United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, TUESDAY, FEBRUARY 12, 2008 *No. 23*

Senate

The Senate met at 10 a.m. and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

God of the universe, Creator of the human family, enlarge our minds and open the doors to our hearts that we may think Your thoughts and pattern our affections after Yours.

Guide the Members of this legislative body. Make them good managers of the different talents you have given them. May they use these gifts for the good of others. Lord, increase their respect for one another that they will seek first to understand rather than to be understood. Open their eyes to new horizons of truth that they have not known before. When they have to stand alone, when loyalty makes them unpopular, give them the courage to faithfully do Your will.

We pray in the Name of Him who is the truth. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 12, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. TESTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following the remarks that I will make and perhaps the Republican leader will make, we are going to resume consideration of the Foreign Intelligence Surveillance Act and will immediately proceed to a series of rollcall votes in relation to the remaining amendments and cloture on the bill. The managers are working on a couple of amendments to see if they can be accepted by voice vote. But there could be as many as nine rollcall votes. If we have not completed voting on these items prior to the caucus time, we will resume votes after the recess.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. MCCONNELL. Mr. President, today the Senate will finish the bipartisan Rockefeller-Bond bill. This bill is the product of months of painstaking negotiations between Senate Republicans and Democrats and benefitted from the participation of intelligence experts in the executive branch.

The overwhelming bipartisan vote in the Intelligence Committee reflected the care, concern, and good faith that went into crafting the bill. The final vote was not 15 to 0, but it was 13 to 2, which around here is pretty close.

The Rockefeller-Bond bill contained the two main ingredients that are needed to sign this bill into law. It will allow intelligence professionals to do their jobs, and it will not allow trial lawyers to sue the telecommunications companies that may have participated and, according to the intelligence, acted in good faith to help protect our country.

A bill that does not satisfy these two requirements will not become law, nor should it. And, in fact, Mr. President, I know the Senator from Missouri, our ranking member, is going to make the point that all of these amendments need to be defeated if, in fact, we are going to get a signature on this bill. It will be the only way in the end to protect our country.

Last week was a great example of what we can accomplish when we work with each other instead of against each other. We were able to pass an economic growth package on an overwhelming bipartisan basis which the President will sign tomorrow.

We have another chance this week to put up a bipartisan win by passing the Rockefeller-Bond bill, a bill that is critical to protecting the homeland from attack and protecting our forces fighting overseas.

I am confident that with the help of friends on the other side of the aisle, we can work through the pending amendments, send it over to the House, and then send it on to the President for his signature this week.

THE ABRAHAM LINCOLN BICENTENNIAL CELEBRATION

Mr. MCCONNELL. Mr. President, today on February 12, America celebrates the birthday of the greatest

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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leader our country has ever produced. And my home State of Kentucky has a front-row seat in the celebration.

Abraham Lincoln was born February 12, 1809, in a log cabin 3 miles south of Hodgenville, KY. The one-room cabin measured 16 by 18 feet, had a dirt floor, and no glass in the windows.

The future President was born with no advantages in life except for a strong curiosity and a sterling character. By the end of his life, this man of humble background had united our country by demonstrating leadership during America's time of greatest crisis, and he showed our country the true value of the Declaration of Independence by asserting that there must be no exceptions to the ideal that all men are created equal.

Two centuries later, America looks back with gratitude at our 16th President by celebrating the Lincoln Bicentennial. The Commonwealth of Kentucky can take special pride in the fact that Lincoln was one of our own, and the Lincoln Bicentennial's opening ceremonies will take place in Hodgenville. So begins a 2-year event celebrating the great emancipator's life and legacy. All across the country, from the State capital in Springfield, IL, where Lincoln served as a legislator, to here in Washington, DC, where Lincoln served as a wartime Commander in Chief, Americans will celebrate this important figure in our national story.

This time will be exciting for teachers, students, and any adult who loves American history. I know Kentucky's friendly neighbors to the north in Illinois often claim Lincoln as their own. Their license plates even say so. But Lincoln was born and spent his formative years in Kentucky, which surely must have shaped the man he became, and he would never have denied his Kentuckian heritage.

In fact, in 1861, as he traveled east to Washington to begin his term as President, Lincoln wrote a speech that he intended to deliver in Kentucky but never got a chance to do. In it, he crafted these words: ''Gentlemen, I too, am a Kentuckian.''

So it is appropriate that the Lincoln Bicentennial celebration begins in the same State that the man himself did. I hope every Kentuckian and every American will take advantage of this opportunity to explore this exciting chapter in American history.

I yield the floor.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. REID. Mr. President, the order before the Senate allows me and the Republican leader 10 minutes any time during this debate to make a presentation. I will do that later. I do want to say, based on the remarks of the distinguished Republican leader, I, too, appreciate the work of Senator ROCKEFELLER and Senator BOND, but I also appreciate the work done by the Judiciary Committee and Senator LEAHY. As a result of that work, the bill has already been made better and, hopefully, we can adopt some of these amendments today.

We, for example, have as a result of the work done by the Judiciary Committee a compromise reached on a number of amendments that have made this bill better, including a Feingold amendment providing Congress with FISA Court documents that will facilitate congressional oversight and enable Congress to better understand the court's interpretation of the laws we passed; a Whitehouse amendment giving the FISA Court the discretion to stay lower FISA Court decisions pending appeal rather than requiring a stay; a Kennedy amendment providing that under the new authority provided by this bill the Government may not intentionally acquire communications when it knows ahead of time that the sender and all intended recipients are in the United States.

The bill has been made better. The bill that Senator ROCKEFELLER and Senator BOND did is not a bill that is perfect in nature, and I hope they will acknowledge that point. The bill has been made better as a result of work done by the Judiciary Committee. We have members of the Intelligence Committee who also serve on the Judiciary Committee. Two who come to my mind are Senator FEINSTEIN and Senator WHITEHOUSE. They have worked very hard in the Intelligence Committee and the Judiciary Committee to improve this legislation.

We should understand where we are. We are now doing different wiretaps, and I think the situation today that is so concerning to most of us is the President has been advised by his lawyers that he does not have to follow the law anyway. Whatever we do here, he has been told by his lawyers that he need not follow the law. He can do whatever he wants; he is the boss; he is someone who does not have to follow the law, does not even have to give a signing statement saying he rejects it. He can just go ahead and do it.

I do not think this should be a day of celebration. This should be a day of concern for the American people. I am very happy we have been able to improve the product that came out of the Intelligence Committee. Hopefully, by the voting today we can improve it more.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

FISA AMENDMENTS ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2248, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2248) to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that act, and for other purposes.

Pending:

Rockefeller/Bond amendment No. 3911, in the nature of a substitute.

Whitehouse amendment No. 3920 (to amendment No. 3911), to provide procedures for compliance reviews.

Feingold amendment No. 3979 (to amendment No. 3911), to provide safeguards for communications involving persons inside the United States.

Feingold/Dodd amendment No. 3912 (to amendment No. 3911), to modify the requirements for certifications made prior to the initiation of certain acquisitions.

Dodd amendment No. 3907 (to amendment No. 3911), to strike the provisions providing immunity from civil liability to electronic communication service providers for certain assistance provided to the Government.

Bond/Rockefeller modified amendment No. 3938 (to amendment No. 3911), to include prohibitions on the international proliferation of weapons of mass destruction in the Foreign Intelligence Surveillance Act of 1978.

Feinstein amendment No. 3910 (to amendment No. 3911), to provide a statement of the exclusive means by which electronic surveillance and interception of certain communications may be conducted.

Feinstein amendment No. 3919 (to amendment No. 3911), to provide for the review of certifications by the Foreign Intelligence Surveillance Court.

Specter/Whitehouse amendment No. 3927 (to amendment No. 3911), to provide for the substitution of the United States in certain civil actions.

Mr. ROCKEFELLER. I say to the Presiding Officer, it is my understanding that the first amendment is minimization compliance review by Senator WHITEHOUSE.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, first of all, we thank all our colleagues for coming to this point where we can have votes and finally get this bill out, which we started in December. It is a very important bill. We have worked together on a bipartisan basis and resolved almost all issues.

The amendment offered by our colleague from Rhode Island has been modified in a way that I believe improves it, makes it effective, makes it work for the intelligence community, and achieves the very important goals that the Senator from Rhode Island has sought to achieve.

I ask that I be added as a cosponsor to this modified amendment. I believe, Mr. President, we can accept it by voice vote.

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

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I simply would also like to be added as a cosponsor, and I congratulate Senator WHITEHOUSE, Senator BOND, and others for doing an outstanding piece of work in resolving the differences on this extremely important enforcement mechanism.

AMENDMENT NO. 3920, AS MODIFIED

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I have at the desk a modification to amendment No. 3920.

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

The amendment, as modified, is as follows:

On page 69, after line 23, add the following:

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by adding at the end the following:

''(h)(1) Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of such Court or with a procedure approved by such Court.

''(2) In this subsection, the terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by subsection (a).''.

Mr. WHITEHOUSE. Mr. President, much of the FISA battle in which we have been engaged over the weeks that it has taken to resolve this issue has been over trying to do two things: one, to fit this program within the separation of powers principles of the American system of government and, two, to make the rights of Americans consistent with what they enjoy stateside in law enforcement investigations.

This amendment is a valuable step in both of those directions, and it solves the minimization issue that had been in dispute.

I appreciate very much the roles of Chairman ROCKEFELLER, Vice Chairman BOND, FBI Director Mueller, and DNI counsel Powell in getting us to a voice vote on this bipartisan amendment.

Mr. President, I ask unanimous consent that amendment No. 3920, as modified, be adopted by voice vote.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered. If there is no further debate, the question is on agreeing to amendment No. 3920, as modified.

The amendment (No. 3920), as modified, was agreed to.

Mr. ROCKEFELLER. I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3910

The ACTING PRESIDENT pro tempore. The question is now on amendment No. 3910 offered by the Senator from California.

The Senator from California.

Mrs. FEINSTEIN. Mr. President, it is my understanding that there is 2 minutes evenly divided; is that correct?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mrs. FEINSTEIN. Mr. President, the purpose of this amendment is to strengthen the legal requirement that FISA is the exclusive authority for the electronic surveillance of Americans. When FISA was written in 1978, it followed 30 years of warrantless surveillance of communications and telegrams of hundreds of thousands of Americans sending messages outside the country. This would stress that FISA is the legal way for the collection of electronic surveillance against Americans.

In 2001, the administration decided they would not take the Terrorist Surveillance Program to the FISA Court, that they would perform this program outside of FISA, and it took until January of 2007 to bring this within the confines of FISA where it is to this day.

I think we need to make a strong statement in this bill that FISA is the exclusive authority for the electronic surveillance of all Americans, and this amendment aims to do that. It provides penalties for moving outside of the law, and I believe it would strengthen the opportunity to prevent the Chief Executive, either now or in the future, from moving outside of this law.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, the bill before us, S. 2248, already has an exclusive means provision that simply restates the congressional intent back in 1978 when FISA was enacted to place the President at his lowest ebb of authority under the Constitution, which gives him power over foreign intelligence. Unfortunately, this amendment is a significant change of the bipartisan provision in the Intelligence Committee bill, and therefore I would urge my colleagues to oppose it.

During the next attack on our country or in the face of an imminent threat, Congress may not be in a position to legislate an authorization. Yet the bottom line is, we just don't know what tomorrow will bring. This provision would raise unnecessary legal concerns that might impede the effective action of our intelligence community to protect this country.

Further, because this amendment does not address warrantless surveillance in times of war and national emergency following an attack on our country, it does not provide enough flexibility for intelligence collectors. I am concerned this will cause operational problems.

Mr. President, I urge the defeat of this amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment. The yeas and nays have been ordered.

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to speak on this amendment.

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

Mr. ROCKEFELLER. Mr. President, I strongly support this amendment. I think it has very good delineation between how decisions are made. The FISA Court needs to be a part of this. I urge my colleagues to support the amendment.

I thank the senior Senator from California for offering this amendment, and for all of her work on ensuring that we have an appropriately drafted exclusivity provision. Senator FEINSTEIN's amendment is critical to both our work on this bill and to our oversight of the intelligence community.

To understand the importance of the Feinstein amendment, we must look at both existing statutes and recent events.

There is already an exclusivity provision in the United States Code. It was enacted as part of the original Foreign Intelligence Surveillance Act in 1978 and placed, where it exists now, in title 18, the criminal law title of the United States Code.

That provision makes the Foreign Intelligence Surveillance Act and certain criminal wiretapping provisions the ''exclusive means by which electronic surveillance . . . and the interception of domestic wire, oral and electronic communications may be conducted.'' Although the intent of Congress is clear from this language, recent history raises concerns about the adequacy of this provision.

In December of 2005, the American people and most of Congress learned for the first time that, shortly after the terrorist attacks of September 11, 2007, the President had authorized the National Security Agency to conduct certain surveillance activities within the United States.

In publicly justifying the legality of this program, the White House asserted that Congress had authorized the President's program by enacting an authorization for use of military force after September 11.

The authorization passed on September 14, 2001, did not mention electronic surveillance. Nor did it mention any domestic intelligence activities. Given the nature of both the authorization and the time in which it was passed, it is very unlikely that it occurred to anyone in Congress that the President might use this authorization to justify his position that the existing statute making FISA the exclusive means for conducting electronic surveillance no longer applied.

I have expressed my dismay in the past about the legal arguments that the President used to justify the surveillance program. We are still working through the many problems caused by the President's decision to go forward without input from Congress or the courts.

But no matter what the President should have done at the time, Congress now has an obligation to act to prevent this misuse of legislation. Having finally made the right decision in early 2007 to bring his entire program under the FISA Court, the President is no longer using the 2001 Authorization for the Use of military force as a justification to disregard FISA. But we must ensure that neither this President nor a future one resurrects the discredited argument that the 2001 authorization for the use of military force is a blank check for such lawlessness.

Section 102 of the Intelligence Committee bill prevents that abuse. Section 102 enacts an exclusivity provision as a new section 112 of FISA, and lists all statutes now in effect that constitute authority for electronic surveillance. This list is a clear statement of congressional intent: Congress did not intend any other presently-existing statutes to constitute an exception to FISA.

Conspicuously absent from the exclusive list is the 2001 authorization for the use of military force. The omission of the 2001 authorization from the complete list that will now be enacted in 2008 is a conclusive statement that the 2001 authorization may never again be used to circumvent FISA.

Senator FEINSTEIN's amendment takes exclusivity one important step further. It is designed to ensure that no future President interprets a statute that does not explicitly mention electronic surveillance as an exception to the FISA exclusivity requirement. This would be an absolutely incorrect interpretation of existing law. Senator FEINSTEIN's amendment ensures that no President will again make this mistake.

Senator FEINSTEIN's amendment addresses the possible impact of future statutes by adding language to the exclusivity section that states that only an express statutory authorization for electronic surveillance will constitute an additional exclusive means for electronic surveillance.

By requiring ''express statutory authorization,'' Congress anticipates that a statute will only constitute an exception to FISA if it explicitly discusses electronic surveillance. Only those statutes listed in the FISA exclusivity section of the Intelligence Committee bill currently meet that standard.

The amendment therefore ensures that general statutes enacted in the future do not become the basis for exceptions to the FISA exclusivity provision. It also applies criminal and civil penalties for any electronic surveillance done outside of the list of authorized statutes.

The Feinstein amendment being offered today also resolves the operational concerns raised by the Director of National Intelligence about the exclusivity provision in the Judiciary Committee's amendment to the bill. Senator FEINSTEIN's amendment does not include the undefined term ''communications information'' and therefore does not bar the acquisition of information that is currently authorized under other statutes.

Existing statutes as well as the current bill provide the intelligence community with mechanisms to obtain the intelligence the country needs in a legal manner, with the oversight of the courts. There is no need for this President, or any future President, to set aside the lawful, well-overseen procedures of FISA in favor of a secret intelligence program.

Both the Intelligence and Judiciary Committees have done a significant amount of work, on a bipartisan basis, to draft a bill that allows the collection of needed intelligence while still protecting the civil liberties of U.S. persons. Senator FEINSTEIN's amendment helps to make sure that this work will not simply be ignored by this President or any future President.

Mr. BOND. Mr. President, I would note that the Intelligence Committee debated this and accepted a return to the original FISA exclusive means provision, which I think we should maintain, and I urge opposition.

S. 2248 already has an exclusive means provision that is identical to the first part of this amendment. That provision simply restates Congress's intent back in 1978 when FISA was enacted to place the President at his lowest ebb of authority in conducting warrantless foreign intelligence surveillance.

The current exclusive mean provision in S. 2248 was acceptable to all sides because it maintains the status quo with respect to the dispute over the President's constitutional authority to authorize warrantless surveillance.

Unfortunately, this amendment is a significant expansion of the bipartisan provision in the Intelligence Committee's bill.

It goes further by stating that only an express statutory authorization for electronic surveillance, other than FISA or the criminal wiretap statutes, shall constitute additional exclusive means.

This attempts to prohibit the President's exercise of his judicially recognized article II authority to issue warrantless electronic surveillance directives.

It also would require that future authorizations for the use of military force, AUMFs, expressly state that they authorize the use of additional electronic surveillance.

I am concerned that this amendment would tie the President's hands following a national emergency or imminent threat of attack on our country—and prevent actions or intelligence collection that may be necessary for our safety and survival.

While FISA currently has provisions that allow the President to conduct electronic surveillance, physical searches, or install pen register/trap and trace devices for 15 days following a declaration of war, these authorities are simply insufficient against the current terrorist threats our country faces.

Let's think this through for a minute. During the next attack on our country, or in the face of an imminent threat, the Congress may not be in a position to legislate an express authorization of additional means. We may not be in a position to formally declare war against an unknown enemy.

What if there is intelligence information about an imminent threat of attack, but Congress is in a lengthy recess, over a holiday? What if there are simultaneous terrorist attacks across the country, impeding air travel so that Members cannot return to Washington, DC?

The bottom line is, we just don't know what tomorrow will bring. Yet this provision would raise unnecessary legal concerns that might impede effective action by the executive branch to protect this country.

I have the utmost respect for Senator FEINSTEIN. She has played a key role in this FISA modernization process.

While our views on the President's constitutional authority may differ, she did convince me that a bipartisan FISA bill should restate the exclusive means concept in the originally enacted FISA statute.

And over the past several weeks, Senator FEINSTEIN and I tried to come up with a further compromise, one that would expand this simple restatement but would also allow the President to act in the event of a national emergency, or following an AUMF or declaration of war.

Unfortunately, we could not reach an agreement. I believe that if we are going to declare that the President should follow the current FISA framework, then we need to make sure that that framework is flexible enough to address the grave threats of terrorism that threaten our country—and that means giving the President the ability to conduct warrantless electronic surveillance, physical searches, or installing pen register/trap and trace devices, for a reasonable period of time. This amendment does not provide this flexibility.

I have other concerns with this amendment. It would make members of the intelligence community who conduct electronic surveillance at the direction of the President subject to the FISA criminal penalty provisions of a $10,000 fine and imprisonment for not more than 5 years. Also, it is likely these criminal penalties would apply to any service provider who assisted the government in conducting such electronic surveillance.

I don't care what the skeptics and critics have said about the President's Terrorist Surveillance Program; the Constitution trumps the FISA statute.

If a government employee—or a provider—acts under the color of the President's lawful exercise of his constitutional authority, that employee should not be subject to criminal penalty.

In my opinion, the current restatement of exclusive means is fair and keeps the playing field level.

Ultimately, the Supreme Court will decide whether Congress has the authority to limit the President's authority to intercept enemy communications.

Until then, it is my hope that we don't try to tilt the balance in a way that we may someday come to regret.

I urge my colleagues to vote against this exclusive means amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to

amendment No. 3910. The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—57

Akaka	Feinstein	Nelson (FL)
Baucus	Hagel	Obama
Bayh	Harkin	Pryor
Biden	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kennedy	Rockefeller
Brown	Kerry	Salazar
Byrd	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Smith
Carper	Lautenberg	Snowe
Casey	Leahy	Specter
Collins	Levin	Stabenow
Conrad	Lincoln	Sununu
Craig	McCaskill	Tester
Dodd	Menendez	Voinovich
Dorgan	Mikulski	Webb
Durbin	Murkowski	Whitehouse
Feingold	Murray	Wyden

NAYS—41

Alexander	Crapo	Lugar
Allard	DeMint	Martinez
Barrasso	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Nelson (NE)
Brownback	Enzi	Roberts
Bunning	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hatch	Stevens
Coburn	Hutchison	Thune
Cochran	Inhofe	Vitter
Coleman	Isakson	Warner
Corker	Kyl	Wicker
Cornyn	Lieberman	

NOT VOTING—2

Clinton	Graham

The ACTING PRESIDENT pro tempore. Under the previous order requiring 60 votes for the adoption of this amendment, the amendment is withdrawn.

AMENDMENT NO. 3979

There will now be 2 minutes of debate equally divided on amendment No. 3979 offered by the Senator from Wisconsin, Mr. FEINGOLD.

Mr. FEINGOLD. Mr. President, the Feingold-Webb-Tester amendment lets the Government get the information it needs about terrorists and about purely foreign communications, while providing additional checks and balances for communications between people in the United States and their overseas family members, friends, and business colleagues.

It has the support of nine cosponsors. All this amendment does is require the Government to take extra steps to protect the privacy of Americans on U.S. soil when it knows it has collected their communications.

This amendment in no way hampers our fight against al-Qaida and its affiliates. This is not about whether we will be effective in combatting terrorism. This is about whether Americans at home deserve more privacy protections than foreigners overseas.

This is about separation of power, whether anyone outside the executive branch will oversee what the Government is doing with all the communications of Americans it collects inside the United States. I urge my colleagues to support the amendment.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, the purpose of this bill is to make sure we are able to get information when we target a foreign terrorist overseas.

This applies a different standard to someone in the United States who may be picked up on one of those calls than we apply within our own country. If the FBI gets a warrant to listen in on a drug dealer and that drug dealer has lots of conversations, if the drug dealer is talking about a criminal operation, then the FBI acts on it. If it is innocent, the FBI, the interceptors minimize or suppress that evidence, they do not sequester it, they do not have to go through the hoops that are required for a recipient of a telephone call from a foreign terrorist overseas.

There is no reason why, when we have no challenges and no question that minimization is adequate to protect innocent Americans, that they need a higher level of protection when they are talking to a foreign terrorist than when they are talking to a U.S. drug dealer.

I urge the defeat of this amendment.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent for 5 minutes.

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

Mr. ROCKEFELLER. Mr. President, I strongly oppose this amendment.

This amendment would prohibit the Government from acquiring any communication under title VII of the bill if the Government knows before or at the time of acquisition that the communication is to or from a person reasonably believed to be located in the United States, unless the Government follows the sequestration procedures set forth in the legislation.

I see a number of problems with this amendment and I strongly oppose it.

I am afraid that the practical effect of this amendment would be to restrict the scope of the collection authority under the bill to international terrorism. Under the terms of this amendment, no other important foreign policy or national security target could be pursued unless the Government goes through a process that appears to be basically unworkable.

Neither the Intelligence Committee nor the Judiciary Committee limited the scope of the authority in this bill to international terrorism. Both committees anticipated that the flexibility provided by this bill could be used against the gamut of foreign targets overseas with respect to proliferation, weapons development, the clandestine intelligence activities of our enemies, and other priorities. The full Senate should not limit the scope of this bill to one area of foreign intelligence.

A second problem with this amendment is the new, cumbersome procedures it would impose involving the sequestration of information if the communication is to or from a person in the United States. The amendment seems to require that the Attorney General must make an application to the FISA Court to have access to this information for more than 7 days, even if the communication, for instance, concerns international terrorist activities directed against the United States.

While I share the Senator's goal of protecting the privacy interests of Americans, I am afraid this amendment is unworkable.

It bears repeating that what we are trying to do in S. 2248 is modernize the Foreign Intelligence Surveillance Act so that FISA Court orders are not required when the Government is targeting non-U.S. persons overseas to collect foreign intelligence information. And we are trying to do this in a way that protects the privacy interests of U.S. persons.

We thus have included in S. 2248 numerous protections for U.S. persons—both when they are the specific targets of Government surveillance and when their communications are intercepted as the incidental result of the Government acquiring the communications of a foreign target.

The Feingold sequestration amendment does not achieve the appropriate balance of privacy and national security. It appears to me that requirements already in S. 2248, including the requirement that minimization procedures for this collection activity be approved by the FISA Court, represent a much better approach for balancing the national security and the privacy interests of U.S. persons.

I urge the amendment be defeated.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. FEINGOLD. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 35, nays 63, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—35

Akaka	Durbin	Obama
Baucus	Feingold	Reed
Biden	Harkin	Reid
Bingaman	Kennedy	Salazar
Boxer	Kerry	Sanders
Brown	Klobuchar	Schumer
Byrd	Kohl	Stabenow
Cantwell	Lautenberg	Tester
Cardin	Leahy	Webb
Casey	McCaskill	Whitehouse
Dodd	Menendez	Wyden
Dorgan	Murray	

NAYS—63

Alexander	Dole	McCain
Allard	Domenici	McConnell
Barrasso	Ensign	Mikulski
Bayh	Enzi	Murkowski
Bennett	Feinstein	Nelson (FL)
Bond	Grassley	Nelson (NE)
Brownback	Gregg	Pryor
Bunning	Hagel	Roberts
Burr	Hatch	Rockefeller
Carper	Hutchison	Sessions
Chambliss	Inhofe	Shelby
Coburn	Inouye	Smith
Cochran	Isakson	Snowe
Coleman	Johnson	Specter
Collins	Kyl	Stevens
Conrad	Landrieu	Sununu
Corker	Levin	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	Wicker

NOT VOTING—2

Clinton	Graham

The amendment (No. 3979) was rejected.

Mr. BOND. I move to reconsider the vote.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3907

The ACTING PRESIDENT pro tempore. The question is on agreeing to amendment No. 3907 offered by the Senator from Connecticut, Mr. DODD. There are 2 minutes of debate time equally divided, and the time on the remaining amendments will be strictly enforced.

The Senator from Connecticut.

Mr. DODD. Mr. President, let me, first of all, thank my colleague from Wisconsin, Senator FEINGOLD, for his cosponsorship of this amendment, along with a number of other Members of this body who have joined us in this effort.

I thank the chairman and ranking member. My colleagues should know, initially the administration sought to grant immunity to all participants in this telecommunications surveillance program. The chairman and ranking member disagreed with that. However, they have provided retroactive immunity to some 16 phone companies. One of the phone companies refused, of course, to comply with this 5-year surveillance program that was granted without a warrant, without a court order.

I believe it is dangerous in setting a precedent for us today to grant that retroactive immunity without insisting the courts—as they are designed to do—should determine the legality or illegality of this program.

There are four committees of the U.S. Congress that have considered this issue. Three of the committees have rejected retroactive immunity. Only the Intelligence Committee of this body has decided to include it. I believe we ought to strike that provision and allow the court to do its job. That is what this amendment does, and I urge its adoption.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, this carrier liability provision is an essential part of this bill. If we permit lawsuits to go ahead against carriers alleged to have participated in the program, there will be more disclosures in discoveries and pleadings of the means of collecting information, disclosing our most vital methods of collecting information.

Secondly, if we permit the carriers that may or may not have participated to be sued in court, then the most important partners the Government has—the private sector—will be discouraged from assisting us in the future.

The Intelligence Committee—the one committee that has looked at this—reviewed it and said these companies acted in good faith and, therefore, we should give them retroactive immunity.

I yield the remainder of my time to the distinguished chairman.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I strongly oppose this amendment. It is, of course, the whole shooting match. Substitution was brought up in the Judiciary Committee, and it was defeated. This, I believe, is the right way to go for the security of the Nation.

Mr. President, Senators DODD and FEINGOLD have offered an amendment to strike title II of the Intelligence Committee bill.

Title II addresses, in the narrowest way possible, a number of different underlying issues related to the past and future cooperation of providers. Any suggestion that it deals only with liability protection for providers related to the President's program fails to consider the title of the bill as a whole.

Unlike the Government's initial immunity proposals, title II does not try to address all of the different kinds of problems in one sweeping immunity provision that might provide immunity in situations where it is not deserved. Instead, it addresses each problem individually.

Let's look at the first problem. Under existing law, providers are entitled to protection from suit if they act pursuant to a FISA court order or if they receive a particular certification from the Attorney General. Senators DODD and FEINGOLD point to this existing immunity provision— which may be based solely on the certification of the Attorney General—to suggest that no further immunity is needed. But this suggestion ignores the situation in the current lawsuits.

The Government has not allowed the providers who have been sued to publicly disclose whether or not they assisted the Government. Providers, therefore, cannot reveal whether they are already entitled to immunity, or even whether they declined to cooperate with the intelligence community.

In other words, even those providers who were not involved in the President's program or who acted only pursuant to a valid court order cannot extricate themselves from these lawsuits.

Section 203 of the Intelligence Committee bill, therefore, creates a mechanism within FISA that allows courts to review whether providers should be entitled to immunity under existing law, without revealing whether or not the provider assisted the intelligence community. The Dodd-Feingold amendment to strike title II strikes this provision, which protects those providers who indisputably complied with existing law.

There is a second problem that has not been widely discussed. Providers are currently subject to investigations by State public utilities commissions, which seek information about the relationship between the providers and Federal Government.

These State investigations essentially seek to force disclosure of classified information about the nature and extent of the information obtained by the intelligence community from communication providers. This inquiry into the conduct of the Federal Government is not an appropriate area for State regulation.

Section 204 of the Intelligence Committee bill, therefore, creates a new section of FISA that preempts State investigations that seek to force disclosure of classified information about the conduct of the Federal intelligence relationship between the provider and the intelligence community.

Finally, section 202 provides retrospective immunity for the participation of telecommunication companies in the President's warrantless surveillance program. We need to be very clear on the parameters of this section. It does not simply clean the slate for the actions of communications providers in the aftermath of 9/11.

In order for a provider to obtain liability protection, the Attorney General must certify that a company's actions were based on written assurances of legality, and were related to a communications intelligence activity authorized in the relevant time period.

Because these certifications require the Attorney General to have determined that legal requirements have been met and that the program was designed to detect or prevent a terrorist attack, an area where assistance would clearly be required, they parallel existing statutory requirements for immunity. Before immunity can be granted, the bill also requires the court to conduct a case-by-case review to ensure that the Attorney General did not abuse his discretion.

It is important to understand why the Intelligence Committee included this provision in our bill. After hearing from witnesses and reviewing documents, the committee concluded that the providers who assisted the Government acted in good faith, with a desire to help the country prevent another terrorist attack like those committed on September 11, 2001.

Even more importantly, however, the committee recognized that, because of the ongoing lawsuits, providers have become increasingly reluctant to assist the Government in the future. Given the degree to which our law enforcement agencies and intelligence community need the cooperation of the private sector to obtain intelligence, this was simply an unacceptable outcome.

Senators DODD and FEINGOLD have suggested that including the provision on liability protection as part of the bill is a sign of support for the President's program. It is not. It is simply a mechanism to ensure that accountability for the President's program lies with those who are truly responsible for it: The Government officials who represented to these companies that their actions were in accordance with the law. And it is a way to ensure that the intelligence community obtains the assistance it needs from the private sector to keep us safe.

The question of whether the President's warrantless surveillance program was legal, or whether it violated constitutional rights, can and must be answered. Likewise, if administration officials improperly violated the privacy of innocent U.S. persons by conducting this warrantless surveillance, they should be held accountable.

But suing private companies who may have cooperated with the Government is neither an appropriate accountability mechanism nor the best way to obtain answers to questions about the legality of the program, nor is it the appropriate way to encourage public disclosure of information about the program.

The Intelligence Committee's bill does not prevent Congress from conducting its own oversight of these issues, or even from creating alternative mechanisms to seek those answers. It also allows suits against the Government to go forward.

I encourage my colleagues to come up with appropriate alternatives for review of the President's program; alternatives that will ensure both that the story of the President's program is made available to the public in a manner consistent with the protection of national security information and that Government officials are held accountable for any wrongdoing in which they may have been involved.

What we must not do, however, is to make companies that cooperated with the Government in good faith bear the brunt of our anger towards the President and other Government officials about the warrantless surveillance program; our intelligence community's future relationship with the private sector is simply too important.

Protection from liability is simply a way to ensure that the next President has the cooperation of these companies both to obtain intelligence to protect the country and to protect the privacy interests of U.S. persons.

I, therefore, urge you to oppose the Dodd-Feingold amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

Mr. DODD. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 31, nays 67, as follows:

[Rollcall Vote No. 15 Leg.]

YEAS—31

Akaka	Dorgan	Murray
Baucus	Durbin	Obama
Biden	Feingold	Reed
Bingaman	Harkin	Reid
Boxer	Kennedy	Sanders
Brown	Kerry	Schumer
Byrd	Klobuchar	Tester
Cantwell	Lautenberg	Whitehouse
Cardin	Leahy	Wyden
Casey	Levin	
Dodd	Menendez	

NAYS—67

Alexander	Ensign	Murkowski
Allard	Enzi	Nelson (FL)
Barrasso	Feinstein	Nelson (NE)
Bayh	Grassley	Pryor
Bennett	Gregg	Roberts
Bond	Hagel	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Carper	Inouye	Smith
Chambliss	Isakson	Snowe
Coburn	Johnson	Specter
Cochran	Kohl	Stabenow
Coleman	Kyl	Stevens
Collins	Landrieu	Sununu
Conrad	Lieberman	Thune
Corker	Lincoln	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	Webb
DeMint	McCaskill	Wicker
Dole	McConnell	
Domenici	Mikulski	

NOT VOTING—2

Clinton	Graham

The amendment (No. 3907) was rejected.

Mr. ROCKEFELLER. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to table was agreed to.

AMENDMENT NO. 3912

The ACTING PRESIDENT pro tempore. The question is on agreeing to amendment No. 3912, offered by Mr. FEINGOLD of Wisconsin. There are 2 minutes of debate evenly divided.

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, this amendment was approved by the Senate Judiciary Committee. It ensures that in implementing the new authorities provided in the bill, the Government is acquiring the communications of targets from whom it seeks to obtain foreign intelligence information and that it is not indiscriminately collecting all communications between the United States and overseas.

This amendment is necessary because of the vast and overbroad authorities provided by the PAA in this bill. In public testimony, the DNI stated that the PAA could authorize this type of bulk collection and could cover every communication between Americans inside the United States, in Europe, in South America, or the entire world. He also said that the Government is not actually engaging in this type of broad bulk collection but that it would be ''desirable.''

This amendment would not impede in any way collection in support of military operations, as the opponents continue to falsely assert. This extremely modest amendment would, however, oppose a massive bulk collection dragnet, which Chairman ROCKEFELLER has even acknowledged would violate the Constitution.

I urge support for the amendment.

Mr. ROCKEFELLER. Mr. President, I oppose this amendment.

The Senator from Wisconsin is offering an amendment that he argues will prevent what he calls ''bulk collection.'' The amendment is intended, as described by the Senator from Wisconsin, to ensure that this bill is not used by the Government to collect the contents of all the international communications between the United States and the rest of the world. The Senator argues that his amendment will prevent ''bulk collection'' by requiring the Government to have some foreign intelligence interest in the overseas party to the communications it is collecting.

I regret to say that I must oppose this amendment. I do not believe it is necessary. I do believe as drafted the amendment will interfere with legitimate intelligence operations that protect the national security and the lives of Americans.

In considering amendments today, we need to consider whether an amendment would provide additional protections for U.S. persons and whether it would needlessly inhibit vital foreign intelligence collection. I do not believe the amendment as drafted provides additional protections. Furthermore, intelligence professionals have expressed their concern that this amendment would interfere with vital intelligence operations and there are important classified reasons underlying that concern.

Let us review the reasons why the amendment is unnecessary: first, bulk collection resulting in a dragnet of all of the international communications of U.S. persons would probably be unreasonable of the fourth amendment. No bill passed by the Senate may authorize what the fourth amendment prohibits. What is more, the committee bill, in fact, explicitly provides that acquisitions authorized under the bill are to be conducted in a manner consistent with the fourth amendment.

Second, the committee bill stipulates that acquisitions under this authority cannot intentionally target any person known to be located in the United States. And, to target a U.S. person outside the United States, the government must get approval from the FISA Court.

Third, the committee bill increases the role of the FISA Court in supervising the acquisition activities of the Government. The bill requires Court approval of minimization procedures that protect U.S. person information. It maintains the prior requirement of Court approval of targeting procedures.

In the unlikely event that the FISA Court would give its approval to targeting procedures and minimization procedures that allowed the Government to engage in unconstitutional bulk collection, the committee bill also strengthens oversight mechanisms in the executive and legislative branches. These mechanisms are intended to ensure such activity is detected and prevented.

The sponsor of the amendment says that his amendment only requires the Government to certify to the FISA Court that it is collecting communications of targets for whom there is a foreign intelligence interest.

But the committee bill already requires the Attorney General and the Director of National Intelligence to certify to the FISA Court that the acquisition authorized under the bill is targeted at persons outside the United States in order to obtain foreign intelligence information.

Because the remedy does not improve upon the protections in the bill for Americans, and places new burdens on the surveillance of foreign targets overseas, I thus oppose the amendment and urge it be rejected.

The ACTING PRESIDENT pro tempore. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, there is a clear delineation in this bill. We permit targeting of foreign terrorists overseas, or Americans, with a court order. This doesn't permit listening in on bulk collections of communications involving innocent Americans. The only American who is going to be listened in on is one calling to or receiving a call from a terrorist.

I urge defeat of this amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to amendment No. 3912.

Mr. FEINGOLD. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN, I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. GRAHAM) and the Senator from Idaho (Mr. CRAIG).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The PRESIDING OFFICER (Mr. CASEY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—37

Akaka	Durbin	Murray
Baucus	Feingold	Obama
Biden	Feinstein	Reed
Bingaman	Harkin	Reid
Boxer	Kennedy	Salazar
Brown	Kerry	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Kohl	Stabenow
Cardin	Lautenberg	Tester
Casey	Leahy	Whitehouse
Conrad	Levin	Wyden
Dodd	McCaskill	
Dorgan	Menendez	

NAYS—60

Alexander	Domenici	Mikulski
Allard	Ensign	Murkowski
Barrasso	Enzi	Nelson (FL)
Bayh	Grassley	Nelson (NE)
Bennett	Gregg	Pryor
Bond	Hagel	Roberts
Brownback	Hatch	Rockefeller
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Carper	Inouye	Smith
Chambliss	Isakson	Snowe
Coburn	Johnson	Specter
Cochran	Kyl	Stevens
Coleman	Landrieu	Sununu
Collins	Lieberman	Thune
Corker	Lincoln	Vitter
Cornyn	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	Webb
Dole	McConnell	Wicker

NOT VOTING—3

Clinton	Craig	Graham

The amendment (No. 3912) was rejected.

Mr. BOND. I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3938

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3938 offered by the Senator from Missouri.

Mr. BOND. Mr. President, with the distinguished chairman of the committee, we offer this amendment responding to a request made by the Director of National Intelligence when he sent up his recommendations to us last April. He and the Attorney General strongly support this amendment because it adds proliferators of weapons of mass destruction to the definition in FISA of agent of a foreign power, foreign intelligence information, use of information, and physical searches. This amendment applies only to non-U.S. persons.

Making these definitional changes will allow the Government to target for surveillance those who seek to spread this dangerous technology and will enable the intelligence community to share information with other agencies. It remains a central concern for our national security, whether done by terrorists, criminals or other nations.

I believe we can accept this amendment on a voice vote. I turn to my distinguished chairman for his comments.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I support this amendment.

It closes a gap in the Foreign Intelligence Surveillance Act. The amendment expands the definition of certain key terms in the law in order to enhance the Government's ability to obtain FISA coverage of individuals involved in the international proliferation of weapons of mass destruction.

Although the international proliferation of WMD is one of the most serious threats facing the nation, the Government cannot now get a FISA Court order for individuals believed to be engaged in international proliferation of weapons of mass destruction unless the Government can also show a close link between the trafficker and a foreign Government or an international terrorist organization.

Too often, this connection only becomes clear at the completion of the target's proliferation activity. With this amendment, the Government will be able to conduct electronic surveillance and physical searches, with a FISA Court order, at a much earlier stage in an individual's proliferation activities.

It should be understood that this amendment is intended to broaden FISA coverage only in those instances in which the individual is involved in international proliferation activities. The amendment is intended to cover those who are engaged in activities involving proliferation of weapons of mass destruction, which include under the terms of the amendment biological, chemical and radiological weapons and destructive devices that are intended to or that actually do have a capability to cause death or serious bodily injury to a significant number of people.

This amendment will enhance our efforts to acquire foreign intelligence information to detect and disrupt the international proliferation of weapons of mass destruction.

The vice chairman is to be applauded for addressing this issue and I urge passage.

Mr. FEINGOLD. Mr. President, I must oppose Bond amendment No. 3938. I do not object to expanding FISA to cover dangerous individuals involved in the international proliferation of weapons of mass destruction, which is the primary goal of this amendment.

But this amendment is drafted in such a way that its effect would be

much broader and could result in wiretaps issued by the secret FISA Court being directed at U.S. companies and U.S. universities that are engaged in perfectly legal research efforts or that are legally and legitimately working with materials that have multiple purposes and that aren't intended to be used for weaponry at all.

In fact, the American Library Association and the Association of Research Libraries have expressed serious concern about this amendment. Here is what they said: ''While we can appreciate the concerns for those wanting FISA to address the issues of international proliferation of WMDs, the language appears to also expose to secret wiretaps those U.S. academic researchers, universities and companies doing legal research into conventional and chemical/biological weapons.'' Mr. President, that is simply not acceptable.

Let me be clear: This amendment expands the core provisions of FISA that authorize wiretaps and secret searches of the homes and offices of people inside the United States. This is not about extending the new authorities provided in the Protect America Act and reauthorized by the Intelligence Committee bill.

It is one thing to permit secret court-ordered foreign intelligence wiretaps of people in this country who are intentionally engaged in the international proliferation of WMD. But because of the way this amendment is drafted, it would go far beyond just authorizing wiretaps for these types of dangerous criminals.

The biggest problem with the amendment is that it does not require that the people being wiretapped be involved in any criminal activity. This means that companies and individuals engaged in perfectly legal and legitimate biological, chemical, nuclear or other research could be wiretapped under this provision.

I don't understand this. Under FISA today, while foreign government officials can be surveilled to gain foreign intelligence even if they are not breaking the law, foreign terrorist suspects not associated with a government who are in the United States can only be wiretapped if they are involved in criminal activities. That requirement helps ensure that innocent people engaged in, say, legal protest activities aren't subject to FISA. And I know of no complaints about that requirement.

This amendment, on the other hand, doesn't require any suspicion of criminal wrongdoing. It does not even require that the target know that they might be contributing to proliferation. Worse yet, it does not even define international proliferation. So how can we know what activity might trigger the use of this most intrusive of investigation techniques against an individual in the United States? What does international proliferation mean for purposes of this authority?

I certainly don't know the answer to that, and there is nothing in this amendment to answer it. And without a requirement that the proliferation must be illegal under U.S. law, I am seriously concerned that this could cover entities doing perfectly legal, academic, chemical, biological or nuclear research, or even research on conventional weapons like grenades and bombs. It could also cover legitimate companies manufacturing dual-purpose goods, component parts or precursors that could be used for weapons if they fell into the wrong hands.

We can easily fix this problem with the amendment. It would be quite simple to add language virtually identical to that already included in FISA with respect to international terrorism, simply stating that international proliferation of WMD only covers activities that violate U.S. criminal laws or would be criminal if committed within U.S. jurisdiction. I even proposed language to this effect to the Senator from Missouri, hoping that we could work out our differences on this amendment and not require the full Senate to vote on it. But my modest proposal was rejected, for reasons I fail to understand. What I do understand is that if the proponents of this amendment refuse to include language limiting it to people committing crimes, that makes me even more concerned about what is intended and how this is going to be used. There are other changes, as well, that could bring the scope of the amendment into line with the justification for it, but none of my suggestions were accepted.

Some may argue that we should not worry about this expansion of FISA because it only applies to foreigners visiting the United States, sometimes referred to as ''non-U.S. persons.'' But on the face of the amendment, that is not at all clear. This is because the amendment expands the definition of ''foreign power'' under FISA to cover any entity involved in international proliferation of WMD, regardless of whether it is incorporated in the United States or how many Americans work there. And any foreign power can be wiretapped or searched under the plain provisions of FISA, regardless of whether it is breaking the law.

Even if the amendment were limited to non-U.S. persons, U.S. companies, and universities hire any number of people who are here on work or study visas and who are not considered ''U.S. persons.'' When those people are here in the United States, they are fully protected by the fourth amendment. So why should those individuals be subject to secret court-ordered wiretaps and searches of their offices when they have done nothing illegal? And won't this affect the ability of U.S. companies and universities to recruit the best foreign talent to come and work for them?

I realize this all may seem very technical, but let me repeat the upshot: What all of this means is that, under this amendment, U.S. companies and U.S. universities conducting perfectly legal and legitimate activities—meaning they are doing nothing wrong—could be considered ''foreign powers'' under FISA and subject to court-ordered secret wiretaps in this country without any suspicion of wrongdoing. This has left organizations like the American Library Association and the Association of Research Libraries with very serious concerns about the amendment.

Mr. President, I would have been willing to adopt this amendment if it could have been modified to address some of these concerns. But it would be my preference not to address this complex issue in this legislation. The responsible thing to do would be to engage in further study so we know we have the right solution to this problem. But if we are going to take on this issue here, today, let's at least do it in a responsible, targeted way.

We have heard a lot about unintended consequences throughout the debate on this bill. I believe this amendment will have serious unintended consequences, and I think it would benefit all of us to study the issue further. But if that is not possible, we should at a minimum try to limit the effect of the amendment to the dangerous criminals who are the reason for this expansion of FISA. The Bond amendment does not do that.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3938.

The amendment (No. 3938) was agreed to.

Mr. BOND. I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3927

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3927 offered by the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment substitutes the Government for the party defendant in place of the telephone companies. It is designed to maintain some check and balance on the executive because Congress has been totally ineffective to do so.

It accomplishes both purposes. It keeps the program going to gain intelligence information necessary for national defense, but it maintains the courts being open as a check and balance.

I yield to Senator WHITEHOUSE.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, if we vote for retroactive immunity, we violate the rule of law taking away legitimate claims in legitimate litigation in a manner that is unprecedented and unconstitutional. If on the other hand we do nothing, we leave American companies gagged by the state secrets privilege in ongoing litigation.

This amendment is a sensible, fair, bipartisan alternative that takes away

no rights, that follows the Federal Rules of Civil Procedure, that honors the separation of powers principles and leaves no litigant gagged by the Government.

Please support the amendment.

The PRESIDING OFFICER. All time has expired. Who yields time in opposition? The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, the distinguished ranking member of the Judiciary Committee, Senator SPECTER, has offered an amendment proposing to substitute the government for the providers in the ongoing civil lawsuits.

I appreciate and agree with the sentiment of Senator SPECTER and Senator WHITEHOUSE that the government—not the providers who operated in good faith with them—should be held responsible for the legal fallout from the President's warrantless surveillance program. But this amendment lays out a remarkably complicated litigation procedure that is unlikely to achieve any meaningful review of the President's program.

Under this amendment, if the Attorney General submits a certification to the district court that an individual carrier provided assistance in connection with the President's program or did not provide assistance, the district court certifies a question to the FISA Court.

The FISA Court is then required to determine whether the carrier cooperated with existing law, or acted in good faith and pursuant to an objectively reasonable belief that the written request was legal. If the FISA Court makes that finding, the government is substituted for the carrier in the district court.

At that point, litigation continues against the government under several different possible statutes, and the provider is dismissed from the suit. The plaintiffs may, however, seek discovery—that is, documents, witness testimony, and other information—from the providers who were originally named in the lawsuit.

This complicated procedure raises a number of concerns both about the determination by the FISA Court and the resolution of the lawsuits after the government is substituted.

As an initial matter, it is unclear why the cases would need to be transferred to the FISA Court for a determination of good faith. The Intelligence Committee has already made an assessment of the good faith of the cooperating providers. The possibility of a court—rather than the Congress—making the good faith determination is particularly relevant to an amendment offered by Senator FEINSTEIN, and I am sure we will discuss it further.

But even if Congress seeks to have a court, rather than Congress, make a determination of good faith, having that.determination made in the FISA Court unnecessarily complicates the process. The FISA Court is not a standard factfinding trial court; it does not hear from witnesses, take evidence, or assess the ''good faith'' of private parties. The FISA Court is simply not set up to make factual determinations that impact civil lawsuits.

Nor does transferring the cases to the FISA Court help the plaintiffs in these cases. They are not entitled to hear the classified information concerning the good faith of the providers, and they will not be involved in the debate.

In addition, although a finding of good faith would normally result in dismissal of the lawsuits, under this proposal, the providers would still potentially have the burden of producing documents and witnesses. Thus, because providers who acted in good faith will continue to have a role in the litigation, even if they are no longer the named defendants, this proposal does not relieve the cost and reputational burdens of the litigation. It therefore is unlikely to encourage the providers to cooperate with the government in the future.

It is also unclear what substituting the government in these cases seeks to accomplish. The proposal would involve changing the nature of the claims filed against telecommunications companies to causes of action against the government under a number of statutes, including the Federal Tort Claims Act, the Administrative Procedure Act, or FISA. Suits under these statutes, however, can be, and in some cases, have already been brought against the government.

If it is already possible to sue the government under thee statutes for possible violations, and indeed, if the government has already been sued under these statutes, why do we need to create a new procedure to convert claims against private companies into these claims against the government?

Finally, we should look at what is actually happening in the current litigation. Many of my colleagues have suggested that allowing the litigation to continue—with either the government or the providers as the defendant—will allow the court to resolve the issue of whether the providers acted in accordance with the law. But this is not presently the debate in the litigation.

Right now, the parties in the approximately 40 civil lawsuits are arguing about access to classified information about the President's program. The government has refused to publicly reveal the classified documents and information that would allow litigation to proceed. Because classified information is needed to address even threshold litigation issues, having the government or a particular provider as defendant in the suit is unlikely to change this aspect of the litigation.

In other words, whether or not we substitute the government for the provider, no court is likely to resolve the question of whether the President, or any private company, violated the law in the near future. Given that the administration is unlikely to declassify information about the program while the lawsuits are ongoing, it is also unlikely that litigation will ever tell the story of what happened with the President's program. So what benefit is there to substituting the government in the providers' stead?

Providers who acted in good faith should be removed from ongoing litigation, without having the burden of responding to discovery and litigation requests and without the reputational harm of having suits in their name go forward against the government. Ongoing reminders of the potential pitfalls of cooperating in good faith with the government will not encourage these companies—whose assistance the intelligence community and law enforcement agencies desperately need—to cooperate with the government in the future.

If plaintiffs in any ongoing suit want to bring claims against government officials, those suits can be brought directly, without the complicated substitution procedure described in this amendment.

Although no member of the Intelligence Committee offered an amendment on this issue, the committee considered whether it would be more appropriate to substitute the government for particular providers in ongoing lawsuits as part of the work done in preparing this bill. For all of the reasons I have discussed, the committee ultimately decided that substitution was not the right approach to address the ongoing lawsuits.

I, therefore, cannot support this amendment, and I urge my colleagues to oppose it.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, for all the reasons we voted down striking retroactive immunity, this amendment must be defeated as well because it would continue to disclose all the methods of collection in electronic surveillance and it would put at risk the private parties.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 3927.

Mr. BOND. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 30, nays 68, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—30

Akaka	Harkin	Obama
Bingaman	Kennedy	Reed
Boxer	Kerry	Reid
Brown	Kohl	Sanders
Byrd	Lautenberg	Schumer
Cantwell	Leahy	Specter
Cardin	Levin	Stabenow
Casey	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Nelson (FL)	Wyden

NAYS—68

Alexander	Dodd	McCain
Allard	Dole	McConnell
Barrasso	Domenici	Mikulski
Baucus	Dorgan	Murkowski
Bayh	Ensign	Murray
Bennett	Enzi	Nelson (NE)
Biden	Feinstein	Pryor
Bond	Grassley	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Salazar
Burr	Hatch	Sessions
Carper	Hutchison	Shelby
Chambliss	Inhofe	Smith
Coburn	Inouye	Snowe
Cochran	Isakson	Stevens
Coleman	Johnson	Sununu
Collins	Klobuchar	Tester
Conrad	Kyl	Thune
Corker	Landrieu	Vitter
Cornyn	Lieberman	Voinovich
Craig	Lincoln	Warner
Crapo	Lugar	Wicker
DeMint	Martinez	

NOT VOTING—2

Clinton	Graham

The amendment (No. 3927) was rejected.

Mr. BOND. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

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

AMENDMENT NO. 3919

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided on amendment No. 3919 offered by the Senator from California, Mrs. FEINSTEIN.

The Senator from California.

Mrs. FEINSTEIN. Mr. President, FISA has a law within it as to how you do electronic surveillance, and that law has specific provisions of what companies seeking to assist the Government must do. Essentially, what this amendment does is ask the FISA Court to review that compliance by the telecom companies to see that they complied with the elements of that part of FISA.

I think some Members have been able to look at the certification letter sent to telecoms, but most Members have not, and I think it is very important that the court have an opportunity to review these certifications and see if they are adequate under the provisions of the FISA law, and this is exactly what this amendment does.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, the FISA Court was not set up to make judgments about the operation of foreign intelligence. As a matter of fact, they said specifically, in a case released in December, that is a matter for the executive branch.

Now, there are some people who say there ought to be a court challenge to the President's terrorist surveillance program. Let me remind my colleagues that there are seven cases proceeding against the Government and Government employees which will not be impacted by this bill. Every day that litigation continues, whether it be in a FISA court or in open court, there is a danger of leaking of information.

There could be disclosure of our methods, and there could be risks to employees of the companies in areas of the world. Certainly their bottom line could be impacted. As Senator DURBIN pointed out last week, leaks of classified information caused severe harm to a company in his State.

I urge the defeat of this amendment.

Mr. ROCKEFELLER. Mr. President, the distinguished Senator from California has offered an amendment to modify the procedures in the Intelligence Committee bill on dismissal of civil actions against telecommunications companies that assisted an element of the intelligence community with regard to the President's warrantless surveillance program.

Senator FEINSTEIN's amendment preserves the basic idea of the Intelligence Committee bill; namely, that narrowly crafted immunity for private companies is an appropriate way of resolving dozens of lawsuits arising from the President's program. But the amendment makes one significant change in the procedure proposed by the Intelligence Committee. Rather than Congress deciding that each and every company acted in good faith, the question of whether individual carriers relied in good faith on representations made by the Government would be made by the FISA Court.

I understand and appreciate the Senator from California's desire to have a court make this good faith determination. But in this particular case, I think that Congress is better able to assess the context in which companies cooperated with the Government in order to determine whether they acted in good faith.

As members of the Intelligence Committee, Senator FEINSTEIN and I have had access to the letters sent to the telecommunications companies. We have heard from the companies who were told after 9/11 that their assistance was ''required'' and that the request for assistance was based on a Presidential order, the legality of which was certified by the Attorney General.

In addition, the committee understands the threats faced by the United States in the years after September 11, and the effect that threat environment had on all American citizens.

The committee also understands exactly how critical the private sector is to all of our intelligence collection efforts, and what effect the pending lawsuits have had on the private sector's continued cooperation with the Government.

The policy question that is at the heart of the Feinstein amendment—whether companies that cooperated with the intelligence community after September 11 should be protected from liability for their actions—is not a question than can truly be addressed in an individual court case. Unlike the fact-intensive, good faith determinations that would be made in a court case, this question is not about how a company reacted to each individual piece of correspondence it received, or its discussions with the Government. The question should not be answered on a piecemeal basis, based on whether each of the individual actions taken by any particular company was in good faith.

Knowing how to address this policy issue instead depends on understanding the circumstances that surrounded the requests, the full dimension of the threat, and the historical relationship between the Government and the companies. Because Congress has the ability to look at the totality of the circumstances in a way that a court evaluating an individual company's good faith cannot, I feel that it is our responsibility to assess the reasonableness of the response of all of the companies.

Given the circumstances involved in this sensitive matter, I believe Congress, not the courts, should make the determination as to whether companies acted in good faith and should be protected from liability.

Apart from disagreeing as to who should make the decision about good faith, there are also a number of significant procedural concerns with the Feinstein amendment. I fear that these problems would make the amendment unworkable.

Under Senator FEINSTEIN's amendment, the first step in the immunity process would be the same as under the Intelligence Committee's bill. The Attorney General would make a certification to a court in which a case against a telecommunication company is being heard. The certification would say one of two things.

First, if the company assisted the government, the certification would have to indicate that any assistance provided had been for an intelligence activity involving communications that had been authorized by the President between September 11, 2001, and January 2007.

The certification would also have to state that the assistance had been described to the company in a written request or directive from the Attorney General or the head or deputy head of an intelligence community element which indicated that the activity was authorized by the President had determined to be lawful.

Alternatively, the certification could indicate that the telecommunications company did not provide the alleged assistance.

The court would then have the opportunity to review the Attorney General's certification for abuse of discretion. To protect national security information, only the judge would be entitled to review the certification; the plaintiffs would not have access to it.

Under the committee's bill, such a certification would be the end of the process, except for the issuance of the court's order dismissing the action if the Attorney General's certification met these requirements.

Senator FEINSTEIN's amendment, in contrast, uses that certification to trigger a transfer of the case to the Foreign Intelligence Surveillance Court. This amendment also specifically provides that the FISA Court will permit any plaintiff in an applicable covered civil action to appear before the Court.

This transfer of the case to the FISA Court seriously complicates the existing lawsuits, and poses a number of significant procedural problems that are not resolved in the amendment.

As an initial matter, the type of analysis in the amendment is outside the longstanding scope and jurisdiction of the FISA Court.

Under the Feinstein amendment, the FISA Court would be required to determine, acting as a body of all judges, whether immunity would be granted under current law, whether the company had an objectively reasonable belief under the circumstances that compliance with the written request or directive was lawful, or whether the company did not provide the alleged assistance.

None of these determinations involve the Foreign Intelligence Surveillance Act, the statute on which the FISA Court has expertise. Indeed, the point of the litigation is that the President's program was conducted outside of FISA.

In addition, the FISA Court is not generally set up for adversarial civil litigation; it does not usually hear from witnesses or take evidence. Although Congress has granted the Court the ability to hear challenges to certain FISA directives, it has never before been asked to make factual determinations that affect the outcome of civil lawsuits.

Sending the case to the FISA court therefore raises all sorts of questions. For example, would the FISA Court, acting en banc, hear testimony from witnesses? If so, who would examine the witnesses? What rules of evidence would apply? What role would the plaintiffs play in the proceeding?

The FISA Court would have to come up with an entirely new set of procedures just to handle this litigation. This new proceeding—particularly as the Court would have to act en banc—would significantly strain the resources of the Court that oversees our electronic surveillance of terrorists and foreign powers and protects the privacy of U.S. persons.

Nor does transferring the cases to the FISA Court necessarily help the plaintiffs in these cases. As they do not currently have security clearances, the Government is unlikely to provide the plaintiffs with access to classified information about the proceeding. Thus, most likely, they will not be involved in the debate.

I commend the Senator from California for her efforts to come up with a mechanism by which the court can consider and determine the good faith of the companies. But, because of all of the procedural problems with this amendment I have described, as well as a more fundamental belief that Congress has a unique ability in this circumstance to assess the good faith of the companies, I cannot support this amendment.

The PRESIDING OFFICER (Mr. WHITEHOUSE.) All time has expired. The question is on agreeing to amendment No. 3919.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''nay.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 41, nays 57, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—41

Akaka	Feingold	Nelson (FL)
Baucus	Feinstein	Obama
Bayh	Harkin	Reed
Biden	Kennedy	Reid
Bingaman	Kerry	Salazar
Boxer	Klobuchar	Sanders
Brown	Kohl	Schumer
Byrd	Lautenberg	Specter
Cantwell	Leahy	Stabenow
Cardin	Levin	Tester
Casey	Lincoln	Webb
Conrad	McCaskill	Whitehouse
Dorgan	Mikulski	Wyden
Durbin	Murray	

NAYS—57

Alexander	Dodd	McCain
Allard	Dole	McConnell
Barrasso	Domenici	Menendez
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Grassley	Pryor
Bunning	Gregg	Roberts
Burr	Hagel	Rockefeller
Carper	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Isakson	Stevens
Collins	Johnson	Sununu
Corker	Kyl	Thune
Cornyn	Landrieu	Vitter
Craig	Lieberman	Voinovich
Crapo	Lugar	Warner
DeMint	Martinez	Wicker

NOT VOTING—2

Clinton	Graham

The PRESIDING OFFICER. Under the previous order requiring 60 votes for adoption of the amendment, the amendment is withdrawn.

Under the previous order, the substitute amendment, as amended, is agreed to.

The amendment (No. 3911), in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on S. 2248, the FISA bill.

Harry Reid, Charles E. Schumer, Sherrod Brown, Daniel K. Akaka, Jeff Bingaman, Thomas R. Carper, Ken Salazar, Sheldon Whitehouse, John D. Rockefeller IV, Richard Durbin, Bill Nelson, Debbie Stabenow, Robert P. Casey, Jr., E. Benjamin Nelson, Evan Bayh, Daniel K. Inouye.

Mr. FEINGOLD. Mr. President, as I have said repeatedly on the Senate floor, I strongly oppose granting unjustified retroactive immunity to companies that allegedly participated in the President's illegal wiretapping program, which went on for more than 5 years. It is unnecessary because under current law, companies already have immunity from civil liability if they comply with a court order or with a certification from the Attorney General that a court order is not required and all statutory requirements have been met. Congress should leave it to the courts to evaluate whether the companies alleged to have cooperated with the program would deserve immunity under this existing law rather than changing the rules of the game after the fact. That is why I have been a staunch supporter of the Dodd amendment to strike the immunity provision from this bill entirely.

Given my strong opposition to any retroactive immunity for telecommunications companies, I want to explain why I voted in favor of two amendments that proposed alternatives to but did not entirely eliminate retroactive immunity. Amendment No. 3927, offered by Senators SPECTER and WHITEHOUSE, would have substituted the Government for the companies in the pending litigation, and amendment No. 3919, proposed by Senator FEINSTEIN, would have directed the FISA Court to evaluate whether companies complied with the existing immunity provision or otherwise acted in good faith.

I do not believe that either of these proposals is necessary. In fact, when Senator SPECTER offered his substitution proposal as a stand-alone bill in the Senate Judiciary Committee, I opposed it. I firmly believe that Congress should allow the courts to evaluate whether the companies deserve immunity under the law that applied to them at the time, and we should not be

meddling in this area at all. However, unlike the Specter bill, these two amendments were offered to replace the broad grant of retroactive immunity in the FISA bill, and they were offered after the Senate had voted not to adopt the Dodd-Feingold amendment. Each of them was an improvement, however slight, to the underlying immunity provision, in that they would have left open the possibility that the lawsuits could continue, thus permitting the courts to rule on the legality of the warrantless wiretapping program. Therefore, I voted in favor of both of these amendments, even though I would have much preferred to see retroactive immunity stricken entirely.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that act, and for other purposes, shall be brought to a close.

The yeas and nays are required under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 69, nays 29, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—69

Alexander	Dole	McConnell
Allard	Domenici	Mikulski
Barrasso	Ensign	Murkowski
Baucus	Enzi	Nelson (FL)
Bayh	Feinstein	Nelson (NE)
Bennett	Grassley	Pryor
Bond	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Hatch	Salazar
Burr	Hutchison	Sessions
Carper	Inhofe	Shelby
Casey	Inouye	Smith
Chambliss	Isakson	Snowe
Coburn	Johnson	Specter
Cochran	Kohl	Stevens
Coleman	Kyl	Sununu
Collins	Landrieu	Thune
Conrad	Lieberman	Vitter
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	Webb
Crapo	McCain	Whitehouse
DeMint	McCaskill	Wicker

NAYS—29

Akaka	Durbin	Murray
Biden	Feingold	Obama
Bingaman	Harkin	Reed
Boxer	Kennedy	Reid
Brown	Kerry	Sanders
Byrd	Klobuchar	Schumer
Cantwell	Lautenberg	Stabenow
Cardin	Leahy	Tester
Dodd	Levin	Wyden
Dorgan	Menendez	

NOT VOTING—2

Clinton	Graham

The PRESIDING OFFICER. On this vote, the yeas are 69, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

FISA AMENDMENTS ACT OF 2007

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I ask unanimous consent that immediately following Senator FEINGOLD's 15 minutes on FISA, I be recognized for 10 minutes and that the time be taken from Senator DODD's 4 hours.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. Mr. President, I strongly oppose S. 2248. This bill is deeply flawed in ways that will have a direct impact on the privacy of Americans. Along with several other Members of this body, I have offered modest amendments that would have permitted the government to obtain the intelligence it needs, while providing the checks and balances required to safeguard our constitutional rights. Unfortunately, under intense administration pressure marked by inaccurate and misleading scare tactics, the Senate has buckled. And we are left with a very dangerous piece of legislation.

The railroading of Congress began last summer, when the administration rammed through the so-called Protect America Act, vastly expanding the government's ability to eavesdrop without a court-approved warrant. That legislation was rushed through this Chamber in a climate of fear—fear of terrorist attacks, and fear of not appearing sufficiently strong on national security. There was very little understanding of what the legislation actually did.

But there was one silver lining: The bill had a 6-month sunset to force Congress to do its homework and reconsider the approach it took. Unfortunately, with far too few exceptions, the damage has not been undone.

This new bill was intended to ensure that the government can collect communications between persons overseas without a warrant, and to ensure that the government can collect the communications of terrorists, including their communications with people in the United States. No one disagrees that the government should have this authority. But this bill goes much further, authorizing widespread surveillance involving innocent Americans—at home and abroad.

Proponents of the bill and the administration don't want to talk about what this bill actually authorizes. Instead, they repeatedly and inaccurately assert that efforts to provide checks and balances will impede the government's surveillance of terrorists. They launched these attacks against the more balanced bill that came out of the Judiciary Committee. And they have attacked and mischaracterized amendments offered on the floor of this body. This is fear-mongering, it is wrong, and it has obscured what is really going on.

What does this bill actually authorize? First, it permits the government to come up with its own procedures for determining who is a target of surveillance. It doesn't need advance approval from the FISA Court to ensure that the government's targets are actually foreigners, and not Americans here in the United States. And, if the Court subsequently determines that the government's procedures are not even reasonably designed to wiretap foreigners, rather than Americans, there are no meaningful consequences. All that illegally obtained information on Americans can be retained and used.

Second, even if the government is targeting foreigners outside the U.S., those foreigners need not be terrorists. They need not be suspected of any wrongdoing. They need not even be a member or agent of some foreign power. In fact, the government can just collect international communications indiscriminately, so long as there is a general foreign intelligence purpose, a meaningless qualification that the DNI has testified permits the collection of all communications between the United States and overseas. Under this bill, the government can legally collect all communications—every last one—between Americans here at home and the rest of the world. Even the sponsor of this bill, the chairman of the Intelligence Committee, acknowledges that this kind of bulk collection is probably unconstitutional, but the DNI has said it would be not only authorized but ''desirable'' if technically possible. Technology changes fast in this area. We have been forewarned, yet the Senate failed to act.

One of the few bright spots in this bill is the inclusion of an amendment, offered by Senators WYDEN, WHITEHOUSE and myself in the Intelligence Committee, to prohibit the intentional targeting of an American overseas without a warrant. That is an important new protection. But that amendment does not rule out the indiscriminate vacuuming up of all international communications, which would allow the government to collect the communications of Americans overseas, including with friends and family back home, without a warrant. And those communications can be retained and used. Even the administration's illegal warrantless wiretapping program,

as described when it was publicly confirmed in 2005, at least focused on the communications of particular terrorists. What we are talking about now is potentially a huge dragnet that could sweep up the communications of countless innocent Americans.

Third, the Senate failed to prohibit the practice of reverse targeting; namely, wiretapping a person overseas when what the government is really interested in is an American here at home with whom the foreigner is communicating. The underlying bill simply does not stop this practice and, if there was any doubt, the DNI has publicly said that the bill merely ''codifies'' the administration's view that surveillance of an American is fine, so long as the government is technically wiretapping the foreigner. Even the DNI has said this is unconstitutional, but there is nothing in this bill to stop it.

Fourth, the Senate has failed to protect the privacy of Americans whose communications will be collected in vast new quantities. The administration's mantra has been: ''don't worry, we have minimization procedures.'' Minimization procedures are nothing more than unchecked executive branch decisions about what information on Americans constitutes ''foreign intelligence.'' As recently declassified documents have again confirmed, the ability of government officials to find out the identity of Americans and use that information is extremely broad. Moreover, even if the administration were correct that minimization procedures have worked in the past, they are certainly inadequate as a check against the vast amounts of Americans' private information that could be collected under these new authorities.

This legislation is particularly troubling because we live in a world in which international communications are increasingly commonplace. Thirty years ago it was very expensive, and not very common, for most Americans to make an overseas call. Now, particularly with email, such communications are commonplace. Millions of ordinary, and innocent, Americans communicate with people overseas for entirely legitimate personal and business reasons. Parents or children call family members overseas. Students email friends they have met while studying abroad. Business people communicate with colleagues or clients overseas. Technological advancements combined with the ever more interconnected world economy have led to an explosion of international contacts.

We often hear from those who want to give the government new powers that we just have to bring FISA up to date with new technology. But changes in technology should also cause us to take a close look at the need for greater protections of the privacy of our citizens. If we are going to give the government broad new powers that will lead to the collection of much more information on innocent Americans, we have a duty to protect their privacy as much as we possibly can. And we can do that without sacrificing our ability to collect information that will help protect our national security.

But, the Senate has once again fallen for administration tactics that have become so depressingly familiar. ''Trust us,'' they say. ''We don't need judicial oversight. The courts will just get in our way. You never know when they might tell us that what we're doing is unconstitutional, and we would prefer to make that decision on our own. Checks and balances, judicial and congressional oversight, will impede our ability to fight terrorism.'' And, sadly, these grossly misleading efforts at intimidation have apparently worked.

I have been speaking for some time now about my strong opposition to this bill, and I haven't even addressed one of the most outrageous elements of that bill: the granting of retroactive immunity to companies that allegedly participated in an illegal wiretapping program that lasted for more than 5 years.

This grant of automatic immunity is simply unjustified. There is already an immunity provision in current law that has been there since FISA was negotiated—with the participation of the telecommunications industry—in the late 1970s. The law is clear. Companies have immunity from civil liability when they cooperate with a Government request for assistance—as long as they receive a court order, or the Attorney General certifies that a court order is not required and all statutory requirements have been met.

This is not about whether companies had good intentions. It is about whether they complied with this statutory immunity provision, which has applied to them for 30 years. If the companies followed that law, they should get immunity. If they did not follow that law, they should not get immunity. And a court should make that decision, not Congress. It is that simple.

Congress passed a law laying out when telecom companies get immunity and when they don't for a reason. These companies have access to our most private communications, so Congress has subjected them to very precise rules about when they can provide that information to the government. If the companies did not follow the law Congress passed, they should not be granted a ''get out of jail free'' card after the fact.

Proponents of retroactive immunity have said repeatedly that immunity is necessary if the government is going to have the cooperation of carriers in the future. We do need that cooperation. But we also need to make sure that carriers don't cooperate with illegitimate requests. We already have a law that tells companies when they should and when they shouldn't cooperate, so they are not placed in the position of having to evaluate independently whether the government's request for help is legitimate.

Instead of allowing the courts to apply that law to the facts—instead of allowing judges to decide whether the companies deserve immunity for acting appropriately—this bill sends the message that companies need not worry about complying with questionable government requests in the future because they will be bailed out after the fact.

This is outrageous. Even more outrageous is that fact that if these lawsuits are dismissed, the courts may never rule on the NSA wiretapping program. This is an ideal outcome for an administration that believes it should be able to interpret laws alone, without worrying about how Congress wrote them or what a judge thinks. For those of us who believe in three independent and co-equal branches of government, it is a disaster.

In the 1970s, Congress learned that the executive branch had been using its immense powers and the advance of technology to spy on its citizens. By passing FISA, Congress faced up to the fact that we can't just trust the executive branch, including the President of the United States, to do the right thing, that judicial oversight of the power to spy was needed, that checks and balances are the best way to ensure liberty, and security.

I have spent a great deal of time on the floor over the past several weeks discussing the details of the bill, offering amendments, and debating the possible effects of the fine print of the statute. But this isn't simply about fine print. In the end, my opposition to this bill comes down to this: This bill is a tragic retreat from the principles that have governed government conduct in this sensitive area for 30 years. It needlessly sacrifices court oversight and protection of the privacy of innocent Americans. It is an abdication of this body's duty to stand up for the rule of law.

We know what is wrong with this legislation. We know that it authorizes unconstitutional surveillance of Americans. We have been forewarned. I urge my colleagues to vote ''no'' on final passage.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, I rise to speak about the FISA bill currently being considered by the Senate. I believe it is our duty to provide all the tools necessary to fight terrorism. We also have another duty—I would say a simultaneous duty, a sworn duty—to protect the constitutional rights of our citizens.

So we have two duties. One is to protect the American people and give the Government the tools it needs to do that; two, to protect the constitutional rights of Americans. If we lose those rights, then the basic freedoms of our people are at risk.

I believe we have fallen far short. We have fallen far short of the balance that we always need to look for, ever since the beginning of our Republic—

the balance between security and freedom. I think we missed it here.

It is not the Government's job to scare our people; it is the Government's job to protect our people. It is not the Government's job to endanger the privacy of law-abiding Americans, but to protect the privacy of law-abiding Americans. Sadly, we had a number of amendments to this bill which would have brought that balance I talked about into being, the balance between security and freedom.

Senator FEINGOLD had an amendment limiting the use and dissemination of information unlawfully obtained through foreign surveillance on U.S. citizens. His amendment would have protected the rights of innocent U.S. citizens and provided a necessary balance to the bill. I was proud to support it because the bill, obviously, needed some more checks and balances.

Senator FEINGOLD also had an amendment to provide protection against bulk collection of foreign communications that could include communications of innocent Americans. Again, this measure would have provided additional protection for the rights of American citizens, and I was proud to support it because I believe we need, again, additional checks on enhanced Government surveillance authority.

My colleague and friend from California, Senator FEINSTEIN, had an amendment that stated a very important principle: that FISA, the Foreign Intelligence Surveillance Act, is the exclusive authority for conducting foreign intelligence surveillance.

Why is that important? It is important because this administration argues time and again that ''it has inherent authority'' to conduct warrantless surveillance, or that Congress somehow gave them the authority when it authorized the use of military force in Iraq—a ridiculous claim. The Feinstein amendment was a very important amendment because it would have made it clear that FISA is the exclusive authority, pure and simple.

Why was that important going forward? We don't want to have this administration or another one in the future—I don't care which party they are from—spying on the American people and then saying: It is true, we didn't obey FISA, but we thought it was important to go outside the law. If we had adopted the Feinstein amendment, we would have clearly stated that FISA is the law when it comes to conducting surveillance on our own people.

The Feinstein amendment—which failed, sadly by only 1 or 2 votes short of the 60-vote hurdle—said we are not going to lose our freedoms, we are not going to allow another administration to spy on us; FISA is going to be the one and only law that pertains here.

Finally, there is the issue of immunity for telecommunications companies that cooperated with the administration's warrantless surveillance program. We know that American law did not give these telephone companies the authority to do what they did, but they were somehow persuaded by the administration to go along with them. Not every telephone company, not every communications company did go along. At least one said: Look, we think this is not legal; show us the legality. And they stood, I think, in firm support of their consumers.

Here is the problem with granting immunity. Congress has not been given complete information on this program. We do not know the level of involvement by the telephone companies and the telecom companies. We need complete information; we have incomplete information. How can I be a good Senator, how can I do a good job if I don't have the facts surrounding this whole matter of the warrantless surveillance program? When you put out that immunity, you basically stop the court cases, and if you stop the court cases, we will never get to the bottom of this issue and our citizens will never know who was spied on, why were they spied on, what happened, what went wrong, what went right, and how much power this Government tried to exercise over its people illegally.

Granting immunity without fully understanding whether our people were illegally spied upon and to what extent, I find that irresponsible. Where is our pride? We wrote a law that said phone companies cannot do this, and they went ahead and did it. Not all of them. Now we are saying: Never mind, President Bush and Vice President CHENEY write the law, they make the decision. It is not right. It is not American. It is anti-American. It is not what we do in this great country.

President Bush says we are sending our troops overseas to fight for freedom, fight for democracy, and at home they ask the telecom companies to break the law. They spied on Americans, and we cannot find out what they did, how they did it, the details of the program, and now we are going to now grant immunity. I cannot believe that we didn't do better on that particular amendment. That amendment failed. Again, I was proud to stand with Senator DODD and Senator FEINGOLD on the amendment.

In closing, I don't believe this bill strikes the kind of balance we need between broadening the Government's authority to conduct surveillance and protecting the rights of our citizens. We did have many chances today to increase the oversight of FISA surveillance programs. We had many opportunities to hold this administration accountable and future administrations accountable while giving them what they need to go after the bad actors, those who would harm us. I voted to get bin Laden. I voted to go to war against al-Qaida. I voted no on the Iraq war because that was a diversion. I want to get the terrorists who perpetrated 9/11. I want to give any administration the tools they need, but I do not want to expose my constituents and the people of America who are law-abiding and caring and all they live for is for their families—I don't want to subject them to being spied upon.

Unfortunately, those amendments all went down. It is sad for me to say that we have a bill that steps on the rights of the freedoms of our people, of the law-abiding Americans in our country and, therefore, I cannot support it.

Mr. President, I yield the floor. I suggest the absence of a quorum, and I ask that the time be taken equally off both sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. DODD. Mr. President, it is clear now that this body is going to approve retroactive immunity for the telecom industry, which may have helped the President to illegally spy on millions of Americans.

I have spoken on this issue now for I think in excess of 20 hours, going back 2½ months ago when this issue first came to the floor in December. Just to recall the history of the last couple of months briefly, if I may: Two committees of the Senate, appropriately, had jurisdiction over this matter—the Intelligence Committee and the Judiciary Committee. In fact, the House of Representatives similarly had two committees with jurisdiction over this matter, the matter being the amendments to the Foreign Intelligence Surveillance Act.

I have talked at length about the history of that act and commended our previous colleagues who served in this body for having crafted a rather ingenious piece of legislation that architecturally created the balance between security and liberty in the wake of the Watergate scandal in the mid-1970s. Democrats and Republicans came together and said: How can we guarantee that we can gather information to keep our Nation safe and secure from those who would do us harm and simultaneously protect the more than two centuries of liberties and rights that Americans have come to associate with our Constitution—the rule of law?

This was not an easy matter, striking that balance, that tension which has existed for more than 220 years in our country, and I would be the first to admit that. So I have great admiration for those who struggled with it.

In 1978, the FISA—the Foreign Intelligence Surveillance Act—Court was established, a secret court, the members of which are appointed by the Chief Justice of the U.S. Supreme Court. The members of that court are sitting Federal judges across the land. No one can ever know who these judges are. They are anonymous in that sense, and they are called upon at a moment's

notice to determine whether probable cause exists for a warrant to be issued to allow our Government to require institutions, public or private, to provide information that could affect the safety and security of our country. That has been the history.

Since 1978, time and again the Congress of the United States has amended the Foreign Intelligence Surveillance Act. Usually, it was amended in order to keep pace with the ability of those who would do us harm to utilize new technologies, new sources of information that could prove to be dangerous for our country; but simultaneously, legislation was upgraded so that the new means of gathering information, of determining who would do us harm, were also improving. In almost every instance, the amendments and the changes to the Foreign Intelligence Surveillance Act were adopted unanimously by members of both political parties.

That brings us, of course, to this year, with the amendments being offered to this Foreign Intelligence Surveillance Act.

Events occurred either prior to 9/11 or shortly thereafter which have caused the most significant debate yet on FISA. There are those who have argued that, in fact, the surveillance activity that is the subject of the retroactive immunity actually began prior to the attacks of 9/11. The bulk of the evidence seems to point to the fact that this surveillance began shortly thereafter.

I would not be standing here, as I have said before, had this been a momentary lapse of judgment, considering the emotions of the attacks here on our country. I could understand why a President, why a telecom industry, in the wake of 9/11, would have responded to a request to gather information quickly to determine not only who did us harm but what additional dangers they posed to us. I would not be standing here if this had been an administration that had not engaged in a pattern of behavior over the years that suggested they had less than a high regard for the rule of law. But as we have now learned, this was not a matter of a week or a month or a year. This warrantless invasion of our privacy went on for 5 long years, without any rule of law behind it except the word of an American President and apparently the sanction of the Attorney General of the United States.

FISA specifically said in 1978 that you must have a warrant to do this. We even changed the law, as you know, Mr. President, to say that you could even get the warrant after the fact if the emergency was such that you didn't have the opportunity to get the warrant but went after the fact, immediately thereafter.

I would point out, Mr. President, as I did in some detail last evening for almost 3 hours on this floor, that the President's warrantless wiretapping program was not a selective or focused surveillance merely on those who were outside the country or those who were suspected or might be involved in threatening activities. This decision to gather information included literally every phone call, every fax, every e-mail, every image that went through 16 phone companies of our country, using what they call splitters to literally vacuum up everything that came in. If the allegations are true, it was one of the single largest invasions of privacy in the history of our country, all done without a warrant and without a court order.

We discovered this because of a whistleblower and a report in the media that revealed the program. Otherwise, I suspect it would be going on as I speak, without any interruption whatsoever. In fact, the only interruption that occurred, I might point out—because the argument has been made that these companies were acting out of patriotism—came, according to some reports when the Federal Government stopped paying the phone companies for collecting it.

I would also point out that not every phone company complied. I know the argument has been made: Look, everyone did it. It is a common argument, one we made to our parents, usually: Everyone was doing it. We all remember the answer we received from our parents. Well, the argument here is: Almost everyone was doing it. Quest decided not to. When the request was made of them to gather information without a warrant, they said: Give us a court order, and we will comply. A court order was never forthcoming, of course, and they never participated.

So this December, we arrived at this debate about whether to grant the telecoms retroactive immunity. Three other committees had examined this issue, and all three of the committees, in the House and in this body, had determined that retroactive immunity was not warranted. Only one committee decided it was, but that committee has prevailed in the last several days, weeks, and months in this debate, and as such we are now confronted with cloture being invoked, cutting off debate here about the subject matter. And given the votes today, in all likelihood this body is not going to change its mind on this issue. Our only hope, those of us who feel strongly about this, is that the other body, the House of Representatives, which has taken a very different point of view, will be able to prevail in the conference between these two bills, and deny retroactive immunity.

Let me point out quickly that denying retroactive immunity does not mean the phone companies will necessarily be found guilty of doing something wrong. All it means is that the coequal branch of Government, the judicial branch, will get a chance to look at whether what they did was legal. I have my own opinions about this, but my opinions should not prevail, nor should the opinions of 51 Members of this body. We are not the judicial branch, we are the legislative branch.

The Founders of this great Republic of ours created three coequal branches of Government, and the judicial branch was designed and created to check the actions of the executive and legislative branches and determine whether things we did were constitutional—legal—or not. That is why they exist. So the debate about whether what the companies did or did not do is legal is not a matter for this body to determine, any more than it is for the executive branch. It is the judicial branch that should make that determination. Yet, by the action we took earlier today, we are now going to close the door on determining whether the action taken by the phone companies was legal.

Sweep it under the carpet, close the door, and we will set the precedent for some future Congress, which will point to this debate and its conclusion and decide that the Congress of the United States found that the FISA Court was not needed or, that in fact the President could collect whatever data and information he wanted—maybe medical records, maybe financial records, maybe personal histories of families.

I feel passionately about this issue. This is the first time in my quarter of a century service here that I have engaged in what might be called some ''extended debate''—that is how deeply I care about this issue.

Nothing is more important, in my view, than the rule of law and the Constitution. No threat is so urgent that we should be willing to abandon the rule of law. But that is exactly what we have done. And it is a false and phony argument to claim that failing to do so would jeopardize our security. There is a long history of the judicial branch of Government in this country dealing with sensitive national security matters in camera, without revealing state secrets. The suggestion that we cannot possibly let the courts look at the use of warrantless wiretapping is so false on its face it is hardly worthy of an argument to the contrary.

In fact, Judge Walker, a Republican appointee to the Federal bench, I might point out, has ridiculed the argument that these matters could not go before the judicial branch for review. There is no longer a debate about whether the wiretapping program is in the public—it is. And the means and technology used to do it have publicly been discussed and debated.

This decision deprives us of the opportunity to determine exactly what happened. I would further point out that but for the insistence of the chairman of this committee and the ranking member, and I suspect others, the administration would have succeeded in immunizing everyone involved with this, everyone within the executive branch, the White House, the Justice Department.

The chairman and the ranking member said that was going too far. But that request is instructive. What do we

learn from it? Why did the administration demand of the Intelligence Committee that everyone associated with this matter be immunized against any further legal action? What was the motive behind it? Doesn't that suggest that something else must be going on?

That is where we are in all of this. Again, I apologize to my colleagues and others for taking so much time to talk about this. But as I mentioned last evening, I grew up in a family with a father who was deeply involved in the rule of law. He was a prosecutor at the Nuremberg trials in 1945 and 1946, a rather unique moment in American history, where because of an American President, because of a Secretary of War, because of a Supreme Court Justice and a handful of others, America did not yield to the vengeance, even for those enemies we hated the most: Nazis who had incinerated 6 million Jews and 5 million others targeted for their politics, religion, and otherwise. Why would you possibly give that crowd a trial? A handful of Americans, Republicans and Democrats, got together and said: America is different. We believe in the rule of law in the United States. And we believe the rule of law is something that does not necessarily belong to one Nation or sovereignty; it belongs to all people, reaching back to our own founding documents that tell us that the rule of law, not the rule of man, ought to prevail.

So the United States, along with our very reluctant allies, created the Nuremberg trials, which established the moral high ground for the United States in so many ways. As a result, 21 defendants in the first trial got a lawyer and got to present evidence and defend themselves—because we followed the rule of law.

It was the moral high ground and the basis for so much else that was created in the post World War II period: The international courts, the U.N. system, the NATO system, the Marshall Plan. All these institutions sprang from that what we helped create in the wake of World War II and the Nuremberg trials.

So I grew up around a dining room table where the rule of law was talked about all the time. I was taught that our Constitution did not belong to a political party, it did not belong to politicians or candidates.

And I remember that great scene in the movie ''A Man For All Seasons,'' where Thomas More is asked if he would not be willing to cut down all the laws in England to get his hands on the devil.

And More responds, and I am paraphrasing his quote: When I have cut down every law in England to get to the devil and the devil comes after me, what laws will stand there to protect me?

So while some may feel comfort that they are being protected by this decision we have made, they should remind themselves the worm does turn, and someday they may find themselves on the opposite side of this question.

So this debate should not be framed as the issue of the hour; rather, it is about the principle behind it, and that is the rule of law. The power of courts to decide the legality and illegality of actions is so deeply imbedded in our Constitution, so deeply imbedded in the fabric of how we conduct ourselves, that it ought not to be the subject of a partisan discussion and debate.

That is why I have fought to keep this day from coming with everything I had in me. I have not fought alone. Many average Americans have given me strength for this fight, strength that comes from the passion and eloquence of citizens who do not have to be involved, but choose to be involved. I thank them for it.

But today when I speak in this body against this immunity and for the rule of law, I am speaking for a minority. And respecting the rule of law anywhere means respecting it everywhere, even when it means we do not win. The rule of law says we, the minority, cannot stand forever; and having made our case with all the fire in us, we stand down and wait for a different day and a different set of circumstances.

I will say this, though. I have seen some dark days in this Chamber; in my mind, one of the worst was September 28, 2007. That was the day the Senate voted to strip habeas corpus and tolerate torture.

Today, February 12, 2008, is nearly as dark: the day the Senate voted to ensure secrecy and to exempt corporations from the rule of law. Frankly, I have seen a lot of darkness in recent years, as one by one our dearest traditions of constitutional governance have been attacked.

At each new attack, millions of Americans have stood up in outrage; but millions more have answered with patience. One might fault them for that, but I do not. More than two centuries of democratic tradition have nurtured that patience; it speaks well of our Democratic faith that so many take the rule of law in America as a given.

If millions have not yet noticed the rule of law falling, that is because it has so far to fall. But fall it will, if we remove our support for it. The law in America is not a gift or an inheritance; it is the active work of every generation to preserve and protect it.

As America's patience wears thinner and thinner, and as more and more citizens take up that active work, our minority will—I have faith that it will—make itself a majority.

But today was not that day. And so the Senate has signed its name to this immunity, this silencing of our courts, this officially sanctioned secrecy, without a majority of us evening laying eyes on the secret papers that are supposed to prove the President's case.

Retroactive immunity is a disgrace in itself. And in the last months I believe we have proved that beyond a reasonable doubt. But it is even more disgraceful in all it represents. It is the mindset that the Church Committee summed up so eloquently three decades ago.

> The view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom.

That view created the Nixonian secrecy of the 1970s, and the Church Committee wrote those words, in part, as a rebuke to our predecessors in this Chamber who for years let secrecy and executive abuses slide. But today those words take on a new meaning. Today they rebuke us. They shame us for our lack of faith that we can, at the same time, keep our country safe and our Constitution whole.

When the 21st century version of the Church Committee convenes to investigate the abuse of the past years, how will it judge us? What will it say about us when they look back on our actions? When it reads through the records of our debate—not if, but when—what will it find?

When the President asked us to repudiate the Geneva Conventions and strip away the right of habeas corpus, how did we respond?

When images of American troops tormenting detainees were broadcasted around the world, how did we protest?

When stories of secret prisons and outsourced torture became impossible to deny, how did we resist?

And on February 12, 2008, when we were asked to put corporations explicitly outside the law and accept at face value the argument that some are literally too rich to be sued, how did we vote?

All of those questions are coming for us. All of them and more. And in the quiet of his or her own conscience, each Senator knows what the answers are.

I fought so long against retroactive immunity because, in this huge fabric of lawlessness, it was the closest thread to grab. I believed if we grabbed hold and pulled, it would begin to unravel. That has not happened.

But if we believe that each assault against the rule of law was an accident, that each was isolated, we are deluding ourselves. If the past is any guide, there will be another one. And hope, as they say, springs eternal. I hope we will stand up then.

And perhaps we will have the chance to do so very soon. As I mentioned a few minutes ago, the House of Representatives has passed a version of this bill without retroactive immunity. It will be the job of the conference between the House of Representatives and the Senate to reconcile the two versions of this bill.

And before I stand down, I wish to implore the members of that committee, in the strongest terms I can find, to strip retroactive immunity from this bill once and for all. Remember, this is about more than a few telephone calls, a few companies, a few lawsuits. If the supporters of retroactive immunity keep this small, they win. In truth, the issue we have debated for the last few months, the issue

that will finally come to a head in this conference committee, is so much more. At stake is our latest answer to the defining question: The rule of law or the rule of men?

That question never goes away. As long as there are free societies, generations of leaders will struggle mightily to answer it. Each generation must answer for itself; and just because our Founders answered it correctly does not mean they are bound by their choice. In that, as in all decisions, we are entirely free; the whole burden falls on us.

But we can take counsel. We can listen to those who came before us, who made the right choice, even when our Nation's very survival was at risk. They knew that the rule of law was far more rooted in our character than any one man's lawlessness.

I do not think that has changed at all. Secure in that faith, I will sit down now and end my part in this conversation. But when the question of the rule of law or the rule of men comes again, which it surely will, I will be proud to stand up once more. And if this bill comes back with retroactive immunity, I will speak against that travesty—the denial of the rule of law in favor of the rule of men.

I yield the floor.

The PRESIDING OFFICER (Mr. SALAZAR). The Senator from Washington is recognized.

Ms. CANTWELL. I rise today to express concerns about the FISA Amendments Act S. 2248 before us. This morning, the Senate lost an opportunity to strengthen this bill. And, unfortunately, without those critical provisions, I will have to oppose the bill before us. I thank the Senator from Connecticut for his leadership in fighting against this bill. I know he will be back on this issue at every opportunity.

Mr. President, I rise to join this debate. I have been, over many years, interested and involved in privacy rights issues in a variety of capacities. Certainly, the residents of my state care passionately about their rights to privacy.

This administration has done a lot to blur the line between foreign intelligence gathering and spying on U.S. citizens. Now, the legislation before us today could have been improved to better protect the rights of U.S. citizens by passing amendments proposed by my colleague Senator FEINGOLD, but we turned those down.

Instead what has been a delicate balance in the United States to protect the rights of privacy of U.S. citizens and national security is going to be further eroded.

Congress has limited powers and so does the President. The President does not and should not have unchecked power in this or any other area. It would be contrary to our American values and our system of government, which has endured for more than 231 years.

When strengthening national security, we must also safeguard civil liberties and the privacy rights of American citizens. I cannot support a bill that fails to strike this critical balance, as the original Foreign Intelligence Surveillance Act (FISA) did. We didn't allow the government to have unchecked unlimited authority then, and we shouldn't allow it now. There have been times in the past when both Democratic and Republican administrations lost sight of the need to protect U.S. citizens' privacy rights.

We all want to protect the United States, but how good is this approach if the end result is that everyone thinks that there is a back door to our computer operating systems, a back door to our telecommunication systems? Who will want to do business in the United States if they think there are no secure systems, only systems to which the U.S. government will have access? Communications over the Internet, regardless of country of origin or country of destination, know no national boundaries, and travel by the most efficient route. If the Act as currently drafted goes forward, it may lead to an international reexamination of how the Internet should operate. FISA has been a very important part of our checks and balances.

In our country, a Senator cannot pick or choose what laws they follow and neither should the President nor telecommunication companies. Congress should not be providing blanket immunity for telecommunications companies that cooperated with the Administration's warrantless wiretapping programs. We don't know precisely what those companies did or the full extent of what they did.

I believe the Federal courts should be allowed to rule on the legality of the companies' conduct. Congress should not move to preempt judicial decisions. Special procedures can be put in place that could allow such cases to move ahead without revealing classified information or damaging U.S. national security. Specifically, I want to touch on the lawsuit the Electronic Frontier Foundation (EFF) filed against a large telecom company, accusing it of violating FISA, on behalf of a class of its customers. If retroactive immunity is granted to telecom providers, the lawsuit will be dismissed, and the public will never get an opportunity of getting even a glimpse of what happened.

The issue of the Federal Government and telecoms possibly violating FISA came to light in part as a result of the actions of a brave whistleblower. According to media reports and internal AT&T documents provided by this whistleblower, Mark Klein, the telecom company allegedly splits off a copy of all of the Internet traffic transported over fiber-optic cables running though its San Francisco office and diverts it all—e-mails, IMs, web browsing, everything—to a secure room under the control of the National Security Agency that contains sophisticated data-mining equipment capable of monitoring all the communications' content in real-time. What appears to have happened is a major change in how electronic surveillance is conducted in this country. Surveillance used to be particularized—investigators would pick a target and then intercept the communications of that target. But now, it appears the Administration is using advances in technology to move to a wholesale surveillance regime, where everything is intercepted and then investigators sift through the hay to pick their targets. In other words, the Administration is seizing millions of Americans' communications—billions of phone calls and e-mails and more—in a 21st century high-tech equivalent of the King's general warrants that our Founders fought a revolution to avoid.

The Electronic Frontier Foundation wants a court to be able to decide whether this new mode of surveillance is or can ever be legal, under FISA or the fourth amendment. Letting the courts decide that question is critical to checks and balances, critical to ensuring that Congress' privacy laws are followed and the fourth amendment respected, and critical to preventing abuses of power. Therefore, I urge my colleagues to allow this case to move forward. I urge them to allow the Federal courts to rule on the legality of the companies' conduct. These are the issues, I believe, that must be reviewed by the courts. I think passing this legislation really preempts what is critical judicial review and undermines the fundamental principle of checks and balances in our system.

I know these are challenging times. But we have to remember our Constitution and to remember what is effective policy. Everybody in America wants to be safer and we want to use technology to protect our national security. But, technology can be used in a way that protects privacy rights. This all goes back to checks and balances. Instead of rushing to dismantle them, Congress needs to maintain and strengthen these checks and balances in order to prevent abuses of power. This model has worked for our country.

I encourage my colleagues to make sure we remember the fourth amendment and we remember our citizens' rights to privacy as well in considering this legislation, which I hope the Senate will turn down this afternoon.

Mr. ROCKEFELLER. Mr. President, under a unanimous Consent agreement, the Senate has accepted three amendments to the FISA Amendments Act of 2008. I would like to say a word about each.

The senior Senator from Massachusetts has authored a helpful amendment to ensure that the Government will not intentionally acquire communications where the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

Our bill, S. 2248, is not intended to authorize the intelligence community to acquire purely domestic communications.

Electronic surveillance of purely domestic communications requires a court order under title I of FISA. In addition, S. 2248 explicitly prohibits the targeting of persons known at the time of acquisition to be located inside the United States.

The importance of the Kennedy amendment is that it reinforces our intent. It should put to rest any doubts about what the Senate intends with respect to protecting the communications of persons within the United States. I am grateful for the willingness of the Senator KENNEDY to work with the committee on this amendment.

I would also like to acknowledge his leading role in the history of FISA as the sponsor of the original FISA legislation, first in 1976, and then when FISA was enacted in 1978. Senator KENNEDY helped the Congress then to enact legislation that protects both our national security and the rights of Americans. We are grateful that he has stepped forward again to help us achieve those goals.

Under the unanimous consent agreement, the Senate has accepted an amendment by Senator WHITEHOUSE that resolves an important question about the status, pending appeal, of an order by the Foreign Intelligence Surveillance Court requiring correction of deficiencies in intelligence collection procedures under the new title VII of FISA.

The amendment requires the FISA Court of Review to determine, within 60 days of the Government's appeal, whether all or part of a FISA Court order requiring correction will be implemented during the appeal. The Government may continue collection until the appellate court makes that determination, and longer if the Court so determines. The 60-day requirement ensures that the matter will receive appellate attention without undue delay.

We appreciate Senator WHITEHOUSE's successful effort to resolve this matter.

Finally, under the unanimous consent agreement, the Senate has accepted an amendment by Vice Chairman BOND to delete a statutory requirement that appeals in cases either challenging or seeking to enforce directives to companies be filed within 7 days. The amendment leaves it to the FISA Court or the Court of Review to establish that deadline as they do for all other appeals under FISA.

The amendment recognizes the responsibility of those courts to establish rules. And it recognizes that both the Government and carriers may require additional time to evaluate whether an appeal should be filed.

I appreciate the vice chairman's effort to resolve this matter.

Mr. OBAMA. Mr. President, I am disappointed that the Senate has rejected several commonsense improvements to the Intelligence Committee's FISA proposal. I commend my colleagues, Senators DODD, FEINGOLD, TESTER, WEBB, WHITEHOUSE, LEAHY, SPECTER and others, for proposing these solutions, and I welcome the outpouring of interest on this issue from informed and concerned citizens around the country.

News last week from the Intelligence Committee hearing underscored the importance of ensuring that our surveillance laws protect our security, just as we must vigilantly safeguard our civil liberties. Director of National Intelligence McConnell warned that al-Qaida continues to train and recruit new adherents to attack within the United States, and such reports should serve to unite us in common purpose against the terrorists that threaten our homeland. Instead, President Bush is using this debate once again to divide us through a politics of fear.

I was disappointed to learn of the President's threat to veto any FISA bill that does not include an unprecedented grant of immunity for telephone companies that cooperated with the President's warrantless wiretapping program. Why the President continues to try to hold this important legislation captive to that special interest provision defies explanation.

I was proud to cosponsor the Dodd-Feingold amendment to strike the immunity provision from the bill. However, with the defeat of this amendment, telephone companies will not be held accountable even if it could be proven that they clearly and knowingly broke the law and nullified the privacy rights of Americans. This is a matter for the courts to decide, not for preemptive action by the Senate.

We can give our intelligence and law enforcement community the powers they need to track down and take out terrorists without undermining our commitment to the rule of law or our basic rights and liberties. That is why I cosponsored the Feingold amendment, which would have prevented the Government from using these extraordinary warrantless powers to conduct ''bulk collection'' of American information. I also supported the Feingold-Webb-Tester amendment to protect the privacy of Americans' communications by requiring court orders to monitor American communications on American soil, unless there is reason to believe that the communications involve terrorist activities directed at the United States or the monitoring is necessary to prevent death or serious bodily harm. Unfortunately, these amendments were defeated as well. These are the types of narrowly tailored, commonsense fixes that would have allowed the Government to conduct surveillance without sacrificing our precious civil liberties.

For over 6 years since the attacks of 9/11, this administration has approached issues related to terrorism as opportunities to use fear to advance ideological policies and political agendas. It is time for this politics of fear to end.

We need durable tools in this fight against terrorism—tools that protect the liberties we cherish and the security we demand. We are trying to protect the American people, not special interests like the telecommunications industry. We are trying to ensure that we don't sacrifice our liberty in pursuit of security, and it is past time for the administration to join us in that effort.

There is no need for the goals of security and liberty to be contradictory.

Mr. LEVIN. Mr. President, last year Congress passed a temporary bill with a 6-month time limit that would give us the opportunity to carry out a thorough, thoughtful examination of how to utilize complicated new technologies in the surveillance of suspected terrorists without invading the privacy of innocent Americans. In the months since we passed that temporary act, we have worked in a bipartisan manner to consider the best course forward for permanent changes to the Foreign Intelligence Surveillance Act. Despite the enormous complexity of these issues, we reached a bipartisan consensus on the key provisions contained in title I of the bill we are considering today.

I believe that title I of the bill before us appropriately provides the intelligence community the authority it needs to collect intelligence information on suspected terrorists. The collection of that intelligence is important to our national security and merits congressional support. That is why I helped write the Rockefeller-Levin substitute amendment that we voted on last summer, why I voted in favor of the Leahy substitute amendment that we considered in January, and why I support title I of the bill before us today. In my view, the Rockefeller-Levin substitute, the Leahy substitute, and title I of this bill all provide for the appropriate collection of intelligence information on suspected terrorists.

Title I of this bill would provide the needed authority for collection of that information in a responsible manner.

Title I of this bill, unlike the temporary act which we passed last summer, would not authorize the targeting of U.S. persons for electronic surveillance without probable cause.

Title I of this bill, unlike the temporary act, would not authorize the administration to collect communications—including communications to and from U.S. persons—for months without even submitting the collection program for court approval.

Title I of this bill, unlike the temporary act, would not authorize the administration to continue to collect such communications for an extended period even after the FISA Court has specifically rejected an application for approval.

Title I of this bill, unlike the temporary act, would expressly authorize judicial review of the targeting and so-called minimization procedures in order to protect the privacy rights of U.S. persons.

Title I of this bill, unlike the temporary act, would require regular inspector general reviews and regular reports to Congress on any authorized collection program.

I congratulate Senator ROCKEFELLER and other colleagues on their success in achieving the administration's support for these well-crafted title I provisions, which are significant improvements over the temporary bill hastily adopted last year.

Title II of the bill is a different story. Title II would eliminate accountability by granting retroactive immunity for telecommunications providers that disclosed communications and other confidential information of their customers at the behest of Government officials. They did this despite a law specifically making it illegal to do so. Unlike title I, there is no bipartisan agreement on title II.

Title II would require dismissal of lawsuits brought by persons claiming injury from interception and disclosure of their communications, even if the activity resulting in the injury was illegal. It would require dismissal of lawsuits, even if the disclosure violated the constitutional rights of individuals whose personal information was illegally disclosed. It would require dismissal of lawsuits, even if innocent U.S. citizens were damaged by the disclosure or compromise of confidential personal information.

Retroactive immunity is not fair. It is not wise. And it is not necessary.

Retroactive immunity is not fair because it leaves American citizens who may have been harmed by the alleged unlawful conduct of these providers without any legal remedy.

Retroactive immunity is not wise because it precludes any judicial review of that conduct. I am deeply concerned that if we act here to immunize private parties who participated in a program that appears to have been clearly illegal, we may encourage others to engage in such illegal activities in the future. In a free society, illegal activity cannot be excused on the grounds that Government officials asked you to carry it out. There must be accountability for illegal acts. As written, title II eliminates some critically required accountability.

Nor is retroactive immunity necessary. Congress has already ensured the future cooperation of the telecommunications providers with the intelligence community in the Protect America Act adopted last August. That act authorizes the Attorney General or the Director of National Intelligence to direct telecommunications providers to disclose certain information and provides prospective immunity to telecommunications providers that cooperate with such directives.

Title I of the bill before us appropriately continues to provide prospective immunity to telecommunications providers. Title I states:

Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued by the Attorney General or the Director of National Intelligence pursuant to the act.

In light of the prospective immunity in title I, which is appropriately in this bill, the retroactive immunity of title II is not necessary to ensure the future cooperation of telecommunications providers that receive legitimate requests for information from the intelligence community.

The argument has been made that we must provide retroactive immunity to the telecommunications providers to ensure the cases against them are immediately dismissed because if the cases are permitted to proceed, vital national security information will be disclosed. But the courts have numerous tools at their disposal to protect such information and have successfully used these tools throughout our history. They can review evidence in a classified setting; they can redact documents; they can even dismiss a case for national security reasons if they deem it necessary to do so.

Some have even taken the position that the mere existence of this litigation, even without the disclosure of any information, will somehow help the terrorists. But the President has already disclosed the existence of the collection program at issue. It has been discussed in Congress and in the press. The Director of National Intelligence has publicly discussed the program.

There is a way to properly immunize from legal liability telecommunications providers that acted in good faith based on the assurances of appropriate administration officials. The way to do that is by substituting the United States for the telecommunications providers as the defendant in lawsuits based on the actions of those providers. That substitution would safeguard telecommunications providers from liability just as effectively as the retroactive immunity language in title II of the bill. But unlike the retroactive immunity language of title II, it would not leave persons who can prove they were victims of unlawful actions without a remedy.

We can ensure that any such innocent victims retain whatever legal rights they have under applicable law, except that the U.S. Government would be substituted for the telecommunications providers as the defendant in such lawsuits. And it is appropriate that the Government be liable rather than the telecommunications providers, since the disclosures were allegedly made by the providers in these cases at the request of senior executive branch officials based on appeals to help safeguard U.S. security and assurances that the providers would be protected from liability regardless of the requirements of law.

We had a number of opportunities to provide equity both to the telecommunications providers and to any injured citizens.

We had the opportunity to adopt the Dodd-Feingold amendment, which would have struck title II from the bill, allowing us to adopt a new approach that protects both the equities of telecommunications providers that acted in good faith and those of people who were allegedly injured by their illegal actions.

We had the opportunity to adopt the Specter-Whitehouse substitution amendment, which would have fully protected telecommunications providers, without depriving American citizens who were harmed by unlawful collection of their personal information of a legal remedy. It did so by substituting the United States for the telecommunications providers as the defendant in lawsuits based on the actions of those providers. That substitution would safeguard telecommunications providers from liability just as effectively as the retroactive immunity language in title II of the bill.

And we had the opportunity to adopt the Feinstein amendment, which would have limited immunity to those telecommunications providers that are found by a court to have acted in reasonable, good-faith reliance on assurances from executive branch officials.

The adoption of these amendments would have made a significant improvement to the bill. With their rejection, I cannot support this bill despite my support for title I, which again, appropriately, authorizes the collection of intelligence. But it is my hope that a bill comes from conference with the House of Representatives that includes appropriate changes to eliminate unfair, unwise, and unnecessary retroactive immunity provisions.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

Mr. LEAHY. Madam President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senator from Vermont has 20 minutes.

Mr. LEAHY. Madam President, the Foreign Intelligence Surveillance Act FISA is intended to protect our national security. It is also intended to protect the privacy and civil liberties of Americans. The law was passed to protect the rights of Americans after the excesses of an earlier time.

We are debating amendments to this important law. I had hoped the Senate would act to improve the bill reported by the Select Committee on Intelligence. It has not. I had hoped the Senate would incorporate improvements included in the House-passed RESTORE Act and the bill reported by the Senate Judiciary Committee. It has not.

I had hoped the administration would work with us. It has not. Instead, having gotten exactly the bill they want, in the way they want, from the Intelligence Committee, they have threatened a Presidential veto if we improve this bill in any way or fix its flaws.

I had hoped that Republican Senators would work with us as we have worked together to amend FISA dozens of times over the last 30 years and to update it in more than a dozen ways even since September 11, 2001. But instead of working in a bipartisan fashion, as I have seen before in my 34 years in the Senate, in an unprecedented way, Republicans voted lockstep to table the Judiciary Committee improvements and virtually lockstep against every individual amendment and improvement.

Worse, the Republican leadership has stalled action on the measure for weeks. They continue to insist it is their way or no way. Sadly, with the acquiescence of even some on this side of the aisle, they have controlled the debate, the bill, and the final result in the Senate.

Working together we could have done so much better. I look forward to working with the House to make improvements that are needed to this measure before I can support it.

The process has been, in large part, a repeat of that which led to the so-called Protect America Act last summer. That ill-conceived measure was rushed through the Senate in an atmosphere of fear and intimidation just before the August recess, and after the administration had broken their word and reneged on agreements reached with congressional leaders. The bill was hurriedly passed under intense partisan pressure from the administration. It provided sweeping new powers to the Government to engage in surveillance, without a warrant, of calls to and from the United States involving Americans, and it provided no meaningful protection for the privacy and civil liberties of Americans who were on those calls.

I was here when we first passed FISA because we knew what happened when we had an out-of-control administration. We saw it during the Watergate years. We saw it with J. Edgar Hoover. We saw those who wiretapped people because they didn't like what they said, they disagreed with the administration; they actually raised questions about the Vietnam war. Sometimes it would help if everybody read a history book every now and then around here. Some seem too willing to give up the liberties for which we fought.

The Senate should have considered and incorporated more meaningful corrections to the so-called Protect America Act. Before that flawed bill passed, Senator ROCKEFELLER and I and several others in the House and Senate had worked hard and in good faith with the administration to craft legislation that solved an identified problem but also protected Americans' privacy and liberties.

We all want to protect our security. We all want the ability to go after those who would do this country harm. And we drafted legislation that would have taken care of the problem they told us about.

But just before the August recess, we got a call. Basically, the Director of National Intelligence told us they could not keep their word, they could not keep the administration's word, and the administration decided to ram through its version of the so-called Protect America Act, with excessive grants of Government authority and without accountability or checks and balances. They refused to consider any other way.

After almost 6 years of breaking the law and violating FISA through secret warrantless wiretapping programs, that was wrong. A number of us supported a better balanced alternative, and we voted against the Protect America Act as drafted by the administration and passed by the Senate.

Ironically, the reason we were even voting on it is that the press found out how the administration was breaking the law. Even though the administration was required by statute to tell leaders in Congress what they were doing, which was a clear violation of the law, they had failed to do that. Fortunately, we still have some remnant of a free press in this country and they found it out.

Because of a sunset provision, we had a chance to revisit that matter and correct it. The Judiciary Committees and the Intelligence Committees of the Senate and the House spent the past months considering changes to FISA. In the Senate Judiciary Committee, we held open hearings and countless briefings and meetings to consider new surveillance legislation, including classified meetings. We considered legislative language in a number of open business meetings of the committee, and we reported a good bill to the Senate. This was before last Thanksgiving.

Instead of that bill, a good bill, the Senate is poised to pass a bill that will permit the Government to review more Americans' communications with little in the way of meaningful court supervision.

I support surveillance targeting foreign threats, but I wanted to make sure we protect those American liberties that, after all, we fought a Revolutionary War to protect and a civil war and two World Wars and not just give it away because some people around here get cold feet when threatened by the administration.

Attorney General Mukasey said at his nomination hearing that ''protecting civil liberties, and people's confidence that those liberties are protected, is a part of protecting national security.'' I agree with him about that. That is what the Senate judiciary bill would have done.

The administration insists on avoiding accountability by including blanket retroactive immunity in their bill. It would grant blanket retroactive immunity to telecommunications carriers for their warrantless surveillance activities from 2001 through earlier this year contrary to FISA and in violation of the privacy rights of Americans.

The administration violated FISA by conducting warrantless surveillance for more than 5 years. They got caught. Frankly, if they had not gotten caught, they would probably still be doing it. When the public found out about the President's illegal surveillance of Americans, the administration and telephone companies were sued by citizens who believed their privacy and their rights were violated.

So now the administration is trying to get this Congress to terminate those lawsuits. But don't believe the crocodile tears of this administration, saying they are doing it to protect these telephone companies. This is, after all, the same administration that owed the telephone companies millions of dollars in unpaid bills for wiretapping. They will not even pay their bills.

No, the reason they want this provision is to protect those in the administration who broke the law. They don't want anybody to find out which members of the Department of Justice so thwarted the law in writing cockamamie legal opinions that a first-year law student would see through. They want to insulate themselves from accountability. I am not going to support such an end run around accountability.

The administration knows these lawsuits may be the only way that it is ever going to be called to account for its flagrant disrespect of the law. In running its illegal program of warrantless surveillance, the administration relied on legal opinions prepared in secret and shown to only a tiny cabal of like-minded officials.

This ensured that the administration received the advice they wanted. Don't tell us what the law is; tell us what we want the law to be. I used to read my children ''Alice in Wonderland.'' Now I read my grandchildren ''Alice in Wonderland.'' This sounds like ''Alice in Wonderland.''

Jack Goldsmith, a conservative Republican who came in briefly to head the Justice Department's Office of Legal Counsel, described the program as a ''legal mess.'' This administration does not want a court to have a chance to look at this legal mess, and retroactive immunity will assure not that they are protecting telephone companies, but that they will cover their own backsides. They want to protect themselves.

The rule of law is fundamentally important in our system, and so is protecting the rights of Americans from unlawful surveillance. I do not believe Congress can or should seek to take those rights and those claims from those already harmed. As I said, I worked with Senator SPECTER and both Senators FEINSTEIN and WHITEHOUSE to try to craft more effective alternatives

to retroactive immunity. We worked with the legal concept of substitution, replacing Government in the shoes of private defendants that acted at its behest. Let it assume full responsibility for the illegal conduct.

Substitution would have protected the telephone companies. It would have placed the administration in their shoes in the lawsuits. But the truth is that the administration doesn't really care about the telephone companies. They are worried only about the American public finding out what they did illegally, how they violated the laws and the Constitution of this country.

I also supported Senator FEINSTEIN's proposal to strengthen the role of the FISA Court in this regard. The administration and its allies in the Senate defeated both of these viable alternatives to retroactive immunity. The administration, by trying to frighten people, warded off all efforts of compromise and accommodation. They don't want to be held accountable, and they have enough Senators who will protect them so they will not be held accountable—not to the Congress or, more importantly, to the American people.

The Senate was forced to vote on retroactive immunity even though not all Senators had access to the information they needed to make an informed judgment about the Government's and the phone companies' conduct. The majority leader wrote to the administration last year urging such access, and I supported it. Of course, we got had no response. The administration ignored the request. After all, if we knew what we were doing around here, we might actually make them stand up and be responsible for their actions, which is the last thing in the world they want. It is clear they do not want to allow Senators or anyone else to evaluate their lawlessness. Their rule is no accountability. Whether it is Scooter Libby or anyone else, no accountability. We will protect those who break the law on our behalf.

I have drawn very different conclusions from Senator ROCKEFELLER about retroactive immunity. I agree with Senator SPECTER and many others that blanket retroactive immunity, which would end ongoing lawsuits by legislative fiat, undermines accountability.

Senator SPECTER has been working diligently, first as chairman of the Judiciary Committee and now as ranking member, to obtain judicial review of the legality of warrantless wiretapping of Americans from 2001 until last year. The checks and balances the judiciary provides in our constitutional democracy has an important role to play. Every one of us, if we follow our oath of office, should want to protect that. Judicial review can and should provide a measure of accountability.

I believe protecting the rule of law is important, and I believe in protecting the rights of Americans from unlawful surveillance. I do not believe the Congress can or should seek to take those rights and those claims from those already harmed. Moreover, ending ongoing litigation eliminates the only viable avenue of accountability for the Government's illegal actions.

Therefore, I say again, I oppose retroactive immunity. There should be a measure of accountability for the administration's actions in the years following 9/11. If it is simply a case of protecting the telephone companies, then why don't we vote for something that would put the Government in their shoes? Why don't we? Because that is the last thing in the world this administration wants because then they would have to answer to how many different people in the Bush administration broke the law.

I don't believe anybody is above the law. I don't believe the President is; I don't believe a Senator is; I don't believe anybody is. Keep in mind, as I said earlier, why we have FISA. Congress passed that law only after we discovered the shameful abuses of J. Edgar Hoover's FBI. Through the COINTEL Program—sometimes called COINTELPRO—Director Hoover spied on Americans who objected and spoke out against the war in Vietnam. I objected and spoke out against the war in Vietnam. Many Vermonters opposed that war. I wonder how many Vermonters were spied on for daring to speak out against it.

Ironically, Madam President, in April of 1975, the United States Senate voted by a one-vote margin in the Armed Services Committee to stop the war in Vietnam. A year later, it was hard to find anybody in this body who had supported it, although obviously an awful lot of Senators had.

Well, I wonder if we are going to look back that same way someday and ask: were we so frightened by 9/11 that we were willing to throw away everything this country fought for, everything that has made this country great through our history?

We can protect Americans' rights. We can protect those things our forefathers fought a revolution to obtain, that we fought a civil war to protect, that we fought two world wars to cement. We can protect ourselves. But we cannot protect ourselves if we do not protect our rights. Are we going to throw our rights away because of a group of terrorists? This Senator is not going to.

Let us show the American people and the world what America stands for. We can and will do all we can to secure the future for ourselves, our children, and our grandchildren. At the same time, we can protect the cherished rights and freedoms that define America and make this country different from all others. Those are the rights and freedoms that protected past generations and allow us to have an American future. If we do not protect them, what will we leave to our children and grandchildren?

Let us stand up for American values. Let us not be afraid to preserve our freedom while protecting our national security.

Madam President, I retain the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Madam President, I ask unanimous consent that the vote on passage of S. 2248, as amended, occur at 5:30 p.m. today, notwithstanding rule XII, paragraph 4, and that the time specified in the previous order remain in effect, with the time from 5:10 to 5:30 equally divided and controlled between the leaders, with the majority leader controlling the final 10 minutes.

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

Mr. LEAHY. Madam President, I yield back the remainder of my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AMENDMENT NO. 4018 TO AMENDMENT NO. 3911

Mr. ROCKEFELLER. Madam President, I ask unanimous consent that the amendment at the desk making technical and conforming changes to the bill be in order, notwithstanding the adoption of the substitute amendment, and that the amendment be adopted. This consent request has been approved by both leaders.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4018) was agreed to, as follows:

(Purpose: To make technical corrections)

On page 7, beginning on line 14, strike '', consistent with the requirements of section 101(h) or section 301(4), minimization procedures'' and insert ''minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 8, line 13, strike ''168 hours'' and insert ''7 days''.

On page 26, beginning on line 22, strike ''consistent with the requirements of section 101(h) or section 301(4)'' and insert ''that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 32, line 3, strike ''subsection (2)'' and insert ''subsection (b)''.

On page 35, line 6, strike ''obtained;'' and insert ''obtained,''.

On page 35, line 18, strike ''168 hours'' and insert ''7 days''.

On page 35, line 24, strike ''subsection'' and insert ''section''.

On page 36, line 6, strike ''168 hours'' and insert ''7 days''.

On page 36, line 16, strike ''168-hour'' and insert ''7-day''.

On page 40, beginning on line 16, strike ''consistent with the requirements of section 101(h) or section 301(4)'' and insert ''that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 44, line 15, strike ''clause'' and insert ''subparagraph''.

On page 45, line 15, strike ''obtained;'' and insert ''obtained,''.

On page 46, line 2, strike ''168 hours'' and insert ''7 days''.

On page 46, line 8, strike ''subsection'' and insert ''section''.

On page 46, lines 14 and 15, strike ''168 hours'' and insert ''7 days''.

On page 46, line 24, strike ''168-hour'' and insert ''7-day''.

On page 48, beginning on line 13, strike ''orders under section 704(b) or section 705(b)'' and insert ''orders under section 704(c) or section 705(c)''.

On page 54, beginning on line 22, strike ''during the period such directive was in effect'' and insert ''for information, facilities, or assistance provided during the period such directive was or is in effect''.

On page 60, line 4, strike ''reasonably''.

On page 60, line 5, strike ''determines'' and insert ''reasonably determines''.

On page 60, line 10, strike ''determines'' and insert ''reasonably determines''.

On page 60, lines 20 and 21, strike ''168 hours'' and insert ''7 days''.

On page 61, line 7, strike ''168 hours'' and insert ''7 days''.

On page 65, line 6, strike ''168 hours'' and insert ''7 days''.

On page 65, lines 16 and 17, strike ''168 hours'' and insert ''7 days''.

On page 67, line 2, strike ''168 hours'' and insert ''7 days''.

On page 67, line 4, strike ''168 hours'' and insert ''7 days''.

Mr. ROCKEFELLER. Madam President, after a long debate, we are, in fact, ready to, hopefully, pass the FISA bill. This has been an extremely important debate over important issues critical to the Nation's security.

As I discussed at the beginning of the debate, the guiding principle in bringing this bill to the Senate floor was to modernize our ability to collect communications intelligence against foreign targets without compromising the constitutional and statutory privacy protections afforded to all Americans. In my mind, we have achieved this goal.

Vice Chairman BOND and I worked very hard in the Intelligence Committee to produce a balanced and bipartisan bill. One can say whatever one wants, but 13 to 2 is 13 to 2. I think we can be proud of the improvements we have made to the bill each step of the way since last September. But, in fact, it goes all the way back almost a year. In the end, the bill we are about to pass, I hope, strengthens our national security and represents a very significant improvement over the Protect America Act that passed last summer.

Let me mention a few of the provisions we have included in the bill for protecting the rights of Americans here in the United States and overseas.

We require an individual FISA order for the targeting of U.S. persons believed to be located outside the United States any time the collection is conducted inside the United States.

We have also put in place for the first time a procedure requiring FISA Court approval for collection on United States persons outside of the United States in circumstances that would require a warrant if undertaken within the United States. This has never before existed. It now exists in the FISA law, if we do, in fact, pass it.

We have increased the role of the FISA Court in other significant ways, starting with the new requirement that the FISA Court approve the minimization procedures that are essential to the treatment of information concerning Americans authorized under this act. And thanks to Senator WHITEHOUSE's amendment adopted this morning, we have clarified that the FISA Court has inherent authority to enforce compliance with the procedures that it, and it alone, can approve.

We also adopted new requirements to give Congress visibility into how the new collection authority is being implemented, from the Feingold amendment on FISA Court documents, to the new requirements for reporting by the Attorney General and the Director of National Intelligence.

Just as we have worked on a bipartisan basis here in the Senate in order to achieve the strongest possible bill, I believe now is the time to work with our colleagues in the House of Representatives to achieve a true bipartisan, bicameral bill. I look forward to that dialog with our House colleagues.

I would note there are additional measures I support which may make this legislation even stronger. Among these would be the exclusivity amendment of Senator FEINSTEIN that received a strong bipartisan majority vote this morning. I think it was 57 votes. I commend her for all of her work she has done on this critical issue and on other parts of the bill, and I will fight like heck for her in the conference committee, if we are to have one. We will continue to work with her and with Vice Chairman BOND to see if there is any way to bridge the differences in the bipartisan manner that has dominated our negotiations throughout this procedure.

In closing, it would not have been possible to have reached this point without the hard work of the staff of the Intelligence and Judiciary Committees, as well as the leadership staff. From the Intelligence Committee, I thank Andy Johnson; Louis Tucker; Melvin Dubee; Michael Davidson; Jack Livingston; Christine Healey; Alissa Starzak; and Kathleen Rice. I also thank Mary DeRosa, Nick Rossi, Zulima Espinel, and Matt Solomon of the Judiciary Committee; and Ron Weich, Serena Hoy, and Marcel Lettre of the majority leader's staff.

Finally, I must recognize the steadfast support and work of the committee's vice chairman, Senator BOND. The work of the Intelligence Committee is not easy. When it comes on the floor, it is more difficult because there is a certain kind of exclusivity which is not appreciated by some Members but is the way it works.

Vice Chairman BOND has been dogged in his efforts to move this whole thing forward. He is formidable in his pursuit of intelligence and his insistence it be made available to the committee and to the appropriate committees; and he is flexible in his willingness to find compromises to keep our bipartisan coalition together.

I hope this bill does pass. I think it is landmark legislation. I don't think all will see it that way at the very beginning, and that is OK because what we do is not so much of the moment but for the longer term. So there may be disagreements on immunity. But, on the other hand, there can be no disagreements on the national security of the United States. Immunity has been narrowly tailored. A lot of people don't know that, or maybe made up their minds at the beginning, but, whatever, we did what we thought was the right thing to do.

One of the great things about being in this body is no matter what people say and what people think, if you do what you think is right, you are serving your country.

I thank the Presiding Officer and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCONNELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. MCCONNELL. Madam President, are we now in my designated time?

The PRESIDING OFFICER. We are.

Mr. MCCONNELL. Madam President, earlier today the Senate voted to invoke cloture on the bipartisan Rockefeller-Bond bill. It was not a close vote. Rather, it was a strong bipartisan show of support for this important piece of legislation.

The Protect America Act expires at the end of this week. That is Saturday, February 16.

Twenty-one House Democrats have written to Speaker PELOSI saying they ''fully support'' the Rockefeller-Bond bill if it is not changed substantially—and it was not changed—and they urge her, the Speaker, to ''quickly consider'' the bill in order ''to get a bill signed into law before the Protect America Act expires in February.''

I have a copy of the letter signed by 21 Democrats, so-called Blue Dog Democrats, in the House. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, January 28, 2008.

DEAR MADAM SPEAKER: Legislation reforming the Foreign Intelligence Surveillance Act (FISA) is currently being considered by the Senate. Following the Senate's passage of a FISA bill, it will be necessary for the House to quickly consider FISA legislation

to get a bill to the President before the Protect America Act expires in February.

It is our belief that such legislation should include the following provisions: Require individualized warrants for surveillance of U.S. citizens living or traveling abroad; Clarify that no court order is required to conduct surveillance of foreign-to-foreign communications that are routed through the United States; Provide enhanced oversight by Congress of surveillance laws and procedures; Compel compliance by private sector partners; Review by FISA Court of minimization procedures; Targeted immunity for carriers that participated in anti-terrorism surveillance programs.

The Rockefeller-Bond FISA legislation contains satisfactory language addressing all these issues and we would fully support that measure should it reach the House floor without substantial change. We believe these components will ensure a strong national security apparatus that can thwart terrorism across the globe and save American lives here in our country.

It is also critical that we update the FISA laws in a timely manner. To pass a long-term extension of the Protect America Act, as some may suggest, would leave in place a limited, stopgap measure that does not fully address critical surveillance issues. We have it within our ability to replace the expiring Protect America Act by passing strong, bipartisan FISA modernization legislation that can be signed into law and we should do so—the consequences of not passing such a measure could place our national security at undue risk.

Sincerely,

Leonard L. Boswell, ———, Mike Ross, Bud Cramer, Heath Shuler, Allen Boyd, Dan Boren, Jim Matheson, Lincoln Davis, Tim Holden, Dennis Moore, Earl Pomeroy, Melissa L. Bean, John Barrow, Joe Baca, John Tanner, Jim Cooper, Zachary T. Space, Brad Ellsworth, Charlie Melancon, Christopher P. Carney.

Mr. MCCONNELL. Madam President, it is clear that not only does the Rockefeller-Bond bill enjoy bipartisan majority support in the Senate, it also enjoys bipartisan majority support in the House. It is a tribute to the fine work of the Senator from West Virginia, Mr. ROCKEFELLER, and the Senator from Missouri, Mr. BOND, in pulling this complex piece of legislation together and getting extraordinary support across the aisle.

This bill protects the country. It is a bill that will be signed by the President of the United States, so we are making a law here. We need to focus on completing action on this legislation and get it to the President before the Protect America Act expires.

As to further delays: Back in August, our Democratic colleagues said an additional 6 months was needed to get this right. In the fall, they said: We need a little more time. Last month, they said: Give us another 15 days and we can wrap it up. At this point, no Member of this body can reasonably state this piece of legislation was hastily or unfairly considered. It has been the product of 6 months' work, intense work on behalf of Senator ROCKEFELLER and Senator BOND.

We do not need yet another extension, yet another delay. We need to focus on getting our work done. I am confident that with the help of our friends on the other side of the aisle, we can get a second bipartisan accomplishment to the President in as many weeks. Tomorrow, he will sign the stimulus package—an important bipartisan accomplishment. Later in the week, he could conceivably be in a position to sign this important piece of bipartisan legislation.

I encourage my colleagues in the House and the Senate to redouble their efforts toward this end. That would show the American people that Congress can indeed function on a bipartisan basis on important issues before the country.

I am among those proud of the fine work done by Senator ROCKEFELLER and Senator BOND. This is a terrific, important piece of legislation. I know it will pass the Senate shortly, overwhelmingly.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. Madam President, is there time remaining on this side prior to the vote?

The PRESIDING OFFICER. Four and a half minutes remain.

Mr. BOND. Madam President, with the sufferance of the minority leader, I thank my colleagues, especially Senator ROCKEFELLER, and all those who worked with us. We have had to make a number of very tough votes. We made some good changes in the bill. I thank, particularly, Senators WYDEN, FEINSTEIN, and WHITEHOUSE for working with us to achieve their objectives in a way that would allow the program to continue.

Approximately 10 months ago, the DNI, Admiral McConnell, came to Congress and asked that we update FISA. Changes in technology had resulted in the FISA Court rulings or interpretations that impeded the effective use of electronic surveillance against terrorists overseas.

This problem came to a head in May 2007, when there was a FISA Court ruling causing significant gaps in our intelligence collection against foreign terrorists. Throughout the summer of 2007 and amid growing concern of increased threats to our security in light of these gaps, Congress was asked by the DNI to act. And Congress, in August, passed the Protect America Act, a short-term fix that did what it was supposed to do. It was lacking in one important aspect; it did not provide civil liability protection to those private partners who assisted the intelligence community.

Following passage of the PAA, Chairman ROCKEFELLER and I immediately set to work to come up with a bipartisan permanent solution. We worked closely with the intelligence community.

In the end, after many hearings, briefings, debate, and visits to the facility, we did pass it on a 13-to-2 vote. We concluded that those electronic communication service providers that assisted with the President's TSP acted in good faith and deserve civil liability protection from frivolous lawsuits. As indicated by the chairman, this bill goes further than any legislation in history in protecting the privacy of U.S. persons, mostly Americans, whose communications may be acquired incidentally to this foreign targeting. For the first time in history, it requires the FISA Court to approve targeting of U.S. persons, American citizens, overseas to obtain foreign intelligence information.

This bill was a series of delicate compromises. Both sides had to give. Many of us would have preferred to have all litigation related to the TSP terminated as the DNI originally requested. Again, we agreed, for reasons set forth on the floor, that cases against Government officials—and all criminal cases—could go forward.

Others believed the FISA Court should not approve targeting of Americans abroad, particularly when these same protections are not afforded in ordinary criminal cases. In the spirit of compromise, we created a process that allows sufficient flexibility while addressing privacy concerns.

In the end, I am proud to say we have accomplished our collective goals of making sure we have a bill with clear authorities for foreign targeting, with strong protections for Americans, and with civil liability protection for those providers who may have assisted with the President's terrorist surveillance program.

We have heard debate over the past several weeks on a number of amendments that I believe would have proved harmful to our intelligence collection efforts. Some would have shut down, or severely impeded, intelligence collection against foreign terrorists. That is one of the reasons we worked so closely with the intelligence community to ascertain what could be done to increase protections without harming their ability to collect.

We now have a solid bill. The DNI will support it and the President can sign it into law. I urge my colleagues to send this bill to the House with a strong bipartisan vote. It gives our intelligence operators and law enforcement officials the tools they need to conduct surveillance of foreign terrorists in foreign countries who are planning to conduct attacks against the U.S., our troops, and our allies. It is a balance we need to protect our civil liberties, without handcuffing our intelligence professionals.

I hope we can do the right thing and pass the bill. I thank all our colleagues who helped.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Madam President, I want the RECORD to reflect that any of my remarks where I disagree with the bill before the Senate in no way reflects upon the chairman of the committee. I have known JAY ROCKEFELLER for several decades, and I have not known a better public servant than JAY. JAY ROCKEFELLER got into Government for the right reasons. We know that the Rockefeller name is magic, that he could have led a life of leisure, doing many different things. But he chose public service. He went to West Virginia doing work as a VISTA volunteer. He fell in love with the people—the poor people—of West Virginia and has worked since then to improve the lives of the people of West Virginia. He has done a wonderful job there, serving as the secretary of state, Governor, and now as a long-time Senator.

There are certain things in this legislation that I disagree with. But I repeat, as a public servant, there is not one better—or I doubt that there ever has been anyone better than JAY ROCKEFELLER. He has devoted his Senate life in service to the Intelligence Committee. He devotes night and day not only working in the Committee room where there is no exposure to the public—he gets no publicity for doing this. He does it because he believes it is the right thing for the country. Of course, I receive calls from him well after hours on concerns he has in dealing with foreign intelligence generally.

I already voted against it on the FISA legislation, and I will vote ''no'' on final passage of the bill.

The Senate's debate on FISA has made the Intelligence Committee's bill better—no question about that—by adding a number of protections from the Judiciary Committee's version.

The Senate adopted amendments offered by Senators KENNEDY, WHITEHOUSE, and FEINGOLD to improve title I of the bill. This concerns the procedures we use to conduct this kind of surveillance in the future. That is an improvement. But the Senate rejected amendments to strike and modify various parts of title I, to improve title I, and rejected all amendments to strike or modify title II concerning immunity for telecommunications companies that may have broken the law by abiding the White House's requests for warrantless wiretaps on American citizens.

I believe the White House and any companies that broke the law must be held accountable.

In their unyielding effort to expand Presidential powers, President Bush and Vice President CHENEY created a system to conduct wiretapping—including on American citizens—outside the bounds of longstanding Federal law.

As I have said before—and books have been written on it—the President, as soon as we passed the first PATRIOT Act, after he joined with us in celebrating it, he basically ignored it and did whatever he wanted to do because he was told by the White House staff he was above the law, he didn't have to follow the law we passed.

The President could have taken the simple step at any time of requesting new authority from Congress. All he would have had to do was come talk to us. We would have been willing to listen to him and, very likely, would have done anything he wanted to do. After all, Congress has repeatedly amended FISA because of new technology and legitimate needs in the intelligence community.

But whether out of convenience, incompetence, or outright disdain for the rule of law, the Bush-Cheney administration chose to ignore Congress and ignore the Constitution.

The White House should bear responsibility for this reckless disdain for the rule of law.

It also appears that many companies followed the administration's orders without regard to the law or privacy, or even basic common sense. I always will support giving our intelligence community the tools it needs to collect intelligence on terrorists and other foreign targets. We have to do that.

We always have and always will need to help in the private sector to protect our country. That is clear. When companies comply with legal and constitutional directives to support intelligence and law enforcement activities, they have no reason to fear. But the requirement and obligation they have for protecting the rights of American citizens and the Constitution and FISA are perfectly clear, very clear.

According to the press reports, at least one company—Qwest Communications Company—refused the White House request to participate in this program. The others had an opportunity to do the same. As far as we know, they chose not to. They didn't follow the example of Qwest.

If the Senate had voted today to reject amnesty, we would have sent a message that no one is above accountability and no one is above the law. If we had rejected amnesty, we would have sent a message that fighting terrorism doesn't require the sacrifice of basic fundamental rights.

I was disappointed that the Senate rejected amendments opposing immunity. Even though their efforts were unsuccessful, all Americans owe a debt of gratitude to two outstanding and principled Senators, Senators FEINGOLD and DODD. I don't mean in any way to suggest that people who disagree with them are not outstanding or are unprincipled. That isn't the case. There is a basic disagreement. I felt I needed to applaud and commend these two men for how hard they worked in making their point. I believe they stood up to the administration, which certainly needs standing up to. They stood up for accountability.

Despite today's votes, there is no doubt in my mind that history will prove they were right. Millions of Americans joined this effort. Win or lose, their voices were heard and their efforts made a difference.

If the Senate votes for final passage of FISA today, which I suspect will be the case, we must decide what comes next. The mere fact that we pass something today, and the House passed something previously, doesn't mean we have anything to send to the President.

Two weeks ago, in the runup to the State of the Union Address—and we have heard it time and again—the President and Vice President and Senate Republicans believed it was urgent to pass the FISA bill, that it is critical to our national security. But then, Senate Republicans spent most of the time since then refusing to allow any votes on FISA amendments, slow-walking the bill as part of a strategy to jam the House. That is what happened. I have to suggest that they deserve a pin on their lapel because they set out and did what they wanted to do—stall this as long as they could.

A week and a half ago, as the February 1 sunset to the Protect America Act approached, we passed a 15-day extension. This would have allowed 2 weeks to negotiate with the House, which would have been rushed, but we could have at least had meaningful meetings. Those will not take place.

Unfortunately, the White House has been convinced that if they dragged this process out long enough, there would not be enough time to negotiate a bill with the House. The White House is convinced they can force the House to pass exactly the bill they want. I believe it is wrong for the White House to do this, and I believe it is unfair to the House of Representatives.

Due to months of White House foot-dragging, the relevant House committees have only just gotten the documents relating to immunity. They need some time to review and analyze that.

We must not let this critical issue be resolved by the White House trying to force the House to do something they didn't want to do, such as happened last August.

I plan to ask, after this legislation passes today, unanimous consent for an extension in order to allow sufficient time for negotiation with the House. My friend, the distinguished Republican leader, has already said there will be no extensions given. I hope that is not the case, and with this extra time, the conference committee can make further improvements to this critical bill.

Why do we need to improve the bill?

Richard Clarke, a national security adviser to Presidents Reagan, Bush Sr., and President Clinton, said it well in an op-ed:

> FISA has and still works as the most valuable mechanism for monitoring our enemies.
>
> In order to defeat the violent Islamic extremists who do not believe in human rights, we need not give up the civil liberties, constitutional rights and protections that generations of Americans fought to achieve.

The Bush-Cheney White House continues to sell us a false choice between

security and liberty. I reject that choice.

This is America and we are Americans. We can and must have both liberty and security.

It is my understanding we are ready to vote on final passage.

The PRESIDING OFFICER. The question is on passage of S. 2248, as amended.

Mr. BOND. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New York (Mrs. CLINTON) and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from South Carolina (Mr. GRAHAM).

Further, if present and voting, the Senator from South Carolina (Mr. GRAHAM) would have voted ''yea.''

The result was announced—yeas 68, nays 29, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—68

Alexander	Dole	Mikulski
Allard	Domenici	Murkowski
Barrasso	Ensign	Nelson (FL)
Baucus	Enzi	Nelson (NE)
Bayh	Grassley	Pryor
Bennett	Gregg	Roberts
Bond	Hagel	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Carper	Inouye	Smith
Casey	Isakson	Snowe
Chambliss	Johnson	Specter
Coburn	Kohl	Stevens
Cochran	Kyl	Sununu
Coleman	Landrieu	Thune
Collins	Lieberman	Vitter
Conrad	Lincoln	Voinovich
Corker	Lugar	Warner
Cornyn	Martinez	Webb
Craig	McCain	Whitehouse
Crapo	McCaskill	Wicker
DeMint	McConnell	

NAYS—29

Akaka	Durbin	Menendez
Biden	Feingold	Murray
Bingaman	Feinstein	Reed
Boxer	Harkin	Reid
Brown	Kennedy	Sanders
Byrd	Kerry	Schumer
Cantwell	Klobuchar	Stabenow
Cardin	Lautenberg	Tester
Dodd	Leahy	Wyden
Dorgan	Levin	

NOT VOTING—3

Clinton	Graham	Obama

The bill (S. 2248), as amended, was passed.

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 3773, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3773) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken and the text of S. 2248, as amended, is inserted in lieu thereof; the bill, as amended, is considered read the third time and passed, the motion to reconsider made and laid upon the table, and passage of S. 2248 vitiated and that bill be returned to the calendar.

The bill (H.R. 3773), as amended, was passed, as follows:

H.R. 3773

Resolved, That the bill from the House of Representatives (H.R. 3773) entitled ''An Act to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008'' or the ''FISA Amendments Act of 2008''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

''Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

''SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

''(A) the Select Committee on Intelligence of the Senate; and

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706;

''(4) shall not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

''(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

''(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) TARGETING PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

''(e) MINIMIZATION PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4) for acquisitions authorized under subsection (a).

''(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) CERTIFICATION.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

''(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 7 days after such determination is made.

''(2) REQUIREMENTS.—A certification made under this subsection shall—

''(A) attest that—

''(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(ii) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(iii) the procedures referred to in clauses (i) and (ii) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;

''(iv) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(v) the minimization procedures to be used with respect to such acquisition—

''(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(vi) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

''(vii) the acquisition does not constitute electronic surveillance, as limited by section 701; and

''(B) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

''(i) appointed by the President, by and with the consent of the Senate; or

''(ii) the head of any element of the intelligence community.

''(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

''(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

''(5) REVIEW.—The certification required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

''(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

''(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

''(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

''(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

''(4) CHALLENGING OF DIRECTIVES.—

''(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

''(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review not later than 5 days after being assigned a petition described in subparagraph (C). If the judge determines that the petition consists of claims, defenses, or other legal contentions that are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition and order the recipient to comply with the directive or any part of it. Upon making such a determination or promptly thereafter, the judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

''(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition described in subparagraph (C) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of that petition not later than 30 days after being assigned the petition, unless the judge, by order for reasons stated, extends that time as necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. Unless the judge sets aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the records of the reasons for a determination under this subparagraph.

''(F) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

''(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(5) ENFORCEMENT OF DIRECTIVES.—

''(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition filed under subparagraph (A) shall issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section, and is otherwise lawful.

''(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

''(E) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(F) PROCESS.—Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication

service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(1) IN GENERAL.—

''(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

''(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court any such certification or procedure, or amendment thereto, not later than 5 days after making or amending the certification or adopting or amending the procedures.

''(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

''(5) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(ii) cease the acquisition authorized under subsection (a).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

''(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of an appeal of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

''(3) RETENTION OF RECORDS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.

''(k) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

''(A) the Foreign Intelligence Surveillance Court; and

''(B) the congressional intelligence committees.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

''(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

''(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence; and

''(iv) the congressional intelligence committees.

''SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

''(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or

the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

''(A) that the minimization procedures be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or

other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(3) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

''(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

''(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained, and

''(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision

thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(c) or section 705(c), as applicable.

''(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

''(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 708. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subparagraph (a) shall include—

''(1) with respect to section 703—

''(A) any certifications made under subsection 703(f) during the reporting period;

''(B) any directives issued under subsection 703(g) during the reporting period;

''(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

''(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

''(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

''(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

''(G) any procedures implementing this section;

''(2) with respect to section 704—

''(A) the total number of applications made for orders under section 704(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 705—

''(A) the total number of applications made for orders under 705(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.''.

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et. seq.) is amended—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Limitation on definition of electronic surveillance.

''Sec. 702. Definitions.

''Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

''Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

''Sec. 705. Other acquisitions targeting United States persons outside the United States.

''Sec. 706. Joint applications and concurrent authorizations.

''Sec. 707. Use of information acquired under title VII.

''Sec. 708. Congressional oversight.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting ''(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)'' after ''electronic surveillance''.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

''(e) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an ''(a)'' before ''CIVIL ACTION'',

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

''(b) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

''(C) pen registers under section 402;

''(D) access to records under section 501;

''(E) acquisitions under section 704; and

''(F) acquisitions under section 705;''.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) for information, facilities, or assistance provided during the period such directive was or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED.

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

''STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED

''SEC. 112. The procedures of chapters 119, 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.''.

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding after the item relating to section 111, the following:

''Sec. 112. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.''.

(c) CONFORMING AMENDMENTS.—Section 2511(2) of title 18, United States Code, is amended in paragraph (f), by striking '', as defined in section 101 of such Act,'' and inserting ''(as defined in section 101(f) of such Act regardless of the limitation of section 701 of such Act)''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following:

''(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

''(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

''(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

''(d) PROTECTION OF NATIONAL SECURITY.—The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(e) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term ''Foreign Intelligence Surveillance Court'' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'';

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

''(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(B) resonably determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is

obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''7 days''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''7 days''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

(A) by inserting ''(1)'' after ''(a)''; and

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by adding at the end the following:

''(h)(1) Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of such Court or with a procedure approved by such Court.

''(2) In this subsection, the terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by subsection (a).''.

SEC. 110. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting '', the international proliferation of weapons of mass destruction,'' after ''international terrorism''.

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking ''or'' at the end

(B) in subparagraph (C), by striking ''or'' at the end; and

(C) by adding at the end the following new subparagraphs:

''(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

''(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power; or''.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by inserting after subsection (o) the following:

''(p) 'Weapon of mass destruction' means—

''(1) any destructive device described in section 921(a)(4)(A) of title 18, United States Code, that is intended or has the capability to cause death or serious bodily injury to a significant number of people;

''(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code); or

''(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.''.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 301(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting '''weapon of mass destruction','' after ''person',''.

SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.

Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''; and

(2) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANCE.—The term ''assistance'' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) CONTENTS.—The term ''contents'' has the meaning given that term in section 101(n) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) COVERED CIVIL ACTION.—The term ''covered civil action'' means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ''electronic communication service provider'' means—

(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(B) a provider of an electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ''element of the intelligence community'' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

(i) in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

(b) REVIEW OF CERTIFICATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

(1) review such certification in camera and ex parte; and

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(c) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

(d) CIVIL ACTIONS IN STATE COURT.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action that is pending on or filed after the date of enactment of this Act.

SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101, is further amended by adding after title VII the following new title:

"TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

"SEC. 801. DEFINITIONS.

''In this title:

''(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

''(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning give that term in section 101(g).

''(3) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

''(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

''(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community as specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(6) PERSON.—The term 'person' means—

''(A) an electronic communication service provider; or

''(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

''(i) an order of the court established under section 103(a) directing such assistance;

''(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code; or

''(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

''(7) STATE.—The term 'State' means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

"SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.

''(a) REQUIREMENT FOR CERTIFICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—

''(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

''(B) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

''(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008, or 703(h) directing such assistance; or

''(D) the person did not provide the alleged assistance.

''(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

''(b) LIMITATIONS ON DISCLOSURE.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

''(1) review such certification in camera and ex parte; and

''(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

''(c) REMOVAL.—A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

''(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

''(e) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of enactment of the FISA Amendments Act of 2008.''.

SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by section 203 of this Act, is amended by adding at the end the following new section:

"SEC. 803. PREEMPTION.

''(a) IN GENERAL.—No State shall have authority to—

''(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

''(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

''(b) SUITS BY THE UNITED STATES.—The United States may bring suit to enforce the provisions of this section.

''(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

''(d) APPLICATION.—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2008.''.

SEC. 205. TECHNICAL AMENDMENTS.

The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end the following:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''Sec. 801. Definitions.
''Sec. 802. Procedures for implementing statutory defenses.
''Sec. 803. Preemption.''.

TITLE III—OTHER PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCEDURES.

(a) IN GENERAL.—Except as provided in subsection (c), the amendments made by this Act

shall take effect on the date of the enactment of this Act.

(b) REPEAL.—

(1) IN GENERAL.—Except as provided in subsection (c), sections 105A, 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.

(2) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C.

(c) TRANSITIONS PROCEDURES.—

(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.

(2) ORDERS IN EFFECT.—

(A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 556) shall remain in effect until the date of expiration of such order; and

(ii) at the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall reauthorize such order if the facts and circumstances continue to justify issuance of such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.

(3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).

(B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.—Any authorization or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and, except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).

(4) USE OF INFORMATION ACQUIRED UNDER PROTECT AMERICA ACT.—Information acquired from an acquisition conducted under the Protect America Act of 2007, and the amendments made by that Act, shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of that Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

(5) NEW ORDERS.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(A) the government may file an application for an order under the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

(B) the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall enter an order granting such an application if the application meets the requirements of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(6) EXTANT AUTHORIZATIONS.—At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act.

(7) APPLICABLE PROVISIONS.—Any surveillance conducted pursuant to an order entered pursuant to this subsection shall be subject to the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(8) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that authorization expires; or

(B) the date that is 90 days after the date of the enactment of this Act.

Mr. ROCKEFELLER. Madam President, I suggest the absence of a quorum.

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

Mr. BOND. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. Madam President, again I rise to thank Chairman ROCKEFELLER, the members of the committee on both sides, and our very able staffs for a lot of hard work, particularly by members of the committee but by many Members who are not on the committee, who took their time to learn what the electronic surveillance capabilities are, to learn what guidelines and protections there are to protect the privacy rights and constitutional rights of American citizens and help us pass this bill.

This is a bill which I hope we will at least, in large part, find the House agreeable to and that we can send it to the President. This has been a very long procedure. The chairman just pointed out that we have been working on this almost a year. We worked very hard after the August recess to come up with a good bill. I know we had some very warmly felt and vigorously argued amendments, but the fact that these would make it difficult for the intelligence community to collect the intelligence necessary to protect our interests, our allies, our troops abroad, and us here at home led a significant bipartisan majority to improve it.

Again, my sincere thanks to the leadership on both sides for allowing us to get to this important measure. We hope we will have a conference report, if necessary, or a measure from the House that we can pass before the end of the week.

So, Madam President, my sincere thanks to Members on both sides and particularly our great staffs on both sides.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

UNANIMOUS-CONSENT REQUEST—S. 2615

Mr. REID. Madam President, as I indicated I would earlier today, I will ask unanimous consent to extend the law that is now in effect. I wish to extend that 15 days to see if we can work out something more with the House.

So I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 571, S. 2615; the bill be read a third time and passed; and the motion to reconsider be laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Reserving the right to object, let me just make the point once again that we just passed this bill 68 to 29 in its initial form, which was preserved on the Senate floor. It came out of the Intelligence Committee 13 to 2. This is the Rockefeller-Bond bipartisan, overwhelmingly supported bill coming out of the Senate.

The current law does not expire until Saturday. It is still my hope that the House, and particularly when you consider the fact that 21 House Democrats, so-called Blue Dog Democrats, have indicated to the Speaker in writing that they would like to see the Senate bill passed—the Rockefeller-Bond bill taken up and passed by the House—I think it is just premature for an extension, Madam President. I think there is

still at least a chance the House might conclude that we have done a terrific piece of work, and they could very well consider the option, as the Blue Dogs have suggested, of taking up the measure and sending it on down to the President for signature.

So for the moment, Madam President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BROWN. I ask unanimous consent to speak as in morning business.

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

COMMEMORATING THE 99TH ANNIVERSARY OF THE NAACP

Mr. BROWN. Madam President, 99 years ago today, a group of courageous individuals came together to form the National Association for the Advancement of Colored People.

The year of 1909 was the centennial of Abraham Lincoln's birth. Fewer than 50 years removed from the signing of the Emancipation Proclamation and the carnage of the Civil War, the promise and price of that struggle must have still been fresh on the minds of many Americans.

The ''Call for the Lincoln Emancipation Conference in 1909'' was designed to take stock of the progress since the end of the Civil War.

The conclusion of the 60 organizers, among them the mayor of Toledo, and the president of Western Reserve University in Cleveland, the conclusion was that Lincoln would have been disheartened by the Nation's failure to secure equality of law and equality of opportunity without respect to color. They faced rampant Jim Crow discrimination, conducted with the blessing of the Supreme Court. The country was plagued by race riots and lynchings in every region, even in Lincoln's hometown of Springfield, IL.

The founders of the NAACP understood that if true equality was to be had, the spirit of the abolitionists must be revived. So long as the North remained silent about the conditions in the South, it was supplying tacit approval.

They wrote:

> Discrimination once permitted cannot be bridled. Recent history shows that in forging chains for the Negroes, the white voters are forging chains for themselves.

They met, they organized, and they spoke out. For almost a century the NAACP has led the fight for equality, continually working to ensure political and educational and social and economic equality for persons of all races.

Whether it was the fight to desegregate public schools or to secure equal voting rights or the passing of the 1964 Civil Rights Act, the NAACP has remained at the forefront of the struggle for justice. Even when this body, this Senate, did not do the right thing, the NAACP continued to fight for equal rights and equal opportunity.

This is a struggle that continues today. Discrimination in housing has continued a legacy of segregation in many of our neighborhoods and many of our schools. Discrimination in housing finance has led to disproportionate numbers of African-American and Latino borrowers being stuck with predatory loans that are falling into forclosure at record rates.

Black young people are more likely than their peers to attend failing schools. A new wave of barriers to voting rights has appeared in the form of vote caging, deceptive practices, and unreasonable voter ID laws. I saw some of those in the 1980s as Ohio Secretary of State. They happened in New Jersey, they happened in Louisiana, they happened in the North, they happened in the South. They are still happening.

African Americans make up about 13 percent of our population but account for over 50 percent of the prison population.

In times such as these, the NAACP is needed more than ever. Fortunately, in my home State of Ohio and across the Nation, NAACP chapters continue their fight for justice and equality. In Lorain, in Mansfield, in Toledo, in Cleveland and Columbus, they continue that fight.

The Ohio NAACP Prison Program is changing the lives and helping to rehabilitate hundreds of inmates. NAACP members across the State are registering voters and run afterschool programs.

The Cincinnati NAACP chapter is holding public forums to foster a better relationship between the community and the police department. Through programs such as these, our communities are stronger, our neighborhoods are stronger, our Nation is stronger.

As a life member of the NAACP, I am proud to support its efforts to protect our rights to increase opportunities for all Americans. As the founders observed 99 years ago, this Government cannot exist half slave and half free any better today than it could in 1861. I hope my colleagues will join me today in commemorating the NAACP's 99th anniversary.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MENENDEZ.) The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

199TH ANNIVERSARY OF ABRAHAM LINCOLN'S BIRTH

Mr. DURBIN. Mr. President, in her book ''Team of Rivals,'' Doris Kearns Goodwin tells a story that illustrates the extraordinary, transcendent power of Abraham Lincoln's faith in human freedom and democracy.

It is a story about something that occurred in 1908, 100 years ago. The Russian novelist Leo Tolstoy had been entertaining some Caucasus tribesmen for hours with tales of Alexander the Great, Julius Caesar, and Napoleon. When he finished, a chief stood and asked Tolstoy to speak about the greatest of all heroes, a man who ''spoke with a voice of thunder . . . laughed like a sunrise and his deeds were as strong as the rock.'' Tell them, the chief implored, about Abraham Lincoln.

Tolstoy would later write, ''That little incident proves how largely the name of Lincoln is worshipped throughout the world. . . . He was not a great general like Washington or Napoleon; he was not such a skillful statesman as Gladstone or Frederick the Great, but his supremacy expresses itself altogether in his peculiar moral power and in the greatness of his character. ''Washington was a typical American. Napoleon was a typical Frenchman. But Lincoln,'' Tolstoy wrote, ''was a humanitarian as broad as the world.''

Today marks the 199th anniversary of Abraham Lincoln's birth. This past weekend was also the official opening of a 2-year bicentennial celebration of the Abraham Lincoln Bicentennial. In Harlan County, KY, where Lincoln was born in bitter poverty, Lincoln scholars and admirers gathered to discuss and celebrate Lincoln's life and legacy. This evening in Springfield, IL, the Abraham Lincoln Association will hold its annual meeting to once again reflect on the life of Abraham Lincoln in his hometown.

I express my personal thanks to Judge Tommy Turner who has worked tirelessly with so many dedicated Kentuckians to put together today's kickoff in Harlan County.

First Lady Laura Bush was to have spoken at the kickoff. Unfortunately, the icy weather forced postponement. It will be rescheduled. She will be returning to the Abraham Lincoln Birthplace National Historic Site in Hodgenville, KY.

President Lincoln kept a place in his heart for Kentucky all his life, and there must be a special place for Kentucky in the Lincoln Bicentennial Celebration. I also thank my colleague, Senator Jim Bunning, who is a member of the Abraham Lincoln Bicentennial Commission. I know how hard he worked to make this kickoff a success in his home State.

Over the next 2 years, hundreds of special events and celebrations will be held in cities and towns across America to remind all of us who Lincoln was and what he meant and still means to

America and the world. Coordinating many of these events will be the Abraham Lincoln Bicentennial Commission, which I am honored to cochair with Harold Holzer, a noted Lincoln scholar from New York, and my fellow Illinoisan, Representative Ray LaHood. Ray deserves special credit because it was his idea to create this commission to honor Illinois's favorite son in our land of Lincoln. For 12 years before I was elected to the Senate I had the privilege of holding the same seat Lincoln once held in the U.S. House of Representatives, a seat now held by Congressman LAHOOD.

Abraham Lincoln was, I believe, America's greatest President. Our Founders decreed that we are all endowed with an inalienable right to liberty, but they could not reconcile their noble ideals with the ignoble practice of slavery. Abraham Lincoln helped give meaning to our national creed of ''liberty and justice for all.'' He steered America through the most profound moral crisis in our history and the bloodiest war. His leadership saved the Union, and his vision redefined what it meant to be an American.

The goal of the Abraham Lincoln Bicentennial Commission is to help Americans and people around the world to gain a better understanding of this complex and heroic man. We want to foster a resolve among Americans from all backgrounds to continue the work Abraham Lincoln started. I think the Gettysburg Address may be the greatest speech I have ever read. I memorized it in grade school. I refer to it so many times, and realize, in an economy of words, Abraham Lincoln speaking almost impromptu really captured great meaning for so many Americans. He challenged all of us to rededicate our lives ''to the unfinished work'' for which ''the brave men, living and dead'' had sacrificed so much on the hallowed ground of battle in Gettysburg, PA.

How much of the work of true democracy remains unfinished today? How can we summon, as Lincoln said, ''the better angels of our nature'' to meet the challenges of our time? Those are the discussions the Abraham Lincoln Bicentennial Commission hopes to foster as America prepares to celebrate the bicentennial of the birth of its greatest President.

I encourage everyone to go to the Commission's Web site at www.lincolnbicentennial.com, learn more about Lincoln and about how your community can plan to celebrate his birthday. President Lincoln's adopted hometown of Springfield is also my adopted hometown. I have lived there almost 40 years now. If you have ever been there, you know that around every corner in downtown Springfield is another powerful reminder of Abe Lincoln. The small house at the corner of 8th and Jackson, the only home Lincoln ever owned, is just a block away from my Senate office. His law office, right near the old State capitol, is an amazing place, restored and visited by so many because of its meaning in his daily life as an ordinary lawyer in central Illinois, the old State capitol building where he warned prophetically that a House divided could not stand. This beautiful building was restored in 1976 as part of our bicentennial. The old State capitol is one of my favorite in the State of Illinois.

My special thanks to a good friend of mine, an architect named Earl Wallace Henderson III, who was called on to do a magnificent job of restoring and remodeling that old State capitol. And now, just a couple blocks away, my pride and joy as an elected official from Springfield, IL, is the Abraham Lincoln Presidential Library and Museum. It is just 3 years old. It is already the most visited Presidential library in America. I love that place. I go to a lot of museums and Presidential museums. I don't know of another one, though, that really captures the spirit of the President so effectively and lures children in for beautiful exhibits and movies that they don't forget. Kids walk out of the Abraham Lincoln Museum with their moms and dads and say: Can we go back? It warms my heart every time I hear of the record numbers of people who are visiting.

It was also in Springfield that a 28-year-old Lincoln, a member of the State legislature, delivered a speech that still speaks powerfully to us today. We know it as the Lyceum Address. Lincoln was told to speak about whatever he liked. He chose as his subject ''the perpetuation of our political institutions.'' He expressed a concern that would later be echoed many times: What would happen to America when its Founding Fathers and those who fought to gain our liberty were gone? How could we sustain America if new generations had no knew leaders to inspire them with original ideas of our Republic? Until then, the truth and terrible costs of America's revolution could always be seen—in Lincoln's words—''in the form of a husband, a father, a son or a brother. . . . A living history was to be found in every family . . . in the limbs mangled, [and] in the scars of wounds received . . . ''

Lincoln went on to say:

> But those histories are gone. They were the pillars of liberty; and now that they have crumbled away, that temple must fall—unless we, their descendants, supply their place with other pillars.

I would like to think that Lincoln would be relieved if he could see this great Nation today. We are 170 years further removed from our Founders than we were when the young Lincoln spoke those words at the Lyceum, but America is still filled with patriots who know and are willing to defend our founding principles. There are many of us, and we are vastly more diverse than the Americans of Lincoln's time, but there is still in us a deep and passionate longing to be one nation, one people, undivided.

We saw a glimpse of that desire in the dark days after 9/11. Sometimes we wondered if we could ever recover that sense of national unity and purpose. But look what is happening today. There is a deep longing in America today to transcend old divisions in order to meet our new challenges. It is a longing that goes far beyond political parties and labels of all kinds. We have not forgotten the principles on which our Nation was founded, nor have we forgotten the lessons Abraham Lincoln taught us. Our unity is our strength. Together we can overcome any challenge. We can finish the unfinished work of America and become a ''more perfect union.''

MORNING BUSINESS

Mr. DURBIN. 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.

REMEMBERING CONGRESSMAN TOM LANTOS

Mrs. BOXER. Mr. President, California and the entire Nation lost a remarkable leader yesterday with the passing of my friend, Congressman TOM LANTOS.

From his leadership as chairman of the House Committee on Foreign Affairs to his founding of the Congressional Human Rights Caucus, Congressman LANTOS went about his work with a dignity and a seriousness that transcended politics. In a time of bitter divisions, he earned the respect of colleagues from both sides of the aisle.

As a survivor of the Holocaust, Congressman LANTOS brought to Congress a profound personal commitment to human rights. We will remember not only his courage and his optimism, but also his deep affection for his adopted country. He leaves behind a legacy of hope and inspiration.

On a personal level, it was an honor to call TOM a colleague and a friend. I was proud to work with him on so many important issues.

I remember working with him to secure funding to build a tunnel to bypass a section of Route 1 that was so frequently closed by landslides that it was known as ''Devil's Slide.'' It took years, but they broke ground on the tunnel in November. And it is a fitting tribute to the passion with which he served his constituents that there is a bill before the State senate to name that tunnel in his honor.

Congressman LANTOS was a true statesman, and we will miss him. My heart goes out to his family during this time of grief. They are in our thoughts and in our prayers.

APPROPRIATIONS EARMARKS

Mr. SPECTER. Mr. President, on October 23, 2007, Senator DEMINT and I

had a debate in the Senate on Senator DEMINT's amendment to strike $3.7 million in grants in the Appropriations bill for Labor, Health and Human Services and Education with $2.2 million going to the AFL–CIO Appalachian Council and $1.5 million to the AFL-CIO Working for America Institute. This funding applied to job-training programs covering some 11 States and the District of Columbia.

During the course of the debate, Senator DEMINT made the following statement:

This amendment is part of an effort to clear up what a lot of us have called the culture of corruption over the last several years. A lot of this has come from Americans connecting the dots between the earmarks that we give to our favorite causes back home and many of the campaign contributions and political support that we get back here in Congress. While motivations are generally good, at best the appearance of what is going on here has alarmed the American people.

When I outlined my reasons for supporting these grants, Senator DEMINT replied:

I agree with all the purposes the Senator stated, all of the ideas of getting teenagers to work in Philadelphia. All of those things are good. I am not taking argument with any of them. If the AFL–CIO is the best source to deliver these services, there should not be any problem with this at all. All we are asking is to make this a competitive grant so that we can have criteria and accountability in a system so that what we want to accomplish will actually get accomplished.

Senator DEMINT's amendment was rejected on a 60–34 vote.

After the floor debate and vote were over, Senator DEMINT and I discussed the issues in the debate. Senator DEMINT stated that he was not suggesting any corrupt practice or inappropriate conduct by me, but only that it was preferable to use the funds for competitive bids. Senator DEMINT and I agreed that it would be useful to correct any misimpressions by having this colloquy for the RECORD.

Mr. DEMINT. Senator SPECTER has correctly stated the conversation which we had after the floor debate and we agreed it would be useful to have this discussion to clear up the record. As I told Senator SPECTER privately and now state publicly, I was in no way suggesting that his support for these programs resulted from campaign contributions or political support. My reference to the ''culture of corruption'' was not intended to suggest that there was any corruption involved in this matter. In my statement, I was specific in not suggesting inappropriate motivations when I said ''motivations are generally good.'' I was also careful to focus on the ''appearance'' and not the reality by noting it ''has alarmed the American people.'' As many know, my objection to earmarks has to do with the system itself, not the people who participate in it. While Senator SPECTER and I naturally have differences on issues of public policy, which is to be expected in an institution like the Senate, I have worked with him during my tenure in the Senate of more than 3 years and do not question his integrity.

Mr. SPECTER. I thank Senator DEMINT for his candid and forceful statements which I think clear the record.

HONORING OUR ARMED FORCES

STAFF SERGEANT CHAD A. BARRETT

Mr. SALAZAR. Mr. President, I rise today to honor the service and sacrifice of SSG Chad Barrett. Sergeant Barrett was assigned to the 64th Brigade Support Battalion, 3rd Brigade Combat Team, 4th Infantry Division out of Fort Carson, CO. He died last Saturday in Iraq at the age of 35.

A native of Jonesborough, TN, Chad grew up in a family with a proud history of service. By joining the Army, he followed in the footsteps of his older brothers, his cousins, and his grandfather, who earned the Purple Heart in World War II.

Chad was in his 12th year of service and his third deployment to Iraq when he died. He took on one of the most dangerous jobs of the war: that of a gunner tasked with defending supply convoys. Those convoys see it all: improvised explosive devices, rocket attacks, explosively formed penetrators, ambushes. Protecting the convoys is a job that takes courage, but it also takes a toll. In his second deployment, Sergeant Barrett's unit was attacked 42 times. He put himself in harm's way and no doubt saved countless lives, but each day, each mission, and each fight has a cost that we often forget. However steely one's nerves or how strong one's will, the daily sacrifices of our soldiers do cause wounds and injuries of their own. These wounds are sometimes less visible than those of a bullet or a blast, but they are no less painful and certainly no less deadly.

Mr. President, the daily heroics of Chad's service in Iraq will be remembered long after the words from this floor fade. This was a lesson of our 16th President, Abraham Lincoln, as he honored the tens of thousands who perished at Gettysburg. ''The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced.'' As we honor the life of Sergeant Barrett, may we embrace this charge and rededicate ourselves to our unfinished work and to the dream for which every soldier serves—that of achieving stable and lasting peace.

To Sergeant Barrett's wife, Michelle, his sons, Guston and Zachary, his parents, Linda and Ronnie, and to all his family and friends, our thoughts and prayers are with you. I cannot imagine the pain and grief that you are feeling. In time, though, I hope your sorrow will be salved by the knowledge that Chad served his country with honor and that we are all grateful for his courage, sacrifice, and daily heroism. May his legacy always endure.

ADDITIONAL STATEMENTS

REMEMBERING LANCE CORPORAL JOHNATHON GOFFRED

• Mr. BAYH. Mr. President, with a heavy heart and deep sense of gratitude, I wish to honor the life of a brave soldier. LCpl Johnathon Goffred, 22 years old, died unexpectedly on January 26 in Camp Pendleton, CA. Johnathon was a dedicated soldier, loving son, grandson and brother, and a valued friend to many.

Johnathan grew up in Johnson County, IN, with his paternal grandparents, Walter and MaryAnn Sparrow. He graduated from Center Grove High School in Greenwood in 2003, where he was active in sports and assisted the Center Grove Little League. It was his dream to become an Indiana State Police trooper.

In 2005, Johnathon joined the Marines where he was a rifleman with the 3rd Battalion, 1st Marine Regiment. Johnathon served a 7-month tour of duty in the Anbar province of Iraq, returning in 2007. For his excellent service, Johnathan was awarded the Global War on Terrorism Service Medal, the Iraqi Campaign Medal, the National Defense Service Medal, and a Sea Service Deployment Ribbon. His comrades remember him as a devoted friend who was generous with all he had. One of his fellow servicemen described him as the type of person who would give you the shirt off his back if you needed it.

Johnathan is survived by his mother, Angie Martin Goffred; his paternal grandparents, Walter and MaryAnn Sparrow; his maternal grandfather, Bill Goffred; his seven brothers, Dale, Shawn, Nick, Tom, Wes and Kragen Sparrow and Michael Paul; and his eight sisters, Tina Seril, Mellisa, Keria, Keisa, Quinci, Brianna, Shannon and Masada Sparrow.

Today, I join Johnathon's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and kindness that people will remember when they think of Johnathon. Today and always, Johnathan will be remembered by family members, friends, and fellow soldiers as a true American hero, and we honor his service to our country.

It is my sad duty to enter the name of LCpl Johnathon Goffred in the official RECORD of the Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Johnathon's can find comfort in

the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Johnathon.●

RETIREMENT OF DARRELL KERBY

● Mr. CRAPO. Mr. President, good mayors are those who leave the communities, citizens, and environment of the towns they have led in better condition than when they were first elected. An exceptional mayor is one who imparts a vision of what the community could be and works with the members of his or her community and outside interests to achieve that vision. There are examples of this across my State of Idaho, and the outgoing mayor of Bonners Ferry, Darrell Kerby, is one such remarkable example.

Darrell is retiring from public service after serving the citizens of Bonners Ferry for over 20 years, first on the city council and most recently as mayor. He is known to city employees and the public as a man of outstanding character, courtesy, kindness, and confidence. His leadership has been marked by a penchant for conviction tempered in small-town graciousness. He was at the helm in 2003 when Bonners Ferry was selected as Idaho's Most Friendly Town by travelers and tourists. He was instrumental in the revitalization of downtown Bonners Ferry through the construction of the tunnel connecting the downtown business area to the Kootenai River Inn. He promoted the construction of the International Gateway Visitors Center, improved parking in the downtown business district, secured improvements to and expansion of the city water system that included obtaining a critical Federal grant, led improvements to the city powerplant, and fueled positive city growth.

Darrell's participation in the community extends beyond his mayoral office. He has served or serves on the Boundary Regional Health Center Board of Directors, the Idaho Board of Health & Welfare, the Association of Idaho Cities, the Idaho Energy Resources Authority, the Boundary County Economic Development Committee, and the Kootenai Valley Resource Initiative Committee, a collaborative effort that I have been pleased to work with him on over the years. Speaking of the Kootenai Valley Resource Initiative, Darrell has been instrumental in keeping my staff informed and involved as the stakeholders involved work to collaboratively manage the natural resources of the Kootenai Valley and begin restoration work on the Myrtle Creek Watershed after the devastating fire in 2003.

Darrell received the Harold Hurst Award in 2007 for exemplary performance by a city official and has contributed in an outstanding manner to the accomplishments of the Association of Idaho Cities.

I wish Darrell well in his retirement and thank him for his exemplary years of public service. The residents of Bonners Ferry and Boundary County, as well as the State of Idaho, have gained immeasurably from Darrell's efforts and dedication.●

RETIREMENT OF MARK SMITH

● Mr. HARKIN. Mr. President, today I pay tribute to a very special Iowan and a truly exceptional labor leader, Mark Smith. Mark retired earlier this month after serving 28 years in leadership roles in the Iowa Federation of Labor. He served as secretary-treasurer from 1974 until 1997, and as president from 1997 until his retirement. Throughout, he has remained a member of the American Federation of Teachers, Local 716.

Prior to coming to the Iowa Federation of Labor, Mark spent 5 years as an instructor at the University of Iowa's Labor Center, where he taught up-and-coming union leaders about labor law, labor history, communication, leadership, economics, and public policy. Mark may have left the classroom, but he never stopped being a teacher and mentor. He has always believed strongly that to achieve real successes for working families and to advance a progressive public policy agenda, it is critical to train people to organize and advocate for themselves.

Throughout his distinguished tenure as IFL president, Mark was respected for his keen intelligence and his direct, honest, feisty style of doing business. He understood the political system, and how to get things done. He didn't believe in top-down political engagement; he believed in organizing and empowering people at the grass roots to fight for a brighter future—and to win.

Mark is a proud progressive, with a passion for economic and social justice. He is also a passionate believer in bringing people together in collective action, whether in the political arena, at the bargaining table, or in the community. He has devoted his life to building stronger unions because he believes that they are an ideal vehicle for effecting positive change for ordinary people.

For many years, I have counted on Mark for his friendship, counsel, and support—and that will not change. But his retirement is a tremendous loss for working families and for the labor movement in Iowa. In the Bible, it says that ''if the trumpet gives an uncertain sound, who will prepare himself for battle?'' For more than a decade as president of the Iowa Federation of Labor, there has been nothing uncertain about Mark Smith's trumpet. He has been a great labor leader, and a strong, unwavering voice for progressive change. I wish him a long and happy retirement with his family, including wife Marty, daughter Christine, sons Michael and Erich, and grandson Isaiah.●

TRIBUTE TO DENNIS SWANSON

● Mr. LIEBERMAN. Mr. President, today I wish a happy 70th birthday to Mr. Dennis Swanson, a kind and generous man who has been one of the leading innovators in television broadcasting over the last 30 years.

Mr. Swanson, who currently serves as president of stations operations at FOX Television Stations, Inc., has been called a ''mastermind'' of the broadcast industry. It is high praise, and very well deserved. With keen foresight, tremendous business acumen, and a willingness to take chances, Swanson has improved the fortunes of every station he has worked for. Most importantly, he did this not by offering viewers programs that appealed to the lowest common denominator, but instead he developed creative, high-quality programming that appealed to the needs of the stations' communities.

In 1976, Swanson was hired as executive producer of KABC, Los Angeles' ABC affiliate. At that time, the station had never finished higher than third in local news ratings, and Swanson saw that the station needed to do something to offers its viewers a new perspective. In 1977, with the debate over Proposition 13 raging throughout California, Swanson invited the measure's author, Howard Jarvis, to come on the 5 p.m. newscast and debate the measure's opponents every day for a month. In addition, Swanson worked hard to improve the quality of the station's reporting. These efforts paid off when in 1978 he was awarded the George Foster Peabody Award, the most prestigious award in broadcasting, for KABC's reporting on the Los Angeles Police Department. KABC became the No. 1 station in the region, and Swanson was promoted to station manager in 1981.

In 1983, Swanson was asked to take over WLS–TV, an ABC owned and operated station in Chicago with low ratings. It is here that Swanson made perhaps the best broadcasting decision of his career and one that reveals his strong character. Impressed by her audition, Swanson offered a morning show to a woman from Baltimore with a unique name. As Swanson recalled years later, Oprah Winfrey wasn't sure she was ready for such a job. She was concerned that her color and appearance would prevent her from winning over viewers. Swanson would have none of that, ''I'm not in the color business,'' he told her. He assured her that he didn't want her to change her appearance, but to simply ''be the person I saw audition.''

As we all know, the decision to hire Oprah was an unqualified success, rocketing WLS to the top of the Chicago market and eventually reaping billions in revenues for ABC. It also launched the career of one of the most influential and inspirational figures in America today.

In 1986, Swanson moved to New York to take the helm at ABC Sports. During his tenure, ABC's top sports program, ''Monday Night Football,'' became one of America's top-rated primetime programs, consistently ranking in the top-10 highest rated shows. He also pulled one of the most remarkable developments in sports programming history when he convinced the International Olympic Committee to stagger its winter and summer games so the Olympics would occur every other year. This decision has been credited with keeping the public interested in the games and promoting the Olympics' message of sportsmanship and friendly competition. Additionally, Swanson was integral in the development of the Bowl Championship Series, an agreement between the four major college football bowl games that allows for the top two teams to play for the national championship at the end of each year.

In 1996, Swanson went to work as general manager for WNBC, NBC's flagship station in New York. The station was running second to longtime market leader WABC–TV, but needed a creative spark to put it over the top. As he had done in L.A. and Chicago, Swanson focused on providing viewers with high-quality community programming. He convinced network executives to broadcast the Christmas tree lighting at Rockefeller Center live during prime time. It was a huge hit. True to form, the station under Swanson broadcast other community events, such as the St. Patrick's Day Parade and the Puerto Rican Pride day parade, ensuring that many New Yorkers who were unable to attend the parades could still feel like part of the festivities. When Swanson left WNBC in 2002, the station, like those he left in Chicago and Los Angeles, was the ratings leader for its market.

After leaving WNBC, Swanson served as executive vice president and chief operating officer of Viacom Television Stations, Inc., where he oversaw 39 television stations throughout the country. While his tenure there was brief, having left for FOX in 2005, at the time of his departure Viacom's stations in New York and L.A. were increasing in market share, as were several stations in smaller markets. He now is in charge of FOX's 35 local television stations.

For all the success he has had, focusing solely on Mr. Swanson's professional success doesn't even allow one to scratch the surface of his rich life. Far from the apocryphal career-obsessed television executive of popular lore, for him serving the community was not just a strategy for increasing television ratings but a way of life. He has served on the boards and advisory committees of various organizations, including the Broadway Association, Inc., the National Academy of Television Arts and Sciences, the Committee for Hispanic Children and Families, Inc, and the Ireland-United States Council for Commerce and Industry. He has also been active in efforts to promote minority voices in the media, serving as chairman of the Emma L. Bowen Foundation for Minority Interests in the Media since its founding in 1991.

Those who know him best say Mr. Swanson has two passions: his family and the U.S. Marine Corps. Having served in the Marines as an officer in the early 1960s, he often credits the corps with helping make him the man he is today. He has given back, raising millions for the Marine Corps Scholarship Foundation and the Intrepid Fallen Heroes Fund.

But first and foremost for Mr. Swanson is his family. Despite his busy schedule, he strives to spend as much time as possible with Kathy, his wife of 46 years, their three children and nine grandchildren. He makes it a point to be with them for every holiday and special event. All of his grandchildren have their grandfather attend their events, whether they are hockey games in Connecticut at 6 a.m. or theatrical plays and lacrosse games in northern Virginia or ballets and soccer games in southern California; Dennis is always there for them

When looking upon all that Mr. Swanson has accomplished both professionally and personally, it is difficult to imagine that there is more that he can do. Yet his dedication and creativity have proven resilient over the years, so one can only expect bigger and better things from him. I look forward to seeing what kind of new and innovative ideas he develops in the future.

Happy birthday, Dennis Swanson. May your 70th year be your best one yet.●

TRIBUTE TO LOUIE KROGMAN

● Mr. THUNE. Mr. President, today I honor Louie Krogman from White River, SD. On December 20, 2007, Louie scored his 2,826th point to become South Dakota's all-time leading boys basketball scorer.

Louie broke the former record of 2,825 points when he sank a free throw in the first half of White River's game against Pine Ridge during the Lakota Nation Invitational Tournament in Rapid City, SD. The 5,000 fans in attendance rose to their feet and honored him with a standing ovation. Before the game continued, the Lakota Nation honored Louie with a Lakota name and serenaded him with a Lakota honor song while he donned a traditional Native quilt. When the game resumed, Louie continued his dominance and led the Tigers to a decisive victory. Louie broke the 50-year-old record notably early in the 2007–2008 season, which leaves him plenty of time to continue to build on an amazing high school career.

This prestigious achievement is a direct result of the hard work and dedication that Louie has demonstrated throughout his career at White River High School. During his career, Louie was twice selected to the all-state basketball first team, named all-conference first team four times, named the Argus Leader player of the year, and chosen for the State ''B'' Tournament All-Tourney team. Through his hard work, leadership, athletic abilities, and a great supporting cast Louie has helped the Tigers become one of South Dakota's top basketball teams.

Mr. President, it gives me great honor today, along with Louie's friends, family, and the State of South Dakota, to congratulate him on this impressive accomplishment.●

TRIBUTE TO DON MEYER

● Mr. THUNE. Mr. President, today I honor Don Meyer, the head men's basketball coach at Northern State University, NSU, in Aberdeen, SD. Coach Meyer recently won his 880th coaching career victory and currently has the most wins of any active coach in men's basketball. This accomplishment places Coach Meyer in second place on the collegiate all-time win list, trailing only Bobby Knight.

Coach Meyer began coaching at NSU in 1999 and has led the Wolves to 178 victories. Prior to coming to Aberdeen, he coached for 24 seasons at David Lipscomb University in Nashville, TN, and three seasons at Hamline University in Minneapolis, MN.

Despite his many accomplishments, Don Meyer has remained extremely humble. He is always quick to praise his assistant coaches, players, and fans for the invaluable role they play in his accomplishments. This humility has earned him the respect and admiration of his players. His excellent example of leadership and teamwork has even inspired one of his former players to write a book chronicling his time playing for Coach Meyer.

Coach Meyer is truly an example of the dedication and inspiration that is found in South Dakota's coaches. He has given the young people of South Dakota a fine example of what it means to be leader both on and off the court. On behalf of the State of South Dakota, I am proud to commend Coach Meyer on this impressive accomplishment and wish him and the Wolves all the best for their continued success.●

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

The President pro tempore (Mr. BYRD) announced that on today, February 12, 2008, he had signed the following enrolled bill, which had previously been signed by the Speaker of the House:

H.R. 3541. An act to amend the Do-not-call Implementation Act to eliminate the automatic removal of telephone numbers registered on the Federal ''do-not-call'' registry.

ENROLLED BILL SIGNED

At 5:02 p.m., a message from the House of Representatives, delivered by

Mrs. Cole, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 781. An act to extend the authority of the Federal Trade Commission to collect Do-Not-Call Registry fees to fiscal years after fiscal year 2007.

The enrolled bill was subsequently signed by the President pro tempore (Mr. BYRD).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. McCASKILL (for herself and Mr. BOND):

S. 2622. A bill to designate the facility of the United States Postal Service located at 11001 Dunklin Road in St. Louis, Missouri, as the ''William 'Bill' Clay Post Office''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. NELSON of Nebraska:

S. 2623. A bill to amend title 37, United States Code, to authorize travel and transportation allowances for mobilized members of the reserve components of the Armed Forces on leave for suspension of training or to meet minimal staffing requirements, and for other purposes; to the Committee on Armed Services.

By Mrs. FEINSTEIN (for herself, Mr. SPECTER, Mr. INOUYE, and Mr. DURBIN):

S. 2624. A bill to regulate political robocalls; to the Committee on Rules and Administration.

By Mr. HARKIN:

S. 2625. A bill to ensure that deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts, be excluded from consideration as annual income when determining eligibility for low-income housing programs; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. VOINOVICH (for himself and Mr. BROWN):

S. 2626. A bill to designate the facility of the United States Postal Service located at 160 East Washington Street in Chagrin Falls, Ohio, as the ''Sergeant Michael M. Kashkoush Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ISAKSON (for himself and Mr. CHAMBLISS):

S. Res. 447. A resolution honoring Friendship Force International and recognizing March 1, 2008 as World Friendship Day; to the Committee on the Judiciary.

By Mr. McCONNELL:

S. Res. 448. A resolution making minority party appointments for the 110th Congress; considered and agreed to.

By Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. ISAKSON, Mr. BAUCUS, Mr. COLEMAN, Ms. SNOWE, Mr. STEVENS, Mr. BROWNBACK, Mr. LIEBERMAN, Mrs. DOLE, and Mr. MARTINEZ):

S. Res. 449. A resolution condemning in the strongest possible terms President of Iran Mahmoud Ahmadinejad's statements regarding the State of Israel and the Holocaust and calling for all member States of the United Nations to do the same; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 400

At the request of Mr. SUNUNU, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 400, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to ensure that dependent students who take a medically necessary leave of absence do not lose health insurance coverage, and for other purposes.

S. 430

At the request of Mr. BOND, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 430, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

S. 1577

At the request of Mr. KOHL, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 1577, a bill to amend titles XVIII and XIX of the Social Security Act to require screening, including national criminal history background checks, of direct patient access employees of skilled nursing facilities, nursing facilities, and other long-term care facilities and providers, and to provide for nationwide expansion of the pilot program for national and State background checks on direct patient access employees of long-term care facilities or providers.

S. 1627

At the request of Mrs. LINCOLN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1627, a bill to amend the Internal Revenue Code of 1986 to extend and expand the benefits for businesses operating in empowerment zones, enterprise communities, or renewal communities, and for other purposes.

S. 1734

At the request of Mrs. BOXER, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1734, a bill to provide for prostate cancer imaging research and education.

S. 1738

At the request of Mr. BIDEN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1738, a bill to establish a Special Counsel for Child Exploitation Prevention and Interdiction within the Office of the Deputy Attorney General, to improve the Internet Crimes Against Children Task Force, to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute predators.

S. 1889

At the request of Mr. LAUTENBERG, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1889, a bill to amend title 49, United States Code, to improve railroad safety by reducing accidents and to prevent railroad fatalities, injuries, and hazardous materials releases, and for other purposes.

S. 2059

At the request of Mrs. CLINTON, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2059, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 2119

At the request of Mr. JOHNSON, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 2119, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 2186

At the request of Mr. SMITH, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2186, a bill to permit individuals who are employees of a grantee that is receiving funds under section 330 of the Public Health Service Act to enroll in health insurance coverage provided under the Federal Employees Health Benefits Program.

S. 2279

At the request of Mr. BIDEN, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 2279, a bill to combat international violence against women and girls.

S. 2322

At the request of Mr. CARDIN, the names of the Senator from Alaska (Mr. STEVENS) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of S. 2322, a bill to amend the International Center Act to authorize the lease or sublease of certain property described in such Act to an entity other than a foreign government or international organization if certain conditions are met.

S. 2347

At the request of Mr. OBAMA, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2347, a bill to restore and protect access to discount drug prices for university-based and safety-net clinics.

S. 2389

At the request of Mr. KERRY, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 2389, a bill to amend the Internal Revenue Code of 1986 to increase the alternative minimum tax credit amount for individuals with long-term unused credits for prior year minimum tax liability, and for other purposes.

S. 2433

At the request of Mr. BIDEN, his name was added as a cosponsor of S. 2433, a bill to require the President to develop and implement a comprehensive strategy to further the United States foreign policy objective of promoting the reduction of global poverty, the elimination of extreme global poverty, and the achievement of the Millennium Development Goal of reducing by one-half the proportion of people worldwide, between 1990 and 2015, who live on less than $1 per day.

At the request of Mr. DODD, his name was added as a cosponsor of S. 2433, supra.

S. 2510

At the request of Ms. LANDRIEU, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 2510, a bill to amend the Public Health Service Act to provide revised standards for quality assurance in screening and evaluation of gynecologic cytology preparations, and for other purposes.

S. 2550

At the request of Mrs. HUTCHISON, the names of the Senator from West Virginia (Mr. BYRD), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Ohio (Mr. BROWN) were added as cosponsors of S. 2550, a bill to amend title 38, United States Code, to prohibit the Secretary of Veterans Affairs from collecting certain debts owed to the United States by members of the Armed Forces and veterans who die as a result of an injury incurred or aggravated on active duty in a combat zone, and for other purposes.

S. 2560

At the request of Mr. KERRY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 2560, a bill to create the income security conditions and family supports needed to ensure permanency for the Nation's unaccompanied youth, and for other purposes.

S. 2568

At the request of Mr. KERRY, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 2568, a bill to amend the Outer Continental Shelf Lands Act to prohibit preleasing, leasing, and related activities in the Chukchi and Beaufort Sea Planning Areas unless certain conditions are met.

S. 2569

At the request of Mrs. BOXER, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2569, a bill to amend the Public Health Service Act to authorize the Director of the National Cancer Institute to make grants for the discovery and validation of biomarkers for use in risk stratification for, and the early detection and screening of, ovarian cancer.

S. 2578

At the request of Mr. COLEMAN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 2578, a bill to temporarily delay application of proposed changes to Medicaid payment rules for case management and targeted case management services.

S. 2585

At the request of Mr. HARKIN, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2585, a bill to provide for the enhancement of the suicide prevention programs of the Department of Defense, and for other purposes.

S. 2587

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2587, a bill to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or 2 or more misdemeanors.

S. 2588

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2588, a bill to require that funds awarded to States and political subdivisions for the State Criminal Alien Assistance Program be distributed not later than 120 days after the last day of the annual application period.

S. 2596

At the request of Mr. DEMINT, the names of the Senator from Kentucky (Mr. MCCONNELL) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 2596, a bill to rescind funds appropriated by the Consolidated Appropriations Act, 2008, for the City of Berkeley, California, and any entities located in such city, and to provide that such funds shall be transferred to the Operation and Maintenance, Marine Corps account of the Department of Defense for the purposes of recruiting.

S. 2602

At the request of Mr. SALAZAR, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 2602, a bill to amend the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2008, to terminate the authority of the Secretary of the Treasury to deduct amounts from certain States.

S. RES. 439

At the request of Mr. LUGAR, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. Res. 439, a resolution expressing the strong support of the Senate for the North Atlantic Treaty Organization to enter into a Membership Action Plan with Georgia and Ukraine.

AMENDMENT NO. 3910

At the request of Mr. DURBIN, his name was added as a cosponsor of amendment No. 3910 proposed to S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

AMENDMENT NO. 3912

At the request of Mr. DURBIN, his name was added as a cosponsor of amendment No. 3912 proposed to S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

AMENDMENT NO. 3920

At the request of Mr. BOND, his name was added as a cosponsor of amendment No. 3920 proposed to S. 2248, an original bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

AMENDMENT NO. 3967

At the request of Mr. COBURN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 3967 intended to be proposed to S. 2483, a bill to authorize certain programs and activities in the Forest Service, the Department of the Interior, and the Department of Energy, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Mr. SPECTER, Mr. INOUYE, and Mr. DURBIN):

S. 2624. A bill to regulate political robocalls, to the Committee on Rules and Administration.

Mrs. FEINSTEIN. Mr. President, today I am introducing the Robocall Privacy Act of 2008, cosponsored by my colleagues Senator SPECTER, Senator INOUYE and Senator DURBIN. This is a simple, straight-forward bill that would allow continued political outreach through prerecorded phone messages, but protect American families from being inundated by calls all through the day and night.

In recent years, we have seen an unparalleled development of new technologies that help political candidates reach out to voters.

This is a good thing. Political speech is essential, and should be protected. The vast majority of these technological developments bolster the Democratic process, promoting an interchange of information and ideas.

One of these is the so-called robocall, in which a prerecorded message can be sent out to tens of thousands of voters at a minor cost through computer automation.

With television and radio ads becoming so expensive, these prerecorded calls can play an important role alerting voters to a candidate's position and urging their support at the polls.

A recent Pew Foundation poll found that 80 percent of Iowans in the recent primaries received automated political robocalls. A high level of sophistication goes into these robocalls—they are targeted and specific software dictates who is called, and when.

But the process can be abused. And we all have heard stories about people being called over and over and over again at all hours of the day and night.

I believe this is wrong. Not only is it interfering with the privacy rights of Americans, but it can turn people away from the political process itself.

Commercial calls are already limited by the Federal Trade Commission's ''Do Not Call'' list—with millions of individuals subscribing. But political calls were specifically exempted from that list.

Let me be clear: I am not seeking to eliminate all robocalls. Instead, this legislation is carefully designed to provide some safeguards without halting the practice altogether.

The Robocall Privacy Act of 2008 bans political robocalls to any person from 9 p.m. in the evening and a.m. in the morning.

It also bans more than two political robocalls from each campaign to the same telephone number per day, bans the caller from blocking the ''caller identification'' number, and requires an announcement at the beginning of the call identifying the individual or organization making the call and the fact that it is a pre-recorded message. This is to prevent misinformation about the caller.

The enforcement provisions of this bill are simple and intent on stopping the worst of these calls. The bill creates a civil fine for violators of the law, with additional fines for callers who willfully violate the law.

The bill also allows voters to sue to stop those calls immediately, but not receive money damages. A judge can order violators of the law to stop these abusive calls.

Why are these provisions so important? Let me briefly describe some recent incidents:

Hundreds of robocalls woke voters up at 2 in the morning during a 2007 New York election—because of a software programming error. The calls were supposed to occur at 2 p.m.

In the Nebraska 3rd District Congressional Election, voters complained to candidate Scott Kleeb when they received dozens of calls, containing poor-quality versions of his voice. Kleeb's supporters claim that his voice was recorded, and used in an abusive robocall against him.

In the 2006 Congressional elections, many calls wrongly implied that one candidate was making a robocall. The message began with a recorded voice stating that the call contained information about U.S. Representative MELISSA BEAN. Some voters called BEAN's office to complain without listening to the entire message, which eventually identified an opposing party committee as the sponsor—when most voters had hung up. Representative BEAN had to spend campaign funds informing voters she had not made that call.

The National Do Not Call Network—a nonprofit focused on this issue—has indicated voters receive many calls a day. They have reported as much as 37 political phone calls in one day for one voter. That same organization reports that 40 percent of its membership indicated it received between 5 and 9 calls a day during the election season.

In a recent Texas campaign, a negative robocall was sent to voters early in the morning—supposedly from one of the candidates. That candidate immediately protested it was not done on his behalf—but instead was an attempt to smear him by using his name. Voters became furious at the call.

In a Maryland race in November 2006, in a conservative area residents received a middle-of-the-night robocall from the nonexistent ''Gay and Lesbian Push,'' urging them to support one of the candidates. That candidate lost the election, and enraged voters about the false, late-night call.

Repeated robocalls to Tennessee resident Jonathan Gregory caused him to complain to The Tennessean newspaper: ''It's extremely annoying, and it's like getting telemarketing calls at work. . . . I think they should have some type of limit on how many times they can call the same number.''

A February 1 Letter to the Editor of the Harrisburg Patriot-News, from a woman from East Pennsboro, PA, indicated that she received many political robocalls to her personal cell phone and was billed for each call.

I am a strong supporter of the First Amendment protection for political speech and I want to encourage the free exchange of information about candidates.

But I also believe people should have a right to be protected from the most egregious forms of abuse.

However, the worst of these calls are disturbing people in their homes by forcing them to answer calls and listen again and again. Something must be done.

The bill does not ban robocalls. It merely provides a reasonable framework of tailored time, place, and manner restrictions.

I hope my colleagues join me in supporting the Robocall Privacy Act of 2008.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 447—HONORING FRIENDSHIP FORCE INTERNATIONAL AND RECOGNIZING MARCH 1, 2008 AS WORLD FRIENDSHIP DAY

Mr. ISAKSON (for himself and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 447

Whereas the nonprofit organization Friendship Force International was founded in Atlanta in 1977 to promote international understanding and good will;

Whereas, since 1977, nearly 1,000,000 individuals all over the world have traveled as Friendship Force Citizen Ambassadors or opened their homes as hosts in order to promote international understanding;

Whereas, today, Friendship Force International has more than 35,000 members in 40 States and 58 foreign countries who are building bridges across the cultural barriers that separate people;

Whereas, in order to celebrate on an annual basis its mission to support the cause of peace through international understanding, Friendship Force International has set March 1 of each year as World Friendship Day; and

Whereas Friendship Force International chapters around the world are urging people everywhere to celebrate World Friendship Day on March 1, 2008: Now, therefore, be it

Resolved, That the Senate—

(1) honors Friendship Force International for promoting international understanding and good will in the world; and

(2) recognizes the celebration of World Friendship Day on March 1, 2008, and asks people everywhere to mark and celebrate the day appropriately.

SENATE RESOLUTION 448—MAKING MINORITY PARTY APPOINTMENTS FOR THE 110TH CONGRESS

Mr. MCCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 448

Resolved, That the following be the minority membership on the following committee for the remainder of the 110th Congress, or until their successors are appointed:

Committee on Foreign Relations: Mr. Lugar, Mr. Hagel, Mr. Coleman, Mr. Corker, Mr. Voinovich, Ms. Murkowski, Mr. DeMint, Mr. Isakson, Mr. Vitter, Mr. Barrasso.

SENATE RESOLUTION 449—CONDEMNING IN THE STRONGEST POSSIBLE TERMS PRESIDENT OF IRAN MAHMOUD AHMADINEJAD'S STATEMENTS REGARDING THE STATE OF ISRAEL AND THE HOLOCAUST AND CALLING FOR ALL MEMBER STATES OF THE UNITED NATIONS TO DO THE SAME

Mr. SMITH (for himself, Mr. LAUTENBERG, Mr. ISAKSON, Mr. BAUCUS, Mr. COLEMAN, Ms. SNOWE, Mr. STEVENS, Mr. BROWNBACK, Mr. LIEBERMAN, Mrs. DOLE, and Mr. MARTINEZ) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 449

Whereas President of Iran Mahmoud Ahmadinejad stated on October 26, 2005, that ''The establishment of the Zionist regime was a move by the world oppressor against the Islamic world'';

Whereas President Ahmadinejad stated on October 26, 2005, that ''Anybody who recognizes Israel will burn in the fire of the Islamic nation's fury'';

Whereas President Ahmadinejad stated on October 26, 2005, that ''There is no doubt that the new wave in Palestine will soon wipe off this disgraceful blot from the face of the Islamic world'';

Whereas President Ahmadinejad stated on October 26, 2005, ''Is it possible for us to witness a world without America and Zionism? But you should know that this slogan, this goal, can certainly be achieved'';

Whereas President Ahmadinejad stated on October 26, 2005, that ''The skirmishes in the occupied land are part of a war of destiny. The outcome of hundreds of years of war will be defined in Palestinian land. As the Imam said, Israel must be wiped off the map'';

Whereas President Ahmadinejad stated on December 14, 2005, that ''They have invented a myth that Jews were massacred and place this above God, religions and the prophets'';

Whereas President Ahmadinejad stated on December 14, 2005, that ''If you have burned the Jews, why don't you give a piece of Europe, the United States, Canada or Alaska to Israel. Our question is, if you have committed this huge crime, why should the innocent nation of Palestine pay for this crime?'';

Whereas President Ahmadinejad stated on February 11, 2006, that ''The real Holocaust is what is happening in Palestine where the Zionists avail themselves of the fairy tale of Holocaust as blackmail and justification for killing children and women and making innocent people homeless'';

Whereas President Ahmadinejad stated on February 11, 2006, that ''We ask the West to remove what they created sixty years ago and if they do not listen to our recommendations, then the Palestinian nation and other nations will eventually do this for them'';

Whereas President Ahmadinejad stated on February 11, 2006, ''Remove Israel before it is too late and save yourself from the fury of regional nations'';

Whereas President Ahmadinejad stated on April 15, 2006, that ''Whether you like it or not, the Zionist regime is heading toward annihilation. The Zionist regime is a rotten, dried tree that will be eliminated by one storm'';

Whereas President Ahmadinejad stated on April 24, 2006, that ''We say that this fake regime cannot logically continue to live'';

Whereas President Ahmadinejad stated on May 11, 2006, that ''The West claims that more than six million Jews were killed in World War II and to compensate for that they established and support Israel. If it is true that the Jews were killed in Europe, why should Israel be established in the East, in Palestine?'';

Whereas President Ahmadinejad stated on December 12, 2006, that ''Thanks to people's wishes and God's will the trend for the existence of the Zionist regime is downwards and this is what God has promised and what all nations want . . . Just as the Soviet Union was wiped out and today does not exist, so will the Zionist regime soon be wiped out'';

Whereas President Ahmadinejad stated on June 3, 2007, that ''With God's help, the countdown button for the destruction of the Zionist regime has been pushed by the hands of the children of Lebanon and Palestine . . . By God's will, we will witness the destruction of this regime in the near future'';

Whereas President Ahmadinejad stated on September 12, 2007, that ''We do not accept or officially recognize Israel. They are occupiers and illegitimate''; and

Whereas President Ahmadinejad stated on January 30, 2008, ''I advise you to abandon the filthy Zionist entity which has reached the end of the line. It has lost its reason to be and will sooner or later fall'': Now, therefore, be it

Resolved, That the Senate—

(1) condemns in the strongest possible terms President of Iran Mahmoud Ahmadinejad's hateful and anti-Semitic statements regarding the State of Israel and the Holocaust; and

(2) calls on all member States of the United Nations to publicly condemn President Ahmadinejad's statements as a violation of the principles of both the United Nations Charter and the Universal Declaration of Human Rights.

Mr. SMITH. Mr. President, I rise today with my colleague Senator LAUTENBERG of New Jersey to introduce a resolution condemning the comments made by Iranian President Ahmadinejad on Israel and the Holocaust.

For too long, the civilized world has remained silent while the leader of Iran has threatened Israel's survival and denied the existence of the Holocaust. Since the inception of his term in office in 2005, President Ahmadinejad has continually been the mouthpiece for the vilest, most base examples of anti-Semitism and hate. Standing against this ceaselessly hostile rhetoric and threats, the State of Israel should be afforded the full support of the United States and the international community. President Ahmadinejad's denial of the Holocaust—one of the most appalling crimes against humanity the world has ever known—is likewise unacceptable and outrageous. My colleagues and I condemn these comments in the strongest possible terms, and call for all the civilized nations of the world to do likewise.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4018. Mr. ROCKEFELLER (for himself and Mr. BOND) proposed an amendment to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

TEXT OF AMENDMENTS

SA 4018. Mr. ROCKEFELLER (for himself and Mr. BOND) proposed an amendment to amendment SA 3911 proposed by Mr. ROCKEFELLER (for himself and Mr. BOND) to the bill S. 2248, to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes; as follows:

On page 7, beginning on line 14, strike '', consistent with the requirements of section 101(h) or section 301(4), minimization procedures'' and insert ''minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 8, line 13, strike ''168 hours'' and insert ''7 days''.

On page 26, beginning on line 22, strike ''consistent with the requirements of section 101(h) or section 301(4)'' and insert ''that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 32, line 3, strike ''subsection (2)'' and insert ''subsection (b)''.

On page 35, line 6, strike ''obtained;'' and insert ''obtained,''.

On page 35, line 18, strike ''168 hours'' and insert ''7 days''.

On page 35, line 24, strike ''subsection'' and insert ''section''.

On page 36, line 6, strike ''168 hours'' and insert ''7 days''.

On page 36, line 16, strike ''168-hour'' and insert ''7-day''.

On page 40, beginning on line 16, strike ''consistent with the requirements of section 101(h) or section 301(4)'' and insert ''that meet the definition of minimization procedures under section 101(h) or section 301(4)''.

On page 44, line 15, strike ''clause'' and insert ''subparagraph''.

On page 45, line 15, strike ''obtained;'' and insert ''obtained,''.

On page 46, line 2, strike ''168 hours'' and insert ''7 days''.

On page 46, line 8, strike ''subsection'' and insert ''section''.

On page 46, lines 14 and 15, strike ''168 hours'' and insert ''7 days''.

On page 46, line 24, strike ''168-hour'' and insert ''7-day''.

On page 48, beginning on line 13, strike ''orders under section 704(b) or section 705(b)'' and insert ''orders under section 704(c) or section 705(c)''.

On page 54, beginning on line 22, strike ''during the period such directive was in effect'' and insert ''for information, facilities, or assistance provided during the period such directive was or is in effect''.

On page 60, line 4, strike ''reasonably''.

On page 60, line 5, strike ''determines'' and insert ''reasonably determines''.

On page 60, line 10, strike ''determines'' and insert ''reasonably determines''.

On page 60, lines 20 and 21, strike ''168 hours'' and insert ''7 days''.

On page 61, line 7, strike ''168 hours'' and insert ''7 days''.

On page 65, line 6, strike ''168 hours'' and insert ''7 days''.

On page 65, lines 16 and 17, strike ''168 hours'' and insert ''7 days''.

On page 67, line 2, strike ''168 hours'' and insert ''7 days''.

On page 67, line 4, strike ''168 hours'' and insert ''7 days''.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, February 26, 2008, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of this oversight hearing is to receive testimony on U.S. oil inventory policies, including the Strategic Petroleum Reserve policies.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record may do so by sending it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to *Rosemarie_*Calabro@energy.senate.gov

For further information, please contact Tara Billingsley at (202) 224–4756 or Rosemarie Calabro at (202) 224–5039.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a nomination hearing has been scheduled before the Senate Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, February 27, 2008, at 9:45 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to consider two nominations: Stanley C. Suboleski, of Virginia, to be an Assistant Secretary of Energy (Fossil Energy), vice Jeffrey D. Jarrett, resigned; and, J. Gregory Copeland, of Texas, to be General Counsel of the Department of Energy, vice David R. Hill.

For further information, please contact Sam Fowler at (202) 224–7571 or Rosemarie Calabro at (202) 224–5039.

COMMITTEE ON INDIAN AFFAIRS

Mr. DORGAN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, February 14, at 9:30 a.m. in room 628 of the Dirksen Senate Office Building to conduct an oversight hearing on the President's fiscal year 2009 budget request for tribal programs.

Those wishing additional information may contact the Indian Affairs Committee at (202) 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, February 12, 2008, at 9:30 a.m., in open and closed session to receive testimony on Air Force nuclear security.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate, in order to conduct a hearing entitled: ''Addressing Healthcare Workforce Issues For the Future.''

The hearing will take place on Tuesday, February 12, 2008, at 2:30 p.m. in room 106 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, in order to conduct a hearing entitled ''Judicial Nominations'' on Tuesday, February 12, 2008, at 2:30 p.m., in room SR–301 of the Russell Senate Office Building.

Witness list

James Randal Hall to be United States District Judge for the Southern District of Georgia, Richard H. Honaker to be United States District Judge for the District of Wyoming, Gustavus Adolphus Puryear, IV to be United States District Judge for the Middle District of Tennessee, and Brian Stacy Miller to be United States District Judge for the Eastern District of Arkansas.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 12, 2008, at 2:30 p.m., in order to hold a closed hearing.

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

SUBCOMMITTEE ON CRIME AND DRUGS

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary, Subcommittee on Crime and Drugs, be authorized to meet during the session of the Senate, in order to conduct a hearing entitled ''Federal Cocaine Sentencing Laws: Reforming the 100-to-1 Crack/Powder Disparity'' on Tuesday, February 12, 2008, at 2:30 p.m., in the Dirksen Senate Office Building, room 226.

Witness list

John Richter, United States Attorney, Western District of Oklahoma, U.S. Department of Justice; The Honorable Ricardo H. Hinojosa, Chair, U.S. Sentencing Commission, Washington, DC; The Honorable Reggie B. Walton, United States District Judge, Member, Criminal Law Committee, Federal Judicial Conference, Washington, DC; Nora Volkow, M.D., Director, National Institute on Drug Abuse, U.S. Department of Health & Human Services, Washington, DC; and James Felman, Co-Chair, Sentencing Committee, Criminal Justice Section, American Bar Association.

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

MAKING MINORITY PARTY APPOINTMENTS FOR THE 110TH CONGRESS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 448, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 448) making minority party appointments for the 110th Congress.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DURBIN. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The resolution (S. Res. 448) was agreed to, as follows:

S. RES. 448

Resolved, That the following be the minority membership on the following committee for the remainder of the 110th Congress, or until their successors are appointed:

Committee on Foreign Relations: Mr. Lugar, Mr. Hagel, Mr. Coleman, Mr. Corker, Mr. Voinovich, Ms. Murkowski, Mr. DeMint, Mr. Isakson, Mr. Vitter, Mr. Barrasso.

ORDERS FOR WEDNESDAY, FEBRUARY 13, 2008

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m., Wednesday, February 13; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business with 1 hour of debate only, equally divided, prior to a cloture vote on the conference report to accompanying H.R. 2082, the Intelligence Authorization Act for fiscal year 2008.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. DURBIN. Mr. President, tomorrow, the first vote of the day is expected to occur shortly after 10:30 a.m. on the motion to invoke cloture on the intelligence authorization conference report.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 6:26 p.m., adjourned until Wednesday, February 13, 2008, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

FEDERAL HOSPITAL INSURANCE TRUST FUND

JEFFREY ROBERT BROWN, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS, VICE THOMAS R. SAVING.

FEDERAL INSURANCE TRUST FUNDS

JEFFREY ROBERT BROWN, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS, VICE THOMAS R. SAVING.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

HYEPIN CHRISTINE IM, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 6, 2008, VICE HENRY LOZANO, RESIGNED.

HYEPIN CHRISTINE IM, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING OCTOBER 6, 2013. (REAPPOINTMENT)

LAYSHAE WARD, OF MINNESOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR NATIONAL AND COMMUNITY SERVICE FOR A TERM EXPIRING DECEMBER 27, 2012, VICE MIMI MAGER, TERM EXPIRED.

NATIONAL INSTITUTE FOR LITERACY

PERRI KLASS, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD

FOR A TERM EXPIRING NOVEMBER 25, 2009, VICE WILLIAM T. HILLER, TERM EXPIRED.

KATHERINE MITCHELL, OF ALABAMA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2010, VICE MARK G. YUDOF, RESIGNED.

EDUARDO J. PADRON, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2009, VICE JUAN R. OLIVAREZ, TERM EXPIRED.

ALEXA E. POSNY, OF KANSAS, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2008, VICE CAROL C. GAMBILL, TERM EXPIRED.

TIMOTHY SHANAHAN, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2010. (REAPPOINTMENT)

RICHARD KENNETH WAGNER, OF FLORIDA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2009. (REAPPOINTMENT)

WITHDRAWALS

Executive Message transmitted by the President to the Senate on February 12, 2008 withdrawing from further Senate consideration the following nominations:

WARREN BELL, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR A TERM EXPIRING JANUARY 31, 2012, VICE KENNETH Y. TOMLINSON, RESIGNED, TO WHICH POSITION HE WAS APPOINTED DURING THE LAST RECESS OF THE SENATE, WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

JOHN L. PALMER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

JOHN L. PALMER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

JOHN L. PALMER, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

THOMAS R. SAVING, OF TEXAS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

THOMAS R. SAVING, OF TEXAS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

THOMAS R. SAVING, OF TEXAS, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND THE FEDERAL DISABILITY INSURANCE TRUST FUND FOR A TERM OF FOUR YEARS. (REAPPOINTMENT), WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.

PATRICIA MATHES, OF TEXAS, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM EXPIRING NOVEMBER 25, 2007, VICE MARK G. YUDOF, RESIGNED, WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2007.