

in a comprehensive, far-reaching manner by amending criminal laws. The changes in the Fraud Enforcement and Recovery Act will give Federal law enforcement agencies the tools they need to address some of the most nefarious criminal activity in the financial world.

As we have seen in recent years, many of our vulnerabilities in the financial sector originated from bad mortgages and dangerous derivatives. The companies in the center of the storm are the names you hear every night on the news. Of course, not every person in those companies has acted criminally. But some have. These the actors who were able to exploit holes in the regulatory system or identify problems with oversight—often with intentional disregard for the health of the economy. Unfortunately, our present laws don't neatly capture some of the criminal acts that are at the heart of financial crisis.

To that end, this bill will amend the definition of "financial institution" to extend the fraud laws to private mortgage-lending businesses that were not directly regulated or insured by the Federal Government. It will also amend the law to cover mortgage-backed derivatives—so intentional, fraudulent acts related to those instruments can be prosecuted.

The Fraud Enforcement and Recovery Act also changes the law to better capture Ponzi schemes. As it stands now, courts have held that the perpetrators of those schemes are liable only for "profits" they earned—rather than being liable for all the "proceeds" they received over the course of time.

Furthermore, the bill puts the money expended through the Troubled Asset Relief Program, the American Recovery and Reinvestment Act, and other stimulus bills under the ambit of the fraud statutes. By making this change now, we hopefully will deter the type of intentional, criminal activity that has contributed to the present financial crisis.

There is also another way we can protect the TARP and ARRA money—by strengthening civil fraud enforcement. The Fraud Enforcement and Recovery Act makes overdue changes to the False Claims Act, so that the Federal Government can recover money lost due to contractor abuse and fraud.

Through Senator GRASSLEY's efforts since the 1980s, the False Claims Act has become the powerful tool that it is today. Individuals, on behalf of the Government, or the Government itself can sue to recover money from contractors who have abused their access to Government funds. We have seen in the Iraq war context that when contractors have access to large tranches of Government money, fraud and abuse will often follow.

Yet some of the False Claims Act cases decided by courts in the last decade have made the False Claims Act less effective. One line of cases determined that fraudulent actions by sub-

contractors are not subject to the False Claims Act. A change in the Fraud Enforcement and Recovery Act plugs this hole in the existing law.

It is too late to turn back the clock and prevent today's financial crisis from happening. But we can hold the bad actors accountable now by prosecuting the perpetrators to the fullest extent of the law. The provisions of the Fraud Enforcement and Recovery Act will help ensure that our enforcement resources match the gravity of the situation before us.

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

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

Mr. DURBIN. Madam President, I ask unanimous consent that Senator SHEROD BROWN of Ohio be allowed to speak at the conclusion of my remarks.

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

#### MORTGAGE FORECLOSURE CRISIS

Mr. DURBIN. Madam President, later this week, the Senate is going to consider legislation that I have been working on for 2 years. Two years ago, it was apparent to me that we were facing a mortgage foreclosure crisis in America. It was a crisis which had just begun, but it was obvious there were many victims. I had no idea when I introduced this legislation that we would be standing here 2 years later and the state of the American economy we would face.

The Senate will consider legislation I have offered to help families save their homes and avoid foreclosure. When we consider amendments to the bill, the key number to remember is 1.7 million families—1.7 million. That is the number of families we will either give a chance to save their homes or allow them to be thrown out in the street, depending on how the vote turns out. My amendment will help 1.7 million families avoid foreclosure. It will make a small change to the Bankruptcy Code to provide these families with a little bit of leverage—leverage they do not have today.

I had a meeting on Friday in my office in Chicago. Groups came from all over the city of Chicago and told me about the mortgage foreclosure crisis in that city. I love that town. I am honored to represent it. But there are neighborhoods that are in serious trouble and not because folks aren't keeping up their homes—they do. They have fierce pride in their little bungalows and homes they maintain. It is not because they aren't proud of their churches they attend and temples and synagogues. That is always a part of life in most cities, and it certainly is in Chicago. And not because the kids aren't out playing on the playgrounds and reflecting the values of their families. No, it is usually because there is one house on the block that has gone into foreclosure.

You may think to yourself: So what. That is only one house. But imagine in your own hometown, in your own neighborhood, if that house next door went into foreclosure. Imagine it was vacant, with plywood on all the windows, and you started noticing that not only was the lawn not being tended to, it was becoming a vacant lot for trash to accumulate. Then the word was out that there were vandals who were stripping the copper tubing and piping out of that house. The next thing you know, there are rumors about drug gangs using it late at night.

That is the reality of these neighborhoods, and it is the reality of mortgage foreclosure. It is not just the economic loss for the neighbors. It is the loss of a neighborhood spirit. That is what foreclosure brings us.

You say to yourself: You know that family that was in there, they just made a terrible decision on a mortgage. Some of them did. Some of them were misled into those terrible decisions.

Have you ever been to a closing to buy a home? Do you remember that stack of papers they put on the table in front of you? They would turn the corner over and they would say: Keep signing.

What is this?

Oh, it is a Federal Government form. The banks looked at it; the realtors looked at it; everything is fine. Keep going. Here is a check. Sign this. Now here is your payment book. In 60 days make your first payment.

Secreted in some of these documents were provisions that a lot of people did not understand. Sometimes the whole process was a fraud. In the worst of times, many of these mortgage brokers were saying to people:

How much money do you make?

Oh, \$50,000, \$60,000.

Oh, that is great. We will put you in a nice little house, we will give you an adjustable rate mortgage and the house will go up in value and everything will be fine.

They call them no-doc mortgages. That meant no documentation. The borrower, the person buying the home, did not have to produce a single document to indicate their income or net worth.

We have a little provision in the Department of Treasury, Internal Revenue Service. If you spend a few dollars and fill out a form, we will verify what your income is so the people who are loaning the money are going to have verification. That was not even asked for. Why? Because the folks who were doing these deals wanted to get them done and get out of town and they did. They left behind a mess in community after community, in city after city.

Now, as these people face foreclosure in their homes, many of them do not know where to turn. They go back to the bank and they say to the bank: Come on, I understand I can get a low interest rate now. Maybe I can stay in this home. I am not going to default

and I will not lose the home. It will not be foreclosed.

Do you know what the banker tells them? The banker says: Oh, we just did a credit rating on you and it turns out you are upside-down. You owe more money on your house than it is worth; therefore, your credit rating is too low. Therefore, we cannot renegotiate the mortgage, therefore you are going to face foreclosure.

That's the Catch-22 reality of mortgage foreclosure today.

I told a story to some people the other day. I got on an airplane to fly from Washington to Chicago. I do that a lot. A stewardess, flight attendant, said she wanted to talk to me. After they served the coffee and soda, the drinks on the plane, she came down and knelt down in the aisle next to me. People are looking around: What is this all about?

She said: Senator, I am a single mom. I have three kids. I have been a flight attendant on this airline for 20 years. I go to work every day and work real hard. I have a house just outside of Chicagoland area, in the metropolitan area, and I have a 7-percent mortgage on it and I cannot do it. I can't make the payments. But I know they are offering mortgages now that are down in the 4- and 5-percent range and I think I can swing it. But they will not sit down and talk to me. Nobody will talk to me. I have to default on my payment and go into foreclosure before anybody will sit and talk to me.

That is the reality of what housing is in many places across America. So, 2 years ago, I came up with this idea of changing the Bankruptcy Code. Currently, under the Bankruptcy Code, if you are facing bankruptcy and you own several pieces of real estate—a home, a vacation condo in Florida, a ranch or a farm—and you go into bankruptcy, the bankruptcy judge can take a look at the mortgage which is in foreclosure for your condo in Florida, and that bankruptcy judge can say: The fair value of that condo is X. Therefore, we will reduce the principle on the mortgage to X. We will change the interest rate, and we believe you can make the payments. You can keep your condo. The same for your farm, the same for your ranch. But your home? No deal. The bankruptcy court cannot even consider changing the mortgage terms on your home.

That has been in the law for awhile. I think it is a terrible provision. The people who want to protect that provision? Many of the banks that brought us this crisis, many of the banks that have been given billions of dollars. It's not all of them. I will tell you the good guys later on. But many of these banks that have benefited from the hundreds of billions of dollars taxpayers have put on the table have said, when it comes to a bad mortgage and a foreclosure, tough deal. They made a bad decision. They have to pay for it.

Really? These bankers who were raking in the billions of taxpayers' dollars

because of their bad deals and their rotten portfolios have said to these poor people facing foreclosure: Tough. Tough. You should have known better. You should not have made that mistake. You should have shown the wisdom and foresight that we show in the banking business.

How about that for turning the tables?

That is what this debate is all about. I don't want to see more people in bankruptcy. That is not a good outcome. But if the lenders of these mortgages know that at the end of the road, after everything else has gone on, there may be a bankruptcy judge who will sit down and look at that mortgage and say to that flight attendant: You know what. You are offering mortgages at this bank for 4 and 5 percent. You offer this woman 4.5 percent. She can make the payments and keep her home and the court is going to order it.

If they knew that could happen at the end of the day, I think those bankers would be in a position where they would want to sit down before it occurs and try to avoid the foreclosure, avoid the terrible outcome for the family and the neighborhood.

Mr. President, 1.7 million American families could save their homes with my amendment. I didn't come up with that figure; the analysts did. It makes a very small change in the Bankruptcy Code which could result in that. If it passes, it is not just a family who wins or the neighbors who win, the banks win. Do you know what it costs a bank to take a home through foreclosure? A minimum, I am told at a hearing I held, of \$50,000. That is what they lose for all the legal fees and things that are involved in a foreclosure on property. Then, do you know what happens to 99 percent of the properties that go into foreclosure? Do you know who owns them after the foreclosure? The bank. Now that bank has to worry about cutting the grass, making sure it is a presentable property, providing security if necessary. What might happen if somebody started squatting on the property—which is starting to happen. Or drug gangs started invading the building? Now it is a banker's problem, not one they signed up for but one they face.

We can save the homes of 1.7 million families with this issue. The mortgages that are under discussion here were risky instruments. Too many lenders threw caution to the wind and they issued these subprime mortgages, no-doc mortgages, mortgages with stair-step rate increases, and a lot of people were sucked in and taken advantage of.

The Mortgage Bankers Association and their cronies scoffed when we told them we were going to have even more foreclosures, but the number continues to grow. This is the cancer at the heart of this recession. This is what we have to address.

This President has worked overtime with a Recovery and Reinvestment Act, putting money back into the econ-

omy, saving jobs, creating jobs. But we have to get to the heart of this housing crisis. We have to stop what has become a steady decline of neighborhoods and real estate values in America. It affects us all.

The institutions that held billions of dollars of these mortgage assets began to fail. You remember the litany: Bear Stearns, Fannie Mae, Freddie Mac, Lehman Brothers, AIG. The global financial system started to melt down and it started with these bad mortgages. Then the American taxpayers were asked to provide \$700 billion to bail out institutions, just like the ones I have named. Lending dried up at the banks across America. Businesses had to cut back. Millions of American workers have lost their jobs.

In my home State of Illinois, we were losing on average 1,200 jobs a day—a day. Unfortunately, that continues. We think we are starting—starting to turn the corner but ever so slightly.

Trillions of dollars in savings of workers and retirees were wiped out. It happened to everybody, everybody who was in an investment with a 401(k) or IRA or even a pension plan. Eventually, even safe mortgages were put at risk. It started with subprime mortgages. Now it is starting to spread. Credit Suisse now estimates that 8.1 million mortgages could fail in the next few years. It is not over. What does that represent? One out of every six homes in America could face foreclosure.

When I gave this speech a year ago and called for this measure, people came to the floor and said: Durbin, you are exaggerating. It is not that bad. It is going to get well. People will be fine.

That has not happened. Just the opposite has happened.

It does not have to be this way. Many of these mortgages can be slightly modified and people can stay in their homes. The banks can still profit and families can still have a place for a future. If we can save these homes, the value of the assets based on these mortgages could regain much of their value. The institutions that hold billions of dollars of these assets, such as Citigroup, JPMorgan Chase, Bank of America, Wells Fargo, and many others could return to full health more quickly. Confidence might return to the financial system. The American taxpayers would get their money back much earlier from the institutions we bailed out with hard-earned taxpayer dollars. Lending would ramp up at a more rapid pace. Businesses might feel more confidence.

The banks have said all along we don't need any change in the law, we will take care of this problem. Look what has happened. As they promised us they would take care of it, they didn't. More and more homes went into default and face foreclosure because they won't sit down and make the deal. Why wouldn't they? If they face \$50,000 in losses on these foreclosures, if they have all these new obligations, at the

end of the day why wouldn't they sit down?

I will tell you why. For many of them, they don't want to concede the fact that they created this crisis. Second, many of them believe that at the end of the day Uncle Sam and the taxpayers of America will ride to the rescue, buying these mortgage securities, taking care of these banks, saving them after the bottom falls out of the real estate market and housing market in America. What an awful outcome, that all these families would have to go through all this suffering, that all these neighborhoods would have all these problems, so at the end of the day the banks that made the original bad mortgages would be rescued. That must be what they are thinking.

The groups that are leading the charge against me on this are familiar names on Capitol Hill: The Mortgage Bankers Association, the people who brought us this wonderful subprime mortgage crisis, they oppose my bill; the Financial Services Roundtable, the biggest names in financial services in this Nation, the ones who have had their hands out for Federal money, oppose this idea of helping people facing foreclosure; and the American Bankers Association. What a disappointment. What a disappointment that a great association such as that, representing so many good banks, would not even sit down at the table to discuss this provision. It is a source of great disappointment to me because, as a Congressman and Senator, I have worked with them on so many issues. I have never found them more unyielding and unreasonable than on this issue.

They say: Don't worry about it, Senator, we are experts. We are going to handle it. Don't tell us what we need to do.

Many of those same banks are the first in line when it comes to Federal money. In effect, they have said we have created these rotten mortgages in the first place. Then we sliced them up into securities and sold them to investors all over the world as though there were no risks involved, although we knew better. They tell us we made billions of profits on the backs of homeowners, and then we took billions more from the taxpayers when the mortgages went bad, but don't make us solve the crisis. The Mortgage Bankers and American Banking Association says: We will handle it by ourselves. Time will take care of it.

That was effectively the message of the leading banking associations when, for the last several months, we have begged them, pleaded with them to sit down and work this out. They have refused. They have been adamant.

The Independent Community Bankers of America and the National Association of Federal Credit Unions—a group which I always supported in the past—they have had a little different message. They said: We didn't cause this crisis. Why should we be part of any plan to solve it?

We tried lengthy negotiations to address their concerns. We told them this solution will help the economy, will help their borrowers, and basically help their clients. And they just will not buy it.

I can tell them this. It is time for Congress to act and I hope we can muster the courage and find the votes, although I know it is going to be hard, hard to imagine that today the mortgage bankers would have clout in this Chamber, but they do.

They have a lot of friends still here. They are still big players on the American political scene. They have said to their friends: Stay away from this legislation. Do not vote for it.

Some of them will follow their lead. Not everyone has walked away from this responsible solution. The amendment which we will vote on a little later this week has the support of CitiGroup, the Center for Responsible Lending, and many other leading homeowner advocacy groups such as the AARP, the Leadership Council on Civil Rights, the Consumer Federation of America, and dozens of other groups. They have worked with me to craft a responsible, reasonable proposal to give lenders a clear incentive to work hard to keep families in their homes.

The amendment I am going to offer will make a modest change in the Bankruptcy Code with a lot of conditions. It will not apply across the board. In the past, some of my colleagues have understood the need for action but have been uncomfortable with some of the original language. So let me be clear. This amendment is very different. This amendment limits the assistance in bankruptcy to situations where lenders are so intransigent that they are unwilling to cooperate with the two primary foreclosure prevention efforts already underway, the Obama administration's Homeowner Assistance and Stability Plan, and the congressionally created HOPE for Homeowners Refinancing Program, which this bill will greatly improve.

I am not going to go into further detail, but I want to say to my colleagues in the Senate and those who follow this debate, this is not the first time I have come to the Senate floor in the 13 years I have served to raise issues involving the exploitation of American consumers. I can recall the bankruptcy reform debate, had that a few years back, and I offered a simple amendment. Here is what it said: If you, as a lender, are guilty of predatory lending practices—in other words, if you have violated the law in the way that you have suckered in people to sign up for the mortgages, then you cannot show up at the bankruptcy court and ask that court order the person in bankruptcy to pay you. Your hands are not clean. You are a predatory lender.

At that time, many years ago, opposing my amendment was Senator Phil Gramm of Texas. Phil Gramm of Texas and I have an opposite political philosophy. He is a very articulate and a very

smart man, and he was debating me. Do you remember what he said during the course of the debate? He said:

If the Durbin amendment passes—

This is about 8 years ago.

If the Durbin amendment passes, that will be the end of subprime mortgages.

Think about that. If 8 years ago we would have put an end to these subprime mortgages with that amendment, would we be in the mess we are in today? Well, perhaps, but perhaps not. We called the amendment for a vote. The amendment said the banks that were guilty of predatory lending could not recover in bankruptcy, and I lost by one vote. One vote.

I thought to myself so many times as this recession has unfolded how it might have been different if somebody had stood up at that moment in time, just one more Senator for consumers across America. This will be another test. Who is going to win this debate, the mortgage bankers, the American Bankers Association, or the consumers across this country? The flight attendant on that flight, a single mom with three kids, her one asset in life is her home, and she is about to lose it? All she wants is a chance to renegotiate that mortgage and no one will sit down and talk with her. They would rather see her go all the way through default and foreclosure. It is an outrageous situation. It is repeated over and over and over.

We will have this debate this week. I hope this amendment can prevail. We are going to work hard to make sure we do everything we can so that it passes.

Then next week we are going to take up the credit card issue. We will be back with our friends in the banking industry. The American people know a lot about credit cards, and they know what this industry has done. The President said in a meeting last week: This is another industry that is entitled to make a profit but not entitled to exploit America's families and consumers. He is right. This will be a real test of my colleagues in the next few weeks in the Senate. First, we come to mortgage foreclosure, and then when it comes to credit cards, as to whether we are going to stand up on the side of working people in America, families struggling to get by, struggling with debt, who need someone to speak up for them, we can do that in the Senate. I sincerely hope we do.

I yield the floor.

The PRESIDING OFFICER. Expressions of approval and disapproval are not permitted.

The Senator from Ohio is recognized.

#### TRADE POLICY

Mr. BROWN. Madam President, I actually approve of the Senator's comments. In this case I want to express that.

In the last few weeks, there has been a good bit of discussion in the media