Mr. President. I rise today to address one of the most

timely and sensitive recommendations of the 9/11 Commission, the

creation of a civil liberties board to provide checks and balances

against the ``enormous authority'' granted the government by the

people. Critically, the 9/11 Commission concluded: ``We must find ways

of reconciling security with liberty, since the success of one helps

protect the other.''

There is no doubt that such a board is needed given the heightened

civil liberty tensions created by the realities of terrorism and modern

warfare. The tools of the information age include precise data-

gathering, networked databases, and tracking and sensing technologies

impervious to the common eye. As Vice Chairman Hamilton noted, in a

recent Judiciary Committee hearing, as he commented about the security

steps and the technology that are quickly becoming ubiquitous in our

post-9/11 world, these developments are ``an astounding intrusion in

the lives of ordinary Americans that (are) routine today in

government.'' With such powerful tools come heightened responsibility.

We have an obligation to ensure that there are mechanisms in place

that will see to it that this power is subject to appropriate checks

and balances and Congressional oversight. An effective civil liberties

board can provide those checks and contribute to preserving both

liberty and security.

We need a civil liberties board that can think critically and

independently about the policies we implement as a nation and about how

they affect our fundamental rights. The board must be able to

participate in the policymaking

process, review technology choices and options, peer into various

agencies and assess actions, review classified materials and

investigate concerns. This board must have the versatility to work

closely with government officials, but at the same time it must be

sufficiently independent to assess those government policies without

fear, favor or compromise. Given these significant responsibilities, it

is equally important that the board be accountable to Congress and the

American people.

The civil liberties board outlined in the Collins-Lieberman bill

makes great strides in meeting these goals. It represents a true

bipartisan effort from conception to introduction. I was pleased to

work with these Senators along with Senator Durbin to make this civil

liberties board the kind of board that would honor the 9/11

Commission's intent.

It establishes a bipartisan board that would have access to the

documents and information needed to assess our counterterrorism

policies that affect the vital civil liberties of the American people.

It provides a mechanism for them to work closely with administration

officials, including working with a network of newly created

department-level privacy and civil liberty officers, whose proximity to

decision makers will ensure that these concerns are considered from the

earliest stages of policy formation. It requires the board to report to

Congress on a regular basis, and without compromising classified

information, inform the public about policies that impact their vital

liberties.

Unfortunately, Senator Kyl's amendment No. 3801 attempts to gut the

carefully crafted, bipartisan civil liberty and privacy provisions that

are the hallmark of the Collins-Lieberman bill. It is inconsistent with

the recommendations of the 9/11 Commission and would undermine the

civil liberties that we cherish.

First, Senator Kyl's amendment attempts to cut off the information

flow that would ensure that the board could accurately, reliably and

effectively advise on the impact of policies on privacy and civil

liberties. It would also eliminate the board's ability to subpoena

people outside of the government who may have important information,

such as private sector data collectors working on behalf of the

government. It would also eliminate the privacy officers, as well as

public hearings and reports to the public.

It is clear that the commission intended for the board to have access

to the information that it needed in order to effectively assess

policy. In a recent House Judiciary Committee hearing, Vice Chairman

Hamilton said, ``The key requirement is that government agencies must

be required to respond to the board.'' He went on to note that the

commission itself had subpoena power, and ``if we had not had it, our

job would have been much, much more difficult.'' I would note that the

Collins-Lieberman bill does not go as far as to mandate subpoena power

over government officials, but rather only over relevant non-government

persons.

Given the secrecy and civil liberty concerns that have been pervasive

in this administration, we should be enhancing information flow and

dialogue, not eliminating it. It is ironic that at the same time that

the administration has been making it more difficult for the public to

learn what government agencies are up to, the government and its

private sector partners have been quietly building more and more

databases to learn and store more information about the American

people.

Second, Senator Kyl's amendment would eliminate a provision that

gives the board important guidance on how to review requests by the

government for new and enhanced powers. This is a critical omission. In

order to balance liberty and security, we need to ensure that the board

will be looking at policies through a prism that would allow for

heightened security protection, while also ensuring that intrusions are

not disproportionate to benefits, or that they would unduly undermine

privacy and civil liberties.

Contrary to assertions that this would be a ``citizen board'' gone

wild that would ``haul any agent in anywhere in the world and grill

him,'' this board would consist of highly accomplished members who have

the appropriate clearance to access classified information, who have

extensive professional expertise on civil liberty and privacy issues,

and who have the knowledge of how to view these concerns in the context

of important anti-terrorism objectives.

It simply cannot be that the government can create and implement

policies that impinge on our liberties without having to account to

anyone. While that may make things convenient or easy, it certainly

does not preserve the ideals of the country we are fighting to protect.

Senator Kyl's amendment is just the latest of recent attempts to

undermine the 9/11 Commission's clear recommendations for an effective

board. The administration recently issued an executive order that

attempted to foist upon us an anemic civil liberties board. I and

several of my colleagues noted in a letter to the President that the

board was not a bipartisan or independent entity. It had no authority

to access information and no accountability. It was housed in the

Department of Justice, and comprised solely of administration officials

from the law enforcement and intelligence communities, precisely the

communities that the board would have an obligation to oversee. It was

the proverbial case of the fox guarding the henhouse. This would not

have resulted in a vigorous consideration of policy that the Commission

intended.

As the Commission noted, the ``burden of proof for retaining a

particular governmental power should be on the Executive, to explain

(a) that the power actually materially enhances security and (b) that

there is adequate supervision of the Executive's use of the powers to

ensure protection of civil liberties. If the power is granted, there

must be adequate guidelines and oversight to properly confine its

use.''

We should be looking for ways to ensure that this burden of proof

will be met, rather than weakening oversight and accountability.

As the 9/11 Commission noted, when it comes to security and civil

liberties, ``while protecting our homeland, Americans should be mindful

of threats to vital personal and civil liberties. This balancing is no

easy task, but we must constantly strive to keep it right.''

Senator Kyl's amendment fails to ``keep it right,'' and I urge that

the Senate honor the spirit of the recommendations of the 9/11

Commission, and reject it.