perhaps we will have suggestions on how to change it. It would have to be operational and enforceable. As I said, the amendment is oratory language—taxpayer funds should not be used for bailouts. We know that a sense-of-the-Senate resolution is nothing more than that, a sense of the Senate. It needs to have operational and enforcement language to have meaning. It is my understanding that this language doesn't.

Second, the real question is whether instead of a bailout, where government—I don't want to use the word bureaucrats—officials representing the U.S. Government in one, two, or three different entities could, on their own, with little direction in congressional legislation, determine that a firm now needs to be taken over or bailed out, and without very much legislative criteria to direct them as to how to do it, or the circumstances under which it should be done, could begin to unwind that firm, using taxpayer money that is later recouped or perhaps funding from a tax or an assessment on other banks, for example, to infuse capital to keep it from going out of business. This is a way in which bankruptcy would ordinarily work, except that bankruptcy works according to a set of rules and traditions that have been developed over a couple hundred years that everybody is familiar with, and which people took into account before they made investments in or lent money to a company in the first place. If they became a bondholder, they knew where the bondholders would be in the order of priority in the case of a bankruptcy. If it is secured, they would have one level of security, and if it is unsecured, they are going to be at the bottom of

the totem pole when it comes to distributing the assets of the bankruptcy. Lending is predicated upon their understanding of these well-known rules and principles.

Moreover, they understand that a judge will be in charge, and he will put people under oath and cause them to testify so that you know exactly what the assets are, and you can understand what it would take to keep the company running or, in the event it does have to be liquidated, how the funds would be disbursed. A trustee is appointed, who has a fiduciary responsibility, under the court rules, to manage how the company comes out of bankruptcy, or to ensure that the rules of bankruptcy and the judgment are carried out. That is the way a bankruptcy works. It is a proper way to unwind or liquidate most businesses in this country.

I think those who say these financial institutions are different, we need a different set of rules, first, have an obligation to tell us why. What is different about these entities that the bankruptcy laws simply don't work? What would cause them to have a different set of treatments? If there are some things—and I can think of a couple things that distinguish them—then how can we modify the bankruptcy rules in effect to take into account those differences? One deficit, one could posit, is the fact that a large financial firm could easily have an effect on others invested in or who they invest in and, therefore, in effect cause a domino effect in markets. That could happen very quickly. Therefore, when you see signs of a problem, you need to deal with that very quickly. That is where this idea of bankruptcy comes from. It doesn't take a government bureaucrat or a government entity set up for this purpose to figure out that is what needs to be done and how to do it. It can be done within the context of bankruptcy today or with relatively modest modifications in the Bankruptcy Code, we could make those changes.

The fear a lot of us have is that the people who are not elected or constrained by any particular power, except the limitations Congress imposes upon them—and in this bill those limitations are very general—those people could make decisions and put somebody into this process to decide who gets paid how much, without any reference necessarily, for example, to the Bankruptcy Code, who gets privileged and who isn't, and with whose money.

If you look at the example of the two auto companies, you find that labor unions were substantially privileged to the exclusion of other investors. A lot of people thought this was wrong. It was contrary to the way it would have evolved had they been in bankruptcy court. So what most folks would like to see is a process you can count on, that you have rules of law established over time in the bankruptcy law that enable you to rely upon them, and not some unspecified, unclear process that is run by some agency of the U.S. Government. While it is certainly a step forward to say that taxpayers should not be on the hook for this, it is not enough to say that, A, because that is not operational or enforced, but, B, because there are other ways to do it that represent a closer adherence to the rule of law that would be better at promoting investment or lending in the first instance, because of the clarity and predictability of the way the situation would be treated in the event of a bankruptcy; and finally, that people who are not responsible for the bad management decisions would not have any liability when that company is liquidated or comes out of bankruptcy operating again. Rather, the people who had been involved in the company in the first instance would bear that obligation.

This is just one idea—one of many—as an alternative to the specific provisions in the legislation. It is my hope that as we continue debate about this portion of the bill, we can come together on a set of principles that would adhere more closely to the rule of law established in the Bankruptcy Code to the concept that those responsible should be the ones who end up bearing the burden and that, in any event, as it appears most of us would agree, taxpayers should not be responsible for the decisions made by the management of a failing firm.

I wonder whether my colleagues want to speak. If not, I will suggest the absence of a quorum. The Senator from Illinois wishes to speak.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, let me basically set the stage on what we are doing in the Senate today and why it is so important.

This bill, which Senator DODD of Connecticut has worked on for months with his staff—1,407 pages—is basically a bill that has been designed to create financial stability in the United States. Even with this great economy we have and all of the financial institutions and businesses notwithstanding, this recession has brought us economic pain that many of us have never seen in our lifetimes and only remember vaguely from our parents and grandparents describing the Great Depression.

What Senator DODD and the Banking Committee set out to do was to basically change the law to establish more oversight of financial institutions to make sure we never get into this mess again. It took quite a few pages to do it. This week, we start considering amendments to the bill, efforts to improve it, change it, and delete sections. It is the Senate in its historic role as a deliberative body.

Today, there are no votes and that is why there are few Members on the floor. Amendments will be offered and the votes will start maybe as soon as tomorrow if Senator DODD and Senator SHELBY can reach an agreement. It is worth a moment's reflection to understand why we are here with a bill of this importance and magnitude, which may take a week or more—probably more—before it is completed. The Pew Financial Reform Project recently summarized what we have been through in this recession. It is a painful reminder, but it is worth noting as we start this debate. This is what they estimate to be the devastation caused by the recession we are in: $100,000, the cost to the typical American family in combined losses from declining stock and home values; $360 billion, the estimated loss in wages due to slow economic growth, in October 2008 through 2009, and that is a loss in wages of over $3,250 for the average U.S. family because of the recession; $3.4 trillion, the total loss in real estate wealth from July 2008 until March 2009, so roughly, on average, every household in America who owns a home lost $30,300 in value; 5.5 million, the number of additional jobs lost due to slow economic growth, and some 8 million Americans are unemployed, and another 6 million are discouraged and not looking for work; 500,000, additional number of homes foreclosed upon during the most acute phase of the crisis; $7.4 trillion, total loss in stock wealth from July 2008 through March 2009. That is more than $66,000 per household, and it was usually felt in retirement accounts and savings accounts of families all across America.

These are indications of what we have been through and, to some extent, are still going through. We are emerging from this recession, but it was a devastating loss to families and businesses across America, and a loss many are still trying to recover from. Senator DODD took on the unenviable task of looking at the laws we have on the books and asking: How can we strengthen them to avoid this from happening again?

Of course, there are several things that stand out. Why did the United States get in the business of stepping up and saying we are going to take taxpayer dollars to save private businesses? That is what we did. AIG, the largest insurance company in the world—initially, the Federal Reserve came in with some $85 billion when they were about to fail. If I am not mistaken, over the course of time, they added another $100 billion given to this one entity to keep it afloat. Why? Because they had basically guaranteed with insurance policies business contracts at every level in the American economy, and they were about to fail. They didn't keep an adequate reserve. So as these contracts started to fail, this insurance company couldn't pay off its promise. The feeling was that the whole economy would collapse on itself if we didn't prop up AIG to keep it in business.

The same was true for major financial institutions—institutions that

dreamed up securities which had never existed before. They decided to start packaging mortgages. So the mortgage I entered into in Springfield, IL, with my local bank could have been sold off to another bank, and then to some other financial institution, and then chopped and diced into pieces, those pieces each going to a separate security; and people were investing in them, guessing whether my wife and I were going to make our mortgage payments.

As they went along, these rating agencies that are supposed to look at these securities and decide whether they are good or bad were giving them sky-high AAA ratings, as good as a government security. Why? Because there weren't many defaults in real estate mortgages and, historically, real estate values went up. So they said this is a safe investment. Meanwhile, there were people looking at derivatives, saying we think this may be too optimistic, and we think maybe people are being loaned money for mortgages who might not be able to pay.

As we got into it deeper, that is exactly what happened. Banks and financial institutions were offering mortgages to people under no-doc loans, no document loans, which basically meant if you said, I am making $100,000 and my wife is making $100,000 and we have maybe $50,000 in debt, they would say: That is all we need to know; let's go to closing.

But where were the income tax returns and the documents to prove it? They weren't worried about that because they would get the mortgage and quickly sell it off to somebody else. That created this house of cards that eventually tumbled.

What Senator DODD and the Banking Committee are trying to do is make sure we never get in the position where American taxpayers never have to be called on to prop up banks, financial institutions, and insurance companies which, if they failed, would bring down the economy.

The first amendment we have is from Senator BOXER of California. It has been referred to by the minority whip, Senator KYL, in his opening remarks. He referred to it and described it as kind of a sense-of-the-Senate offering. For those not familiar with how the Senate works, at the end of the day, we have a long list of resolutions that we offer for winning basketball teams and for national dairy ice cream dairy month, and fair play for Paraguay, and all sorts of things. These are sense-of-the-Senate resolutions, where we express our warm feelings for the good things happening in this country.

This offering by Senator BOXER is not a sense-of-the-Senate resolution. It is an amendment to the bill. It is so short and direct that I want to read it. It consists of three sentences. Listen to them in clear, plain English, and you will understand why Senator BOXER's amendment is the right one for us to start with:

First:

All financial companies put into receivership under this title shall be liquidated. No taxpayer funds shall be used to prevent the liquidation of any financial company under this title.

Second paragraph:

All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company, or shall be the responsibility of the financial sector, through assessments.

Third:

Taxpayers shall bear no losses from the exercise of any authority under this title.

This is not a greeting card. This would be a law with teeth prohibiting the taxpayers of America from ever being left holding the bag again when a bank makes stupid decisions and faces liquidation. That is not a sense-of-the-Senate resolution. It would be a law and should be the first thing we pass.

Senator BOXER listened to the debate back and forth about taxpayer bailout. She said to me and others: I am going to make this clear. I am going to put it in as clear language as I can think of to make sure that at the end of the day, we never go through this again. Her leadership on this amendment—it is right to be the first subject to be brought up. Those on the other side who dismiss this as not being powerful enough need to take the 2 or 3 minutes it would take to read it. If they read it, they will understand it is powerful, direct, and understandable language that says we are never going to let the taxpayers face this kind of obligation.

It is not the only provision in this bill. There are many others that have been worked on for a long time. Senator DODD negotiated with the other side literally for months trying to reach a bipartisan agreement. I know he tried. He tried hard with Senator SHELBY, the ranking Republican, with Senator CORKER, a member of the committee, also a Republican. At a committee hearing he held, the Republicans offered 400 amendments, something of that nature. When the time came to call the amendments so there would be an open debate and the bill could be changed one way or the other, they made a decision not to call any amendments, not to offer any changes to the bill.

I say on behalf of Senator DODD, he has shown a good-faith effort to try to make this a strong bipartisan effort. It is not too late. As we start the debate this week, we have a chance to reach, I hope, some agreement and make this a strong bipartisan bill at the end.

But when I listen to Senator KYL of Arizona talking about the goals of this bill and what we want to achieve, I am worried. You see, the Republicans issued their summary of their substitute bill, the bill they want to offer to replace this bill. Within that summary, there is one thing that stands out: There is not a single provision in the Dodd bill which the Republican substitute would strengthen. There is no language we could find in their summary where they say: We are going to make sure we protect families and businesses and consumers more. Each and every section of their substitute weakens this bill, strengthens the banks, and removes the oversight and transparency requirements in so many different areas.

When we take a look at the powers that the Dodd bill provides to the Federal Reserve, unfortunately this Republican substitute does not even give those same powers so that the Federal Reserve which could require, for example, more leverage requirements so that a bank would have more money in the bank to back up investments they would make, liquidity requirements, those are all weakened by the Republican substitute. Time and again their approach to this bill to avoid an economic disaster is to water it down.

Last week, they had a different strategy. The strategy was a filibuster strategy to stop us from even coming to this bill. When they could not sink the bill, they decided they would let us move forward and try to water it down. I don't think that is a move in the right direction for the American economy. I hope we will stand against amendments which weaken this bill.

It is estimated that the financial industry is spending over $100,000 a day in Washington on lobbyists who are trying to get us to weaken or defeat this bill. One may not see them as one walks around Capitol Hill. Believe me, they are busy at work—on the telephones and visiting the offices—asking Members to weaken this bill.

I hope we have the fortitude to say no because this is something that needs to be done. This bill needs to be passed. If anything, we need to strengthen provisions of it.

There is one section that means a lot to me on consumer financial protection. I offered a separate bill on the subject before it came up. Historically, we gave consumer financial protection to a lot of different agencies. Sadly, none of them took it too seriously.

I can recall when the Chairman of the Federal Reserve, Ben Bernanke, was up for reconfirmation just a few months ago. I talked with him in my office. He said: Over the years, the Federal Reserve was given powers to protect consumers. He said: What happened was we never used them. Recently we have started to, but historically we did not use this authority.

We had a situation that when it came to the safety and soundness of banks, they were doing their job, trying to make sure the banks had enough in reserve, that their practices were meeting the law. But when it came to protecting the people, the customers of the banks, they did not really apply themselves to that situation. That was repeated in several other agencies.

What Senator DODD has done is to create the strongest consumer financial protection law in the history of the United States of America. He is not

creating a massive bureaucracy as his critics say. Rather, he is saying we will have one agency with its own funding and its own authority which will be able to look at legal documents that Americans, families, and businesses deal with every day to protect us from the tricks and traps into which we can run.

There will be more complete disclosure when it comes to signing an important document—such as a mortgage, credit card agreement, a student loan, an automobile loan, a retirement plan—so that individuals will be empowered across America to look at the facts and make the choice that is best for them.

We are not going to create any kind of guardian angel society. People may still make a bad decision, but they will do it with their eyes wide open instead of being lured into a document which has a secret clause that ends up exploding and hurting them financially.

It happened not that long ago. My colleagues may remember if any of them have been to real estate closings, sitting down in that bank office at a table with your spouse, with two ballpoint pens in hand as they turned the corners of the documents and you signed away for about 20 or 25 minutes. About halfway through you say: What is this again? Oh, don't worry, it is standard boilerplate, just required by the government; been through it all; done it a thousand times. Off you go.

At the end, you put the ballpoint pen down, stand up, shake hands, hand a check, get the keys, go to the new house. But you never know until a later time whether there is a clause or provision in one of those agreements that can come back to haunt you. Let me give an illustration.

In the days of subprime mortgages, people used to be lured in to take a mortgage on a house because the payments were so low: In the first couple of years you mean my monthly payment is going to be half of what I was paying, and I can have this big house? It's a deal. In the third year, there is going to be a change, but the home is going to go up in value. And off you go and sign up.

Some people did not seriously take into consideration that things might go bad for them personally, such as losing a job or the value of the home may not go up as promised or the interest rate may go sky high and they cannot handle it.

In the early mortgages, they had a prepayment penalty. That one clause, that one sentence meant those people at that moment in time would face the worst economic situation of their lives because instead of being able to renegotiate a different mortgage with a different bank with affordable terms, there was a penalty built into their original mortgage that cost them tens of thousands of dollars they could not pay, and they ended up in foreclosure and ended up losing their homes and lost their downpayments. Many of them lost their life savings because of one sentence in that stack of closing documents.

The purpose of this consumer financial protection agency is to make sure we shine a light on those provisions so that people know when they make a decision what that decision means.

Now come the Republicans, and they have come up with a substitute, at least their leadership has. I don't know if it speaks to all the Republicans. They may not agree with it.

In their summary, it appears they start carving out different groups that will not be covered by consumer financial protection. We have them in my hometown of Springfield, IL, and you may have them in yours too. These pay-day loans, title loans, where you come in and hand the title of your car over and they give you a basic loan and say: We are not going to take your car away.

The next thing you know, interest rates are going up, you refinance the loan, and pretty soon you may lose your car. It appears in the Republican substitute those folks in their business ventures should not be covered by the Financial Consumer Protection Act. Go figure. Some of the shabbiest credit operations in America are going to be exempt under the Republican approach to this bill. I don't think it makes much sense.

They also, when it comes to check cashers, currency exchanges, debt collectors, some of the used car dealers, start cutting out exemptions, these lobbyist loopholes that are carving out different financial institutions which will not be subject to this kind of consumer protection.

That is a step in the wrong direction. We ought to make sure everybody is onboard. Groups have come to me from Illinois and said: Could you just acknowledge the fact that our operation has been clean, everybody loves us, we are good neighbors? No, everybody should play by the same basic rules of disclosure and honesty. Good businesses can live with that standard. Those that are not so good, maybe they should not be in business.

When it comes to the attorneys general in the States across America, the Republican substitute says they cannot enforce the provisions we are putting in here. That is a step in the wrong direction. That weakens this good bill. I hope we do not succumb to that proposal.

There are a number of other things in here. I will not go through it in detail. One of the staff refers to it as a ''term paper.'' It goes on page after page summarizing what the Republican substitute will do.

It basically weakens the credit rating agencies I mentioned earlier. Remember the ones that gave AAA ratings to bad securities? Senator DODD starts addressing these with review of their practices, and the Republican substitute weakens that. How can that be any good, to weaken that after the experience we have been through?

That is the debate we are going to face. I hope my colleagues, during the course of this week, will have the opportunity to take this good bill, this strong bill, and make it stronger. I will offer a few amendments along those lines. If those on the other side of the aisle want to join in that effort, I welcome them to see what they have to offer. But if those who come to the floor to offer amendments to weaken this bill, to weaken the oversight, to have less transparency and less security, they are virtually eliminating a cop on the beat that we need on Wall Street to make sure we never, ever experience the kind of economic crisis we are currently experiencing across America.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, first, I thank our colleague from Illinois for his predictable eloquence. He is not a member of the Banking Committee, but I began to think he was listening to him talk. He has a wonderful awareness and knowledge of the legislation, and I appreciate that very much. It is a complicated area of law. The fact that he has spent as much time analyzing what is in the bill and the important work that has been done over the many months we have been involved in this debate is something I appreciate very much. I thank him.

I know my friend from Kentucky is here as well. I will not take long, I say to Senator BUNNING.

I am one who is supportive of the Boxer amendment. It is straightforward. The Senator from Illinois read the amendment. What I think is important is in the very first line it says, ''At the end of title II, add the following.'' That is the resolution title.

As the Senator from Illinois said, this is not a sense-of-the-Senate resolution. Title II of the resolution title is a title the Presiding Officer, Senator WARNER of Virginia, and Senator CORKER of Tennessee were the principal authors of on a bipartisan basis in November or December. I asked a number of my colleagues if they were interested in working on various sections of the bill. Senator WARNER and Senator CORKER had a strong interest in the resolution sections of title I and title II of the proposed legislation, the too-big-to-fail concept, something which I believe every Member of this Chamber endorses.

None of us wants to ever again be put in the situation that unfolded in the fall of 2008 when we saw a check for $700 billion being written out to stabilize a number of large financial institutions in the country.

The good news is that at the end of all of that, we are getting money back. But, obviously, it was traumatic to go through all of that, to watch institutions that should have been far more cognizant of the difficulty they were getting into, and when they got into deep trouble, in order to stabilize the

economy or have what the Chairman of the Federal Reserve and the Secretary of the Treasury warned that had we not stepped in could have caused the entire financial system of this country of ours to melt down, to use their words exactly, in the fall of the 2008. All of us here collectively started with how do we write a piece of legislation that would minimize the events that unfolded over the last several years.

Once again, the statistics get repeated frequently on this floor, but they are deserving of being repeated. Mr. President, 8.5 million jobs have been lost, 7 million homes went into foreclosure, a 20-percent decline in retirement incomes, a 30-percent decline in home values, the $11 trillion to $13 trillion—that is with a ''T,'' trillion dollars—in loss of household wealth. Senator DURBIN enumerated a number of those statistics more on an individual basis or a family basis.

So we are determined, as we begin this process, that we begin with titles I and II. The titles of the bill don't always reflect priorities, but in this case they do. There is nothing more important we do in this bill than to end the too-big-to-fail concept—the notion there is an implicit guarantee that if you get in trouble as a financial institution, whatever it may be, that the Federal Government will bail you out when that happens. So we have worked very hard, over many months, to craft the language that will actually bring us to that conclusion; in the rare case, resolution; in most cases, bankruptcy or receivership, where management gets fired under our legislation or where creditors lose, shareholders lose their market value or the value of their shares, there is a tremendous decline there. This is a very painful process to go through but a necessary one.

What Senator BOXER has crafted is merely, in a sense, restating what we have in the legislation, in title I and title II, but to make it more clear and more emphatic, using all the tools we have written—and that is a significant section of this bill—with a tremendous amount of input from people whose knowledge and background in this area was critically important.

I wish to thank my colleague from Vermont, Senator LEAHY, chairman of the Judiciary Committee, because our colleague from Arizona is correct, there were issues involving bankruptcy that we had to work on in this legislation. With the cooperation of the Judiciary Committee as well, we were able to fashion what we have in this bill to end too big to fail. Senator BOXER's amendment emphasizes that point.

When she says in her amendment, very clearly, that all financial companies put into receivership—which is what the language of titles I and II does—under this title shall be liquidated. Shall be liquidated. Not maybe or we hope you are or wouldn't it be a nice thing if you were but you shall be liquidated. What words do my friends not understand in that sentence?

No taxpayer funds. The second sentence. No taxpayer funds shall—again, for those who know the English language, that is not may—be used to prevent the liquidation of any financial company under this title. I don't know how much more clear you can be. Again, I commend her for the language because I think it is the kind of language that anyone ought to be able to understand.

All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company or shall be the responsibility of the financial sector through assessments. In other words, they shall pay, not the taxpayers. Again, I don't know how much more clearly you could write the language.

What we did through page after page and chapter after chapter and title after title, if you will, was to legally tell you how we do this. But Senator BOXER has then put an exclamation point on it by telling you this is what all this means, in case anyone fails to understand it.

Then, in the third sentence, taxpayers shall—again—bear no losses from the exercise of any authority under this title of the bill.

So I applaud and thank my colleague from California for the language. Again, we think we have done it. But, look, anyone who tells you they have written the perfect bill, be careful of them. I have been around here long enough to know there is no such thing as the perfect bill. Senator SHELBY, my partner, the ranking Republican and the former chairman of the committee, and I are working on additional language that some have raised as a way to tighten this down even further, should there be any doubts. My hope is, shortly, maybe even as early as tomorrow, we will be able to present a united front on how we do that to further allay the fears some have that titles I and II don't quite complete what they were designed toward achieving in this legislation. So I look forward to that.

I am a supporter of the Boxer amendment when it comes up. The other parts of this bill, again, we have talked a lot about. Senator KYL talked about various other ways of dealing with bankruptcy. He is correct; it is complicated. It is not a straight, normal bankruptcy because there are counterparties; that is, other people, other institutions that may be in very good shape, not in danger at all of coming undone, that could be adversely affected by the financial collapse of another firm. So we want to be careful, as we begin that process of liquidation, that we don't put the country at greater risk than would be the case with the single company or the single institution going into receivership.

So there are aspects that have required a very thoughtful process and, again, the Presiding Officer—and I commend him for it—along with Senator CORKER and others, has been very involved and has been able to work on it over these many months. This is not a bill that was drafted over the weekend or in a few days. There has been a tremendous amount of work that has gone into it. Again, my hope is, as we gather in the coming days on this bill, that we will be talking about what is in this bill and how it works, rather than people listening to some talking points out of a political document about what they hope might be or might not be in the bill in order to arrive at some political judgment. This issue is far too serious. If we fail in this effort over the coming days, then we will leave this country of ours so exposed to the exact situation we saw in the fall of 2008.

We know in the world in which we live today, it isn't just a matter of what happens in our own country—all the headlines we have read about now over the last several weeks of a small country in the Mediterranean—Greece—going through great economic difficult has all of a sudden put Europe at risk financially. The Euro has declined in value, the debt instruments have lost their value. Now the IMF has jumped in, and the Europeans apparently may have jumped in, but let it be a warning to people that we are not living in a world any longer where an American institution, an American bank or some financial institution gets in trouble; we are now talking about a world where what happens in Shanghai, what happens in Europe, what happens in small countries can affect all of us.

We need to recognize that in this 21st century, the rules we are operating on basically were written 100 years ago or more and we need to update those rules and regulations to make it possible for us to manage the next crisis when it comes, and it will come, certainly. When it does occur, will we be able to deal with it effectively, early on, so as not to watch it explode across this country and cause as much devastation as the present events over the last 2 years have?

That is what this effort is all about. It is not more complicated than that, although the answers can be complicated as we try to fashion them in a way that makes sense. I pray this will not become an ideological or political debate. We bear far too great a responsibility to our fellow citizens not to give our best judgment on how to resolve these matters. It ought not to be a question of who wins and who loses 6 months from tomorrow when it will be election day—6 months tomorrow, on November 4. I know there is a great preoccupation with that. I don't deny that. But our efforts on this bill ought not to be wrapped around that conclusion. We ought to be trying to do our very best to fashion the steps, the rules that will allow us to minimize the effects of another economic crisis.

I can't imagine walking away from this session of Congress, after all the effort that has been made to bring us

to this point, not to sit down and resolve these matters in a way that allows us to move forward. So I intend to be supportive of the Boxer amendment. I hope and believe Senator SHELBY and I can agree on a second set of ideas to present to our fellow colleagues tomorrow. I have listened over the weekend. We have worked very hard with all our colleagues, both Democrats and Republicans, who have come up With additional ideas they would like to incorporate as a part of this bill, and we are working with them. My hope is we can lay those out in the next 2 or 3 days to reach agreement on some of those matters.

There will be some matters which we probably can't resolve, despite our good efforts. If that is the case, then we should have a good, healthy debate for an hour or two, then vote in this Chamber and decide whether to accept or reject various ideas. That is the way this institution was designed to work. So in the coming days, I intend to be standing at this very spot, acting as the manager of this bill, along with Senator SHELBY, and again the members of the committee who spent so much time and effort over the last number of months will be a part of this discussion. They offered their intelligence, their background, and their information that I think will enlighten and inform not only the membership but the country as well to what we are trying to achieve.

I look forward to that debate, when we begin in the next 24 hours, and hope that over the next week or so we can conclude that debate; that we will have that good kind of civil conversation, partisan at various points, as I am sure it is apt to be, but remind each other that we bear a joint responsibility to get this right before we adjourn this Congress and to see to it that the American people have a good answer, at least the best answer we can give them under the circumstances, as to how to minimize the effects that have caused so much harm to our country over the last 2 years.

With that, I thank my colleague from Kentucky, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. BUNNING. Mr. President, I come to the floor to speak about financial reform and the bill the Senate is considering right now. I have made no secret of my desire to pass a strong financial reform bill and rein in excesses of our largest financial companies. No Senator in the Banking Committee or in this Chamber has been a stronger voice against the financial industry enablers at the Fed than I have been. I have fought every bailout that has come through this Congress as well as the bailouts that the Federal Reserve and both the Bush and Obama administrations put in place without the approval of the Congress. I wish to pass a bill that ends bailouts and puts strong restrictions on reckless activities in our financial sector. Unfortunately, the bill before the Senate not only fails to end bailouts, it does the opposite and makes them permanent. This bill will also lead to future financial disasters because it ignores the root causes of the crisis and thus fails to put the necessary handcuffs on key parts of the financial system.

The primary goal of this bill should be to end bailouts and the idea of too big to fail. Instead, the bill makes too big to fail a permanent feature of our financial system. It concentrates regulations of the largest financial institutions at the Federal Reserve and removes only small banks from Fed supervision. The Feds failed as a regulator leading up to the crisis and should not be the regulator of any banks, but now Federal regulation will be a sign that a firm is too big to fail. On top of the new Fed seal of approval for our largest financial companies, this bill creates a new stability council that will designate other firms for the Fed to regulate and, thus, too big to fail.

Federal regulation of the largest financial firms is not the only way this bill makes too big to fail and bailouts permanent. The largest bank holding companies and other financial firms will now be subject to a new resolution process. Any resolution process is, by definition, a bailout because the whole point is to allow some creditors to get paid more than they would in bankruptcy. Even if the financial company is closed down at the end of the process, the fact that the creditors are protected against the losses they would normally take will undermine market discipline and encourage more risky behavior. That will lead to more Bear Stearns, Lehman Brothers, and AIGs, not less.

The bailouts in this bill come with a cost beyond the moral hazard created by protecting creditors. Despite claims that the financial industry will pay for the bailouts, payments into the bailout fund are tax deductible, which means taxpayers are directly subsidizing the bailouts.

The bailout fund is not the only way this bill keeps taxpayers on the hook for future bailouts. First, the bill does not shut off the Federal Reserve's bailout powers. While some limits are placed on the Fed, the bill still lets it create bailout programs to buy up assets and pump money into struggling firms through ''broad-based'' programs. Second, the bill creates an unlimited new debt guarantee program at the FDIC that can be used to prop up firms instead of closing them down. Both of these bailout powers put taxpayers directly at risk and make bailouts a permanent part of the financial system.

Instead of putting all these bailout powers into law, we should be putting failing companies into bankruptcy. Bankruptcy provides certainty and fairness, and protects taxpayers. Under bankruptcy, similar creditors are treated the same, which.prevents the government from picking winners and losers in bailouts. Shareholders and creditors also know up front what losses they are facing and will exercise caution when dealing with financial companies. Later this week I will join several other Senators in offering an amendment that will update our bankruptcy laws to deal with modern financial firms and permanently end bailouts.

If this bill is not going to take away government protection for financial companies and send those that fail through bankruptcy, then it should make them small enough to fail. Decades of combination have allowed a handful of banks to dominate the financial landscape. The four largest financial companies have assets totaling over 50 percent of our annual gross domestic product, and the six largest have assets of more than 60 percent. The four largest banks control approximately one-third of all deposits in the country. This concentration has come about because creditors would rather deal with firms seen as too big to fail, knowing that the government will protect them from losses. I would rather take away the taxpayer protection for creditors of large firms and let the market determine their size. But if that is not going to happen we should place hard limits on the size of financial companies and limit the activities of banks with insured deposits. Any financial companies that are over those size limits must be forced to shrink. This will lead to a more competitive banking sector, reduce the influence of the largest firms, and prevent a handful of them from holding our economy and government hostage ever again.

Along with not solving too big to fail, this bill does not address the housing finance problems that were at the center of the crisis. First, there is nothing in this bill that will stop unsafe mortgage underwriting practices such as zero downpayment and interest-only mortgages. There is a lot of talk of making financial companies have skin in the game, but when it comes to mortgages, the skin in the game that matters is the borrower's. Second, the bill ignores the role of government housing policy and Fannie Mae and Freddie Mac, which have received more bailout money than anyone else. The bill does not put an end to the GSE's taxpayer guarantees and subsidies or stop the taxpayers from having to foot the bill for their irresponsible actions over the past decade. On Friday the Wall Street Journal reported that over 96 percent of all mortgages written in the first quarter were backed by some type of government guarantee. Until we resolve the future of the GSEs, the private mortgage market will not return and the risk to the taxpayers will continue to increase.

This bill also does nothing to address the biggest single factor in the current financial crisis and most other crises in the past—flawed Federal Reserve monetary policy. Nothing in this bill will stop the next bubble or collapse if the

Fed continues with its easy money policies. Cheap money will always distort prices and lead to dangerous behavior; no amount of regulation can contain it.

As I mentioned earlier, the bill concentrates regulation of the largest financial firms at the Federal Reserve, despite the Fed's long history of failed regulation. Leading up to the crisis the Fed already favored the interests of the large banks, and by only removing its supervision of small banks the Fed will become even more of a cheerleader for Wall Street. In an earlier version of this bill, bank and consumer protection regulation were removed from the Fed and placed in a new bank regulator. Unfortunately, that was undone in the current version and the Fed gets more power for both jobs.

No one has criticized the Fed more than I have, for its failure to use its consumer protection powers to regulate mortgages. But I just cannot understand keeping consumer protection inside the same Fed that ignored that job for decades. This bill takes a dangerous approach to consumer protection by separating it from the safety and soundness of financial companies. It also goes even further by letting the Fed reach into businesses that had nothing to do with the financial crisis.

Finally, I want to mention the credit rating agency portion of the bill. Our goal should be to reduce investors' reliance on the agencies. Instead, the bill will give investors a false sense of security by setting new standards to get certified by the government. Also, allowing the rating agencies to be sued will discourage new agencies from entering the market and further concentrate power in the hands of the largest agencies that have performed the worst.

I have many other concerns about the bill that I will not mention on the floor today, but they are explained in detail in the minority views section of the committee report. As the bill stands today, it will not solve the problems in our financial system. It is regulation without reform. But I hope we can work together to get a bipartisan bill that will put an end to too big to fail forever.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. KAUFMAN. Mr. President, I rise to discuss Wall Street reform, because we must get this bill right if we are to prevent another financial crisis like the last one, which almost destroyed our country. The newspapers are filled with reasons why this is so important: In Europe, because a sovereign debt crisis is threatening to become a full-blown bank crisis, the governments of the EU are using taxpayer funds to bail out Greece.

The hearings before Chairman LEVIN's Permanent Subcommittee on Investigations have riveted the Nation on fraud at the heart of the financial crisis; the widespread use of fraudulent stated-income loans by Washington Mutual; the abject failures of the bank regulatory agencies; the willful neglect of the credit rating agencies; and, finally, the hopelessly conflicted practices of Goldman Sachs, which put its own trading activities above any sense of duty to its customers.

In particular, over the past few weeks, much has been spoken and written about solving the problem of banks that are ''too big to fail.'' As many of my colleagues know, Senator BROWN and I, along with Senators CASEY, MERKLEY, WHITEHOUSE, and HARKIN, introduced a bill to place strict limits on the size and leverage used by systemically significant banks and non-banks alike. We are now offering this legislation as an amendment to the financial reform bill, because we believe that Congress must reduce these megabanks to a manageable size and cap the leverage they may use in order to limit the risk they pose to our economy. We should never again have banks that are too big to fail.

As the recent investigations by Chairman LEVIN, the Financial Crisis Inquiry Commission and others have shown: Even the best-intentioned regulators are no match for gigantic financial institutions, which are structurally complex, functionally opaque, and global in scope. Just as importantly, these financial institutions purposely operate to evade regulatory oversight by means of regulatory arbitrage, accounting and reporting practices that frustrate transparency, and so-called financial innovation that regulators have no chance of fully grasping in real time.

To surrender our Nation's economic security to unelected and mostly unconfirmed regulators is both unwise and undemocratic. It is also a gamble. For those of my colleague who do trust the current set of regulators and have faith in them,—I am sure of those. I trust our regulators.—I would ask: Who will be the next president? Which regulators will he or she name to oversee the largest banks? What will be their regulatory philosophy? And how much determination and enthusiasm will they bring to the task of forecasting bank risk and risk to the U.S. economy? I submit, no can answer those questions.

And while resolution authority is necessary, why would we believe that it will work for a $2 trillion megabank with operations in more than 100 countries? And as we saw just months ago, such banks do not simply fail on their own. The very problems that affect one megabank, such as a fall in the value of widely held assets like mortgage-backed securities, will affect every other big bank at the same time. That is what is happening in Europe today. The EU has decided to bail out Greece, before the panic spreads to Portugal, Ireland and Spain.

That is why to me the choice is clear. We must do more to act preventively.

Making the largest banks smaller is a necessary, but not sufficient, proposal. It is a complementary idea to the regulatory solutions contained in the current bill, which is a good bill.

In the 1930s, this body had the courage and foresight to pass laws that maintained U.S. financial stability for generations. But a decade ago, too many forgot the wisdom of those laws. That is our challenge today in the Senate. We can either do nothing, which would be dangerous and irresponsible. Or we can direct the regulators to do a better job, which may work for a time. Or we can build a strong, clear safeguard to secure the American economy and to protect the American people from ever having to bail out megabanks again.

The current bill has many provisions that I support, but, as Moody's reports, ''the proposed regulatory framework doesn't appear to be significantly different from what exists today.'' We must go farther.

The Brown/Kaufman amendment is not as dramatic as it seems nor is it, I believe, fraught with unintended consequences. Very large banks will still exist under this bill. But they will not be so big that they are ''too big to manage and too big to regulate,'' as former FDIC Chairman Bill Isaac has said. And the leverage they use, the ratio of capital to assets, which is the very basis for how risky they become, will be statutorily capped.

In fact, the extra layer of protection provided by this legislation is the least we should do. Under Brown-Kaufman, big financial conglomerates like Bank of America and Citigroup will still have balance sheets that exceed $1 trillion, about half of their current size. In other words, Citigroup would be about the size that it was in 2002, when it was still very competitive in the U.S. and overseas. The balance sheet of an investment bank like Goldman Sachs would be scaled down from $850 billion to a more reasonable level of just above $300 billion, or around $450 billion if Goldman exits the bank holding company structure. Lest anyone think that this is punitive: Goldman Sachs's assets didn't exceed $100 billion until 2003. That means under the worst case of this bill, their assets will be three times as big as they were in 2003. The firm is currently well over 10 times the size it was when it went public just over 10 years ago.

A recent report by Andrew Haldane, the executive director of Financial Stability at the Bank of England, has two charts depicting the incredible growth and concentration that occurred within our financial system over the last 10 to 15 years.

The first chart shows how the averse size of a commercial bank relative to GDP has tripled over the 15 years. By the way, this looks very much like the chart we had on housing process right before the big crash. Look at that exponential growth. If you want to see what happened, 1999 was when we repealed Glass-Stegall. Of course, this increase was driven by the growth of the

megabanks, not by the growth of community or regional banks.

The second chart shows how concentrated the U.S. banking system has become in just 10 years. The top three banks represented approximately 20 percent of overall bank assets in 1999, the time of the repeal of the Glass-Steagall Act. In fewer than 10 years, this percentage has doubled, with these top three banks now representing more than 41 percent of total bank assets.

And the government's response to the financial meltdown has only made the financial industry bigger? None of this includes what happened in the meltdown: JP Morgan swallowed Bear Stearns and Washington Mutual; Bank of America absorbed Merrill Lynch; and Wells Fargo bought Wachovia.

Why would we want financial institutions this gigantic? And people are telling me how do you unravel this? First thing we are going to do is now that the finance is set, undo these things we did during the financial crisis. That is not for me to decide. What we should do is put the limits up there and let people decide how they are going to reach the limits. The last 2 years proved beyond dispute that management and risk committees at America's most prestigious firms were unable to effectively track, measure, and mitigate their exposures.

As Andrew Haldane recently noted: ''risk and counterparty relationships outstripped banks' ability to manage them. . . . Large banks grew to comprise several thousand distinct legal entities. When Lehman Brothers failed, it had 1 million open derivatives contracts.''

Former Treasury Secretary Robert Rubin recently admitted: ''There isn't a way for an institution with hundreds of thousands of transactions a day involving something over a trillion dollar that you are going to know what's in those position books.'' That is Robert Rubin one of the smallest men I have ever met on finance and also on the Government's approach to finance. If leaders of these massive financial institutions have no idea regarding their systemic risk, what hope do regulators have?

The truth is that these financial institutions have become so large and complex that regulators rely upon the banks and the markets to self-regulate. Under the Basel II Capital Accord, determinations on capital adequacy became dependent on the judgments of rating agencies and, increasingly, the banks' own internal models. Modeling is fine, so lone aa the banks stay between bright lines which should be drawn by Congress. Otherwise, if regulators issue rules governing capital requirements that depend on the banks to use their own models to determine adequacy of their capital and liquidity, then as a practical matter such regulation becomes meaningless, and is no longer regulation.

Indeed, regulators have long had all the tools they need to increase capital and restrict banks from engaging in activities that pose a serious risk to the safety, soundness or stability of a bank holding company. But they failed to do it.

The regulators failed for many reasons, but they failed in part because so much of the risk is hidden and difficult to understand. Institutions like Lehman and Citigroup brazenly engaged in accounting gimmicks to evade regulations that were imposed on them. Lehman implemented ''Repo 105'' to hide the true extent of its liabilities at the end of each reporting quarter. At the end of each reporting quarter, they came up with something so that they could take liabilities off the balance sheets so regulators and even shareholders did not know what their true economic position was. In the second quarter of 2008 alone, it moved $50 billion temporarily off of its balance sheets without telling regulators, ratings agencies, or even its own board or shareholders. SEC and Federal Reserve regulators stationed at Lehman Brothers never caught on. And the Lehman CEO claimed he never knew about it. Is it not amazing, a CEO of a corporation, all of the money he is making, $50 billion each quarter off the balance sheet being hidden, and he never knew anything about it. At the same time, Citigroup and others held more than a trillion dollars in off-balance-sheet vehicles to avoid capital requirements for lending. When market conditions soured, tens of billions of dollars in liabilities suddenly appeared back on their balance sheets to the surprise of regulators and shareholders alike.

Some argue that it is the quality of those regulatory standards that must be improved, and that they must be finely tuned and calibrated if they are to affect the behavior of the large banks.

Assistant Treasury Secretary Michael Barr recently noted, markets will ''undoubtedly evolve'' beyond what any law says. But, he said, regulators are now pushing for new global capital standards that will be ''more robust, higher and better quality, less pro-cyclical, and include global agreement on a leverage ratio.''

That will be very helpful, but it is not a solution. The history of financial regulation has proven that strong and sweeping statutory standards are far tougher to evade than technical regulations that prescriptively set requirements. The Financial Times reported recently that banks are already developing new ways to arbitrage the global capital standards to which Secretary Barr refers. In other words, they are finding ways around the rules before they are even finalized.

That is why we need statutory standards on the leverage and size of these megabanks, as provided in the Brown-Kaufman SAFE Banking Act. While some technocrats may say that they are blunt tools, I say that that is precisely the point: the amendment provides a clear line that banks can not evade and regulators can not ignore, thereby making both accountable.

The Federal Government cannot continue to subsidize these mega-banks and permit them to grow by taking on ever greater risk and speculation. Dean Baker and Travis McArthur of the Center for Economic and Policy Research compared the borrowing costs of the 18 largest banks, all of which have over $100 billion in assets, to smaller ones. They estimated that the effective government subsidy because of the implicit guarantee that they are too big to fail results in a 70–80 basis point borrowing advantage over smaller banks, resulting in lower borrowing costs equal to approximately $34 billion. We are not saying they are too big to fail, what the market is saying, if you are a bank that is big enough so it looks like it is too big to fail, you can borrow for 70–80 basis points less than smaller banks. Fed Chairman Bernanke has noted that this is unfair competition to smaller banks. I agree. I wish I would hear more from smaller banks. As a result, less money flows to local communities, and small businesses have trouble getting affordable loans.

Nonetheless, there are still those who argue that we need megabanks, that there are economies of scale that allow $2 trillion banks to better service large U.S. global corporations and help us compete globally. They offer no evidence to support this claim, however, because there is none. At least I have not been able to find any.

There are no academic studies proving that in banking, bigger is better and more efficient beyond $100 billion in assets. While big corporations on some occasions need to access particularly large amounts of capital, Wall Street banks typically form syndicates to spread the risk. And while megabanks have large balance sheets that might allow them to take on a large amount of underwriting risk, it is not clear whether this is good for the customer or the financial system as a whole. By having lots of smaller institutions participate in an underwriting, the corporate customer is apt to get better pricing because it will be accessing a wider variety of retail and institutional distribution channels. The financial system is also safer by not having large concentrations of proprietary positions in loans and securities, or even worse, by having these institutions ''hedge'' those large exposures with esoteric products that no one understands and that are often hidden off balance sheet.

Nor is there research that demonstrates that the U.S. needs large banks in order to ''compete'' with massive foreign banks.

It is true that only 6 of the 50 largest banks in the world are based in the U.S. Many banks on that list have a history of government involvement, some were even owned by their governments. Virtually all of these batiks benefit from implicit or explicit government guarantees. Many, including

the largest bank on the list, the Royal Bank of Scotland, have been recipients of massive bailouts.

Ireland is in the midst of a painful process of bailing out its largest banks. Switzerland put together an approximately $60 billion bailout package for one of its largest banks, UBS. The U.K.'s bailout support for its banks exceeds $1 trillion. The case of Iceland provides a cautionary tale for all nations on how a government can be completely overwhelmed by the collapse of its largest financial institutions.

And while French and German banks have enjoyed only modest, direct bailouts, through the EU and IMF debt relief provided to Greece, these banks have received a massive, indirect government bailout. The Wall Street Journal reports that German and French banks carry a combined $119 billion in exposure to Greek borrowers and more than $900 billion to Greece and other vulnerable Euro countries, including Ireland, Portugal and Spain. French banks have almost $80 billion in exposures to Greece, while German banks have $45 billion in exposures to the country.

Given these circumstances, other countries face just as urgent a need to break apart their megabanks.

What about Canada, many ask? Its large banks did well during the last crisis. But there are significant differences in our two countries. First, there was no wave of financial deregulation in Canada. Canadian banks are subjected to tight mortgage origination standards and tough leverage limits, something U.S. financial institutions and their regulators completely ignored for the last decade. Second, in Canada the government insures the most risky mortgages, and I don't think we want to go back to doing that. Finally, not one of Canada's largest banks is near the size of any of the five largest U.S. banks. In fact, the largest Canadian bank is not even a third of the size of the largest U.S. bank. What's more, under the limits of the Brown-Kaufman Act, our megabanks would continue to be much larger than the largest Canadian banks.

Some officials have argued that ''most observers'' think that breaking up the big banks would lead to more risk, not less; that bigger banks are more diversified and therefore less risky than smaller banks. That makes no sense to me. As the governor of the Bank of England, Mervyn King, recently observed, ''Banks who think they can do everything for everyone all over the world are a recipe for concentrating risk.'' That is one of the reasons why he, too, favors breaking up the megabanks as the solution to ''too big to fail.''

I believe the view of most observers is best summarized in the review of the literature in ''13 Bankers,'' the book by Simon Johnson and James Kwak. Breaking up the banks is not a populist idea in the pejorative sense of that word. It is supported by smart, informed people outside the Washington-Wall Street corridor who understand what is happening, including three presidents of the Federal Reserve Board and a host of economists and academics.

Even Alan Greenspan, in his recent speech at the Brookings Institute looking back on ''The Crisis,'' stated clearly: ''For years the Federal Reserve had been concerned about the ever larger size of our financial institutions. Federal Reserve research had been unable to find economies of scale in banking beyond a modest-sized institution. A decade ago, citing such evidence, I noted that 'megabanks being formed by growth and consolidation are increasingly complex entities that create the potential for unusually large systemic risks in the national and international economy should they fail.' Regrettably, we did little to address the problem.''

Anyone can come up with reasons for maintaining the status quo, for allowing oversized megabanks to continue to be too big to fail. But given the recent economic disaster, the burden of proof should fall on those who want to retain our currently dangerous concentration of financial power. Repeating the mantra of U.S. competitiveness and the idea that ''this is not about size but about risk and interconnectedness'' are only excuses for an unjustified failure to act.

The question is what must we do to ensure that a financial crisis like the great recession, which continues to cause millions of people to be out of work and lose their homes, never happens again? The Brown-Kaufman amendment would add another layer of protection to our financial sector, and would make it much less likely that U.S. taxpayers will ever be asked to bail out Wall Street again.

Brown-Kaufman is a modest, even conservative, proposal to restore the size of banks to where they were a decade ago. It will also impose a statutory leverage limit to prevent megabanks from taking on too much risk—a fact about our amendment that is often overlooked.

Sometimes, the buck must stop with Congress. We can take strong steps to undo the harm of the last decade, or we can punt responsibility to the very regulators who failed us in the first place. Either way, the American people will hold us responsible. So let us act responsibly and protect them from further harm.

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

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

The legislative clerk proceeded to call the roll.

Mr. WARNER. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. WARNER. Mr. President, I wasn't planning on speaking today, but I have had the opportunity to preside for the last couple of hours. I heard my friend from Arizona earlier today make some comments about the financial reform bill. I rise to address them.

Before doing so, I commend the Presiding Officer for his comments this afternoon, comments with which I may not fully agree, but he makes a very persuasive and interesting case about how we get this right. Clearly, we have to make sure our goal is setting rules and regulations that will stand the test of time. We have to make sure we end the notion of too big to fail.

I know the approach of the Presiding Officer is to look at size. I think the committee's approach, which I share, is to look at interconnectedness, to give regulators the ability to unwind organizations if they can't prove they have a rational way to be unwound through a bankruptcy process.

Reasonable people can disagree, but we absolutely agree on the goal: making sure the American taxpayer never has to hear ''too big to fail,'' particularly too big to fail where the American taxpayer has to pay the bill.

I thank the Presiding Officer for his comments. I know the debate will continue.

Earlier today, my friend, the Senator from Arizona, spoke on the bill. As somebody who has been involved in portions of this bill for a number of months, the Senator from Arizona and I share common goals. We want to make sure that taxpayers are not exposed, that we end bailouts, and that we put rules of the road in place for the 21st century for the financial system. My hope is that in some of the workings between Chairman DODD and Senator SHELBY, they will find common agreement on titles Senator CORKER and I worked on, where they might improve the initial draft.

What I hear time and again from all of our colleagues is a commonality of goals. My hope is that at the end of the day we will have legislation that has broad bipartisan support.

Let me go back to my colleague from Arizona. He had a strong preference for bankruptcy. His concern was that bankruptcy in every case can take care of every financial institution's unwinding, that bankruptcy provided predictability. He mentioned in passing a new concept called speedy bankruptcy and cited certain scholarly articles on it, speedy bankruptcy that had some portion of a certain aspect of the capital structure that would convert certain debt into equity in the event of this process. He made the comment that even having resolution in the process would always lead to bailouts. I respectfully disagree and want to take a moment to further explicate what Chairman DODD's bill does in terms of how he approached these same issues in a bipartisan way.

First, we believe the default option should always be bankruptcy. Bankruptcy is a clear and established set of

rules. It gives creditors, equity holders a predictability about what happens in the event of a firm getting into trouble, getting into potential insolvency, and gives a path toward going out of business. But what we have seen at least to date is that bankruptcy sometimes is neither speedy nor, at least in its current form, always able to take care of enormously large, complex financial institutions.

I believe it was at the end of last week that there was a story in either the New York Times or the Wall Street Journal that pointed out that the Lehmann bankruptcy process is still ongoing, with fees in excess of $400 or $500 million being charged to try to unwind this firm.

One of the things I have heard is, if a firm goes into bankruptcy, there are these dollars that will still be needed to unwind the firm in an orderly process. Those of us who drafted the bill said that this unwinding process, if we are going to use resolution instead of bankruptcy, should be prefunded by the financial industry itself, which would benefit. My colleagues believe that perhaps it would be better if the Treasury or some other institution borrows money that then is repaid from the financial industry itself. Again, reasonable people can disagree whether we prefund or postfund, but the facts remain. The unwinding of any firm takes time and resources. At the end of the day, we have to make sure the taxpayer is protected. That is Point No. 1.

Point No. 2. I agree with my colleague from Arizona when he says that a new tool we could use for these large, systemically important firms to make sure there was a price for them getting too large and there was an ability to make sure they could be unwound in a regular process would be the creation of a new form of debt in the capital structure, debt that, in the event of a crisis, would convert into equity, dilute existing shareholders—be, in effect, a check on management because they would also be diluted in this event.

I urge my colleague from Arizona to recognize that we have put that into the bill already. We have created a convertible debt component that all of the systemically important firms would have to build into their capital structure and, in effect, would allow this to be triggered even prior to a crisis point. So rather than being used only at the moment of crisis, it could actually be used as a speed bump in advance as one of the early signs of a crisis coming.

Again, it is one of the reasons why we have created a Systemic Risk Council that allows for higher capital requirements, focused on leverage, focused on better risk management plans, putting this new contingent debt structure within the overall capital structure of the institution. And there are the funeral plans, or the plans where we are asking, again, for these large institutions to outline how they will unwind themselves through a bankruptcy process.

That process has to be approved by the regulators. It is a process whereby if the regulators do not approve it, they could actually come to the conclusion that there is no way to unwind this firm during bankruptcy and, consequently, they could actually do what the Presiding Officer requires and say: This firm then, consequently, has to be downsized—or certainly their international operations have to be split off or spun off because there is no appropriate way to unwind this firm in the event of a bankruptcy process. So again, I think the goal of my colleague from Arizona of making sure there is an orderly, planned approach through bankruptcy to unwind these large firms is in place. So we agree there.

The fact that there is the creation of this new debt structure within these large firms—that would be debt that would convert to equity—that is in the bill, and actually it is even better than what my friend, the Senator from Arizona, has proposed because it could be triggered even before a crisis.

Where I guess I differ from my colleague, the Senator from Arizona, is that while he and I strongly believe in the bankruptcy process and the preference toward bankruptcy, we believe that in certain extraordinary cases—and if we have done our job, hopefully, extraordinary cases that rarely, if ever, may happen—you still have to have an ability to have a resolution authority.

Why is this the case? Well, as we saw in the crisis in 2008, there were times when perhaps the balance of the industry realized that the firm was rapidly falling into insolvency, but as the firm went down this path toward insolvency, the management of the firm refused to recognize that, consequently potentially putting not only the firm in jeopardy but because of the fact that if that firm, in effect, fell fully insolvent, it could actually threaten the whole safety of the system.

So after conversations with folks from across the political spectrum, we thought in these extraordinary times there needs to be this kind of trigger of last resort in terms of using a resolution process. It is a resolution process to put appropriate guardians in place, requiring the Treasury, the head of the FDIC, the head of the Fed, to all act in concert, to put a judicial check in place so, again, no future administration might overuse this power.

As Senator BOXER's amendment will further reaffirm, resolution will mean the firm will go out of business, that equity will be toast, management will be toast, the unsecured creditors will be toast. This will be an effective death panel for a financial institution.

As my colleague, the Senator from Arizona, has pointed out, at least if a firm chooses bankruptcy, they may emerge on the other side, out of the bankruptcy process, at least semiwhole. If you go into resolution, you are not coming out the other end. This will be like: Once you check in, you never check out. Your firm is going out of business. There may be parts of that firm, because they are systemically important—a clearing process, or some other systemically important part of this institution—that may have to be redeposited elsewhere. And it has to be done in an orderly process. But the firm, as it was priorly construed, will no longer exist. Never again will we do what we did in 2008, where the American taxpayer came in and shored up these firms in their current status. Resolution will never be chosen by any rational management team or any rational group of shareholders.

I hope my friends, who want to make sure we end bailouts, who want to make sure we have an orderly process, will, again, recognize—and there may be ways to improve upon it—we have put together a bill that has a strong preference toward bankruptcy, that puts in place the requirement that the regulators have to bless this bankruptcy plan, no matter how complex you are, and if you cannot get that blessing then maybe parts of your institution need to be spun off in advance. We have already adopted the component of contingent debt that would convert into equity. Again, that threat of converting even in advance of a crisis will be a check on a management team that wants to take undue risk.

There will be no existing shareholders who will want to be faced with what could be significant dilution even in advance of a crisis if the Systemic Risk Council said: Hold on here, you have now gone over that tripwire. You are going to get converted. You are going to get diluted. Again, it is another check on the management team.

I do believe we have created a strong framework. But to ignore the fact that, as we saw in 2008, there may be times when either a management team fails to read the handwriting on the wall and declare bankruptcy or the crisis comes perhaps because of not even management malfeasance but because of a coordinated cyberattack or some other kind of catastrophic event that puts in jeopardy the system—to say never, ever could there be a time when we need an orderly resolution process to maintain the safety and soundness of the overall financial system, I believe, would be shortsighted.

I look forward to continuing to work with colleagues on both sides of the aisle to try to get this right in the coming weeks. I commend the chairman and the ranking member, Senator SHELBY. I hope they are having those conversations even as we speak. I look forward to continuing the conversation with the Presiding Officer on how we, again, can prevent these kinds of actions from even taking place in the first place. How do we deal with his approach of actually downsizing these institutions with bright-line rules or our approach that tries to look, perhaps,

more at the interconnectedness but still grants that ability to the Systemic Risk Council if there is no way for an institution to demonstrate how it will unwind itself through bankruptcy?

Again, reasonable folks can disagree. But none of us should disagree with the ultimate goal: ending too big to fail, making sure we no longer have even the potential of taxpayer exposure, trying to bring more transparency and fairness to this financial system, and, again, as the Presiding Officer and I have talked about before, making sure whatever comes out of this Chamber can stand the test of time so we can give the market the predictability it craves but also the security to the American people that we built ''financial rules of the road'' for the 21st century that will truly work.

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

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THOUSAND-YEAR RAIN EVENT

Mr. ALEXANDER. Mr. President, Nashville and middle Tennessee have been hit with what the Corps of Engineers officials tell us is a thousand-year rain event—in a thousand years, we wouldn't expect to have this much rain—and it is providing enormous hardship to the people not just of Nashville and Davidson County but counties in and around Nashville. I wish to give a brief report on what we know about that, what Senator CORKER and I and Congressman COOPER and the other Members of Congress from that region are doing, working together, so the people of our area can know what to expect.

There is a telephone number to call, and I would like to give it. It is 615–862–8574. It is a telephone number for people in the Nashville-middle Tennessee area who are concerned about what to do, who have an emergency, and who want information about what help may be available to them—615–862–8574.

The Cumberland River and the Harpeth River are the two rivers that are causing most of the problem, and we have been waiting all day for the Cumberland River, which runs through Nashville on up to Clarksville, to crest. That crest hasn't happened yet, and the latest predictions are, it might happen around 7 o'clock. It may be later.

In the meantime, the Corps of Engineers, with whom we are working, is trying hard to minimize the damage from the lakes they are responsible for. There are three major lakes in the middle Tennessee region: Old Hickory, Percy Priest, and Center Hill. These lakes hold the water, of course. If the Corps of Engineers releases water from the overflow of these lakes, that puts more water into the Cumberland River and that floods Nashville more.

This is the latest report on those three lakes. The Corps is currently not releasing water from Percy Priest Lake, and they have told us they will not release water from Percy Priest Lake until the river crests. This is important information for people in downtown Nashville. First Avenue, Second Avenue both have a lot of water. Some of the big buildings, the Pinnacle Building, has a lot of water. The fact that the Corps is not releasing water from Percy Priest Lake until the river crests is an important piece of information.

The water level, on the other hand, at Old Hickory Lake is at historic levels, and the Corps is releasing water from Old Hickory Lake but only when absolutely necessary to maintain the stability of the Old Hickory Dam. Fortunately, the Corps is not having to release water from the third lake, the Center Hill Lake. It has some room to spare.

This is an example of Congress and the Federal Government doing something right because, over the last several years, we have added funds to the appropriations bills—I have and others as well—in order to improve the safety of Center Hill Dam. Because up until the last couple years, the water level had to be lowered because the dam was weak. If the dam was as weak as it was 2 or 3 years ago, the Corps of Engineers would have had to be releasing a lot more water from Center Hill Lake into the Cumberland River, causing more flooding in Nashville.

Over the weekend, we have been in touch with Governor Bredesen's office and Mayor Dean's office and they are doing a first-rate job. Part of my responsibility is to work with Governor Bredesen, and over the last several years, on disasters as they occur, such as the tornado in Macon County, near Nashville, the tornadoes in Jackson and Madison County. The Governor and the Tennessee Emergency Management Agency—I used to be in charge of that agency when I was Governor—have a first-rate operation there, and they have been working hard ever since the rains hit.

The Federal Emergency Management Agency has a liaison stationed at the TEMA—the Tennessee Emergency Management Agency—office, and they are working well together. What those people are doing is using every available resource in support of State and local efforts to try to rescue people, to make life easier, to get the water plant running again, and to begin to assess what the damage is, which is where the Federal Government generally can help.

As I mentioned, this is not just Nashville that is involved. Macon County, Williamson County, Montgomery County, Cheatham County—all the counties right around Nashville up to Clarksville are involved. My chief of staff from Washington has been onsite in Nashville since last night, my State field director has been onsite since last night as well, and they are busy dealing with the local officials. I am prepared to go whenever it would be helpful, but there is no need for me to go and get in the way if there is nothing for me to do. Right now, the best thing for me to do, along with Senator CORKER and Congressman COOPER, is to stay in touch with the Governor's office and the Mayor's office and be ready to help with a disaster request when it is made.

When the Governor makes a disaster request, the procedure is, we then go to work to help persuade the President—and I am sure he will act as promptly as he can—to approve that disaster. There are two or three kinds of help that may be forthcoming. One would be public assistance for debris removal, to repair public buildings that are damaged, water or sewer facilities or infrastructure. For example, one of the major water treatment plants is down, and the mayor has asked Nashvillians to conserve water. That may be an area where Federal support will be available to help.

Then there is the matter of private assistance. Temporary housing may be available. There may be loans available to businesses that are hurt and other forms of assistance to individuals and households.

This is a major event in our city. The Opryland Hotel—one of the biggest hotels anywhere in America—has had to empty itself, and it has 1,500 residents who are staying in a high school. We are told it may be several months before the Opryland Hotel is able to function again. We hope not because its tax revenues provide 25 percent of all the hotel-motel tax revenues for the city, and that would come at a difficult time.

So my purpose on the floor today is simply to express my concern to the residents of the city where we live—in Nashville, TN—and to all others who might be affected in the middle Tennessee area and to let them know I believe Governor Bredesen and the mayor are doing a first-rate job in responding to the immediate requests, that the Federal and State management agencies are hard at work, that there is a telephone number that individual Tennesseans who have questions can call—it is 615–862–8574—and that after getting themselves and their families in order, the best thing to do is to document your losses so when the Governor makes his request for emergency disaster assistance and the President approves it, those losses can be proven and that help can come more quickly.

The Governor will move as swiftly as he can on this. Our experience is, it is

better to be complete than quick because we want to make sure, when the request comes in, that it involves everybody, that it involves all the claims, that they are properly documented. That has been our experience before. So that is my report to the people of middle Tennessee. I want them to know I care about it, that I am on the phone about it, we have staff members on site, and I believe the Governor and the mayor and the Federal and State emergency agencies are doing all they can and we can hope for the best as the Cumberland River crests, we hope sooner rather than later.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO GENERAL SCOTT THOELE

Mr. DURBIN. Madam President, I rise to congratulate Scott Thoele (''Taylee'') of the Illinois Army National Guard on his promotion to brigadier general.

General Thoele, as a colonel, led the Illinois Army National Guard during its deployment last year to Afghanistan.

He commanded the 33rd Infantry Brigade Combat Team, whose soldiers served in that country from August 2008 to September 2009. The mobilization of his soldiers was the Illinois Guard's largest since World War Two.

Most of these men and women are civilian-soldiers from cities and towns across Illinois. They have their own lives separate from service in our Armed Forces.

Most do not serve full time in the Guard. In the midst of living their lives—working at their jobs, spending time with their families, and participating in their communities—they have made a patriotic commitment to their country.

They have said, if my Nation needs me to serve and to fight abroad, I will answer the call.

And last year, 3,000 soldiers from Illinois left their jobs, their families, and their communities to serve at the call of their Nation.

General Thoele is one of those soldiers. He lives in Quincy, IL, with his wife and four children. In his civilian life, he works at First Bankers Trust Company in the bank's audit department.

This was a difficult deployment for the Illinois Army National Guard. They spent the year in Afghanistan in austere conditions. Their main task was to train and mentor the Afghan National Security Forces, in an effort to help the Afghans take responsibility for their own safety and security. They also provided security to the provincial reconstruction teams across Afghanistan. Eighteen Illinois soldiers lost their lives in service to their country. Dozens more were badly injured.

A long time ago, before he became President, there was a young captain from Illinois who answered the call when his State needed men to fight in the Black-Hawk war of 1832. He gathered 400 volunteers from the Sangamon County State militia and traveled north to Prophetstown, IL, marching through miles of what author Carl Sandburg described as ''swamp muck and wilderness brush . . . pushing and pulling when horses and wagons bogged.''

It was also a difficult war—as all wars are. Sandburg wrote that to the men under the young captain, ''it didn't seem the kind of war they had expected and they wrote home about it.'' But ultimately they did come home, while young Abraham Lincoln went on to reenlist—and to serve his Nation in many ways.

I offer my thanks to General Thoele, who also continues to serve his Nation, now as the Deputy Commanding General for the Army National Guard at the Army's Combined Arms Center in Kansas. Thank you for your work in Afghanistan and for bringing our soldiers home safely. And congratulations again on your promotion to brigadier general.

DISCLOSE ACT

Mr. SCHUMER. Madam President, last Friday, I introduced S. 3295, the DISCLOSE Act, because Democracy Is Strengthened by Casting Light on Spending in Elections. I am joined by 40 of my Senate colleagues as cosponsors.

Decades ago, Justice Louis Brandeis boldly said, ''Sunlight is said to be the best of disinfectants.'' That is exactly what this bill will do—shine a light on the flood of spending unleashed by the Citizens United decision.

The DISCLOSE Act will drill down and give the public the information they have a right to know. No longer will groups be able to live and spend in the shadows.

The Court spoke in the Citizens United decision. And while there is disagreement with its ruling, there is room to maneuver. This legislation does not circumvent the Court by reimposing a backdoor ban on corporate spending. Instead, the DISCLOSE Act closes certain loopholes and relies on enhanced disclosure, an idea endorsed by the Court. This legislation meets the test of constitutionality.

The aim of the DISCLOSE Act is simply to level the political playing field so that special interests do not drown out the voice of the average voter. It applies to corporations and advocacy organizations the same rules that candidates already have to abide by. And it applies these rules equally across the board. It covers corporations and labor unions alike, as well as 527s, social welfare organizations, and trade associations.

The DISCLOSE Act will do the following:

First, new disclaimers on all television advertisements funded by special interests will be required in order to uncover who is really behind the ad. If a corporation is running the ad, the CEO will have to appear to at the end to say that he or she approved the message, just like a candidate must do today. If an advocacy organization is running the ad, both the head of the organization running the ad, and the top outside funder of the ad, will have to appear on camera. Additionally, a list of the top five funders to that organization will be displayed on the screen. This will stop the funneling of big money through shadow groups in order to fund ads that are virtually anonymous. For the first time, the money can be followed back to its origin and the source of the money will be public.

Second, an unprecedented level of disclosure is mandated, not only of an organization's spending, but also of its donors. In disclosing their donors, organizations will have a choice—they can either disclose all of their donors that have given in excess $1,000, or they can disclose only those donors who contribute to the group's campaign-related activity account, if they solely use that account for their spending. All spending intended to influence an election—be it on television, radio, print, mailers, robocalls, and billboards—would flow through this account. And every donor who contributes more than $1,000 would have to be disclosed. Organizations must not only disclose these donors to the FEC, but also to the public on their Web sites and to their shareholders and members through their annual and quarterly reports.

Third, loopholes created by the Court's decision are closed. The first loophole is closed by preventing foreign-controlled entities from spending unlimited sums in our elections through their U.S.-based subsidiaries. This was a loophole specifically mentioned by Justice Stevens in his dissent. Foreign leaders who don't have American interests in mind shouldn't have the ability to influence our elections. The second loophole is closed by banning companies with government contracts in excess of $50,000 from making unlimited expenditures. The third loophole is closed by banning expenditures by companies that receive government assistance such as TARP. Taxpayer money should not be used to help corporations influence elections.

Finally, in an attempt to allow all candidates and parties to respond to ads funded by special interests, the current law granting lowest unit rate to candidates is expanded by giving those same rights to the parties on a limited geographic basis.