common defense strategies and information sharing where appropriate with the government. There are some early examples, such as the defense industrial base, that merit commendation, which we should encourage. But it is still pretty primitive.

Fourth, we must ensure that the Federal Government has the authorities and capabilities necessary to protect our American critical infrastructure against cyber-attack. If a bank, for instance, runs into a solvency problem, there is an established and widely accepted procedure for Federal intervention to protect the bank depositors, stand the bank back up, get it back on its feet, and move back out again.

There is no similar procedure if that bank or American critical infrastructure, such as an electric utility, is failing due to an ongoing cyber-attack. There needs to be clear, lawful processes for the private sector to request technical assistance and clear authority for the government to act when a cyber-incident raises significant risk to American lives and property.

It gets a little bit more complicated than that because you cannot just call 911, such as when there is a fire, and have the government come and put out the fire when it is a cyber-attack. Cyber-attacks happen literally at the speed of light.

The best defense against cyber-threats, particularly the most dangerous cyber-threats, requires speed-of-light awareness and response. For this reason, it is worth considering whether some defensive capabilities should be prepositioned in order to better protect the Nation's most critical private infrastructure.

During medieval times, critical infrastructure, such as water wells and graineries, were inside the castle walls, protected as a precaution against enemy raiders. Can certain critical private infrastructure networks be protected now within virtual castle walls in secure domains where those prepositioned offenses could be both lawful and effective?

This would, obviously, have to be done in a transparent manner, subject to very strict oversight. But with the risks as grave as they are, this question cannot be overlooked.

Fifth, we need to put more cyber-criminals behind bars. Law enforcement engagement against cyber-crime needs to be considerably enhanced at multiple levels, reporting, resources, prosecution strategies, and priority. A lot more folks need to go to jail.

Finally, we must more clearly define the rules of engagement for covert action by our country against cyber-threats. This is an especially sensitive subject and highly classified. But for here, let me simply say that the intelligence community and the Department of Defense must be in a position to provide the President with as many lawful options as possible to counter cyber-threats, and the executive branch must have the appropriate authorities, policies, and procedures for covert cyber-activities, including how to react in real time when the attack comes at the speed of light. This all, of course, must be subject to very vigilant congressional oversight.

Uniquely in the world and uniquely in our own history, America's economy and government now depend on networked information technologies for Americans to communicate with each other, keep the trains running on time and the planes flying safely, keep our lights on, and power our daily lives.

The expansion of this powerful new technology across our great country also makes us uniquely vulnerable to cyber-threats. We have to do a lot better as a nation on cybersecurity. I believe we can do better. I know we must do better. Frankly, we cannot afford not to do better.

I hope these remarks and the structure they have provided helps provide assistance to my colleagues as we begin debating and resolving these important issues.

I yield the floor. I see my distinguished colleague from Minnesota prepared to speak.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

DISCLOSE ACT

Mr. FRANKEN. Madam President, I rise today to urge my colleagues to allow debate on the DISCLOSE Act, a commonsense measure to fix just some of the problems created by the Citizens United decision.

For a century, Congress has done everything it could to make sure the American public has as much information as possible about the money being spent in our elections. The first Federal campaign finance disclosure law was passed in 1910, which scientists tell us was 100 years ago. It was strengthened in 1925. In the 1970s, it was replaced with an even stronger system as part of the Federal Election Campaign Act. Eight years ago, with McCain-Feingold, it was strengthened yet again. So the Congress has been in the disclosure business for 100 years. And, in fact, at every major step, the Supreme Court has actually affirmed Congress's power to pass these laws.

In 1934, the Court unanimously upheld the disclosure laws that Congress passed a decade earlier. In 1975, they upheld the disclosure provisions of the Federal Election Campaign Act. In 2003, they upheld the disclosure and disclaimer provisions of McCain-Feingold. Just this January in Citizens United—yes, in Citizens United—they voted 8 to 1 to uphold those same disclosure provisions again.

The disclosure provisions of the DISCLOSE Act are well in line with a century's worth of Federal statutes and precedent, at least according to the Burger Court, the Rehnquist Court, the Roberts Court, and the Hughes Court. I bet some of you have not heard of the Hughes Court. That was from 1934. So we can pass this law. We can do it. There should be a will to do it.

Here are some excerpts from a few Members' floor statements from the 107th Congress, the Congress that passed McCain-Feingold:

> Clearly the American public has a right to know who is paying for ads and who is attempting to influence elections. Sunshine is what the political system needs.

Another Member said:

> We can try to regulate ethical behavior by politicians, but the surest way to cleanse the system is to let the Sun shine in.

Here is yet another:

> Disclosure helps everyone equally to know how their money is spent. [. . .] Disclosure is what honesty and fairness in politics is all about. Why would anyone fight against disclosure?

These are actually the statements of friends of mine across the aisle who are still in this body who opposed McCain-Feingold and who opposed it in large part because they said it did not do enough on disclosure. In fact, a lot of them opposed it precisely because it did not do enough to promote disclosure of the independent expenditures of corporations and unions.

As my good friend Senator HATCH said in March of 2001:

> The issue is expenditures, expenditures, expenditures; and [. . .] the real issue, if we really want to do something about campaign finance reform, is disclosure, disclosure, disclosure.

I think he repeated it three times for emphasis.

This is what the minority leader said when he voted against the McCain-Feingold bill, as amended by the House, in March of 2002. This is the minority leader, Senator MCCONNELL from Kentucky:

> Reformers claim this bill will increase disclosure and shine the light on big money and politics. This is, of course, not true. Unions will continue to funnel hundreds of millions of dollars of hard-working union member dues into the political process without ever disclosing one red cent.

The protections my friends were waiting for are in the DISCLOSE Act, and they boil down to this: If someone is spending a lot of money in our elections, American voters will have a right to know whether that person is a corporation, a nonprofit, a union, or a 527.

Before I close, I want to discuss a part of this bill that does not have to do with disclosure, section 102.

Section 102 incorporates critical provisions of a bill I introduced, the American Elections Act. It will make sure that foreign interests—foreign governments, foreign corporations, and individuals—cannot use American subsidiaries that they own or control to influence our elections.

The fact is, after Citizens United, the U.S. subsidiaries of foreign companies will be able to spend as much as they want in our elections, even if they are under foreign control.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. FRANKEN. I ask for another couple minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. CORNYN. Reserving the right to object, I ask that another couple minutes be added to our time. If that is OK with the Senator from Minnesota, I have no objection.

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

Mr. FRANKEN. I thank the Senator from Texas. The fact is, after Citizens United, the U.S. subsidiaries of foreign companies will be able to spend as much as they want in our elections, even if they are under foreign control. President Obama alluded to this in his State of the Union Address, and Justice Stevens said it explicitly in his dissent.

More and more American companies are coming under foreign ownership and control. According to the Congressional Research Service, between 1998 and 2007, there was a 50-percent increase in the number of mergers and acquisitions where a foreign firm acquired a U.S. firm. But our laws are out of date. They do not protect against election spending from those foreign-controlled companies.

There are basically only three restrictions on election spending by foreign companies: One, you cannot be headquartered or incorporated abroad. The subsidiary has to be headquartered here, such as BP America.

You cannot use money you have earned abroad in our elections. You can use money earned here.

You cannot let foreign citizens decide how to spend that money. But the boards of these companies kind of know how, Citgo, say, might want to spend its money. One company that could pass the test and spend unlimited amounts of their money in our elections is Citgo, 100-percent owned by Hugo Chavez and the Venezuela Government. Here is another company that can pass the test: British Petroleum or, rather, its subsidiary, British Petroleum America. This is unacceptable.

The DISCLOSE Act updates our laws and says that if a foreign entity has a controlling stake in a company, as defined by most States' corporate control standards—or if a foreign entity controls the board of directors of a company, that company should not spend one dime in our elections.

Madam President, I thank the Senator from Texas. I yield back my time. I have no time to yield back. I am done.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mr. CORNYN. Madam President, how much time remains on our side?

The ACTING PRESIDENT pro tempore. There is 32 minutes 23 seconds remaining.

DISCLOSE ACT

Mr. CORNYN. Madam President, I am going to talk about the so-called DISCLOSE Act that we will vote on this afternoon at 2:45. Of course, this is a cloture vote which will require 60 votes to proceed to the bill.

At the time the cloture motion was filed, the bill was so new that it was not even available on the Senate's Web site. Unfortunately, this represents a trend where we have seen legislation come to the floor that is so new and unavailable to the American people to read that they are left to wonder what actually is in the bill.

This particular version of the bill was introduced less than a week ago. Sadly, I have concluded that this bill represents another attempt by my colleagues to push through legislation without adequate time for deliberation and review. In this case, it has pretty dramatic and dire consequences.

It will reduce freedom of speech in a way that is inconsistent with the first amendment of the U.S. Constitution, it creates more Federal regulation, and it does not give the American people the opportunity to review the legislation and to weigh in because they cannot understand what are the ramifications. So in the short time we have between now and 2:45, I would like to weigh in a little bit to hopefully inform anyone who is listening what this particular piece of legislation will do.

I fear that what this legislation does, in sum, is to protect incumbents—protect incumbents—which is not the type of legislation that I think most of our constituents would want to see us pass. I believe they would prefer legislation, if any legislation would be necessary, that would not restrict freedom of speech but would encourage freedom of speech and more political participation in our elections and the process. But this bill doesn't do that. This bill protects incumbents by suppressing the speech of some while letting other speakers speak without any limitation whatsoever. In other words, what this bill does is it picks winners and losers in the political speech contest—something the first amendment does not allow us to do.

I would also say that in the rushing to judgment on the part of the proponents of this bill, we are left to speculate as to what impact the Citizens United decision by the U.S. Supreme Court will really have and whether for-profit corporations will actually use this decision to spend money in elections. I happen to believe there is very little chance most corporations' shareholders will allow their money to be spent for the purpose of advertising on issues in upcoming political elections because they are going to either want the money returned in a dividend to the shareholders or they are going to want money invested to create a growing business and to create a better return on their investment. They are not going to want their money used for the purposes for which the proponents of this legislation fear, in my view.

The fact is, this bill will fundamentally remake the rules and regulations governing the exercise of free speech in American elections. We should be extra cautious in legislating in this area for three reasons:

First, regulation of speech always raises significant first amendment considerations. The first amendment is the cornerstone of our democracy. Political speech about candidates for elected office is at the core of the values protected by the first amendment.

Second, regulation of campaign speech often comes with unintended consequences. Back in 2002—I wasn't here at the time—the Bipartisan Campaign Reform Act was passed. It was also known as the BCRA or McCain-Feingold. I believe it was passed with the very best of intentions, but it has not prevented the exponential increase in the amount of money spent in elections in America since that time. In the 2008 election cycle, President Obama and Senator MCCAIN raised and spent nearly twice as much money as President Bush and Senator KERRY did in 2004—almost twice as much in 4 years. In fact, together, the two Presidential candidates in 2008 spent more money for the general election than did all the Presidential candidates between 1976 and 2000 combined. The so-called Bipartisan Campaign Reform Act of 2002 has also led to another unintended consequence: it has led to a proliferation of interest groups using section 527 of the Internal Revenue Code or some other provision of the law to pour massive amounts of money into campaigns with even less transparency than has existed before.

The third reason we should be especially careful when regulating political speech is that Senators have an inherent conflict of interest. Our jobs depend on the rules surrounding campaigns and elections, so there is a natural temptation by the Senate majority to change the rules in a way that helps its own chances of reelection. The question is, Does this bill resist that temptation to rewrite the rules to benefit the majority party, to protect incumbents, or does this bill succumb to that temptation? I submit that this bill succumbs to that temptation in the haste to push through rules that will protect, in the view of the proponents of this legislation, incumbents in the election that will be held almost 100 days from now.

This bill would silence critics of the majority party—it is that simple—and it would protect the closest allies and special interests aligned with the majority party.

This bill treats similarly situated parties differently. That is what I mean by picking winners and losers. It would silence businesses with some foreign shareholders, but it would protect unions with significant foreign membership. It would silence businesses with government contracts, but it would protect unions of government employees and unions that work on those same government contracts. It would silence companies that have received TARP funds but protect the