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Senate's Odd Couple Takes on Too Big to Fail

By: Victoria Finkle – March 12, 2013

Sens. Sherrod Brown, a liberal Democrat, and David Vitter, a conservative Republican, rarely agree on contentious issues, but the two lawmakers have forged an unlikely partnership targeting the country's largest banks.

The Senate's latest odd couple say their alliance to end "too big to fail" took root last summer during a Banking Committee hearing with Federal Reserve Board Chairman Ben Bernanke, when the two realized they shared an interest in raising capital standards on big banks.

"[Vitter] was asking " about capital standards and pressed [Bernanke] pretty hard. I remember turning around to [my staffer] and saying, 'that's pretty interesting,'" Brown said in an interview last week. "And I just went over and talked to him and said 'Do you want to work on some of this? Because I agree with you,' and that sort of began the relationship. I knew him, but didn't know him very well before that."

The Ohio Democrat and Louisiana Republican have since written several joint letters to Bernanke and other regulators about higher capital standards and requested a Government Accountability Office study measuring the economic benefits of "too big to fail."

They announced last month that they would go one step further by jointly authoring a bill related to capital standards that could effectively force the largest banks to downsize or break up. The bill is due out in coming weeks.

The legislation faces long odds, but both lawmakers agreed that working together has been informative, and said they hope it will also prove politically expedient.

"The biggest benefit [of the partnership] is hopefully we will be to be able to pass something," Vitter said in a separate interview last week. "Obviously in this Senate, with Republicans at 45 and with almost everything taking 60 votes, not 51, you need by definition to have some bipartisan support to get things through."

Brown clearly sees Vitter as a key ally.

"He has access to people that will listen to him," Brown said. "If it's a Sherrod Brown bill, there are a number of Republicans that probably won't pay much attention to it. If it's a Brown-Vitter bill or a Vitter-Brown bill they will. Same on our side."

Their combined efforts come as the chorus in Washington over "too big to fail" grows louder. Attorney General Eric Holder's candid admission last week that some institutions are so large the Justice Department is afraid to pursue a criminal case against them has added more fuel to the fire.

But Brown and Vitter are not new to the fight, having been focused on concerns about the megabanks' size and interconnectedness for some time.

Brown introduced an amendment to raise capital standards with former Sen. Ted Kaufman during the writing of the Dodd-Frank reform law in 2010, an effort that garnered just 33 votes. (The Dodd-Frank law contains other provisions designed to wind down large firms in the event of a crisis, but critics say they are inadequate to end "too big to fail.") The Ohio Democrat introduced the legislation again as a standalone bill in 2012.

Vitter, meanwhile, said that he wasn't present for the Brown-Kaufman amendment vote in 2010 (he one of six lawmakers who didn't vote on the legislation), but added that he was "sympathetic to that point of view" at the time. The conservative lawmaker also pushed a bill last year - working with Rep. Scott Garrett, R-N.J. on the House side - that would strip regulators of their authority to designate systemically significant non-banks, which the lawmakers argued would help stop the spread of "too big to fail" to other types of institutions.

Brown and Vitter said last week that they are still hammering out the details of their new bill, but it's clear some compromises will have to be made to appease the two lawmakers, who otherwise occupy opposite ends of the political spectrum. Their legislation, for example, is expected to include language that would reduce the regulatory burden on smaller institutions under the Dodd-Frank reform law.

"Certainly one of my goals in the bill, and I think [Brown] is going along with this and agreeing with this at least to some extent, is to distinguish between sizes of institutions and to have or begin to usher in different regulatory frameworks for those very different categories," said Vitter. "And so I hope to have in the bill a section that begins to lessen in an appropriate way what is now the crushing Dodd-Frank regulatory burden on smaller institutions like community banks."

Observers said that despite bipartisan compromises, the bill will face several challenges. One major hurdle will be attracting centrist lawmakers who may be more industry friendly.

"Sometimes when you're doing legislation, you pair someone on the liberal and conservative ends of spectrum to show that there's going to be broad bipartisan support that is going to ensure passage," said Edward Mills, a financial policy analyst at FBR Capital Markets and former Hill aide. "This is the rare case where in between the extremes of the spectrum, there's almost no support in the middle."

Vitter acknowledged that difficulty, but argued that interest in "too big to fail" is already growing, even among moderates.

"I think these ideas will attract folks who are more liberal and more conservative before they attract they middle, because I think folks in the middle are politically much more ultra-cautious and quite frankly much more respectful, would be a kind term, of these institutions which are very powerful and have big lobbies," Vitter said. "So I do think you're going to see support grow from the left and the right. But I do think it's doing that, and I think it's reflecting a solid consensus from the American people and ultimately I think that will attract people in the middle."

Another challenge for the lawmakers remains the political climate at large. Washington has shifted its focus away from banking issues following the financial crisis and its aftermath, and the tone is decidedly not cooperative.

"The problem is I have trouble seeing any actual legislative vehicle getting any traction," said Isaac Boltansky, a policy analyst at Compass Point Research and Trading. "Here we are rounding the quarter on the first quarter of the year, and we've accomplished nothing and the tone has actually degraded from where it was in 112th Congress. I'm just holding on hope that we can get some of the must-act items done in this Congress, let alone new legislation."

Still, Holder's comments last week may aid their cause.

"It's another glaring example that 'too big to fail' is alive and well," said Vitter. If "megabanks are so big the Justice Department"\xA6 will think twice and three and five and ten times about prosecuting them in a way they never would for other institutions, I think the American people's reaction to that is, these banks are not just 'too big to fail' or 'too big to prosecute' - the bottom line is they're just too big."

But it's unclear if the senators will be able to expect any help from top Democrats, including Senate Banking Committee Chairman Tim Johnson or President Obama. Brown hasn't worked with the White House on the issue, but has had some preliminary discussions with Treasury Department staff, according to a Senate aide.

"The relationship between Brown and Johnson will be well worth watching," said Mark Calabria, director of financial regulation studies at the Cato Institute. "That's ultimately what will determine whether this goes anywhere in the Senate. It's too early to tell, but that's going to be a big part of it."