We had a good conversation. I called him back and he said he had no problem with Mr. Strickland. Obviously, this has been rolling around and somebody else has put a snag on it.

I would now ask my friend, the Republican leader, if I ask unanimous consent for 4 hours of debate on this individual, would there be an objection to this?

Mr. MCCONNELL. Madam President, I would say to my friend, the majority leader, that I am not able, at this particular time, to enter into an agreement on this nomination.

Mr. REID. Madam President, that is very unfortunate, but I understand.

I now ask unanimous consent, as in executive session, that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to executive session to consider Calendar No. 62, the nomination of Kathleen Sebelius to be Secretary of Health and Human Services; that there be 5 hours of debate with respect to this nomination, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of that time, the Senate proceed to a vote on confirmation of Kathleen Sebelius; that upon confirmation, the normal procedure of the Senate be followed and that following that we resume legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. MCCONNELL. Madam President, reserving the right to object, this nomination came out of committee yesterday. It was fairly contentious. It was not a party-line vote, but a number of Members on my side opposed the nomination. So at least for today, I am not able to enter into a consent agreement on a time specific to consider the nomination of Governor Sebelius. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. REID. Madam President, we need not quibble on the time. It came out Tuesday or Wednesday, and I understand people may want to look at this more closely. That is fine. It appears to me it wouldn't do me any good or the Senate any good to ask for more time at this time. No matter what time I set aside, the Republican leader couldn't agree now?

Mr. MCCONNELL. I would say to my friend, the majority leader, I cannot today agree to a time specific for consideration of this nomination.

Mr. REID. Madam President, we have another individual who we feel should be approved, David Hayes, to be Deputy Secretary of the Interior. I would ask my friend, the Republican leader, if we suggested 3 hours of debate under the conditions I outlined for the other two, is the Republican leader in a position to agree to have this nomination?

Mr. MCCONNELL. Madam President, I would say to my good friend, the majority leader, not at this time.

RECOGNITION OF THE REPUBLICAN LEADER

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

HOLOCAUST DAYS OF REMEMBRANCE

Mr. MCCONNELL. Madam President, later this morning, President Obama will speak at a Days of Remembrance ceremony here in the Capitol Rotunda—an annual event that was established by Congress as a living memorial to the victims of the Holocaust. Throughout the week, Louisville, Lexington, and other communities in Kentucky and the Nation have held events to commemorate this solemn occasion.

As we remember the terrible sufferings of the Jewish people and all others who have suffered and who continue to suffer at the hands of hatred and intolerance, we spread one of the most enduring lessons of the Holocaust—that evil exists in the world and it is the responsibility of free and just nations to protect the innocent by speaking for all those who cannot speak for themselves.

The theme of the 2009 Days of Remembrance is ''Never Again: What You Do Matters.'' Those words should serve as a reminder to all of us that anti-Semitism and other forms of religious hatred are as real today as they were in the middle of the last century and that the best way to honor the victims of the Holocaust is for us to work toward building a more hopeful and a more peaceful world.

I yield the floor.

RESERVATION OF LEADER TIME

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

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 386, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 386) to improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Reid amendment No. 984, to increase funding for certain HUD programs to assist individuals to better withstand the current mortgage crisis.

Inhofe amendment No. 996 (to amendment No. 984), to amend title 4, United States Code, to declare English as the national language of the Government of the United States.

Vitter amendment No. 991, to authorize and remove impediments to the repayment of funds received under the Troubled Asset Relief Program.

Boxer amendment No. 1000, to authorize monies for the special inspector general for the Troubled Asset Relief Program to audit and investigate recipients of nonrecourse Federal loans under the Public Private Investment Program and the Term Asset Loan Facility.

Kyl amendment No. 986, to limit the amount that may be deducted from proceeds due to the United States under the False Claims Act for purposes of compensating private intervenors to the greater of $50,000,000 or 300 percent of the expenses and cost of the intervenor.

Coburn amendment No. 982, to authorize the use of TARP funds to cover the costs of the bill.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The ACTING PRESIDENT pro tempore. The Senate is considering S. 386, to which six amendments are pending.

Mr. LEAHY. I thank the Chair.

Madam President, yesterday, when we were finally allowed to proceed to the Fraud Enforcement and Recovery Act, we began making real progress. Ten amendments were offered during the course of the day, four amendments were adopted, and six remain pending. I believe, had we not stopped voting at 5 o'clock, we could have finished the bill and passed it last night. As things stand, we hope to dispose of the six remaining amendments through the course of this morning. We should complete Senate consideration of the bill without further delay.

I should note that the number of Senators who have cosponsored this bill continue to grow—now at 17 Senators. Most of the Senators who offered amendments yesterday praised the underlying bill. I think we have only one pending amendment that regards the underlying bill; only one that actually directly relates to it. Senator GRASSLEY will speak to that amendment. Most of the amendments that have been offered, almost all the remaining amendments pending, aren't within the jurisdiction of the Judiciary Committee, they are within the jurisdiction of the Banking Committee, and I look forward to the leadership of that committee—the committee of jurisdiction—with respect to guidance on those amendments.

In my view, it would have been better if Senators had withheld their amendments and waited to offer them on the housing and banking legislation that is going to be considered next week by the Senate. Then you would have at least had a bill that was relevant to the amendments. But, of course, every Senator can do whatever he or she wants to. Now, the banking/housing amendments that have been added to this Judiciary bill will complicate passage and enactment of what everyone agrees is needed—the fraud enforcement legislation. I think that is unfortunate.

Among the examples are amendments affecting the use of TARP funds.

Modifying the Troubled Asset Relief Program is a complicated matter. I wish it were not complicating this bill. I have no problem with such amendments being on a bill that actually relates to TARP, but this one does not. Indeed, in the 6 weeks, the month and a half since the fraud enforcement bill was reported by the Judiciary Committee, my staff and I reached out to Senators and no one raised these TARP issues. Had they, we would have engaged with Chairman DODD and Senator SHELBY and tried to work them out as best we could in the proper setting.

The Obama administration has reformed the TARP process. It is doing its best to get a handle on the use of these funds. I intend to look to their views and to those of Chairman DODD, but I believe complicating passage of this fraud enforcement bill with those issues is not helpful. Nonetheless, we will do what we have to in order to complete this process.

The Obama administration's Statement of Administration Policy expresses their strong support for enactment of the underlying fraud enforcement bill. They note:

> Its provisions would provide Federal investigators and prosecutors with significant new criminal and civil tools and resources that would assist in holding accountable those who committed financial fraud.

To give an idea, the Justice Department, the FBI, the Secret Service, the Special Inspector General for the TARP, law enforcement officers, good government advocates—all support the underlying bill. The New York Times wrote last weekend:

> Senators should not be asking if the expenditure on fraud enforcement called for in this bill is affordable, but whether it is enough.

Fraud has damaged our economy. It has wrecked the lives and life savings of thousands of hardworking Americans. That is why this bill should not be complicated with a lot of extraneous material that is not in the jurisdiction of this bill. We have people around this country facing economic crises. They are preyed upon by some of these mortgage fraud groups. They promise to help them out of any kind of a mortgage difficulty they have and then they steal their retirement accounts. They steal the money they may have saved for their children to go to college. They steal the equity in their homes. Then they disappear, so people are left with no homes, no equity, no retirement accounts. If they saved money for their children to go to college, there is no money there, and the people who have committed the fraud get away.

On those occasions when sometimes they are chased down, they may actually face a fine. But if they have stolen $200 million and get a $10 million fine—big deal. It is the cost of doing business. But if we have very tough legislation that allows the Justice Department and others to go in right at the get-go, to be able to go in and go after these people and make it very clear: If you are involved in this kind of fraud, if you are involved in this kind of theft, you are not going to get a fine, you are going to go to prison, then they are going to pay attention.

I can tell you from my own experience as a prosecutor, I know fines in this kind of fraud situation do not serve as much of a deterrent. But if we are able to send in the police to arrest these people, and they know they are going to spend years behind bars, then they start paying attention. That is the only thing that really does it, and that is the only thing that is going to protect these Americans, American taxpayers, honest, hardworking men and women—the only thing that is going to protect them from losing everything they have in a downturn in the economy.

We should pass this bill without further delay. We should move to the task of helping law enforcement find and hold accountable those who engage in such fraudulent conduct. This should be fairly easy. We can pass this bill and say: We are against crime, we are against fraud, we want the good guys to win, we want the bad guys to go to jail. It is as simple as that. That is why there are Republicans and Democrats who support this—across the political spectrum.

Strengthening fraud enforcement is a key priority for President Obama. During the campaign the President promised to ''crack down on mortgage fraud professionals found guilty of fraud by increasing enforcement and creating new criminal penalties.''

The President made good in his promise in his budget, calling on FBI agents ''to investigate mortgage fraud and white collar crime,'' and more Federal prosecutors and civil attorneys ''to protect investors, the market, and the Federal Government's investment of resources in the financial crisis, and the American public.''

As taxpayers, we all have a stake in this. If these people are able to get away with their fraud, if they are able to get away with siphoning off this money, we taxpayers pay the bill in the long run. Those who are hit with the fraud pay far more than that. They may pay with their life savings, with their homes, with everything they have ever worked for.

This bipartisan Fraud Enforcement and Recovery Act is a chance to authorize the necessary additional resources to detect, fight, and deter fraud that robs the American people and the American taxpayers of their funds. Investing resources in detecting and deterring fraud yields dividends for the American people. That is what this bill would do, and we should pass it without further delay.

I want my colleagues to know, at some point, if people are not here to offer amendments, we will call up and vote on the amendments that are pending and then go to final passage. I know the Democratic and Republican leaders talked about a budget matter that has to come up that will probably take us into the evening. I am trying to save the time of all Senators, so I urge Senators to come because at some point everything that is pending is going to be called up and is going to be voted on up or down. I would at least like to have the Senators on the floor who are sponsoring them. Then we will go to final passage.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1002

Mr. THUNE. Madam President, I ask unanimous consent that amendment No. 1002 to the bill be brought up and made pending.

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

The clerk will report.

The legislative clerk read as follows:

> The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 1002.

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

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

The amendment is as follows:

> (Purpose: To require the Secretary of the Treasury to use any amounts repaid by a financial institution that is a recipient of assistance under the Troubled Assets Relief Program for debt reduction)
>
> At the end of the bill, add the following:

TITLE II—DEBT REDUCTION PRIORITY ACT

SEC. 21. SHORT TITLE.

This title may be cited as the ''Debt Reduction Priority Act''.

SEC. 22. FINDINGS.

Congress finds the following:

(1) On October 7, 2008, Congress established the Troubled Assets Relief Program (TARP) as part of the Emergency Economic Stabilization Act (Public 110-343; 122 Stat. 3765) and allocated $700,000,000,000 for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

(2) The Department of Treasury, without consultation with Congress, changed the purpose of TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program (CPP) rather than purchasing toxic assets.

(3) Lending by financial institutions was not noticeably increased with the implementation of the CPP and the expenditure of $250,000,000,000 of TARP funds, despite the goal of the program.

(4) The recipients of amounts under the CPP are now faced with additional restrictions related to accepting those funds.

(5) A number of community banks and large financial institutions have expressed their desire to return their CPP funds to the

Department of Treasury and the Department has begun the process of accepting receipt of such funds.

(6) The Department of the Treasury should not unilaterally determine how these returned funds are spent in the future and the Congress should play a role in any determination of future spending of funds returned through the TARP.

SEC. 23. DEBT REDUCTION.

(a) IN GENERAL.—Title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) is amended by adding at the end the following:

"SEC. 137. DEBT REDUCTION.

''Not later than 30 days after the date of enactment of this section, the Secretary of the Treasury shall deposit any amounts received by the Secretary for repayment of financial assistance or for payment of any interest on the receipt of such financial assistance by an entity that has received financial assistance under the TARP or any program enacted by the Secretary under the authorities granted to the Secretary under this Act, including the Capital Purchase Program, in the Public Debt Reduction Payment Account established under section 3114 of title 31, United States Code.''.

SEC. 24. ESTABLISHMENT OF PUBLIC DEBT REDUCTION PAYMENT ACCOUNT.

(a) IN GENERAL.—Subchapter I of chapter 31 of title 31, United States Code, is amended by adding at the end the following new section:

"§ 3114. Public Debt Reduction Payment Account

''(a) There is established in the Treasury of the United States an account to be known as the Public Debt Reduction Payment Account (hereinafter in this section referred to as the 'account').

''(b) The Secretary of the Treasury shall use amounts in the account to pay at maturity, or to redeem or buy before maturity, any obligation of the Government held by the public and included in the public debt. Any obligation which is paid, redeemed, or bought with amounts from the account shall be canceled and retired and may not be reissued. Amounts deposited in the account are appropriated and may only be expended to carry out this section.

''(c) There shall be deposited in the account any amounts which are received by the Secretary of the Treasury pursuant to section 137 of the Emergency Economic Stabilization Act of 2008. The funds deposited to this account shall remain available until expended.

''(d) The Secretary of the Treasury and the Director of the Office of Management and Budget shall each take such actions as may be necessary to promptly carry out this section in accordance with sound debt management policies.

''(e) Reducing the debt pursuant to this section shall not interfere with the debt management policies or goals of the Secretary of the Treasury.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 31 of title 31, United States Code, is amended by inserting after the item relating to section 3113 the following:

''3114. Public debt reduction payment account''.

SEC. 25. REDUCTION OF STATUTORY LIMIT ON THE PUBLIC DEBT.

Section 3101(b) of title 31, United States Code, is amended by inserting ''minus the aggregate amounts deposited into the Public Debt Reduction Payment Account pursuant to section 3114(c)'' before '', outstanding at one time''.

SEC. 26. OFF-BUDGET STATUS OF PUBLIC DEBT REDUCTION PAYMENT ACCOUNT.

Notwithstanding any other provision of law, the receipts and disbursements of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code, shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 27. REMOVING PUBLIC DEBT REDUCTION PAYMENT ACCOUNT FROM BUDGET PRONOUNCEMENTS.

(a) IN GENERAL.—Any official statement issued by the Office of Management and Budget, the Congressional Budget Office, or any other agency or instrumentality of the Federal Government of surplus or deficit totals of the budget of the United States Government as submitted by the President or of the surplus or deficit totals of the congressional budget, and any description of, or reference to, such totals in any official publication or material issued by either of such Offices or any other such agency or instrumentality, shall exclude the outlays and receipts of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code.

(b) SEPARATE PUBLIC DEBT REDUCTION PAYMENT ACCOUNT BUDGET DOCUMENTS.—The excluded outlays and receipts of the Public Debt Reduction Payment Account established by section 3114 of title 31, United States Code, shall be submitted in separate budget documents.

Mr. THUNE. Madam President, on October 7, 2008, Congress passed the Troubled Asset Relief Program as part of the Emergency Economic Stabilization Act—or TARP—and allocated $700 billion for the purchase of toxic assets from banks with the goal of restoring liquidity to the financial sector and restarting the flow of credit in our markets.

The Department of Treasury, without consultation from Congress, changed the purpose of the TARP and began injecting capital into financial institutions through a program called the Capital Purchase Program rather than purchasing toxic assets.

Financial lending was not increased with the implementation of CPP, and the expenditure of $218 billion of TARP funds disputes the goal of the program. Those receiving funding through the CPP are now faced with additional restrictions related to accepting that funding.

A number of community banks and large financial institutions have expressed their desire to return their CPP funds to the Department of Treasury, and Treasury has begun the process of accepting receipt of those funds. However, because of the financial stress test Treasury is currently conducting, it is possible that Treasury will restrict banks from returning funds they received from the CPP.

In his testimony before the TARP Congressional Oversight Panel on April 21, 2009, earlier this week, Secretary Geithner stated that Treasury estimates $134.6 billion of TARP funds are still available. What is important about that figure is he includes $25 billion which they expect to receive back from banks under CPP. Geithner also stated that he believed $25 billion is a conservative number, and private analysts predict more will be returned.

Section 120 of the Emergency Stabilization Act terminated the authority for TARP funds on December 31, 2009, and the Secretary can request an extension to the deadline not later than 2 years after enactment. Keep in mind that this restriction only applies to Treasury's issuance of new loans and does not cover the reuse of previously issued assistance that was returned to the Treasury.

Essentially, to summarize what my amendment does, it requires Treasury to use any of the funds that are recovered through TARP to reduce the national debt. Basically, this amendment prevents the Treasury from reallocating money for other purposes. The amendment establishes the public debt reduction payment account and requires Treasury to deposit any amounts received from repayment of financial assistance through TARP into this account. The Secretary of the Treasury must use the money in the public debt reduction payment account to pay, redeem, or buy any Government obligation included in the public debt. The obligations paid, redeemed, or bought are canceled and cannot be reissued. In addition, the statutory debt limit is automatically reduced by any amount equal to funds that are deposited in this account.

I think the amendment is very straightforward, and it really is directed at ensuring that the taxpayer dollars that were allocated for the TARP program, which, as I said before, was about $700 billion last fall, much of which has been expended but much of which now is in the process of being repaid, assuming, again, the mechanism is put in place to allow the Treasury to take receipt of funds that banks wish to repay, TARP funds which they wish to repay—with that money coming into the Treasury—and as I said before, Secretary Geithner earlier this week indicated that it would probably be about $25 billion, at least that we know of now, and there are predictions that it could be much more, that money comes back into the Treasury and could be recycled, reused—what we want to do and what my amendment does is it ensures that those TARP funds that are repaid by banks actually go to reduce the public debt.

We know we have incurred an enormous amount of debt. In fact, the inspector general, Neil Barofsky, stated in his quarterly report to Congress that 12 separate programs are being funded under TARP, involving up to $3 trillion of Government and public funds. Amazingly, that is equivalent to the size of the entire Federal budget. This is certainly not what I believe Congress intended or was told, for that matter, the funding would be used for. So Congress needs to have a role in this. If the administration wants additional authority under TARP, they should come here. Congress retains, under the Constitution, the power of the purse.

What this amendment simply does is directs those funds that come back in as a result of repayments by banks of TARP funds into the Federal Treasury, that those funds go toward reducing the Federal debt, which, as we all know, based on the budget that was passed a couple of weeks ago, is going to double in 5 years and triple in 10, at a rate of $1 trillion a year. The average deficit over the next 10 years, by the end of the 10-year period, will amount to $17 trillion. The very least we can do for the taxpayers of this country is ensure that TARP funds that are repaid by banks, the taxpayer dollars that were extended to help recapitalize the banks, when those are no longer necessary and banks give that money back to the Treasury, Treasury receives that, that those funds not be recycled, reused, go to some discretionary program to fund other programs of Government, but that they be used to reduce the Federal debt. I believe the taxpayers deserve that. This amendment, No. 1002, would do that. So I would hope my colleagues will support it and, in my view, make it very clear that tax dollars expended under TARP, when repaid, are going to go to debt reduction and not be used for some other Federal Government program.

That is what the amendment does. I would urge my colleagues to support it.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Vermont.

Mr. LEAHY. Madam President, I thank my friend from South Dakota for his courtesy in talking to me first about the amendment. As I pointed out to him, these are matters before the Banking Committee. The Judiciary Committee has really got nothing to do with it, the same as many of these. I will wait for Senator DODD and Senator SHELBY to respond; I will not.

I am going to make a unanimous consent request. I have notified both sides of this. There is a Boxer-Snowe amendment No. 1000. I ask unanimous consent that at 10:50—I realize it is going to be objected to, but I am trying to save both Republicans and Democrats from being here until 2 o'clock tomorrow morning because of the bill that comes up after this. I ask unanimous consent—and if this is objected to, I will repeat the request later on—that at 10:50 the pending business be set aside, the Boxer-Snowe amendment No. 1000 be brought up, there be 8 minutes of debate evenly divided before a vote, and that it then be in order to go to a rollcall vote on the amendment.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DEMINT. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. LEAHY. I have been advised that there would be an objection because they have not heard from the Banking Committee, from Senator DODD and Senator SHELBY. I would urge them to come to the floor so we can move forward, as most of the amendments pending or about to be pending have absolutely nothing to do with the jurisdiction of the Judiciary Committee, have nothing to do with the jurisdiction of the bill on the floor, have everything to do with a bill that is coming up next week from the Banking Committee. So I would urge the Banking Committee to come to the floor and speak to the amendments that are all within the jurisdiction of their committee.

I mention this because if we don't, the other alternative is to accept everything and go immediately to final passage. I don't think that would be responsible because then the fraud bill that virtually everybody in this body, Republicans and Democrats, supports is going to die because it won't go past the other body. I realize every Senator has a right to offer any amendment he or she wants, but at some point we have to be realistic. If we are against the people who are committing fraud on the American taxpayers, something for which all of us have made speeches that we are in favor of stopping them—newspapers from the right to the left have editorialized in favor of stopping them—let's be honest and actually pass a bill that does it. The message amendments should wait until an appropriate bill that has something to do with them.

I am also trying to help Senators. We are going to complete this bill before we go to budget matters. We can complete it easily by noon. As Senators know, I have supported Republican amendments that came up yesterday. They have all been accepted, including an amendment by Senator GRASSLEY and myself. But we want to complete this legislation. I am perfectly willing to stay here all night long to finish this and the budget. But every hour we take on this is an hour longer on the budget. It is somewhat frustrating that Senators who have a concern can't find time to show up on the floor. Senators from both sides of the aisle don't have time to show up on the floor on a bill which we were notified 3 weeks ago was going to be on the floor at this time. I urge them to do so. Because as soon as these amendments are disposed of one way or the other, we will go to final passage.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. I appreciate the observations of the Senator from Vermont. It is a bill that is broadly supported. I understand the objection he will raise with respect to his committee's jurisdiction and what the bill covers.

With regard to my amendment, there is a connection between the underlying bill and what we are trying to accomplish. I previously referenced the inspector general's report about 12 separate programs being funded under TARP that involve up to $3 trillion in government and public funds. Bear in mind, this report spans 247 pages. In that report, it says the very character of the bailout program makes it ''inherently vulnerable to fraud, waste, and abuse, including significant issues related to conflicts of interest facing fund managers, collusion between participants, and vulnerabilities to money laundering.''

I believe this amendment is related to the underlying bill which deals with fraud recovery. The inspector general's report bears that out.

Mr. LEAHY. Madam President, while the Senator from South Dakota is in the Chamber, if I may ask him a question, we also have amendment No. 982 offered by Senator COBURN which allows the unused TARP funds to pay for the Fraud Enforcement and Recovery Act. I ask the Senator if the Coburn amendment and his amendment are mutually exclusive?

Mr. THUNE. In response, Madam President, to the Senator from Vermont, my amendment would prevent funds from being reused, recycled, that were directed to debt reduction. I guess my short answer, without having reviewed the Coburn amendment carefully, would be, I suspect, that they are probably mutually exclusive.

Mr. LEAHY. I thank the Senator. I have read it carefully, and that was my conclusion. This is a matter more in line with the Banking Committee, and I will let them speak to it. This is unprecedented, that we have amendments on bills, whether this one or others, that are mutually exclusive. I did note that. I thank my friend from South Dakota for his comments.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

AMENDMENT NO. 994

Mr. DEMINT. I ask unanimous consent to set aside the pending amendment and call up amendment No. 994.

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

The clerk will report.

The bill clerk read as follows:

The Senator from South Carolina [Mr. DEMINT] proposes an amendment numbered 994.

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

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

The amendment is as follows:

(Purpose: To prohibit the use of Troubled Asset Relief Program funds for the purchase of common stock, and for other purposes)

At the appropriate place, insert the following:

SEC. ___. LIMITATION ON USE OF TARP FUNDS.

Notwithstanding any other provision of law, on and after April 22, 2009, no funds made available to carry out the Troubled Asset Relief Program may be used for the acquisition of ownership of the common stock of any financial institution assisted under title I of the Emergency Economic Stabilization Act of 2008, either directly or through a conversion of preferred stock or future direct capital purchases.

Mr. DEMINT. Madam President, our economy has shed 3.3 million jobs in the last 5 months. The Dow Jones is down 25 percent since September. When the bank bailout or TARP was conceived, it was conceived, ironically, to save the market. We had been told by both President Bush and President Obama that we needed this massive spending in order to get the financial markets working again and the economy moving. It has been 6 months since Congress gave away $700 billion to the Bush administration with essentially no strings attached. The Obama administration has, unfortunately, continued conducting massive and risky experiments in central planning since taking control of the TARP in January. We need to remember that we have yet to use this money the way it was promised.

We were told, when this money was requested during the last months of the Bush administration, that if we didn't have all this money to buy the toxic assets, the world financial market would collapse. I am afraid we were not told the truth. Clearly, the world financial market did not collapse, although it continues to have trouble. But we did not buy up any of the toxic assets, and the world financial market didn't collapse. The Bush administration—and now the Obama administration—set about figuring out different ways to use the money rather than admitting the ideas they had were not right.

Sixteen of the 19 banks that received the largest amounts of this TARP money are loaning less now than they did when the money was provided. We received a report this week that the design of the TARP was ripe for corruption, waste, and fraud. There are already a number of cases in the media that this is happening. Yet we continue to toy with this money in ways that are unprecedented. Now the Obama administration has announced President Obama is going to use the money in a totally different way. We need to look at what they are proposing.

What our economy needs now more than anything else is certainty, certainty that the Government will not undo contracts retroactively, which we are talking about doing here, certainty that spending will be brought under control to avoid future tax increases and runaway inflation, and certainty that failure will not be rewarded by a government bailout. Of course, there has been anything but certainty from our Government in the last several months. Government intervention has become the norm rather than the exception.

Now we understand the Treasury Department has concocted a new scheme to convert these loans, which are preferred stock in certain banks, into common equity in order to increase those banks' capital. This is only a paper change. We move it from a debt to an asset, and we say we have done something. The problem is, when the Government has common stock in banks, it owns banks. It would likely have positions on the board. The taxpayer, who is making this money available, is at risk. If a bank goes under, the common stock is gone. So we are taking what was some security for taxpayers and shifting it to another place. We are crossing a dangerous line where the Government owns and controls banks and insurance companies, auto companies, a line we have never crossed before as a country, a country based on free markets, not central planning by government.

The American people are starting to send us a signal that they are concerned, alarmed by the amount of spending, all these bailouts, the rewarding of failure, the debt we are creating. We saw about a million Americans last week in numerous tea parties across the country take to the streets, hold up their signs, express to their elected officials that we need to stop this out-of-control spending and waste going on in Washington. Loaning banks money temporarily is one thing. It is something I oppose because I have seen government operate long enough to know that it can't do it effectively. It can't do it without waste and fraud and corruption.

Our own Treasury Department has now told us that. We can't put this much money out there without bad things happening. We need to let the market work. If we have banks that are too sick to succeed, then we need to allow them to fail while we protect the depositors in that bank.

The amendment I offer focuses attention on the idea of government owning banks. It is pretty simple. It would prohibit the Government from converting TARP loans to common stock. We have heard of other amendments that would allow banks to give this money back and allow the money to go to paying down debt. This is not a slush fund that we created for politicians to play with, to scheme in different ways on how we could come up with new ways to spend money we don't have. It is all borrowed money. If it is not needed the way it was intended, it needs to come back to the taxpayer rather than what is happening now. The idea that we are going to have the Federal Government actually own stock in banks, insurance companies, and other private companies is an idea we need to stay away from.

I hope all of my colleagues will support this amendment that simply prohibits our Government from converting what was supposed to be loans, what was promised to be loans, what was promised to be used to buy bad assets so banks could loan again, it would prohibit this money from being used for common stock and ownership in the banking system.

I thank the Chair for the time and encourage my colleagues to support the amendment.

I yield the floor and 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. COBURN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 983

Mr. COBURN. Mr. President, I ask unanimous consent that the pending amendment be set aside and that amendment No. 983 be called up.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 983.

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

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

The amendment is as follows:

(Purpose: To require the Inspector General of the Federal Housing Finance Agency to investigate and report on the activities of Fannie Mae and Freddie Mac that may have contributed to the current mortgage crisis)

At the appropriate place, insert the following:

SEC. _____. IG REPORT ON ACTIVITIES OF FANNIE MAE AND FREDDIE MAC.

Not later than 18 months after the date of enactment of this Act, the Inspector General of the Federal Housing Finance Agency shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the following:

(1) When did the Federal National Mortgage Association (in this section referred to as ''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (in this section referred to as ''Freddie Mac'') begin buying large quantities of subprime and Alt-A mortgages? In what years did Fannie Mae and Freddie Mac purchase the largest number of subprime and Alt-A mortgages?

(2) To what extent were the purchase of subprime and Alt-A mortgages by Fannie Mae and Freddie Mac induced by Congressional action or Executive Order?

(3) To what extent were the purchase of large quantities of subprime and Alt-A mortgages by Fannie Mae and Freddie Mac induced by the Department of Housing and Urban Development affordable housing regulations issued in 1995?

(4) What actions by Fannie Mae and Freddie Mac contributed to the overvaluation of mortgage-backed securities?

(5) What political contributions were made by Fannie Mae and Freddie Mac on behalf of a political candidate or to a separate segregated legal fund described in section 316(b)(2)(c) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(2)(c)) between 1990 and 2008?

(6) What lobbying expenditures, as such term is defined in section 4911(c)(1) of the Internal Revenue Code of 1986, were made by Fannie Mae and Freddie Mac between 1990 and 2008?

(7) What contributions were made by Fannie Mae and Freddie Mac to any organization described under section 501(c) of the

Internal Revenue Code of 1986 between 1990 and 2008?

Mr. COBURN. Mr. President, I appreciate the chairman giving me this time to offer this amendment. We have adopted an Isakson amendment. We have a McCain-Dorgan amendment. This is a similar amendment, but I think it gets to the root of the problem. It does not cost very much, and it actually will tell us something we need to know.

The underlying assumption with the bill is that fraud is the primary, if not the sole, cause of this crisis. That may be true. We do not know that. But what we do not know is how much we as Members of Congress played and the extent to which we played a role in helping create this crisis. This is a fairly straightforward amendment that asks the IG to come give us information so we get the answers to the question about our own role in the evolution of the problems we find today.

What we do know is the GSEs undertook an unprecedented assumption of subprime and all-day loans, and those need to be investigated—the extent of them, the amount. We also know they invested more than $1 trillion in those loans. But what we do not know is the volume, the timing. What we do not know is the impact of the significant amount of lobbying by these GSEs and what effect that had on policies and procedures both within the administration and the Congress.

For example, when did Freddie and Fannie begin to purchase large quantities of subprime and all-day loans? In what years were those types of purchases the highest? To what extent were these purchases induced by congressional action or executive order? To what extent were those purchases induced by the Department of Housing and Urban Development affordable housing regulations issued in 1995? What actions by Fannie and Freddie contributed to the overvaluation of mortgage-backed securities?

The amendment also looks to the possibility that congressional action could have contributed to the risky changes in behavior of Fannie and Freddie. What we know is, between the 2000 and 2008 election cycles, GSEs and their employees contributed more than $14.6 million to the funds of both Senators and representatives. We also know Fannie spent $79.5 million in that period and Freddie spent $94.9 million in that period on lobbying Congress. Mr. President, $170 million was spent lobbying Congress making them the 20th and 13th largest lobbying spenders in the country.

This amendment will assure and ensure that some of the toughest questions are asked regarding the GSEs'—Fannie Mae's and Freddie Mac's—special relationships with Congress and whether any conflict created by those relationships influenced the GSEs' behavior, especially to the taxpayers' detriment.

It requires the inspector general to study what political contributions were made, what lobbying expenditures were made, what contributions were made to any other lobbying organization.

It is a compromise step. It is something we already have the people in place for. It is something they have the access to the numbers for. We ought to be able to get that.

We have a mess. Usually, as a physician when I have a mess, I start thinking back: What did I do before? And what caused part of the mess? Where was I wrong in my diagnosis of the signs, symptoms, and history? And then what do I do about it?

If we do not look through the IG at these things, then it is highly unlikely—no matter how many commissions we put together because commissions are going to ask for this anyway—but we are going to ask for it as a special report from the IG under this amendment.

There are a lot of additional considerations, and I will not take time on the floor at this time to do that. But if you want to have a transparent Congress, this is the first question we have to ask: How much were we involved? How effective were the lobbying efforts to change things that were detrimental? Maybe they were positive. But the fact is, we ought to know those things.

The idea is we will be transparent with the American people, both in terms of the lobbying efforts, the contributions they made, and the timing—not just for Congress but also the executive branch; where we look at the actions of both of those—so the American people can see the culpability. Where is it? I happen to believe it is right here in this body, us. We allowed this to happen. I think the onus of the blame needs to be here rather than pointing at other people.

That is not to distract from the idea that we ought to go after fraud. But the biggest fraud is to deny the fact that we had some culpability, and this amendment is designed to measure how much culpability we had by using the IG, the inspector general, to tell us this very specific information.

With that, I yield the floor.

Madam President, 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. LEAHY. Madam 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. LEAHY. Madam President, I was distracted in another conversation. Senator COBURN left the floor. I wished to speak to him about his amendment because it appears to have already been covered in the Isakson-Conrad amendment. I would like to ask if he also feels that way. I would hope he might come back to the floor so we could discuss that.

I also wish to notify the other side I am about to renew my unanimous consent request for a vote on the Boxer amendment. I will not until they have time to talk to the Republican side. There is no Republican on the floor right now. But in a few minutes, I will renew my request for a rollcall vote on that amendment.

In the meantime, Madam President, 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. KYL. Madam 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.

AMENDMENTS NOS. 986, 987, 988, AND 989

Mr. KYL. Madam President, I have an amendment pending—I believe the number is amendment No. 989—and I wish to speak to that amendment and three other amendments which differ only in the amount of a cap on recoveries. The amendments pending are amendments Nos. 989, 988, and 987. Madam President, 986 is the pending amendment. So we will get this straightened out.

Let me speak to the issue first generally, and then I will engage my colleague in a couple of unanimous consent requests that may resolve the issue. If not, then we can vote on the final one.

The point of these amendments is to limit the amount that can be deducted from the money that is due to the Government under the False Claims Act as compensation for what are called private realtors. A private realtor is a whistleblower or an investigator who goes to court with evidence that the Government has been defrauded and is entitled to money under the False Claims Act. In order to encourage these private parties to come forward, the False Claims Act not only entitles these private realtors to recover from the defendant their costs and expenses for investigating and pressing the claims but also allows the private realtor to receive a portion of the proceeds due to the United States.

I think we would all agree it is right and proper that the private realtors be compensated for exposing incidents for which the Federal Government has been defrauded. Such actions have saved the Government billions of dollars over the years.

Unfortunately, the formula for compensating private realtors uses a percentage range to award a portion of the Government's recovery to the realtor. The law allows the private realtor to collect up to 30 percent of the proceeds that are due to the Government.

Now, when this formula was first set back in 1986, I don't think any of us contemplated that the massive billion-dollar recoveries we have seen today would allow this kind of recovery to the private parties as well. So although

I think we all agree whistleblowers deserve to be compensated when they save the Government money, I would also think we could agree there has to be some limit; that they don't deserve to be grossly overcompensated, especially when that compensation comes at the expense of the Federal Treasury.

Let me note a few cases. I will put this entire statement in the RECORD which has a lot of other cases as well, but my colleagues will get the idea from just a few that I will mention.

Private realtors shared $95 million as their share of a $559 million civil settlement paid to the United States by TAP Pharmaceutical Products. Private realtors shared $78 million as their share of a $438 million Federal settlement paid to the United States by Eli Lilly. A private realtor will receive $47.8 million as his share of a recently announced $325 million settlement paid to the Government by Northrop. Another will share $46.4 million as their share of a $375 million settlement paid to the United States by Cephelon. There are several more of these cases, all in the $30-, $40-, $50 million range, for payments that have been made to the Government as a result of this law.

The point is, when they are sharing in that much of the proceeds, they are denying the taxpayers the benefit of the False Claims Act which was, of course, intended to benefit the Treasury and not to significantly benefit these private realtors.

So, again, it is fair to generously compensate them when they help expose malfeasance that has cost the Federal Government money. We want them to receive an incentive to blow the whistle on fraud or corruption. However, the amounts I have described—$95 million in just one case, for example—are wildly in excess of what is necessary to spur such whistleblowing. These amounts all come at the expense of the Treasury.

Let me indicate the kind of savings the Government could achieve under this amendment.

The first request I will make today would cap the private realtor recovery at either $5 million or 300 percent of the expenses and costs in investigating and proving fraud against the Government. In other words, it is sort of a triple damages: for the amount of money they put into it, there is, in effect, a 400-percent recovery; they get 100 percent of their expenses, plus another 300 percent above that. It seems to me this provides more than adequate incentive for the whistleblowers who become aware of fraud and therefore expose it.

In the eight cases I have described in my statement, five of which I mentioned, private realtors received more than $427 million at the expense of the Government. When just one case awards the private realtors $95 million, the numbers add up pretty quickly. So under this request I will make in just a moment, these same private realtors would still have received a grand total of at least $40 million from the Government. Under my amendment, the Government would have been able to keep an additional $387 million. So think about it. This amendment would have saved the Government $387 million.

So let me conclude at this point. I have been advised there are very few law firms—but some law firms—that specialize in these cases. Obviously, they are fighting the amendment because quite a little cottage industry has grown. But I would note to my colleagues if my recommendation is not accepted—if my colleagues conclude that $5 million is not enough for the Government to pay a whistleblower—then what I would suggest is we make that amount higher, and I will offer subsequent requests to support a higher amount.

I wish to note as well there will inevitably be new cases in which outsized awards are paid at the expense of the Government's recovery. For example, just last week, a False Claims Act suit against Quest Diagnostics resulted in a $302 million recovery for the Federal Government, but out of that amount, the Government was forced to pay $45 million to the private realtor. Had my amendment been law, the private realtor would still have received at least $5 million for exposing the fraud, but the Treasury would have received, and therefore saved, an additional $40 million.

So let me ask, rather than having a vote on each of these four amendments—and I have discussed this with the chairman of the Judiciary Committee and we have had a genial discussion; and I suspect I know, at least the first couple of times, the fate of my unanimous consent requests. Nonetheless, amendment No. 989 would provide a $5 million cap.

I would therefore ask unanimous consent that amendment No. 989 be considered and that the Senate be on record as supporting amendment No. 989 with the $5 million cap.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. LEAHY. Madam President, I will object, and I will just take a moment to explain.

First off, I would note, as he typically does, the Senator from Arizona came and talked to me before and was very straightforward with what he was going to do.

This talks about recoveries available under the False Claims Act. I think the Senate expert on the False Claims Act is Senator GRASSLEY, a senior member of the Senate Judiciary Committee. Senator GRASSLEY opposes this, as do I. I know there are going to be other amounts the distinguished Republican leader is going to bring up, but my reason in opposing them—and he has explained each one of them to me ahead of time, so there is no surprise—but I will oppose them because I believe without whistleblowers, a lot of these billions of dollars in fraud that have been found wouldn't have been found. Without the whistleblowers, the Government—the American taxpayers—wouldn't recover so much.

The False Claims Act—and, again, Senator GRASSLEY and others were the leaders in putting that together—has brought back more than $22 billion into the U.S. Treasury.

Now, it has a balanced approach in providing incentives for said whistleblowers. They share in such recoveries if it is warranted and if it is approved by the judge. A judge has to approve it. It has worked out very well. Rather than there being an arbitrary cap, I would rather leave it to the judge to make the determination. Simply saying, well, we will limit it to three times the cost, then I worry about seeing a padding of expenses. I think it is very well balanced the way it is, including having a judge make the final decision.

I think one of the things we all agree upon—I am sure the Senator from Arizona and I agree—is that we have to find fraud, we have to root it out, and we have to bring those who commit fraud to justice. What I am thinking about, as Senator GRASSLEY has pointed out in the past, as have I, we have to give an incentive to the whistleblowers to bring the case. After all, we have seen all too often a whistleblower will alert us to the fraud, and the first thing that happens is they lose their job. They often risk retaliation. In fact, if they are turning in their coworkers or their supervisors and bringing out the fraud, this could be life-altering. It could actually change their professional career, often for the worse. They are looked at as the bad guys, but they are not the bad guys; they are the good guys. We ought to reward them.

I will vote against it in this case. I object to considering it. I know the Senator from Arizona is going to have further amendments, but I just want him to know—and I want my colleagues to know what I have told him privately. I commend him for—as we have always done in cases we have had—talking to me ahead of time, as I have with him when I have had amendments or matters that may involve him.

So I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The request has been made. Is there objection?

Mr. LEAHY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KYL. Mr. President, I appreciate the points made by the chairman of the Judiciary Committee. There does need to be a reward, and there is some subjective judgment in what kind of a cap is appropriate for the reasons that he pointed out. As a result, reasonable people could differ as to whether a $5 million cap would be too much.

For that reason, I indicated if the chairman thought it was too much, I would suggest doubling the amount to a $10 million cap which might be appropriate. That is actually encompassed in amendment No. 988.

So at this time I ask unanimous consent that amendment No. 988 be considered pending and be adopted by unanimous consent, setting a $10 million cap on these recoveries.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, as I indicated to my friend earlier, I would object to that, and I do object.

The PRESIDING OFFICER. Objection is heard.

The minority whip.

Mr. KYL. Mr. President, as I said, I think it is going to be a little harder to object to a $20 million cap, but at this time let me ask—again, this is subjective. How much of a reward is enough to cause people to come forward? Given that we have this cottage industry of firms that has found they can make a lot of money on these cases, it seems to me there is adequate reward for whistleblowers who usually—and I am sure the chairman would agree—usually come forward simply because they see something that is wrong and they have the moral courage to come forward and say: We don't think this practice is right. And they usually don't do it for the financial reward. The law firms that are involved do very well out of this.

So my last unanimous consent request would be to consider amendment No. 987 as pending, which would set a $20 million cap on these awards.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, I hate to try to fix something that I don't think is broken. The False Claims Act has worked very well for the U.S. taxpayers. It has worked well. I know the Senator from Iowa worked so hard in putting this together in the first place. It has brought more than $22 billion back into the Treasury. The awards to whistleblowers have to be approved by a judge. I don't want to fix something that is not broken, so, therefore, I will object, and I do object.

The PRESIDING OFFICER. Objection is heard.

The minority whip.

Mr. KYL. Mr. President, finally, amendment No. 986, which is pending, sets a $50 million cap.

I certainly agree with the chairman that you don't want to fix something that is not broken. I submit that back in 1986, a long time ago, these multibillion-dollar awards were not contemplated, and times have changed. In the 20 or 30 years' passage of time, we have seen this cottage industry of litigation grow, when the kinds of awards that can be recovered—for example, a $97 million award—are simply beyond the pale. They were not contemplated. So it is broken to the extent that we have no upper limit in a case such as that.

AMENDMENT NO. 986

Therefore, I call up amendment 986, which is pending, and I request the yeas and nays on that amendment. If the chairman wishes to respond, I will withhold calling for the vote until he has responded.

The PRESIDING OFFICER. Does the Senator ask for the regular order on his amendment?

Mr. KYL. That is correct, yes.

The PRESIDING OFFICER. The amendment is now pending.

Mr. LEAHY. Mr. President, I know the distinguished Senator from Iowa wishes to speak on this amendment, and we will soon have a rollcall vote. I ask the Senator from Arizona and the Senator from Iowa if we could withhold for 2 minutes in order for the Senator from Wisconsin to speak on an amendment of his, and then we will go back to the amendment of the Senator from Arizona.

Mr. KYL. Yes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Wisconsin is recognized.

AMENDMENT NO. 990

Mr. KOHL. Mr. President, I call up my amendment No. 990.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 990.

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

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

The amendment is as follows:

(Purpose: To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security)

At the appropriate place, insert the following:

SEC. ___. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLEAD BY FALSE DESIGNATIONS.

(a) FINDINGS.—Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

(b) DEFINITIONS.—As used in this section—

(1) the term ''misleading designation''—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this section referred to as the ''NASAA'') Model Rule on the Use of Senior-Specific Certifications and Professional Designations, or it was issued by or obtained from any State;

(2) the term ''financial product'' means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products;

(3) the term ''misleading or fraudulent marketing'' means the use of a misleading designation in selling or advising a senior in the sale of a financial product;

(4) the term ''senior'' means any individual who has attained the age of 62 or older; and

(5) the term ''State'' means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

(c) GRANT PROGRAM.—The Attorney General of the United States (in this section referred to as the ''Attorney General'')—

(1) shall establish a program in accordance with this section to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this section as the Attorney General determines are necessary to carry out and assess the effectiveness of the program under this section.

(d) USE OF GRANT AMOUNTS.—A grant under this section may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations;

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors; and

(7) to enhance provisions of State law that could offer additional protection for seniors

against misleading or fraudulent marketing of financial products.

(e) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this section may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall, to the extent practicable, conform to the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Attorney General.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934), as determined by the Attorney General.

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of enactment of this Act, or any successor thereto, as determined by the Attorney General.

(5) SUITABILITY RULES FOR INSURANCE PRODUCTS.—A State shall have adopted suitability standards for the sale of annuity products, under which, at a minimum (as determined by the Attorney General)—

(A) insurers shall be responsible and liable for ensuring that sales of their annuity products meet their suitability requirements;

(B) insurers shall have an obligation to ensure that the prospective senior purchaser has sufficient information for making an informed decision about a purchase of an annuity product;

(C) the prospective senior purchaser shall be informed of the total fees, costs, and commissions associated with establishing the annuity transaction, as well as the total fees, costs, commissions, and penalties associated with the termination of the transaction or agreement; and

(D) insurers and their agents are prohibited from recommending the sale of an annuity product to a senior, if the agent fails to obtain sufficient information in order to satisfy the insurer and the agent that the transaction is suitable for the senior.

(f) APPLICATION.—To be eligible for a grant under this section, the State or appropriate State agency shall submit to the Attorney General a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

(g) LENGTH OF PARTICIPATION.—A State receiving a grant under this section shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $8,000,000 for each of the fiscal years 2010 through 2014.

Mr. KOHL. Mr. President, I speak today in support of an amendment that would protect older Americans from unscrupulous financial advisers.

In these tough economic times, seniors are discovering that their life savings have lost so much value they may not be able to fund their retirement. Desperate for advice, they look toward investment advisers for strategies to ride out this economic storm. Unfortunately, we have learned that some are placing their trust in so-called ''senior investment advisers,'' who in many cases are one step above scam artists. These individuals often have limited or no education or training though they claim titles with legitimate-sounding names.

We know that an attorney must go to school for 3 years and pass a State bar exam. A CPA must have a college degree, an additional year of study, and must pass a national exam. Neither can offer their professional services without those credentials. Seniors should be able to trust the people who invest their money. They should not be worried that the title after their adviser's name is scarcely more than a marketing ploy.

This amendment would create a new grant program to assist States in their efforts to protect seniors from misleading financial adviser designations by encouraging them to adopt provisions outlined in the North American Securities Administrators Association's and the National Association of Insurance Commissioners' model rules on the use of senior designations.

I strongly encourage my colleagues to cosponsor this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRASSLEY. 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. GRASSLEY. Mr. President, the first point I wish to make is that with the false claims provisions in the Leahy-Grassley bill, which deals with other provisions as well, but the False Claims Act is essential to accomplishing the overall purposes of the bill, along with other tools to do it—to get rid of fraud. We are trying to just, in this bill, in a very rifle shot way, correct some court opinions that have been detrimental and weaken the False Claims Act. That is all we are trying to accomplish in this bill that deals with bigger things as well.

What Senator KYL is bringing up is a legitimate subject of discussion because it has been brought up at other times since passage of the False Claims Act 22 years ago. I don't say it is not legitimate to discuss it. But there is broader false claims legislation in the Judiciary, and it ought to be discussed at a time when we have hearings on this subject. There have been no hearings on this.

These amendments should be reviewed by the full committee under the regular order process. That is the first point I wish to make to Senator KYL about why not to consider this amendment right now.

The second one is the point he made on how big of an award is big enough to incentivize people to turn in fraud.

Mr. LEAHY. Will the Senator yield for a unanimous consent request?

Mr. GRASSLEY. Yes.

Mr. LEAHY. Mr. President, I ask unanimous consent that the vote on the Kyl amendment, now pending, occur at 11:45 but that there be 2 minutes equally divided immediately preceding the vote. First, I make that request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

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

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I also ask unanimous consent that there not be any amendments to that amendment.

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

Mr. GRASSLEY. Mr. President, the second point I wish to make before I get to my formal remarks is on the question the Senator from Arizona raised about how big of an incentive is enough to get reported. That is a legitimate question.

Here is my experience with 22 years of the False Claims Act, dealing with whistleblowers, Government agencies listening to whistleblowers or not, the Justice Department taking a case or not taking a case, or whether the whistleblower initiates the case on their own. What I have found is that the False Claims Act does not come up early in anybody's thought process—about initiating a thought process that there might be fraud out there and somebody ought to be investigating and get to the bottom of it. Usually,

the whistleblower has ample evidence of that or they wouldn't be doing it in the first place. They jeopardize their profession and their job in Government. That isn't right, but whistleblowers who want to do the patriotic thing actually jeopardize their professional future. What I have found is they don't even know about the False Claims Act or about getting a percentage of it. They don't even know about whistleblower protection laws. They want to do the patriotic thing. They want to report fraud.

So to talk about the award being the incentive to come forward, I don't want to say that in some cases that may not be the case, but in most cases these are patriotic people knowing about the fraudulent use of taxpayer money, they think it is wrong and ought to stop, and they think it ought to stop within the agency. They don't get anywhere with the agency, so they come to other people, and eventually along the line, probably, somebody says: You need to take this to court, and you can get something out of this if you win and if you have a case. Probably the majority of them don't win. So they get nothing out of it. But they are trying to be patriotic citizens.

I think that bringing up the issue of how much of an award is big enough to get this information out should not even be a part of the debate. It is still something because we are talking about taxpayer money and what is an incentive to do this, but it ought to be discussed in a thoughtful way, not on an amendment to a bill that is trying to correct a few bad court decisions to get the False Claims Act back to its original purpose.

I thank the Senator from Vermont for letting me cooperate with him on this issue. The Senator from Vermont also recognizes that the False Claims Act is a very useful tool against fraud, which is the overall purpose of the rest of Senator LEAHY's and my bill.

The other thing you have to remember is that this has brought in $22 billion. Senator LEAHY made that very clear. There are so many court cases I can tell you about where the Government, through the Justice Department, came in and tried to belittle the whistleblower, the claimant, to reduce, or even eliminate, any access to an award; how many times judges have had to berate people in the Justice Department. I am not talking about Presidents Obama, Bush, Reagan, Bush 1, or Clinton; I am talking about several of them where you wouldn't even have a case—in other words, saying to the prosecutor and the Justice Department: Do you realize you would not even have had a case without this patriotic whistleblower coming forward?

More recently, there has been a case where the Justice Department asked not to proceed forward. The judge stepped in and said: We are going to go forward; there is something wrong here, and we are going to get to the bottom of it.

So we have $22 billion back because of patriotic Americans. Do you know what. Just because the False Claims Act has been out there, it has been a preventive to fraud, like all the other tools Senator LEAHY has in this bill that will not only help with prosecution, but the possibility of prosecution is going to be a preventive factor.

So I feel strongly that if the issue of an award limit comes up, it ought to be discussed thoroughly and thoughtfully in a tool—the False Claims Act—which has proven its worth by $22 billion and a lot of unknown preventable fraud out there. We ought to think through it thoughtfully.

I want this amendment defeated. The False Claims Act is the No. 1 tool for recovering taxpayer dollars lost to waste, fraud, and abuse. Whistleblowers who bring fraud cases on behalf of the Government, known as qui tam relators, often risk everything to uncover truth.

Currently, the False Claims Act provides a reward to whistleblowers who come forward with good-faith allegations of fraud, waste, or abuse of Government dollars.

They are allowed to file a lawsuit on behalf of the Federal Government, and the case remains under judicial seal in Federal court. The Justice Department then decides to join a case or not join a case. If the Justice Department joins a case and the case is successful, a whistleblower can recover 15 to 25 percent of the funds recovered. If the Justice Department does not join—then it is going to be a much more difficult process for the whistleblower and his or her counsel—the whistleblower can go forward with the case and if they are successful, they can recover more, somewhere between 25 and 30 percent, depending upon the judge.

While some are arguing that this represents a windfall for whistleblowers, the statistics paint a different picture.

In fact, in cases where the Department of Justice joins the whistleblower, the average share for the whistleblower is not 25 percent or 30 percent, it is 16 percent. Compare that 16 percent with the percentage it takes to administer Government generally, throughout Government—about 12 percent. Do you, Mr. President, think there are enough people in the Justice Department, enough FBI people to know where all the skeletons are buried, where all the frauds are being committed? No. This average award is not too far out of line with the average administrative costs of Government.

There have been 6,197 qui tam complaints filed since 1986 which have resulted in $13.7 billion in recoveries to the Federal Government. That averages about $2.2 million recovered for complaint filed.

In these 6,197 cases, the Government has paid qui tam whistleblowers $2.2 billion in awards. That means the average share award for a qui tam whistleblower is about $350,000. This is hardly a windfall that one would seek, particularly if one is ruining their professional career by being a whistleblower, coming forth to do what is patriotic, to do what is right. It is, in fact, an incentive that helps fuel complaints coming in.

However, if we start adding new caps to the already existing whistleblower caps, we could reduce the incentive for whistleblowers to proceed through the cases—or coming forward in the first place—that would help us then recover billions of dollars.

I wish to share the story of Tina Gonter who was a qui tam whistleblower who testified before the Judiciary Committee last year. Ms. Gonter worked closely with the Government and went undercover at the company for months collecting documents and evidence of a fraud against the Navy. She even wore a wire for the Federal agents of the Defense Department.

Ultimately, a couple of individuals went to jail as a result of Ms. Gonter's work. But the Government refused to sue the contractor for fraud. Believe that, the Government refused to sue with obvious evidence. Ms. Gonter filed a false claims case against the company, and it was not joined by our own Justice Department. The judge in that case even scolded the Justice Department and the Navy for not joining the case.

Ultimately, Ms. Gonter prevailed, and the contractor paid over $13 million to the Federal Government. Ms. Gonter received a share of that money, but had she not brought this case, the Justice Department and the Defense Department would have been satisfied with simply putting two people in jail and allowing the contractor to walk away with the money it received for providing fraudulent product to the Navy. And it is not just a case of fraudulent product to the Navy. It is a serious safety matter for the people in the military who put their lives on the line in the defense of our freedom.

That is only one example out of 6,197 that the False Claims Act provides power to get fraudulent activity under control. It is a check on the power of the Government bureaucracy to look the other way—that is what the Justice Department did in this case—and pretend that fraud did not happen on their watch. However, it is fueled by courageous whistleblowers, such as Tina Gonter, and without sufficient financial incentives to come forward and fight these cases for 5 to 10 years they can take in court, we may lose this valuable tool against fraud.

It is about recovering money, taxpayers' money. I find it ironic—I hope people are listening now because there is a conflict here between maybe people on my side of the aisle who think this is a good idea—I find it very ironic that those outside groups supporting this amendment were in staunch opposition to the idea of the Senate imposing any caps on executive compensation at companies receiving bailout funds. Now instead, they want to cap

the recovery of good-faith whistleblowers to come forward with claims of fraud at companies that are ripping off American taxpayers.

The False Claims Act works and will continue to work if we do not cut the incentives for relators to go to court. The law already has a cap for whistleblower recoveries. I urge my colleagues to oppose this amendment which is based on a couple of extreme examples from outlier cases that are not the norm.

We have $22 billion coming in under this act. Early on, we fought the defense industry to get this bill passed, and the defense industry tried to gut it after it was passed. When they could not because they did not have the proper prestige, they came to the American hospital industry to fight a front for them. That did not happen. I don't know exactly what groups are out there now backing all this. But when are you ever going to realize that in this country, the taxpayers deserve some respect? And if there is fraud in your industry, it is no holds barred on the recovery and the preventing of fraud.

I yield the floor.

Mr. LEAHY. Mr. President, I understand the senior Senator from New York has an amendment. While the senior Senator from Iowa is on the floor, I ask unanimous consent that it be in order for the Senator from New York to bring up his amendment—that the pending amendment be set aside for 5 minutes—speak on it, and if there are no objections to it, it then be accepted, and we go back to the Kyl amendment so as not to interfere with the unanimous consent agreement to have a vote on the Kyl amendment at 11:45 a.m. I make that request.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Reserving the right to object, will the Senator repeat the unanimous consent request?

Mr. LEAHY. If I can get the attention of the senior Republican, my request is that the Senator from New York be allowed to bring up his amendment for 5 minutes, and at the conclusion of the 5 minutes, unless more time is requested by unanimous consent, that the matter, if it can be disposed of, be disposed of, but in any event, at the end of that time, we go back to the Kyl amendment on which there is a unanimous consent agreement for a rollcall vote at a quarter of 12.

Mr. ENSIGN. Mr. President, can I modify the request that I be recognized to call up an amendment, not to have action on it, call up an amendment, spend 5 minutes on it following the Senator from New York to get my amendment pending?

Mr. LEAHY. I so modify it. That would still leave the amount of time Senator KYL has requested prior to a vote on his amendment.

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

The Senator from New York.

AMENDMENT NO. 1006

Mr. SCHUMER. Mr. President, I thank you for recognizing me. I thank our chairman of the Judiciary Committee, Senator LEAHY, and one of our senior Republican Members, Senator GRASSLEY, for not only managing this bill but for introducing it. I am a cosponsor of the underlying bill, the Fraud Enforcement and Recovery Act, because it provides much needed tools to go after fraudsters, crooks, and thieves, and other common criminals who have taken advantage of a bad economy to rob unsuspecting Americans of their savings.

I thank Senators LEAHY, GRASSLEY, KAUFMAN, and SPECTER, and all the other cosponsors of the bill for their hard work and making sure we finally do something about financial crime.

From the beginning, however, I have been of the view that there was one major omission—a glaring omission—from this bill. The bill would authorize $165 million a year for the Department of Justice, including $75 million more for FBI agents, as well as money for prosecutors and fraud lawyers.

That is all to the good. It would also provide $30 million to the Postal Inspection Service, $30 million to the IG of the Department of HUD, $20 million for the Secret Service, all to investigate financial and mortgage fraud. But if one reads the list, one thing is missing, and that is the Securities and Exchange Commission.

Thanks to the hard work of many, including my cosponsor of this amendment, Senator SHELBY, and Senator GRASSLEY, the lead Republican sponsor of the bill, we have come up with a compromise provision. Initially, on the amendment we were going to offer, Senator GRASSLEY raised some very valid points, and we have been working in the last 2 days to come to an agreement, and I am proud to say we have.

This amendment provides $20 million for SEC enforcement. It would also give an additional $1 million to the SEC's Office of Inspector General. I am pleased to have played a role in putting together this package which will ultimately benefit the American public through safer markets and better policing of our financial system.

The authorization to the SEC is necessary for fighting exactly the kind of fraud that is covered by this bill. Leaving the SEC out of this bill is a little like fighting a war without the marines. The SEC is often the first line of enforcement before the criminal authorities get involved.

The SEC staffing decreased by 10 percent from 2005 to 2007. The agency has only begun to recover from these decreases. It is understaffed by more than 115 employees.

Shockingly, the SEC's technology budget, the budget that determines the agency's ability to analyze what went wrong in the markets and who caused it, is still only 50 percent of what it was in 2005.

We need to pass this bill now, and we need to adopt this amendment now. Literally, every day there is a new story about a new fraud that robbed guileless consumers of millions, sometimes billions, of dollars. Our authorizations for prosecutions after the S&L crisis, which I played a role in when I was in the House of Representatives, resulted from around 600 convictions and $130 million in ordered restitution between 1991 and 1995.

So far, even while the FBI is working on 2,000 mortgage fraud cases and while the SEC has opened more than three dozen investigations into subprime-backed securities, we have not provided law enforcement with the additional funds to put the bad guys before the courts and in jail, even though white-collar enforcement by the Federal Government has been dangerously depleted.

I want to point perhaps to one of the most high profile fraud cases in the history of our country—a case that was not brought soon enough—to explain why the SEC needs help, even though it also deserves criticism and even outrage for their previous actions. This is, of course, the case of Bernard Madoff and the tens of billions of dollars he stole from sophisticated and unsophisticated investors alike.

We don't know all the facts yet, but all signs point to some kind of dereliction of duty at the SEC. When we find out what went so horribly wrong, we will figure out how to fix it. But this much we know: The SEC receives hundreds of thousands of tips a year about investment fraud. We don't know why the SEC didn't catch on to the complaints of at least one brave whistleblower, Harry Markopolos, and none of us here would ever excuse it. We can acknowledge, though, that the SEC does not have sufficient technical and human resources to assess sophisticated trading patterns, complex financial instruments, and risk factors in the marketplace. When a complaint comes in, even a detailed complaint, such as the one received from Mr. Markopolos, they did not effectively triage it.

The SEC's budget has barely kept up with inflation and cost of living adjustments. It is not clear whether budget cuts caused them to let Madoff fall through the cracks, but certainly budget increases wisely spent—and I have faith that the new Chair will certainly do that—will help prevent future Madoffs from happening.

One of the things the SEC wants to do with the money we provide here is to hire people with specialized industry skills, develop systems for nationwide data centers——

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. SCHUMER. I ask unanimous consent for 2 more minutes.

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

Mr. SCHUMER. One of the things the SEC wants to do with this money is to hire people with specialized industry skills, develop systems for nationwide

data searches based on tips and complaints, and include their risk modeling involving market data and intelligence.

It is incredible the chief regulator of the most sophisticated economy in the world does not have this capability. Let's help get the right cops on Wall Street and then get them the resources they need to fight crime. Everyone has to do more with less these days, but I am not in favor of less resulting in letting bad guys go free.

I thank my colleague, Senator GRASSLEY. As I said, the compromise we have come up with I think is fair because it both beefs up the SEC and deals with Senator GRASSLEY's concerns related to the inspector general. I hope that at some point—we are still awaiting a letter from the SEC—we can ask unanimous consent to move this amendment forward. It has bipartisan support.

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

Mr. KAUFMAN. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself, Mr. SHELBY, Mr. DODD, Mrs. FEINSTEIN, and Mr. GRAHAM, proposes an amendment numbered 1006.

Mr. SCHUMER. I ask unanimous consent that the amendment be considered as read.

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

The amendment is as follows:

(Purpose: To provide additional funding to the SEC to use in enforcement proceedings)

At the appropriate place in section 3, insert the following:

(—) ADDITIONAL APPROPRIATIONS FOR THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $20,000,000 for each of the fiscal years 2010 and 2011 for investigations and enforcement proceedings involving financial institutions, including financial institutions to which this Act and amendments made by this Act apply.

(2) INSPECTOR GENERAL.—There is authorized to be appropriated to the Securities and Exchange Commission, $1,000,000 for each of the fiscal years 2010 and 2011 for the salaries and expenses of the Office of the Inspector General of the Securities and Exchange Commission.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, are we now back on the Kyl amendment?

The PRESIDING OFFICER. We are, but the Senator from Nevada is to be recognized.

Mr. LEAHY. Before that happens, I thank the Senator from New York and the Senator from Iowa. They have been meeting with me and my staff for weeks on this amendment. I am glad they were able to reach agreement on the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside, I call for regular order with regard to the Boxer amendment, and that I be allowed to call up a second-degree amendment, No. 1003.

Mr. LEAHY. Wait a minute. Reserving the right to object, would the Senator repeat that? That is not my understanding of what he was to do. Would the Senator repeat the unanimous consent request?

Mr. ENSIGN. For the Chamber's edification, I have an amendment filed as a first-degree and I also have a second-degree. I was going to call up the second-degree amendment.

Mr. LEAHY. That was not my understanding of what the Senator was asking, so I would object.

AMENDMENT NO. 1004

Mr. ENSIGN. Mr. President, I ask unanimous consent that the pending amendment be set aside and I call up amendment No. 1004, which is the first-degree amendment.

Mr. LEAHY. Reserving the right to object, and I shall not object, it is my understanding that we now have about 7 minutes or 8 minutes. Then we will go off this and go back to the Kyl amendment. I want to protect the Senator from Arizona on his amendment. Even though it is one I disagree with, I want to protect his right to have that.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 1004.

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

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

The amendment is as follows:

(Purpose: To impose certain requirements on public-private investment fund programs, and for other purposes)

At the end of the bill, add the following:

SEC. 5. PUBLIC-PRIVATE INVESTMENT PROGRAM.

(a) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of subsection (b):

(1) Creates a public-private investment fund.

(2) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(A) a public-private investment fund; or

(B) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(3) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(4) Guarantees any debt or asset for purposes of a public-private investment program.

(b) REQUIREMENTS.—Any program described in subsection (a) shall—

(1) impose strict conflict of interest rules on managers of public-private investment funds that—

(A) specifically describe the extent, if any, to which such managers may—

(i) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(ii) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(B) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(C) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(2) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(3) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury;

(4) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(5) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(6) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(7) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(A) the books, documents, records, and employees of each manager of a public-private investment fund; and

(B) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(8) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(9) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(10) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(11) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(12) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(13) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(c) REPORT.—Not later than 45 days after the date of the establishment of a program

described in subsection (a), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(d) DEFINITION.—In this section, the term ''public-private investment fund'' means a financial vehicle that is—

(1) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(2) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

Mr. ENSIGN. Mr. President, taxpayers and politicians alike have been too long in the dark about how the Treasury has been implementing this so-called TARP program—or as most people in the country know it, the bank bailout program. The President has proposed and Treasury Secretary Geithner has proposed a new toxic asset plan that could put hundreds of billions of dollars of the taxpayers' money at risk, so we need to do this right.

The special inspector general for TARP has stated that this new toxic asset buy-back program—called the Public-Private Investment Program—is ''inherently vulnerable to fraud, waste, and abuse.'' The special IG's report outlined a number of good recommendations that are necessary to protect the taxpayers and to ensure the integrity of this new program.

My amendment would simply require that the Treasury Department implement the recommendations from this special inspector general before allocating money under this new program known as the Public-Private Investment Program.

These requirements include, very simply, No. 1, imposing strict conflict of interest rules to prevent PPIP fund managers from inappropriately using the program to benefit themselves or their clients. Common sense. Makes sense. No. 2, mandate complete transparency of this program, including public disclosure of all transactions and the current valuation of all assets. And No. 3, requiring that the fund managers who manage this program have stringent investor screening procedures, at least as rigorous as typical know-your-customer procedures found at commercial banks or retail brokerage firms to ensure investors are legitimate.

Let's put these safeguards in place. These are common sense. We are all talking about a bill in front of us that eliminates fraud and abuse. Well, there is no bigger program that we have right now than the TARP program. We need to eliminate fraud and abuse. And when the special inspector general has said this new program is ripe with fraud and abuse, we ought to protect the taxpayers.

I urge my colleagues to adopt this amendment so that the Treasury Department fulfills President Obama's promise of bringing in transparency and open government. That is what he promised upon coming in. This particular amendment will help ensure that the American people have transparency and that their interests are protected, especially their dollars are protected with this new program that literally could run into the hundreds of billions of dollars.

With that, Mr. President, I yield the floor, and I urge all of my colleagues to support this amendment. Hopefully, we won't get blocked on having a vote on this amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I assume the Banking Committee will talk about the amendment of the Senator from Nevada.

If I could have the attention of the Senator from Nevada, if his staff would allow me to have the attention of the Senator from Nevada for a moment, I realize we are merely constitutional impediments to the staff. I hate to interfere.

Again, this is one of a series of amendments that is not at all within the jurisdiction of the Judiciary Committee. I find it an interesting amendment, but it is within the jurisdiction of the Banking Committee. I was hoping, since there is going to be a banking bill next week, that some of these banking amendments would actually go on the Banking bill and have Judiciary amendments on the Judiciary bill. And I would assume that the discussion will be carried out by Senators DODD and SHELBY of the Banking Committee, in that there is no relationship at all to the Judiciary Committee bill.

I would add to that, of course, that the Senator from Nevada has an absolute right to bring up anything. Someone can bring up something on agriculture and price supports, I suppose. But I wish we could keep it to Judiciary matters.

Mr. President, am I correct we are now back on the Kyl amendment?

The PRESIDING OFFICER. The Senate is on the Kyl amendment.

Mr. LEAHY. I thank the Chair, and I suggest the absence of a quorum.

Mr. ENSIGN addressed the Chair.

Mr. LEAHY. I withhold that request for the Senator from Nevada.

AMENDMENT NO. 1000

Mr. ENSIGN. Mr. President, I call for regular order on the Boxer amendment.

The PRESIDING OFFICER. The amendment is pending.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I thought the Kyl amendment was pending by unanimous consent.

The PRESIDING OFFICER. The Kyl amendment was pending, but the Senator has called for regular order.

Mr. ENSIGN. Mr. President, do I have the floor?

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 1003 TO AMENDMENT NO. 1000

Mr. ENSIGN. Mr. President, I call up as my second-degree amendment No. 1003.

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

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. ENSIGN. I call up amendment No. 1003.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum. Will the Senator give up the floor?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. ENSIGN] proposes an amendment numbered 1003 to amendment No. 1000.

The amendment is as follows:

(Purpose: To impose certain requirements on public-private investment fund programs, and for other purposes)

After page 2, line 20, add the following:

(f) PUBLIC-PRIVATE INVESTMENT PROGRAM.—

(1) IN GENERAL.—Any program established by the Secretary of the Treasury or the Board of Directors of the Federal Deposit Insurance Corporation that does any of the following shall meet the requirements of paragraph (2):

(A) Creates a public-private investment fund.

(B) Makes available any funds from the Troubled Asset Relief Program established under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.) or the Federal Deposit Insurance Corporation for—

(i) a public-private investment fund; or

(ii) a loan to a private investor to fund the purchase of a mortgage-backed security or an asset-backed security.

(C) Employs or contracts with a private sector partner to manage assets for a public-private investment program.

(D) Guarantees any debt or asset for purposes of a public-private investment program.

(2) REQUIREMENTS.—Any program described in paragraph (1) shall—

(A) impose strict conflict of interest rules on managers of public-private investment funds that—

(i) specifically describe the extent, if any, to which such managers may—

(I) invest the assets of a public-private investment fund in assets that are held or managed by such managers or the clients of such managers; and

(II) conduct transactions involving a public-private investment fund and an entity in which such manager or a client of such manager has invested;

(ii) take into consideration that there is a trade off between hiring a manager with significant experience as an asset manager that has complex conflicts of interest, and hiring a manager with less expertise that has no conflicts of interest; and

(iii) acknowledge that the types of entities that are permitted to make investment decisions for a public-private investment fund may need to be limited to mitigate conflicts of interest;

(B) require the disclosure of information regarding participation in and management of public-private investment funds, including any transaction undertaken in a public-private investment fund;

(C) require each public-private investment fund to make a certified report to the Secretary of the Treasury that describes each transaction of such fund and the current value of any assets held by such fund, which report shall be publicly disclosed by the Secretary of the Treasury

(D) require each manager of a public-private investment fund to report to the Secretary of the Treasury any holding or transaction by such manager or a client of such manager in the same type of asset that is held by the public-private investment fund;

(E) allow the Special Inspector General of the Troubled Asset Relief Program, access to all books and records of a public-private investment fund;

(F) require each manager of a public-private investment fund to retain all books, documents, and records relating to such public-private investment fund, including electronic messages;

(G) allow the Special Inspector General of the Troubled Asset Relief Program, the Secretary of the Treasury, and any other Federal agency with oversight responsibilities access to—

(i) the books, documents, records, and employees of each manager of a public-private investment fund; and

(ii) the books, documents, and records of each private investor in a public-private investment fund that relate to the public-private investment fund;

(H) require each manager of a public-private investment fund to give such public-private investment fund terms that are at least as favorable as those given to any other person for whom such manager manages a fund;

(I) require each manager of a public-private investment fund to acknowledge a fiduciary duty to the public and private investors in such fund;

(J) require each manager of a public-private investment fund to develop a robust ethics policy that includes methods to ensure compliance with such policy;

(K) require stringent investor screening procedures for public-private investment funds that include know your customer requirements at least as rigorous as those of a commercial bank or retail brokerage operation;

(L) require each manager of a public-private investment fund to identify for the Secretary of the Treasury each beneficial owner of a private interest in such fund; and

(M) require the Secretary of the Treasury to ensure that all investors in a public-private investment fund are legitimate.

(3) REPORT.—Not later than 45 days after the date of the establishment of a program described in paragraph (1), the Special Inspector General of the Troubled Asset Relief Program shall submit to Congress a report on the implementation of this section.

(4) DEFINITION.—In this subsection, the term ''public-private investment fund'' means a financial vehicle that is—

(A) established by the Federal Government to purchase pools of loans, securities, or assets from a financial institution described in section 101(a)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211(a)(1)); and

(B) funded by a combination of cash or equity from private investors and funds provided by the Secretary of the Treasury, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 986

Mr. LEAHY. Mr. President, I understand that the Senator from Arizona and I have 2 minutes equally divided between us before the vote?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I know Senator KYL is on the way. I will say what I said before, when he was standing on the floor. I, along with Senator GRASSLEY, strongly oppose his amendment because the False Claims Act is so well put together, has a balanced approach of providing incentives for whistleblowers, and has recovered more than $22 billion for the Treasury. That is why Senator GRASSLEY and I oppose the amendment by the Senator from Arizona. Awards to whistleblowers have to be approved by judges, so there is a mechanism to handle excessive awards.

When we have something like the False Claims Act that is working as well as it is—as I said, it is one of the few things that has made money for the Federal Government. So far it has made $22 billion for the U.S. taxpayers. I hate to interfere with something that is working.

My time is up. The Senator from Arizona is on the Senate floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, the purpose of this amendment is to provide a limitation of $50 million for the recovery of the whistleblowers who bring actions that result in recovery for the Government of money that otherwise would have been lost due to fraud. There needs to be a reward, and most of these whistleblowers, frankly, are not looking for money. But it seems to me, from 1986 when we did this, we never contemplated these multibillion-dollar settlements or awards, and to provide up to 30 percent of that to the people who bring the action is too much. We could save the Federal Government a lot of money if we put in a modest limitation. I would argue a $50 million award per case is a pretty liberal award. My amendment would cap the award at $50 million, and I ask my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I ask unanimous consent for 15 seconds.

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

Mr. GRASSLEY. Mr. President, I would like to point out, as I did in my debate, that we have a much larger False Claims Act bill pending in the Judiciary Committee. I think what the Senator from Arizona brought up is a legitimate subject for discussion, but it ought to be discussed in the wider global issue of the False Claims Act and not in a fraud bill where we are just trying to make some very short changes in the False Claims Act.

I ask my colleagues to vote against the Kyl amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been previously ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Illinois (Mr. DURBIN), the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Kansas (Mr. ROBERTS).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted: ''yea.''

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

The result was announced—yeas 31, nays 61, as follows:

[Rollcall Vote No. 162 Leg.]

YEAS—31

Barrasso	Cornyn	McCain
Bennett	DeMint	McConnell
Bingaman	Ensign	Murkowski
Bond	Enzi	Sessions
Brownback	Gregg	Shelby
Bunning	Hatch	Specter
Burr	Hutchison	Thune
Chambliss	Inhofe	Vitter
Coburn	Isakson	Wicker
Cochran	Kyl	
Corker	Lugar	

NAYS—61

Akaka	Graham	Nelson (NE)
Baucus	Grassley	Nelson (FL)
Bayh	Hagan	Pryor
Begich	Harkin	Reed
Bennet	Inouye	Reid
Boxer	Johanns	Risch
Brown	Johnson	Sanders
Burris	Kaufman	Schumer
Byrd	Kerry	Shaheen
Cantwell	Klobuchar	Snowe
Cardin	Kohl	Stabenow
Carper	Landrieu	Tester
Casey	Leahy	Udall (CO)
Collins	Levin	Udall (NM)
Conrad	Lincoln	Voinovich
Crapo	Martinez	Warner
Dodd	McCaskill	Webb
Dorgan	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Gillibrand	Murray	

NOT VOTING—7

Alexander	Lautenberg	Rockefeller
Durbin	Lieberman	
Kennedy	Roberts	

The amendment was rejected.

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

The motion to lay on the table was agreed to.

VOTE EXPLANATION

Mr. DURBIN. Mr. President, on vote No. 162, I was unavoidably detained due to my representation of the Senate at the annual Day of Remembrance Ceremony.

Had I been present for the vote, I would have voted ''nay'' on Kyl amendment No. 986 to the Fraud Enforcement and Recovery Act of 2009.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DORGAN. Will the Senator yield?

Mr. DODD. I will.

Mr. DORGAN. I ask unanimous consent to be recognized following the remarks of the Senator from Connecticut.

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

Mr. LEAHY. Madam President, if the Senator will yield for a moment, this bill would have been easily finished last night, but I understand, under the Senate schedule, we were unable to continue at that time. I hope we will finish soon so that we don't have to spend a great deal more time. We have had a large number of amendments that are basically Banking Committee amendments, and other committees, not the Judiciary Committee. We should come back to realizing that this is a Judiciary bill. Every one of us says we are against those who are stealing life savings and money set aside for kids' colleges and stealing people's homes. We all say we would love to put them in jail. We will not do it until we get the bill through.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. HATCH. Madam President, if the Senator will yield for a unanimous consent request.

Mr. DODD. I will.

Mr. HATCH. I ask unanimous consent that I be permitted to call up an amendment following the remarks of Senators DODD and DORGAN.

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

Mr. DODD. Madam President, the Fraud Enforcement and Recovery Act of 2009 comes out of the Judiciary Committee. Senators LEAHY and GRASSLEY and their colleagues have worked hard to put together a strong bipartisan bill to deal with fraud. In fact, I am told that for every dollar we invest in this effort, there is roughly $15 that would accrue to the benefit of American taxpayers. I commend them for their efforts on this important piece of legislation.

However, this Judiciary Committee bill is sort of turning into a Banking Committee bill as most of the amendments being offered are within the jurisdiction of the Banking Committee. I understand the appetite of my colleagues to address some of these questions. Some of them are very good ideas, ones that I will mention in a moment and that I can support. Others are very complicated and have are technical issues, but they also could do great damage to the effort we are all principally engaged in and desirous of achieving, and that is to restore confidence and optimism in order to get our economic system back on its feet.

I thought it might be valuable, as chairman of the Banking Committee, to run through the amendments that affect the jurisdiction of the Banking Committee and to share some of my observations on ones I would be willing to support, which means we could possibly have voice votes on them and accept them as part of this bill, and others which are of concern to me and which I would oppose for reasons I will briefly explain.

On a positive note, Senator COBURN has offered amendment No. 983. This amendment would require the examination of what happened with the GSEs, Fannie Mae, Freddie Mac, the Federal Home Loan Banks.

Yesterday, we adopted a proposal, offered by Senators ISAKSON, CONRAD, and myself, to establish a commission to examine thoroughly how we got into the situation we find ourselves in. There has been a debate about whether we ought to do that with an outside commission or within the Congress. There is a legitimate debate about that. My colleague from North Dakota proposed a select committee, which was adopted last evening. Whether we adopt the select committee approach or an outside commission, in either case, the GSEs would be a part of that examination.

I make the case that the amendment of the Senator from Oklahoma may be duplicative or unnecessary. But rather than have an extended debate about that, I recommend we accept the amendment. The issues surrounding the GSEs are clearly going to be a part of the look-back. So rather than have extended debate about that, let's just accept the amendment and move on. Then the commission or the select committee can make those specific determinations. I urge that a voice vote be acceptable on that issue.

Senator KOHL has offered amendment No. 990. That amendment is designed to offer additional protections to older Americans from misleading and fraudulent marketing practices within the financial area. I commend my colleague for his amendment. We all know elderly Americans are some of the most—if not the most—vulnerable to the marketing scams that go on, either through direct mail operations or telemarketing operations. People who are alone and vulnerable in many ways are incredibly susceptible to some egregious marketing techniques. The Senator has offered an amendment that would provide additional security for those in retirement, and we can all applaud him for that effort. The amendment has been endorsed by the North American Securities Administrators, financial planners, the Consumer Federation of America, and many others. I commend Senator KOHL for that amendment and again urge my colleagues to accept it, if that is acceptable to the Senator from Wisconsin.

Senator SCHUMER has offered amendment No. 1006 which would add $20 million of authorization to the Securities and Exchange Commission in funding for 2010 and 2011. All of us can appreciate the need for additional support for the Enforcement Division. Americans are painfully aware of the Madoff scandal as well as the Stanford Ponzi schemes. We have had these agencies before our Banking Committee with hearings on how that happened, whether or not people were doing their jobs. Senator SCHUMER has suggested we provide additional resources.

Earlier this year, I requested, along with members of my committee, a billion dollars a year for the SEC in 2010, a level which we still will not reach with this additional $20 million. Many of us agree that the Securities and Exchange Commission has to have the tools and the staff to do the job. There are an awful lot of scams going on. We don't want to hear about Americans being victimized by them any longer. While there is no guarantee that with additional resources and personnel we will stop all of them, we certainly know that with additional resources and tools, we can minimize the problems that emerged with the Madoff and Stanford scandals. Senator SCHUMER has offered a very good amendment, and I urge that it be accepted.

Those three amendments are ones we can accept, and hopefully we will in order to assist our colleague from Vermont and others in moving this bill along.

Let me mention a couple of amendments with which I have some difficulty.

First, the Coburn amendment No. 982. This amendment would authorize the use of TARP funds to cover the cost of this bill. I have many problems with this amendment. First, there is a point of order against this amendment. But aside from the point of order, the purpose of TARP, which Congress passed last year, was to provide assistance to unlock our frozen financial markets in order to provide credit for small businesses; to purchase securities backed by loans from small businesses; to provide capital to banks so they can continue to make loans, although not many of them are doing so, but that was the idea behind the program; and to fund the Making Home Affordable Programs, which modifies mortgage loans, either reducing principal or interest, so that we can mitigate the 10,000 people a day who are entering into foreclosure and for whom modifying those loans is critically important. If we start going around and deciding we will use TARP funds for every idea and every bill that comes to the floor we will deprive the Treasury and others of the tools necessary to get our economy moving again. If we start spreading TARP resources in areas that have little or nothing to do with the underlying economic crisis we will be taking a step in the wrong direction. I urge my colleagues to vote against amendment No. 982 for those reasons. If we start down this path, it will be more and more difficult to get our economy back on its feet again. I know that many of my colleagues disagreed with the TARP, but that is what Congress adopted. There were those who objected to using TARP money for the auto industry and believed that was wrong. There may be other areas where some have disagreed with the use of

TARP funds. But to have it become a funding mechanism for every bill that comes along would undermine the very purpose of those programs.

The next two amendments I urge my colleagues to pay attention to and I believe are matters of concern are the amendments from our colleague from Louisiana, Senator VITTER, No. 991, and Senator DEMINT from South Carolina, amendment No. 994. Let me explain both of the amendments and why I have concerns about each of them.

The Vitter amendment has to do with the issue of warrants. It is a complicated subject matter, but let me briefly explain it. What would be the effect of this amendment? This amendment is basically a favor to banks and minimizes help for taxpayers. That is what it comes down to. This amendment would take away the discretion of regulators and the Treasury to impose additional capital requirements or any other requirements on a TARP recipient that could benefit taxpayers or protect the financial system. Under this amendment, the financial institutions would have the discretion to act on their own in areas where they currently can not. It is quite clear that when they receive, in many cases, billions of dollars in taxpayer money to shore up their position, to salvage these institutions, that to then turn around and allow them unilaterally to make decisions which could harm the taxpayer and cause even further delay of financial system recovery is exactly the wrong direction in which we ought to be going.

The amendment would allow the TARP recipient, rather than Treasury, to determine when its warrants would be repurchased. The amendment would not permit Treasury's discretion to determine when warrants may be executed and would allow the recipient to indefinitely defer exercise of the warrants. In addition, it could harm the taxpayers by eliminating the requirement that Treasury pay market price for these warrants.

So under this amendment, we are reducing the power of the regulators at the very critical moment we want them to exercise that influence rather than allow the recipients themselves to allow what is in their best interest. They are the ones who have received billions of taxpayer money. It seems to me having a leash on all that and allowing the best decision to be made on behalf of the overall economy is what we ought to be doing.

The amendment would empower the banks, which may act in their individual interests—and I understand that—but having received so much taxpayer money, it seems to me we ought to make sure we are not going to allow that unilateral self-interest to trump the interests of the larger concern; and that is the American taxpayer and the overall restoration of our economic well-being.

So I say respectfully to my colleague, and a member of our committee, Senator VITTER, this amendment, I think no matter how good his intentions, may actually do a lot more damage and harm if it were to be adopted at this critical moment when we see that glimmer of light that our economy is beginning to show some signs of recovery. This amendment could set us back at the very moment we may be heading in the right direction.

The last amendment I will address at this moment is one offered by our colleague from South Carolina, Senator DEMINT. I am not in any way disparaging the intentions of my colleagues here. I have great respect for all whom I serve with, and their intentions, I am sure, are motivated by their own framework of how they see these issues. But this amendment concerns me as well in a similar vein. It is a different subject matter, but a similar approach.

Here is what I mean by that. The DeMint amendment also allows a lot of discretion to be left in the hands of the financial institutions, the institutions which have received, of course, tremendous support from the American taxpayer. This amendment would deprive the Treasury of the ability to convert preferred stock to common stock. That conversion could allow banks to basically shore up their balance sheets. That is what some are considering to do. This would limit their ability to do that. It would say you could not do that. You could not have that kind of conversion.

If we limit that ability to make that kind of a discretionary decision, then this could mean that more small business lending would be curtailed, more mortgage lending would be curtailed, more lending for commercial real estate, all of which may be absolutely critical in the coming weeks.

Preferred stock does not increase bank capital in a similar manner as common shares do. The Senator's amendment could lead to the very real consequence that lending is constricted significantly more than we see currently. That would mean more businesses closing for lack of capital, which means more job losses across our country. It means more foreclosures of homes. Madam President, as I mentioned earlier, 10,000 homes a day is a staggering number already. I cannot imagine watching that number increase further. Yet the adoption of that amendment could achieve that result. It could also mean foreclosed homes staying on the market longer, another result that we do not want to see.

In short, the amendment means a lot more economic hardship. Some TARP recipients may not be able to pay a dividend in connection with preferred shares. It would be counterproductive to deprive the Treasury of their discretion to convert its preferred shares to common shares under those circumstances. At a very time you want to shore up balance sheets by allowing for that conversion, this amendment would prohibit that conversion. It seems to me to constrict that kind of action is exactly the wrong direction to be going in at this very moment. The Government's upside potential could be much greater with common shares in some instances, and to deny the ability of our Treasury and others to make that kind of conversion I think could be harmful.

Allowing conversion from preferred shares to common shares would permit the Treasury to provide additional flexibility and assistance to financial institutions and, maybe most importantly, would limit the use of additional taxpayer funds. Let me emphasize that point. I think we are all painfully aware that with about $100 billion left of TARP funds, if you restrict the ability to move from preferred shares to common shares, you increase the likelihood of having to come back here. I do not know of a single Member of this body who welcomes coming back here seeking additional TARP funds. That may very well occur, but it will occur a lot more rapidly if you adopt the DeMint amendment.

So while, again, I respect my colleague from South Carolina, a member of our committee—and I do not question at all his motivations in all of this—I say in this case as well, as with the Vitter amendment, you are restricting the ability of the people we have charged with managing this. If we end up having Congress—535 Members of Congress—deciding on a daily basis how to micromanage this program, and with all due respect to my colleagues, this is above our pay grade in many ways. We in Congress do a lot of things well. Micromanaging this program, such as these two amendments suggest, I think sends us in the wrong direction.

Again, I urge my colleagues on both sides of the aisle to please look at these two amendments and understand the potential danger were they to be adopted. It would certainly curtail our ability, in my view, to engage in exactly the activities that need to be at the top of our agenda: loosening up that credit market; getting a hold of the foreclosure issue, and trying to go in the opposite direction of where it is going today; making it possible for small businesses to get back on their feet; and allowing banks to start lending again in this country. If you adopt these two amendments you achieve the opposite result.

So I urge, on both the Vitter amendment and the DeMint amendment, they be rejected. And for the reasons I offered on, the second Coburn amendment, that are that we cannot turn the TARP program into a slush fund for every program that comes through here, as it was specifically designed to deal with the economic crisis, and that ought to be the purpose for which these funds are used. I urge my colleagues to reject that amendment as well.

Unfortunately, Senator LEAHY, the chairman of the Judiciary Committee, has had his bill turn into a Banking Committee bill with all of these

amendments. So I felt obligated in some sense to come over and share with my colleagues at least my observations on these amendments: the ones I think we can accept—and I applaud my colleagues who have offered amendments that I think are significant and can contribute; even the first Coburn amendment, which I disagree with because you do not need it as a result of the earlier amendments which we adopted cover the issues of his amendment. But I think all of us recognize that the GSES issues have to be part of that look-back, so I would find it difficult to oppose his amendment. Therefore, I urge my colleagues to support that amendment, along with the Kohl amendment and the Schumer amendment that have been offered.

With that, I see my colleagues from North Dakota and Utah who are anxious to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, I thank my colleague from Connecticut. I also thank my colleague from Utah for his forbearance so that I might make a few comments. I appreciate the courtesy of Senator HATCH.

Madam President, I ask unanimous consent that my statement be printed in the morning business section of today's RECORD.

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

(The remarks of Mr. DORGAN are printed in today's RECORD under ''Morning Business.'')

AMENDMENT NO. 1007

Mr. HATCH. Madam President, I ask unanimous consent that the pending amendment be set aside and I call up amendment No. 1007.

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

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1007.

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

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

The amendment is as follows:

(Purpose: To prohibit the Department of Labor from expending Federal funds to withdraw a rule pertaining to the filing by labor organizations of an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959)

At the end, insert the following:

SEC. ___. TRANSPARENCY IN ANNUAL FINANCIAL REPORTS.

(a) FINDINGS.—Congress finds the following:

(1) The American workers who contribute union dues deserve to have transparency and accountability in the management of their unions.

(2) Since 2001, investigations of union fraud have resulted in more than 1,000 indictments, 929 convictions, and restitution in excess of $93,000,000.

(3) A new rule (referred to in this subsection as the ''transparency rule'') to require union management to disclose more information about sales and purchases of assets, and disbursements to officers and employees, among other things, was set to take effect on April 21, 2009, after a previous delay affording reporting entities more time to prepare to comply.

(4) The Obama Administration has set a goal for itself to be the most open and transparent administration in the history of the Nation.

(5) On April 21, 2009, the Department of Labor issued—

(A) a final rule providing for a further delay of the transparency rule; and

(B) a proposed rule to withdraw the transparency rule.

(6) The transparency rule would have been a key tool in the battle against fraud, discouraging embezzlement of the money of union members and making money harder to hide, and would have provided great sunlight and transparency to allow members to know how their dues were being spent.

(7) The Department of Labor's actions are in direct contradiction to everything the Obama Administration purports to stand for.

(b) PROHIBITION.—The Secretary of Labor may not expend Federal funds to withdraw the rule issued by the Secretary of Labor entitled ''Labor Organization Annual Financial Reports'', 74 Fed. Reg. 3678 (January 21, 2009).

Mr. HATCH. Madam President, I rise to propose an amendment that will ensure transparency and prevent egregious cases of fraud against American workers. My amendment is very simple, and I think it is compelling. All it does is prevent the administration from rescinding current regulations that require transparency in the way that union management chooses to spend the hard-earned dues collected from their members. This amendment is specifically directed at preventing the weakening of the Department of Labor's Office of Labor-Management Standards—or OLMS it is called—which is the sole Federal agency tasked with protecting the interests of American workers who pay union dues.

Under current Federal law, the OLMS requires financial reporting that ensures the transparency of how labor union management spends labor union dues in the area of compensation of labor leaders, the purchasing of union assets, and additional information regarding various union receipts. This law requires union leaders to disclose how members' money is spent and provides protection from fraud, waste, and abuse.

Public opinion and our Nation's dire economic conditions have driven us to require banks, corporations, and even Presidential administrations to do business in the light of day—in full transparency. Therefore, the same expectation of transparency should apply to labor unions. The previous administration took steps to do that in 2003 by updating reporting requirements and forms. These updates allowed the electronic filing of disclosures on the Internet. The Office of Labor-Management Standards—OLMS—was about to implement a second update that would require information about compensation to union officers. This revision also would have required the disclosure of transactions involving union assets.

Unfortunately, as was reported this year in the April 21 Federal Register, the Labor Department and Labor Secretary Hilda Solis have delayed the effective date of these revisions. Furthermore, on this same date, the Labor Department has published a notice that seeks to withdraw the rule entirely. By doing this, Secretary Solis has effectively neutralized OLMS in its mission to ensure the transparency in the way labor unions spend the hard-earned money of their Members. Ironically, this is being done by an administration that has told the American public that transparency and change has returned to Washington. It would appear to me that the Labor Department did not get that memo. I feel confident President Obama would be on my side on this, that he would want the transparency. It is in the best interests of union workers. It protects them from fraud. It protects their dues as they put them in there. Unions can run the unions just as businesses run businesses, but they ought to do it honestly. That is why these regulations are so important. That is why this amendment is so important.

There should not be any debate as to the effectiveness of the OLMS. From 2001 through 2007, OLMS investigations resulted in 1,000 indictments. The Office of Labor-Management Standards fraud investigations between 2001 and 2007 resulted in 1,000 indictments and convictions of 929 of those indicted. The funds recovered that were illegally taken amounted to $93 million. Think about that: $93 million in restitution was paid back to the victims of those crimes. I am sure I need not remind any Member of this body that union dues are seldom voluntarily given. Men and women who join these unions are often compelled to pay as part of their employment agreement. Union funds are also comprised of pension funds, which have occasionally been targeted by organized crime and used to underwrite mob activities. I know. I was a member of the AFL–CIO. I went through a formal apprenticeship. I paid dues, and I became a journeyman metal lather, a skilled trade, back in those years when I was working in construction.

Union funds, as I say, are also comprised of pension funds, which sometimes are targeted by organized crime and used to underwrite mob activities. When I was chairman of the Labor Committee, we did a lot to try and overcome these things, but it has never been done better than between 2001 and 2007. From October 2000 through May 2007, in the State of New York alone, the OLMS conducted 334 audits and obtained 87 indictments, resulting in 82 convictions. That is a high constriction rate, showing this is not some little itty, bitty problem. This, in turn, resulted in the recovery and restitution of $39.6 million. In Illinois, the OLMS indicted 44 persons in connection with fraudulent activity involving union funds, resulting in 42 convictions.

These are statistics we can all be proud of. OLMS investigations produced 1,000 indictments and obtained 929 constrictions—a 92.9-percent conviction rate.

We are debating legislation that provides more investigators and remedies to prevent fraud and enforce Federal laws. The OLMS enforces the Labor Management Reporting Disclosure Act, a bipartisan law with roots back to another former Senator who was young, inspiring, and went on to become President: John F. Kennedy. It was then-Senator Kennedy who inserted into this act the union members' bill of rights. It is the union members who are entitled to transparency. The whole world is entitled to transparency in these instances as well. It is the mission of the OLMS to ensure that union business is conducted in the light of day, with its members'—and that is plural—interests at heart.

It is for this reason that I have risen to propose this amendment and I ask my colleagues for their support and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second at this time.

Mr. HATCH. Well, then I will ask for the yeas and nays at the appropriate time.

Mr. REID. Madam President, I ask unanimous consent that the call of the quorum be terminated.

The PRESIDING OFFICER. The Senate is not in a quorum call.

Mr. HATCH. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? This time there is a sufficient second.

The yeas and nays are ordered.

Mr. HATCH. I thank the majority leader for his kindness and, of course, we are willing to have this come up whenever the majority leader and the minority leader determine.

I yield the floor, and 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. SCHUMER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 1006

Mr. SCHUMER. I ask unanimous consent that my amendment No. 1006 be called up.

The PRESIDING OFFICER. The amendment is pending.

Mr. SCHUMER. Madam President, I ask unanimous consent that the amendment be passed.

The PRESIDING OFFICER. Is there any further debate on this issue?

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

The amendment (No. 1006) was agreed to.

Mr. SCHUMER. Madam President, I wish to note to the body that this is the SEC amendment that adds $20 million for new SEC staff and investigators and another $1 million for the IG within the SEC. This was the one part of this very fine piece of legislation that wasn't included. Of course, if you are looking at financial fraud—the kind Bernie Madoff and so many others did—beefing up the SEC and making sure they are much tougher and more focused, as the technology parts of this amendment will allow, is what we need.

Senator GRASSLEY wanted to make sure the SEC avoided past mistakes under its old leadership and made some very useful suggestions. That is why the SEC wasn't included originally. We agreed on those. I wish to thank him, Senator LEAHY, as well as Senator SHELBY, who has been my cosponsor for passing this legislation.

I also wish to thank our new chair at the SEC, Chair Schapiro. Mary Schapiro is a breath of fresh air within the SEC. She is trying to shake it up and focus on the kinds of mistakes we have seen in the past where the whistleblower came before the SEC and gave them the goods on Madoff and they passed it by. It won't happen again. This amendment should help make that happen and strengthen this fine legislation.

I yield the floor.

EXECUTIVE POWER

Mr. SPECTER. Madam President, I ask unanimous consent to proceed for up to 10 minutes as in morning business.

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

Mr. SPECTER. I have sought recognition to introduce three bills relating to limiting Executive power. Because of the past period of time since 9/11, we have seen enormous expansion of Executive power. We have seen the President, during President George W. Bush's administration, use signing statements extensively. We have seen President Obama use a signing statement already in his short tenure, which, in effect, nullifies what the Congress has done.

The Constitution is plain that there is a presentment of legislation to the President and he either signs it or vetoes it. What we have found is that Presidents are now cherry-picking the parts they like and the parts they don't like. So I am submitting legislation on Presidential signing statements.

The second issue of concern involves the immunity for the telephone companies which would deprive Federal jurisdiction for some 40 cases. I believe telephone companies have been good citizens in providing very important information. I believe there is a way to maintain the jurisdiction of the Federal courts and still not subject the telephone companies to litigation or possible damages by having the Government substituted as the party defendant. I am introducing legislation on that subject.

Third, I am introducing legislation that would establish a requirement that the Supreme Court of the United States take jurisdiction on all appeals involving the terrorist surveillance program. That program has caused a great deal of controversy because of the issue as to whether the President has authority under article II to ignore the explicit provisions of the Foreign Intelligence Surveillance Act. The terrorist surveillance program, was declared unconstitutional by a Federal court in Detroit. An appeal taken to the Sixth Circuit was dismissed for reasons of lack of standing. The forceful dissenting opinion in that case showed that there was sufficient basis for standing—a very flexible judicial doctrine.

The Supreme Court of the United States denied certiorari, so at this point, we don't know whether the President's exercise of authority there under article II of the Constitution is correct. Certainly, if the President has that constitutional authority, it supercedes the statute. But that is a matter which should have been decided a long time ago by the Supreme Court, and the Supreme Court has avoided moving on that subject.

Today, I have an article I have offered on executive power. It appears today in the New York review of books, where I outline my intent to introduce these pieces of legislation. The article comes from a longer floor statement I had prepared. It has been reduced somewhat in size.

In the 7½ years since September 11, the United States has witnessed one of the greatest expansions of executive authority in its history, in derogation of the constitutionally mandated separation of powers. President Obama, as only the third sitting senator to be elected president in American history, and the first since John F. Kennedy, may be more likely to respect the separation of powers than President Bush was. But rather than put my faith in any president to restrain the executive branch, I intend to take several concrete steps, which I hope the new President will support.

First, I intend to introduce legislation that will mandate Supreme Court review of lower court decisions in suits brought by the ACLU and others that challenge the constitutionality of the warrantless wiretapping program authorized by President Bush after September 11. While the Supreme Court generally exercises discretion as to whether it will review a case, there are precedents for Congress to direct Supreme Court review on constitutional issues—including the statutes forbidding flag burning and requiring Congress to abide by Federal employment laws—and I will follow those.

Second, I will reintroduce legislation to keep the courts open to suits filed against several major telephone companies that allegedly facilitated the Bush administration's warrantless wiretapping program. Although Congress granted immunity to the telephone companies in July 2008, this

issue may yet be successfully revisited since the courts have not yet ruled on the legality of the immunity provision. My legislation would substitute the government as defendant in place of the telephone companies. This would allow the cases to go forward, with the government footing the bill for any damages awarded.

Further, I will reintroduce my legislation from 2006 and 2007—the Presidential Signing Statements Act—to prohibit courts from relying on, or deferring to, Presidential signing statements when determining the meaning of any act of Congress. These statements, sometimes issued when the President signs a bill into law, have too often been used to undermine congressional intent. Earlier versions of my legislation went nowhere because of the obvious impossibility of obtaining two-thirds majorities in each House to override an expected veto by President Bush. Nevertheless, in the new Congress, my legislation has a better chance of mustering a majority vote and being signed into law by President Obama.

To understand why these steps are so important, one must appreciate an imbalance in our ''checks and balances'' that has become increasingly evident in recent years. I witnessed firsthand, during many of the battles over administration policy since September 11, how difficult it can be for Congress and the courts to rally their members against an overzealous executive.

THE TERRORIST SURVEILLANCE PROGRAM—ACT I

As chairman of the Senate Judiciary Committee from 2005 to 2007, I led the effort to reauthorize and improve the 2001 USA PATRIOT Act, which was originally set to expire at the end of 2005. Indeed, after intensive bipartisan negotiations, the Judiciary Committee succeeded—to the surprise of most observers—in approving a revised bill by unanimous vote. The full Senate then approved the bill by unanimous consent, but the conference report negotiated with the House of Representatives faced stiffer opposition. Nevertheless, after days of floor debate, I awoke on December 16, 2005, fully expecting to finish Senate action on the long-delayed reauthorization.

So, I was startled—really shocked—to read the lead story in the New York Times that morning, titled ''Bush Lets US Spy on Callers Without Courts,'' which revealed that our intelligence agencies had been engaged in warrantless wiretapping since shortly after September 11, in flat violation of the Foreign Intelligence Surveillance Act—FISA—of 1978. This is James Risen and Eric Lichtblau, ''Bush Lets U.S. Spy on Callers Without Courts,'' the New York Times, December 16, 2005. The news caused the Senate to delay passage of the PATRIOT Act reauthorization for months. Senator CHARLES SCHUMER expressed the sentiments of many: ''I went to bed last night unsure of how to vote on this legislation. . . . Today's revelation that the Government listened in on thousands of phone conversations without getting a warrant is shocking and has greatly influenced my vote.'' More importantly, the disclosure in the Times launched a fierce debate about the extent of Presidential authority in the war on terror that has yet to be fully resolved.

That day, I assured my colleagues the reports would be a ''matter for oversight by the Judiciary Committee . . . a very high priority item.'' When Congress reconvened in January 2006, I made good on my promise: I held multiple hearings into the program the Times revealed, later dubbed the Terrorist Surveillance Program. As acknowledged by President Bush, this highly classified program launched in the weeks after September 11 purported to authorize the National Security Agency to intercept phone calls between terror suspects overseas and persons inside the United States. Critics like me argued that the President's program violated FISA. After all, the law declared the procedures set up by FISA to be the ''exclusive means'' by which such surveillance of telephone calls and other communications could be conducted. FISA also made criminal all domestic electronic surveillance designed to obtain foreign intelligence ''except as authorized by statute.'' Although the law defined limited exceptions in emergencies, reports in the press made it clear that none of them applied to the warrantless wiretapping that was done in the Terrorist Surveillance Program.

I recognized that, as administration supporters argued, the President might have inherent power to disregard FISA and to conduct unfettered foreign intelligence surveillance under article II of the Constitution, the section that defines his authority as Commander in Chief. I was not, however, sympathetic to the administration's further argument that Congress had implicitly authorized the President to carry out programs such as the Terrorist Surveillance Program when it authorized the use of military force against terrorists in September 2001.

I was also convinced that President Bush's failure to notify Congress of the secret program violated provisions of the National Security Act of 1947. That statute requires the President to ''ensure that the congressional intelligence committees are kept fully and currently informed of the intelligence activities of the United States.'' But the administration informed only eight legislators of the Terrorist Surveillance Program: the chairman and ranking members of the Senate and House Intelligence Committees, and the two top leaders in the majority and minority of both Houses, leaving out both me and Senator PATRICK LEAHY as chair and ranking member of the Judiciary Committee, despite the fact that when FISA was enacted in 1978, it went through both the Intelligence and Judiciary Committees. While the law explicitly permits notice to this limited ''Gang of 8'' for certain covert operations—such as efforts to influence political conditions abroad without disclosing the U.S. role—the Terrorist Surveillance Program did not fit this exception.

Indeed, those notified were very uneasy about the arrangement. Senator JAY ROCKEFELLER, then ranking member on the Intelligence Committee, sent a secret handwritten letter to the Vice President saying the administration's surveillance activities ''raised profound oversight issues'' on which, owing to the arrangement, ROCKEFELLER could not ''consult staff or counsel.'' A sealed copy of the letter had to be stored in a classified Senate area for over 2 years until knowledge of the Terrorist Surveillance Program became public. Once the story broke, Representative JANE HARMAN, who as ranking member of the House Intelligence Committee was another Gang of 8 member, informed President Bush that she believed ''the practice of briefing only certain Members of the intelligence committees violates the specific requirements of the National Security Act of 1947.''

I raised this issue in a January 24, 2006, letter sent to Attorney General Alberto Gonzales in advance of the first Judiciary Committee hearing on the Terrorist Surveillance Program. Gonzales replied:

> ''It has for decades been the practice of both Democratic and Republican administrations to inform only the Chair and Ranking Members of the intelligence committees about certain exceptionally sensitive matters.

The attorney general added that, according to the Congressional Research Service, the leaders of the intelligence committees had acquiesced in this practice. In my view, Gonzales's argument could appeal only to those unacquainted with the ways the executive branch has, in practice, dealt with the intelligence committees. Administrations of both parties have sometimes told the chair and ranking member that they have important information to disclose, but insisted that they will reveal this information only to some group within the committee and the top congressional leadership, such as the ''Gang of 8.'' In many cases, the offer is accepted as the only way of getting the information—at least in a timely manner.

To the extent the administration relied on such precedents to justify notifying only the ''Gang of 8,'' it should have informed me and Senator LEAHY as well. Indeed, administration officials briefed both of us on the Terrorist Surveillance Program when they later sought comprehensive FISA reform. It is quite glaring, then, that they neglected to brief us in 2005, even as we were considering reauthorization of the PATRIOT Act, which was central to the administration's counterterrorism efforts.

In the spring of 2006, new allegations about the government's surveillance

activities surfaced—not at congressional hearings, but again through leaks to the press. On May 11, 2006, USA Today reported that the National Security Agency had been ''secretly collecting the phone call records of tens of millions of Americans, using data provided by AT&T, Verizon and BellSouth.'' This is Leslie Cauley, ''NSA Has Massive Database of American's Phone Calls,'' USA Today, June 11, 2006. Although the records reportedly included only data like telephone numbers, rather than the contents of calls, the revelations stirred new controversy.

One month later, on June 22, the Chicago Sun-Times reported that AT&T had changed its privacy policy to make customer data a ''business record the company owns,'' one that ''can be disclosed to [the] government. . . .'' This is Associated Press, AT&T Says it Can Disclose Account Data on Net, TV Clients, Chicago Sun Times, June 22, 2006, at 25. I was very interested in the legal basis for this assertion of ownership and what relationship it had, if any, to the reported disclosures of communications data to the government. As luck would have it, that very day, the Judiciary Committee's Antitrust Subcommittee was holding an unrelated hearing on the proposed merger of AT&T and BellSouth, featuring the firms' respective CEOs, Edward Whitacre Jr. and Duane Ackerman. I could not let the presence of these CEOs pass without confronting them on the surveillance program.

I asked Mr. Whitacre whether his ''company provide[d] information to the Federal Government.'' He kept repeating that they ''follow the law''—a comment that I told him was ''contemptuous of this committee,'' because I was asking a factual question and he was offering a legal conclusion. Mr. Whitacre defended his answer on the grounds that he had spoken to a number of attorneys who advised him he could say nothing more.

The episode did not go unnoticed. For example, under the headline ''Privacy flap engulfs hearing,'' the Atlanta Journal-Constitution detailed that ''a Senate hearing Thursday intended to explore the consumer impact of a proposed AT&T-BellSouth merger instead turned into a contentious face-off over phone privacy.'' (see Marilyn Geewax, AT&T Bellsouth Merger; Privacy Flap Engulfs Hearing; Panel Wonders About Use of Phone Records, Atlanta Journal-Constitution, June 23, 2006, at 4G.

In truth, the matter merited its own hearing, but my efforts to hold one were thwarted by Vice President Cheney. Soon after the story broke, I announced my intention to schedule a hearing with the CEOs of the named carriers. I planned to either subpoena the companies or arrange a hearing closed to the public, which the telephone companies had agreed to attend without receiving a subpoena. Unfortunately, Vice President Cheney went behind my back to persuade all of the other Republicans on the committee not to support the subpoena and to boycott the session I had called to discuss a possible private hearing. In the face of this opposition, I had little choice but to agree to a proposal by Senator ORRIN HATCH for a brief delay to give him an opportunity to solicit the administration's views on my bill to permit court oversight of the Terrorist Surveillance Program. When I announced this course of action at the executive session, a highly contentious debate ensued.

Senator LEAHY, long at odds with the Vice President, opined that since we were not going to ''find out independently'' what the government sought from the telecoms and instead wait ''for Dick Cheney to tell us what we should know'' that we might as well ''just recess for the rest of the year.'' On the other hand, Senator DIANNE FEINSTEIN reported that she would not vote for the subpoenas because the ''telephone companies who are trying to be a good citizen should not be held out to dry.'' As a member of both the Judiciary and Intelligence Committees, she added that ''it is very difficult for this committee to legislate without knowing the program'' and therefore the Intelligence Committee was the appropriate venue for legislation on the matter. Senator DICK DURBIN, noting the absence of many Republicans, complained, ''I thought there would be a conversation about this, but apparently there will not be.'' He continued that the ''fortitude and strength [I] had shown in this committee, leading up through the month of May has ended in a June swoon.''

When this uncomfortable meeting—and the accompanying slings—concluded, I drafted what I refer to as a ''lawyer's letter'' to the Vice President. I wrote:

> I was surprised, to say the least, that you sought to influence, really determine, the action of the Committee without calling me first, or at least calling me at some point. This was especially perplexing since we both attended the Republican Senators caucus lunch yesterday and I walked directly in front of you on at least two occasions en route from the buffet to my table.

I concluded with a solemn warning:

> If an accommodation cannot be reached with the administration, the Judiciary Committee will consider confronting the issue with subpoenas and enforcement.

This spat proved great fodder for the editors. The lurid details were splashed across the pages of national newspapers around the country. The Los Angeles Times confided that the ''unusually public rupture between a senior GOP lawmaker and the White House'' provided ''a rare public glimpse of the tactics employed by a vice president who prefers to operate behind the scenes.'' It said I ''lashed out'' in a letter in an ''unusually harsh attack.'' This is Gregg Miller, Specter Says Cheney Tried to Derail Hearings, Los Angeles Times, June 8, 2006, at A6. The front page headline of The Hill screamed ''Specter Rebukes Cheney,'' and the Washington Post averred that the ''simmering tensions'' over the ''administrations tight-lipped position on the programs'' had finally ''boiled over.'' see Alexander Bolton, Specter Rebukes Cheney, The Hill, June 8, 2006, at 1; Michael A. Fletcher, Cheney Plays Down Dispute With Specter, Washington Post, June 9, 2006, at A4.

Someone in Cheney's office must have been up all night, because I had my reply by mid-morning the next day. The White House, he said, was willing to negotiate in good faith. Extensive discussions culminated with a compromise bill and a July 11, 2006, meeting with President Bush in the Oval Office. The President agreed to submit the surveillance program to judicial review, but was insistent that the Senate not alter the agreed-upon terms. Usually, after securing such an agreement, one walks out of the Oval Office to the cameras and advertises it, but I chose to make the announcement at the committee's next executive session on July 13.

My bill of 2006 to expand and revise FISA gave jurisdiction to the Foreign Intelligence Surveillance Court—the Intelligence Court—which was set up by the original FISA law to rule on surveillance requests by Federal agencies—to review the legality of the Terrorist Surveillance Program. Determining the constitutionality of the program would turn upon submissions to the Intelligence Court by the attorney general about its function and procedures, with particular attention to safeguards to ensure that the Terrorist Surveillance Program targeted suspected terrorists and not innocent Americans. The bill further required the attorney general to inform the House and Senate Intelligence Committees of all surveillance programs and created a new criminal offense for misuse of intercepted information. In return, the government was given additional flexibility with respect to the issuance and duration of emergency warrants. And in a nod to the administration, the bill also acknowledged that the president, as commander in chief, retains certain authority inherent in article II of the Constitution, although it left decisions about the scope of that authority to the courts.

Some complained that I had ''sold out'' in making this deal. See, e.g., Jonathan Mahler, After the Imperial Presidency, N.Y. Times, November 9, 2008, Magazine, at MM42. These critics fail to appreciate the disadvantage Congress faces in resisting expansions of executive power. The Terrorist Surveillance Program was put into effect when President Bush signed a secret order in 2001. He did not need to hold any hearings or convince any colleagues. Vice President Cheney could rely on the fractious nature of the Senate, and the great influence of the executive, to easily kill the prospects for my planned subpoenas of the telephone companies. The administration's damage control, like the initial action, was

swift and unilateral. By contrast, on the legislative side, we could not begin to act until we established a factual record through a series of hearings and secured consensus on a path forward.

As committee chairman, I was battered by Senators on both sides in my efforts for oversight. On the right, there were members who touted Article II and party loyalty. They were inclined, at a minimum, to accept the strained arguments that the Authorization for Use of Military Force had authorized the Terrorist Surveillance Program, and that the failure to notify the full intelligence committees did not actually violate the National Security Act. On the left, there was genuine outrage at some administration tactics, but they were also in no hurry for compromise, no matter how favorable the terms. They were very cognizant of the fact that the longer they let the friction between the branches drag on, the worse it looked for Republicans and the better for them and their allies. For example, as the New York Sun reported in June 2006, ''[f]ear of government excess in the war on terror ha[d] driven membership rolls'' in the ACLU ''to more than 550,000 from less than 300,000,'' and the group's fundraising had ''surged.'' See Josh Gerstein, For ACLU's Anthony Romero, These Should Be Best Times, New York Sun, June 27, 2006.

Ultimately, the Judiciary Committee approved my FISA reform bill on September 13, 2006, but in contrast to the bipartisan vote on the PATRIOT Act reauthorization a year earlier, there was a 10–8 party-line vote. A final vote on the Senate floor was never taken, largely because the House had settled on a different approach to the Terrorist Surveillance Program that did not authorize court review of the program. Once again, the inherent constraints on the bicameral legislative branch served to benefit the executive, as the President's surveillance program continued unabated throughout our internal debates.

The courts fared no better at reining in the Terrorist Surveillance Program. In August 2006, Judge Anna Diggs Taylor of the U.S. District Court for the Eastern District of Michigan issued an opinion in ACLU v. NSA, finding the program unconstitutional. Almost a year later, in July 2007, the U.S. Court of Appeals for the Sixth Circuit overturned her decision. On a 2–1 vote, it declined to rule on the legality of the program, finding that the plaintiffs lacked standing to bring the suit. The Supreme Court then declined to hear the case, even though the doctrine of standing has enough flexibility for the Court to have acted. My bill to mandate Supreme Court review of this and other cases therefore seems all the more necessary to resolve the question.

With the Supreme Court abstaining, another lone district judge took a stand. In In re National Security Agency Telecommunications Records Litigation, Chief Judge Vaughn Walker in the Northern District of California considered a case brought by an Islamic charity that claims to have been a subject of the surveillance program. In a 56–page opinion he wrote:

> Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted. Whatever power the executive may otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities.

As detailed further below, the hurdles faced by the few judges willing to examine the Terrorist Surveillance Program, and the snails' pace of appellate review, make my bill to mandate Supreme Court review of this and other cases all the more necessary to resolve the question.

SHORTCOMINGS OF THE LEGISLATIVE AND JUDICIAL BRANCHES AS CHECKS ON EXECUTIVE POWER.

The courts, including the Supreme Court, have admittedly been more effective than Congress in restraining executive excesses, but both have been too slow. This failure is exemplified by the judicial and legislative efforts to address the administration's treatment of detainees in the war on terror.

In Hamdi v. Rumsfeld, decided on June 28, 2004, nearly 3 years after September 11, the Supreme Court ruled that a U.S. citizen being held as an enemy combatant must be given an opportunity to contest the factual basis for his detention before a neutral magistrate. In a stern rebuke of executive overreaching, Justice O'Connor's opinion declared, ''We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens.'' The same day, the Court held in Rasul v. Bush that detainees at Guantánamo Bay were entitled to challenge their detention by filing habeas corpus petitions—the time honored legal action used to contest the basis for government confinement. Two years later, on June 29, 2006, the Court announced in Hamdan v. Rumsfeld that the President could not conduct military commission trials under procedures that had not been authorized by Congress and that failed to satisfy the obligations of the Geneva Conventions' Common article III and the Uniform Code of Military Justice.

Instead of fully embracing these decisions, however, Congress responded with the Detainee Treatment Act and the Military Commissions Act of 2006, both of which eliminated detainees' right to habeas corpus review on grounds that foreign terrorist suspects did not have the same rights as others in U.S. custody.

During debate on the Military Commissions Act, I offered an amendment that would have guaranteed habeas corpus for detainees. In the face of sharp criticism from my own party, I argued that I was not speaking ''in favor of enemy combatants.'' Rather, I was ''trying to establish . . . a course of judicial procedure'' to determine whether the accused were in fact enemy combatants. I pointed out that my fight to preserve habeas rights was, in essence, a struggle to defend ''the jurisdiction of the federal courts to maintain the rule of law.'' I concluded with a plea for the Senate not to deny ''the habeas corpus right which would take us back some 900 years and deny the fundamental principle of the Magna Charta imposed on King John at Runnymede.'' Despite these entreaties, my amendment narrowly lost on a 48–51 vote.

I had lost the battle, but was not prepared to surrender. On January 18, 2007, Attorney General Gonzales testified before the Judiciary Committee and argued that proposals to restore habeas corpus, such as a bill Senator LEAHY and I had introduced, were ''ill-advised and frankly defy common sense.'' I was astounded at his claim that ''there is no express grant of habeas in the Constitution.'' I asked him: ''The constitution says you can't take it away except in case of rebellion or invasion. Doesn't that mean you have the right of habeas corpus unless there is an invasion or rebellion?'' He replied, ''The constitution does not say every individual in the United States or every citizen is hereby granted or assured the right to habeas. . . . It simply says the right of habeas corpus shall not be suspended.'' I protested, ''You may be treading on your interdiction and violating common sense, Mr. Attorney General.''

This exchange received notice in a number of papers, as my position gained momentum. The Detroit Free Press, for example, editorialized:

> The moment when Alberto Gonzales proved he was just wrong for the job of U.S. attorney general came . . . after Sen. Arlen Specter, R–Pa., asked him about the constitutional guarantee of criminal due process, known as habeas corpus.

See Editorial, Gonzales Twisted Rule of Law Too Well, Detroit Free Press, August 28, 2007.

That September, I made a second attempt to restore habeas corpus jurisdiction with an amendment to the Defense Department's authorization bill. This time, a majority of Senators voted for it, including seven Republicans. Unfortunately, the 56–43 majority was insufficient because, in the face of a filibuster threat, Senate procedure required sixty votes to pass. Ironically, a procedural tool that protects Senate minorities had become a shield for the executive branch.

Thus, yet again, it was left to the Supreme Court to beat back the encroachment of executive power, which it finally did on June 12, 2008. In Boumediene v. Bush, the Court held that detainees held at Guantanamo Bay ''are entitled to the privilege of habeas corpus to challenge the legality of their detention.'' Because the Combatant Status Review Tribunals established by the Defense Department in 2004, following the Hamdi and Rasul decisions, and the limited procedural review permitted before the DC Circuit

failed to constitute an adequate and effective substitute for habeas corpus, the Court held that the Military Commissions Act had effected ''an unconstitutional suspension of the writ.''

As satisfying as it was to be vindicated, I was frustrated that Congress had left the task of reining in the executive to slow-paced and incomplete judicial review. While the Boumediene decision ensured habeas rights for detainees, it took 7 years; and even then the Court almost failed to take on the case. All along, the Court's rulings were piecemeal and avoided taking strong stands on controversial constitutional questions. The result was a protracted process that delayed justice for detainees and left important areas of constitutional law murky.

Indeed, the Supreme Court actually denied Boumediene's initial petition for review on April 2, 2007. Then, on June 29, in a highly unusual move, the Court reconsidered and agreed to hear the case. The justices gave no reason for the reversal, but some speculate that they were moved by intervening disclosures concerning the military commissions. In particular, a military officer and lawyer who had been involved in overseeing the tribunals said that the process was flawed and that prosecutors had been pressured to label detainees as enemy combatants.

As much time as it took in these cases, at least the Supreme Court eventually ruled on the merits in Boumediene. The same cannot be said for Supreme Court review, or even substantive appellate review, of President Bush's warrantless wiretapping program. Thus far, only individual judges in the district courts of Michigan and California have been willing to take a strong stand on the Terrorist Surveillance Program.

Like many in the legislature, it appears the courts are reluctant to act. They do not want the responsibility. Only after significant time has passed, and it is relatively safe, do they finally consider such issues on the merits. I have proposed legislation in the past to require expedited review of certain important cases, including the challenges by civil liberties organizations and other plaintiffs to the Terrorist Surveillance Program, and I will do so again in the new Congress.

SIGNING STATEMENTS

Even where Congress manages to negotiate its internal checks and to act decisively against expansions of executive power, presidents have used signing statements that override the legislative language and defy congressional intent.

There was an explosion in the use of signing statements during the Bush administration. The Boston Globe reported in 2006 that President Bush ''has used signing statements to claim the authority to disobey more than 750 statutes—more laws than all previous presidents combined.'' This is Charlie Savage, In Proposed Iran Deal, Bush Might Have to Waive Law: '05 Statute Forbids Providing Reactor, Boston Globe, June 8, 2006.

Two prominent examples make the point. As detailed earlier, I spearheaded the delicate negotiations on the PATRIOT Act Reauthorization which included months of painstaking efforts to balance national security and civil liberties, disrupted by the dramatic disclosure of the Terrorist Surveillance Program. The final version of the bill to reauthorize the PATRIOT Act featured a carefully crafted compromise, which was necessary to secure its passage in 2006. Among other things, it included several oversight provisions designed to ensure that the FBI did not abuse special terrorism-related powers permitting it to make secret demands for business records. President Bush signed the measure into law, only to enter a signing statement insisting that he could withhold from Congress any information required by the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

The second example arose in 2005. Congress overwhelmingly passed Senator JOHN MCCAIN's amendment to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held by the United States. There was no ambiguity in Congress's intent; in fact, the Senate approved the proposal 90–9. However, after signing the bill into law, the President quietly issued a signing statement asserting that his administration would construe it ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.''

Many understood this signing statement to undermine the legislation. In a January 4, 2006, article titled ''Bush Could Bypass New Torture Ban: Waiver Right Is Reserved,'' the Boston Globe cited an anonymous ''senior administration official,'' according to whom ''the president intended to reserve the right to use harsher methods in special situations involving national security.''

These signing statements are outrageous, intruding on the Constitution's delegation of ''all legislative powers'' to Congress, but it is even more outrageous that Congress has done nothing to protect its constitutional powers. The legislation I introduced in 2006 would have given Congress standing to challenge the constitutionality of these signing statements, but has until now failed to muster the veto-proof majority it would surely require. The executive branch operates free of such internal dissent. Although JOHN MCCAIN promised to drop signing statements altogether, Barack Obama, while deploring Bush's practice, said during the campaign that ''no one doubts that it is appropriate to use signing statements to protect a president's constitutional prerogatives.''

Here again, the President does not need to convince any colleagues to issue a signing statement, he needs only put pen to paper. Indeed, 2 days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his ''commander in chief'' and ''foreign affairs'' powers, he refused to be bound by at least 11 specific provisions of the bill including one longstanding rider to appropriations bills designed to aid congressional oversight. As I told the Wall Street Journal, ''We're having a repeat of what Democrats bitterly complained about under President Bush,'' and if President Obama ''wants to pick a fight, Congress has plenty of authority to retaliate.''

THE TERRORIST SURVEILLANCE PROGRAM—ACT II

Many of the issues surrounding the Terrorist Surveillance Program and executive authority resurfaced in 2008. FISA reform legislation, which began making its way through the Senate in February of last year, included a controversial provision giving retroactive immunity to the telecommunications companies for their alleged cooperation with the Terrorist Surveillance Program.

Throughout, my chief concern was to keep the way to the courts open as a means to check executive excesses. I offered an amendment, both in committee and on the floor, to substitute the U.S. Government for the telephone companies facing lawsuits related to the Terrorist Surveillance Program. Instead of immunity, my amendment would have put the government in the place of the companies, so the cases could go forward without posing a legal threat to the companies themselves.

When this proposal was defeated, I proposed yet another amendment, which would have required a federal district court to determine that the surveillance itself was constitutional before granting immunity. I also cosponsored an amendment that would have delayed the retroactive immunity for the telephone companies until a mandatory inspector general's report on the Terrorist Surveillance Program had been issued.

I tried to impress upon my colleagues the importance of our actions:

> We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority . . . The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was [reversed] by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But

the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the act unconstitutional. The Congress ought to let the courts fulfill their constitutional function. . . . Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better.

The date was July 7 and the Senate had just returned from recess, which allowed me to close with a flourish:

Perhaps the Fourth of July holiday will inspire the Senate to exercise its independence from the executive branch now that we have returned to Washington.

Despite my fight to keep the courts open, in the end all my amendments were defeated. Nevertheless, as I said I would, I ultimately voted for the FISA reform bill. I chose not to reject the entire package—which had the support of nearly seventy senators, including both presidential candidates—not only because my classified briefings on the surveillance program convinced me of its value, but also because of the important oversight provisions it imposed on future surveillance programs.

The FISA reform bill required prior court review of the government's procedures for surveillance of foreign targets, except in exigent circumstances. It also required that the Intelligence Court determine whether procedures for foreign targeting satisfy fourth amendment protections against unreasonable searches. In addition, before monitoring U.S. citizens outside the country, it required individualized court orders based on probable cause. Finally, the bill mandated a comprehensive review of the Terrorist Surveillance Program by several inspectors general. Indeed, the final bill had many elements in common with my earliest efforts to place the Terrorist Surveillance Program under FISA—it just took years to get there. And Congress and the courts may yet need to correct its flaws.

A PLAN FOR THE FUTURE

These experiences have crystallized for me the need for Congress and the courts to reassert themselves in our system of checks and balances. The bills I have outlined are important steps in that process. Equally important is vigorous congressional oversight of the executive branch. This oversight must extend well beyond the national security arena, especially as we cede more and more authority over our economy to government officials.''

As for curbing executive branch excesses from within, I hope President Obama lives up to his campaign promise of change. His recent signing statements have not been encouraging. Adding to the feeling of déjà vu is the Washington Post's report that the new administration has reasserted the ''state secrets'' privilege to block lawsuits challenging controversial policies like warrantless wiretapping: ''Obama has not only maintained the Bush administration approach, but [in one such case] the dispute has intensified.'' Government lawyers are now asserting that the trial court lacks authority to compel disclosure of secret documents, and ''warning'' that the government might ''spirit away'' the material before the court can release it to the litigants. This is Carrie Johnson, ''Handling of 'State Secrets' at Issue: Like Predecessor, New Justice Dept. Claiming Privilege,'' The Washington Post, March 25, 2009. As the article notes, I have reintroduced legislation this year with Senators LEAHY and KENNEDY to reform the state secrets privilege. I doubt that the Democratic majority, which was so eager to decry expansions of executive authority under President Bush, will still be as interested in the problem with a Democratic president in office. I will continue the fight whatever happens.

(The further remarks of Mr. SPECTER pertaining to the introduction of S. 875, S. 876 and S. 877 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I ask unanimous consent that the Senator from Arkansas be given 5 minutes as in morning business and then that we return to me and go back on the bill.

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

The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I thank the Chair and my friend from Oklahoma. I appreciate the collegiality and certainly his friendship.

HEALTH CARE

I rise today like many Arkansans because I am very troubled about the rising health care costs and the barriers many Arkansans face accessing an affordable and quality health plan. Nearly half a million Arkansans are uninsured, including 66,000 Arkansas children. The cost in both human and financial terms is felt by everybody. That is why, during this work period, I traveled the State on a 2-week tour to ''take the pulse'' of Arkansans and of health care in our communities and across our State. I met with patients, providers, advocacy groups, and all of the other health care professionals in every corner of our State. We discussed the challenges we face delivering and accessing quality and affordable health care in rural Arkansas. It was a wonderful tour, very open. People were frustrated, concerned, and they had good ideas. They were very much interested in being able to help us in Washington move forward on this issue. I felt as if the will, and certainly the desire, was there among Arkansans to fix this problem.

My first stop was in Clinton, AR, located in Van Buren County, where 26 percent of the residents there are uninsured, and many are on Medicare or Medicaid. A local pharmacist raised concerns with the burden of paperwork, regulations, and fees required by CMS for pharmacists to supply medical equipment and supplies. A nurse practitioner talked about ways to fill gaps in our primary care workforce and how it was in areas like that. Others stressed the need to address the preventive health needs in our State, such as smoking cessation and prevention of obesity and related health conditions.

Next, I went to Augusta, AR, in our row cropland, and I heard from Arkansans who said that high-deductible plans are not meeting their needs. As a result, these patients often miss out on very important primary and preventive care because they cannot afford their plans' expensive copays and deductibles; therefore, they end up being more costly to the system without that preventive or primary care because they end up in more acute-care situations.

In Lake Village, AR, on the eastern side of the State, people talked about the need to improve dental coverage within Medicare and in private insurance. I also heard from veterans who are forced to drive long distances to receive care and expressed the real need for more rural VA clinics and not only how much better quality of life it would provide them but the cost savings it could provide as well to the VA and the whole implementation of health care delivery to our veterans.

Across the State in Nashville, AR, I spoke with a provider about the difficulty in recruiting specialists in rural Arkansas. Health technologies, such as remote patient monitoring and mobile imaging, may help to provide special access to those rural areas, where it may not be efficient for each rural community to have a multitude of specialists located in their communities. At least they can serve there and provide their services with equipment that is much needed.

My final stop was in Springdale, northwest Arkansas, close to the Oklahoma border. I heard from seniors who have had trouble finding a provider that will accept Medicare.

We must build our primary care workforce and address reimbursement inequities in these rural areas in order to help Arkansans on Medicare gain access to the care they need. We had a long discussion about the need for more primary care professionals, physicians, and certainly the fact that it is not just the reimbursement, it is also the quality of life in these rural areas. Making sure we can grow our own primary care physicians in these rural areas does an awful lot in making sure we have those providers in the areas who can serve those individuals.

In all of these places, good Arkansas neighbors working to take care of their neighbors were always present, whether it was community health centers, which are working desperately hard to use the money from the recovery package to increase their ability to cover more of the uninsured, or whether it was the nonprofits or religious-based

clinics that were doing a tremendous job partnering with our hospitals to keep people out of the emergency room and getting some of their lab work done by the hospitals but still being able to provide care in those clinics.

So all in all, it was a great opportunity for me. I love traveling Arkansas anyway, visiting with the great people in our State, but it really showed the concerns we talk about here in Washington, and you get to see them face to face.

I think these stories help illustrate how critical it is for residents of Arkansas and other rural areas to have easy, affordable access to health care. I was grateful to meet with so many Arkansans and to be able to share their stories with my colleagues here, and as we move forward in this debate, it makes a big difference. My staff was there, as always, because there are so many issues. Sometimes people don't know where to go. Having our staff be able to talk to them and direct them in those ways is very valuable. Remembering the educational component in health care and how we make sure information is going to be available to people is a critical part of it.

This week, in the Senate Finance Committee, we launched its first of three roundtable discussions in advance of drafting a health care bill. I strongly believe Congress must craft health reform legislation that lowers costs, improves quality, and provides access to coverage for all Americans. I compliment Chairman BAUCUS and Senator GRASSLEY for the great way they have approached this—last year having multiple hearings and coming again this year with more hearings and a roundtable situation. We had a summit last summer. These things have been very beneficial to the debate in a bipartisan way.

From my seat on the Senate Finance Committee, I will work to ensure we have guaranteed coverage for people with preexisting conditions; continuity of coverage for people between jobs, which we see oftentimes and particularly in this economic setting; maintain affordability for people who are privately insured; and have Medicaid eligibility for every uninsured American living in poverty.

Mr. President, one of the things I noticed that was so positive out there with Arkansans is that, although they are frustrated and concerned about where we are going and what we are going to do, their will to do this now is there. The American people feel it is a must-do situation for us in this economy for the quality of life we want to have. I think that in this body we have an opportunity not only to do it but to do it correctly.

We are very proud of the incredible medical professionals who are in this country, folks such as my colleague from Oklahoma, who is tremendous in his own profession as a physician. We are proud of that. We want to make sure we correct the insufficiencies for those individuals and be able to provide the services at a cost people can afford and have an accessibility that leaves nobody out, whether you live in a major city or in a rural area. I believe this is one of the most urgent issues facing our Nation, and it is time for action. We need to move forward on health care reform.

I very much appreciate the opportunity I have had to visit with Arkansans. I look forward to working with my colleagues in the Finance Committee in a bipartisan way to move the health care reform initiative forward, and also with the rest of the Senators here, to come up with a proposal the American people will be proud of. They know it won't be a work of art, necessarily, but a work in progress as we move ourselves from a health care system that has been focused on acute care into something that is certainly more focused on chronic conditions, multiple chronic conditions, and making sure we make those manageable using preventive health care and certainly the primary care that will keep us healthier longer.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

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

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

TRADE POLICY

Mr. BROWN. Madam President, I have heard lots of discussion in the newspapers in the last 48 hours or so, that there is a move afoot to begin to continue to bring legislation to the House and Senate floors to continue Bush trade policy. There have been statements by some in both parties that we might consider passing the trade agreement, the so-called free trade agreement with Panama, the free trade agreement with Colombia, and the free trade agreement with South Korea.

I think that is a mistake. When you look at what has happened in States such as Ohio, and particularly in a State like that of the Presiding Officer—in Buffalo and Rochester and Syracuse and the upstate cities in her State, you can see the kind of incredible job loss, not only from this most recent recession since October but look at the job loss in manufacturing that we have seen through the entire Bush years while this Government has moved forward on Bush trade policies.

Look at the original North American Free Trade Agreement negotiated by the first President Bush, unfortunately the finishing touches put on by President Clinton, and then the Central American Trade Agreement passed by the House and Senate in the midpart of this decade, and now considering again trade agreements negotiated by Bush trade negotiators with Panama, Colombia, and South Korea. Unfortunately what we have seen is a huge spike—more than a spike because it is more long term and fundamental than that—we see the huge growth in our trade deficit. We have today a trade deficit of $2 billion just for today, and $2 billion for tomorrow, and $2 billion for Saturday, and $2 billion for Sunday. Every day it's a $2 billion trade deficit. George Bush the first said a $1 billion surplus or deficit translates into some 13,000 jobs, so a trade deficit of $2 billion, according to President Bush the first, translates into 26,000 lost jobs; a $2 billion trade surplus would be 26,000 gained jobs. In this country, we haven't seen a trade surplus since 1973. What that says is this trade policy leads to persistent trade deficits. This trade policy leads to persistent job loss. And this trade policy leads to families who are hurt and communities which are destroyed.

I can take you to lot of places in my State and you can look at the havoc wreaked by U.S. trade policy. I do not blame all of manufacture's decline, all of job loss, on trade policy, to be sure. But there is no question when you have a $2 billion-a-day trade deficit over the course of a year, between $700 and $800 billion trade deficit for a year, you know that is a problem.

My point is not to debate trade policy today. It is only to say to the administration and my friends on both sides of the aisle and the crowd at the end of the hall here in the House of Representatives, we should not be bringing up more trade agreements until we look at what our trade policy does. I can point not just to job loss; I can also point to what happened as an outgrowth of the Permanent Normal Trade Relations with China, our trade policy with China, when I believe seven people in Toledo, OH, and dozens around the country died from the taking of the blood thinner heparin, ingredients of which came from China and those ingredients were contaminated. Or you can look at toys. In an experiment, a class assignment by Professor Jeff Weidenheimer at Ashland University, not far from where I grew up, he sent out first-year chemistry students to stores to buy toys at Halloween and Christmas and Easter and found lead-based paint, which is toxic for children, on many of these toys, again coming from China—United States corporations outsourcing jobs, then hiring subcontractors in China. So we are not just importing goods, we are also importing lead-based paint, also importing contaminated ingredients in heparin, also in vitamins, in dog food and other products.

My point is let's do a dispassionate, nonideological, nonpartisan study before we do more trade agreements.

Let's do a nonpartisan, nonideological, unbiased study of how NAFTA has worked, how CAFTA has worked, how our relations with China with PNTR and currency, how all that has worked before we move ahead.

In these turbulent economic times, first, we have plenty to do, on health care, education, climate change, housing, particularly on the banking system, and all of that. We have plenty to do, but that is not even the point. The point is before we do more trade agreements, let's look at how they worked. Let's look at what has happened, especially rather than following the Bush trade agenda which we know simply has not served this country well.

I yield the floor.

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.

Mrs. McCASKILL. Madam 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.

Mrs. McCASKILL. Madam President, once upon a time, someone had a good idea about trying to open the mortgage market to as many people as possible. Between that moment and now, we have seen a giant economic crisis that has mushroomed out of control. We have sat around for months now trying to figure out how did it happen and why did it happen.

One of the reasons it happened is, using common sense, we said to people: You can go make money by talking people into borrowing money, and you do not have to worry about whether they pay it back. Let me go through that one more time. We said to a market, the mortgage market: If you go talk people into borrowing more money than they can afford, it does not matter if they can pay it back, you do not need to worry about that because you are going to make your money anyway.

In other words, the people closing their loans had no skin in the game. They were not a partner to the risk. So that is how we got people qualifying for loans by wearing a special costume and photograph. That is how you got these ''liars loans.'' They were called ''liars loans.'' Everybody knew people were lying to get these loans, but no one was doing anything about it because the people who were making the loans were making the money and had no risk.

You would think with this occurring, we would now be on hyper alert for the exact same set of circumstances, but we are not. Because it is going on today as we speak. If you turn on any cable channel almost anywhere in America, before midnight you are going to see an ad that says to seniors: You need to take advantage of a great Government program, a Government benefit. You can be paid cash for the value of your house without any risk. They are called reverse mortgages.

It is a type of home loan that converts the value in your home you have acquired over a lifetime and converts it to cash. Now, in and of itself, this is not a bad concept. People ought to be able to borrow against the value of their homes. We do it with home equity loans.

Here is the problem. We have the people closing these loans who have no skin in the game. Guess who is insuring all these loans. We are. The taxpayers. There is no risk to those people paying for those ads on cable TV, no risk. Reward. No risk. We are taking the risk.

If, in fact, the housing markets go down and the value of someone's property goes down and it is time for that loan, the value of that loan to be recovered when the house is sold, if it does not sell for enough money, guess who is left holding the bag.

Hello. Subprime mortgages chapter two. We are back. We have the same issue we had with the subprime. Since we began this program in 1990, HUD has endorsed and insured 500,000 loans. But, wait, we took the cap off it recently. We anticipate that HUD will, in fact, insure 200,000 of these loans this year alone. We have done 500,000 loans since 1990, and we are going to do 200,000 loans this year. We are talking about a huge growth in the potential liability to the American taxpayer.

These are complex and expensive loans. For many elderly, the equity they have in their home is it. With the economic circumstances we have right now, there is going to be a lot of pressure on the elderly to enter into one of these reverse mortgages, maybe to help other family members who have lost a job.

It is important we fix this program. It is embarrassing that we let the subprime mess go for as long as we did, without anybody saying: Whoa, hold on. It will be doubly embarrassing if we allow this reverse mortgage situation to go down the exact same path.

With these loans, as they increase dramatically in number and value, we are also seeing an increase in fraud. The HUD inspector general has been working in the reverse mortgage field, and all the other inspectors general in our country have done a great job of beginning to find problems of a specific nature as it relates to fraud.

Some of it is where we have inflated appraisals. Some of it is where you have shoddy repairs being done, which decrease the value of the home, which increase the risk to the taxpayer. Some of it is people continuing to collect the proceeds on the home past the time they should, past perhaps the death or the moving out of the senior who did the loan in the first place.

Why is the fraud increasing? I have a theory why the fraud is increasing. All the bad actors over there in subprime, they are looking for a new stream of money so they are all sliding over and saying: Hey, let us start making these reverse mortgages to seniors.

OK. We have to do something about this now. I filed an amendment to the legislation that is in front of the Senate that will do some important things in terms of fraud prevention and detection and enforcement provisions: We are going to require the borrower to certify they reside in the property; to report the termination of the residence to HUD; require that in the case of a property that is purchased with the proceeds of a reverse mortgage, the property is owned and occupied for at least 180 days, so we do not have the flipping we have seen in the subprime market; require these properties be appraised by certified appraisers, HUD-certified appraisers; we have to verify the purchase price to ensure the appraised value is not inflated and make sure the appraised value is not too high in relation to comparable properties—you can imagine how important this is right now since our housing market values are in such flux—to require the counselors to report suspected fraud or abuse to HUD's inspector general and to inform prospective borrowers how they can report suspected fraud and consumer abuse; require that the lenders and consumers maintain a system to ensure compliance; explicitly state that the HUD inspector general has the authority to conduct independent audits and inspections of the lender.

Would it not have been nice had we done that back when we started having the problems with subprimes? Conduct independent audits and inspections of reverse mortgage lenders to make sure they are in compliance with the requirements; and to compare the reverse borrower's record against the Social Security's death master file for early indications for when payouts should end because payouts under these reverse mortgages stop at the death of the recipient of the reverse mortgage; provide that any limitation on when criminal charges can be brought against fraud perpetrators in this area be calculated on when we find out about the criminal activity, not when it occurred. Because, in many instances, we may not find out about the fraud until the elderly person dies, and then they find out that maybe they thought they still had value in their home, but they were lied to.

This is an important one: Provide that advertising for reverse mortgages cannot be false or misleading and must present a fair and balanced portrayal of the risks and the benefits of the product.

The fraud is the first step. Going after fraud is the first step, but we have to do more. It is very important that we protect our seniors from predatory lenders. When you see these ads on TV, it sounds too good to be true. ''Government benefit,'' ''No risk.'' But there is a huge risk. There is a risk of a senior paying more than they should for a product that does not work for them and a very big risk for the taxpayers of this country.

I look forward to working with the Senate Judiciary and Banking Committees as well as HUD and the HUD inspector general and GAO to get the things done we must do to clean up this problem. If we do not learn from our mistakes, we are doomed to repeat them. I urge all my colleagues to become knowledgeable about this reverse mortgage area, get word to their constituents to be careful about these reverse mortgages. They are very dangerous.

At the end of the day, if someone is making money off you and they do not care whether you can pay it back, it is a dangerous combination.

The ACTING PRESIDENT pro tempore. The senior Senator from Vermont.

Mr. LEAHY. Madam President, I wish to thank the Senator from Missouri for her statement. I hope people listen to what she had to say because it is a warning to many. Again, I would reiterate that one of the reasons we are trying to move this fraud bill through, everybody will be against fraud and everybody is against crime, but as the Senator from Missouri knows so well, you have to have some laws on the book to go after fraud and go after crime. I wish to speak further on that, but I see my dear friend and distinguished colleague from Vermont on the floor.

I will yield the floor so he can also speak on a matter.

The ACTING PRESIDENT pro tempore. The junior Senator from Vermont.

Mr. SANDERS. I thank my colleague from Vermont. I wish to congratulate him for bringing forth a very important piece of legislation.

Clearly, if we are going to begin to address the crisis in our financial institutions, we need the manpower to go out there and do the investigations. We do not have it and this legislation does that.

I wished to say a few words in the midst of this debate on an issue. I am not bringing forth an amendment, but I did wish to say a few words on that; that is, in my office—I suspect in every Senate office—we are being deluged with e-mails and letters and telephone calls expressing outrage at the high interest rates people all across this country are being forced to pay by these very same financial institutions we are in the process of bailing out.

What is going on now is that while we spend hundreds of billions of dollars bailing out our friends on Wall Street, and while they receive zero interest loans from the Fed, what they are saying to the American people is: Thanks very much for the bailout. We are going to raise your interest rates from 15 to 20, to 25, to 30 percent. Pure and simply, that is called usury within Biblical terms. In fact, that is immoral. That is the type of action we should be eliminating right now.

I have introduced legislation which is very similar to the type of legislation that regulates credit unions right now. We would have a maximum interest rate of 15 percent, with some exceptions going to 18 percent, so the American people who are now on under great financial stress, who are buying groceries with their credit cards, who are buying clothes for their kids with credit cards, who are paying for college expenses with their credit cards, are not forced to pay 25 or 30 percent interest rates.

What I would like to do, rather than relate what I believe, is read a few of the e-mails I have received from the constituents. We are receiving a lot of them. Let me read one that comes from the northern part of our State. It says:

> I, like so many others, am appalled at the hikes in credit card rates. Everywhere in our small town of Montgomery everybody is talking about the latest surge in interest rates. People who are never late in payments have seen their rates climb overnight. I, for one, used to overpay on my payments but can't afford to now. In addition, I am a founding member of a small agricultural co-op and we have a shop and studio. Today we found out that the charge for using credit cards has increased. How are people supposed to buy things when small businesses can't afford to process credit cards and people can't afford the interest rates if they use cards? No one has any money for anything anymore. The outrage, which I am sure doesn't surprise you, is building. Doesn't anyone get it?

Well, doesn't anyone in the Senate get it? I hope we do.

Here is another one that comes from the largest city in our State, Burlington:

> I signed up with MBNA (at the time) for a credit card with an interest rate of 7.9 for the life of the credit card (as long as I adhered to terms such as paying on time, not going over limit, etc.) I received a notice yesterday that the interest rate is going to 13% on May 1. I called them and they said it had nothing to do with my credit. Bank of America, due to the economic situation, is raising its rates ''for business reasons only.'' One option they gave me is to pay down my balance at 7.9 but not use it on any future purchases. I now appreciate more than ever your fight against this sort of action. Basically they can do whatever they want.

That is quite right. They can do whatever they want.

Another one:

> Dear Senator Sanders, we just received a note from Bank of America in which they tell us that they are raising our credit rate: 15.74 percent on new and outstanding purchases . . . using a variable rate formula. I know you have been working on a cap for credit cards and are very concerned about big banks profiting so highly at the expense of consumers.

Here is another one:

> Senator Sanders, there is a lot of news this week on how the credit card companies are trying to recoup their losses by raising interest rates on our credit cards. That is what my husband and I have just experienced. Two months ago I ran my husband's credit report, and between three credit bureaus we ranked around a 800 credit score. We have never been late on a payment and have been married 41 years.

Then she talks about the impact these high credit rates are going to have on her.

Another one:

> Dear Bernie, yesterday in the mail I received notification from Bank of America that they were hiking up the interest on my Visa card from 7% to over 12%. This seems arbitrary and in a time when I am extremely worried about my ability to pay my bills because my workload has gone way down. I am furious and scared.

The bottom line is, I am receiving dozens of e-mails from people in my State and from all over the country. They want to see whether the Congress has the guts to stand up to the financial institutions which have poured $5 billion in lobbying and campaign contributions into Washington in the last 10 years.

What the American people are saying is that 30-percent interest rates—arbitrary and huge increases in interest rates for people who have always paid their bills on time—is not only unfair, it is immoral. People should not have to pay 30 percent to borrow money in the United States.

I hope very much the time will come, sooner rather than later, when we will pass a national usury law that will put a cap on interest rates for large financial institutions similar to what exists for credit unions, which is 15 percent with some exceptions.

I yield the floor and look forward to working with the senior Senator from Vermont in passing this legislation.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. Madam President, with the vote and disposition of the Kyl amendment today and the Kyl amendment and the Leahy-Grassley amendment yesterday, we have basically completed work on the underlying bill. Those were the only amendments that affected the underlying bipartisan fraud enforcement bill. A number of other amendments have come in, but they, of course, have nothing to do with this bill. They are not within the jurisdiction of the Judiciary Committee. They are, in large part, extraneous to the fraud enforcement bill. Many if not all are within the jurisdiction of the Banking Committee. I haven't seen one yet that should be in Agriculture, but hope springs eternal. Today, a Senator offered an amendment drawn from the HELP Committee jurisdiction. In a way, it is a compliment that so few people have suggested changes that they wanted to make to the Judiciary Committee bill. I guess Senators are anxious in case they are not around here next week when we have a Banking bill.

I would like to conclude consideration of the bill that actually is before the Senate. We will soon have a list of

amendments on which both sides will agree to have votes. I don't think any of them really have anything to do with the Judiciary bill, but every Senator has a right to offer whatever amendments he or she wants, whether germane to the bill or not, and to get a vote on them. If they are all going to require rollcall votes, we should be done certainly sometime before midnight. Then we can pick up the next piece of legislation, which I understand we should have done by Saturday. Of course, the only amendments really involving this bill could have been done yesterday. We could have finished this bill yesterday.

I would like to speak briefly about the bipartisan Fraud Enforcement and Recovery Act. This bill has received overwhelming support. Almost everyone recognizes the importance of strengthening the Federal Government's capacity to investigate and prosecute the kinds of financial frauds that have undermined our economy. The legislation has strong bipartisan support. I applaud Senator GRASSLEY, who is the lead cosponsor. He worked with me to write this bill. He has been a leader on this issue.

Senators SPECTER and SNOWE have joined as cosponsors. Many different law enforcement and good government organizations are supporting this bill as well, including the Fraternal Order of Police, the Federal Law Enforcement Officers Association, the National Association of Assistant United States Attorneys, the Association of Certified Tax Examiners, and Taxpayers Against Fraud.

Now let me address the authorizations in the bill. I have rarely seen such detailed justification with regard to an authorization. I mention this because this is not an appropriations bill. It is authorizing legislation. It still has to go through the appropriations process. Every agency authorized to receive money in the bill has set out in detail exactly what it would do with that money if it is authorized and appropriated. The detail includes the number of agents, prosecutors, and other key personnel who would be hired, and each agency has explained why the added resources are needed. Those detailed justifications have been shared with anyone interested in reviewing them.

In total, the bill authorizes $245 million a year over the next 2 years to hire more than 300 Federal agents, more than 200 prosecutors, and another 200 forensic analysts and support staff to rebuild our Nation's fraud enforcement efforts. We have broken those numbers down agency by agency.

These resources for additional agents, analysts, and prosecutors are desperately needed. The number of fraud cases is now skyrocketing, but resources were shifted away from fraud investigations after 9/11. Today, the ranks of fraud investigators and prosecutors are drastically understocked, and thousands of fraud allegations go unexamined each month.

Reports of mortgage fraud are up nearly 50 percent from a year ago and have increased tenfold over the past 7 years. In the last 3 years, the number of criminal mortgage fraud investigations opened by the Federal Bureau of Investigation, FBI, has more than doubled, and the FBI anticipates that number may double yet again. Despite this increase, the FBI currently has fewer than 250 special agents nationwide assigned to financial fraud cases, which is only a quarter of the number the Bureau had more than a decade ago at the time of the savings and loan crisis. At current levels, the FBI cannot even begin to investigate the more than 5000 mortgage fraud allegations the Treasury Department refers each month. Other agencies have documented similar crises in their ability to keep up with the rising pace of new cases.

We all know that fraud enforcement simply can't be adequately covered with funds allocated in the recently passed recovery legislation for State and local law enforcement. As someone who pushed strongly for recovery legislation that included State and local law enforcement, I know the purpose behind those funds and what they are dedicated to. It is intended to ensure that State and local law enforcement agencies and crime prevention programs could avoid layoffs, make new hires, and reinforce their work to prevent the increased crime so often associated with economic downturns. In so doing, these funds would reinforce and revitalize those neighborhoods that have experienced economic development and that could so easily backslide. State and local law enforcement fund are urgently needed for those vital purposes. They should not be diverted from State and local law enforcement needs to fund Federal fraud investigations.

Moreover, while states have done admirable work cracking down on mortgage fraud, the Federal Government must play a substantial role in this area. Mortgage fraud schemes and other financial fraud schemes often cover many States and jurisdictions, which hampers the ability of any State or local investigators and prosecutors to reach them. These schemes also are often extremely complex and labor-intensive to unravel, requiring the expertise and resources of the Federal Government and the mortgage fraud task forces in which Federal and State law enforcement officers work closely together. We simply cannot ask States to solve this enormous and complex problem on their own. I believe that we need to be good law enforcement partners and that the Federal Government needs to do its share. To fulfill those responsibilities these additional funds need to be authorized.

I agree that the $10 million in additional funding to the FBI for mortgage fraud enforcement in the omnibus appropriations bill is a good start, but it is just a small start to what is needed. I wish the economic recovery had been able to include an additional $50 million for the FBI that the Senate initially was willing to include, but that additional funding was stripped away. Unfortunately, to achieve bipartisan support and passage of the economic recovery package, those funds were eliminated. The funds currently being provided are insufficient to tackle the magnitude of this problem. I refer all Senators to the testimony before the Judiciary Committee by the Director of the FBI and the Deputy Director of the FBI and to the detailed justifications the FBI and other law enforcement agencies have provided.

I believe authorizing and funding fraud enforcement will save the government money. That is what the Justice Department has found. That is what Taxpayers Against Fraud has found. That is what the administration indicates in its Statement of Administration Policy in strong support of this bill. As the administration says: ''These additional resources will provide a return on investment through additional fines, penalties, restitution, damages, and forfeitures.'' I would add that strong fraud enforcement will also save money by deterring fraudulent conduct.

According to recent data provided by the Justice Department, the government recovers on average $32 for every dollar spent on criminal fraud litigation. Similarly, the nonpartisan group Taxpayers Against Fraud has found that the Government recovers $15 for every dollar spent in civil fraud cases. Just last year, the Justice Department recovered nearly $2 billion in civil false claims settlements, and, in criminal cases, courts ordered nearly $3 billion in restitution and forfeiture. Strengthening criminal and civil fraud enforcement is a sound investment, and this legislation will not only pay for itself, but should bring in money for the Federal Government.

If fraud goes unprosecuted and unpunished, then victims across America lose money. In many cases, American taxpayers take the loss directly. For example, in the case of many mortgage frauds, the Federal Government has guaranteed the loans, and when the fraud is uncovered, American taxpayers, as well as the victim, lose out. More directly, with the billions of dollars of Federal funds now going out through the recovery legislation, the Troubled Assets Relief Program, and other bailout programs, we should all recognize that enforcement will be essential to protect those recovery funds from fraud and to recover any money that is fraudulently taken. If we do not take action to investigate and prosecute this kind of fraud, Americans will lose far more money than this bill costs.

The only organizations that have opposed this legislation are the Heritage Foundation and the National Association of Criminal Defense Lawyers. They have argued that the legal fixes

in this bill constitute overreaching by the Federal Government. In fact, this bill does not overfederalize or overcriminalize.

Senator GRASSLEY and I took great care in crafting it to avoid those kinds of excesses. The bill creates no new statutes and no new sentences. Instead, it focuses on modernizing existing statutes to reach unregulated conduct and on addressing flawed court decisions interpreting those laws. This is exactly the kind of Federal criminal legislation that these critics should appreciate. Rather than gratuitously adding new laws or expanding Federal jurisdiction, it acts in a targeted way to fill in gaps identified by investigators and prosecutors to make it easier for them to reach the conduct most relevant to the current financial crisis.

The bill amends the definition of ''financial institution'' in the criminal code in order to extend Federal fraud laws to mortgage lending businesses that are not directly regulated or insured by the Federal Government. These companies were responsible for nearly half the residential mortgage market before the economic collapse, yet they remain largely unregulated and outside the scope of traditional Federal fraud statutes. This change will finally apply the Federal fraud laws to private mortgage businesses like Countrywide Home Loans and GMAC Mortgage.

The bill would also amend the major fraud statute to protect funds expended under the Troubled Assets Relief Program and the economic stimulus package, including any government purchases of preferred stock in financial institutions. The U.S. Government has provided extraordinary economic support to our banking system, and we need to make sure that none of those funds are subject to fraud or abuse. This change will give Federal prosecutors and investigators the explicit authority they need to protect taxpayer funds.

This bill will also strengthen one of the core offenses in so many fraud cases—money laundering—which was significantly weakened by a recent Supreme Court case. In United States v. Santos, the Supreme Court misinterpreted the money laundering statutes, limiting their scope to only the ''profits'' of crimes, rather than the ''proceeds'' of the offenses. The Court's mistaken decision was contrary to congressional intent and will lead to financial criminals escaping culpability simply by claiming their illegal scams did not make a profit. Indeed, Ponzi schemes like the $65 billion fraud perpetrated by Bernard Madoff, which by definition turn no profit, are exempt from money laundering charges under this formulation. This erroneous decision must be corrected immediately, as dozens of money laundering cases have already been dismissed.

None of these changes constitute overcriminalization. Rather, they reach fraudulent conduct at the center of our ongoing economic crisis. Americans are rightly demanding accountability for this fraud, and we cannot have full accountability without the participation of Federal investigators and prosecutors armed with the tools and resources they need.

We can delay no further in taking decisive action to strengthen fraud enforcement and doing everything we can to fight the scourge of fraud that has contributed to our economic crisis. There is simply no good reason for us not to act. The administration ''strongly supports enactment'' of this bill. The Justice Department supports it, the FBI supports it, the Secret Service supports it, the TARP inspector general supports it, the HUD inspector general supports it, Federal and State law enforcement officers support it.

The bottom line, Madam President—before I lose my voice entirely—is, this legislation is to stop people who have been robbing the retirement savings of Americans, who have been robbing their homes from under them, who have been robbing the money they have set aside for their kids' college education and getting away with it under some of the elaborate mortgage fraud schemes. They get away with it because there is no real ability to go after them. There is neither the money nor the personnel. This legislation gives both money and personnel but also gives teeth to the law.

I have said on this floor several times, if you have somebody who sets up a $100 million fraud scheme, they do not care what happens to the people in their way. They do not care if they ruin the lives of the people they are going after. They do not care if the people lose their homes because they figure if they get caught, they might have to give a little bit of the money back in a fine or otherwise. They are not deterred. They, obviously, do not have a sense of conscience or morality. They do not care if people lose their life savings. They do not care if people lose their retirement. They do not care if people lose their hope for the future. All they want is the money.

Madam President, I tell you right now, if these same people think they are going to go to prison for what they are doing, if they think they will spend time behind bars for years and years, then maybe—maybe—some Americans may be able to keep their homes, some Americans may be able to keep their dreams, some Americans may be able to keep their retirement, some Americans may be able to keep sending their children to college.

People are now losing that dream. That is why there is strong bipartisan support for this bill. That is why I must admit I am somewhat frustrated that many have come here to try to bring amendments that have absolutely no place in this bill, and, if anything, would slow up the ability to protect Americans. But they have the right to do this.

We will soon have a list of amendments, we will set the list in, and we will set a time for final passage. And maybe—maybe—within a few weeks the President will be able to sign this legislation and people will be a lot more protected than they are now.

Madam President, I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 1000

Mrs. BOXER. Madam President, I ask unanimous consent that amendment No. 1000 be the pending business so I might modify it.

The ACTING PRESIDENT pro tempore. Is there an objection?

Without objection, it is so ordered.

AMENDMENT NO. 1000, AS MODIFIED

Mrs. BOXER. Madam President, I ask that my amendment be modified with the changes that are already at the desk and ask unanimous consent that Senators WEBB and WYDEN be added as cosponsors of the amendment.

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

The amendment is so modified.

The amendment, as modified, is as follows:

On page 20, between lines 11 and 12, insert the following:

''(e) ADDITIONAL FUNDING FOR THE SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.—

''(1) IN GENERAL.—Of the amounts of authority made available pursuant to section 115(a) of the Emergency Economic Stabilization Act of 2008 (P.L. 110–343), an additional $15,000,000 shall be made available to the Special Inspector General of the Troubled Asset Relief Program (in this subsection referred to as the Special Inspector General).

''(2) PRIORITIES.—In utilizing funds made available under this subsection, the Special Inspector General shall prioritize the performance of audits or investigations of recipients of non-recourse Federal loans made by the Secretary of the Treasury or the Board of Governors of the Federal Reserve System, to the extent that such priority is consistent with other aspects of the mission of the Special Inspector General. Such audits or investigations shall determine the existence of any collusion between the loan recipient and the seller or originator of the asset used as loan collateral, or any other conflict of interest that may have led the loan recipient to deliberately overstate the value of the asset used as loan collateral.''.

Mrs. BOXER. I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. UDALL of Colorado). Without objection, it is so ordered.

Ms. SNOWE. Mr. President, I rise today to express my strong support for the Fraud Enforcement and Recovery Act of 2009 currently before the Senate. This legislation, which is long overdue, will take critical strides toward enabling the Justice Department and Federal Bureau of Investigation to investigate and prosecute the mortgage and securities fraud that have played such a large role in bringing our economy to the brink of collapse. I would like to commend Senators LEAHY, GRASSLEY, and KAUFMAN for introducing this bill that I am proud to cosponsor and hope that the Senate will pass it as quickly as possible.

The fact is that the current recession stands apart from others we have experienced since the end of World War II, and not just because it is the longest and deepest. Although many downturns are the result of a decline in the business cycle, this recession was in significant part brought about by two factors that could well have been avoided had mortgage brokers and their associates and financiers set aside greed and outsized profits in favor of responsible lending, financial practices, and sustainable, but nonetheless healthy, rates of return.

First, during the most recent housing boom, as are all aware, many homebuyers were placed into predatory, subprime loans that they could not be reasonably expected to repay. Indeed, while unscrupulous lenders, including private mortgage brokers and lending businesses that were not subject to the type of oversight and regulations that have traditionally prevented fraud, profited from a quick short-term fee in exchange for underwriting an irresponsible mortgage with little due diligence, homebuyers were left with loans that began with low interest rates and affordable payment but that morphed into significantly higher interest rates and payments. In other cases, the New York Times has reported that circles of appraisers delivered inflated appraisals on demand, while lawyers paid by the seller, but holding themselves out as representing the buyer, and mortgage brokers conspired to persuade buyers to take on overpriced and often dilapidated homes. And the scams continue to this day. The Times reports that deed thieves are currently approaching distressed owners and offering to ameliorate financial difficulties by temporarily taking over deeds. Then they refinance and flee with the owners' equity in tow.

The result of the fraudulent loans and scams has been nothing short of a disaster that has devastated communities nationwide. RealtyTrac, the leading online marketplace for foreclosure properties, in January reported that Americans received 3.2 million foreclosure filings on 2.3 million properties during 2008. That represents a staggering 81-percent increase in total properties from 2007 and a 225 percent increase in total properties from 2006.

Unfortunately, mortgage brokers and related parties are not solely to blame for the economic calamity that has befallen the nation. Large Wall Street investment banks thought they saw a profit opportunity and decided to package and sell risky subprime mortgages in largely unregulated markets. They believed that they could reduce risk by placing mortgage securities into such bundles but were in many cases dishonest with themselves and investors about the potential for losses. Although paper profits soared so long as housing prices increased, once they began to tumble, the value of these securities did as well.

It is now estimated that in the past year, U.S. banks and financial institutions lost more than $500 billion as a result of their investments in subprime mortgages. Some of this Nation's most recognizable companies, including Bear Stearns and Lehman Brothers have been wiped away due to collapse of the mortgage-backed securities market, while Fannie Mae and Freddie Mac have been taken over by the Federal Government.

While other financial institutions have not shuttered their doors, they have absorbed significant losses. This has caused banks to all but cease to lend, which has led to untold difficulties for businesses and individuals seeking credit. Consumers could not obtain car and student loans, and business owners, and small business owners in particular, could not acquire capital to expand operations or, in many cases, make payroll. In short, the staggering 5.1 million job losses we have witnessed since the onset of the recession in December 2007 are in large part attributable to the collapse of housing and financial markets.

To ameliorate the situation, Congress was last October forced to pass the $700 billion Emergency Economic Stabilization Act that created the Troubled Asset Relief Program, TARP, to rescue financial markets. Combined with other actions taken by the Federal Reserve Board, Federal Deposit Insurance Corporation, and the Treasury Department, the Congressional Oversight Panel on April 7 reported that the total value of all direct spending, loans and guarantees provided in conjunction with the federal government's financial stability efforts now exceeds $4 trillion. In addition to this unprecedented exposure, Congress also passed the $787 billion American Recovery and Reinvestment Act in February to assist those displaced by the recession and sow the seeds for recovery.

Notably, as Congress passed the $700 billion financial rescue package last October, I insisted that our obligation did not stop with the enactment of that legislation. Indeed, I called on Congress to demand accountability for the massive malfeasance that has been perpetrated on the American people and specifically made the point that those responsible for our Nation's economic meltdown must be investigated and subsequently prosecuted to the fullest extent of the law. Frankly, it would be inconceivable to me to devote anything less than 100 percent of our resources to investigating those responsible for this crisis.

It is for these reasons that on February 25, I, joined by Senator WHITEHOUSE, introduced the FBI Priorities Act of 2009, S. 481, to augment FBI investigations of financial crimes. Turning to specifics, this bill authorizes $150 million for each of the fiscal years 2010 through 2014 to fund approximately 1,000 Federal Bureau of Investigation field agents in addition to the number of field agents serving on the date of enactment. This extra manpower will help enable the FBI to develop and fully investigate, as well as bring responsible parties to justice.

There is simply no question that this additional manpower is an absolute necessity to combat fraud given rising caseloads and a wholly inadequate level of resources. Consider the following facts: In the last 6 years, suspicious activity reports alleging mortgage fraud that have been filed with the Treasury Department have increased nearly tenfold to 62,000 in 2008. In the last 3 years, the number of criminal mortgage fraud investigations opened up by the FBI has more than doubled to exceed 1,800 at the end of 2008. Moreover, the FBI anticipates a new wave of cases that could double that number yet again in coming years. Finally, despite increases in caseloads, the FBI currently has fewer than 250 special agents nationwide assigned to these financial fraud cases. At current levels, these agents cannot individually review, much less thoroughly investigate, the more than 5,000 fraud allegations received by the Treasury Department each month.

Although the details of the legislation I have introduced differ from those in the measure currently before the Senate, I believe the impact on the government's ability to root out and prosecute fraud would be similar. In particular, the legislation now under consideration authorizes $165 million a year for hiring fraud prosecutors and investigators at the Justice Department in 2010 and 2011. This includes $75 million in 2010 and $65 million in 2011 for the FBI to hire 190 additional special agents and more than 200 professional staff and forensic analysts to nearly double the size of its mortgage and financial fraud program. With this funding, the FBI can expand the number of its mortgage fraud task forces nationwide from 26 to more than 50.

Notably, the funding authorized in the bill also includes $50 million a year for U.S. Attorneys' Offices to staff those fraud task forces and $40 million for the criminal, civil, and tax divisions at the Justice Department to provide special litigation and investigative support in those efforts. In addition, the bill authorizes $80 million a year for 2010 and 2011 for investigators and analysts at the U.S. Postal Inspection Service, the U.S. Secret Service, and the Department of Housing and

Urban Development's Office of Inspector General to combat fraud in Federal assistance programs and financial institutions.

In addition to adding critical funds necessary to identify and prosecute fraud, this legislation makes several vital improvements to fraud and money laundering statutes to strengthen prosecutors' ability to combat a growing wave of fraud. Specifically, the bill amends the definition of ''financial institution'' in the criminal code to extend Federal fraud law to mortgage lending businesses that are not directly regulated or insured by the Federal Government. Responsible for nearly half the residential mortgage market prior to the economic collapse, these companies inexplicably remain largely unregulated and outside the scope of traditional Federal fraud statutes. This provision would apply the Federal fraud laws to private mortgage businesses, just as they pertain to federally insured and regulated banks.

Furthermore, this legislation amends the false statements in mortgage applications statute to make it a crime to make a materially false statement or to willfully overvalue a property to influence any action by a mortgage lending business. Currently, these strictures apply only to Federal agencies, banks, and credit associations and do not necessarily extend to private mortgage lending businesses. This provision would ensure that private mortgage brokers and companies are held fully accountable under this Federal fraud provision.

Finally, I would like to point out that this bill would modify Federal law to protect funds expended under TARP and the economic stimulus package. Specifically, the legislation would amend the Federal major fraud statute to include funds flowing pursuant to TARP and the stimulus package. The change will give Federal prosecutors and investigators the explicit authority they require to protect taxpayer funds, which could not be more critical with $4 trillion at risk as part of TARP and related programs and $787 billion at stake as part of the stimulus package. It is absolutely vital that every dollar we have put at stake go toward economic stabilization and revitalization and not to line the pockets of those who seek to defraud taxpayers.

Mr. FEINGOLD. Mr. President, I will vote for the Fraud Enforcement and Recovery Act of 2009, S. 386. This bill improves enforcement and recovery mechanisms for mortgage, securities, financial institution and other frauds. In the context of today's global financial crisis, it is a very important piece of legislation, and I commend its authors.

The current economic downturn has many causes. But certainly fraud—in mortgage lending and in the mortgage-backed securities and derivatives markets—played a significant role. The Fraud Enforcement and Recovery Act of 2009 does a number of things to help deter and uncover fraud, and compensate its victims. First, it authorizes significant new resources for the FBI, the Department of Justice, the Department of Housing and Urban Development, and other agencies to investigate and prosecute these kinds of cases.

In addition, the bill extends Federal fraud laws to the mortgage lending business, just as they apply to federally insured banks. Similarly, it makes sure that Federal prohibitions against false statements apply to statements made to influence mortgage lending decisions. Very importantly, because the taxpayers have now put extraordinary sums of money into propping up the financial sector, the bill makes clear that fraudulent activities in connection with the TARP program and the economic stimulus package can be prosecuted. The bill also reverses an erroneous Supreme Court interpretation of the Federal money laundering statute that was making it impossible to prosecute so-called Ponzi schemes. These simple and effective clarifications and expansions of current law will help protect the American people from these very damaging frauds.

I also strongly support Section 4 of the bill, which amends the False Claims Act—FCA. The FCA provisions clarify liability for making false or fraudulent claims to the federal government. A few concerns have been raised about this part of the legislation, which I would like to briefly address here.

One criticism is aimed at the bill's rejection of an ''intent'' requirement under the FCA. The Supreme Court recently held in the Allison Engine case that such a requirement exists. The bill simply returns the law to its original intent. The judicially manufactured requirement that the person making a false claim intend that the government itself pay the claim was giving subcontractors a way to avoid liability for fraud, which is inconsistent with the purpose of the act.

Another criticism alleges that the addition of a ''materiality'' requirement to the FCA is potentially broad and unclear. But ''material'' is defined in the bill in a way that is consistent with Supreme Court and other judicial precedents, so this claim is unconvincing.

The Fraud Enforcement and Recovery Act of 2009 is an important accomplishment. Those who perpetrate financial fraud, which is so harmful not only to the victims of the fraud but to the economy as a whole, must be discovered and prosecuted. This bill makes it easier to do that, so I am pleased to support it.

VOTE EXPLANATION

Mr. COBURN. Mr. President, earlier today amendment No. 1006 was passed by a voice vote. If there had been a rollcall vote, I would have opposed this amendment, as it added more than $40 million to a bill that already costs nearly half a billion dollars.

Mr. CONRAD. Mr. President, before we begin the debate on appointing conferees on the budget resolution, will the Parliamentarian inform us of the parliamentary status on the floor.

The PRESIDING OFFICER. The Senate is considering S. 386.

BUDGET RESOLUTION CONFERENCE

Mr. CONRAD. Mr. President, floor staff informs me they are working on an agreement that will allow us to go to the consideration of the conferees. At this point, we will open the discussion but will not turn to it. I will use this time to make my statement so that we are efficiently using the time of the Senate.

I remind my colleagues that some of the key elements in the Senate-passed budget resolution we will soon be taking to conference. The budget needs to be considered in the context of the very tough hand we have been dealt. This administration and this Congress have inherited a mess of truly staggering proportions. If we start with the deficit outlook, we can see that the previous administration inherited surpluses that they rapidly turned into record deficits, and then record deficits of a proportion that stagger the imagination. I don't think anybody could have anticipated we would have deficits approaching $2 trillion in a year.

We also saw in the previous administration a dramatic increase in the Federal debt—a more than doubling of the Federal debt in the period that the previous administration was responsible for.

The Obama administration inherited record deficits, a doubling of the debt, the worst recession since the Great Depression, financial market and housing crises unparalleled since the 1930s, and nearly 4 million jobs lost in the last 6 months alone. On top of it all, we have ongoing wars in Iraq and Afghanistan.

I often think what it must be like to be President Obama, who wakes up every morning with this heavy responsibility on his shoulders. In our caucus today, we had the Chairman of the Federal Reserve Board, Chairman Bernanke. I told him that I believe when the history of this period is written, he will go down as one of its heroes—somebody who helped rescue us from what could have been a financial collapse, not only here but around the country.

In the budget resolution that passed the Senate, which we will be taking to conference, we have tried to preserve the major priorities of the President: reducing our dependence on foreign energy; a focus on excellence in education; fundamental health care reform, because that is the 800-pound gorilla that can swamp the fiscal boat of the country; middle-class tax cuts; and cutting the deficit in half over the term of the budget.

The budget we produced reduced the deficit by more than half over the next 5 years. We have reduced the deficit by two-thirds. I am proud of that fact. We reached 3 percent of GDP a little less

than that—which all of the economists say is essential to stabilizing the debt.

At the same time, we have adhered to the President's intentions to make certain strategic investments—one of the most important in energy—to reduce our dependence on foreign energy, because that is an imperative for this country, a strategic imperative, a financial imperative, and a national security imperative.

The budget resolution that went through the Senate reduces our dependence on foreign energy, creates green jobs, preserves the environment, and helps with high home energy costs. It does it in the following ways: one, a reserve fund to accommodate legislation to invest in clean energy and address global climate change; second, providing the President's level of discretionary funding for the DOE; third, building on the economic recovery package to provide investments in renewable energy, efficiency, and conservation, as well as low carbon coal technology, and modernizing the electric grid.

I thank Chairman LEAHY once again for his incredible courtesy and graciousness in allowing us to interrupt his very important legislation so we can go to this matter of naming conferees, because we are under a tight deadline there. I thank the chairman of the Judiciary Committee for his incredible graciousness.

We also, in this budget, preserve the President's priority of a focus on excellence in education. If we are not the best educated, we are not going to be the most powerful country in the world for very long. So we adopt the priority of investments in education to generate economic growth and jobs, to prepare our workforce to compete in the global economy, to make college more affordable, and to improve student achievement. We do it, again, in three ways: a higher education reserve fund to facilitate the President's student aid increase; by extending the simplified college tax credit, providing up to $2,500 a year in tax credit—that is a dollar-for-dollar reduction in your tax liability; and, finally, by providing the President's requested level of $5,550 for Pell grants and fully funding his education priorities, such as early education.

When I am asked about the President's budget, I give it very high marks because I think it has the priorities exactly right—reducing our dependence on foreign energy, excellence in education, and health care reform, all in the context of dramatically reducing the deficit. So on health care, the budget resolution that previously passed the Senate, which we will take to the conference committee, bends the health care cost curve, reducing costs long term, improves health care outcomes, expands coverage, increases research, and promotes food and drug safety. Again, we do it in three different and very specific ways: No. 1, a reserve fund to accommodate the President's initiative to fundamentally reform the health care system. As many have said, we have a sickness system, not a wellness system. We have to make a transition. We also have a reserve fund to address Medicare physician payments, because we know that the doctors across the country who serve Medicare-eligible patients are due for major deep cuts—cuts of more than 10 percent. We are not going to let that happen. Third, it continues investment in key health care programs, such as the NIH and the FDA.

Not only have we preserved the President's key investment priorities, reducing our dependence on foreign oil, moving toward excellence in education, health care reform, but we also preserve his fourth key priority of cutting the deficit dramatically. In the budget resolution that previously passed the Senate, we reduce the deficit by two-thirds by 2014—that is in dollar terms we reduced it by two-thirds. Most economists say you ought to evaluate it as a percentage of the gross domestic product, that that is the best way to see what you are accomplishing. If we look at it in those terms, we are reducing the deficit by more than three-quarters, from 12.2 percent of GDP in 2009 down to less than 3 percent of GDP out in 2014.

I am especially proud of that trajectory on the deficit, because I think it is absolutely critical. I would be the first to say we need to do even more in the second 5 years, but this is a 5-year budget. The reason it is a 5-year budget is that, of the 34 budgets that Congress has done since the Budget Act was instituted, 30 of those 34 times we have done a 5-year budget. Why? Because the forecasts beyond 5 years are murky, at best, highly unreliable. So we have stuck to a 5-year budget, as has traditionally been the case.

With respect to the revenue side of the equation in this budget, the Congressional Budget Office, in looking at what we have done, would conclude that as a total, compared to current law, the budget resolution that passed the Senate reduces taxes. Let me emphasize that, because some want to put all the emphasis on the tax increases in this package; but if you take the tax increases and the tax reductions and put it all together, and you look at a net result, you find that we are cutting taxes over the 5 years by $825 billion. That is because we have extended the middle-class tax relief that is from the 2001 and 2003 acts, the 10-percent bracket, the childcare tax credit, the marriage penalty relief, and the education incentives. All of that is in this bill.

We also provide alternative minimum tax reform relief for 3 years to prevent 24 million people from being swept up in the alternative minimum tax.

We also have estate tax reform, $3.5 million an individual, $7 million a couple, indexed for inflation. That means 99.8 percent of estates in this country will pay zero; 99.8 percent of estates will pay zero.

We also have business tax provisions and the traditional tax extenders, such as the research credit, that are included in this budget, for a total of tax relief of $958 billion.

On the other side of the equation, we have loophole closures, such as codifying economic substance and international tax enforcement to go after these offshore tax havens, these abusive tax shelters. We raise $133 billion for a net tax reduction of $825 billion over the 5 years of this budget.

On the spending side of the house, domestic discretionary spending, again as a percentage of the gross domestic product—and the reason, of course, economists say that is what you should focus on rather than the dollar amounts is that this takes account of inflation. It gives a more fair comparison year by year.

We hear all this talk that this is a big spending budget. No, it is not. This budget reduces domestic discretionary spending as a percentage of gross domestic product from 4.3 percent in 2010 down to 3.2 percent in 2014. We are taking domestic discretionary spending down to one of its lowest levels in the last 50 years.

In fact, nondefense discretionary spending increases under this budget resolution an average 2.5 percent.

In addition, we have a series of budget enforcement tools that are in this resolution: discretionary caps for 2009 and 2010. Some have said we ought to have discretionary caps for 2011 too. Well, why? Well, why? We are going to be back here a year from now. We have discretionary caps for 2009 and 2010. Why do we need them for 2011, when we are going to be right back here, same place, same time 1 year from now?

We also maintain a strong pay-go rule. We provide a point of order against long-term deficit increases; a point of order against short-term deficit increases; we allow reconciliation for deficit reduction only in the resolution out of the Senate; and we provide a point of order against mandatory spending on an appropriations bill.

Let me address, very briefly, this last provision because what we found was some of our colleagues have gotten increasingly clever about finding new ways to spend money. We found they were increasing mandatory spending on appropriations bills. Mandatory spending is typically not done on an appropriations bill, as the Chair well knows. Appropriations bills are designed to deal with discretionary spending, not mandatory spending. Mandatory spending is things such as Social Security and Medicare, certain farm supports. Those are mandatory spending items. We found some of our colleagues have gotten very clever and started to increase mandatory spending on appropriations bills. We have created a point of order to try to short circuit that bad practice.

The budget resolution also attempts to address our long-term fiscal challenges. Let me be very clear. My colleague will momentarily speak, and he

will be highly critical of the budget resolution for not more fully addressing our long-term challenges. It may surprise listeners to hear me say that I agree with him. If there is a place this budget can be fairly criticized, it is that it does not do enough long term. I think we do a pretty good job in the first 5 years. But beyond that—this is only a 5-year budget—but beyond that, much more needs to be done.

The ranking Republican on the Budget Committee, Senator GREGG, and I have a proposal that I believe needs to be pursued. It is to have a task force given the responsibility to come up with a plan to get us back on a sounder, long-term fiscal track and to come to Congress for an assured vote if 12 of the 16 members of that group could agree.

Nonetheless, there are three important elements of this budget resolution that deal with our long-term fiscal circumstance. No. 1 is the health reform reserve fund. That, after all, is the biggest threat to our long-term fiscal security and stability. No. 2 is we have program integrity initiatives to crack down on waste, fraud, and abuse. We have five in this budget, and they are very important—Medicare, Social Security, defense, and others as well. I hope very much that these are pursued in the conference committee.

No. 3 is we have a long-term deficit increase point of order to require a 60-vote point of order against moves to increase long-term deficits.

Finally, let me say that on this question of the long term, the President has been very clear. At the fiscal responsibility summit on February 23, the President said this:

> Now, I want to be very clear. While we are making important progress towards fiscal responsibility this year, in this budget, this is just the beginning. In the coming years, we'll be forced to make more tough choices, and do much more to address our long-term challenges.

The President got it exactly right with that statement. We are going to have to do much more. But this budget is a good and responsible beginning.

Mr. President, with that, I will yield the floor. Let me say, momentarily we will have a unanimous consent request before us. I do not yet have it in my hands. I will say this before we begin this debate. This is an institution with Republicans, Democrats, and Independents. On the Budget Committee, we have all three represented.

I am chairman of the committee representing the Democratic Party. Senator GREGG is the ranking Republican. Senator GREGG is someone with whom we have strenuous debates and disagreements. You will see that in the coming hours. But I wish to make very clear that I have high regard for Senator GREGG. He is motivated by patriotism, by love of country, and by a fundamental understanding that we are on an unsustainable track, that we have to be much more serious about our long-term buildup of deficits and debt. He has not just talked about it, he has been prepared to act.

I wish to recognize him for his commitment to something I also believe in. I think it is abundantly clear we cannot stay on our current course. It is a course that will lead us to a much diminished standard of living for the future. While I believe this budget is a good beginning, I do not assert that this in any way solves our long-term problem. It does not. But it is a beginning, an important beginning, and we need to do more.

I also thank Senator GREGG for his unfailing courtesy and professionalism, not only in our public debates but in the workings of the Budget Committee. He has assembled a first-rate and professional staff. We have worked together well to do the business of the committee and the business of the country.

I thank Senator GREGG, once again, for all he has done to allow the budget resolution to be fully debated, fully discussed, to have our differences aired publicly and privately but also to do it in an air of civility and respect, something I certainly feel toward him.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, let me begin by saying I think it is terribly unsportsmanlike of the chairman of the committee to say such nice things about me, to disarm my ability to effectively attack his budget, but I wish to join his thoughts because he and his staff are very good to work with. He is a professional. They are committed. He genuinely believes, as I do, that this country's outyear fiscal situation is not a sustainable event. We are trying to work together to address that situation. We hope we can gather others to join us in this effort.

I respect he has water to carry around here, and he carries it extraordinarily well on behalf of his constituency, which is the Democratic caucus and the President of the United States. I congratulate him for the exceptional job he does.

That being said——

Mr. CONRAD addressed the Chair.

Mr. GREGG. Is the debate over?

Mr. CONRAD. Can we end the debate? (Laughter.)

Mr. GREGG. That being said, let's begin where the chairman leaves off accurately and correctly in saying that the course we are on is unsustainable.

What does ''unsustainable'' mean? It is one of those terms of art we use around here. It means that by the time this budget runs its course—not necessarily the chairman's budget but the President's budget because the President's budget is a 10-year budget—by the time the President's budget runs its course, we will have passed on to our children a debt which will have tripled—tripled—a deficit which will have averaged every year for the 10 years a trillion dollars or more and a national public debt—that is the debt we owe to the Chinese, to the Japanese, and to our own people who own a fair portion of our debt—a national public debt which will have doubled as a percent of our gross national product, going up to 80 percent of our gross national product.

What does all that mean? It means essentially we will have built a debt in this Nation which our children will not be able to afford to pay down. Just the interest on that debt alone, as we move into the later years of this budget, will exceed anything else in the budget as a line item on the discretionary side of the ledger. It will exceed, for example, all the money we spend, the interest alone will exceed all the money we spend on national defense. It will exceed by a factor of three or four or maybe even eight accounts such as education, housing, veterans affairs, and health. The deficits will have been so large for so long that the debt will have grown to a point that there is no logical way or fair way that our children and our children's children, who will have to pay this debt, will be able to do it in a manner that would leave them with a nation that is as strong and as prosperous as the Nation that was given us.

Putting it another way, at the end of this budget, after these 10 years are over and beginning in about the third and fourth year of this budget, the spending will be so out of control at the Federal level, the growth of the Government will have occurred at such a rapid rate that we will have created a debt structure which will mean that our children will have about three choices in their future.

The first is that there will be a dramatic increase in inflation. We will try to pay this debt off with inflated dollars. There is no more regressive or harmful tax that a society can put on its people than to have uncontrolled inflation or massive inflation. But that is what one of the choices is.

The other choice is that we will raise taxes to a level that they will be so high we will essentially tax away the opportunity of our children to do things which were considered to be commonplace for our generation—buy a home, send their kids to college, invest in a small business, take a risk, create a job. All of that will be taxed away because the tax rates would have to get up to such a level to pay this debt off that we will no longer be able to have that type of prosperity. The third course of action, equally untenable, is that the dollar gets devalued—which is to some extent an inflationary event—and people stop buying our debt. They simply say: I don't believe you can pay this debt off—you, the people of the United States. You are not going to be able to generate enough productivity to do it. That, of course, leads to some level of implosion of our economy which I can't even calculate or comprehend, but it is much worse than what we even confront today.

So nobody is arguing or debating—at least I am not, though there are some

who are—I am not coming to this floor and saying it is irresponsible for this administration, for President Obama to have inserted a large amount of Federal spending into the economy this year and next year. We recognize that this economy is in stress and that the only source of liquidity for our economy is our National Government and that the Federal Reserve, for all intents and purposes, has become the lender of first resort. But that is a short-run issue.

The problem with this budget is that the type of spending which has to be done now is not curtailed after 2 years. It is not reigned in. It is not reduced or even leveled off. It continues up and up in the third year, the fourth year, the fifth year, the sixth year of the budget the President sent up here. The spending continues to go up on a path that is extraordinarily steep, so that the cost of the Government, which today and historically has been about 20 percent of GDP, jumps to 21 percent, 22 percent, 23 percent, and 24 percent. In fact, if you go outside the window and you presume these numbers continue to compound, you get to a cost of Government that ends up around 28 and 29 percent of GDP. You cannot sustain an economy with that type of cost.

I have a few charts to try to put this in perspective.

The first chart is on the issue of debt. The budget, as proposed by the President—and why do I keep talking about the President's budget rather than the chairman's budget? Because the President's Director of OMB said they are essentially the same, and they are essentially the same. We can get into the differences, but the differences are at the margin and they are really not arguable. The biggest difference is that the chairman's budget only goes for 5 years, not 10 years. Well, there are other big differences, but that leaves off the second 5 years, and by leaving off the second 5 years, you don't talk about and you essentially hide some of the most dramatic effects of this spending binge.

The President's budget increases taxes by $1.5 trillion, it increases discretionary spending by $1.4 trillion, and it increases mandatory spending by $1.2 trillion. And this number, this $1.2 trillion, is grossly underestimated. What does it do in the area of savings? On the mandatory side, it does nothing in the area of savings, absolutely nothing. In fact, the few discretionary savings he sent up, which I happen to support, were dropped in the chairman's mark, especially in the area of agriculture. So as we have said, and some people have heard it before—maybe not in this room—it spends too much, it taxes too much, and it borrows too much as a budget. What it doesn't do is save too much, and that is what gets us into trouble. The practical effect of this budget's structure is that it takes Federal debt and doubles it in 5 years and triples it in 10 years.

Try to remember what we are talking about. We are not talking about going from $100 to $200 to $300. We are talking about trillions. Trillions. I don't know what a trillion dollars is. I can't even conceive of it. But that is what we are talking about. We are talking about taking the Federal debt from $5.8 trillion up to $17 trillion, or thereabouts. To try to put it in perspective, if you take all the spending, all the debt run up by all the Presidents since the beginning of the country—George Washington through Franklin Pierce through George W. Bush—all that debt that has been run up over 230-some-odd years by all our Presidents, that debt is doubled by this President within 5 years of being in office.

There is another chart which shows this even better. It is called the wall of debt. This chart wasn't invented by me, but whoever invented it was a genius, obviously. The wall of debt shows how the Federal deficit just goes up and up and up and up. This wall of debt is what our kids are going to run into when they try to have a productive lifestyle. It is what is going to cost them their ability to be successful.

By the time we get to the end of this, or even right here in the middle somewhere of this budget, the average family in this country is going to have $130,000 of new debt for which they are responsible. And $130,000 is probably more than the mortgage on the homes of most people. The interest cost on that debt, which most Americans, which all Americans are going to be responsible for, will be about $6,000. That may be more than what most people pay in interest on their homes. But that is the debt that is going to be passed on to them by this budget.

Why does it happen? It happens for one very simple reason. It is called spending. The simple fact is that under the President's budget—and under the budget proposed by the chairman—the spending of the Federal Government goes up dramatically, comes back down, and then starts back up again. It goes up dramatically, of course, in these 2 years here, which I said I have reservations about. I especially had reservations about the stimulus package, which was a misallocation of spending, even though I supported the stimulus effort. Why does it start back up again? It starts back up again because this President, in a very forthright manner—and I give him credit for this—has said not only in his budget but he has said publicly that he genuinely believes the way you create prosperity is to significantly increase the size of the Federal Government, to take it to the left dramatically. So he does. As a result, spending goes up at a rate that is simply not affordable for our children.

Look at this black line here. This is the black line that reflects the average spending of the Federal Government between 1958 and 2008. Look at how much higher the spending is of this Government under this proposed budget. That is a huge gap. When you are talking about an economy as large as ours, when you are talking about 2, 3, and 4 percent—or in this case, 4 or 5 percent—that is where the massive deficits come from. That is where the massive increase in debt comes from. It is debt that is the issue.

The chairman used to say: The debt is the threat. He is absolutely right, the debt is the threat, but the driver of the threat is spending. Unless you are willing to address the issue of spending, you are not going to get debt under control because you can't tax people enough to cover that. Well, of course you can always inflate the economy and try to cover it, but that leads to much more harmful events.

So this is the fundamental difference we have as a party. The President has said he wants to spend, he wants to tax, and he wants to borrow. And I think it is important to note there is a little subtlety here that hasn't been focused on too much, and that is this: When President Clinton came into office, he also wanted to spend and tax, but he didn't want to borrow. He used his taxes, which he increased—which I probably opposed—in order to reduce the deficit. This President, on the other hand, who is claiming he is going to raise taxes on just the wealthy—which is a canard if there ever were a canard around here—is using all that revenue not to reduce the deficit but to increase spending, and then he spends on top of that. So he is using it to grow the size of Government. He is very forthright about this. He is going to use those tax revenues to nationalize the health care system. That is the way I describe it; he describes it another way. He is going to use those revenues to basically create a massive expansion of spending in the other accounts of the Federal Government. But he is not going to use those revenues to try to reduce the deficit. That is the big difference between President Obama and President Clinton in the area of fiscal policy. So he doubles and triples the debt, and as a result, he leaves to our children a nation which is not affordable. So as I said, there is a fundamental difference.

You know, in the past we would get these budget debates on the floor, and they were sort of academic exercises. People would engage in them, and they would be very interesting, but I don't think anybody ever saw it as the core of the policy of the country. Even though it was important, it wasn't the core.

This debate is about this country's future. This budget is about where this country ends up. The pathway that has been laid out in this budget is a pathway that leads to a debt which the chairman has openly said is not sustainable. If the chairman knows it is not sustainable and the President knows it is not sustainable, why haven't they sent a budget up here to address that fact? Instead, they have sent a budget up here which does nothing about that fact, and, in fact, it does the opposite. It increases spending, it

increases discretionary and mandatory spending, and it saves absolutely zero in the area we most need savings, which is the mandatory accounts.

So the difference is this: The President, as I said, has been forthright. His budget—this budget—probably the most significant document we have received here in the area of fiscal policy since perhaps the time of Lyndon Johnson or before, concludes that the way to prosperity is to expand the size of Government in an exponential manner by spending on Government programs in hopes that they create some sort of economic activity and create prosperity over the long run. Well, we believe, as a party, that doesn't work because in this case it is not paid for and it creates all this debt which we then pass on to our children to pay. We believe the way to prosperity is to have a government that is affordable and to pass that affordable government on to your children. Equally important is to empower the individual citizen and groups of citizens to go out, take a risk, and create a job, not to have the Government take from the individual the ability to create jobs because it taxes the individual either through inflation or through taxes or through a huge debt burden, as is proposed in this budget—a huge debt burden that is not sustainable.

So this is a very significant debate and a very significant decision point in our Nation's history because if this budget passes in its present form, we are guaranteeing that we will pass on to our children a nation whose Government is not sustainable, and therefore we will be passing on to our children a nation which is less than what we received from our parents. No generation has the right to do that to another generation, and that is what this debate is about.

Mr. President, at this point, I yield to Senator JOHANNS, who has an amendment or who wishes to discuss a motion to instruct.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. JOHANNS. Mr. President, because of the procedure we are following at the moment, I can't make this motion right now, but we will offer the motion at the appropriate time.

I rise today to speak about something I am bringing to the Senate. I am on the floor today because I think it is unwise and I also think it is unfair to the American people to use budget reconciliation to pass cap and trade.

Just to review the history of this, I joined the senior Senator from West Virginia and circulated a letter asking the leadership of the Budget Committee not to include reconciliation instructions to pass cap and trade. I was very happy that a number of my colleagues agreed with us. Eight Democrats signed the letter, and 25 Republicans—even some who support cap and trade—signed the letter. Notably, the budget resolution which we considered on the floor of the Senate did not include reconciliation instructions. I commended members of the Budget Committee during floor debate for not including instructions for cap and trade. I do so again today.

At the same time, I expressed concern that the real threat, though, came from the House in terms of what it had done with its resolution. The House budget, I think we all know, included, interestingly enough, reconciliation instructions. We all know why they included the instructions. The House has no use for them. They are not necessary under House rules. Therefore, there is no reason to include them other than to attempt to force cap-and-trade provisions into the conference report.

We are nearing that day when a conference report will come to us. This would restrict input from the American people, or the Senate body, on a policy that would result in massive taxes and fees.

I thank Members on the other side of the aisle. I think they should be commended for what they did next. Understanding that the House was trying to slip climate change into law without review, without debate, without amendment, without consideration, 26 of my colleagues from the other side voted with the Republicans in support of my amendment.

What was the result? The result was that 67 Senators made it very clear just a few days ago that they would not support using budget reconciliation to pass cap and trade. This vote, I would offer, showed courage and leadership. Probably most importantly, it showed true bipartisan spirit.

Today I am again asking for the support and leadership of my colleagues to stand in support of my motion to instruction the budget conferees. My motion just says: Don't just drop our amendment when you walk into the conference committee meeting.

It says: Remember, we voted overwhelmingly against shutting off debate and using as little as a single legislative day to pass complex cap-and-trade legislation.

It says: Don't forget that cap and trade, if passed, will radically change the economic landscape of this great Nation.

Amendments to such a bill should not be narrowly limited by the rules of the budget process, a process that was really built for deficit reduction, not greenhouse gas reduction. It asks for leadership from our Senate conferees so the American people can witness a full debate on this very important issue.

Where does that leave us today? One might ask the question: Why is the motion necessary? With such a strong showing against including instructions for cap and trade, isn't that message already clear? The message is clear, but I think we have to be vigilant for some simple reasons.

First, we learned over the past several days that budget discussions are far from over. Reports indicate that negotiations will continue over the next several days, maybe into the next several weeks. Memories fade. If we think that budget reconciliation is off the table as time wears on, we could be very mistaken.

Budget Committee leadership from both the House and the Senate has specifically noted that debate on the inclusion of reconciliation instructions continues to be very intense. In other words, the use of budget reconciliation for cap and trade does remain a possibility. Cap and trade could be slipped into law if the House instructions, as currently written, end up in the conference report.

For me, today's motion is about being able to say to Nebraskans when I return home—to look them in the eye and say: Yes, I read that bill, and I carefully considered its impact on you, your families, your businesses, and your future. And, yes, I did everything I could to make sure people from Nebraska understood well the significant tax burden likely to result from the legislation. And, yes, after considering all of those things, I stood up and cast a vote, yes or no.

We need to stand up to those who want to use reconciliation to stop transparency and limit debate. I believe both the Chairman of the Senate Budget Committee, whom I respect, and the Ranking Member of the Senate Budget Committee, whom I respect, are battling mightily to ensure that reconciliation instructions are not included. Today, on the floor of the Senate, I commend them for that bipartisan effort. But they need our help. They need an army of Senators whose primary concern is the interest of the American people. A vote in support of this motion can do just that. We need this vote. We need to pass this motion. We need to insist that the text of the amendment, which 67 Senators, both Republican and Democrat supported, remains in the conference report on the budget.

I appreciate the opportunity to express this view. I urge my colleagues to support this motion. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. If the Senator will indulge me for about 2 minutes because I want to speak quickly on behalf of the amendment of the Senator from Nebraska? He has outlined a lot of the substantive reasons it is important. It would not be appropriate to do this type of huge policy on a 20-hour debate, no-amendment situation, up-or-down vote. But there is another issue which goes to the integrity of the Senate and the purposes of the Senate.

Basically, reconciliation is purely a Senate event. The House doesn't need reconciliation. The House has a Rules Committee. They can determine how long debate is going to be, when there is going to be debate, and how many amendments there are going to be.

The Senate historically has been the place where people come to talk, to discuss, to air out an issue, and then to have amendments on that issue. That is the whole function of the Senate in our constitutional process. I find it incongruous, to be kind, that the House of Representatives would be trying to dictate to the Senate the rules of operation of the Senate in a manner—first, it is inappropriate to begin with, but they are dictating them in a manner which basically goes at the fundamental purpose of the Senate, which is that the Senate be the place where debate, discussion, and amendment occurs on policy issues of great substance.

I do not argue that reconciliation is not a useful and appropriate tool to be used around here. There are many reconciliation initiatives for which I voted. But in the area the Senator has noted, which is a massive change in industrial policy, a huge tax on every person who turns on a light in every home in America, that should not be done under reconciliation. Equally important, the House of Representatives should not be explaining to the Senate or telling the Senate what the rules of the road are in the Senate. They have enough issues on their own over there.

At this point, I think the Senator from Michigan wanted to be recognized. At the completion of the remarks of the Senator from Michigan or the chairman's comments, unless the Senator has further comments, the next Member to be recognized on our side will be Senator GRASSLEY.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, let me indicate with respect to the question of reconciliation being used for cap and trade or climate change, there is no provision on the House side for that purpose. At least that is the stated intention of the Speaker of the House of Representatives. And there is no reconciliation instruction in our resolution at all for any purpose.

Let me indicate I happen to agree with the Senator from Nebraska. I personally do not believe reconciliation should be used for this purpose. I must say, I am very disappointed the Republicans, when they were in a position to do so, abused reconciliation. I believe that strongly. Reconciliation was designed for one purpose and one purpose only, and that was deficit reduction. Our friends on the other side used it to dramatically cut taxes and increase the deficit. That was, to me, an absolute abuse of reconciliation.

But two wrongs do not make a right, and I do not believe using reconciliation for major substantive legislation that is not fundamentally deficit reduction is an appropriate use of reconciliation. That is No. 1.

No. 2, I think people will find that because reconciliation was designed for a very specific purpose, that it does not work well for the purposes of writing major substantive legislation. I will not go into all the technical reasons why that is the case, but it is the case. We will get to questions of reconciliation being used for other purposes as well.

I have argued strenuously, publicly and privately, that reconciliation ought to be reserved for deficit reduction. But I do want to indicate that there is no reconciliation instruction in the resolution coming from the Senate; and in the House, the Speaker has made clear that reconciliation would not be used for climate change legislation or for cap-and-trade legislation.

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

Mr. CONRAD. I would be happy to yield.

Mr. GREGG. I totally want to identify my position with the Senator's argument as to the purposes of reconciliation and the fact it should not be used for major public policy initiatives which require debate and hearings in the Senate and an amendment process. Are we to presume, therefore, that your logic on cap and trade applies also to major health care reform?

Mr. CONRAD. My logic does, as I have made very clear over and over, publicly and privately. But, you know, I don't get to decide. We have House conferees, we have other Senate conferees, and, of course, we have a White House that has an interest—although they have no formal role in the budget process here. They submit a budget, but as the ranking member well knows, the budget resolution is entirely a congressional document.

With that said, I do want to indicate that I previously voted for the amendment of the Senator. I will vote for it again. But I do want to indicate we do not have any reconciliation instruction in our resolution, and the House, through its leadership, has made clear they do not intend to use a reconciliation instruction for the purpose of cap and trade or for the purpose of climate change legislation.

Mr. GREGG. If the Senator will yield for a further question, I will make this a rhetorical question. The Senator is one of the most influential Members of the Senate and of the Congress. When he says he wants something to happen, especially when it deals with the budget, I know it will.

Mr. CONRAD. I wish that were true. I wish the Senator had been with me in the discussions over the last few days, even in our caucus on Tuesday.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I, too, rise to speak to a motion to instruct conferees. I understand we do not yet have an agreement to be able to move forward on that.

I first want to indicate that I, as well as the chairman of the Budget Committee, joined with the Senator from Nebraska in supporting his amendment to the budget resolution. But I believe it is not enough just to say what we will not do on climate change. It is very important to say what we will do. So that is what my motion to instruct does. It provides a positive direction for future climate legislation. I thank my colleagues, Senators BOXER, BROWN, SHAHEEN, CARDIN, and LIEBERMAN for cosponsoring this motion to instruct.

The budget we pass is truly about investing in America's future. With all respect to our ranking member, for whom I have great respect and fondness, there is a difference in this budget in terms of priorities. There is no question about it. There is a big difference in terms of what we want to invest in—education, energy independence, health care, jobs. I might say coming from Michigan: Jobs, jobs, jobs.

So there is a difference in direction, in values, and priorities in this budget. I believe it is what the American people are asking for. Our policy on climate change has to invest in the future just as our budget does. If done right, climate change legislation will create new jobs, new industries, and it will revitalize and strengthen our economy. So I will offer a motion to instruct in response to other amendments that say what we cannot do. My motion, on the other hand, is what America can do, what we must do.

My State of Michigan is facing serious challenges right now. We have the highest unemployment rate in the country, of 12.6 percent. The hardworking people, the families in Michigan and other States that are struggling, need us to do a climate change policy right so that it does create jobs and transform our economy. Our economy cannot go forward with the same old policies dependent on foreign oil and pollution that harms our health and our economic interests. Climate policy can and must look out for working families and businesses, whether it is a farmer, a manufacturer, or a clean tech engineer. That is why the motion to instruct that I will be offering refers to a future climate policy that is well balanced to address all of these interests, so it does create jobs and strengthens manufacturing and breaks America of our dangerous addiction to foreign oil. We cannot rely any longer on the same old technologies and the same old fuel.

With new energy solutions come new jobs and new industries. America has always led the world in innovation and we can do it again in a green energy economy if we do this right. We are in the midst of a revolution, an energy revolution. Over 100 years ago, Henry Ford revolutionized manufacturing in transportation with the automobile and the assembly line. He also revolutionized the way we pay people in this country. He gave his workers $5 dollars a day to work on the line when it was not necessary to do that, because he wanted to make sure he had people who could buy his automobiles.

Through doing that, that revolutionized people to invest in workers. He

helped create the middle class of this country. In the 1980s we had a computer revolution that changed the way we work, the way we communicate, the way we learn, the way we live. The energy revolution of the 21st century will change our economy, I believe, if done right.

That is why the right kind of climate policy is so important. The motion to instruct that I will be offering will direct the conference committee toward a smart climate policy that will protect and strengthen manufacturing. First we ensure a level playing field in the world economy so climate legislation does not hurt our bottom line. This will protect U.S. manufacturers from international competitors that do not follow the same important environmental standard our companies will have to follow.

Second, new manufacturing opportunities will arise. I believe that. For example, to meet the needs of new clean energy production, we will need to produce clean energy technologies on a massive scale. We are talking about 8,000 parts in a wind turbine. As I have said to many colleagues, we can build every single one of those in Michigan. I know I talk a lot about this. I talk a lot about our economy in Michigan. But I truly believe if our energy policy can turn Michigan's economy around, it will turn America's economy around.

Recent history has shown what happens when we rely primarily on foreign sources of energy. We subject ourselves to less than friendly international governments that can leverage unstable supply and higher prices against the people we represent. The motion to instruct I will offer will guide the conference committees to take steps to further reduce our dangerous addiction to foreign oil.

Furthermore, our domestic energy needs also increase over time, and all sources of clean energy should be part of the portfolio. Diversification of our energy supply is key for security, stability, and opportunity. This is a national and international problem and we must solve this together.

My motion directs the conferees to ensure that all regions contribute equitably and help each other as America transitions to a clean energy future. I also believe a successful climate policy has to include all our economic stakeholders. Agriculture and forestry can make significant contributions to greenhouse gas reduction, perhaps as much as 20 percent, with the right incentives. My motion to instruct provides clear and certain opportunities for landowners so they can achieve emission reductions and benefit from doing so.

Finally, this motion to instruct puts us on the road to a balanced climate policy. With policies that meet these objectives, we can ensure the American public that greater economic opportunity lies ahead, and we can do this while meeting the ambitious emission reduction targets set by President Obama.

Instead of arguing about what we cannot do, I urge my colleagues to embrace what we can do. That is what this motion to instruct relates to—creating jobs, protecting our environment, energy independence. This is what our future is about.

In addition to speaking about the motion to instruct, I would take a moment to say, on the broader budget resolution, this resolution again is different. It is about jobs, it is about energy independence, health care, education, tax cuts, yes, for the middle class who have been overlooked for too long, as well as focusing on cutting the deficit in half during the life of this budget resolution.

We know this deficit has been run up. When I came into the Senate in 2001, we were debating what to do about a $5.7 trillion surplus over 10 years, and colleagues were willing to make decisions, our colleagues on other side of the aisle, were willing to go into deficits for the war in Iraq, go into deficits for tax cuts for a few, go into deficits for a different set of policies.

It is true, this budget resolution reflects what I believe is a different set of priorities that are the priorities of the American people. I am very proud of and grateful to our chairman, the Senator from North Dakota, for his leadership, and I appreciate the ranking member as well for his graciousness, even though we have different views. I very much appreciate the way he and the chairman conduct the committee. But I am proud to say this is different. The American people want a different set of priorities, and that is what this budget resolution provides.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from North Dakota.

Mr. CONRAD. Madam President, at this moment, I ask unanimous consent that next Senator GRASSLEY be accorded 14 minutes; that Senator BOXER follow him for 10 minutes.

How much time would Senator WYDEN request ?

Mr. WYDEN. Could I have 10 as well?

Mr. CONRAD. And 10 minutes to Senator WYDEN.

Mr. GREGG. Is this all coming off of your time?

I will be yielding my time on this side.

Mr. CONRAD. I would always be happy to give Senator GRASSLEY time off mine.

Mr. GRASSLEY. I will take it off your time.

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

The Senator from Iowa is recognized.

Mr. GRASSLEY. Pretty soon we are going to have a motion dealing with small business. I want to address that issue now so that I get it addressed properly as a senior member of the Senate Finance Committee.

Everyone in this body knows that small businesses are an extremely important and dynamic part of the U.S. economy. I wish to say, and I often do, that small business is the employment machine of our economy.

President Obama agrees with that. Small businesses have generated 70 percent of the net increase in jobs in the United States over a long period of time. Three weeks ago, we debated this issue during the budget resolution debate. During the debate, the Senate spoke on this point, because Senator CORNYN had a small business tax relief amendment. That amendment passed by an overwhelming vote of 82 to 16.

America's small businesses have been suffering during this recession. If you go back to your States frequently, as I do, you will hear about it from your small businesses very directly. A few weeks ago, Senator LANDRIEU and Senator SNOWE held a hearing on the crunch hitting small business. They found that big banks have been cranking down lending to small businesses. At a time we are putting more money into big banks, why? I do not know that we got an explanation. I have been trying to get an answer out of Treasury on whether banks receiving the bailout money have been similarly squeezing out small business customers. I am still waiting for an answer from our Treasury Department.

A very good source of answer, though, as we turn elsewhere, an answer about the environment of small business, is found in the monthly surveys of small businesses conducted by the National Federation of Independent Business. We all know about the NFIB, the largest small business organization. NFIB has been conducting these surveys now for 35 years.

The membership of that organization includes hundreds of thousands of small businesses all across America. You can find the survey on NFIB's Web site www.nfib.org. I wish to encourage every Member to check out this month's survey, because I am going to be referring to it with charts I have with me.

The survey shows some extremely disturbing trends on credit availability. Small businesses depend on credit. Small businesses are getting squeezed very hard. That chart is up now. As you can see, the chart shows the availability of loans has fallen off the cliff as late as 2007 and gets worse as you get into 2009.

You see on the right side of the chart the sharp downturn evidencing the lack of ability of small businesses to get loans. This credit crunch as well as other factors has contributed to the near record low in the NFIB's index of small business optimism. I wish to have you view this, something like we regularly view, the University of Michigan's monthly index on consumer confidence.

The NFIB takes surveys regularly. This chart shows small business owners turning extremely pessimistic in the last couple of years. You can see how that has ''downturned'' very rapidly at the right end of the chart. What you see here is the attitude of decision-makers in small business of America,

the people who create the jobs. Those are the decisionmakers for the businesses that President Obama and we in the Congress agree are most likely to grow or contract jobs.

The pessimism evidenced by the chart is at its second lowest point in the 35-year survey. This data should concern every policymaker in this body. As bad as the two sets of charts are, I have a worse picture.

This chart shows the net increase or decrease in small business hiring plans. The survey asks the small business owner simply whether he or she plans to expand, on the one hand, or contract, on the other hand, employment over the next 3 months.

As you can see even more dramatically, look at the right-hand side of the chart here. If I said on those others to the left hand, in each case I was talking about the right. I do know the difference between the left and right hand. But as you can see even more dramatically on the other two charts, this chart shows small business activity contracting tremendously.

Small business hiring plans are at their most negative level in the entire 35-year history of this survey, again, the right side of the chart. Let me repeat, because it is so important, this goes back to 1974, those surveys. Since NFIB started doing them, the likelihood of small business owners adding workers has never been worse.

With this pessimism, we should not be surprised then that job losses for small businesses have been growing dramatically. The national employment report recently released by Automatic Data Processing shows 742,000 nonfarm private sector jobs were lost from February to March 2009. Of those 742,000 lost jobs, 614,000 or 83 percent, were from small business.

The President's recent efforts to increase lending to the small business sector are commendable. The centerpiece of his small business plan will allow the Federal Government to spend up to $25 billion to purchase the small business loans that are now hindering community banks and other lenders.

Unfortunately, that is only a drop in the bucket.

Remember that small business accounts for about half of the private sector. Moreover, the positives that will come to small businesses from this relatively small package of loans—which will ultimately and obviously have to be paid back—will be heavily outweighed by the negative impact of the President's proposed tax increases. Helping small businesses get loans just to take that money back in the form of tax hikes is not helping the economy or small businesses.

The President's budget proposes to raise the top two marginal rates from 33 percent and 35 percent to 40 percent and 41 percent respectively, when PEP and Pease are fully reinstated. President Obama's marginal rate increase would mean an approximately 20 percent marginal tax rate increase on small business owners in the top two brackets.

Many of my friends on the other side will say that while they agree that successful small businesses are vital to the success of the U.S. economy, the marginal tax increases for the top two brackets will not have a significant negative impact on small businesses. I take exception to that argument. They used Tax Policy Center data, and I want to show why that should not be allowed.

Proponents of these tax increases seek to minimize their impact by referring to Tax Policy Center data that indicate about 2 percent of small business filers pay taxes in the top two brackets. In testimony before the Senate Finance Committee, the liberal think tank, Center on Budget Policy and Priorities, also used that figure. Moreover, Secretary Geithner has testified using that figure. They argue that a minimal amount of small business activity is affected.

However, there are two faulty assumptions to this small business filer argument.

The first faulty assumption is that the percentage of small business filers is static. In fact, small businesses move in and out of gain and loss status depending on the nature of the business and the business cycle. The nonpartisan Joint Committee on Taxation has indicated that, for 2011, approximately 3 percent of small business filers will be hit by these proposed higher rates. These statistics compare to a 2007 Treasury which showed 7 percent of flow-through business owners paying the top rate. In the latest analysis, when the impact of the alternative minimum tax is fully included, that percentage may drop some.

The second faulty assumption is that the level of small business activity, including employment, is proportionate to the filer percentage. This is where the argument is hogwash.

According to NFIB survey data, 50 percent of owners of small businesses that employ 20–249 workers would fall in the top two brackets. You can see it right here on this chart. It shows what I am talking about. According to the Small Business Administration, about two-thirds of the Nation's small business workers are employed by small businesses with 20 to 500 employees.

Do we really want to raise taxes on these small businesses that create new jobs and employ two-thirds of all small business workers? Of course, we don't. But that is exactly what the majority is going to do if they follow the President's lead.

With these small businesses already suffering from the credit crunch, do we really think it's wise to hit them with the double-whammy of a 20 percent increase in their marginal tax rates?

Newly developed data from the Joint Committee on Taxation demonstrates that 55 percent of the tax from the higher rates will be borne by small business owners with income over $250,000. This is a conservative number, because it doesn't include flow-through business owners making between $200,000 and $250,000 that will also be hit with the budget's proposed tax hikes.

If the proponents of the marginal rate increase on small business owners agree that a 20 percent tax increase for half of the small businesses that employee two-thirds of all small business workers is not wise, then they should either oppose these tax increases, or present data that show a different result for this group of people.

As we prepare for the conference on the budget resolution, the President and the congressional Democratic leadership have an opportunity to change course. They have an opportunity to revisit the tax heavy, spending heavy, and debt heavy budget they have passed 2 weeks ago. Both budgets would perpetuate the double whammy of constricted credit on the one hand and high taxes on the other, directed at America's job creation engine—small business.

In the coming days, we Republicans will try to persuade our Democratic friends who have all the controls of fiscal policy to change course for the benefit of small business that we all agree ought to be our first concern. One way they can change course is to focus, like a laser beam, on jump-starting the Nation's job engine—small business America. We need an upturn in the small business optimism index that is contrary to what this chart shows. We need to reverse the direction of this sharply downward sloping arrow. If we ignore this negative environment, we are just kidding ourselves. We need to change course and reverse this even more sharply downward sloping hiring plan arrow.

That is where the President and Congress agree we need to get more job growth. As we take the final steps on the budget, let's match that budget with this reality

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I listened to Senator GRASSLEY's remarks, and I have been in conference with folks who have read this budget line by line. It is important for me to say something as someone who represents the largest State in the Union. As I look at this budget and it is how one looks at it—I see it as a boon to small business. I don't see one specific tax increase aimed at small business. Yes, if an individual is over $250,000 a year, for all of us in that category, the tax breaks will expire. But to say that all small businesses are hit hard is an argument that doesn't hold up, in my eyes. I have great respect for my friend, and I know he has analyzed it another way. But when I look at the priorities of the new President and of this Democratic Congress, what do I see?

Here are the priorities. Investment in energy, that is going to be great for

small business. Talk to my venture capitalists. They are ready, willing, and able to make huge commitments to alternative forms of energy. Investment in education, that is also going to be good for people who work in the education field. And health care, we know that as we have more insurance out there available for people, there will be many jobs created and many small businesses created around the delivery of health care.

I guess the way one looks at this budget depends on their point of view. Clearly, I believed our President, when he said he had those priorities. I view this budget overall as being a boon to small business and being a boon to the American people as we move forward with investments that will create many jobs.

The reason I wanted this time in particular was to kind of reargue an old argument we already had once before and that has come before us. Senator JOHANNS wants to have another vote to say we won't use the reconciliation process which, for people who don't know what that means, we won't use a process that we only need a majority to win. We are going to use the 60-vote requirement to write and pass global warming legislation.

I know this is going to pass because it passed before. I think most Members believe if we can get 60 votes for climate change legislation, fine. But I have to say again, after reviewing the number of times the Republican Party has used reconciliation since 1980, it has been 13 times out of the 19 times that reconciliation has been used. I would say to people who might be listening to this, to try to keep it as simple as possible: Reconciliation is used when there is a way to reduce the deficit. That is when it is used. You want to reduce the deficit so you say: Therefore, if you are reducing the deficit, we will do it with just a majority vote instead of a supermajority vote. That is the thinking behind it.

A cap-and-trade program, which many of us support in order to combat global warming, will give us the ability to reduce the deficit. We know that because that is what we were told last year as we worked on the Boxer-Lieberman-Warner bill. Much of the funds went back to consumers to help them pay energy costs. But there was a segment of funds that went straight into deficit reduction. But, no, my Republican friends don't want to look at that. Even though they used this 13 times, they want to prohibit the use of reconciliation for global warming legislation.

As I look back on the number of times Republicans have used reconciliation, in my view, it didn't make life any better for the American people. This is what they used it for. They used it to cut health program block grants to our States. They used it to cut Medicaid. They used it to cut food stamps. They used it to cut dairy price supports. They used it to cut energy assistance. They used it to cut education grants. They used it to cut impact aid and title I compensatory education programs for disadvantaged children. They used it to cut student loans. They used it to cut the Social Security minimum benefit. Our friends on the other side were very happy to use the reconciliation process, which only required 51 votes, to hurt the American people. That is what I think those cuts did. But when it comes to helping the American people by stepping up to the plate and addressing global warming and, in the course of doing so, creating millions of new jobs, no, they want to have a supermajority.

Senator JOHANNS showed us he can get the votes to pass that. I know he will. That is why I am so grateful to Senator STABENOW, who has said: OK, you want to say we won't use reconciliation. She is saying: We will, in fact, keep the reserve fund in there for global warming so we can move it forward. This reserve fund will allow us to invest in new jobs that will come about by investments in clean energy technologies which will make us a healthier economy, energy independent, and it will make us more secure because we will have to import less foreign oil. We are going to see increases in energy efficiency which will yield amazing benefits. That will help us in the long run reduce energy costs. We are going to use these funds to protect consumers. This is what the Stabenow-Boxer-Brown-Lieberman-Cardin amendment is saying. We want to keep that reserve fund in the budget so we can move forward with climate change legislation.

I am looking forward to this moment. This is long overdue. We have lost 8 years. But the kind of approach we need is the kind of approach Senator STABENOW is envisioning. We cannot afford to wait. Scientists are telling us we are going to face rising sea levels, droughts, floods, the loss of species, spreading diseases. Our own health officials in the last administration and this one have told us we have to act. The Environmental Protection Agency has proposed an endangerment finding.

We are being told that our people are in danger if we do not enact global warming legislation. It is spelled out.

Severe illnesses are going to crop up as a result of organisms that will now be living in warmer waters.

To quote the EPA—and they talk about the heat waves and the mortality rate and the wildfires and the drought and the flooding—this is what they say. I will close with this quote. They say: Global warming left unchecked is a serious harm to our people. It is not a close case, they say. The greenhouse gases that are responsible for global warming endanger public health and welfare within the meaning of the Clean Air Act.

Madam President, I ask unanimous consent to have printed in the RECORD the EPA's Proposed Endangerment Finding.

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

EPA'S PROPOSED ENDANGERMENT FINDING

The effects of climate change observed to date and projected to occur in the future—including but not limited to the increased likelihood of more frequent and intense heat waves, more wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems—are effects on public health and welfare within the meaning of the Clean Air Act.

This is not a close case in which the magnitude of the harm is small and the probability great, or the magnitude large and the probability small. In both magnitude and probability, climate change is an enormous problem. The greenhouse gases that are responsible for it endanger public health and welfare within the meaning of the Clean Air Act.

Severe heat waves are projected to intensify in magnitude and duration over the portions of the U.S. where these events already occur, with likely increases in mortality and morbidity. The populations most sensitive to hot temperatures are older adults, the chronically sick, the very young, city-dwellers, those taking medications . . ., the mentally ill, those lacking access to air conditioning, those working or playing outdoors, and the socially isolated.

Mrs. BOXER. I say to my friends and my colleagues who are listening to this debate, vote for the Stabenow motion to instruct. It is an important motion. It will keep the reserve fund and will allow us to move forward and attack this serious problem of global warming that has gone unaddressed for too long.

Madam President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010

Mr. REID. Madam President, I ask the Chair to lay before the Senate a message from the House on S. Con. Res. 13, the concurrent budget resolution.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House insist upon its amendment to the resolution (S. Con. Res. 13) entitled ''Concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2010, revising the appropriate budgetary levels for fiscal year 2009, and setting forth the appropriate budgetary levels for fiscal years 2011 through 2014.'', and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. REID. Madam President, the following request has been approved by Senator GREGG and the Republican leadership.

I ask unanimous consent that the Senate disagree to the amendment of the House, agree to the request for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees; that prior to the Chair appointing conferees,