

## MORNING BUSINESS

Mr. SCHATZ. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

## FOIA IMPROVEMENT ACT

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to engage in a colloquy with Senator LEAHY of Vermont, chairman of the Senate Judiciary Committee, regarding S. 2520, the FOIA Improvement Act of 2014.

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

Mr. ROCKEFELLER. I thank Senator LEAHY for attempting to address my concerns about this bill. I thank his committee staff for working with my committee staff to insert clarifying report language.

Mr. LEAHY. I would like to acknowledge the chairman of the Senate Committee on Commerce, Science, and Transportation for highlighting important concerns of the agencies his committee works with closely. This legislation seeks to further the goal of government transparency; but we also understand the need for government agencies to dutifully and carefully fulfill their responsibilities.

Mr. ROCKEFELLER. From the beginning, I have recognized that this bill would make important changes to the Freedom of Information Act. My concerns have been rooted in the possible unintended consequences this bill would have on consumer protection. I was concerned this bill would make it harder for our consumer protection agencies to bring enforcement actions against corporate wrongdoers.

Specifically, I am concerned that requiring government law enforcement agencies to show foreseeable harm that is not "speculative or abstract" when invoking FOIA exemptions for attorney-client, work-product, and deliberative process privileges will undermine law enforcement efforts.

Hundreds of years of American legal tradition has generally protected work-product documents and attorney-client communications from the discovery process in civil litigation. Further, the deliberative process privilege has allowed government agencies' law enforcers to freely exchange ideas and legal strategies as part of their internal decision making process.

I am concerned that the bill could have a "chilling effect" on internal communications and deliberations of agencies' law enforcement personnel who are preparing law enforcement actions against alleged wrongdoers, in order to avoid the prospect of increased litigation.

We do not want to hinder the robust, internal exchange of rigorous ideas and legal strategies within government agencies when they are bringing enforcement actions.

Given this, courts should review agency law enforcement decisions on the new foreseeable harm standard under an "abuse of discretion" standard.

Mr. LEAHY. At Senator ROCKEFELLER's request we have included language in the committee report on the abuse of discretion standard and its application to make clear that it is the intent of Congress that judicial review of agency decisions to withhold information relating to current law enforcement actions under the foreseeable harm standard be subject to an abuse of discretion standard.

Mr. ROCKEFELLER. Furthermore, if we are going to potentially burden our government agencies with increased costs that will be associated with complying with the bill, then I think Congress should also provide these agencies with sufficient funding to deal with what is sure to be an increased workload.

While I still have concerns about this bill's effect on consumer protection, I think the accommodation made by Senator LEAHY will help. I thank him for inserting clarifying language in the report with regard to this congressional intent on review of information withheld under the foreseeable harm standard.

Mr. JOHNSON of South Dakota. Mr. President, I ask consent to engage in a colloquy with Senator LEAHY, chairman of the Senate Judiciary Committee, regarding important aspects of S. 2520, the FOIA Improvement Act of 2014.

While I support the ultimate goal of this legislation, which seeks to increase government transparency, as the chairman of the Senate Banking Committee, I am also mindful of the need for government agencies to dutifully and carefully fulfill their oversight responsibilities of our Nation's financial institutions and the health and welfare of our financial systems at large. Financial regulatory agencies are tasked with ensuring the safety and soundness of the financial system, compliance with Federal consumer financial law, and promoting fair, orderly, and efficient financial markets. A critical component of effective oversight is the ability of a financial regulator to have unfettered access to information from a regulated institution. A financial institution should not have to fear that its regulator will be unable to protect the institution's confidential information from disclosure. Since the passage of the Freedom of Information Act, Congress has recognized the importance of protecting this type of supervisory information as evidenced specifically in 5 U.S.C. § 552(b)(8), commonly referred to as Exemption 8, and more generally in other exemptions. It is my understanding that nothing in S. 2520 is intended to limit the scope of the protections under Exemption 8, or other exemptions relevant to financial regulators; nor is the bill intended to require release of confidential informa-

tion about individuals or information that a financial institution may have, the release of which could compromise the stability of the financial institution or the financial system, or undermine the consumer protection work by the regulators. Given that the release of confidential or sensitive information relating to oversight of regulated entities could cause harm to such entities, individuals, or the financial system, a financial regulatory agency could reasonably foresee that disclosure of such information requested under FOIA may harm an interest protected by Exemption 8. This is precisely why Congress continues to provide these statutory exemptions.

Mr. LEAHY. I thank Senator JOHNSON for his remarks and for his interest and support for this legislation. I agree that it is important to ensure that our financial regulators are able to do the work required to maintain the safety and soundness of our financial institutions. I also agree that the free flow of information between regulators and financial institution is important to this process. Exemption 8 was intended by Congress, and has been interpreted by the courts, to be very broadly construed to ensure the security of financial institutions and to safeguard the relationship between financial institutions and their supervising agencies. The proposed amendments to the Freedom of Information Act, FOIA, are not intended to undermine the broad protection in Exemption 8 or to undermine the integrity of the supervisory examination process. Moreover, much of the information that the government is permitted to withhold under Exemption 8, is also protected under Exemption 4, which exempts from disclosure commercial and financial information that is privileged or confidential. Exemption 4 covers information prohibited from disclosure under the Trade Secrets Act and similar laws, and as such does not provide for discretionary disclosure under FOIA. As with other exemptions that are based on separate legal restrictions, it is understood that the foreseeable harm standard will not apply to most of the information falling under Exemption 4. I will address these concerns, and I appreciate all the time and attention the Senator from South Dakota has given to this important legislation.

Mr. JOHNSON of South Dakota. I thank the Senator from Vermont for his work on this important matter and for working with me to clarify the scope of this bill. I hope the Senator from Vermont continues to work on these issues with the agencies to ensure that this new standard will not serve to undermine the broad protections currently afforded to confidential supervisory information and in turn undermine the cooperative relationship between regulators and their supervised institutions.