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Senate

The Senate met at 10 a.m. and was called to order by the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island.

PRAYER

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

Let us pray.

O God, before Whom the lives of all are exposed and the desires of all known, be at work in our lives. Wipe away selfish interests so that we may perfectly love and truly serve You. Lord, give our lawmakers courage as they face today's challenges, providing them with the necessary skill to perform their duties and accomplish Your purposes. Give them the wisdom to refuse to sow to the wind, thereby risking reaping the whirlwind. May they find joy in both serving and loving You. We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island, 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. LEAHY).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, December 27, 2012.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHELDON WHITEHOUSE, a Senator from the State of Rhode Island, to perform the duties of the Chair.

PATRICK J. LEAHY,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

THE FISCAL CLIFF

Mr. REID. Mr. President, New Years Eve is fast approaching and for decades and decades the American people have watched the ball drop in Times Square. It is the countdown to midnight, the start of a new year.

This year the American people are waiting for the ball to drop, but it is not going to be a good drop because Americans' taxes are moving in the wrong direction. Come the first of this year, Americans will have less income than they have today if we go over the cliff—and it looks as if that is where we are headed. The House of Representatives as we speak, with 4 days left after today to the 1st of the year, is not here, with the Speaker having told them he will give them 48 hours' notice. I can't imagine their consciences. They are out wherever they are around the country and we are here, trying to get something done.

They are not in Washington, DC. The House of Representatives is not here. They could not even get the Republican leadership together yesterday. They had to do it with a teleconference.

If we go over the cliff, we will be left with the knowledge it could have been prevented with a single vote in the Republican-controlled House of Representatives. Prior to this session starting today, the Presiding Officer and I had a conversation about how things have changed around here. I served in the House of Representatives. There are 435 Members of the House. What goes on in this country should not be decided by the majority, it should be decided by the whole House of Representatives. Everyone, including the Speaker of the House of Representatives, knows that if they had brought up the Senate-passed bill that would give relief to everyone making less than $250,000 a year, it would pass overwhelmingly. Every Democrat would vote for it and Republicans would vote for it. But the Speaker, he says: No; we cannot do that. It has to be a majority of the majority. So we have done nothing.

He even tried to bring up the bill last week to show they could defeat it. They could not do that even. They could not defeat the bill that passed in the Senate.

I don't think the American people understand the House of Representatives is not operating as a House of Representatives. It is being operated with a dictatorship of the Speaker not allowing the vast majority of the House of Representatives to get what they want. If the $250,000 threshold would be brought up, it would pass overwhelmingly, I repeat.

On any given day for the last 5 or 6 months, since July 25, Speaker BOEHNER could have brought the Senate-passed middle-class tax cut legislation to a vote in the House and it would have passed. But he has made the decision he is not letting us have a vote on that because if he let it be voted upon, it would pass. I have said it is not too late for the Speaker to take up the Senate-passed bill, but even that time is winding down. Today is Thursday. He is going to give 48 hours' notice to the House before they come back. So 48 hours from today is Saturday. With just that one vote, middle-class families would have the security that taxes would not go up by at least $2,200 on

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

New Year's Day. That is the average. Some would go up more, some less, of course.

Speaker BOEHNER should call Members back to Washington today. He should not have let them go, in fact. They are not here. JOHN BOEHNER seems to care more about keeping his speakership than about keeping the Nation on a firm financial footing. It is obvious what is going on around here. He is waiting until January 3 to get reelected as Speaker before he gets serious with negotiations because he has so many people over there who will not follow what he wants. That is obvious from the debacle that took place last week, and it was a debacle.

He made an offer to the President. The President came back—they are just a little bit apart—and he walked away from that and went to Plan B. All that did is whack people who need help the most—poor people. He could not even pass that. Remember, he is not letting the House of Representatives vote. He is letting the Republicans vote. It was so bad, and he was in such difficult shape there he would not even let a vote take place with his Republicans because he knew he would lose. For months, he has allowed House Republicans to hold middle-class taxpayers hostage to protect the richest 2 percent, and the funny thing about that is the 2 percent do not want to be protected. The majority of people in our great country are willing to pay more. The only people who disagree with that are Republicans who work in this building.

The Speaker just has a few days left to change his mind, but I have to be very honest; I don't know, timewise, how it can happen now. Everyone knows we cannot bring up anything here unless we do it by unanimous consent because the rules have been so worked the last few years that we cannot do anything without 60 votes. There are 53 of us. After the first of the year, there will be 55 of us.

I hope the Speaker and the Republican leader in the Senate would come to us and say here is what we think will work. Let's find out what that could be because the Speaker cannot pass, it seems, much of anything over there. On the Sunday shows they had Republican Senators and they were asked on the FOX network—pretty conservative, and that is probably a gross understatement—would you filibuster the President's bill? They refused to answer. We don't make that decision. We can't answer that. A filibuster is over all our heads.

That is why we have to look seriously next year at changing the rules around here. The bill that has passed the Senate protects 98 percent of families and 97 percent of small businesses. They passed a bill in the House, that we defeated, that extends the tax cuts for everybody. That was voted down over here. The President said he would veto it. So this happy talk—the Republican House leadership said yesterday: Let them take our bill. That bill was brought up and it was defeated.

I repeat, the American people do not agree with the Republicans in the House and Republicans over here. The way to avoid the fiscal cliff has been right in the face of the Republican leaders, both MCCONNELL and BOEHNER, for days and days, going into weeks and months, and it is the only option that is a viable escape route and that is the Senate-passed bill. It would not be hard to pass. I have talked about that at some length. Every Democrat in the House would vote for it, a handful of Republicans would vote for it, and that is all that would be needed. But Grover Norquist is standing in the way of this—not the rich people but Grover Norquist, the man who says what the Republicans can do. I say to the Speaker: Take the escape hatch we have left you. Put the economic fate of the Nation ahead of your own fate as Speaker of the House. Millions of middle-class families are nervously watching and waiting and counting down the moment until their taxes go up. Nothing can move forward in regard to our budget crisis unless Speaker BOEHNER and Leader MCCONNELL are willing to participate in coming up with a bipartisan plan.

Speaker BOEHNER is unwilling to negotiate, we have not heard a word from Leader MCCONNELL, and nothing is happening. Democrats cannot put forward a plan of their own. Without the participation of Leader MCCONNELL and Speaker BOEHNER, nothing can happen on the fiscal cliff and so far they are radio silent.

We are going to work in the next couple of days to get the most important legislation done on FISA. There should be a good debate. We have people who are interested in changing what we have on the floor. There have been a series of amendments on trying to change FISA—the espionage legislation that guides this country. It should be a good debate.

We have to finish the supplemental appropriations bill that is so important for the people in the Northeast. We have a lot to do. There could be as many as 28 votes in the next few days. We are in Washington working while the Members of the House of Representatives are out watching movies, watching their kids play soccer and basketball and doing all kinds of things. They should be here. They should be here urging the Speaker: Let's bring up the $250,000 bill. Let's not have middle-class Americans and small businesses get hurt.

What is the business?

RESERVATION OF LEADER TIME

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

FISA AMENDMENTS ACT REAUTHORIZATION ACT OF 2012

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to consideration of H.R. 5949, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5949) to extend the FISA Amendments Act of 2008 for five years.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oregon, Mr. WYDEN, is recognized.

Mr. WYDEN. Mr. President, I thank Leader REID for the honor of being able to open this morning's debate. I also wish to particularly identify with a point the leader made. There is an old saying that most of life is just showing up. I think what the American people want—I heard this at checkout lines in our local stores, for example, this week—they want everybody back in Washington and going to work on this issue, just as the leader suggested.

I think Senators know I am a charter member of what I guess you could call the optimist caucus in the Senate. As improbable as some of these talking heads say on TV that it is, I still think we ought to be here, just as the leader said, working on this issue because of the consequences.

Mr. REID. Mr. President, will my friend yield for a question?

Mr. WYDEN. I would be happy to yield to the majority leader.

Mr. REID. The distinguished Senator from Oregon and I served together in the House of Representatives. Does the Senator remember the days when the House voted not as a majority but as a body to come up with how legislation should be given to the American people? Does my friend remember that?

Mr. WYDEN. I do. The leader is being logical, and Heaven forbid that sometimes logic break out on some of these matters. I remember when we started out—and I joked that I had a full head of hair and rugged good looks—the majority leader and I used to work with people on both sides of the aisle. We would try to show up early, go home late, and, as the leader said, focus on getting some results. I thank the leader for his point and again for the honor of being able to start this discussion.

As I indicated, what I heard at home is that we are supposed to be here and try to find some common ground. I know the talking heads on TV say this is impossible and it cannot be done. First of all, as the majority leader said, this has been done in the past. When there are big issues and big challenges, historically the Congress will come together and deal with it.

I am particularly concerned about some of the effects going over the cliff will have on vulnerable senior citizens. As the Presiding Officer knows, that is my background. We have often talked about health care and seniors. My background was serving as codirector of the Oregon Gray Panthers. If the reimbursement system for Medicare, in

effect, goes over this cliff, that is going to reduce access to health care for senior citizens across the country, and I don't believe there are Democrats and Republicans who want that to happen.

As the majority leader indicated, finding some common ground on this issue and backing our country away from the fiscal cliff is hugely important and crucial to the well-being of our country. I just wanted to start with those remarks.

Also crucial to our country is the legislation before the Senate right now. Its name is a real mouthful.

Mr. President, I think you will recall this legislation from your days serving on the Senate Select Committee on Intelligence. The name of this is the Foreign Intelligence Surveillance Act Amendments Act. It also expires in a few days. Our job is to find a way to strike the best possible balance between protecting our country from threats from overseas and safeguarding the individual liberties of the law-abiding Americans we have cherished in this country for literally hundreds of years. This task of balancing security and liberty was one of the most important tasks defined by the Founding Fathers years and years ago, and it is no less important for the Congress today.

As I indicated earlier, the majority leader, Leader REID, has accorded me the honor of beginning this debate. I will open with a very short explanation of what the FISA Amendments Act is all about. Of course, this is an extension of the law that was passed in 2008. It is a major surveillance law, and it is the successor to the warrantless wiretapping program that operated under the Bush administration, which gave the government new authorities to collect the communications of foreigners outside the United States. The bill before the Senate today would extend this law for another 5 years.

There is going to be a discussion of various issues, but all of them go to what I call the constitutional teetertotter, which is basically balancing security, protecting our country at a dangerous time, and the individual liberties that are so important to all of us. I expect there will be amendments to strengthen protections for the privacy of law-abiding Americans.

I want to say to my colleagues and those who are listening that this is likely to be the only floor debate the Senate has on this law encompassing literally a 9-year period—from 2008 to 2017. So if we are talking about surveillance authority that essentially looks to a 9-year period, we ought to have an important discussion about it, and that is why I am grateful to the majority leader for making today's discussion possible.

I have served on the Senate Intelligence Committee for 12 years now, and I can tell every Member of this body that those who work in the intelligence community are hard-working and patriotic men and women. They give up an awful lot of evenings, weekends, and vacations to try to protect the well-being and security of our country. For example, we hear a lot about a well-publicized event, such as their enormously valuable role in apprehending bin Laden. What we don't hear about is the incredible work they do day in and day out. They work hard to gather intelligence, and I commend them for it as we begin this discussion.

The job of those who work in the intelligence community is to follow whatever laws Congress lays down as those hard-working men and women collect intelligence. Our job here in the Congress is to make sure the laws we pass are in line with the vision of the Founding Fathers, which was to protect national security as well as the rights of individual Americans.

We all remember the wonderful comment by Ben Franklin. I will paraphrase it, but essentially Ben Franklin said: If you give up your liberty to have security, you really don't deserve either. We owe it to the hard-working men and women in the intelligence community to work closely with them. We need to find the balance Ben Franklin was talking about, and we can help them by conducting robust oversight over the work that is being done there so members of the public can have confidence in the men and women of the intelligence community. This will give the public the confidence to know that as we protect our security at a dangerous time, we are also protecting the individual liberties of our people.

The story with respect to this debate really begins in early America when the colonists were famously subjected to a lot of taxes by the British Government. The American colonists thought this was unfair because they were not represented in the British Parliament. They argued that if they were not allowed to vote for their own government, then they should not have to pay taxes.

We all remember the renowned rallying cry of the colonists. It was ''no taxation without representation.'' Early revolutionaries engaged in protests against these taxes all over the country. Of course, the most famous of these protests was the Boston Tea Party in which colonists threw shiploads of tea into the Boston Harbor in protest of the tax on tea.

As we recall from our history books, there were a lot of taxes on items such as tea, sugar, paint, and paper. Because so many colonists believed these taxes were unjust, there was a lot of smuggling going on in the American Colonies. People would import things, such as sugar, and simply avoid paying the tax on them.

We all remember that the King of England didn't like this very much. He wanted the colonists to pay taxes whether they were allowed to vote or not. So the English authority began issuing what were essentially general warrants. They were called writs of assistance, and they authorized government officials to enter into any house or building they wanted in order to search for smuggled goods. These officials were not limited to only searching in certain houses, and they were not required to show any evidence that the place they were searching had any smuggled goods in it. Basically, government officials were allowed to say they were looking for smuggled goods and then would search any house they were interested in to see if the house had some of those smuggled goods.

An English authority's goal is to find smuggled goods. Letting constables and customs officers search any house or building is a pretty effective way to go out and find something. If they keep searching enough houses, eventually they will find some smuggled goods in one of them and seize those goods and arrest whoever lives in that house for smuggling. Of course, the problem is that if government officials can search any house they want, they are going to search through the houses of a lot of people who have not broken any laws.

Mr. President, it is almost as if you decided you were going to search everybody in your State of Rhode Island. You could go in and turn them all upside down, shake them, and see if anything fell out. Obviously, you would find some people who had some things in their possession that they should not have, but that is not the way we do it in America. In America, there has to be probable cause in order to do something like that.

The American colonists had a huge problem with the idea that everybody's house was going to be checked for smuggled goods on the prospect that maybe somebody somewhere had engaged in smuggling. The colonists said it is not OK to go around invading people's privacy unless there is some specific evidence that they have done something wrong. That is how people in Rhode Island and Oregon feel today. One cannot just go out and check everybody in sight on the prospect that maybe there is someone who has done something wrong.

Back in the colonists' time, the law said that these writs of assistance were good until the King died. So when King George II died and the authorities had to get new writs, many colonists tried to challenge them in court.

In Boston, James Otis denounced this mass invasion of privacy by reminding the court that—and we remember this wonderful comment—a man's house is his castle. Mr. Otis described the writs of assistance as the power that places the liberty of every man in the hands of every petty officer. Unfortunately, the court ruled that these general orders permitting mass searches without individual suspicion were legal, and English authorities continued to use them. The fact that English officials went around invading people's privacy without any specific evidence against them was one of the fundamental complaints the American colonists had against the British Government. So naturally our Founding Fathers, with

the wisdom they showed on so many matters, made it clear they wanted to address this particular complaint when they wrote the Bill of Rights.

The Bill of Rights ensures that strong protections of individual freedom would be included within our Constitution itself, and the Founding Fathers included strong protections for personal privacy in the fourth amendment. The fourth amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be searched.

This was a direct rejection of the authority the British had claimed to have when they ruled the American Colonies.

The Founding Fathers said our government does not have the right to search any house that government officials want to search even if it helps them to do their job. Government officials may only search someone's house if they have evidence that someone is breaking the law and they show the evidence to a judge to get an individual warrant.

For more than 200 years, this fundamental principle has protected Americans' privacy while still allowing our government to enforce the law and to protect public safety.

As time passed and we entered the 20th century, advances in technology—a whole host of technologies—gave government officials the power to invade individual privacy in a whole host of new ways—new ways the Founding Fathers never dreamed of—and all through those days, the Congress and the courts struggled to keep up.

Time and time again Congress and the courts were most successful when they returned to the fundamental principles of the fourth amendment. It is striking. If we look at a lot of the debates we are having today about the Internet—and the Presiding Officer has a great interest in this; we have talked often about it—certainly the Founding Fathers could never have envisioned tweeting and Twitter and the Internet and all of these extraordinary technologies. But what we have seen as technology has continued to bring us this treasure trove of information with all of these spectacular opportunities the Founding Fathers never envisioned is that time and time again the Congress and the courts were most successful when they returned to the fundamental principles of the fourth amendment.

For example, in 1928 the Supreme Court considered a famous case about whether the fourth amendment made it illegal for the government to listen to an individual's phone conversations without a warrant. Once again, dating almost to the precedent about the colonists and smuggling, the 1928 case was about smuggling—specifically, bootlegging. The government argued then that as long as it did the wiretapping remotely without entering an individual's house, the fourth amendment would not apply.

Now, Justice Louis Brandeis wrote what has come to be seen in history as an extraordinary dissent, a brilliant dissent, and he argued that this was all wrong; that the fourth amendment was about preventing the government from invading Americans' privacy regardless of how the government did it.

I am just going to spend a couple of minutes making sure people see how brilliant and farsighted Justice Brandeis was in how his principles—the principles he talked about in 1928—are as valid now as they were then.

Justice Brandeis said:

> When the Fourth and Fifth Amendments were adopted . . . force and violence were then the only means known to man by which a Government could directly effect self-incrimination. . . . Subtler and more far-reaching means of invading privacy have [in effect] now become available to the Government. Discovery and invention have made it possible for the Government . . . to obtain disclosure in court of what is whispered in the closet.

Justice Brandeis goes on to say:

> In the application of a Constitution, our contemplation cannot be only of what has been but of what may be. The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may someday be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home. ''That places the liberty of every man in the hands of every petty officer'' was said by James Otis of much less intrusions than these.

Justice Brandeis goes on to say:

> The principles—

The principles, literally—

> [behind the Fourth Amendment] affect the very essence of constitutional liberty and security. They . . . apply to all invasions on the part of the Government and its employees of the sanctities of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where the right has never been forfeited by his conviction of some public offense.

Justice Brandeis closes this remarkable dissent saying:

> . . . The evil incident to invasion of the privacy of the telephone is far greater than that involved with tampering with the mails. . . . As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wiretapping.

The protection guaranteed by the amendments Justice Brandeis was referring to—the fourth and fifth amendments—is broad in scope.

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans and their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government on the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

Because I have outlined Justice Brandeis's dissent on several issues, I want to make sure those last two sentences are clear.

Justice Brandeis said that the right of the people to be left alone by their government is ''the most comprehensive of rights''—the most comprehensive of rights, said Justice Brandeis—and, he said, ''the right most valued by civilized men.'' And the Justice said that intrusions on individual privacy, ''whatever the means employed, must be deemed a violation of the Fourth Amendment.''

The reason I have outlined Justice Brandeis's views on this issue is that Justice Brandeis's views didn't prevail in 1928. Back in 1928 they thought they were dealing with high-tech surveillance. But suffice it to say that his views were eventually adopted by the full Supreme Court. That is why I believe it is so important that as we look to today's debate—really an opportunity to update the way in which that careful balance, the constitutional teeter-totter: security, well-being of all of us on this side and individual liberties on this side—it is so important to recognize what Justice Brandeis said about the value of getting it right when it comes to liberty, when it comes to individual freedom.

One of the reasons there are amendments being offered by Senators to this legislation at a time when we are dealing with these crucial issues about the fiscal cliff, the question of the budget, taxes, and, as I mentioned, senior citizens being able to see a doctor—those are crucial issues, but this legislation, the FISA Amendments Act, is also a crucial piece of legislation, and that is why Senators will be offering amendments in order to strike the best possible balance between security and liberty.

When the Foreign Intelligence Surveillance Act, which is often known as FISA—Senators and those listening will hear that discussion almost interchangeably; the abbreviated name is FISA—when it was written in 1978, Congress applied Justice Brandeis's principles to intelligence gathering. The Congress, when they wrote the original FISA legislation in 1978, really said that Justice Brandeis got it right with respect to how we ought to gather intelligence. So the original FISA statute stated that if the government wants to collect an American's communications for intelligence purposes, the government must go to a court, show evidence that the American is a terrorist or a spy, and get an individual

warrant. This upheld the same principle the Founding Fathers fought for in the revolution, it is the same principle enshrined in the Bill of Rights, and it said that government officials are not allowed to invade Americans' privacy unless they have specific evidence and an individual warrant.

After 9/11, the Bush administration decided it would seek additional surveillance authorities beyond what was in the original Foreign Intelligence Surveillance Act statute. To our great regret, instead of asking the Congress to change the law, the Bush administration developed a warrantless wiretapping program—let me repeat that, a warrantless wiretapping program—that operated in secret for a number of years. When this became public—as I have said on this floor before, these matters always do become public at some point—when it became clear that the Bush administration had developed this warrantless wiretapping program, there was a huge uproar across the land. I remember how angry many of my constituents were when they learned about the warrantless wiretapping program, and I and a lot of other Senators were very angry as well.

As has the Presiding Officer, I have been on the Intelligence Committee, and I have been a member for 12 years, but the first time I heard about the warrantless wiretapping program—the first time I heard about it—was when I read about it in the newspapers. It was in the New York Times before I, as a member of the Senate Select Committee on Intelligence, knew about it.

There was a very heated debate. Congress passed the FISA Amendments Act of 2008, and that was to replace the warrantless wiretapping program with new authorities for the government to collect the phone calls and e-mails of those believed to be foreigners outside the United States.

The centerpiece of the FISA Amendments Act is a provision that is now section 702 of the FISA statute. Section 702 is the provision that gave the government new authorities to collect the communications of people who are believed to be foreigners outside the United States. This was different than the original FISA statute. Unlike the traditional FISA authorities and unlike law enforcement wiretapping authorities, section 702 of the FISA Amendments Act does not involve obtaining individual warrants. Instead, it allows the government to get what is called a programmatic warrant. It lasts for an entire year and authorizes the government to collect a potentially large number of phone calls and e-mails, with no requirement that the senders or recipients be connected to terrorism, espionage—the threats we are concerned about.

If that sounds familiar, it certainly should. General warrants that allowed government officials to decide whose privacy to invade were the exact sort of abuse that the American colonists protested over and led the Founding Fathers to adopt the fourth amendment in the first place. For this reason, section 702 of the FISA law contains language that is specifically intended to limit the government's ability to use these new authorities to spy on Americans.

Let me emphasize that because that is crucial to this discussion and the amendments that will be offered. It is never OK—never OK—for government officials to use a general warrant to deliberately invade the privacy of a law-abiding American. It was not OK for constables and Customs officials to do it in colonial days, and it is not OK for the National Security Agency to do it today. So if the government is going to use general warrants to collect people's phone calls and e-mails, it is extremely important to ensure that this authority is only used against foreigners overseas and not against law-abiding Americans.

Despite what the Acting President pro tempore and the Senate may have heard, this law does not actually prohibit the government from collecting Americans' phone calls and e-mails without a warrant. The FISA Amendments Act states—and I wish to quote because there have been a lot of inaccuracies and misrepresentations on this—the FISA Amendments Act states that acquisitions made under section 702 may not ''intentionally target'' a specific American and may not ''intentionally acquire'' communications that are ''known at the time of acquisition'' to be wholly domestic.

But the problem with that is, it still leaves a lot of room for circumstances under which Americans' phone calls and e-mails—including purely domestic phone calls and e-mails—could be swept up and reviewed without a warrant. This can happen if the government did not know someone is American or if the government made a technical error or if the American was talking to a foreigner, even if that conversation was entirely legitimate.

I am not talking about some hypothetical situation. The FISA Court, in response to a concern I and others have had, has already ruled at least once that collection carried out by the government under the FISA Amendments Act violated the fourth amendment to the Constitution. Senate rules regarding classified information prevent me from discussing the details of that ruling or how many Americans were affected, over what period of time, but this fact alone clearly demonstrates the impact of this law on Americans' privacy has been real and it is not hypothetical.

When the Congress passed the FISA Amendments Act 4 years ago, it included an expiration date. The point of the expiration date was to ensure that Congress could review these authorities closely and the Congress could decide whether protections for Americans' privacy are adequate or whether they need to be modified.

Again, go back to what I have described as the constitutional teetertotter—our job: balance the need of the government to collect information, particularly with respect to what can be threats coming from overseas, with the right of individual Americans to be left alone. It is that balance we are discussing. If the Congress finds it is unbalanced, the Congress has a responsibility to step up and figure out how to make the appropriate changes in the law to ensure that both security and privacy are being protected simultaneously.

Unfortunately, the Congress and the public—the American people—do not currently have enough information to adequately evaluate the impact of the law we are debating on Americans' privacy. There are a host of important issues about the law's impact that intelligence officials have simply refused to answer publicly.

I am going to now spend a few minutes outlining the big questions I believe Americans deserve answers to. Certainly, the Congress has to have answers to these questions in order to do our job—our job of doing robust oversight over this law and over intelligence, which, as I said a bit ago, is exactly what the hard-working men and women in the intelligence community need and deserve in order to do their job in a way that will generate confidence among the American people.

First, if we want to know what kind of impact this law has had on Americans' privacy, we probably want to know roughly how many phone calls and e-mails that are to and from Americans have been swept up by the government under this authority. Senator MARK UDALL, our distinguished colleague from Colorado and a great addition to the Intelligence Committee—he and I began the task of trying to ferret out this information some time ago. Over a year and a half ago, Senator MARK UDALL and I asked the Director of National Intelligence how many Americans have had their communications collected under this law; in effect, swept up by the government under these authorities.

The response was it is ''not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed under the authority of the'' FISA Amendments Act. That is how the government responded to Senator UDALL and me.

If you are a person who does not like the idea of government officials secretly reviewing your phone calls and e-mails, you probably do not find that answer particularly reassuring. But suffice it to say, the situation got worse from there.

In July of this year, I and a tripartisan group of 12 other Senators, including Senator MARK UDALL, our colleague from Utah, Senator MIKE LEE, Senator DURBIN—I am pleased to be joined by Senator MERKLEY, who has been vital in this coalition, this

tripartisan coalition to get the best possible balance between security and liberty—he was a signer of the letter; Senator PAUL of Kentucky, who has also been an outspoken advocate of striking a better balance between privacy and liberty was a signer; Senator COONS, Senator BEGICH, Senator BINGAMAN, Senator TESTER, Senator SANDERS, Senator TOM UDALL, Senator CANTWELL—all of us joined in writing another letter to the Director of National Intelligence asking additional questions about the impact of this law on Americans' privacy.

We asked the Director if he could give us even a rough estimate—just a rough estimate—in other words, there has been discussion both in the press and in the intelligence community: This group of Senators is asking for something impossible. This group of Senators is asking for an exact count of how many Americans are being swept up under this FISA authority, their calls and e-mails reviewed. I wish to emphasize we just said, as a tripartisan group of Senators: We would just like a rough estimate—use any approach they want in terms of giving us an assessment of how many Americans' communications have been swept up in this way. Is it hundreds? Is it hundreds of thousands? Is it millions?

The tripartisan group of Senators basically was just asking for a report, the kind of information that is a prerequisite to doing good oversight. Frankly, I think when we talk about oversight and we cannot even get a rough estimate of how many law-abiding Americans have had their communications swept up under this law, if they do not have that kind of information, oversight—the idea of robust oversight—it ought to be called toothless oversight if they do not have that kind of information.

The Director declined to publicly answer this question. So our tripartisan group and others continued. We asked the Director if anyone else has already done such an estimate. We did not ask about doing anything new. The intelligence community said: Oh, my goodness. It will be so hard to give even a rough estimate. So we said: OK. Just tell us if anyone else has already done such an estimate. The Director declined to publicly answer this question as well.

Right at the heart of this discussion is, if we are serious about doing oversight, the Congress ought to be able to get a straightforward answer to the question: Have any estimates been done already as to whether law-abiding Americans have had their communications swept up under the FISA authority?

Second, if we want to understand this law's impact on Americans' privacy, we probably want to know whether any wholly domestic communications have been collected under the FISA authorities. When we are talking about wholly domestic communications, we are talking about one person in the United States talking to another person who is also in the United States. This law contains a number of safeguards that many people thought would prevent the warrantless collection of wholly domestic U.S. communications, and I think the Congress ought to know whether these safeguards are working.

So our tripartisan group of Senators dug into this issue as well, and we asked the Director back in July if he knew whether any wholly domestic U.S. communications had been collected under the FISA Amendments Act. So here we are talking about wholly domestic communications from one American, for example, in Rhode Island, to another American in the home State of Senator MERKLEY and myself. I am disappointed to say the Director declined to answer this question as well.

Let's contemplate that for a moment. A tripartisan group of Senators—Democrats, Republicans, Independents—asked if the government knew whether any wholly domestic communications had been collected under the FISA law, and the head of the intelligence community declined to publicly provide a simple yes or no response to that question.

That means the FISA Amendments Act involves the government going to a secret court on a yearly basis and getting programmatic warrants to collect people's phone calls and e-mails, with no requirement that these communications actually belong to people involved with terrorism or espionage. This authority is not supposed to be used against Americans, but, in fact, intelligence officials say they do not even know how many American communications they are actually collecting. The fact is, once the government has this pile of communications, which contains an unknown but potentially very large number of Americans' phone calls and e-mails, there are surprisingly few rules about what can be done with it.

For example, there is nothing in the law that prevents government officials from going to that pile of communications and deliberately searching for the phone calls or e-mails of a specific American, even if they do not have any actual evidence that the American is involved in some kind of wrongdoing, some kind of nefarious activity.

Again, if it sounds familiar, it ought to because that is how I began this discussion, talking about these sorts of general warrants that so upset the colonists. General warrants allowing government officials to deliberately intrude on the privacy of individual Americans at their discretion was, as I have outlined this morning, the abuse that led America's Founding Fathers to rise up against the British. They are exactly what the fourth amendment was written to prevent.

If government officials wanted to search an American's house or read their e-mails or listen to their phone calls, they are supposed to show evidence to a judge and get an individual warrant. But this loophole in the law allowed government officials to make an end run around traditional warrant requirements and conduct backdoor searches for American's communications.

Now, let me be clear. If the government has clear evidence that an American is engaged in terrorism, espionage—serious crimes—I think the government ought to be able to read that person's e-mails and listen to that person's phone calls. I believe and have long felt that is an essential part of protecting public safety. But government officials ought to be required to get a warrant. As the Presiding Officer knows, there are even emergency provisions—and I support these strongly as well—that allow for an emergency authorization before you get the warrant, in order to protect the well-being of the American people.

So what we want to know at this point, if you are trying to decide whether the constitutional teeter-totter is being properly balanced or is out of whack, you want to know whether the government has ever taken advantage of this backdoor search loophole and conducted a warrantless search for the phone calls or e-mails of specific Americans. So when the tripartisan group wrote to the Director of National Intelligence, we asked him to state whether the intelligence community has ever deliberately conducted a warrantless search of this nature. The Director declined to respond to this as well—declined to respond to a tripartisan group of Senators simply asking: Has the intelligence community ever deliberately conducted a warrantless search of this nature?

If anybody is kind of keeping score on this, you will notice that the Director refused to publicly answer any of the questions that were asked in our letter. So if you are looking for reassurance that the law is being carried out in a way that respects the privacy of law-abiding American citizens, you will not find it in his response.

I should note that the Director did provide additional responses in a highly classified attachment to his letter. This attachment was so highly classified that I think of the 13 Senators who signed the letter of the tripartisan group, 11 of those 13 Senators do not even have staff who have the requisite security clearance to read it. So naturally that makes it hard for those Senators, let alone the public, to gain a better understanding of the privacy impact of the law.

Several Senators sent the Director a followup letter last month again urging him to provide public answers to what we felt were straightforward questions—really sort of a minimum set of responses that the Congress needs to do oversight. The Director refused that as well.

Intelligence officials do not deny the facts I have outlined this morning.

They still insist they are already protecting innocent Americans' privacy. There is a lot of discussion about how this program is overseen by the secret FISA Court, how the court is charged with ensuring that all of the collections carried out under this program are constitutional.

To respond to those arguments, I would note that under the FISA Amendments Act, the government does not have to get the permission of the FISA Court to read particular e-mails or listen to particular phone calls. The law simply requires the court to review the government's collection and handling procedures on an annual basis. There is no requirement in the law for the court to approve the collection and review of individual communications even if government officials set out to deliberately read the e-mails of an American citizen.

Even when the court reviews the government's collection and handling procedures, it is important to note that the FISA Court's ruling are made entirely in secret. It may seem hard to believe, but the court's rulings that interpret major surveillance law and even the U.S. Constitution in significant ways—these are important judgments—the public has absolutely no idea what the court is actually saying. What that means is that our country is in effect developing a secret body of law so that most Americans have no way of finding out how their laws and their Constitution are being interpreted. That is a big problem. Americans do not expect to know the details of how government agencies collect information, but Americans do expect those agencies to operate within the boundaries of publicly understood law. Americans need and have a right to know how those laws and the Constitution are interpreted so they can ratify the decisions that elected officials make on their behalf. To put it another way, I think we understand that Americans know that intelligence agencies sometimes have to conduct secret operations, but the American people do not expect these agencies to rely on secret law.

I think we understand that the work of the intelligence community is so extraordinarily important. I see the distinguished chair of the committee here. Every member of our committee—every member—feels that it is absolutely critical to protect the sources and methods by which the work of the intelligence community is being done. But we do not expect the public to, in effect, just accept secret law.

When you go to your laptop and you look up a law, it is public. It is public. But what I have described is a growing pattern of secret law that makes it harder for the American people to make judgments about the decisions that are being made by those in the intelligence community. I think that can undermine the confidence the public has in the important work being done by the intelligence community.

If you think back to colonial times, when the British Government was issuing writs of assistance and general warrants, the colonists were at least able to challenge those warrants in open court. So when the courts upheld those writs of assistance, ordinary people could read about the decisions, and people such as James Otis and John Adams could publicly debate whether the law was adequately protecting the privacy of law-abiding individuals. But if the FISA Court were to uphold something like that today, in the age of digital communications and electronic surveillance, it could conceivably pass entirely unnoticed by the public, even by those people whose privacy was being invaded.

Since 2008 other Senators and I have urged the Department of Justice and the intelligence community to establish a regular process for reviewing, redacting, and releasing the opinions of the FISA Court that contain significant interpretation of the law so that members of the public have the opportunity to understand what their government thinks their law and their Constitution actually mean. I am not talking about a need to release every single routine decision made by the court. Obviously, most of the cases that come before the court contain sensitive information about intelligence sources and methods that are appropriate to keep secret.

I do not take a backseat to any Member of this body in terms of protecting the sources and methods of those in the intelligence community doing their important work, but the law itself should never be secret. What Federal courts think the law and the fourth amendment to the Constitution actually mean should never be a secret from the American people, the way it is today.

I am going to wrap up. I see Senator MERKLEY and Senator FEINSTEIN here. I have a couple of additional points.

I was encouraged in 2009 when the Obama administration wrote to Senator ROCKEFELLER and myself to inform us that they would be setting up a process for redacting and releasing those FISA Court opinions that contained significant interpretations of law. Unfortunately, over 3 years later, this process has produced literally zero results. Not a single redacted opinion or summary of FISA Court rulings has been released. I cannot even tell if the administration still intends to fulfill this promise. I often get the feeling they are hoping people will go away and forget that the promise was made in the first place.

I should note, in fairness, that while the administration has so far failed to fulfill this promise, the intelligence community has sometimes been willing to declassify specific information about the FISA Court's rulings in response to requests from myself and other Senators. For example, in response to a request I made this past summer, the intelligence community acknowledged that on at least one occasion—this was an acknowledgement from the intelligence community. The intelligence community acknowledged that at least on one occasion, the FISA Court had ruled that collection carried out by the government under the FISA Amendments Act violated the fourth amendment to the Constitution. I think that is an important point to remember when you hear people saying the law is adequately protecting Americans' privacy.

I would also note that on this point, partially declassified internal reviews of the FISA amendments collection act have noted that certain types of compliance issues continue to occur—continue to occur.

I have two last points. Beyond the fact that the programmatic warrants authorized by the FISA Amendments Act are approved by a secret court, the other thing that intelligence officials cite is that there are ''minimization'' procedures to deal with the issues that those of us who are concerned about privacy rights have raised. This is an odd term, but it simply refers to rules for dealing with information about Americans.

Intelligence officials will tell you that these are pretty much taking care of everything, and if there are not enough privacy protections in the law itself, minimization procedures provide all of the privacy protections any reasonable person could ever want or need. These minimization procedures are classified, so most people are never going to know what they say. As someone who has access to the minimization procedures, I will make it clear that I think they are certainly better than nothing, but there is no way, colleagues, these minimization procedures ought to be a substitute for having strong privacy protections written into the law.

I will close with the reason I feel so strongly about this, which is that senior intelligence officials have sometimes described these handling procedures in misleading ways and make protections for Americans' privacy sound stronger than they actually are. I was particularly disappointed when the Director of NSA did this recently at a large technology conference.

In response to a question about the National Security Agency's surveillance of Americans, General Alexander referenced the FISA Amendments Act and talked in particular about the minimization procedures that applied to the collection of U.S. communications. Understand that this was at a big, open technology conference. General Alexander said that when the NSA sweeps up communications from a ''good guy,'' which I think we all assume is a law-abiding American, the NSA has ''requirements from the FISA court and the Attorney General to minimize that, which means nobody else can see it unless there is a crime that is being committed.'' Now, anybody who hears that phrase says: That

is pretty good. I imagine that is what people in that technology meeting and the conference call wanted to hear. The only problem is that it is not true. It is not true at all. The privacy protections provided by these minimization procedures are simply not as strong as General Alexander made them out to be.

In October, a few months after General Alexander made the comments, Senator UDALL and I wrote him a letter asking him to please correct the record. The first paragraphs of the letter were:

Dear General Alexander:

You spoke recently at a technology convention in Nevada, at which you were asked a question about NSA collection of information about American citizens. In your response, you focused in particular on section 702 of the FISA Amendments Act of 2008, which the Senate will debate later this year. In describing the NSA's collection of communications under the FISA Amendments Act, you discussed rules for handling the communications of U.S. persons.

General Alexander said:

We may, incidentally, in targeting a bad guy hit on somebody [sic] from a good guy, because there's a discussion there. We have requirements from the FISA Court and the Attorney General to minimize that, which means nobody else can see it unless there's a crime that's been committed.

Senator UDALL and I wrote:

We believe that this statement incorrectly characterized the minimization requirements that apply to the NSA's FISA Amendments Act collection, and portrayed privacy protections for Americans' communications as being stronger than they actually are. We urge you to correct this statement, so that Congress and the public can have a debate over the renewal of this law that is informed by at least some accurate information about the impact it has had on Americans' privacy.

General Alexander wrote us back a few weeks later and said that, of course, that is not exactly how minimization procedures work and, of course, the privacy protections aren't as strong as that.

If anyone would like to read his letter, I put it up on my Web site. I don't know why General Alexander described the minimization procedures the way he did. It is possible he misspoke. It is possible he was mistaken. But I certainly would be more sympathetic to these arguments that all these privacy protections are being taken care of if it hadn't taken Senator UDALL and I making a push to get the NSA to correct the record with respect to these minimization procedures. Frankly, I am not sure, if there hadn't been a big push by Senators who had questions about what was said at that technology conference, I am not sure the NSA would have ever corrected what they originally said about minimization.

So minimization procedures are not a bad idea, but the suggestion that we don't need privacy protections written into the law because of them is a bad idea.

Finally, at that conference, General Alexander stated: ''The story that we [the NSA] have millions or hundreds of millions of dossiers on people is absolutely false.''

I have been on the Senate Intelligence Committee for 12 years, and I don't know what the term ''dossier'' means in that context.

So in October, Senator UDALL, a member of the committee, and I asked the Director to clarify that statement. We asked:

Does the NSA collect any type of data at all on 'millions or hundreds of millions of Americans'?

I think that is a pretty straightforward question. If we are asking whether the NSA is doing a good job protecting Americans' privacy, it is one of the most basic questions of all. If General Alexander saw fit, and he was the one who said they don't keep millions of dossiers, General Alexander could have answered our question about whether they were keeping these dossiers with a simple yes or no.

Instead, the Director of the NSA replied that while he appreciated our desire to have responses to the questions on the public record, he would not provide a public answer.

Again, the Director of the NSA said: ''The story that we [the NSA] have millions or hundreds of millions of dossiers on people is absolutely false.''

So two members of the committee asked: ''Does the NSA collect any type of data at all on 'millions or hundreds of millions of Americans,' '' and the Director refused to respond.

At this point, I close by way of saying I believe the FISA Amendments Act has enabled the government to collect useful intelligence information, and my goal is to reform the legislation. The two specific things I want to do are, first, require the intelligence community to provide more information about the impact of the FISA Amendments Act on Americans' privacy and, second, to make improvements to privacy protections so we can readily see where they are most needed.

So there will be several amendments that will be offered. The amendment I will be offering is sponsored by 15 Members of the Senate. It simply says the Director of the National Intelligence Agency should submit a report to the Congress on the privacy impact of the FISA Amendments Act.

This amendment would require the report to state whether any estimate has been done, how many U.S. communications have been collected under the authority, and to provide any estimates that exist. I wish to emphasize this amendment would not require any entity to actually conduct such an estimate. The Director would be required only to provide any estimates that have already been done and, if no estimates exist, the Director could say so.

Additionally, the amendment would require the report to state whether any wholly domestic communications have been collected under the FISA Amendments Act and whether any government agencies have ever conducted any warrantless, backdoor searches. These are straightforward questions, and they are obviously relevant to understanding the scope of the law's impact on privacy.

The report would address General Alexander's confusing statements by requiring the intelligence community to simply state whether the NSA has collected any personally identifiable data on more than 1 million Americans. The Congress and the country deserve an answer to this question as well.

The amendment does not force the declassification of any information. The amendment gives the President full discretion to redact as much information from the public version of the report as he deems appropriate, as long as he tells the Congress why.

To repeat, the amendment doesn't require the intelligence community to conduct a new estimate, and the President would have full discretion to decide whether any information should be made public.

I offer this amendment because I believe every Member of Congress ought to have the answers to these questions. If your constituents are similar to mine and Senator MERKLEY's, they expect us to give government agencies the authority to protect our country and to gather intelligence on important topics, but they also expect us to conduct vigorous oversight on what those agencies are doing.

It is, I guess, a temptation to say: I don't know what is going on, so I will let somebody else look at the privacy issues and go from there. I don't think that is good oversight.

To me, at a minimum, if we don't pass a requirement that we get a rough accounting of whether there has even been an estimate done with respect to how many law-abiding Americans have been swept up under these FISA authorities, my view is that oversight becomes toothless, and that is not what our obligation over these issues is all about.

There will be other important amendments as well. Senator MERKLEY has one that I think is particularly important because it goes to this question of secret laws. Senator LEAHY seeks to promote additional accountability as well with his important amendment. My colleague Senator PAUL will be offering an amendment, an important amendment as well, with respect to reasonable searches and seizures under the fourth amendment.

We obviously have crucial work to do with respect to the fiscal cliff issue in the next few days. We talked earlier when the majority leader was here about the impact of the budget and taxes, senior citizens not being able to see doctors. It is crucial work, and I continue to be part of that optimists caucus in the Senate, believing we can still find some common ground in these last few days on the fiscal cliff and avoid going over the fiscal cliff.

That is crucial work, but striking the right balance between protecting our country and protecting our individual liberties is also important work. For

that reason, I wanted to walk through the history of the FISA Amendments Act this morning, describe why it was so important, particularly for us to get even an accounting.

Remember, this doesn't disrupt any operations in the intelligence community. This is just an accounting of how many law-abiding Americans had their communications swept up under this law. That work is crucial too.

For that reason, I hope that on a bipartisan basis, the amendments will be viewed favorably by the Senate when we begin voting. Thank you for your indulgence for being part of this discussion, presiding in the chair, and with special thanks to the distinguished majority leader who gave me the opportunity to open this discussion about FISA this morning.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I would like to make an opening statement, as the committee chair, on the bill that is before the Senate.

This bill is a simple bill. This is a House bill that extends, reauthorizes the FISA Amendments Act. FISA is the Foreign Intelligence Surveillance Act. The House bill reauthorizes the FISA Amendments Act for 5 years, until December 31, 2017. That is all it does.

Without Senate action, these authorities to collect intelligence expire in 4 days. That is the reason it is the House bill before us, and that is the reason I urge this body to vote no on all amendments and send this reauthorization to the President where it will be signed. If it goes past the 31st, the program will be interrupted.

This is important. Reauthorization of the FISA Amendments Act has the support of the Director of National Security, Jim Clapper; the Attorney General, Eric Holder; and other national security officials who have made clear the importance of this legislation.

Following my remarks, I would like to enter letters into the RECORD from the Attorney General and the Director of National Intelligence, saying this reauthorization is the highest legislative priority of the Intelligence Community.

Let me explain what the expiring provisions of the FISA Amendments Act do. I assume that is agreeable with the President that these letters go into the RECORD following my remarks.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Let me describe what these provisions do and why they are necessary to reauthorize.

What will expire on December 31 is title VII of FISA, which is called the FAA, the FISA Amendments Act. This authorizes the executive branch of the government to go to the FISA Court, which is a special court—and most people don't know this—of 11 Federal District Court judges appointed by the Supreme Court who review government requests for surveillance activities and obtain annual approval for a program to conduct surveillance on non-U.S. persons, in other words, surveillance on individuals who are not U.S. citizens or lawful permanent residents and who are located outside the United States.

Under current law, the Attorney General and the Director of National Intelligence may submit an application to the FISA Court. I call this a program warrant. It identifies the category of foreign persons against whom the government seeks to conduct surveillance. This application is accompanied by targeting and minimization procedures that establish how the government will determine that someone targeted for surveillance is located outside the United States; and, secondly, how it is going to minimize the acquisition and retention of any information concerning U.S. persons who are accidentally caught up in this.

If the FISA Court finds the procedures to be consistent with both law and the fourth amendment, they enter an order authorizing this kind of surveillance for 1 year—and the judges on the FISA Court have found both—and they have authorized the program to continue.

The process that follows allows the intelligence community to collect the communications of international terrorists and other non-U.S. persons who are located outside the country by, for example, acquiring electronic communications such as phone calls and e-mails sent to or from a phone number or an e-mail address known to be used by the person under surveillance.

Without this authority, the intelligence community would need to return to the process of going to the FISA Court in every individual case involving collection directed at a non-U.S. person and to prove in each case there is probable cause to believe the individual is part of or working for a foreign power or a terrorist group.

Now, here is the question: Can the government use section 702 of FISA to target a U.S. person? The answer to that is no. The law specifically prohibits the use of section 702 authorities to direct collection against—that means target—U.S. persons. So no one should think the targets are U.S. persons.

This prohibition is codified in section 702(b), which states that surveillance authorities may not be used—and let me quote the law—''to intentionally target any person known at the time of acquisition to be located in the United States or to intentionally target a United States person reasonably believed to be located outside the United States.''

Now, if the government wants to engage in electronic surveillance targeting a U.S. person for foreign intelligence purposes, it must go back to the FISA Court and it must get a specific order from that court. In an emergency, the surveillance can commence before the court order is issued, but the government still must have probable cause to believe the U.S. person is an agent of a foreign power.

Let me take a few moments to address the principal concerns some of my colleagues have expressed about this legislation, which is the effect this one provision—Section 702—may have on the privacy and civil liberties of U.S. persons. And let me say that 13 members of the Intelligence Committee who have voted in favor of the extension of the FISA Amendments Act—and against previous amendments from Senator WYDEN—do not believe privacy is being eliminated under the law this bill would reauthorize.

As I have discussed, section 702 establishes a framework for the government to acquire foreign intelligence by conducting electronic surveillance on non-U.S. persons who are reasonably believed to be located outside of the United States under a program that is annually approved by the court. The privacy concerns stem from the potential for intelligence collection directed at non-U.S. persons located abroad to result in the incidental collection of or concerning communications of U.S. persons. I understand these concerns, and I would like to explain why I believe the existing provisions are adequate to address them.

First, this section is narrowly tailored to ensure that it may only be used to target non-U.S. persons located abroad. It includes specific prohibitions on targeting U.S. persons or persons inside the United States and prohibitions on engaging in so-called reverse-targeting, which means targeting a non-U.S. person abroad when the real purpose is to obtain their communications with a person inside the United States. That is prohibited.

Anytime the intelligence community is seeking to collect the communications of an American, it has to demonstrate that it has probable cause and get an individual FISA Court order.

Second, Congress recognized at the time this amendments act was enacted that it is simply not possible to collect intelligence on the communications of a person of interest without also collecting information about the people with whom and about whom that person communicates, including, in some cases, non-targeted U.S. persons. The concern was addressed when the FAA was originally drafted. Specifically, in order to protect the privacy and civil liberty of U.S. persons, Congress mandated that for collection conducted under 702, the Attorney General adopt and the FISA Court review and approve procedures that minimize the acquisition, retention, and dissemination of nonpublic information concerning unconsenting U.S. persons.

Third, numerous reports and assessments from the executive branch that I will describe in a moment provide the committee with extensive visibility

into how these minimization procedures work and enable both the Intelligence and the Judiciary Committees to see how these procedures are effective in protecting the privacy and civil liberties of U.S. persons.

Oversight by the legislative, judicial, and executive branch of the government over the past 4 years has been very thorough. There are procedures and requirements in place under current law that provide protection for the privacy and civil liberties of U.S. persons. Those entrusted with the responsibility to collect the oversight, the committees of jurisdiction, the FISA Court, and the executive branch agencies together remain vigilant and continue to review the operations of these agencies.

Let me give a quick summary of the 702 reporting requirements under current law.

They include a semiannual assessment by the Attorney General and the DNI. Every 6 months the AG and the DNI are required to assess compliance with the targeting and minimization procedures and the acquisition guidelines adopted under Section 702. They are both further required to submit each assessment to the FISA Court and the congressional Intelligence and Judiciary Committees.

The inspector general of the Department of Justice and the inspector general of each element of the intelligence community are also authorized review compliance with Section 702. The IGs are required to provide copies of such reviews to the Attorney General, to the Director of National Intelligence, and the congressional Intelligence and Judiciary Committees. So we have the AG reviewing, we have the IGs reviewing, and then we have separate reviews by the agency heads.

The head of each element of the intelligence community must conduct an annual review which includes the following:

First, an accounting of the number of disseminated intelligence reports containing a reference to the U.S. person's identity. As a matter of fact, Members can go into a classified room at the offices of the Senate Intelligence Committee and review these reports. Any Member has access to that review.

Second, an accounting of the number of U.S. 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. Members can review that.

Third, the number of targets who were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed. Members can go in the Intelligence Committee offices and review that.

Fourth, a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess the extent to which acquisitions under 702 acquire communications of U.S. persons, and the results of any such assessment.

So you see, the reporting requirements go on and on.

Then there is a semiannual report. Every 6 months, the AG is required to fully inform the congressional Intelligence and Judiciary Committees concerning the implementation of Title VII of FISA, and there is a whole list of things that must be reviewed and recounted. Then there is a semiannual Attorney General review on FISA. There is also the provision for documents from the FISA Court relating to significant construction or interpretation of FISA.

Mr. President, I ask unanimous consent to have printed in the RECORD this list.

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

SUMMARY OF SECTION 702 REPORTING REQUIREMENTS

Background: The surveillance authorities added to the Foreign Intelligence Surveillance Act (''FISA'') by FISA Amendments Act (''FAA'') enable the government to conduct intelligence collection targeting persons located outside the United States. The FAA provision that receives the most attention is known as ''Section 702,'' which authorizes the government to engage in certain forms of intelligence collection targeting non-U.S. persons located overseas for foreign intelligence purposes with the assistance of U.S.-based electronic communication service providers. This Section 702 collection is approved by the FISA Court on a programmatic basis, without the need for individualized court orders. Instead, the Director of National Intelligence (DNI) and Attorney General (AG) submit annual certifications to the Court for review and approval, which identify categories of non-U.S. person targets located overseas.

Reporting Requirements Relating to Section 702: FISA imposes a series reporting requirements on the AG, DNI, and agencies within the Intelligence Community (IC) that utilize Section 702 authorities. These include, with respect to section 702:

Semiannual AG/DNI Assessments of Section 702. Every six months, the AG and DNI are required to assess compliance with the targeting and minimization procedures and the acquisition guidelines adopted under Section 702. The AG and DNI are further required to submit each assessment to the FISA Court and the congressional intelligence and judiciary committees. Section 702(l)(1) [50 U.S.C. 1881a(l)(1)].

IG Assessments of Section 702. The Inspector General of the Department of Justice and the Inspector General of each element of the intelligence community ''authorized to acquire foreign intelligence information under [Section 702]'' (e.g., the NSA IG) are ''authorized'' to review compliance with the Section 702 targeting and minimization procedures and the acquisition guidelines. Section 702(l)(2)(A) [50 U.S.C. 1881a(l)(2)(A)] (emphasis added).

In addition, the IGs are required to 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'' and ''the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed.'' Section 702(l)(2)(B), (C) [50 U.S.C. 1881a(l)(2)(B), (C)].

Finally, the IGs are required to provide copies of such reviews to the AG, DNI, and the congressional intelligence and judiciary committees. Section 702(l)(2)(D) [50 U.S.C. 1881a(l)(2)(D)].

Annual Reviews by Agency Heads of Section 702. The head of each element of the intelligence community ''conducting an acquisition authorized under [Section 702]'' (e.g., the Director of NSA) are required to conduct annual reviews to ''determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition.'' Among other things, the annual review must include:

(1) ''an accounting of the number of disseminated intelligence reports containing a reference to a United States-person identity;''

(2) ''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;''

(3) ''the number of targets that were later determined to be located in the United States and, to the extent possible, whether communications of such targets were reviewed;'' and

(4) ''a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess . . . the extent to which the acquisitions authorized under [Section 702] acquire the communications of United States persons, and the results of any such assessment.''

The head of each element of the intelligence community that conducts an annual review is also required to use the review to ''evaluate the adequacy of the minimization procedures utilized by such element.''

Finally, the head of each element of the intelligence community that conducts an annual review is required to provide a copy of each review to the FISA Court, AG, DNI, and the congressional intelligence and judiciary committees. Section 702(l)(3) [50 U.S.C. 1881a(l)(3)].

Semiannual AG Report on Title VII. Every 6 months, the AG is required to ''fully inform'' the congressional intelligence and judiciary committees ''concerning the implementation'' of Title VII. This reporting requirement is in addition the semiannual assessment performed under Section 702 and encompasses Section 703 and 704 of Title VII, as well as Section 702. Among other things, each report is required to include:

(1) certifications submitted in accordance with Section 702;

(2) justification for any exercise of the emergency authority contained in Section 702;

(3) directives issued under Section 702;

(4) ''a description of the judicial review during the reporting period . . . including a copy of an order or pleading in connection with such review that contains a significant legal interpretation of the provisions of [Section 702];''

(5) actions taken to challenge or enforce a directive under Section 702;

(6) compliance reviews of acquisitions authorized under Section 702;

(7) a description of any incidents of noncompliance with directives, procedures, or guidelines issued under Section 702; and

(8) the total number of applications made for orders under Sections 703 and 704, as well as the total number of such orders granted, modified; and denied; and the number of AG-

authorized emergency acquisitions under these sections. Section 707 [50 U.S.C. 1881f].

Semiannual AG Report on FISA. Every 6 months, the AG is required to submit a report to the congressional intelligence and judiciary committees concerning the implementation of FISA. This reporting requirement comes in addition to both the Section 702 semiannual assessment and the Title VII semiannual report and encompasses all the provisions of the Act. In addition to requirements that pertain to Titles I–V of FISA, the report must include a ''summary of significant legal interpretations'' involving matters before the FISA Court and copies of all decisions, orders, or opinions of the FISA Court that include ''significant construction or interpretation'' of any provision of FISA, including Section 702. Section 601(a) [50 U.S.C. 1871(a)].

Provision of Documents Relating to Significant Construction or Interpretation of FISA. Within 45 days of any decision, order, or opinion issued by the FISA Court that ''includes significant construction or interpretation of any provision of [FISA]'' (including Section 702), the AG is required to submit to the congressional intelligence and judiciary committees ''a copy of the decision, order, or opinion'' and any ''pleadings, applications, or memoranda of law associated with such decision, order, or opinion.'' Section 601(c) [50 U.S.C. 1871(c)].

Mrs. FEINSTEIN. So, Mr. President, it is not a question of this oversight not being done. I must respectfully disagree with the Senator from Oregon on that point. There is clearly rigorous oversight, and we have done hearing after hearing, we have looked at report after report, and any Member of this body who so wishes can go and review this material in the offices of the Intelligence Committee.

Now, let me talk about a protection that does exist for privacy, but will expire if this bill is not passed. That is section 704. Under this section, the intelligence community is required to get a specific judicial order before conducting surveillance on a U.S. person located outside the United States.

Before this provision was enacted in 2008 as the product of Senators who were concerned—and they were listened to, and this was enacted—the intelligence community could conduct intelligence collection on U.S. persons outside the country with only the approval of the Attorney General but without a requirement of independent judicial review. Section 704 provides that judicial review by the special Foreign Intelligence Surveillance Court. This will only be preserved if title VII of this act is reauthorized. If it isn't, the privacy provision goes down with it.

Now, let me talk a bit more about the oversight that we have done. If you listen to some, there has been little oversight, but that is not the case. We have held numerous hearings with Directors of National Intelligence Dennis Blair and Jim Clapper; with the head of the NSA, General Alexander; and with Bob Mueller at the FBI. We have had Eric Holder appear before the committee to discuss this, and we have heard from intelligence community professionals involved in carrying out surveillance operations, the lawyers who review these operations, and, importantly, the inspectors general who carry out oversight of the program and have written reports and letters to the Congress with the results of that report.

The intelligence committee's review of these FAA surveillance authorities has included the receipt and examination of dozens of reports concerning the implementation of these authorities over the past 4 years, which the executive branch is required to provide by law. We have received and scrutinized all the classified opinions of the court that interpret the law in a significant way.

Finally, our staff has held countless briefings with officials from the NSA, the DOJ, the Office of the DNI, and the FISA Court itself, including the FBI. Collectively, these assessments, reports, and other information obtained by the Intelligence Committee demonstrate that the government implements the FAA surveillance authorities in a responsible manner, with relatively few incidents of noncompliance.

Let me say this. Where such incidents of noncompliance have arisen, they have been inadvertent. They have not been intentional. They have been the result of human error or technical defect, and they have been promptly reported and remedied. That is important. Through 4 years of oversight, from all these reports, from all the meetings, from all the hearings, we have not identified a single case in which a government official engaged in a willful effort to circumvent or violate the law.

Keep in mind the oversight performed by Congress—that is, both Houses—and the FISA court comes in addition to the extensive internal oversight of the implementation that is performed by the Department of Justice, the Director of National Intelligence, and multiple IGs.

There is a view by some that this country no longer needs to fear attack. I don't share that view, and I have asked the intelligence committee staff to compile arrests that have been made in the last 4 years in America on terrorist plots that have been stopped. There are 100 arrests that have been made between 2009 and 2012. There have been 16 individuals arrested just this year alone. Let me quickly review some of these plots. Some of these may arrests come about as a result of this program. Again, if Members want to see the specific cases where FISA Amendments Act authorities were used, they can go and look at the classified background of these cases.

First, in November, 1 month ago, two arrests for conspiracy to provide material support to terrorists and use a weapon of mass destruction. That was Raees Alam Qazi and Sheheryar Alam Qazi. They were arrested by the FBI in Fort Lauderdale, FL. The next case is another conspiracy to provide material support. Arrested were Ralph Deleon, Miguel Alejandro Santana Vidriales and Arifeen David Gojali. These three men were planning to travel to Afghanistan to attend terrorist training and commit violent jihad; third, was a plot to bomb the New York Federal Reserve Bank; fourth, a plot to bomb a downtown Chicago bar; fifth, a conspiracy to provide material support to the Islamic Jihad Union; sixth, a plot to carry out a suicide bomb attack against the U.S. Capitol in February of 2012; seventh, a plot to bomb locations in Tampa, FL; eighth, a plot to bomb New York City targets and troops returning from combat overseas; ninth, a plot to assassinate the Saudi Ambassador to the United States; and it goes on and on and on.

So I believe the FISA Amendments Act is important and these cases show the program has worked. As the years go on, I believe good intelligence is the most important way to prevent these attacks.

Information gained through programs such as this one—and through other sources as well—is able to be used to prevent future attacks. So, in the past 4 years, there have been 100 arrests to prevent something from happening in the United States, some of these plots have been thwarted because of this program. I think it is a vital program. We are doing our level best to conduct good oversight and keep abreast of the details of the program and to see that these reports come in. I have tried to satisfy Senator WYDEN but apparently have been unable to do so.

I am hopeful the Senate Intelligence Committee's 13-to-2 vote to reauthorize this important legislation will be considered by all Members.

I ask unanimous consent to have printed in the RECORD the Statement of Administrative Policy on the House bill.

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

STATEMENT OF ADMINISTRATION POLICY

H.R. 5949—FISA AMENDMENTS ACT REAUTHORIZATION ACT OF 2012

(Rep. Smith, R–TX, and 5 cosponsors, Sept. 10, 2012)

The Administration strongly supports H.R. 5949. The bill would reauthorize Title VII of the Foreign Intelligence Surveillance Act (FISA), which expires at the end of this year. Title VII of FISA allows the Intelligence Community to collect vital foreign intelligence information about international terrorists and other important targets overseas, while providing protection for the civil liberties and privacy of Americans. Intelligence collection under Title VII has produced and continues to produce significant information that is vital to defend the Nation against international terrorism and other threats. The Administration looks forward to working with the Congress to ensure the continued availability of this critical intelligence capability.

Mrs. FEINSTEIN. It states that the administration strongly supports H.R. 5949, and it goes on to say what the bill

would do. It says it is vital and it produced and continues to produce significant information that is vital to defend the Nation against international terrorism and other threats.

I am very hopeful this bill will pass without amendment and thereupon can go directly to the President for signature.

I yield the floor.

EXHIBIT 1

INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY,
Washington, DC, June 15, 2012.

Hon. RON WYDEN,
Senate Select Committee on Intelligence, U.S. Senate, Washington, DC.
Hon. MARK UDALL,
Senate Select Committee on Intelligence, U.S. Senate, Washington, DC.

DEAR SENATOR WYDEN AND SENATOR UDALL: Thank you for your 4 May 2012 letter requesting that my office and the National Security Agency (NSA) Inspector General (IG) determine the feasibility of estimating ''how many people inside the United States have had their communications collected or reviewed under the authorities granted by section 702'' of the FISA Amendment Act (FAA). On 21 May 2012, I informed you that the NSA Inspector General, George Ellard, would be taking the lead on the requested feasibility assessment, as his office could provide an expedited response to this important inquiry.

The NSA IG provided a classified response on 6 June 2012. I defer to his conclusion that obtaining such an estimate was beyond the capacity of his office and dedicating sufficient additional resources would likely impede the NSA's mission. He further stated that his office and NSA leadership agreed that an IG review of the sort suggested would itself violate the privacy of U.S. persons.

As I stated in my confirmation hearing and as we have specifically discussed, I firmly believe that oversight of intelligence collection is a proper function of an Inspector General. I will continue to work with you and the Committee to identify ways that we can enhance our ability to conduct effective oversight. If you have any questions concerning this response, please contact me.

Sincerely,

I. CHARLES MCCULLOUGH, III,
Inspector General of the Intelligence Community.

DIRECTOR OF NATIONAL INTELLIGENCE,
Washington, DC.

Hon. RON WYDEN,
U.S. Senate.
Hon. MIKE LEE
U.S. Senate.
Hon. RAND PAUL,
U.S. Senate.
Hon. MARK BEGICH,
U.S. Senate.
Hon. JON TESTER,
U.S. Senate.
Hon. TOM UDALL,
U.S. Senate.
Hon. MARIA CANTWELL,
U.S. Senate.
Hon. MARK UDALL,
U.S. Senate.
Hon. JEFF MERKLEY,
U.S. Senate.
Hon. CHRIS COONS,
U.S. Senate.
Hon. JEFF BINGAMAN,
U.S. Senate.
Hon. BERNARD SANDERS,
U.S. Senate.
Hon. DICK DURBIN,
U.S. Senate.

DEAR SENATORS: (U) Thank you for your July 26, 2012 letter on the FISA Amendments Act (FAA). As you noted, reauthorization of FAA is an extremely high priority for the Administration. The FAA authorities have proved to be an invaluable asset in our effort to detect and prevent threats to our nation and our allies.

The members of the Intelligence Community and I appreciate the need for Congress to be fully informed about this statute as it considers reauthorization. We have repeatedly reported to the Intelligence and Judiciary committees of both the House and Senate how we have implemented the statute, the operational value it has afforded, and the extensive measures we take to ensure that the Government's use of these authorities comports with the Constitution and the laws of the United States. Our record of transparency with the Congress includes many formal briefings and hearings, numerous written notifications and reports, and countless hours that our legal, operational, and compliance experts have spent in detailed discussions, briefings, and demonstrations with committee staff and counsel. In addition, we have provided classified and unclassified white papers, available to any Member of Congress, detailing how the law is implemented, the robust oversight involved, and the nature and value of the resulting collection.

(U) This extensive history of interaction with Congress has included discussions, within the past several months, of the issues raised in your letter of July 26. We have met at length with committee staff and counsel to discuss the legal and operational parameters associated with use of FAA 702. With the benefit of this information, the committees have reported FAA reauthorization legislation. We urge that it be brought to the floor of the Senate and House, and enacted without amendment as proposed by the Administration at the earliest possible date.

This degree of transparency with Congress has been possible because these hearings, briefings, reports, and discussion have generally been classified. The issues you have raised cannot be accurately and thoroughly addressed in an unclassified setting without revealing intelligence sources and methods, which would defeat the very purpose for which the laws were enacted. It remains vitally important to avoid public disclosure of sources and methods with respect to section 702 in order to protect the efficacy of this important provision for collecting foreign intelligence information.

(U) The ability to discuss these issues in a classified setting allows us to be completely transparent with Congress on behalf of the American people. We are committed to continuing that transparency. Although a meaningful and accurate unclassified response to the important questions you have asked is not possible. I am enclosing a classified response that addresses your questions in detail.

(U) That said, there is a point in your letter I would like to address directly. I strongly take exception to the suggestion that there is a ''loophole'' in the current law concerning access to communications collected under section 702 of the FAA. While our collection methods are classified, the basic standards for that collection are a matter of public law:

Section 702 only permits targeting of non-U.S. persons reasonably believed to be located outside of the United States. It does not permit targeting of U.S. persons anywhere in the world, or of any person inside the United States.

Section 702 prohibits so-called ''reverse targeting''—targeting a person located outside the United States as a pretext when the real goal is to target a person inside the United States.

Section 702 prohibits the intentional acquisition of any communication when all communicants are known at the time of acquisition to be within the United States.

(U) In enacting these standards for collection, Congress understood that some communications of U.S. persons would be incidentally acquired, and the statute therefore specifies minimization procedures that restrict that acquisition, retention, and dissemination of any information about U.S. persons. The Foreign Intelligence Surveillance Court is required by statute to ensure that those procedures are both reasonably designed to ensure compliance with the above limitations and consistent with the Fourth Amendment. In addition, components of the Executive Branch, including both my office and the Department of Justice, regularly assess compliance with the targeting and minimization procedures. Finally, the Intelligence Committees have been fully briefed on both the law and how the government collects and uses information under section 702. In short, there is no loophole in the law.

(U) As the legislation comes up for floor consideration, we would welcome the opportunity to meet with any Senator or appropriately cleared staff member to address these issues in a classified setting. I have asked Kathleen Turner, Director of my Office of Legislative Affairs, to contact your offices to try to schedule a briefing.

(U) I appreciate your taking the time to share your views with me, and I look forward to working with you to ensure that Congress has a full understanding of these and any other concerns you may have as the Senate considers legislation to reauthorize the FAA this fall.

Sincerely,

JAMES R. CLAPPER.

Enclosure.

UNCLASSIFIED upon removal of Enclosure.

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, AND UNITED STATES DEPARTMENT OF JUSTICE

Washington, DC, Feb. 8, 2012.

Hon. JOHN BOEHNER,
Speaker, United States House of Representatives, Washington, DC
Hon. HARRY REID,
Majority Leader, U.S. Senate, Washington, DC.
Hon. NANCY PELOSIm
Democratic Leader, United States House of Representatives, Washington, DC.
Hon. MITCH MCCONNELL,
Republican Leader, U.S. Senate, Washington, DC.

DEAR SPEAKER BOEHNER AND LEADERS REID, PELOSI, AND MCCONNELL: we are writing to urge that the Congress reauthorize Title VII of the Foreign Intelligence Surveillance Act (FISA) enacted by the FISA Amendments Act of 2008 (FAA), which is set to expire at the end of this year. Title VII of FISA allows the Intelligence Community to collect vital information about international terrorists and other important targets overseas. Reauthorizing this authority is the top legislative priority of the Intelligence Community.

One provision, section 702, authorizes surveillance directed at non-U.S. persons located overseas who are of foreign intelligence importance. At the same time, it provides a comprehensive regime of oversight by all three branches of Government to protect the privacy and civil liberties of U.S. persons. Under section 702, the Attorney General and the Director of National Intelligence may authorize annually, with the approval of the Foreign Intelligence Surveillance Court (FISC), intelligence collection targeting categories of non-U.S. persons abroad, without the need for a court order for each individual target. Within this framework, no acquisition may intentionally target a U.S. person, here or abroad, or any other person known to be in the United States. The law requires special procedures designed to ensure that all such acquisitions target only non-U.S. persons outside the United States, and to protect the privacy of U.S. persons whose nonpublic information may be incidentally acquired. The Department of Justice and the Office of the Director of National Intelligence conduct extensive oversight reviews of section 702 activities at least once every sixty days, and Title VII requires us to report to the Congress on implementation and compliance twice a year.

A separate provision of Title VII requires that surveillance directed at U.S. persons overseas be approved by the FISC in each individual case, based on a finding that there is probable cause to believe that the target is a foreign power or an agent, officer, or employee of a foreign power. Before the enactment of the FAA, the Attorney General could authorize such collection without court approval. This provision thus increases the protection given to U.S. persons.

The attached background paper provides additional unclassified information on the structure, operation and oversight of Title VII of FISA.

Intelligence collection under Title VII has produced and continues to produce significant intelligence that is vital to protect the nation against international terrorism and other threats. We welcome the opportunity to provide additional information to members concerning these authorities in a classified setting. We are always considering whether there are changes that could be made to improve the law in a manner consistent with the privacy and civil liberties interests of Americans. Our first priority, however, is reauthorization of these authorities in their current form. We look forward to working with you to ensure the speedy enactment of legislation reauthorizing Title VII, without amendment, to avoid any interruption in our use of these authorities to protect the American people.

Sincerely,

JAMES R. CLAPPER,
Director of National Intelligence.
ERIC H. HOLDER, JR.,
Attorney General.

BACKGROUND PAPER ON TITLE VII OF FISA PREPARED BY THE DEPARTMENT OF JUSTICE AND THE OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE (ODNI)

This paper describes the provisions of Title VII of the Foreign Intelligence Surveillance Act (FISA) that were added by the FISA Amendments Act of 2008 (FAA). Title VII has proven to be an extremely valuable authority in protecting our nation from terrorism and other national security threats. Title VII is set to expire at the end of this year, and its reauthorization is the top legislative priority of the Intelligence Community.

The FAA added a new section 702 to FISA, permitting the Foreign Intelligence Surveillance Court (FISC) to approve surveillance of terrorist suspects and other foreign intelligence targets who are non-U.S. persons outside the United States, without the need for individualized court orders. Section 702 includes a series of protections and oversight measures to safeguard the privacy and civil liberties interests of U.S. persons. FISA continues to include its original electronic surveillance provisions, meaning that, in most cases, an individualized court order, based on probable cause that the target is a foreign power or an agent of a foreign power, is still required to conduct electronic surveillance of targets inside the United States. Indeed, other provisions of Title VII extend these protections to U.S. persons overseas. The extensive oversight measures used to implement these authorities demonstrate that the Government has used this capability in the manner contemplated by Congress, taking great care to protect privacy and civil liberties interests.

This paper begins by describing how section 702 works, its importance to the Intelligence Community, and its extensive oversight provisions. Next, it turns briefly to the other changes made to FISA by the FAA, including section 704, which requires an order from the FISC before the Government may engage in surveillance targeted at U.S. persons overseas. Third, this paper describes the reporting to Congress that the Executive Branch has done under Title VII of FISA. Finally, this paper explains why the Administration believes it is essential that Congress reauthorize Title VII.

1. SECTION 702 PROVIDES VALUABLE FOREIGN INTELLIGENCE INFORMATION ABOUT TERRORISTS AND OTHER TARGETS OVERSEAS, WHILE PROTECTING THE PRIVACY AND CIVIL LIBERTIES OF AMERICANS

Section 702 permits the FISC to approve surveillance of terrorist suspects and other targets who are non-U.S. persons outside the United States, without the need for individualized court orders. The FISC may approve surveillance of these kinds of targets when the Government needs the assistance of an electronic communications service provider.

Before the enactment of the FAA and its predecessor legislation, in order to conduct the kind of surveillance authorized by section 702, FISA was interpreted to require that the Government show on an individualized basis, with respect to all non-U.S. person targets located overseas, that there was probable cause to believe that the target was a foreign power or an agent of a foreign power, and to obtain an order from the FISC approving the surveillance on this basis. In effect, the Intelligence Community treated non-U.S. persons located overseas like persons in the United States, even though foreigners outside the United States generally are not entitled to the protections of the Fourth Amendment. Although FISA's original procedures are proper for electronic surveillance of persons inside this country, such a process for surveillance of terrorist suspects overseas can slow, or even prevent, the Government's acquisition of vital information, without enhancing the privacy interests of Americans. Since its enactment in 2008, section 702 has significantly increased the Government's ability to act quickly.

Under section 702, instead of issuing individual court orders, the FISC approves annual certifications submitted by the Attorney General and the DNI that identify categories of foreign intelligence targets. The provision contains a number of important protections for U.S. persons and others in the United States. First, the Attorney General and the DNI must certify that a significant purpose of the acquisition is to obtain foreign intelligence information. Second, an acquisition may not intentionally target a U.S. person. Third, it may not intentionally target any person known at the time of acquisition to be in the United States. Fourth, it may not target someone outside the United States for the purpose of targeting a particular, known person in this country. Fifth, section 702 prohibits 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 in the United States. Finally, it requires that any acquisition be consistent with the Fourth Amendment.

To implement these provisions, section 702 requires targeting procedures, minimization procedures, and acquisition guidelines. The targeting procedures are designed to ensure that an acquisition only targets persons outside the United States, and that it complies with the restriction on acquiring wholly domestic communications. The minimization procedures protect the identities of U.S. persons, and any nonpublic information concerning them that may be incidentally acquired. The acquisition guidelines seek to ensure compliance with all of the limitations of section 702 described above, and to ensure that the Government files an application with the FISC when required by FISA.

The FISC reviews the targeting and minimization procedures for compliance with the requirements of both the statute and the Fourth Amendment. Although the FISC does not approve the acquisition guidelines, it receives them, as do the appropriate congressional committees. By approving the certifications submitted by the Attorney General and the DNI as well as by approving the targeting and minimization procedures, the FISC plays a major role in ensuring that acquisitions under section 702 are conducted in a lawful and appropriate manner.

Section 702 is vital in keeping the nation safe. It provides information about the plans and identities of terrorists, allowing us to glimpse inside terrorist organizations and obtain information about how those groups function and receive support. In addition, it lets us collect information about the intentions and capabilities of weapons proliferators and other foreign adversaries who threaten the United States. Failure to reauthorize section 702 would result in a loss of significant intelligence and impede the ability of the Intelligence Community to respond quickly to new threats and intelligence opportunities. Although this unclassified paper cannot discuss more specifically the nature of the information acquired under

section 702 or its significance, the Intelligence Community is prepared to provide Members of Congress with detailed classified briefings as appropriate.

The Executive Branch is committed to ensuring that its use of section 702 is consistent with the law, the FISC's orders, and the privacy and civil liberties interests of U.S. persons. The Intelligence Community, the Department of Justice, and the FISC all oversee the use of section 702. In addition, congressional committees conduct essential oversight, which is discussed in section 3 below.

Oversight of activities conducted under section 702 begins with components in the intelligence agencies themselves, including their Inspectors General. The targeting procedures, described above, seek to ensure that an acquisition targets only persons outside the United States and that it complies with section 702's restriction on acquiring wholly domestic communications. For example, the targeting procedures for the National Security Agency (NSA) require training of agency analysts, and audits of the databases they use. NSA's Signals Intelligence Directorate also conducts other oversight activities, including spot checks of targeting decisions. With the strong support of Congress, NSA has established a compliance office, which is responsible for developing, implementing, and monitoring a comprehensive mission compliance program.

Agencies using section 702 authority must report promptly to the Department of Justice and ODNI incidents of noncompliance with the targeting or minimization procedures or the acquisition guidelines. Attorneys in the National Security Division (NSD) of the Department routinely review the agencies' targeting decisions. At least once every 60 days, NSD and ODNI conduct oversight of the agencies' activities under section 702. These reviews are normally conducted on-site by a joint team from NSD and ODNI. The team evaluates and, where appropriate, investigates each potential incident of noncompliance, and conducts a detailed review of agencies' targeting and minimization decisions.

Using the reviews by Department of Justice and ODNI personnel, the Attorney General and the DNI conduct a semi-annual assessment, as required by section 702, of compliance with the targeting and minimization procedures and the acquisition guidelines. The assessments have found that agencies have ''continued to implement the procedures and follow the guidelines in a manner that reflects a focused and concerted effort by agency personnel to comply with the requirements of Section 702.'' The reviews have not found ''any intentional attempt to circumvent or violate'' legal requirements. Rather, agency personnel ''are appropriately focused on directing their efforts at non-United States persons reasonably believed to be located outside the United States.''

Section 702 thus enables the Government to collect information effectively and efficiently about foreign targets overseas and in a manner that protects the privacy and civil liberties of Americans. Through rigorous oversight, the Government is able to evaluate whether changes are needed to the procedures or guidelines, and what other steps may be appropriate to safeguard the privacy of personal information. In addition, the Department of Justice provides the joint assessments and other reports to the FISC. The FISC has been actively involved in the review of section 702 collection. Together, all of these mechanisms ensure thorough and continuous oversight of section 702 activities.

2. OTHER IMPORTANT PROVISIONS OF TITLE VII OF FISA ALSO SHOULD BE REAUTHORIZED

In contrast to section 702, which focuses on foreign targets, section 704 provides heightened protection for collection activities conducted overseas and directed against U.S. persons located outside the United States. Section 704 requires an order from the FISC in circumstances in which the target 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.'' It also requires a showing of probable cause that the targeted U.S. person is ''a foreign power, an agent of a foreign power, or an officer or employee of a foreign power.'' Previously, these activities were outside the scope of FISA and governed exclusively by section 2.5 of Executive Order 12333. By requiring the approval of the FISC, section 704 enhanced the civil liberties of U.S. persons.

The FAA also added several other provisions to FISA. Section 703 complements section 704 and permits the FISC to authorize an application targeting a U.S. person outside the United States to acquire foreign intelligence information, if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or data, and is conducted in the United States. Because the target is a U.S. person, section 703 requires an individualized court order and a showing of probable cause that the target is a foreign power, an agent of a foreign power, or an officer or employee of a foreign power. Other sections of Title VII allow the Government to obtain various authorities simultaneously, govern the use of information in litigation, and provide for congressional oversight. Section 708 clarifies that nothing in Title VII is intended to limit the Government's ability to obtain authorizations under other parts of FISA.

3. CONGRESS HAS BEEN KEPT FULLY INFORMED, AND CONDUCTS VIGOROUS OVERSIGHT, OF TITLE VII'S IMPLEMENTATION

FISA imposes substantial reporting requirements on the Government to ensure effective congressional oversight of these authorities. Twice a year, the Attorney General must ''fully inform, in a manner consistent with national security,'' the Intelligence and Judiciary Committees about the implementation of Title VII. With respect to section 702, this semi-annual report must include copies of certifications and significant FISC pleadings and orders. It also must describe any compliance incidents, any use of emergency authorities, and the FISC's review of the Government's pleadings. With respect to sections 703 and 704, the report must include the number of applications made, and the number granted, modified, or denied by the FISC.

Section 702 requires the Government to provide to the Intelligence and Judiciary Committees its assessment of compliance with the targeting and minimization procedures and the acquisition guidelines. In addition, Title VI of FISA requires a summary of significant legal interpretations of FISA in matters before the FISC or the Foreign Intelligence Surveillance Court of Review. The requirement extends to interpretations presented in applications or pleadings filed with either court by the Department of Justice. In addition to the summary, the Department must provide copies of judicial decisions that include significant interpretations of FISA within 45 days.

The Government has complied with the substantial reporting requirements imposed by FISA to ensure effective congressional oversight of these authorities. The Government has informed the Intelligence and Judiciary Committees of acquisitions authorized under section 702; reported, in detail, on the results of the reviews and on compliance incidents and remedial efforts; made all written reports on these reviews available to the Committees; and provided summaries of significant interpretations of FISA, as well as copies of relevant judicial opinions and pleadings.

4. IT IS ESSENTIAL THAT TITLE VII OF FISA BE REAUTHORIZED WELL IN ADVANCE OF ITS EXPIRATION

The Administration strongly supports the reauthorization of Title VII of FISA. It was enacted after many months of bipartisan effort and extensive debate. Since its enactment, Executive Branch officials have provided extensive information to Congress on the Government's use of Title VII, including reports, testimony, and numerous briefings for Members and their staffs. This extensive record demonstrates the proven value of these authorities, and the commitment of the Government to their lawful and responsible use.

Reauthorization will ensure continued certainty with the rules used by Government employees and our private partners. The Intelligence Community has invested significant human and financial resources to enable its personnel and technological systems to acquire and review vital data quickly and lawfully. Our adversaries, of course, seek to hide the most important information from us. It is at best inefficient and at worst unworkable for agencies to develop new technologies and procedures and train employees, only to have a statutory framework subject to wholesale revision. This is particularly true at a time of limited resources. It is essential that these authorities remain in place without interruption—and without the threat of interruption—so that those who have been entrusted with their use can continue to protect our nation from its enemies.

Mr. GRASSLEY. Mr. President, the reauthorization of the Foreign Intelligence Surveillance Act Amendments Act, also known as the FISA Amendments Act, is a crucial authority for the U.S. Intelligence Community. Unless we act to pass this legislation, the law will expire in just a few days from now. It must be reauthorized immediately for a 5-year period.

I am familiar with the FISA Amendments Act, FAA, through my role as ranking member of the Judiciary Committee, which along with the Select Committee on Intelligence, has jurisdiction over this legislation and oversight of the intelligence operations conducted by the Department of Justice and Federal Bureau of Investigation. During the last year, my staff and I have engaged in extensive consultation with the intelligence community and the Department of Justice to understand how the FAA has been used. The committee held a closed hearing with witness testimony and questions from Senators as well.

We debated this legislation in committee where I opposed the version produced by the Judiciary Committee which is now the basis of the Leahy amendment. I opposed it because I have learned a great deal both about the value of the intelligence collected under the FAA and about the lengths that the intelligence community goes to protect the rights of U.S. citizens when collecting that intelligence.

Given the congressional oversight of this legislation, coupled with the built-in protections and oversight from the executive branch, the value of the intelligence gathered by this important legislation warrants reauthorization without the changes made by the Leahy amendment.

The most important portion of the FAA is Section 702. It authorizes, with approval of the Foreign Intelligence Surveillance Court, FISC, an 11-member panel of Article III judges appointed by the Supreme Court, electronic surveillance of non-U.S. persons located overseas, but without the need for individualized orders for every target of the surveillance, as is required for surveillance of anyone inside the United States. The law specifically prohibits targeting U.S. persons, acquiring wholly domestic communications, or targeting someone outside the U.S. with the intent to collect information on a target inside the U.S. known as ''reverse-targeting''.

It is possible that the communications of some U.S. citizens may be captured during the conduct of authorized surveillance. But that is only incidentally. The only way that a U.S. person's communication would be picked up would be if that person were in communication with a non-U.S. person overseas who had been targeted under the FAA.

Some people think that a U.S. person has a constitutional right not to have his communications with a foreign target eavesdropped by the U.S. government without a warrant. But that's not how the fourth amendment works. It protects the rights of the person who is being targeted, not anyone in contact with him. For example, if the government legally taps the phone of a mafia godfather in the United States, it can listen to his conversation with anyone who calls him. It doesn't need a court-issued warrant for the person calling, only for the godfather himself. He is the one who has a reasonable expectation of privacy in his telephone.

In the same way, when the government legally intercepts the communications of a terrorist living overseas, it can listen to his conversation with anyone who contacts him, even if the other party is in the United States. What matters is whether the government has the legal authority to intercept the communications of the terrorist in the first place. That's what the FAA provides. It is important to point out that no warrant is required because the target is not a U.S. citizen and is located overseas. So, the fourth amendment doesn't apply to him.

Instead, under Section 702, the FISC approves annual certifications from the attorney general and director of National Intelligence about collection of information on categories of foreign intelligence targets, what procedures the intelligence community will use to accomplish this surveillance, how they will target subjects for surveillance, and how the IC will use the information. The government must also demonstrate to the court that it has special procedures to weed out intentional collection of communications of anyone located inside the United States and to minimize the use of any incidentally collected information.

In addition, there is significant oversight of the program to protect U.S. citizens' rights. The law requires that the Attorney General and director of National Intelligence conduct semi-annual assessments of the surveillance activities. Furthermore, it authorizes the inspector general of the Department of Justice to review the program at any time. Both houses of Congress are provided the semi-annual reports and IG audits, as well as significant decisions of the FISC. These are on file with the Senate security office and any Senator and appropriately cleared staff can review them.

This process works. Our oversight of the implementation of the statute has found no evidence that it has been intentionally misused in order to eavesdrop on Americans. Senator FEINSTEIN, chair of the Senate Select Committee on Intelligence, and even Senator LEAHY, chairman of the Judiciary Committee, have stated that no such misconduct has been discovered.

For these reasons, we should reauthorize the statute without any changes, as the House has done. The only adjustment to the existing statute in the House bill is replacing the expiration date of December 31, 2012 with December 31, 2017, a 5-year period. That is also what the administration supports and what the intelligence committee passed this summer. A 5-year period would allow the intelligence community to continue utilizing these valuable tools against potential terrorists or other intelligence targets without interruption or delay. It will provide the intelligence community with much needed certainty and stability in a program that works to save American lives.

The combination of the statutory limitations on collection, targeting and minimization procedures, and acquisition guidelines, court review of those procedures and guidelines, and compliance oversight by the administration and Congress, ensure that the rights of U.S. persons are sufficiently protected when their communications are incidentally collected in the course of targeting non-U.S. persons located abroad.

I urge my colleagues to support the House passed version of the FAA reauthorization so we can ensure that there is no interruption in one of our most vital national security tools.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

AMENDMENT NO. 3435

Mr. MERKLEY. Mr. President, I call up my amendment which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. MERKLEY] proposes an amendment numbered 3435.

Mr. MERKLEY. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

(Purpose: To require the Attorney General to disclose each decision, order, or opinion of a Foreign Intelligence Surveillance Court that includes significant legal interpretation of section 501 or 702 of the Foreign Intelligence Surveillance Act of 1978 unless such disclosure is not in the national security interest of the United States)

At the appropriate place, insert the following:

SEC. __. DISCLOSURE OF DECISIONS, ORDERS, AND OPINIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) FINDINGS.—Congress finds the following:

(1) Secret law is inconsistent with democratic governance. In order for the rule of law to prevail, the requirements of the law must be publicly discoverable.

(2) The United States Court of Appeals for the Seventh Circuit stated in 1998 that the ''idea of secret laws is repugnant''.

(3) The open publication of laws and directives is a defining characteristic of government of the United States. The first Congress of the United States mandated that every ''law, order, resolution, and vote [shall] be published in at least three of the public newspapers printed within the United States''.

(4) The practice of withholding decisions of the Foreign Intelligence Surveillance Court is at odds with the United States tradition of open publication of law.

(5) The Foreign Intelligence Surveillance Court acknowledges that such Court has issued legally significant interpretations of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that are not accessible to the public.

(6) The exercise of surveillance authorities under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as interpreted by secret court opinions, potentially implicates the communications of United States persons who are necessarily unaware of such surveillance.

(7) Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), as amended by section 215 of the USA PATRIOT Act (Public Law 107–56; 115 Stat. 287), authorizes the Federal Bureau of Investigation to require the production of ''any tangible things'' and the extent of such authority, as interpreted by secret court opinions, has been concealed from the knowledge and awareness of the people of the United States.

(8) In 2010, the Department of Justice and the Office of the Director of National Intelligence established a process to review and declassify opinions of the Foreign Intelligence Surveillance Court, but more than two years later no declassifications have been made.

(b) SENSE OF CONGRESS.—It is the sense of Congress that each 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 section 501 or section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 and 1881a) should be declassified in a manner consistent with the protection of national security, intelligence sources and methods, and other properly classified and sensitive information.

(c) REQUIREMENT FOR DISCLOSURES.—

(1) SECTION 501.—

(A) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following:

''(i) DISCLOSURE OF DECISIONS.—

''(1) DECISION DEFINED.—In this subsection, the term 'decision' means 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 this section.

''(2) REQUIREMENT FOR DISCLOSURE.—Subject to paragraphs (3) and (4), the Attorney General shall declassify and make available to the public—

''(A) each decision that is required to be submitted to committees of Congress under section 601(c), not later than 45 days after such opinion is issued; and

''(B) each decision issued prior to the date of the enactment of the _____ Act that was required to be submitted to committees of Congress under section 601(c), not later than 180 days after such date of enactment.

''(3) UNCLASSIFIED SUMMARIES.—Notwithstanding paragraph (2) and subject to paragraph (4), if the Attorney General makes a determination that a decision may not be declassified and made available in a manner that protects the national security of the United States, including methods or sources related to national security, the Attorney General shall release an unclassified summary of such decision.

''(4) UNCLASSIFIED REPORT.—Notwithstanding paragraphs (2) and (3), if the Attorney General makes a determination that any decision may not be declassified under paragraph (2) and an unclassified summary of such decision may not be made available under paragraph (3), the Attorney General shall make available to the public an unclassified report on the status of the internal deliberations and process regarding the declassification by personnel of Executive branch of such decisions. Such report shall include—

''(A) an estimate of the number of decisions that will be declassified at the end of such deliberations; and

''(B) an estimate of the number of decisions that, through a determination by the Attorney General, shall remain classified to protect the national security of the United States.''.

(2) SECTION 702.—Section 702(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)) is amended by adding at the end the following:

''(4) DISCLOSURE OF DECISIONS.—

''(A) DECISION DEFINED.—In this paragraph, the term 'decision' means 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 this section.

''(B) REQUIREMENT FOR DISCLOSURE.—Subject to subparagraphs (C) and (D), the Attorney General shall declassify and make available to the public—

''(i) each decision that is required to be submitted to committees of Congress under section 601(c), not later than 45 days after such opinion is issued; and

''(ii) each decision issued prior to the date of the enactment of the _____ Act that was required to be submitted to committees of Congress under section 601(c), not later than 180 days after such date of enactment.

''(C) UNCLASSIFIED SUMMARIES.—Notwithstanding subparagraph (B) and subject to subparagraph (D), if the Attorney General makes a determination that a decision may not be declassified and made available in a manner that protects the national security of the United States, including methods or sources related to national security, the Attorney General shall release an unclassified summary of such decision.

''(D) UNCLASSIFIED REPORT.—Notwithstanding subparagraphs (B) and (C), if the Attorney General makes a determination that any decision may not be declassified under subparagraph (B) and an unclassified summary of such decision may not be made available under subparagraph (C), the Attorney General shall make available to the public an unclassified report on the status of the internal deliberations and process regarding the declassification by personnel of Executive branch of such decisions. Such report shall include—

''(i) an estimate of the number of decisions that will be declassified at the end of such deliberations; and

''(ii) an estimate of the number of decisions that, through a determination by the Attorney General, shall remain classified to protect the national security of the United States.''.

Mr. MERKLEY. Mr. President, I rise this morning to talk about the Foreign Intelligence Surveillance Act and the concerns I and many of my colleagues have.

Earlier this morning, Senator WYDEN, the senior Senator from Oregon, was discussing at length the importance of the fourth amendment, the importance of Americans knowing the boundaries and the rules under which our government collects intelligence and to know their rights to privacy are protected.

Under this Foreign Intelligence Surveillance Act, there are a variety of ways in which that assurance is compromised, and Senator WYDEN did a very good job of laying those out. I wish to emphasize that same message; that our country was founded on the principles of privacy and liberty, of protection from an overreaching central government.

During the founding, we set out and said we are going to be a new kind of nation; one that will not permit an overbearing, intrusive government spying on citizens or meddling in their private affairs. This belief was enshrined in our fourth amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

I think that is an extraordinarily complete description saying that the government is bound—bound—by having to demonstrate before a court probable cause a case that is put forward and backed up by oath or affirmation, a case that is put forward with great detail about the places to be searched and the persons or things to be seized.

So the concept is laid out very clearly about what constitutes unreasonable searches and seizures. It is certainly not that the government can't collect information, just they have to show probable cause of a crime in order to create that boundary that says the information we have in our daily lives. I don't know how much broader it can be than houses, papers, and effects. It pretty much covers the entire parameter.

One of the problems we have is that sometimes lawyers start looking for loopholes, and we can address those loopholes if they are discussed in a public setting, if we can get our hands around them. But if they are loopholes created in secrecy, then indeed it is very hard to have a debate on the floor of the Senate about whether those loopholes or interpretations are right or whether we should change the law in order to address them.

Of course, our laws have had to be updated and changed over time to adapt to new technology and changing threats, and one of those developments was the creation of the Foreign Intelligence Surveillance Act in the 1970s.

In 1972, the Supreme Court held the fourth amendment does not permit warrantless surveillance for intelligence investigations within our country. One may wonder how this even took a Supreme Court decision since the fourth amendment is so absolutely clear on this point.

In 1978, Congress enacted FISA—Foreign Intelligence Surveillance Act—to regulate government surveillance within our country that is conducted for foreign intelligence purposes. Under FISA, the government had to obtain an order from a special court called the FISA Court in order to spy on Americans. This is certainly an appropriate boundary to implement. The order required the government to obtain a warrant and show probable cause. These are the same basic, commonsense protections we have had in place for other types of searches. This development required individualized and particular orders from the FISA Court to collect communications.

But now let's fast forward to 2001. President Bush decided in secret to authorize the National Security Agency to start a new program of warrantless surveillance inside the United States. This is in complete contravention of the fourth amendment and in complete contravention of the law at that time. As I am sure many of my colleagues will certainly recall, this was revealed to the American people 4 years later when it was reported in the New York Times in 2005. In response, after years of back and forth contentious debate, Congress passed the FISA Amendments Act—the bill we are considering on this floor today. We are considering a reauthorization. This law gave the government new surveillance authority but also included a sunset provision to ensure that Congress examines where the law is working and the way it was intended.

The debate we are having right now on this floor is that reexamination. I will note that I think it is unfortunate that we are doing this at the last second. We have known that this intelligence law is going to expire for years. It was laid out for a multiyear span.

Certainly, it is irresponsible for this Chamber to be debating this bill under a falsely created pressure that it needs to be done without any amendments in order to match the bill from the House. That is a way of suppressing debate on critical issues here in America.

If you care about the fourth amendment, if you care about privacy, you should be arguing that we should either create a very short-term extension in order to have this debate fully or that we should have had this debate months ago so it could have been done in a full and responsible manner, with no pressure to vote against amendments in order to falsely address the issue of partnering with the House bill.

This law included that sunset provision. Now here we are looking at the extension. It is a single-day debate, crowded here into the holidays when few Americans will be paying attention. But I think it is important, nonetheless, for those of us who are concerned about the boundaries of privacy and believe the law could be strengthened to make our case here in hopes that at some point we will be able to have the real consideration these issues merit.

In my opinion, there are serious reforms that need to be made before we consider renewing this law. This law is supposed to be about giving our government the tools it needs to collect the communications of foreigners, outside of our country. If it is possible that our intelligence agencies are using the law to collect and use the communications of Americans without a warrant, that is a problem. Of course, we cannot reach conclusions about that in this forum because this is an unclassified discussion.

My colleagues Senator WYDEN and Senator UDALL, who serve on Intelligence, have discussed the loophole in the current law that allows the potential of backdoor searches. This could allow the government to effectively use warrantless searches for law-abiding Americans. Senator WYDEN has an amendment that relates to closing that loophole.

Congress never intended the intelligence community to have a huge database to sift through without first getting a regular probable cause warrant, but because we do not have the details of exactly how this proceeds and we cannot debate in a public forum those details, then we are stuck with wrestling with the fact that we need to have the sorts of protections and efforts to close loopholes that Senator WYDEN has put forward.

What we do know is that this past summer, the Director of National Intelligence said in a public forum that on at least one occasion the FISA Court has ruled that a data collection carried out by the government did violate the fourth amendment. We also know that the FISA Court has ruled that the Federal Government has circumvented the spirit of the law as well as the letter of the law. But too much else of what we should know about this law remains secret. In fact, we have extremely few details about how the courts have interpreted the statutes that have been declassified and released to the public. This goes to the issue of secret law my colleague from Oregon was discussing earlier. If you have a phrase in the law and it has been interpreted by a secret court and the interpretation is secret, then you really do not know what the law means.

The FISA Court is a judicial body established by Congress to consider requests for surveillance made under the FISA Amendments Act, but, almost without exception, its decisions, including significant legal interpretations of the statute, remain highly classified. They remain secret.

I am going to put up this chart just to emphasize that this is a big deal. Here in America, if the law makes a reference to what the boundary is, we should understand how the court interprets that boundary so it can be debated. If the court reaches an interpretation with which Congress is uncomfortable, we should be able to change that, but of course we cannot change it, not knowing what the interpretation is because the interpretation is secret. So we are certainly constrained from having the type of debate that our Nation was founded on—an open discussion of issues.

These are issues that can be addressed without in any way compromising the national security of the United States. Understanding how certain words are interpreted tells us where the line is drawn. But that line, wherever it is drawn, is, in fact, relevant to whether the intent of Congress is being fulfilled and whether the protection of citizens under the fourth amendment is indeed standing strong.

An open and democratic society such as ours should not be governed by secret laws, and judicial interpretations are as much a part of the law as the words that make up our statute. The opinions of the FISA Court are controlling. They do matter. When a law is kept secret, public debate, legislative intent, and finding the right balance between security and privacy all suffer.

In 2010, due to concerns that were raised by a number of Senators about the problem of classified FISA Court opinions, the Department of Justice and the Office of the Director of National Intelligence said they would establish a process to declassify opinions of the FISA Court that contained important rulings of law. In 2011, prior to her confirmation hearing, Lisa Monaco, who is our Assistant Attorney General for National Security, expressed support for declassifying FISA opinions that include ''significant instructions or interpretations of FISA.''

So here we have the situation where the Department of Justice and the Office of the Director of National Intelligence said they would establish a process of declassifying opinions. They understood that Americans in a democracy deserve to know what the words are being interpreted to mean. We have the Assistant Attorney General for National Security during her hearings express that she supports significant instructions or interpretations being made available to the public. But here we are 2 years later since the 2010 expressions and a year from the confirmation hearings for Lisa, and nothing has been declassified—nothing.

The amendment I am offering today sets out a three-step process for sending the message it is important Americans know the interpretations of these laws. It does so in a fashion that is carefully crafted to make sure there is no conflict with national security.

First you call upon the Attorney General to declassify the FISA report in court of review opinions that include significant legal interpretations. If the Attorney General makes a decision, however, that it cannot be declassified—those decisions—in a way that does not jeopardize national security, then the amendment requires the administration to declassify summaries of their opinions.

So at the first point, you have the official written court opinions. But possibly woven into those court opinions are a variety of contexts about ways and manner of gathering intelligence that pose national security problems. This amendment says: OK, if that is the case, we certainly do not want to disclose sensitive information about ways and means of collecting intelligence, so declassify summaries. That way, we can understand the legal interpretation without adjoining information that might represent a national security problem.

This amendment goes further. If the Attorney General decides that not even a summary can be declassified without compromising national security, then the amendment requires the administration to report to Congress regarding the status of its process for declassifying these opinions—a process the administration has already said it is undertaking. It just says: Tell us where you are.

It is probably very clear from my discussion that I would prefer that the opinions, the actual court opinions, be declassified and that perhaps, if they are sensitive, the national security information would be redacted. That is the normal process in which documents are declassified—you black out or remove sections that are sensitive. But the amendment I am presenting goes further on the side of protecting national security, saying: You don't have to just redact court opinions, you can do a summary that addresses significant legal implications without addressing the ways and means that might be embedded in a further court decision. Furthermore, Mr. Attorney General, if you make a decision that not even that is possible, then update us on the process.

But the key point is that it requires the Attorney General to make a decision, a clear decision over the national security balance and provide what can be done within the context, within the framework of not compromising our national security.

This is so straightforward that anyone bringing the argument to this floor that we should not do it because it compromises national security really has no case to make—absolutely no case to make.

The ACTING PRESIDENT pro tempore. The time of the Senator, under the order, has expired.

Mr. MERKLEY. My understanding is that 30 minutes was allocated?

The ACTING PRESIDENT pro tempore. Thirty minutes equally divided.

Mr. WYDEN. Mr. President, parliamentary inquiry: Can I yield to Senator MERKLEY time from general debate in order to let him complete his remarks?

The ACTING PRESIDENT pro tempore. With the unanimous consent of the Senate.

Mr. WYDEN. I ask unanimous consent.

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

Mrs. FEINSTEIN. Well, wait a minute.

The ACTING PRESIDENT pro tempore. Is there objection?

Mrs. FEINSTEIN. I object, if it is time on our side that will be used.

Mr. MERKLEY. Mr. President, if there is no one else waiting to speak, I ask unanimous consent to speak as in morning business and will yield when someone is ready, prepared to speak to the bill.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from California.

Mrs. FEINSTEIN. Mr. President, let me do something I do sometimes—correct myself. If the Senator is offering to use the time on his side, that is fine with me. As long as it is not using the time for the bill on our side.

Mr. WYDEN. Mr. President, I think this is acceptable, yes.

Mrs. FEINSTEIN. I thank the Senator.

Mr. MERKLEY. Mr. President, I thank my colleagues for setting out the parameters. I am going to wrap this up in fairly short order.

I again wish to emphasize that if any of my colleagues would like to come down and argue that this in any way compromises national security, I will be happy to have that debate because this has been laid out very clearly so the Attorney General has complete control over any possible compromise of information related to national security. Indeed, although I think it is important for this body to continue to express that the spirit of what we do in this Nation should be about citizens to the maximum extent possible having full and clear understanding of how the letter of the law is being interpreted.

Let me show an example of a passage. Here is a passage about what information can be collected: '' . . . reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation (other than a threat assessment) conducted in accordance with subsection (a)(2),'' and so on.

Let me stress these words: ''relevant to an authorized investigation.''

There are ongoing investigations, multitude investigations about the conduct of individuals and groups around this planet, and one could make the argument that any information in the world helps frame an understanding of what these foreign groups are doing. So certainly there has been some FISA Court decision about what ''relevant to an authorized investigation'' means or what ''tangible things'' means. Is this a gateway that is thrown wide open to any level of spying on Americans or is it not? Is it tightly constrained in understanding what this balance of the fourth amendment is? We do not know the answer to that. We should be able to know.

If we believe that an administration and the secret court have gone in a direction incompatible with our understanding of what we were seeking to defend, then that would enable us to have that debate here about whether we tighten the language of the law in accordance with such an interpretation. Again, is this an open gateway to any information anywhere in the world, anytime, on anyone or is it a very narrow gate? We do not know. American citizens should have the ability to know, and certainly a Senator working to protect the fourth amendment should know that as well. We have always struck a balance in this country between an overbearing government and the important pathway to obtaining information relevant to our national security.

The amendment I am laying forth strikes that balance appropriately. It urges the process to continue by providing an understanding of what the secret court interpretations are, which is very important to democracy. It provides the appropriate balance with national security, gives clear decision-making authority to the Attorney General of this process, and in that sense it gives the best possible path that honors national security concerns while demanding transparency and accountability for this issue of privacy and protection of the fourth amendment.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. WYDEN. For purpose of general debate, how much time remains on our side and how much time remains under the control of the distinguished chair of the committee?

The ACTING PRESIDENT pro tempore. The opponents have 140 minutes remaining; the proponents have 183 minutes remaining.

Mr. WYDEN. I thank the Chair. I will speak out of our time in order to respond to a couple points. I also wish to commend my colleague Senator MERKLEY from Oregon for his excellent statement. He has been doing yeoman's work in terms of trying to promote accountability and transparency on this issue and the work he has done in the Senate. I am going to correct a couple of misconceptions about what has been said and also talk on behalf of the good work Senator MERKLEY is doing.

With respect to this amendment I will be offering, I believe the Senate cannot say we passed the smell test with respect to doing vigorous oversight if we don't have some sense of how many Americans in our country who are communicating with each other are being swept up under this legislation. For purposes of the FISA Amendments Act, I think we ought to know, generally, how many Americans are being swept up under the legislation. Oversight essentially would be toothless without this kind of information.

I wish to correct one misconception with respect to where we are on the language in the reporting amendment. The distinguished chair of the committee urged Senators to visit the offices of the Senate Select Committee on Intelligence to see the documents the chair has stated relate to intelligence officials who say it is impossible for them to estimate the number of law-abiding Americans who have had their communications swept up under the legislation. However, the fact is that when colleagues read the amendment I will be offering, they will see I am not requiring anyone to take on a new task of preparing an estimate of how many law-abiding Americans have been swept up in it. This is simply a request to the intelligence community, which states that if any estimate has already been done, that estimate ought to be provided.

When the distinguished chair of the committee says Senators should go over to the committee's offices and look at the documents which state that the intelligence community cannot do a new estimate, I want Senators to know the language of my amendment does not ask for a new estimate. In no way does it ask for a new estimate. It simply says: If an estimate has been done, that estimate ought to be furnished. If no estimate has been done, the answer to that is simply no. We will be very clear about it, and the matter will have been clarified. If no estimate has been done, then fine; the answer is no.

As I indicated earlier, the amendment also requires the intelligence community to state whether any wholly domestic communications have been collected. That again can be answered with a yes or no. Finally, it requires a response as to whether the National Security Agency has collected personal information on millions of Americans, and that too is a very straightforward answer.

I think when we talk about this kind of information, we ought to come back

to the fact that no sources and methods in the intelligence community would be compromised. In no way would the operations or the important work of the intelligence community be interrupted. What it would simply do is provide us with what I think are the basics that this Senate needs to be able to say it is doing real oversight over a very broad area of surveillance law.

I hope Senators will ask themselves as we look at this: Do we in the Senate know whether anyone has ever estimated how many U.S. phone calls and e-mails have been warrantless collected under the statute? Does the Senate know whether any wholly domestic phone calls or e-mails have been collected under this statute? Does the Senate know whether the government has ever conducted any warrantless, backdoor searches for Americans' communication? If not, this is the Senate's chance to answer that question.

When our constituents come forward and ask us whether the government is protecting our privacy rights as we protect our security, the question is: How does the Senator look their constituents in the eye and tell them they don't know and are not in a position to get information that is essential to pass the smell test when it comes to this body doing basic oversight over what is certainly a broad and, for many Americans, rather controversial surveillance law.

I assume—because we have already heard some characterizations of my amendment, which are simply and factually incorrect—that we will have other responses to the reporting amendment in terms of objections. I have already stated my first concern: The intelligence community stating that they cannot estimate how many Americans' communications are collected under key section 702 of FISA. Again, my response is that when Senators look at the text of the amendment, it does not require anybody to do an estimate. It simply says that if estimates do exist, they ought to be provided to the Congress. When it comes to our oversight responsibilities, I do not think that request is excessive or unreasonable.

Second, I think we will hear the House and Senate Intelligence Committees already do oversight of FISA. Every Member of the Congress has to vote on whether to renew the FISA Amendments Act. Frankly, I think every Member of this body ought to be able to get a basic understanding of how the law actually works, and that is not available today.

Next, we will hear that the intelligence community has already provided the Congress with lots of information about the FISA Amendments Act. As the Presiding Officer knows from his service on the committee, much of that information is in highly classified documents that are difficult for most Members to review. The reality is most Members literally have no staff who have the requisite security clearance in order to read them.

The amendment I am talking about with respect to basic information on the number of Americans who have had their communications swept up under FISA—whether Americans with respect to wholly domestic communications have been swept up under this law—in my view that information ought to be available to this body in documents Members can actually access. Frankly, it ought to be available in a single document which Members can access.

In connection with the discussion about these issues, we will also hear the answers to these questions should not be made public. The amendment I am going to be offering with respect to getting a rough set of estimates as to how many Americans are being swept up under these authorities—and whether an estimate actually even exists—gives the President full authority to redact whatever information he wishes from the public version of the report. Under the amendment I am pursuing, the executive branch would have full discretion to decide whether it is appropriate to make any of this information public.

As we ensure more transparency and more accountability with respect to this information and access to it, no sources or methods which have to be protected—including important work the intelligence committee is doing—will be compromised in any way. The last word on this subject is the call of the President of the United States, who has the full discretion to decide whether it is appropriate to make any of this information public.

Finally, we are undoubtedly going to hear that the law is about to expire and amendments will slow it down. First of all, I think many of us would rather have had this debate earlier in this session of the Senate, and had there been more dialog on many of these issues, that would have been possible. We are where we are, and I think all of us understand that. We understand this is a huge challenge. The fiscal cliff is vital in terms of our work this week, but I continue to believe the other body is perfectly capable of passing this legislation before the end of the year.

The amendments that are being offered all go to the issue of transparency and accountability. Not one of those amendments would jeopardize the ongoing issues and operations which relate to the sources and methods of the intelligence community. The Congress can make amendments to improve oversight and still keep this law from expiring.

With respect to the reporting amendment, I hope the argument made by the distinguished chair of the committee that the intelligence community has said they cannot estimate how many Americans' communications have been collected under section 702—that Senators go to the offices of the Intelligence Committee. When colleagues look at the text of the amendment, the amendment does something different than the issue which has been raised by the distinguished chair of the committee. The amendment does not require anyone to do an estimate. It simply says that if an estimate already exists, that estimate ought to be provided to the Congress.

Let me also make some brief remarks on this issue of secret law that touches on the point raised by my colleague from Oregon Senator MERKLEY, who I think has given a very good presentation on the floor and has a very good amendment. When the laws are interpreted in secret, the results frequently fail to stand up to public scrutiny. We have talked about this on the floor and in the committee and it isn't that surprising when we think about it. The law-making process in our country is often cumbersome, it is often frustrating, and it is often contentious. But over the long run I think we know this process is the envy of the world because it gives us a chance to have a real debate, generate support of most Americans because then people see, when they have had a chance to be a part of a discussion, that they are empowered in our system of government. On the other hand, when laws are secretly interpreted behind closed doors by a small number of government officials without public scrutiny or debate, we are much more likely to end up with interpretations of the law that go well beyond the boundaries of what the public accepts or supports. So let's be clear that when we are talking about public scrutiny and having debates, that is what allows the American people to see that those of us who are honored to serve them are following their will.

Sometimes it is entirely legitimate for government agencies to keep certain information secret. In a democratic society, of course, citizens rightly expect their government will not arbitrarily keep information from them, and throughout our history our people have guarded their right to know. But I think we also know our constituents acknowledge certain limited exceptions exist in this principle of openness. For example, most Americans acknowledge that tax collectors need to have access to some financial information, but the government does not have the right to share this information openly. So we strike the appropriate balance on a whole host of these issues on a regular basis.

Another limited exception exists for the protection of national security. The U.S. Government has the inherent responsibility to protect its citizens from threats, and it can do this most effectively if it is sometimes allowed to operate in secrecy. I don't expect our generals to publicly discuss the details of every troop movement in Afghanistan any more than Americans expected George Washington to publish his strategy for the Battle of Yorktown. By the same token, American citizens recognize their government may sometimes rely on secret intelligence collection methods in order to

ensure national security, ensure public safety, and they recognize these methods often are more effective when the details—what are the operations and methods as we characterize them under intelligence principles—remain secret. But while Americans recognize government agencies will sometimes rely on secret sources and methods to collect intelligence information, Americans expect these agencies will at all times operate within the boundaries of publicly understood law.

I have had the honor to serve on the Intelligence Committee now for over a decade. I don't take a backseat to anyone when it comes to the importance of protecting genuine, sensitive details about the work being done in the intelligence community, particularly their sources and methods. However, the law itself should never be secret. The law itself should never be secret because voters have a right to know what the law says and what their government thinks the text of the law means so they can make a judgment about whether the law has been appropriately written, and they can then ratify or reject the decisions elected officials make on their behalf.

When it comes to most government functions, the public can directly observe the functions of government and the typical citizen can decide for himself or herself whether they support or agree with the things their government is doing. American citizens can visit our national forests—we take particular pride in them in our part of the country—and decide for themselves whether the forests are being appropriately managed. When our citizens drive on the interstate, they can decide for themselves whether those highways have been properly laid out and adequately maintained. If they see an individual is being punished, they can make judgments for themselves whether that sentence is too harsh or too lenient, but they generally can't decide for themselves whether intelligence agencies are operating within the law. That is why, as the U.S. intelligence community evolved over the past several decades, the Congress has set up a number of watchdog and oversight mechanisms to ensure intelligence agencies follow the law rather than violate it. That is why both the House and the Senate have Select Intelligence Committees. It is also why the Congress created the Foreign Intelligence Surveillance Court, and it is why the Congress created a number of statutory inspectors general to act as independent watchdogs inside the intelligence agencies themselves. All these oversight entities—one of which I am proud to serve on, the Senate Select Committee on Intelligence—all of them were created, at least in part, to ensure intelligence agencies carry out all their activities within the boundaries of publicly understood law.

But I come back to my reason for bringing up this issue this afternoon. The law itself always ought to be public and government officials must not be allowed to fall into the trap of secretly reinterpreting the law in a way that creates a gap between what the public thinks the law says and what the government is secretly claiming the law says. Any time that is being done, it first violates the public trust, and, second, I have long felt that allowing this kind of gap—a gap between the government's secret interpretation of the law and what the public thinks the law is—undermines the confidence our people are going to have in government. Also, by the way, it is pretty shortsighted because history shows the secret interpretations of the law are not likely to stay secret forever, and when the public eventually finds out government agencies are rewriting these surveillance laws in secret, the result is invariably a backlash and an erosion of confidence in these important government intelligence agencies and the important work, as I noted this morning, our intelligence officials are doing.

So this is a big problem. Our intelligence and national security agencies are staffed by exceptionally hard-working and talented men and women, and the work they do is extraordinarily important. If the public loses confidence in these agencies, it doesn't just undercut morale, it makes it harder for these agencies to do their jobs. If we ask the head of any intelligence agency, particularly an agency that is involved in domestic surveillance in any way, he or she will tell us that public trust is a vital commodity and voluntary cooperation from law-abiding Americans is critical to the effectiveness of their agencies. If members of the public lose confidence in these government agencies because they think government officials are rewriting surveillance laws in secret, those agencies are going to be less effective. I don't want to see that happen. On my watch, I don't want to be a part of anything that makes our intelligence agencies less effective.

Officials at these government agencies do not get up in the morning to do their work with malicious intent. They work very hard to protect intelligence sources and methods for good reasons. Sometimes what happens is people lose sight of the difference between protecting sources and methods, which ought to be kept secret, and the law itself, which should not be kept secret. Sometimes they even go so far as to argue that keeping the interpretation of the law secret is actually necessary because it prevents our Nation's adversaries from figuring out what our intelligence agencies are allowed to do. My own view is this is ''Alice in Wonderland'' logic, but if the U.S. Government were to actually adopt it, then all our surveillance laws would be kept secret because that would, I guess one could argue, be even more useful. When Congress passed the Foreign Intelligence Surveillance Act in 1978, it would have been useful to keep the law secret from the KGB so Soviet agents wouldn't know whether the FBI was allowed to track them down. But American laws and the American Constitution shouldn't be public only when government officials think it is convenient. They ought to be public all the time. Americans ought to be able to find out what their government thinks those laws mean, and I think it is possible to do that while still ensuring that sensitive information—information about sources and methods and the operations of the intelligence community—is appropriately kept secret.

My own view is the executive branch in the United States has so far failed to live up to their promises of greater transparency in this area, greater commitment to ensuring the public sees how our laws are being interpreted. As long as there is a gap between the way the government interprets these laws and what the public sees when people are sitting at home and looking it up on their laptops, I am going to do everything I can to reduce that gap and to ensure our citizens, consistent with our national security, have additional information with respect to how our laws are interpreted. We can do that while at the same time protecting the critical work being done by officials in the intelligence community.

With that, I am happy to yield to the distinguished chairwoman.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I wish to take a moment to clarify this question of secret law. This code book I am holding is the law. It is not secret. This is all of the code provisions which guarantees the legality of what the intelligence community does. There is a whole section on congressional oversight. There is a whole section on additional procedures regarding persons inside the United States and persons outside the United States. This, in fact, is the law. We can change the law, and Senator WYDEN had something to do with adding section 704. He did, in fact, change the law to put additional privacy protections in and those privacy protections are up for reauthorization in this bill before us.

I wish to address, if I could, what Senator MERKLEY said in his comments. I listened carefully. What he is saying is opinions of the Foreign Intelligence Surveillance Court should, in some way, shape or form, be made public, just as opinions of the Supreme Court or any court are made available to the public. To a great extent, I find myself in agreement with that. They should be. Why can't they be? Because the law and the particular factual circumstances are mixed together in the opinion, so the particular facts and circumstances are possibly classified. Hopefully the opinion can either be written in a certain way for public release or the Attorney General can be required to prepare a summary of what that opinion said for release to the public.

There is one part of Senator MERKLEY's amendment which I think we can work together on regarding the FISA Court opinions, and that is on page 5, lines 3 to 11, where the amendment says:

. . . if the Attorney General makes a determination that a decision may not be declassified and made available in a manner that protects the national security of the United States, including methods or sources related to national security, the Attorney General shall release an unclassified summary of such decision.

I have talked to Senator MERKLEY about this, and I have offered my help in working to establish this. The problem is, we have 4 days, and this particular part of the law expires, the FISA Amendments Act. I have offered to Senator MERKLEY to write a letter requesting declassification of more FISA Court opinions. If the letter does not work, we will do another intelligence authorization bill next year, and we can discuss what can be added to that bill on this issue.

I am concerned that what is happening is the term ''secret law'' is being confused with what the Foreign Intelligence Surveillance Court issues in the form of classified opinions based on classified intelligence programs. As I have made clear, the law is public and when possible, the opinions of the Foreign Intelligence Surveillance Court should be made available to the public in declassified form. It can be done, and I think it should be done more often.

If the opinion cannot be made public, hopefully a summary of the opinion can. And I have agreed with Senator MERKLEY to work together on this issue.

I ask unanimous consent that all quorum calls during debate on the FISA bill be equally divided between the proponents and opponents.

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

The Senator from Oregon.

Mr. WYDEN. Mr. President, just to respond to the points made by the distinguished chair of the committee—and, by the way, I think the chair's reference to being willing in the next intelligence authorization bill to work with those of us—and Senator MERKLEY has made good points this afternoon to try to include language in the next intelligence authorization bill to deal with secret law—I think that would be very constructive. I appreciate the chair making that suggestion.

Colleagues may know that under the leadership of the chair of the committee and the distinguished Senator from Georgia, the vice chair of the committee, Mr. CHAMBLISS, we were able, late last week, to work out the disagreements with respect to the intelligence authorization bill this year. I wish to thank the chair for those efforts. I think we have a good bill. I think all of us are against leaks. That is what was at issue. I think we have now dealt with the issue in a fashion so as to protect the first amendment and the public's right to know, and I appreciate the chair working with this Senator on it.

I think we have a good intelligence authorization bill now for this year. I think the chair's suggestion that we look at dealing with this issue of secret law—in addition, I hope, to adopting the Merkley amendment—that we deal with it in the next intelligence authorization bill is constructive. I do want to respond to one point on the merits with respect to comments made by the distinguished chair on this issue.

The distinguished chair of the committee essentially said the law is public because the text of the statute is public. That is true. That is not in dispute. It is true that the text of the law is public. But the secret interpretations of that law and the fourth amendment from the FISA Court are not public. The administration pledged 3 years ago to do something about that. They pledged it in writing in various kinds of communications, and that still has not been done. That is why this is an important issue with respect to transparency and accountability.

The distinguished chair of the committee is absolutely correct that the law is public. The text of the law is public. Nobody disputes that. But the secret interpretations of the law and the fourth amendment—the interpretations of the FISA Court are not public, and we have received pledges now for years that this would change.

I remember—perhaps before the distinguished chair of the committee was in the Chamber—talking about how Senator ROCKEFELLER and I got a letter indicating that this was going to be changed and that we were very hopeful we were going to again get more information with respect to legal interpretations, matters that ought to be public that do not threaten sources and methods and operations. We still have not gotten that. That is the reason why Senator MERKLEY's work is so important.

I see my friend and colleague. I say to Senator MERKLEY, the distinguished chair of the committee has made the point—I think while the Senator had to be out of the Chamber—that the law is public because the text of it is public. But what the Senator has so eloquently described as being our concern is that the opinions of the FISA Court—their opinions and views about the fourth amendment—are what has been secret, and the administration has said for years now they would do something about it.

So the Senator's amendment seeks to give this the strongest possible push. I think that is why the Senator's amendment is so important. The Senator is obviously making a lot of headway because the distinguished chair of the committee has also said this issue of secret law is something that can be addressed as well in the intelligence authorization bill.

If we can adopt the Senator's amendment and then move on to the intelligence authorization bill, that will be a very constructive way to proceed, very much in the public interest. The Senator is obviously making headway.

Mr. MERKLEY. Mr. President, if I could interject for a moment.

Mr. WYDEN. Yes, of course.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. MERKLEY. I thank my colleague from Oregon for spearheading this whole conversation about privacy and national security and how the two are not at war with each other. We are simply looking for appropriate warrant processes, an assurance to the public that the boundaries of privacy are being respected. Certainly, a piece of that is the secret law. I appreciate the comments of the chair of the Intelligence Committee on this issue. I do feel that in a democracy, understanding how a statute is interpreted is essential to the conduct of our responsibility in forging laws and ensuring that the constitutional vision is protected.

Mr. WYDEN. I thank my colleague. He is making an important point. I have sat next to Senator FEINSTEIN in the Intelligence Committee now for 12 years, and I think all of us—and we have had chairs on both sides of the aisle—understand how important the work of the intelligence community is. This is what prevents so many threats to our country from actually becoming realities—tragic realities.

What my friend and colleague from Oregon has hammered home this afternoon is that if a law is secret and there is a big gap between the secret interpretation of a law and what the public thinks the law means—my friend and I represent people who, for example, could be using their laptop at home in Coos Bay. If they look up a law and they see what the public interpretation is and they later find out that the public interpretation is real different than what the government secretly says it is, when people learn that, they are going to be very unhappy.

I see my colleague would like some additional time to address this issue. I am happy to yield to him.

Mr. MERKLEY. I thank Senator WYDEN.

The Senator mentioned an Oregonian sitting in Coos Bay working on his or her laptop and calling the Senator's office and saying: Hey, the law says the government can collect tangible material related to an investigation. Does that mean they can collect all of my Web conversations—knowing that the Web circuits travel around the world multiple times and at some point they travel through a foreign space. They ask this question in all sincerity because they care about the fourth amendment and their privacy.

How much ability do we have to give them a definitive answer on that?

Mr. WYDEN. Absent the information we are seeking to get under the amendment I am going to offer, I do not

think it is possible for a Senator to respond to the question.

The issue for an individual Senator would be: Do you know whether anyone has ever estimated how many U.S. phone calls and e-mails have been warrantlessly collected under the statute? Do you know whether any wholly domestic phone calls and e-mails have been collected under this statute, which I believe is the exact question my colleague from Oregon has asked.

I do not believe a Member of the Senate can answer that question. Being unable to answer that question means that oversight, which is so often trumpeted on both sides of the aisle, is toothless when it comes to the specifics.

I hope that responds to my colleague's question.

Mr. MERKLEY. Absolutely. I think about other questions our constituents might ask. They might ask if our spy agencies are collecting vast data from around the world and they become interested in an American citizen, can they search all that data without getting a warrant—a warrant that is very specific to probable cause and an affirmation.

Again, I suspect the answer we could give to the citizen would be that we cannot give a very precise evaluation of that, not knowing how the concept of information related to an investigation has been interpreted and laid out.

Mr. WYDEN. My colleague is asking a particularly important question because the Director of the National Security Agency, General Alexander, recently spoke at a large technology conference, and he said that with respect to communications from a good guy, which we obviously interpret as a law-abiding American, and someone overseas, the NSA has ''requirements from the FISA Court and the Attorney General to minimize that''—to find procedures to protect the individual, the law-abiding American's rights, essentially meaning, in the words of General Alexander, ''nobody else can see it unless there's a crime that's been committed.''

If people hear that answer to my colleague's question—which, frankly, General Alexander responded to directly—they pretty much say that is what they were hoping to hear; that nobody is going to get access to their communications unless a crime has been committed.

The only problem, I would say to my friend, is Senator UDALL and I have found out that is not true. It is simply not true. The privacy protections provided by this minimization approach are not as strong as General Alexander made them out to be. Senator UDALL and I wrote to General Alexander, and he said—and I put this up on my Web site so all Americans can see the response—the general said: That is not really how the minimization procedures work—these minimization procedures that have been described in such a glowing way—and that the privacy protections are not as strong as we have been led to believe. He may have misspoken and may have just been mistaken, but I am not sure the record would be correct even now had not Senator UDALL and I tried to make an effort to follow it up.

I can tell the Senator that at this very large technology conference—this was not something that was classified—at a very large technology conference recently in Nevada, what the head of the National Security Agency said was taking place with respect to protecting people, in response to my colleague's questions: Were their e-mails and phone calls protected, the general said to a big group: They are, unless a crime has been committed. The real answer is that is not correct.

Mr. MERKLEY. I thank my colleague from Oregon for being so deeply invested in the details of this over many years, utilizing a fierce advocacy in support of the fourth amendment and privacy to bring to these debates. I also thank the chair of the Intelligence Committee for her comments earlier today about secret laws and her own concerns about that and her willingness to help to work to have the administration provide the type of information that clarifies how these secret opinions interpret statutes. My thanks go to the Senator from California, Mrs. FEINSTEIN.

The PRESIDING OFFICER (Mrs. MCCASKILL.) The Senator from Oregon.

Mr. WYDEN. I thank my friend. Just one last point with respect to this technology conference where so many people walked away and thought their privacy was being protected by strong legal protections. General Alexander made additional confusing remarks that were in response to that same question with respect to the protections of law-abiding people.

General Alexander said, '' . . . the story that we [the NSA] have millions or hundreds of millions of dossiers on people is absolutely false.''

Now, I have indicated this morning as well, having served on the Intelligence Committee for a long time, I do not have the faintest idea of what anybody is talking about with respect to a dossier. So Senator UDALL and I followed that up as well. We asked the Director to clarify that statement. We asked, ''Does the NSA collect any type of data at all on millions or hundreds of millions of Americans?'' So that, too, is a pretty straightforward question.

The question Senators have been asking about this are not very complicated. If you are asking whether the National Security Agency is addressing these privacy issues, I think it is one of the most basic questions you can ask. Does the National Security Agency collect any type of data at all on millions or hundreds of millions of Americans? If the Agency saw fit, they could simply answer that with a yes or no. Instead, the Director of the Agency replied that while he appreciated our desire to have responses to those questions on the public record, there would not be a public response forthcoming.

So to go over the exchange again, the Director of National Security Agency states that '' . . . the story that we have millions or hundreds of millions of dossiers on people is absolutely false.'' Senator UDALL and I then asked: Does the NSA collect any type of data at all on millions or hundreds of millions of Americans? The Agency is unwilling to answer the question.

So that is what this debate is all about, is reforming the FISA Amendments Act and, in particular, getting enough information so that it is possible for the Senate to say to our constituents: We are doing oversight over this program.

I think right now, based on what we have outlined over the last 3 or more hours, it is clear that on so many of the central questions—the gap, for example, between the secret interpretation of the law and the public interpretation of the law, our inability to find out whether Americans in their wholly domestic communications have had their rights violated, how many law-abiding Americans have had their e-mails and phone calls swept up under FISA authorities, responses to these questions that stem from public remarks made by intelligence officials at public conferences—the inability to get answers to these questions means that this Senate cannot conduct the vigorous oversight that is our charge.

I expect we will have colleagues coming in. With the weather, it is a special challenge to get here from our part of the country.

I have a parliamentary inquiry. The distinguished chair of the committee already, I believe, got unanimous consent that the time in quorum calls be allocated to both sides. That was my understanding. Is that correct?

The PRESIDING OFFICER. That is correct.

Mrs. FEINSTEIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COONS. 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. COONS. Madam President, I ask unanimous consent to speak in general debate as to H.R. 5949 and that my time in so speaking be charged against Senator WYDEN.

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

Mr. COONS. Madam President, in this dangerous world, we have an obligation to give our intelligence community the tools and the resources they need to keep us safe. But we also have a fundamental obligation—just as great, I believe—to protect the civil liberties of law-abiding American citizens. A right to private communications free from the prying eyes and

ears of the government should be the rule, not the exception, for American citizens on American soil whom law enforcement has no reason to suspect of wrongdoing. Yet the legislation that we debate on this Senate floor today, the FISA Amendments Act, or the Foreign Intelligence Surveillance Act Amendments Act, would reauthorize surveillance authority that most Americans, most of the Delawareans whom I represent, would be shocked to learn the government has in the first place.

Under section 702, FISA permits the government to wiretap communications in the United States without a warrant if it reasonably believes the target of the wiretap to be outside of the country and has a significant purpose of acquiring foreign intelligence information.

Of course, communications are by definition between two or more people, so even if one participant is outside our country, the person they are talking to may be here in the United States and they may well be an American citizen.

Under this legislation, the government is permitted to collect and store their communications but without clear legal limits on what can be done with this information. They can keep it for an indefinite period of time. They can search within these communications and use them in civilian criminal investigations. Perhaps most concerning of all to me, they can search information obtained under this act for the communications of a specific individual U.S. citizen without judicial oversight and for any reason. If these are all true and this is the case, then I am gravely concerned.

What is at issue today is the scope of the government's power to conduct surveillance without getting a warrant. The warrant requirement is enshrined in our legal system from the very founding of our Nation because we believe in judicial checks and balances. If the government suspects wrongdoing by a U.S. citizen, it must convince a judge to approve a warrant. Warrants are issued each and every day in courts across the United States for investigation of potential offenses across the whole spectrum of criminal activity, including crimes affecting national security. In contrast, surveillance under this act is not required to meet this standard, leaving American citizens vulnerable to potentially very real violations of their privacy.

The balance between privacy and security is an essential test for any government, but it is a vital test for our government and for this country.

This law, in my view, does not contain some essential checks that are supposed to protect our privacy.

This law in its current form does contain some checks that I want to review that are supposed to protect our privacy. It requires that the government surveillance program must be reasonably designed to target foreigners abroad and not intentionally acquire wholly domestic communications. The law requires that a wiretap be turned off when the government knows it is listening in on a conversation between two U.S. individuals, and it forbids the government from targeting a foreigner as a pretext for obtaining the communications of a U.S. national. All three of these are important privacy protections currently in the law.

The problem is that we here in the Senate—and so the citizens we represent—don't know how well any of these safeguards actually work. We don't know how courts construe the law's requirements that surveillance be, as I mentioned, reasonably designed not to obtain any purely domestic information. The law doesn't forbid purely domestic information from being collected.

We know that at least one FISA Court has ruled that a surveillance program violated the law. Why? Those who know can't say, and average Americans can't know. We can suspect that U.S. communications occasionally do get swept up in this kind of surveillance, but the intelligence community has not—in fact, they say they cannot offer us any reasonable estimate of the number or frequency with which this has happened.

The government also won't state publicly whether any wholly domestic communications have been obtained under this authority, and the government won't state publicly whether it has ever searched this surveillance, this body of communications, for the communications of a specific American without a warrant.

For me, this lack of information, this lack of understanding, this lack of detail about exactly how the protections in this act have worked is of, as I said, grave concern. Too often, this body finds itself in the position of having to give rushed consideration to the extension of expiring surveillance authorities.

The intelligence communities tell us these surveillance tools are indispensable to the fight against terrorism and foreign spies, just as they did during the PATRIOT Act reauthorization debate last year. Also as in the case of the PATRIOT reauthorization, the expiration of these authorities, we were told, would throw ongoing surveillance operations into a legal limbo, that it could cause investigations to collapse or harm our ability to track terrorists and prevent crimes. All of these are profound and legitimate concerns. It is precisely because this legislation is so important that it is all the more deserving of the Senate's careful, timely, and deliberate attention.

This kind of serious consideration requires more declassified information on the public record than we have available now. That is why I am supporting the amendments reported by the Judiciary Committee, on which I serve, which would help to shine a light on exactly how this surveillance authority is used. It would direct the intelligence community inspector general to issue a public report explaining whether and how the FISA Amendments Act respects the privacy interests of Americans.

This amendment would also give us another chance to amend this FAA after we receive this report by adjusting the sunset not to 2017 but to 2015. The new expiration date would align the sunset of the FISA Amendments Act with those in the PATRIOT Act, allowing for more comprehensive review of both surveillance authorizations.

Concerns about privacy rights of law-abiding American citizens, as well as the striking lack of current public information, are also why I support the amendment of Senator MERKLEY to direct the administration to establish a framework for declassifying FISA Court opinions about the FAA. Secure sources and methods vital to the success of our intelligence community must be protected. I agree with that, and this amendment would do that. But the default position here ought to be that the legal analysis about the government's use of warrantless surveillance in this country is public rather than hidden from view.

I also strongly support the amendment of Senator WYDEN to force the intelligence community to provide Congress and the public, as appropriate, with specifics on just how much domestic communication has been captured under the FAA and what the intelligence community does with that information. This amendment simply asks for the most basic information about the practical consequences of the use of the powerful surveillance authorities in this act. To what extent are these authorities being used to discover the content of private conversations by U.S. citizens? What is the order of magnitude? We don't know.

This amendment is simply common sense. The Delawareans for whom I work and the Nation for whom we work expect that the government cannot listen in on their phone calls or read their e-mails unless a judge has signed a warrant. If there is a reason why this requirement is not consistent with national security, then I say let the intelligence community make that case and allow us to debate that and consider it in public. It is simply not acceptable for the intelligence community to ask us to surrender our civil liberties and then refuse to tell us with any specificity why we must do so, the context, and the scale of the exercise of this surveillance authority. In my view, America's first principles demand better.

I thank Senator WYDEN for his leadership on this issue, and I thank Majority Leader REID for ensuring that we have the opportunity to debate and consider these amendments and the very important issues they reflect here today.

I urge all of my colleagues to consider carefully and then support these

amendments to the FAA. We cannot let the impending deadline distract us from the important opportunity to conduct oversight and implement responsible reforms. To simply be rushed to passage when we have known the deadline was approaching for years strikes me as an abrogation of our fundamental oversight responsibility. This Chamber deserves a full and informed debate about our intelligence-gathering procedures and their potentially very real impact on Americans' privacy rights, and we need it sooner rather than later. These amendments would allow us to have that conversation and to work together on a path that strikes the essential balance between privacy and security for the citizens of these United States.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PAUL. 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. PAUL. Madam President, I rise today in support of the Fourth Amendment Protection Act. The fourth amendment guarantees the right of the people to be secure in their persons, their houses, their papers, and their effects against unreasonable searches and seizures.

John Adams considered the fight against general warrants—or what they called in those days writs of assistance—to be when ''the child Independence was born.'' Our independence and the fourth amendment go hand in hand. They emerge together. To discount or to dilute the fourth amendment would be to deny really what constitutes our very Republic.

But somehow, along the way, we have become lazy and haphazard in our vigilance. We have allowed Congress and the courts to diminish our fourth amendment protections, particularly when we give our papers to a third party—once information is given to an Internet provider or to a bank. Once we allowed our papers to be held by third parties, such as telephone companies or Internet providers, the courts determined we no longer had a legally recognized expectation of privacy.

There have been some dissents over time. Justice Marshall dissented in the California Bankers Association v. Schulz case, and he wrote these words:

> The fact that one has disclosed private papers to a bank for a limited purpose within the context of a confidential customer-bank relationship does not mean that one has waived all right to the privacy of the papers.

But privacy and the fourth amendment have steadily lost ground over the past century. From the California Bankers Association case, to Smith v. Maryland, to U.S. v. Miller, the majority has ruled that records, once they are held by a third party, don't deserve the same fourth amendment protections.

Ironically, though, digital records seem to get less protection than paper records. As the National Association of Defense Attorneys has pointed out, ''since the 1870s, a warrant has been required to read mail, and since the Supreme Court's decision in Katz v. the United States, a warrant has generally been required to wiretap telephone conversations. However, under current law, e-mail, text messages, and other communication content do not receive this same level of protection.'' Why is a phone call deserving of more protection than our e-mail or texts?

In U.S. v. Jones, the recent Supreme Court case that says the government can't put a GPS tracking device on a car without a warrant, Justice Sotomayor said this:

> I for one doubt that people would accept without complaint the warrantless disclosure to the government of a list of every Web site they have visited in the last week, or month, or year. . . . I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to the Fourth Amendment protection.

Justices Marshall and Brennan, dissenting in Smith v. Maryland, emphasized the danger of giving up fourth amendment protections. They wrote:

> The prospect of government monitoring will undoubtedly prove disturbing even to those with nothing illicit to hide. Many individuals, including members of unpopular political organizations or journalists with confidential sources, may legitimately wish to avoid disclosure of their personal contacts.

In Miller and in Smith, the Supreme Court held that the fourth amendment did not protect records held by third parties. Sotomayor wrote in the Jones case that it may be time to reconsider these cases, reconsider how they were decided; that their approach is, in her words, ''ill-suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.''

Today, this amendment that I will present, the Fourth Amendment Protection Act, does precisely that. This amendment would restore the fourth amendment protection to third-party records. This amendment would simply apply the fourth amendment to modern means of communications. E-mailing and text messaging would be given the same protections we currently give to telephone conversations.

Some may ask, well, why go to such great lengths to protect records? Isn't the government just interested in the records of bad people?

To answer this question, one must imagine their Visa statement and what information is on that Visa statement. From our Visa statement, the government may be able to ascertain what magazines we read; whether we drink and how much; whether we gamble and how much; whether we are a conservative, a liberal, a libertarian; whom we contribute to; what our preferred political party is; whether we attend a church, a synagogue, or a mosque; whether we are seeing a psychiatrist; and what type of medications we take. By poring over a Visa statement, the government can pry into every aspect of one's personal life. Do we really want to allow our government unfettered access to sift through millions of records without first obtaining a judicial warrant?

If we have people who are accused of committing a crime, we go before a judge and get a warrant. It is not that hard. I am not saying the government wouldn't be allowed to look through records. I am saying that the mass of ordinary, innocent citizens should not have their records rifled through by a government that does not first have to ask a judge for a warrant before they look at personal records.

We have examples in the past of abuses by our own country. During the civil rights era, the government snooped on activists. During the Vietnam era, the government snooped on antiwar protesters. In a digital age, where computers can process billions of bits of information, do we want the government to have unfettered access to every detail of our lives? From a Visa statement, the government can determine what diseases one may or may not have; whether one is impotent, manic, depressed; whether someone is a gun owner and whether he or she buys ammunition; whether one is an animal rights activist, an environmental activist; what books we order, what blogs we read, and what stores or Internet sites we look at. Do we really want our government to have free and unlimited access to everything we do on our computers?

The fourth amendment was written in a different time and a different age, but its necessity and its truth are timeless. The right to privacy and, for that matter, the right to private property are not explicitly mentioned in the Constitution, but the ninth amendment says that the rights not stated are not to be disparaged or denied.

James Otis—arguably the father of the fourth amendment—put it best when he said:

> One of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and whilst he is quiet, he is as well guarded as a prince in his castle.

Today's castle may be an apartment, and who knows where the information is coming from. It may be paper in one's apartment or it may be bits of data stored who knows where, but the concept that government should be restrained from invading a sphere of privacy is a timeless concept.

Over the past few decades, our right to privacy has been eroded. The Fourth Amendment Protection Act would go a long way toward restoring this cherished and necessary right. I hope my colleagues will consider supporting, defending, and enhancing the fourth amendment, bringing it into a modern

age where modern electronic and computer information and communications are once again protected by the fourth amendment.

Madam President, I reserve the remainder of my time.

Mrs. FEINSTEIN. Madam President, is the Senator going to call up his amendment?

AMENDMENT NO. 3436

Mr. PAUL. Madam President, I ask unanimous consent to call up my amendment, which is at the desk.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. PAUL], for himself and Mr. LEE, proposes an amendment numbered 3436.

Mr. PAUL. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To ensure adequate protection of the rights under the Fourth Amendment to the Constitution of the United States)

At the appropriate place, insert the following:

SEC. _____. FOURTH AMENDMENT PRESERVATION AND PROTECTION ACT OF 2012.

(a) SHORT TITLE.—This section may be cited as the ''Fourth Amendment Preservation and Protection Act of 2012''.

(b) FINDINGS.—Congress finds that the right under the Fourth Amendment to the Constitution of the United States of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is violated when the Federal Government or a State or local government acquires information voluntarily relinquished by a person to another party for a limited business purpose without the express informed consent of the person to the specific request by the Federal Government or a State or local government or a warrant, upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

''(c) DEFINITION.—In this section, the term ''system of records'' means any group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular associated with the individual.

(d) PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Federal Government and a State or local government is prohibited from obtaining or seeking to obtain information relating to an individual or group of individuals held by a third-party in a system of records, and no such information shall be admissible in a criminal prosecution in a court of law.

(2) EXCEPTION.—The Federal Government or a State or local government may obtain, and a court may admit, information relating to an individual held by a third-party in a system of records if—

(A) the individual whose name or identification information the Federal Government or State or local government is using to access the information provides express and informed consent to the search; or

(B) the Federal Government or State or local government obtains a warrant, upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, I rise in opposition to this amendment. This amendment is extraordinarily broad. It is much broader than FISA, and in the course of my remarks, I would hope to address how broad it is. It essentially bars Federal, State, and local governments from obtaining any information relating to an individual that is held by a third party unless the government first obtains either a warrant or consent from the individual. This is also not germane to FISA. It has not been reviewed by the Judiciary Committee, which would have jurisdiction over this matter. For that reason alone, I would vote against it. Also, it impedes the timely reauthorization of the FISA Amendments Act.

I also oppose the substance of the amendment. The amendment is titled the ''Fourth Amendment Preservation and Protection Act.'' In reality, it seeks to reverse over 30 years of Supreme Court precedent interpreting the fourth amendment.

In 1967 the Supreme Court established its reasonable expectation of privacy test under the fourth amendment, in the case of Katz v. United States. Nine years later, in a case known as U.S. v. Miller, the Supreme Court held:

[T]he Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities.

So already you have a Supreme Court case saying that the fourth amendment does not prohibit the use of this kind of information by the government.

The Miller case involved the government obtaining account records from a bank. But in 1979, just 3 years after Miller, the Supreme Court took up the issue of third-party collection in a case involving the installation and use of pen registers, which are electronic devices that enable law enforcement to collect telephone numbers dialed from a particular phone line without listening to the content of those calls. The 1973 case is known as Smith v. Maryland, and in it the Court held:

[W]e doubt that people in general entertain any actual expectation of privacy in the numbers they dial. All telephone users realize that they must ''convey'' phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed. All subscribers realize, moreover, that the phone company has facilities for making permanent records of the numbers they dial, for they see a list of their long-distance (toll) calls on their monthly bills. . . . Telephone users . . . typically know that they must convey numerical information to the phone company; that the phone company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes. Although subjective expectations cannot be scientifically gauged, it is too much to believe that telephone subscribers, under these circumstances, harbor any general expectation that the numbers they dial will remain secret. . . . This Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.

More recently, in the Court's 2012 decision in U.S. v. Jones, some Justices have questioned whether the time has come to revisit Miller and Smith in some form. Now, perhaps they are right, but this amendment isn't the form they had in mind. And this isn't the time to do so.

This amendment is so broad that the police could not use cell phone data to find a missing or kidnapped child without a warrant or the consent of the missing child—impossible to get. Similarly, they could not ask the phone company to provide the home address of a terrorist, drug dealer, or other criminal without consent or warrant. They could not ask a bank if such criminals had recently deposited large sums of money. In fact, as written, this amendment would prohibit law enforcement from looking up the name, address, and phone number of a criminal suspect, witness, or any other person online unless they obtained a warrant or the consent of the criminal suspect. As you can see, the amendment is too broad.

As I have already stated, the FAA authorities expire in 4 days. If those authorities are allowed to lapse, our intelligence agencies will be deprived of a critical tool that enables those agencies to acquire vital information about international terrorists and other important targets overseas, plus what they may be plotting in the United States. It is imperative that we pass a clean reauthorization of these authorities without amendments that will hamper passage in the House.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 3437

Mr. LEAHY. Madam President, I ask unanimous consent to set aside the pending amendments and call up my amendment, which is at the desk.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] for himself, Mr. DURBIN, Mr. FRANKEN, Mrs. SHAHEEN, Mr. AKAKA, and Mr. COONS, proposes an amendment numbered 3437.

Mr. LEAHY. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''FAA Sunsets Extension Act of 2012''.

SEC. 2. EXTENSION OF FISA AMENDMENTS ACT OF 2008 SUNSET.

(a) EXTENSION.—Section 403(b)(1) of the FISA Amendments Act of 2008 (Public Law

110-261; 50 U.S.C. 1881 note) is amended by striking ''December 31, 2012'' and inserting ''June 1, 2015''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 403(b)(2) of such Act (Public Law 110-261; 122 Stat. 2474) is amended by striking ''December 31, 2012'' and inserting ''June 1, 2015''.

(c) ORDERS IN EFFECT.—Section 404(b)(1) of such Act (Public Law 110-261; 50 U.S.C. 1801 note) is amended in the heading by striking ''DECEMBER 31, 2012'' and inserting ''JUNE 1, 2015''.

SEC. 3. INSPECTOR GENERAL REVIEWS.

(a) AGENCY ASSESSMENTS.—Section 702(l)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''authorized to acquire foreign intelligence information under subsection (a)'' and inserting ''with targeting or minimization procedures approved under this section'';

(2) in subparagraph (C), by inserting ''United States persons or'' after ''later determined to be''; and

(3) in subparagraph (D)—

(A) in the matter preceding clause (i), by striking ''such review'' and inserting ''review conducted under this paragraph'';

(B) in clause (ii), by striking ''and'' at the end;

(C) by redesignating clause (iii) as clause (iv); and

(D) by inserting after clause (ii), the following:

''(iii) the Inspector General of the Intelligence Community; and''.

(b) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REVIEW.—Section 702(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REVIEW.—

''(A) IN GENERAL.—The Inspector General of the Intelligence Community is authorized to review the acquisition, use, and dissemination of information acquired under subsection (a) in order to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f), and in order to conduct the review required under subparagraph (B).

''(B) MANDATORY REVIEW.—The Inspector General of the Intelligence Community shall review the procedures and guidelines developed by the intelligence community to implement this section, with respect to the protection of the privacy rights of United States persons, including—

''(i) an evaluation of the limitations outlined in subsection (b), the procedures approved in accordance with subsections (d) and (e), and the guidelines adopted in accordance with subsection (f), with respect to the protection of the privacy rights of United States persons; and

''(ii) an evaluation of the circumstances under which the contents of communications acquired under subsection (a) may be searched in order to review the communications of particular United States persons.

''(C) CONSIDERATION OF OTHER REVIEWS AND ASSESSMENTS.—In conducting a review under subparagraph (B), the Inspector General of the Intelligence Community should take into consideration, to the extent relevant and appropriate, any reviews or assessments that have been completed or are being undertaken under this section.

''(D) REPORT.—Not later than December 31, 2014, the Inspector General of the Intelligence Community shall submit a report regarding the reviews conducted under this paragraph to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

''(I) the congressional intelligence committees; and

''(II) the Committees on the Judiciary of the House of Representatives and the Senate.

''(E) PUBLIC REPORTING OF FINDINGS AND CONCLUSIONS.—In a manner consistent with the protection of the national security of the United States, and in unclassified form, the Inspector General of the Intelligence Community shall make publicly available a summary of the findings and conclusions of the review conducted under subparagraph (B).''.

SEC. 4. ANNUAL REVIEWS.

Section 702(l)(4)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)(4)(A)), as redesignated by section 3(b)(1), is amended—

(1) in the matter preceding clause (i)—

(A) in the first sentence—

(i) by striking ''conducting an acquisition authorized under subsection (a)'' and inserting ''with targeting or minimization procedures approved under this section''; and

(ii) by striking ''the acquisition'' and inserting ''acquisitions under subsection (a)''; and

(B) in the second sentence, by striking ''The annual review'' and inserting ''As applicable, the annual review''; and

(2) in clause (iii), by inserting ''United States persons or'' after ''later determined to be''.

Mr. LEAHY. Madam President, when Congress passed the FISA Amendments Act of 2008, it granted the Government sweeping new electronic surveillance powers which, if abused or misused, could impinge on the privacy rights of Americans. Congress enacted these controversial authorities with the understanding that it would re-examine these provisions within four years, and determine whether to allow these authorities to continue.

While there is no question that the surveillance powers established in the FISA Amendments Act have proven to be extraordinarily important for our national security, it is equally clear to me that those broad powers must continue to come with rigorous oversight and strong privacy protections.

That is why the Senate should adopt the Senate substitute amendment that would allow the government to continue using these authorities, but for a period of time that ensures strong and independent oversight. This amendment was considered and reported favorably by the Senate Judiciary Committee last July. I urge Senators to support this reasonable and commonsense measure. I call on all Senators who talk about accountability and oversight to join with us to adopt this better approach to ensuring our security and our privacy.

Many of us will remember that the FISA Amendments Act was originally passed to clean up what one Bush administration lawyer called the ''legal mess'' of the warrantless wiretapping program, which undermined the privacy rights and civil liberties of countless Americans. More than that, the warrantless wiretapping program undermined the public's trust in our Government, and in the intelligence community's ability to police itself.

During the debate on the FISA Amendments Act in 2007 and 2008, I worked with others on the Judiciary Committee to ensure that important oversight, accountability, and privacy protections were put into place, including express prohibitions on the warrantless wiretapping of U.S. persons or any individual located here in the United States, as well as a prohibition against the practice of so-called ''reverse targeting.''

I am convinced that the oversight and accountability provisions that we included in the original legislation have helped to prevent the abuse of these surveillance tools. Based on my review of information provided by the Government, and after a series of classified briefings, I have not seen evidence that the law has been abused, or that the communications of U.S. persons are being intentionally targeted. But let's be absolutely clear, my conclusion is based on the information I have seen to date, and current compliance does not guarantee future compliance. We must not relax our oversight efforts, and I believe that there is more that can be done to protect against future abuse and misuse.

In June, after the Senate Intelligence Committee originated the Senate bill to reauthorize and extend FISA, Senator GRASSLEY and I asked for a sequential referral, just as I did in 2008, to allow the Judiciary Committee to consider and improve this important legislation. The bill that was approved by the Intelligence Committee provided for a general and unfettered extension of the expiring provisions until June 2017.

I hoped that the Senate Judiciary Committee would improve on that, and we did. I worked with Senator FEINSTEIN, Chair of the Senate Intelligence Committee, to craft a compromise to shorten the sunset to 2015 and to add some accountability and oversight provisions. I appreciated the Senator from California's commitment to helping to improve this sensitive and important legislation and her strong words of support for the Senate Judiciary Committee bill. The Senate Judiciary Committee adopted the substitute and reported the Senate bill to the Senate promptly last July. That is the bill that I am offering, the Senate bill. There is no reason for us to merely rubberstamp the House bill. We have a better bill with better provisions and more accountability and oversight. I am pleased that Senators DURBIN, FRANKEN, SHAHEEN, AKAKA, and COONS have joined me as cosponsors of this amendment.

The Senate bill that the Judiciary Committee adopted, and that I am offering to improve on the House bill

that has been brought before us, provides for a shorter sunset of the expiring surveillance authorities. The House bill's sunset is longer than that adopted by the Senate Select Committee on Intelligence and unnecessarily extended. The Senate bill I offer provides for extending FISA authorities, but would sunset them in June 2015. This will allow the existing programs to continue but ensures that we revisit them in a timely fashion as more information becomes available. It would also align with the June 2015 sunset of certain provisions of the USA PATRIOT Act, thereby enabling Congress to evaluate all of the expiring surveillance provisions of FISA together. This is an approach that Chairman FEINSTEIN and I both supported during the PATRIOT Act reauthorization debate in 2011, along with many members of the Judiciary and Intelligence Committees. This is the position the intelligence community and the administration supported then and as recently as last year. It is the right position and the right sunset, and that is why the Senate bill should include it and will if my amendment is adopted.

As we have seen through our experience with the USA PATRIOT Act, sunsets are important oversight tools. Sunsets force Congress to re-examine carefully the surveillance powers that have been authorized. If we know we have to actually look at it because it is going to run out, what happens is amazing—Senators in both parties actually look at it. More importantly, sunsets force the administration to provide full and accurate information to justify to Congress the reauthorization of significant authorities. Any administration is going to be willing to kick the ball down the road if they don't have to do it; if they have a sunset, they do. The last thing we want is for the NSA and the FBI to take for granted that they will have these powers, especially when the misuse or abuse of these powers could significantly impact the constitutional liberties of Americans. Likewise, we must never take for granted our constitutional liberties, and we should not shy away from our duty as Senators to protect against any such misuse or abuse.

I acknowledge and appreciate those in the intelligence community who work very hard to ensure compliance with our laws and Constitution. But it is also important to note that there has never been a comprehensive review of these authorities by an independent Inspector General that would provide a complete perspective on how these authorities are being used, and whether they are being used properly.

The DOJ Inspector General recently completed a review of the FBI's implementation of the FISA Amendments Act, but this was limited in scope—not only because it was just limited to the FBI, and not any other part of the intelligence community, but also because it was limited in scope to the period ending in early 2010. Notably, this was the first report ever issued by the DOJ Inspector General regarding the FBI's use of Section 702 authorities, and it was issued in September 2012—after the Senate Intelligence and Judiciary Committees reported their bills, and after the House voted to pass its clean extension.

Even more troubling is the fact that we still have not received a report from the NSA Inspector General that fully assesses the NSA's compliance with its targeting and minimization procedures, or the limitations we put in place to protect the privacy of Americans. I am told that a preliminary report on the adequacy of the management controls at the NSA is being finalized—but it is just that: a preliminary report, and not an actual, final, comprehensive, or definitive assessment of whether NSA analysts are complying with the procedures and rules that they have put into place. Indeed, the NSA Inspector General's office has acknowledged that there is more work to be done, and that this review—once completed—will just be a first step. Moreover, as with the DOJ Inspector General's report, this review is limited just to a single agency, and does not incorporate any review or assessment of any information-sharing that might be taking place.

To address the limitations faced by the IGs for individual agencies, our Senate bill as embodied in my substitute amendment adds some commonsense improvements to the oversight provisions in the FISA Amendments Act, including a comprehensive independent review by the Inspector General of the Intelligence Community. The Office of the Inspector General of the Intelligence Community was established in 2010 and has the unique ability to provide a comprehensive assessment of the surveillance activities across the intelligence community, rather than just a limited view of a single agency. An independent review by the Inspector General for the Intelligence Community could answer some remaining questions about the implementation of the FISA Amendments Act, particularly with respect to the protection of the privacy rights of U.S. persons. I also believe that an unclassified summary of such an audit should be made public in order to provide increased accountability directly to the American people.

These are reasonable improvements to the law that I urge all Senators to support. We often hear Senators speak about the need for vigorous and independent oversight of the Executive Branch, the need to support independent inspectors general who are not beholden to a particular agency, and the need for Congress to conduct its own independent reviews as a check on the power of the Executive. So I ask those same Senators this question: When Congress has authorized the use of expansive and powerful surveillance tools that have the potential to impact so significantly the constitutional rights of law-abiding Americans, isn't this exactly the type of situation that calls for that sort of vigorous and independent oversight? Put simply, someone needs to be watching the watchers—and watching them like a hawk. I call upon all Senators, on both sides of the aisle, who talk about accountability and oversight to join with us to adopt this better approach to ensuring our security and our privacy by adopting the Senate bill as embodied in the substitute amendment.

No one can argue that shortening the sunset or adding oversight provisions somehow hampers the Government's ability to fight terrorism or somehow harms national security. That is not true. All Senators should know that neither the 2015 sunset date nor the added oversight provisions have any operational impact on the work of the intelligence community. No one—I repeat, no one from the administration has ever said to me that these provisions cause any operational problems for the intelligence community, and to suggest otherwise now is simply not accurate.

In fact, when the Senate Select Committee on Intelligence reported its bill last year that bill had exactly the same sunset date of June 2015 that is in the substitute amendment. I was encouraged that Senator FEINSTEIN supported this 2015 sunset date when the Judiciary Committee approved this substitute amendment, and noted then that this substitute amendment does not cause any operational problems for the intelligence community.

So where does that leave us? It leaves us with a simple choice. We can enable the intelligence community to continue using these authorities until 2015, while adding commonsense improvements that will help us to conduct vigorous oversight. Or the Senate can abdicate its responsibilities and rubberstamp the House bill that extends these powerful authorities for another five years, without a single improvement in oversight or accountability—even though we may not have all the information we need to make an informed determination.

As an American, and as a Vermonter, the choice is simple for me. We have an obligation to ensure that these expansive surveillance authorities are accompanied by safeguards. We can fulfill our duty to protect the privacy and civil liberties of the American public, while continuing to provide the intelligence community with tools to help keep America safe. That is what the Senate bill as embodied in the substitute amendment accomplishes. I urge Senators to choose this balanced, commonsense approach, and to support adopt the Senate substitute to the over-expansive House bill.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, in listening to the distinguished chairman of the Judiciary Committee and also reading the amendment, I want to

make clear that there are parts of this amendment to which I would agree. However, the House bill is now before us, which would extend the sunset of the FISA Amendments Act 5 years versus 2½ years in the Leahy Amendment. So, before us is the 5-year authorization period which the House has already passed. We have 4 days before the FISA Amendments Act essentially end. I cannot support that shorter time but I support the 5-year extension.

The part of the amendment of the chairman of the Judiciary Committee that I do agree with is the expanded mission of the inspector general of the Intelligence Community. Since the chairman is now becoming the President in rapid promotion, I will be happy to address my remarks to him.

(The PRESIDENT pro tempore assumed the Chair.)

Mr. President, Mr. Chairman, I want you to know we have spent large amounts of time on the particular issue of Section 702 reporting. For example, the law requires semiannual Attorney General and DNI assessments of section 702. Every 6 months they assess compliance with the targeting and minimization procedures. The law also requires the inspector general of Justice and the IG of every element of the intelligence community authorized to acquire foreign intelligence information to review compliance within Section 702. In addition, the IGs are required to review the number of disseminated intelligence reports containing a reference to a U.S.-person identity and the number of U.S. person identities subsequently disseminated. The law also already requires annual reviews by agency heads of Section 702. It also requires a semiannual Attorney General report on Title VII every 6 months to fully inform the congressional Intelligence and Judiciary Committees. And there is another semiannual report on FISA required for the Attorney General to submit a report to the committees. Finally, there are requirements for the provision of documents relating to significant construction or interpretation of FISA by the FISA Court.

So it is clear that there are many reporting requirements on FISA and specifically section 702. I would also add that the Intelligence Committee has had hearings with the DNI, with Attorney General Holder, with Director of FBI Mueller on how Section 702 is carried out. I will also tell you the Intelligence Committee staff spends countless hours going over the reports in meetings with representatives of the departments. However, I would say to Chairman LEAHY that what I would like to do is look at your amendment and see how it compares to what is currently being done and possibly add some parts of your amendment to our authorization bill next year.

I would urge that we have your staff and the Intelligence Committee staff work together to see what we can do. The real reason to oppose all of this at this time is that these authorities expire in 4 days. I remember the vote in the Judiciary Committee on this amendment very well. Had the bill come to the floor over the summer, after it passed out of Committee, then we might have had time to convince the House to consider these changes to current law. But here we are where we have a 5-year House bill in front of us and only 4 days to extend the sunset. As I am opposing all amendments, I would respectfully and, not quite sorrowfully but almost, have to oppose your amendment with the caveat I added, Mr. Chairman.

In deference to you and your chairmanship of the Judiciary Committee, the Intelligence Committee staff will work closely with yours to see if there is anything that needs to be added to a future intelligence authorization bill.

I thank you for that and I yield the floor.

The PRESIDENT pro tempore. The Senator from Oregon.

Mr. WYDEN. Mr. President, first, I strongly support your amendment, given how little most Members of Congress know about the actual impact of the law. The shorter extension period as envisioned by the distinguished chairman of the Judiciary Committee makes a lot of sense. I also think it makes sense to have the intelligence community inspector general conduct an audit on how FISA Amendment Act authority has been used.

Once again, we have had this discussion about how much everybody already knows about how the FISA Amendments Act affects the operations of this program on law-abiding Americans. I would have to respectfully disagree. I asked Senators, as we touched on this in the course of the afternoon, whether they know if anyone has ever estimated how many U.S. phone calls and e-mails have been warrantlessly collected under this statute?

Senator UDALL and I have asked this very simple question: Has there been an estimate—not whether there is going to be new work, whether they are going to be difficult assignments. We have asked whether there has ever been an estimate of how many U.S. phone calls have been warrantlessly collected under the statute. We were told in writing we were not going to be able to get that information.

I think Senators ought to also ask themselves whether they know if any domestic phone calls and e-mails, what are wholly domestic communications, have been conducted under this statute. I think they will also find they do not know the answer to this question. I think Senators also would want to know whether the Government has ever conducted any warrantless backdoor searches for Americans' communications.

So when we have the argument that has now been advanced several times in the course of the day that we already know so much, we do not need all these amendments, it is just going to delay passage of the legislation, I urge people—go to my Web site, in particular—to look at what we have learned from the intelligence community, which is the response to request after request, particularly requests of a tripartisan group of Senators asking yes or no questions: Has there been an estimate? For example, how many law abiding Americans have had their communications swept up into these FISA authorities? Our inability to get that answer makes it clear that when one talks about robust oversight under this legislation, the reality is that there is enormous lack of specifics with respect to how this legislation actually works.

I would only say in response to the amendment offered by the Presiding Officer, Senator LEAHY, the chairman of the Judiciary Committee, I think his amendment is very appropriate. Given how little is known, to me it is one of the fundamental pillars of good oversight that we do not grant open-ended kind of authorizations when we lack so much fundamental information about how this program works, particularly how it would affect law-abiding Americans.

With that, I yield back.

Mrs. FEINSTEIN. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDENT pro tempore. The majority leader.

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

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

LETTER OF RESIGNATION

Mr. REID. Mr. President, I have in my hands a letter from Brian Schatz, the Lieutenant Governor of the State of Hawaii, and that letter is a resignation letter.

I ask unanimous consent the resignation letter be printed in the RECORD.

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

DECEMBER 26, 2012.

Re Resignation as Lieutenant Governor.

Hon. NEIL ABERCROMBIE,
Governor, State of Hawai'i, State Capitol, Honolulu, Hawaii.

DEAR GOVERNOR ABERCROMBIE: Thank you for the confidence you have placed in me today by appointing me to represent Hawaii in the United States Senate by filling the vacancy in the Senate caused by the death of Senator Inouye.

Because of the critical issues facing our nation, I will need to go to Washington, D.C. immediately to assume the duties of the office of United States Senator. In order to ensure that the duties and responsibilities of the Lieutenant Governor are performed for the State of Hawai'i with as little interruption as possible, I hereby tender my resignation as Lieutenant Governor, effective immediately.

Very truly yours,

BRIAN SCHATZ.

CERTIFICATE OF APPOINTMENT

The VICE PRESIDENT. The Chair lays before the Senate a certificate of appointment to fill the vacancy created by the death of the late Senator Daniel K. Inouye of Hawaii.

The certificate, the Chair is advised, is in a form suggested by the Senate. If there is no objection, the reading of the certificate will be waived and it will be printed in full in the RECORD.

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

EXECUTIVE CHAMBERS

Honolulu

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Hawai'i, I, Neil Abercrombie, the governor of said State, do hereby appoint Brian Schatz a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the death of Daniel K. Inouye, is filled by election as provided by law.

Witness: His excellency our governor Neil Abercrombie, and our seal hereto affixed at the Hawai'i State Capitol this 26th day of December, in the year of our Lord 2012.

By the governor:

NEIL ABERCROMBIE,
Governor.
BRIAN SCHATZ,
Lieutenant Governor.

[State Seal Affixed]

ADMINISTRATION OF THE OATH OF OFFICE

The VICE PRESIDENT. If the Senator-Designee will now present himself at the desk, the Chair will administer the oath of office.

The Senator-Designee, escorted by Mr. AKAKA and Mr. REID, advanced to the desk of the Vice President, the oath prescribed by law was administered to him by the Vice President, and he subscribed to the oath in the Official Oath Book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause, Senators rising)

The PRESIDENT pro tempore. The majority leader.

WELCOMING SENATOR BRIAN SCHATZ

Mr. REID. Mr. President, on behalf of the entire Senate, I welcome Senator BRIAN SCHATZ to the Senate. I congratulate him on his appointment to fill the seat of the late Senator Dan Inouye who, as we all know, was an institution in and of himself.

Senator SCHATZ is now one of the youngest Senators in this body. Nevertheless, he has a long history of serving the State of Hawaii. Prior to entering politics, Senator SCHATZ served for 8 years as the CEO of Helping Hands Hawaii, one of Hawaii's largest nonprofit social services organizations. He also served four terms in the Hawaii House of Representatives and served until just a few minutes ago as the Lieutenant Governor of the State of Hawaii.

Having been a Lieutenant Governor he has experience as a legislator, and then as one of the presiding officers of the entire Senate, speaks for itself in helping to prepare for the job he has here. I expect he will build upon the foundation laid by Senator Inouye in the Senate. While no one can fill the shoes of our friend Senator Inouye, BRIAN SCHATZ is a young man with a future full of promise and opportunity.

I ask unanimous consent that the Senator from Hawaii, Mr. AKAKA, now be recognized.

The PRESIDENT pro tempore. The senior Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise to welcome Hawaii's new Senator, BRIAN SCHATZ. BRIAN is a leader for Hawaii's present and for our future and I welcome him with much aloha pumehana, which means warm love.

I also welcome and congratulate Senator SCHATZ's wife Linda; their children, Tyler and Mia; his twin brother, and Senator SCHATZ's proud parents, Dr. Irwin and Mrs. Barbara Schatz.

Senator SCHATZ arrives in Washington during a sad time as we continue to mourn the loss of our champion, Senator Dan Inouye. Dan Inouye will always be a legend in Hawaii. He will never be replaced.

At Dan Inouye's memorial service in Honolulu this past weekend, I was reminded of how many people he touched in Hawaii and across the country. We must honor his legacy by working together for the people of Hawaii.

I thank BRIAN for volunteering for this incredible responsibility. He only learned of his appointment yesterday and did not have any time to spare, so he hopped on Air Force One and flew straight to Washington to be sworn in today.

We need him here now because we are facing a major challenge, one that regrettably has been created by Congress in our own inability to thus far compromise. The looming spending cuts and tax increases known as the fiscal cliff must be fixed within the next 5 days.

Mahalo—thank you—BRIAN, for accepting this challenge.

I am here to help Senator SCHATZ in any way I can. While there are other talented leaders in Hawaii who stepped forward and who would also have been excellent appointees, I know my colleagues will join me in supporting Senator BRIAN SCHATZ for the good of Hawaii.

Throughout my 36-year career in Congress, the Hawaii delegation has always been unified. We have always put Hawaii first before our individual ambition. We must continue that. Hawaii comes first.

I have followed BRIAN SCHATZ's career for many years. He was an active member of the Hawaii State House of Representatives for 8 years before becoming the CEO of Helping Hands Hawaii, a nonprofit organization that provides human services in the islands. As Lieutenant Governor, he has been a big part of our community. He has been an outspoken supporter of our troops and veterans and defender of our environment.

Senator SCHATZ will be a strong progressive voice for Hawaii in the Senate. He will advance freedom and equality. He will be a strong voice on climate change, expanding clean renewable energy, and protecting our precious natural resources. He will defend our Native Hawaiians and all our Nation's first people—those Americans who exercised sovereignty on lands that later became part of the United States. He will uphold the values and priorities of our unique State.

I say to my friend, the new junior Senator from Hawaii, never forget that he is here with the solemn responsibility to do everything he can to represent the people of Hawaii, to make sure their needs are addressed in every policy discussion, and to speak up and seek justice for those who cannot help themselves.

God bless you, Senator SCHATZ. God bless Hawaii. God bless the United States of America.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, before my friend from Hawaii leaves the floor, we have all come and given speeches—a lot of us, at least—about Senator AKAKA, but we have not had a lot of people on the floor when we have done that.

The presentation just now is typical for DAN AKAKA: never a word about himself, always about somebody else. If the new Senator has Senator AKAKA's qualities—the kindest, gentlest person I have ever served in this body with—it is something for which he should strive. The shoes he has to fill, we all know—AKAKA and Inouye—are significant to fill, but he can do that.

For you, Senator AKAKA—with these people on the floor—we are going to miss you so much. You are a wonderful human being and have been a great Senator.

Mr. AKAKA. I yield the floor, Mr. President.

Mr. REID. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

FISA AMENDMENTS ACT REAUTHORIZATION ACT OF 2012—Continued

COMMENDING THE PRESIDENT PRO TEMPORE

Mr. BLUNT. Mr. President, also on two things that do not relate to my

comments about the Foreign Intelligence Surveillance Act—I would like to say it is a great honor for me to be able to speak on the floor for the first time with the President pro tempore presiding over the Senate. I know he is going to lead this body well and he has served with great dignity. It is an honor to be here with him on this day, even if it is December 27, 2012, and even though we are, of course, all continuing to think about the former President pro tempore and the services for him that were just completed.

TRIBUTES TO DEPARTING SENATORS

DANNY AKAKA

I would also like to say I was here when the new Member from Hawaii was sworn in and listened to Mr. AKAKA's comments. I have great respect for him and the quiet dignity he brings to everything he does—from weekly demonstrations of his personal faith, which I share with him, to his name being mentioned first in all these quorum calls that have gone on now for, I assume, all the time he has been in the Senate, going back to 1981.

But we will miss him, as we will miss his colleague from Hawaii, and we welcome his new colleague today. I get to welcome you personally, Mr. President, with heartfelt appreciation, as the new President pro tempore of the Senate.

Following that, I wish to speak on the importance of extending the Foreign Intelligence Surveillance Act, the Amendments Act, I think it is called.

While I was serving in the House in 2008, the Foreign Intelligence Surveillance Act had lapsed, and we were not doing the things we should be doing. I was able there to work with my good friend STENY HOYER, who was the majority whip at the time. I was the minority whip at the time. We had held the reverse of those jobs in the previous Congress. I liked my role as majority whip better. But Mr. HOYER and I were able to work together, particularly with my predecessor from Missouri, Senator Bond, and Senator ROCKEFELLER—Senator Bond was the vice chairman of the Intelligence Committee; Senator ROCKEFELLER was the chairman—as we tried to negotiate how we would extend the FISA Amendments Act.

My colleagues here today—many of them remember the challenge we faced in getting that bill done. Many of them, including the current chairman of the Senate Intelligence Committee, know the importance we placed on the work that is done every day under the Foreign Intelligence Surveillance Act.

At the time in 2008, we had a very concrete set of examples of what would happen without FISA because, frankly, we were effectively without it. For periods of time in 2007 and 2008, the National Security Agency was unable to fully perform its mission in monitoring many of the activities of known terrorists who were overseas and particularly found it impossible to focus in on new targets—and, again, those are known terrorists not in this country.

It was wrong that Congress allowed the act to lapse, and it would be dangerously wrong if we let it happen again on December 31 of this year.

Five years ago, I sat through many disturbing intelligence briefings. I remember the sense of urgency expressed by the then-Director of National Intelligence Mike McConnell; the then-CIA Director Michael Hayden; and the then-Attorney General Michael Mukasey, as they discussed the consequences we would have to deal with if we continued not to move forward and put this act back in place.

The agreement we reached balanced the concerns of those who feared the National Security Agency had overreached with the ongoing authority the intelligence community needed to protect the country. That agreement is before us again to be reauthorized for another 5 years.

The FISA Amendments Act protects individuals in the United States from so-called reverse targeting. It is one of the concerns people had 5 years ago. This would be a process which, in theory, could be used to monitor the communications of American citizens under the guise of spying on terrorists.

It also continues to ensure that any communication originating in the United States caught in the FISA process is minimized. What does that mean? It means it is handled in a way that American communications cannot be examined unless they have further justification.

Meanwhile, the bill updated the antiquated way we monitor terrorist communications, ensuring that our intelligence professionals no longer have to spend countless hours trying to figure out whether an overseas terrorist's communications are traveling over fiber optic wires or through a satellite.

I am concerned the amendments we are looking at here not only disrupt the delicate balance we struck in 2008 but also they may mean that this act does not get extended. The House has voted on a straight extension. The only thing standing between the continuation of that 2008 hard-fought and I think properly balanced agreement is a Senate vote on what the House has passed. I will be voting against the amendments. I think some of these amendments are well intended and, in fact, if they were not part of this bill, studies and other things that are being proposed might very well be worth doing but not worth doing in a way that would allow FISA to expire in just a few short days.

I am pleased to have been able to serve on both the Senate and the House Select Committees on Intelligence and have witnessed firsthand the important role that FISA plays in protecting our country.

I am thankful for the intelligence professionals who serve our country, both in the United States and overseas. I hope, as they observe this debate we are having about FISA, they see a Congress that supports them, supports their families, and supports their important work.

Unless the world changes—and, hopefully, it will change—we should never allow our ability to track terrorists overseas to go dark again. That is why it is critically important we pass this bill in the next few hours, why we extend FISA for another 5 years, and give our intelligence professionals the tools they need to protect our country and, frankly, give the Congress, the President, and, most importantly, the American people the obligation to look at this authority again in 5 years and see if we still need it.

Today, we need to extend the Foreign Intelligence Surveillance Act. I hope we do that.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, I would be happy to defer to the vice chairman.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I rise today in support of H.R. 5949, the FISA Amendments Act Reauthorization Act of 2012. Before I speak on it as vice chairman of the Intelligence Committee, I wanted to say that this bill, along with many other products that have come out of the Intelligence Committee, has been put together in a strong bipartisan way under the leadership of our chairman Senator FEINSTEIN, who has been a great advocate for the national security of the United States and a great advocate for our men and women in the intelligence community. I would be remiss if I did not say as we conclude this year, which is the second of the 2 years I have been vice chair, what a privilege and pleasure it has been to work with her. I thank her for her leadership and all of the issues we have worked on together.

This bill, which passed the House with broad bipartisan support, provides a clean extension of the FISA Amendments Act until December 31, 2017. Earlier this year, with strong bipartisan support, the Senate Intelligence Committee also reported the bill with a clean extension, although it had a slightly earlier sunset of June 1, 2017. So we have two bills—one from each Chamber—that recognize that the FAA must be reauthorized for the next 5 years. Both bills also confirm that there should be no substantive changes to the FAA itself. But time is running short before these vital authorities expire, as they expire on December 31. So it makes the most sense for the Senate to simply pass the House bill and send it to the President for his immediate signature so that we have no gap in collection on those who seek to do us harm, as they are out there every day seeking to do that.

As we debate the merits of passing a clean extension of the FAA, I think it is important to remember why the FAA is so necessary. The terrorist attacks by al-Qaida on September 11,

2001, highlighted a significant shortfall in our ability to collect foreign intelligence information against certain overseas targets. Our intelligence community took operational measures to address that shortfall but eventually realized that additional FISA authorities were needed to fully address the problem.

More than 5 years ago, after an adverse ruling from the Foreign Intelligence Surveillance Act Court, the Director of National Intelligence requested that Congress act immediately to stem the sudden and significant reduction in the intelligence community's capability to collect foreign intelligence information on overseas targets. So Congress responded—first with the Protect America Act of 2007 and then with the FISA Amendments Act of 2008. By providing a statutory framework for acquiring foreign intelligence information from overseas targets, the FAA has enabled the intelligence community to identify and neutralize terror networks before they harm us either at home or abroad.

While I cannot get into specific examples, I can say definitively that these authorities work extremely well. I encourage all of my colleagues to go to the Intelligence Committee's spaces and review the classified materials provided by the intelligence community. These materials give the classified examples that clearly demonstrate the FAA's success.

Let me briefly highlight what some of those authorities do. Under section 702, the government may target persons reasonably believed to be outside the United States for the purpose of acquiring foreign intelligence information. However, there are a number of important limitations on this authority that are designed to ensure that this section 702 collection cannot be used to intentionally target a U.S. person under what we call reverse-targeting within the community. These acquisitions are authorized jointly through a certification by the Attorney General and the Director of National Intelligence and are approved by the FISA Court.

The plain language and legislative history of section 702 makes clear that Congress understood there would be incidental collection of one-end domestic and U.S. person communications. There has to be. If we impose an upfront ban on the collection of such communications, we could never do the acquisition in the first place because it is often impossible to determine in advance whether an unknown target overseas is, in fact, a U.S. person. So we need the broad ''any person'' authority at the outset to ensure that the acquisition can occur in the first instance. Moreover, Congress also understood that this incidental collection would likely provide the crucial lead information necessary to thwart terrorists like the 9/11 hijackers who trained and launched their attacks from within the United States. But because of legitimate concerns about the privacy of U.S. persons, Congress also placed specific safeguards on section 702 collection, including review and approval by the FISA Court of the AG-DNI certification and targeting and minimization procedures, a requirement that all acquisitions be consistent with the fourth amendment, and explicit prohibitions against certain conduct, such as intentionally targeting a U.S. person.

Because there are instances, however, in which we may need to target U.S. persons overseas who have betrayed their country as terrorists or spies, the FAA does include specific ways to do this. Similar to the authorities in title I of FISA, sections 703 and 704 allow the FISA Court to authorize collection against certain U.S. persons overseas. Before the FAA, this type of collection was authorized by the Attorney General and not by a court. The FAA enhanced the protections for U.S. persons by requiring individual FISA Court orders based on probable cause that the U.S. person is a foreign person, agent of a foreign power, or an officer or employee of a foreign power. As I understand it, most of the objections to the FAA relate to section 702 and what we call incidental collection.

I recommend again that my colleagues review the unclassified FAA background paper that was sent by the AG and by the DNI to Congress last February. That document was earlier made a part of the RECORD at my request. This paper describes the FAA authorities in some detail, and it highlights the layers of oversight by all three branches of government. These multiple oversight mechanisms are there primarily to protect U.S. persons.

I can tell you firsthand from my work on the Intelligence Committee on both the House and the Senate side that it is vigorous oversight. Every aspect of the FAA gets looked at closely by the executive branch, from the dedicated personnel responsible for operating the system, up through the managerial chain of command to the relevant inspectors general and all of the lawyers at the National Security Division at the Department of Justice and at the agencies responsible for FAA implementation. Twice a year, Congress gets reports on its implementation on top of what we learn from hearings, oversight visits, briefings, and notifications, as well as other reports that are given to Congress. The judicial branch, the FISA Court, plays its own key role by reviewing the certifications and the targeting and minimization procedures and ensuring that all of those comply with the law.

I cannot say that the implementation of the FAA has been perfect. Certainly there have been a few mistakes along the way over the past several years. Sometimes technology does not always work the way it is supposed to, and sometimes there is a disconnect between the way a collection device actually works and the way it has been described by the lawyers. But I can tell you that on those few occasions where something has not been quite right with how these authorities have been used, the oversight mechanisms put in place by the FAA have worked exactly as intended by Congress. When a problem arises, the Justice Department knows about it, the FISA Court knows about it, and Congress knows about it. The collection related to the problem stops until the problem gets fixed.

In my experience, the FAA is one of the most tightly overseen activities within the intelligence community. I know some people believe more oversight is needed, but I do not think there is justification for that. I am concerned that if we add more IG reviews, for example, we run the risk of taking scarce resources away from actual analysis and operations. That is not the right course, especially when we know the existing oversight mechanisms are working so well. These FAA authorities are simply too important to lose.

We have a bill before us that has passed the House and can be sent straight from this body to the White House for signature by the President. The President has said he will sign the House bill as soon as he receives it from this body. I urge my colleagues to join me in voting for a clean extension of the FISA Amendments Act until December 31, 2017.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, I ask unanimous consent to speak for up to 30 minutes and that be under the time allotted to Senator WYDEN.

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

Mr. UDALL of Colorado. Madam President, I rise, as many have today, to talk about the Foreign Intelligence Surveillance Act. Before I get to the substance of my remarks, I wish to acknowledge the great leadership and work that both the chairwoman and the vice chairman provide for the committee. We would not be here today without their focus and their commitment to maintaining the best intelligence community, I believe, in the world. I also want to thank my colleague Senator WYDEN and the others who have spoken today on the floor about the authorities under the FISA Amendments Act.

I would suggest that most Americans likely do not recognize the name of the bill, but I am certain they have heard about what this bill addresses; that is, government surveillance of communications. This is an issue that is critical to get right because if it is done wrong, it can strike at the core of our constitutional freedoms. So I wanted to thank our Senate leadership today for providing us time to discuss what is a very important issue. I might suggest that the topic at hand is important

enough to require multiple days of debate, but given the gravity and the number of other issues we must confront before the end of the year, I am grateful for this debate and the discussion we are having for most of this day.

Some observers may even question why we are taking even this limited amount of time to debate a bill we here in the Senate expect to pass easily. The truth is that even though many Senators are likely to vote for this bill, it is incomplete and it needs reforms. In fact, part of the reason this debate is so important is because I believe Congress and the public do not have an adequate understanding of the effect this law has had and could have on the privacy of law-abiding American citizens.

This is an important subject. It is an important question. That is why a number of us have taken to the floor today to spend some time highlighting the issues at hand in the hopes our colleagues will join us in striking the right balance, one that preserves foundational values and constitutional liberties while still allowing us to effectively and forcefully prosecute our war on terror.

I was a Member of the House in 2008 when the FISA Amendments Act passed Congress and was signed into law. I voted for it then, along with most of my Democratic colleagues in the House.

In March 2008 many of us in the House viewed the FISA Amendments Act—or the FAA, in shorthand—as an improvement over the status quo. Why was that so? It was because it put a legal framework around President Bush's warrantless wiretapping program and it updated the Foreign Intelligence Surveillance Act—or FISA, as it is known in shorthand—to respond to changes in technology and to hold that administration accountable.

As I noted 4 years ago during that debate, the bill also included important provisions that for the first time required intelligence agencies to seek a judge's permission before monitoring the communications of Americans overseas. That meant the Federal Government could no longer monitor the e-mail or phone calls of Americans overseas without a warrant.

In my remarks, I am going to talk on a number of occasions about warrants and the check they provide on government overreach. That was an important part of that debate in 2008. Back in that year, back in 2008, it was Senator WYDEN, who is here on the floor today, who was instrumental in including that particular provision in the final FISA Amendments Act legislation. From the perspective of a House Member at that time, I was pleased, glad, and appreciated that we had Senator WYDEN's leadership right here in the Senate.

I now have the great privilege to serve on the Senate Intelligence Committee with Senator WYDEN. I have to admit that from the position I now have, I am viewing the FISA Amendments Act through a different lens. As a member of that committee, I learned a great deal more about our post-9/11 surveillance laws and how they have been implemented. In the course of my 2 years on the committee, I have determined that there are reforms that need to be made to the FISA Amendments Act before we renew it into law.

As we prepare to renew the FISA Amendments Act for the first time since 2008, it is important that we take this opportunity to address several flaws that have become apparent to me and a number of our colleagues. Fortunately, the sunset provision in the original bill effectively provides us with that opportunity so that today we can ensure that the statute still tracks with our foreign intelligence requirements and the interests of the American people. In addition, to remain an effective law, the sunset provision helps ensure that the FISA Amendments Act's authorities keep up with today's state of technology.

Let me be clear that I strongly believe that for our national security, the Federal Government needs ways in which to monitor communications to ensure that we remain a step ahead of our enemies and terrorists. I also strongly believe we need to balance the civil liberties embodied in our Constitution with our ongoing fight against terrorists.

We need only look to recent history to understand why Congress needs to keep a tight rein on these surveillance efforts. It was in the months after 9/11, just shortly after 9/11 that President Bush first authorized what we now refer to as the secret warrantless wiretapping program. Many legitimate concerns were raised about that program, and Congress wisely went back and put some limits on it in that 2008 law. But we have an opportunity to discuss today whether those limits went far enough and whether the circumstances that prompted the creation of the program in 2001 and its passage into law in 2008 still justify its existence today.

I am a member of both the Armed Services and Intelligence Committees, and I will be the first to say that terrorism remains a serious threat to the United States, and we must be as diligent as ever in protecting our fellow American citizens. I can also say with confidence that the FISA Amendments Act has been beneficial to the protection of our national security.

In the Senate Intelligence Committee, I receive regular briefings on our efforts to combat terrorism abroad and here at home in the United States, including the benefits and accomplishments of the FISA Amendments Act. I think the threats—I should say I not only think, I know the threats we still face today do justify the extension of these authorities. I don't question the value of the foreign intelligence the FAA provides. But my question to my colleagues and the administration is whether a 5-year straight extension of these authorities, without any changes, is the best way forward. In my view, it is not.

I recognize that even after Osama bin Laden's death, we still face numerous threats. Make no mistake about it, terrorism is a serious threat to our homeland and to American lives, and terrorism has also forced us to have a conversation about our civil liberties and the balance between our privacy and the need to confront threats to our Nation. I strongly believe our commitment to protect the American people should not force us to abandon the foundational principles that make us a beacon for the rest of the world. This is a false choice. We must, as the Federal Government and the protectors of our Constitution, protect the constitutional liberties of the American people and live up to the standard of transparency our democracy demands.

As I mentioned, I am the only Senator on our side of the aisle who serves on both the Intelligence Committee and the Armed Services Committee, and I believe I have a unique perspective when evaluating the critical balance between protecting our national security and the rights of American citizens. It is the responsibility of Congress to find that balance between the will of the many and the rights of the few, the security of the country and the freedom of its citizens. In times of war and crisis, finding this balance—and it is a delicate balance—can be even more challenging, and there are unfortunate times in our Nation's history when we have lost sight of our principles and what the United States represents as a nation.

I understand that the law requires the intelligence community to conduct oversight of FAA implementation, that the Foreign Intelligence Surveillance Court reviews the legality of the procedures, and that the congressional Intelligence Committees conduct our oversight of FISA programs. But nearly all of this oversight is conducted in secret. I know my constituents trust me to conduct this oversight, but I believe the people too have a role in keeping a watchful eye on the government.

As Senators ROCKEFELLER and WYDEN wrote in a letter to the Bush administration officials in 2008, ''secrecy comes with a cost'' which can—and I want to quote these two valued and wise Senators—''make it challenging for Members of Congress and the public to determine whether the law adequately protects both national security and the privacy rights of law-abiding Americans.''

With that general overview, I wish to talk about some of the specifics in this particular bill we are considering today. I would like to get to the core of my concerns.

As my colleagues know, section 702 of the FISA Amendments Act established a legal framework for the government to acquire foreign intelligence by targeting non-U.S. persons who are reasonably believed to be located outside

the United States under a program approved by FISA and the FISA Court, I should add. Because section 702 does not involve obtaining individual warrants, it contains language specifically intended to limit the government's ability to use these new authorities to deliberately spy on American citizens.

Earlier this year Senator WYDEN and I opposed the bill reported out of the Senate Intelligence Committee extending the expiration date of the FISA Amendments Act of 2008 from December 2012 to June 2017. We opposed this long-term extension because we believe Congress does not have an adequate understanding of the effect this law has had on the privacy of law-abiding citizens. In our view, it is important for Members of Congress and the public to have a better understanding of the foreign intelligence surveillance conducted under the FAA so that Congress can consider whether the law should be modified rather than simply extended without changes.

This has been a longstanding quest for a number of us. In fact, while I have been outspoken on this issue, the effort to better understand the FAA's implementation precedes my time on the Senate Intelligence Committee. Senator WYDEN and others have been pressing the intelligence agencies for years to provide more information to Congress and the public about the effect of this law on Americans' privacy.

I think Senator WYDEN and the others would agree with me that to his credit, the Director of National Intelligence in July 2012 agreed to declassify some facts about how the secret FISA Court has ruled on this law. So what did we learn from that declassification? Well, specifically, it is now public information that on at least one occasion, the FISA Court has ruled that some collection carried out by the government under the FISA Amendments Act violated the fourth amendment. The court has also ruled that the government has circumvented the spirit of the law.

So much about this law's impact remains secret. What do I mean by that? Well, for example, Senator WYDEN, I, and others have been trying to get a rough estimate of how many Americans have had their phone calls or e-mails collected and reviewed under these authorities. The Office of the Director of National Intelligence told us in July 2011 that ''it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed'' under the FISA Amendments Act.

We are prepared to accept that it might be difficult to come up with an exact count of this number, but it is hard for us to believe that the Director of National Intelligence and the whole of the intelligence community cannot come up with at least a ballpark estimate. This is disconcerting. Our concern about numbers is this: If no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large.

So how did we respond? Well, during a markup in our committee, we offered an amendment that would have directed the inspectors general of the intelligence community and the Department of Justice to produce a rough estimate of how many Americans have had their communications collected under section 702. Our amendment did not pass, but we will continue our efforts to obtain this information because the American people deserve to know.

There are those who are satisfied with the law's current privacy protections, and they point out that classified minimization procedures guide how government officials handle information on Americans' communications. But I don't believe those procedures are a substitute for strong privacy protections incorporated into the law itself. Do we really want accountability for those protections to be secret? Do we really want to be dependent upon the good will of future administrations to keep faith with the so-called minimization procedures?

That is why I believe the FISA Amendments Act extension should include clear rules prohibiting the government from searching through the incidental or accidental collection of these communications unless the government has obtained a warrant or emergency authorization permitting surveillance of that American. Our founding principles demand no less.

Senator WYDEN and I offered an amendment during the committee's markup of this bill that would have clarified the law to prohibit such searches. Our amendment included exceptions for searches that involve a warrant or an emergency authorization, as well as for searches on phone calls or e-mails of the people who are believed to be in danger or who consent to the search, each of which is important.

Our amendment to close this backdoor search loophole did not pass in committee, but we remain concerned—I would say very concerned—that this loophole could allow the government to effectively conduct warrantless searches for Americans' communications. Especially since we do not know how many Americans may have had their phone calls and e-mails collected under this law, we believe it is particularly important to have strong rules in place to protect the privacy of our fellow Americans.

As the majority report noted when the Senate bill passed out of the committee: ''Congress recognized at the time the FISA Amendments Act was enacted that it is simply not possible to collect intelligence on the communications of a party of interest without also collecting information about the people with whom, and about whom, that party communicates, including in some cases nontargeted U.S. persons.''

Therefore, I understand that in scooping up large amounts of data, it may be impossible not to accidentally catch some Americans' communications along the way—seems logical. The language of the law—the collection of foreign intelligence of U.S. persons reasonably believed to be located outside the United States—anticipates that incidental or accidental collection of Americans' e-mails or phone calls would, in fact, occur. But under the FISA Amendments Act, as it is written, there is nothing to prohibit the intelligence community from searching through a pile of communications, which may have incidentally or accidentally been collected without a warrant, to deliberately search for the phone calls or e-mails of specific Americans.

Again, I understand—and I think I can speak for Senators WYDEN and others of us who have this concern—this could happen by accident. But I don't think the government should be doing this on purpose without getting a warrant or an emergency authorization regarding the American they are looking for.

I have noted that Senator WYDEN and I call this the backdoor searches loophole. Understandably, the Intelligence Committee doesn't much like that term, arguing there is no loophole. But I think we are going to have to agree to disagree on the terminology. I don't believe, though, that Congress intended to authorize the searches when they voted for the FISA Amendments Act in 2008. I know I certainly didn't.

The intelligence agencies have not denied that section 702 gives the NSA the authority to conduct these searches, and it is a matter of public record the intelligence community has sought to preserve this authority. If it is not classified that intelligence agencies have this authority and it is not classified they would like to keep it, we think it is reasonable to tell the public whether and how it has ever been used. Yet when Senator WYDEN and I and 11 other Senators asked whether intelligence agencies have already done this, we were told the answer was classified.

My concern is that this section 702 loophole could be used to circumvent traditional warrant protections and search for the communications of a potentially large number of American citizens. The Senate Intelligence Committee majority report argues there may be circumstances in which there is a legitimate foreign intelligence need to conduct queries on data already in its possession, including data from accidentally or incidentally collected communications of Americans. I would argue, if there is evidence that an American is a terrorist or spy or involved in a serious crime, the government should be permitted to search for the communications of that American by getting a warrant or an emergency authorization.

In that spirit, Senator WYDEN and I have offered this backdoor searches

loophole amendment once again to this bill, and we intend to continue to bring attention to this issue until our colleagues grasp what could be at stake should this loophole not be closed. We have also filed a second amendment which seeks to instill some transparency to surveillance conducted under FISA Amendments Act authorities.

What is included in this amendment? It requires the Director of National Intelligence to provide information to Congress that we have requested before but that we have not yet received, including a determination of whether any government entity has produced an estimate of the number of U.S. communications collected under the FISA Amendments Act; an estimate of such number, if any exists; an assessment of whether any wholly domestic U.S. communications have been collected under the FISA Amendments Act; a determination of whether any intelligence agency has ever attempted to search through communications collected under the FISA Amendments Act to find the phone calls or e-mails of a specific American without obtaining a warrant or emergency authorization to do so; and finally, a determination of whether the NSA has collected any type of personally identifiable information on more than 1 million Americans.

The amendment states the report produced by the Director of National Intelligence shall be made available to the public, but it gives the President the authority to make any redactions he believes are necessary to protect national security.

Colleagues, I am going to conclude by restating my belief that the American people need a better understanding of how the FISA Amendments Act, section 702, in particular, has affected the privacy of our fellow Americans. I also believe we need new protections against potential warrantless searches for Americans' communications. I believe without such reforms Congress should not simply extend the law for 5 years.

We need to strike a better balance between giving our national security and law enforcement officials the tools necessary to keep us safe but not damage the very constitution we have sworn to support and defend. National security and civil liberties can coexist. We do not need to choose between them.

In Federalist 51, James Madison stated—and I would like to quote that great American:

> In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

The bill that is before us could come closer to that standard if we improve it through some of the amendments being offered by my colleagues and me, but it does not live up to that standard now. The American people deserve their privacy, they deserve to know how the intelligence community interprets and implements this law, and, frankly, they deserve better than the protections put before us today.

I urge my colleagues to consider the gravity of the issues at hand and seriously consider and contemplate the effect of another 5 years of unchanged FAA authorities.

I appreciate the attention of the Chair and the patience of my colleagues on this important matter. I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Madam President, I note the Wyden amendment has not yet been called up. Someone may wish to do so.

First of all, though vice chairman CHAMBLISS isn't here, he said some very nice things, and I just want him to know that one of the best experiences of my Senate career has been the ability to work in a bipartisan way in the Intelligence Committee, to put things together between both sides, and to have staffs working together on both sides. Sometimes that isn't possible, but most of the time it is, and I think it is the way the Intelligence Committee was supposed to function. The fact that it does function that way, I think, is real testimony to Vice Chairman CHAMBLISS and the work we have done together.

I find this particular amendment very frustrating because I have tried to be as helpful as I could over many years in getting information released in a classified form for Members of the committee. In fact, we have been very successful in that regard. There are approximately eight big reports a year now that present information in a classified function. There are two reports from the Attorney General and the DNI assessing compliance with the targeting and minimization procedures and the acquisition guidelines of section 702. There are also reports required on the implementation of title VII. That report includes actions taken to challenge or enforce a directive under section 702, and a description of any incident of noncompliance. There are annual reviews by each agency responsible for implementing these sections, regular reviews by the IG of the Department of Justice and the IG of each agency. It goes on and on and on. Yet there is no satisfaction from some Senators.

I believe that the Senators who support this amendment are trying to maximize the public release of this information, but I would encourage Senators to remember that this is a classified program. The information is available, but it is available in classified form.

The proponents of these amendments leave out the fact that each year the program is approved by the FISA Court. This is a court of 11 judges appointed by the Chief of the Supreme Court, all of whom are Federal district court judges.

The administration has decided the program should remain classified, and so we do our level best to provide the information on a classified basis and information is declassified when it can be. But the Wyden amendment goes a step too far. It could remove the classification from most of this program and create a way to make more information public that could well jeopardize the future of the program.

I think vice chairman CHAMBLISS would agree with me. One of the things we have seen is that this program is valuable, and the ability to collect intelligence and use that intelligence wisely and, with oversight from appropriate agencies, this program saves lives in this country. I know there are people trying to attack this country all the time. I know in the last 4 years there have been 100 terrorism-related arrests. Therefore, the classified information, which is available—but available in a secure room for Members to read—is important. I would urge, as vice chairman CHAMBLISS has urged, that Members go and read this information.

I would like to quote from the letter sent to Speaker BOEHNER, Leader REID, and Minority Leaders PELOSI and MCCONNELL from the Director of National Intelligence on this provision, section 702, which authorizes surveillance directed at non-U.S. persons located overseas who are of foreign intelligence importance. The letter says all of the process—and it is pages and pages—is carried out in a classified form but to inform the Members who are the ones to provide the oversight. I mean, we are the public check on the Executive Branch. We are not of the intelligence community. We are the public, and it is our oversight, it is our due diligence to go in and read the classified material.

So this amendment is an effort to make more of that information public, and I think it is a mistake at this particular time because I think it will create a risk to the program. I think it will make us less secure, not more secure.

There are parts of the collection apparatus which are classified, and at this stage they are classified for good reason. So I have a fundamental opposition to this amendment. But of more immediate concern, we have 4 days to get this bill signed by the President or this section ceases to function—4 days.

This is the House bill that is before us. It reauthorizes the program to 2017, and we have been through this before. We can make changes. I have tried to work with Senator WYDEN, to the greatest extent possible, by delving

into these issues at hearings of the Intelligence Committee and by supporting his requests for information. I have offered to Senator MERKLEY today to work with him to consider whether his proposal should be part of our intelligence authorization bill next year. I don't know what else to do because I know where this goes, and where it goes is that there may be an intent by some to undercut the program. I don't want to see it destroyed. I want to see us do our job of oversight, which means reading and studying the classified material and, if something isn't there, getting it in a classified manner.

This is a very difficult issue that requires a great deal of study. And consider the threats that are out there. If it weren't for the FBI, Najibullah Zazi would have blown up the New York subway and it was because of intelligence received that the FBI was able to follow him and eventually arrest him and other co-conspirators.

If I thought this country was out of danger, it might be different. But I believe we are still at risk, and I believe there are people who will kill Americans if they have the opportunity to do so. One of our jobs here in Congress is to see that the intelligence apparatus within the American Government functions in a way so that intelligence is streamlined, that it gets to the right place, that it stops terrorist plots before they can be carried out.

So, I say this in good conscience to Senator WYDEN. My great fear is that all of this information gets declassified and put out in public and then something that reveals sources and methods is disclosed, perhaps even inadvertently. Then, before we know it, the program is destroyed. I don't want to see this program destroyed.

The PRESIDING OFFICER. The Senator from Oregon.

Mrs. FEINSTEIN. I believe his time is up.

Mr. WYDEN. Madam President, I believe I control additional time. How much time does our side have remaining?

The PRESIDING OFFICER. There is 39 minutes of general debate time remaining to the Senator from Oregon.

Mr. WYDEN. Madam President, I am going to be very brief in terms of responding to Senator FEINSTEIN, the distinguished chair.

First of all, there is no question the chair of the committee is correct that this is a dangerous time. That is specifically why, at page 6 of my amendment on the report, I include a redaction provision.

If the President believes that public disclosure of information in the report required by the subsection could cause significant harm to national security, the President may redact such information from the report made available to the public.

The bottom line: If the President believes any information that is made public would jeopardize our country at a dangerous time, the President is given full discretion with respect to redaction.

Point No. 2. The chair of the committee is absolutely right; this is an important time for national security. It is also an important time for American liberties. We know the people of this country want to strike a balance between protecting our security and protecting our liberties. So under the reporting amendment all we require is, first, an estimate, just the question of an estimate and whether it has been done by any entity with respect to collecting this information—no new work, just a response to the question of whether an estimate has been done.

Second, we request information on whether any wholly domestic communications have been collected under section 702, and then we ask whether there have been any backdoor searches under the legislation. Finally, we want a response with respect to what the Director of National Security meant when he said: ''The story that we have millions or hundreds of millions of dossiers on people is absolutely false.''

That is what we are talking about. I think, without that information, oversight in the intelligence field will essentially be toothless. This interrupts no operations in the intelligence field. It does not jeopardize sources and methods. It is, in my view, the fundamentals of doing real oversight.

I thank my colleague from Kentucky for giving me this time, and I close by saying: No disagreement with the distinguished chair in the fact that there are real threats to this country's well-being and security, and that is why the President is given complete discretion in order to redact any information that would be made public.

I yield the floor, and I thank the Senator from Kentucky for the time.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, we are going to have two or three votes at 5:30. A number of the Senators who have amendments dealing with the supplemental have agreed to come at that time as soon as the votes are over and start debating those amendments tonight. We would like to get as much of that debate out of the way tonight as possible so we can start voting at a reasonably early time tomorrow.

The debate today on FISA has been stimulating, has been very thorough and good. As I understand it, there are three FISA amendments we are going to vote on tonight. That will still leave Senator WYDEN's amendment, and we will worry about taking care of that tomorrow sometime.

I ask unanimous consent that at 5:30 any remaining debate time on the pending amendments—Leahy, Merkley, and Paul—be yielded back and the Senate proceed to vote in relation to the pending amendments in the order provided in the previous agreement; that there be 2 minutes, equally divided, prior to each vote and that all after the first vote be 10-minute votes.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object. Might I ask tomorrow when the intelligence votes will take place?

Mr. REID. We don't have the intelligence to do that right now.

Mrs. FEINSTEIN. It is too classified.

Mr. REID. We have two very important measures to finish. I appreciate the collegiality of the Senators on this most important piece of legislation dealing with the espionage on our country part, and we should be able to work it out tomorrow. But we have 21 amendments we have to dispose of dealing with the supplemental. Some of those will be agreed to and would not need votes, but we have a lot of debate time on that in addition to votes. If we just did the votes alone, it would be 8 hours of voting.

We hope to be able to narrow that down, as soon as we have something more definite, so the Senator and Senator WYDEN and others can complete the time, and set up a time that is appropriate for Senator WYDEN's amendment.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I appreciate the comments of the leader. I think the chairman and I—and I assume those who have amendments that will be remaining, I guess one amendment remaining and then final passage. If we could complete debate tonight, we would be prepared, at the pleasure of the leader, to go ahead and finalize the FISA amendments.

Mr. REID. It would be very important to do that. I don't want to press the Senator from Oregon. He has been very good and flew all night from his newborn to get here from Oregon, and he was here at 10 a.m. I don't want to press him anymore.

I say, through the Chair, to my friend from Oregon, how does he feel about finishing the debate tonight?

Mr. WYDEN. I wish to thank the distinguished leader who has been so helpful in ensuring that we have a real debate.

With my colleagues' indulgence, my understanding from the leader is we would have 15 minutes on each side at some point in the morning. If we could proceed with what I thought was the direction we were going, I would very much appreciate it. But it should be limited to 15 minutes on each side, pro and con, at some point in the session tomorrow.

Mr. CHAMBLISS. Madam President, through the Chair, if I could ask the Senator from Oregon, is the Senator talking 15 minutes on his amendment and 15 minutes on passage? Fifteen minutes on each, on your amendment and vote on it and go to final passage?

Mr. WYDEN. It is fine. Through the Chair, 15 minutes with respect to our side reporting the amendment, 15 minutes on the other side, it will be voted on, and then we go to final passage.

Mr. REID. I would suggest this. When we come in, in the morning, why don't

we have this the first order of business. We would have the half hour evenly divided, vote on the Wyden amendment, and then final passage. That way we could devote the rest of the day and tonight to the supplemental.

I ask unanimous consent that be the case in addition to what I just did here.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

The Republican leader.

Mr. MCCONNELL. Madam President, I am going to proceed in my leader time.

The PRESIDING OFFICER. The Senator has that right.

THE FISCAL CLIFF

Mr. MCCONNELL. Madam President, you will excuse me if I am a little frustrated at the situation in which we find ourselves.

Last night, President Obama called myself and the Speaker—and maybe others—from Hawaii and asked if there was something we could do to avoid the fiscal cliff.

I say I am a little frustrated because we have been asking the President and the Democrats to work with us on a bipartisan agreement for months—literally, for months—on a plan that would simplify the Tax Code, shrink the deficit, protect the taxpayers, and grow the economy, but Democrats consistently rejected those offers.

The President chose instead to spend his time on the campaign trail. This was even after he got reelected, and congressional Democrats have sat on their hands. Republicans have bent over backward. We stepped way out of our comfort zone. We wanted an agreement, but we had no takers. The phone never rang.

So now here we are, 5 days from New Year's Day, and we might finally start talking. Democrats have had an entire year to put forward a balanced, bipartisan proposal. If they had something to fit the bill, I am sure the majority leader would have been able to deliver the votes the President would have needed to pass it in the Senate and we wouldn't be in this mess. But here we are, once again, at the end of the year, staring at a crisis we should have dealt with literally months ago.

Make no mistake. The only reason Democrats have been trying to deflect attention onto me and my colleagues over the past few weeks is that they don't have a plan of their own that could get bipartisan support.

The so-called Senate bill the majority leader keeps referring to passed with only Democratic votes, and despite his repeated calls for the House to pass it, he knows as well as I do that he himself is the reason it can't happen. The paperwork never left the Senate, so there is nothing for the House to vote on.

As I pointed out before we took that vote back on July 25, the Democratic bill is, ''a revenue measure that didn't originate in the House, so it has got no chance whatsoever of becoming law.'' The only reason we ever allowed that vote on that proposal, as I said at that time, was we knew it didn't pass constitutional muster. If Democrats were truly serious, they would proceed to a revenue bill that originated in the House—as the Constitution requires and as I called on them to do again last week.

To repeat, the so-called Senate bill is nothing more than a glorified sense of the Senate resolution. So let's put that convenient talking point aside from here on out.

Last night, I told the President we would be happy to look at whatever he proposes, but the truth is we are coming up against a hard deadline. As I said, this is a conversation we should have had months ago. Republicans are not about to write a blank check for anything Senate Democrats put forward just because we find ourselves at the edge of the cliff. That would not be fair to the American people.

That having been said, we will see what the President has to propose. Members on both sides of the aisle will review it and then we will decide how best to proceed. Hopefully, there is still time for an agreement of some kind that saves the taxpayers from a wholly preventable economic crisis.

I yield the floor.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The majority leader.

Mr. REID. Mr. President, I am not sure my distinguished Republican counterpart has followed what has taken place in the House of Representatives. In the House, as reported by the press and we all know it, one of the plans—it did not have a name, it was not Plan B, I don't know what plan it was because they had a number over there—but this plan was to show the American people that the $250,000 ceiling on raising taxes would not pass in the House. Why did they not have that vote? Because it would have passed. They wanted to kill it. The Speaker wanted to show everybody it would not pass the House, but he could not bring it up for a vote because it would have passed. A myriad of Republicans think it is a fair thing to do and of course every Democrat would vote for that.

The Republican leader finds himself frustrated that the President has called on him to help address the fiscal cliff. He is upset because ''the phone never rang.'' He complains that I have not delivered the votes to pass a resolution of the fiscal cliff, but he is in error. We all know that in July of this year we passed, in the Senate, relief for middle-class Americans. That passed the Senate.

We know Republicans have buried themselves in procedural roadblocks on everything we have tried to do around here. Now they are saying we cannot do the $250,000 because it will be blue-slipped. How do the American people react to that? There was a bill introduced by the ranking member of the Ways and Means Committee in the House, SANDY LEVIN, that called for this legislation. The Speaker was going to bring it up to kill it, but he could not kill it. Then we moved to Plan B, the debacle of all debacles. It is the mother of all debacles. That was brought up in an effort to send us something. He could not even pass it among the Republicans it was so absurd—''he'' meaning the Speaker.

It is very clear now that the Speaker's No. 1 goal is to get elected Speaker on January 3. The House is not even here. He has told them he will give them 2 days to get back here—48 hours; not 2 days, 48 hours.

They do not even have enough of the leadership here to meet to talk about it. They have done it with conference calls. People are spread all over this country because the Speaker basically is waiting for January 3. The President campaigned on raising taxes on people making more than $250,000 a year. The Bush-era tax cuts expire at the end of this year. Obama was elected with a surplus of 3 million votes. He won the election. He campaigned on this issue.

Again, the Speaker cannot take yes for an answer. The President has presented him something that would prevent us from going over the cliff. It was in response to something the Speaker gave to the President himself. But again, I guess, with the dysfunctional Republican caucus in the House, even the Speaker cannot tell what they are going to do because he backed off even his own proposal. The House, we hear this so often, is controlled by the Republicans. We acknowledge that. I would be most happy to move forward on something Senator MCCONNELL said they would not filibuster over here, that he would support and that BOEHNER would support, if it were reasonable. But right now we have not heard anything. I don't know—it is none of my business, I guess, although I am very curious—if the Republican leader over here and the Speaker are even talking.

What is going on here? You cannot legislate with yourself. We have nobody to work with, to compromise. That is what legislation is all about, the ability to compromise. The Republicans in the House have left town. The negotiations between the President and the Speaker have fallen apart, as they have for the last 3½ years. We have tried mightily to get something done.

I will go over the little drill, to remind everyone how unreasonable the Republicans have been. Senator CONRAD and Judd Gregg came up with a proposal to pattern what they wanted to do after the Base Closing Commission. The Commission would be appointed, they would report back to us, no filibusters, no amendments, yes or no, as we did with the base closings. We did a great job there. We closed bases over two different cycles, saving the country hundreds of billions of dollars. We brought that up here—I brought it up. We had plenty of votes to do it, except the Republican cosponsors walked away and wouldn't vote for it. That is where Bowles-Simpson came from.

Again, people talked about why don't we do Bowles-Simpson? One problem: The Republicans appointed there would not vote for it, generally speaking.

Then we went through the months and months of talks between the President and BOEHNER. Both times BOEHNER could not deliver because they refused, because of Grover Norquist, to allow any tax revenues whatsoever. We had meetings with Vice President BIDEN and CANTOR. CANTOR walked out of those meetings. He is the majority leader in the House. We had the Gang of 6, we had the Gang of 8, we had the supercommittee. They were doing good things dealing with entitlements and revenues. One week before they were to report by virtue of statute I get a letter signed by virtually every Republican: Too bad about the supercommittee, we are not going to do anything with revenues.

This is not a capsule of a couple days. This has been going on for years. They cannot cross over the threshold that has been built by Grover Norquist. People who are rich, who make a lot of money, they are not opposing raising the taxes on them. The only people in America who do not think taxes should be raised on the rich are the Republicans who work in this building. Anytime the Speaker and the Republican leader come to the President and say we have a deal for you, the President's door is always open and mine is too.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. I would only add the majority leader has given you his view of the last 2 years. I have certainly given you my take on it. The American people have spoken, and they basically voted for the status quo. The President got reelected, the Senate is still in Democratic hands and the House is still in Republican hands and the American people have spoken. They obviously expect us to come together and to produce a result.

As I indicated, the President called me and probably called others last night. My impression is he would like to see if we can move forward. We do not have very many days left. I have indicated I am willing to enter into a discussion and see what the President may have in mind. I know the majority leader would certainly be interested in what the President has in mind. It appears to me the action, if there is any, is now on the Senate side. We will just have to see whether we are able, on a bipartisan basis, to move forward.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we are going to have to decide, my friend says, how we are going to move forward on a bipartisan basis. Even on the Sunday shows we have just completed, with FOX network, Chris Wallace pushed one of the Republican leaders very hard: Would you filibuster something the Democrats brought to the floor? He refused to answer the question. He would not say, and he kept being pressed.

We are in the same situation we have been in for a long time here. We cannot negotiate with ourselves because that is all we are doing. Unless we get a signoff from the Republicans in the House and the Republican leader, we cannot get anything done. For them to talk about a bipartisan arrangement, we have done that. The President has given them one, given them two, given them three, and we cannot get past Grover Norquist. We tried hard, but when there is no revenue as part of the package, it makes it very hard. JOHN BOEHNER could not even pass a tax proposal that he suggested over there where he would keep the taxes the same for everybody except people making over $1 million a year. No. Grover and the boys said, no, can't do that. He didn't even bring it up for a vote.

I am here. I am happy to listen to anything the Speaker and the Republican leader have. They have a way of getting to the President. They don't need my help. I am happy to work with them any way I can, but the way things have been going it is not a good escape hatch we have. They are out of town now for 2 days, 48 hours. That is where we are.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I think all of us understand the gravity of the challenge we face. This so-called fiscal cliff has been subject to parody and comedy routines, but it is very serious. If Congress fails to act, enacting a measure to be signed by the President, the taxes will go up on every single income-tax-paying American—every one of them; not just the wealthy but everyone. What it means, frankly, is whether one lives in Connecticut, such as the Presiding Officer, or Illinois, such as myself, every family is going to see several things happen automatically. Taxes will go up, the payroll tax cut that has helped this economy is going to disappear, unemployment benefits are going to disappear for millions of Americans who are searching for work, and many other changes will take place, none of which will be favorable in terms of an economic recovery.

I think we ought to stop and reflect for a moment on lessons learned. Here is what I have learned. If we are going to solve this problem, we need to do two things. We need to be prepared on both sides of the table to give. That is a hard thing for many people to acknowledge, but we do; we have to be willing to give on both sides of the table. I remember Senator REID receiving a letter after the supercommittee was hard at work coming up with a bipartisan proposal. It was signed by virtually every Senator on the other side of the aisle and it said: Do not include a penny of revenue.

That was the end of the supercommittee. There was no place to go at that point. They have to be willing to give on revenue, and we have to be willing to give on our side, particularly in the area of entitlements. That is painful. I am one of those who believes, frankly—I have said it over and over—Social Security should be taken from the table and put aside for a separate commission, a separate debate. I do not believe it adds a penny to the deficit, and it should not be a victim of deficit reduction when it has nothing to do with the current deficit.

Second, I understand the importance of Medicaid to those who are young, single moms, the disabled, the elderly, those suffering from mental illness. Medicaid is critically important, and we cannot let that be devastated, particularly in a struggling economy when so many people are out of work or working at jobs without health insurance.

Third, Medicare. In 12 years Medicare will go bankrupt. It will be insolvent. We have to sit down and honestly deal with entitlement reform that saves the programs; doesn't lose them to the PAUL RYAN budget approach but saves the programs in a fiscally responsible way.

That is the first thing we should agree on. Both sides have to come together and be prepared to give.

The second thing is it takes both sides. What Speaker BOEHNER proved to us last week is if they try to do so-called Plan B in the Republican caucus: No hope. But if they take a measure to the floor of the House and invite Democratic and Republican support for it, they can pass it. I believe they can, as we can in the Senate.

That is what needs to be done. We need to have some grassroots efforts in the House and the Senate, of Senators from both sides of the aisle who are prepared to work on a bipartisan basis to solve this problem.

To say we should have done this long ago is to overlook the obvious. Until November 6, we didn't know who the President would be for this new administration, and now we do. It would have been a much different debate with a different outcome if the American voters had not chosen President Obama to be reelected. So we had to wait until November 6, honestly, before we could seriously take on the important and difficult issues involved in this debate, but that time has passed.

The President has stepped forward and has made a proposal. He has made concessions on his proposal and he continues to be here. He flew back from a family vacation that I know is as important to him as it is to all our families over the holidays to be here in Washington and to be part of the conversation and dialog.

I hope Speaker BOEHNER will bring back the House of Representatives. We cannot do this alone. We must do this with their leadership and their cooperation. The point which has been made by Senator REID over and over is that this is an issue and a challenge which we can successfully resolve and we must before we go over the cliff.

Mr. President, the pending business is amendments to the FISA reauthorization bill. I rise to speak about that

legislation, which the Senate will vote on in a little over an hour.

As chairman of the Constitution Subcommittee on the Senate Judiciary Committee, I have some concerns about this law known as the FISA Amendments Act. It does not have adequate checks and balances to protect the constitutional rights of innocent American citizens. Although this legislation is supposed to target foreign intelligence, it gives our government broad authority to spy on Americans in the United States without adequate oversight by the courts or by Congress.

It is worth taking a moment to review the history that led to the enactment of the FISA Amendments Act. After 9/11, President George W. Bush asked Congress to pass the PATRIOT Act. Many of us were concerned that the legislation might go too far, but it was a time of national crisis and we wanted to make sure the President had the authority to fight terrorism. We did not know then that shortly after we passed the PATRIOT Act, the Bush administration began spying on American citizens in the United States without the judicial approval otherwise required by law and without authorization from Congress.

Years later, the Judiciary Committee on which I serve heard dramatic testimony from former Deputy Attorney General Jim Comey about the efforts of Andrew Card and White House counsel Alberto Gonzales to pressure Attorney General John Ashcroft into reauthorizing this surveillance of American citizens while Ashcroft was in the hospital.

After the New York Times revealed the existence of the warrantless surveillance program, the Bush administration demanded that Congress pass legislation authorizing the program. This led to enactment of the FISA Amendments Act in 2008. In short, this legislation was born in original sin.

Congress added some oversight requirements and civil liberties protections to the Bush administration's warrantless surveillance program, but they did not go far enough. That is why I opposed the original FISA Amendments Act, along with the majority of Democratic Senators. I supported an earlier version offered by Senator LEAHY, chairman of our Judiciary Committee, which would have authorized broad surveillance powers but included civil liberties protections.

In 2008, the Bush administration accused opponents of this legislation of not understanding the threat of terrorism. Vice President Cheney went so far as to say: ''The lessons of September 11th have become dimmer and dimmer in some people's minds.''

I am sorry some supporters of this reauthorization legislation have repeated this claim of the Bush administration by suggesting that those of us who want to protect the privacy of innocent Americans believe the threat of terrorism has receded. That is not the case. The American people will never forget the lessons of 9/11, and I personally will not. We need to make sure our government has the authority it needs to detect and monitor terrorist communications, but we also need to ensure that we protect the constitutional rights of American citizens.

Earlier this year, I received a classified briefing on the FISA Amendments Act, and I am as concerned now as I was 4 years ago that the legislation does not include sufficient checks to protect the constitutional rights of innocent Americans.

The FISA Amendments Act is supposed to focus on foreign intelligence, but the reality is that this legislation permits targeting an innocent American in the United States as long as an additional purpose of the surveillance is targeting a person outside the United States. This is known as reversed targeting of American citizens.

The 2008 Judiciary Committee bill, which I supported, would have prevented reverse targeting by prohibiting warrantless surveillance if a significant purpose of the surveillance is targeting a person in the United States. We have a Constitution and a due process procedure spelled out when it comes to surveillance of American citizens. The FISA Amendments Act has found a way around it, and I think that is a fatal flaw.

The FISA Amendments Act permits the government to collect every single phone call and e-mail to and from the United States. This is known as bulk collection. The 2008 Judiciary Committee bill would have prohibited bulk collection of communications between innocent American citizens and their friends and families outside the United States.

The FISA Amendments Act also permits the government to search all the information it collects during this bulk collection. The government can even search for the phone calls or e-mails of innocent American citizens, and these searches can be conducted without a court order. This kind of backdoor warrantless surveillance of U.S. citizens should not be allowed. Both parties ought to stand for our Constitution.

Earlier in this year in the Judiciary Committee's markup of FISA Amendments Act reauthorization, Senator MIKE LEE and I offered a bipartisan amendment to prohibit backdoor warrantless surveillance of Americans. Unfortunately, our amendment did not pass, so Americans will still be at risk for this kind of surveillance if the FISA Amendments Act is reauthorized.

I am pleased the Senate will consider a number of amendments that will at least add some transparency and oversight to the FISA Amendments Act so Congress and the American people will know about how the government is using this authority.

I wish to thank majority leader Senator REID for ensuring that the Senate will have the opportunity to debate and vote on these amendments.

I am cosponsor of the Judiciary Committee chairman PAT LEAHY's amendment which was reported by the committee. This amendment would shorten the reauthorization of the FISA Amendments Act from 5 years to 3 years and strengthen the authority of the inspector general.

I am also cosponsor of an important bipartisan amendment offered by Senator RON WYDEN, who is on the floor. Senator WYDEN, together with Senator MARK UDALL, Senator LEE, and myself, has joined an amendment which would require the director of National Intelligence to provide a report to Congress that includes, among other things, information on whether any intelligence agency has ever attempted to search the communications collected under this legislation to find the phone calls or e-mails of a specific American without a warrant. Isn't this the kind of information Congress and the American people should have?

Senator WYDEN is a senior member of the Intelligence Committee. He is offering this amendment because he has been frustrated in his attempts to obtain basic information about the use of surveillance powers by our government authorized by the FISA Amendments Act.

Earlier this year, Senator WYDEN and Senator MARK UDALL asked the Office of the Director of National Intelligence a fundamental question: How many Americans have been subjected to surveillance under the FISA Amendments Act? The Office of the Director of National Intelligence claimed it is not possible to answer that question. At a minimum, before the Senate acts to extend the FISA Amendments Act, Senators should be given any information the intelligence community has about whether innocent Americans have had their private e-mails and phone conversations swept up by FISA Amendments Act collection.

I am pleased to be a cosponsor of the bipartisan amendment that has been offered by Senators JEFF MERKLEY and MIKE LEE. The Foreign Intelligence Surveillance Act is interpreted by a secret court known as the Foreign Intelligence Surveillance Court. The Merkley-Lee amendment would require that significant legal interpretations of FISA by this secret court be declassified. The concept of secret law is anathema to a democracy. The American people have a right to know how the laws passed by their elected representatives are being interpreted and implemented.

I wish to thank Senators MERKLEY and LEE for taking up this cause. Back in 2003, I worked on a provision in the 9/11 intelligence reform bill that would have required the declassification of significant legal interpretations by the FISA Court. Unfortunately, that provision was removed from the final bill at the insistence of the Bush administration.

Former Senator Russ Feingold, my predecessor as chairman of the Constitution Subcommittee, was also an

outspoken advocate of declassifying FISA Court opinions, and back in 2008 he held a hearing on the problem of secret law. This is an important issue, and I hope the Senate will approve the Merkley amendment.

I am not aware of any substantive objections to the Leahy, Wyden, and Merkley amendments. The only concern I have heard is that if the Senate approves one of these amendments, this bill will have to go back to the House for final approval. There are still 4 days before the end of the year, when the FISA Amendments Act expires, which is plenty of time for the House to vote on the bill the Senate passes.

Even with these amendments, I am concerned this reauthorization of the FISA Amendments Act does not include the checks and balances needed to preserve our basic freedoms and liberties. I believe we can be both safe and free. We can give the government the authority it needs to protect us from terrorism but place reasonable limits on government power to protect our constitutional rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise in opposition to the legislation we are going to be voting on today. I want to refer to the Leahy amendment just referred to by the Senator from Illinois.

Senator LEAHY's amendment will act as a complete substitute to the bill that is on the floor and, if passed, it will require a conference with the House of Representatives. It is December 27, and the House is not coming back until the December 30. There simply is not time, even if the amendment was substantive enough that it ought to be considered for passage, to get that conferenced with the House and get this bill on the desk of President by December 31, which is when these provisions expire.

The first change the Leahy amendment makes is to reduce the extension sunset from December 31, 2017, back to December 1, 2015. That date coincides with the expiration of certain other FISA provisions; namely, the roving wiretap authority, the business records court orders, and the lone wolf.

It may seem like it ought to make sense that we have all of these expiring at that time but, frankly—having been involved in the intelligence community for the last 12 years—it actually works in reverse from that and it would have a negative influence on the community itself.

If we match the FAA sunset with the PATRIOT Act and IRPTA sunsets, it provides no real benefit to congressional oversight and could actually increase the risk that all these authorities will expire at the same time. If they all expired at the same time, the community would certainly be at a real disadvantage from an operational standpoint.

The Leahy amendment also makes a number of modifications to the executive branch oversight provisions that simply, I believe, are not necessary. For example, the amendment would require the inspector general of the Intelligence Community, ICIG, to conduct a mandatory review of U.S. person privacy rights in the context of the FISA Amendments Act implementation. If we truly believe this sort of review by the ICIG is necessary, we don't need a statutory provision. We can simply get a letter from the Intelligence Committee directing that be done, and it will be done. So trying to think we need a statutory provision on that type of issue—if there is any contemplation that it exists—is simply not necessary.

I am also concerned the Leahy substitute incorrectly elevates the ICIG to the same level as the Attorney General and the Director of National Intelligence by adding the ICIG as a recipient of FISA Amendments Act reviews that are conducted by the DOJ IG and other intelligence community element inspectors general. That doesn't make a lot of sense because the attorney general and the DNI are the only ones responsible for jointly authorizing the collection of foreign intelligence information under the FAA. They are the ones who need to review compliance assessments conducted by the relevant IGs, including those conducted by the ICIG.

If there is concern about whether the ICIG can even conduct these type of reviews, then I think the FAA is clear on that point. Since the ODNI is authorized to acquire or receive foreign intelligence information, the ICIG can conduct these reviews to the same extent as any other inspector general of an element of the intelligence community. He doesn't need redundant statutory authorization.

It is important to understand that the word ''acquire'' as used here doesn't mean acquisition in the actual physical collection of foreign intelligence information. Rather, ''acquiring'' here simply means to come into possession or control of, often by unspecified means. We know this because in the annual review provision in the very next paragraph sought to be amended, the FAA uses the more precise conducting and acquisition terminology which clearly indicates that it affects only those elements that are actually collecting foreign intelligence information.

This same annual review provision would also be modified by section 4 of Senator LEAHY's amendment. His changes would expand the agency heads responsible for conducting these annual reviews to any agency with targeting or minimization procedures as opposed to the current law, which applies to only those agencies that are actually responsible for conducting an acquisition; that is, the physical collection of foreign intelligence information.

Right now, any IC element that receives downstream FISA collection must comply with FISA's retention, dissemination, and use limitations. They don't have any kind of blanket authority to use this information. But the elements required in the annual reviews are geared more toward the actual collectors of the foreign intelligence information than they are toward downstream IC elements that are already required to comply with FISA's retention, dissemination, and use limitations.

The Intelligence Committee has been conducting oversight on this collection program long before it was ever codified in the FISA Amendments Act. We worked closely with the Judiciary Committee to carefully monitor the implementation of the FAA authorities by the executive branch. In the end, I am fully satisfied the FAA is working exactly as intended and in a manner that protects our rights as Americans. As I have just explained, I do not believe Senator LEAHY's proposed changes are necessary, nor do I believe they improve upon the current practice.

I wish to just quickly address what the Senator from Illinois said about the collection on U.S. persons. If one is collecting on someone who is in Pakistan and they call somebody in the United States, he may be a U.S. citizen or he may be a non-U.S. citizen, and if we are collecting on him under a proper court order, there can be at times collection on somebody inside the United States. But the FISA Amendments Act has a provision for dealing with that so that we have what we call minimization provisions in place that immediately do not allow the use of any information collected on a U.S. citizen in an unlawful manner.

The FISA Court is very tough, they are very strict, and they don't just grant an authority to allow our intelligence community to gather information on foreign suspects or foreign entities or somebody who is working for a foreign power in any kind of household manner. They are very strict in their requirements of what must be shown in order to be able to collect. So in the rare times there is a U.S. citizen on the other end of the line, the minimization provisions kick in, and they work. They work very well. The Leahy substitute simply will not allow the community to do the job we need to get done.

Secondly, I wish to address the Merkley amendment. Again, I oppose this amendment. When Congress created the FISA Court back in 1978, it was understood that this court would have to operate behind closed doors given the sensitivity of the national security matters the court considers. Each time FISA has been amended, whether it is section 501 dealing with business records or 702 relating to targeting foreign terrorists overseas, Congress has maintained the same high level of protection for the court's decisions. The Merkley amendment would make those decisions public.

Section 601 of FISA already requires the Attorney General to provide copies

of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretations of the provisions of the entire act. So there are some reporting requirements right now in place.

The Merkley amendment would further require the Attorney General to declassify and make available to the public any of those decisions that relate to section 501 business record court orders or section 702 overseas targeting provisions.

I believe the American people understand there are certain matters that simply do not need to be made public, particularly when it comes to dealing with bad guys around the world, men who get up every morning and think about ways they can harm and kill Americans. Our folks in the intelligence community are doing a darn good job of gathering information on those types of individuals. Those are not the types of FISA Court orders, given by the court to gather that information that ought to be made public.

In matters concerning the FISA Court, the congressional Intelligence and Judiciary Committees serve as the eyes and ears of the American people. Through this oversight, which includes being given all significant decisions, orders, and opinions of the court, we can ensure that the laws are being applied and implemented as Congress intended.

If a significant FISA Court decision raises concerns, the Intelligence and Judiciary Committees will ask questions—and we have done that from time to time. We hold hearings, we get briefings, we receive notifications and semiannual reports—all designed to give Congress good insight into the real-life applications and interpretations of the FISA Act. This amendment does nothing to advance that oversight, but it could cause real operational problems. If we put in the public domain declassified opinions or unclassified summaries of the most significant court orders, we would give our enemies a roadmap into our collection priorities and capabilities.

I know one of the responses is going to be that the specific intelligence sources and methods could be redacted, but that only solves part of the problem. These guys we are dealing with, these bad guys around the world are smart guys. They are not idiots. When they look at a declassified piece of intelligence information that has redacted portions, they are able to piece the puzzle back together again and figure out exactly who those sources are and what their methods are, which is going to put our intelligence gatherers in jeopardy from a national security standpoint.

There is already substantial oversight of sections 501 and 702 by the FISA Court, the Department of Justice, the intelligence community, and the Congress. I can't think of any two provisions in FISA that have received more attention and more scrutiny than sections 501 and 702. Yet, as a result of this vigorous oversight, we also know these sections are two of the most carefully implemented by all of our investigative authorities.

This amendment sets a dangerous precedent and would undermine some of our most sensitive investigations and investigative techniques. Passing it would also impede our chances of getting a clean FAA extension to the President, as I mentioned earlier in my comments.

Lastly, I wish to quickly mention the Paul amendment. Again, I am going to oppose this amendment because it is inconsistent with the Constitution and it contradicts decades of established Supreme Court precedent and Federal law. Contrary to what this amendment says, there is no fourth amendment violation when the government gets information from a third party about a person who has voluntarily given that information to the third party. The Paul amendment would limit the ability of our intelligence community and our prosecutors to take information that a bad guy has given to a third party, and we get that information from a third party, from that information being used in a prosecution against that bad guy.

In the U.S. v. Miller 1976 Supreme Court case, the Court stated that it ''has repeatedly held that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.'' Clearly, that is language directly contrary to the Paul amendment. The Paul amendment says the government would always have to either have consent or a search warrant to get information held by the third party in a system of records.

This amendment would have a significant impact not just on criminal cases, from drugs to violent crime to child offenses, but on national security matters. Often, the information obtained from a system of records as described in this amendment is what we call building-block information. It is the basic information the law enforcement and intelligence communities use to build an investigation long before there may be probable cause. This type of information can be used not just to build cases but to rule out people as suspects—in short, ensuring they won't be subjected to more intrusive and investigative measures such as search warrants. Yet this amendment elevates building-block information in the hands of a third party to the equivalent of privately held information in which there is reasonable expectation of privacy. Even though a person voluntarily hands over information to a third party, this amendment says we should put the genie back in the bottle and now create a reasonable expectation of privacy.

What is more, if the government gets information from a third party without consent or a search warrant, this amendment says it can never be used in a criminal prosecution. The message here to banks, hotels, shipping companies, fertilizer stores, you name it: Don't bother being Good Samaritans and give law enforcement tips about suspicious activities. We will just take our chances and hope we get enough probable cause in time to stop whatever crime or terrorist act may be planned.

Simply stated, this amendment is contrary to case law and contrary to constitutional provisions.

I urge all of my colleagues to vote against the Paul amendment, the Merkley amendment, as well as the Leahy amendment when we begin voting at 5:30.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, will my colleague from Georgia yield for a question?

Mr. CHAMBLISS. Sure. I would be happy to.

Mr. MERKLEY. I thank the Chair, and I thank my colleague.

My colleague did address issues regarding the Merkley-Lee amendment, which has three stages in it designed to be sensitive to national security. It says that if the Attorney General determines that an opinion is not dangerous to national security, it asks them to release it to the public. It says that if the Attorney General finds that it is sensitive to national security, to release only a summary so written as to protect national security. Then it goes even further to say that if, in the Attorney General's opinion, that is not possible, then please just give us a report on the process the executive branch has already said they are doing, which is to go through a systematic process of determining what they feel should be released independent of any advice we in the Senate might have.

So in these three stages, national security is given full consideration at each step. What it means is that in a situation where we have language such as ''the government can collect information relevant to an investigation,'' and the public wonders, well, is that investigation any investigation in the world, is it—what does ''relevant'' mean? What does ''tangible information'' mean? There are decisions that may confirm that the plain language operates in a fashion that protects the fourth amendment or those interpretations of FISA may, in fact, stand the statute on its head and open a door that was meant to be, by what we did when we passed it here, open just a slit, to be turned into a wide-open gate.

So with those provisions to carefully protect national security, as the Senator so rightly pointed out is necessary, can I perhaps win the Senator's support?

Mr. CHAMBLISS. Well, here is my problem with that provision, and it is twofold. First of all, there is the proverbial elephant's nose under the tent theory, that this is the beginning of opening other things down the road. I think that in this world in which we operate, this cloak-and-dagger world of the intelligence community—and we don't often like to think about the fact that it is necessary in modern times, but it is more necessary today than ever before because of the enemy we face—I think there is a real danger in beginning to open any of those opinions.

The second part of it is kind of tied to that as well. As I said earlier, these folks we are dealing with are very smart individuals. These bad guys carry laptops, they communicate with encrypted messages that we have to try to pick up on with the right kinds of authorizations that the FISA Court gives us and do our best to figure out what they are doing in advance of them taking any action. And while we may not think about a provision in an opinion coming out of the FISA Court being a tipoff to bad guys about what we are doing or, more significantly, what they are doing that is alerting us, you better believe those guys are going to be examining every one of these opinions that we make public, and they are going to be reviewing those opinions, and they are going to, at some point in time, pick up on some small piece of information that is going to give them a shortcut next time they plan an attack against America or Americans.

So I think for us to say that it is the personal opinion of the Attorney General that, well, maybe this does not involve national security, but maybe it does, and we ought to go through those other steps that the Senator alluded to—those bad guys are going to be looking at every single one of those, and at some point in time it is going to come back to haunt us.

Mr. MERKLEY. I thank my colleague for sharing his insights. And certainly national security is extremely important. I obviously reach a different conclusion.

I encourage my colleagues to support the amendment that Senator LEE and I have put forward because it appropriately balances national security concerns against issues of privacy and the fourth amendment. It says simply that where national security is not affected, the public should be able to see these interpretations of what the statutes we write in this Chamber mean so the public can weigh in on whether they feel comfortable with where the secret court has taken us and so we can weigh in, so we can have a debate on this floor not about our best guess about what possible implications might occur from some secret court opinion, but we can actually share a situation where national security is not affected. Well, here is how related to investigations it has been interpreted: Oh my goodness. What was intended to be a door open 1 inch is a door flung open like a barn gate, and the fourth amendment is in serious trouble. That should be debated here.

Certainly, the amendment Senator LEE and I have put forward is very sensitive to the concerns my colleague has presented. I do appreciate his viewpoints. But, Mr. President, through you I ask my colleagues to weigh in on the side that the American people have a right to know what the plain language of the statute actually means after being interpreted by a court.

Thank you.

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. LEE. 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. LEE. Mr. President, no one disputes the vital importance of our national security. Indeed, in Federalist No. 41, James Madison noted that ''[s]ecurity against foreign danger is one of the primitive objects of civil society,'' and he emphasized that such security ''is an avowed and essential object of the American Union.'' Government officials have a solemn duty, particularly in the age of global terrorism, to help ensure that the American people are safe and secure.

Yet at the same time, the government also exists to do a lot more than just promote security. Its most fundamental purpose is to protect our natural and inalienable liberties. Safeguarding individual rights and liberties is the bedrock of American Government. In the words of our Nation's founding document, the Declaration of Independence, it is ''to secure these rights [that] Governments are instituted among Men.''

In our quest for ever-greater security, we must be mindful not to sacrifice the very rights and liberties that make our safety valuable. As Benjamin Franklin put it, ''Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.''

I worry that in seeking to achieve temporary safety, some of the authorities we have given the government under FISA may compromise essential rights and liberties. In particular, I am concerned about the government's ability, without a warrant, to search through FISA materials for communications involving individual American citizens. I worry that this authority is inconsistent with and diminishes the essential constitutional right each of us has ''to be secure . . . against unreasonable searches and seizures.''

We do not know the precise number of communications involving American citizens that the government collects, stores, and analyzes under section 702 of FISA. Whether this number is large or small, I believe we must enforce meaningful protections for circumstances when the government searches through its database of captured communications looking for information on individual American citizens; otherwise, by means of these so-called backdoor searches, the government may conduct significant warrantless surveillance of American persons. I believe this current practice is inconsistent with core fourth amendment privacy protections and needs to be reformed.

During consideration of FISA in the Judiciary Committee, Senator DURBIN and I offered a bipartisan amendment to address this very problem. The language of our amendment is identical to that offered by Senators WYDEN and UDALL during consideration of FISA by the Select Committee on Intelligence. The amendment clarifies that section 702 does not permit the government to search its database of FISA materials to identify communications of a particular U.S. person.

In effect, it would require the government to obtain a warrant before performing such queries involving an American person's communications. The amendment is limited in scope. It excludes from the warrant requirement instances where the government has obtained an emergency authorization, circumstances when the life or physical safety of the American person targeted by the search is in danger and the search is for the purpose of assisting that same person, and in instances where the person has consented to the search.

Moreover, the warrant requirement would apply only to deliberate searches for American communications and would not prevent the government from reviewing, analyzing, or disseminating any American communications collected under FISA and discovered through other types of analysis.

FISA rightly requires that the government obtain a warrant anytime it seeks to conduct direct surveillance on a U.S. person. Indirect surveillance of U.S. persons by means of backdoor searches should be no different. No one disputes that the government may have a legitimate need to search its FISA database for information about a U.S. person, but there is no legitimate reason why the government ought not first obtain a warrant, while articulating and justifying the need for its intrusion on the privacy of U.S. persons. Our constitutional values demand nothing less.

Unfortunately, we will not be voting on such an amendment later today, so our reauthorization of FISA will include a grant of authority for the government to perform backdoor searches, seeking information on individual American citizens without a warrant. I believe such searches are inconsistent with fundamental fourth amendment principles. For this reason, I cannot support the FISA reauthorization, and I urge my colleagues to oppose the bill in its current form.

I would like next to speak about a few amendments I think would make some improvements to this legislation, nonetheless. I would like to first speak on the Merkley-Lee amendment, which would require declassification of significant FISA Court opinions.

The FISA Court is authorized to oversee requests for surveillance both inside and outside of the United States. Given the sensitive nature of these requests, it is necessarily a secret court, a court whose rulings, orders, and other deliberations are and remain classified. Yet, although much of the court's work must properly be kept confidential, it must not operate without meaningful oversight.

Beyond the straightforward application of the law to specific and sometimes highly classified circumstances, FISA Court rulings may include substantive interpretations of governing legal authorities. As is true in every court called on to construe statutory text, FISA Court interpretations and applications are influential in determining the contours of the government's surveillance authorities. Unlike specific sources of information or particular methods of surveillance collection, which are properly classified in many instances, I believe the FISA Court's substantive legal interpretation of statutory authorities should be made public.

A hallmark of the rule of law which is a bedrock principle upon which our Nation is founded is that the requirements of law must be made publicly available—available for review, available for the scrutiny of the average American.

The Merkley-Lee amendment establishes a cautious and reasonable process for declassification consistent with the rule of law. Its procedures are limited in three key respects:

First, the pathway for declassification applies only to the most important decisions that include significant instruction or interpretation of the law.

Second, declassification must proceed in a manner consistent with the protection of national security, intelligence sources and methods, and other properly classified and sensitive information.

Third, the process contemplates instances where the Attorney General determines declassification is not possible in a manner that protects national security. In such cases, the process requires only an unclassified summary opinion or a report on the opinion that happened to remain classified.

This modest and bipartisan amendment will help ensure that we are governed by the rule of law, that government activities are made by applying legal standards known to the public, and that we remain, in John Adams' famous formulation, ''a government of laws and not of men.''

I would like next to speak on the Wyden amendment to require a report on the privacy impact of FISA surveillance. The FISA Amendments Act of 2008 gave the government broad authority to surveil phone calls and e-mails of people reasonably believed to be foreigners outside the United States. Despite the intent that this authority be directed at noncitizens who are located abroad at the moment the surveillance is collected, officials have acknowledged that communications by Americans may be swept up in the government collection of those same materials.

I believe it is critical for both Congress and the public to have access to information about the impact of these FISA authorities on the privacy of individual Americans. Only with such knowledge can we reasonably assess whether existing privacy protections are sufficient or whether reforms might be needed. Yet senior intelligence officials have declined to provide in a public forum the necessary information to such discussion and such analysis.

In particular, it is essential that we learn the extent to which Americans' communications are collected under FISA, whether this includes any wholly domestic communications, and whether government officials subsequently searched through those communications and conducted warrantless searches of phone calls and e-mails related to specific American persons. This modest compromise in this modest, commonsense amendment requires the Director of National Intelligence to provide this information and report back to Congress regarding the privacy impact of the FISA Amendments Act. Given the sensitive nature of this information, our amendment provides for necessary redactions to protect core national security interests that would be important to our country and help keep us safe.

Providing Congress with answers to these critical questions should be a relatively uncontroversial exercise. It should be a no-brainer. Only with such information can we do our job of ensuring a proper balance between intelligence efforts on the one hand and the protection of fundamental individual rights and liberties on the other hand.

Finally, I would like to speak on the Paul amendment, the Fourth Amendment Preservation and Protection Act. The fourth amendment protects the right of the people to be secure in their persons, papers, and effects against unreasonable searches and seizures. At its core the Constitution protects our right to be free from unwarranted government intrusion in our affairs absent probable cause, which the government must set forth with specificity to a court in an application for a warrant.

It is undisputed that absent exigent circumstances, consent, or a warrant, the government may not intrude upon a person's home and search through his papers and personal effects. But we no longer keep our most sensitive information solely in the form of physical papers, physical documents, and other tangible things. The explosion of data sharing and data storage has made our economy more responsive and more efficient, but it also creates the potential for government abuse.

Congress has a fundamental responsibility to protect the individual liberties of Americans by ensuring that the Constitution's core fourth amendment protections are not eroded by the operation of changed circumstances, by new techniques that are made possible and in some cases made necessary by new technology. But Congress has failed to do this.

Some court rulings have likewise fallen short of protecting the full scope, the full spirit of the fourth amendment as it applies to our world of complex data sharing. Courts have attempted in good faith to determine whether individuals have a reasonable expectation of privacy in different kinds of information that they might share with third parties, sometimes online, but the results of many of these rulings are a varied and unpredictable legal landscape in which many do not know and cannot figure out whether they can rely on the fourth amendment to protect sensitive information they routinely share with others for a limited business purpose.

Congress needs to act to preserve the fourth amendment's protections as they apply to everyday uses, including routine use of the Internet, use of credit cards, libraries, and banks. Absent such protections, individuals may in time grow wary of sharing information with third parties.

I am cognizant that this area of the law is complex. It is full of changes. It is full of instances in which we have to undertake a very delicate balancing act. Nevertheless, much work remains to be done to ensure that the fourth amendment protections are here and that they are real and that they benefit Americans and they do so in a way that does not interfere with legitimate law enforcement and national security activities. We must not shy away from the task simply because it is hard. It is daunting, but it is possible and it is necessary. Congress must act to preserve Americans' constitutional right to be secure in their persons, their papers, and effects against unreasonable searches and seizures.

The PRESIDING OFFICER (Mr. FRANKEN.) The Senator from Montana.

Mr. TESTER. I would like to talk about the FISA Amendments Act. I thank Senator WYDEN for his leadership on this issue and for offering an amendment to this act that I have cosponsored and will speak on in just a minute.

On our vote tomorrow, I will say that I will reluctantly plan to oppose the vote on the FISA Amendments Act when we get to final passage. There are many reasons for that. I am not naive. I do understand there are people out there who want to do harm to our Nation. I very much appreciate the folks in the intelligence community who do

difficult behind-the-scenes work to keep us all safe. But at the same time, I believe our civil liberties and our right to privacy need to be protected. I do not believe they are sufficiently protected under the current law. So simply extending current law for 5 more years is irresponsible, and it is not a reflection of our values.

There are a few ways this bill falls short. I am especially concerned about the practice of reverse-targeting. The deputy majority leader talked about it about an hour ago.

The intelligence community does not need a warrant to conduct surveillance on someone located overseas. I think we can all agree there is no problem there. The problem comes when the intelligence community conducts surveillance on someone overseas where the real purpose is to gain information about someone right here in America. That can happen without a warrant, and we should not let that happen without a warrant.

Our national security is not threatened if we require this information to be tagged and sequestered and subject to judicial review. It would merely ensure that the information intercepted overseas in the form of communications to or from an American citizen would have to be overseen by the courts. Current law is supposed to prohibit this practice, but there really is no way to enforce the prohibition. That leaves the door open for abuse. That is simply unacceptable.

Unfortunately, neither Senator WYDEN nor I are able to offer our amendments that would address this hole in our privacy rights.

We can do better. We can also do better when it comes to transparency. The simplest amendment the Senate can approve today is the one I am proud to consponor. It is the Wyden amendment to require the Director of National Intelligence to report to Congress on the impact of FISA amendments on the privacy of American citizens. It is a commonsense amendment.

The report could be classified but would no longer allow the intelligence community to ignore requests for information from Congress. Why in the world do we not require the intelligence community to be accountable to us for its actions? It is our responsibility in Congress to hold the entire executive branch accountable. If we do not ask these questions, we are simply not doing our job. That is true whether it is President Obama, President Bush, or some other President.

I hope we can adopt the Wyden amendment to improve the reporting requirements of FISA. I urge my colleagues to support this commonsense amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 1, for the purpose of calling up and debating the Coats amendment; that following the remarks of Senator COATS Senator ALEXANDER be recognized; the Senate resume consideration of the FISA bill, H.R. 5949; and that all provisions of the previous orders remain in effect.

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT—Resumed

The PRESIDING OFFICER. The Senate will proceed to the consideration of H.R. 1, which the clerk will now report by title.

The legislative clerk read as follows:

A bill (H.R. 1) making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes.

Pending:

Reid amendment No. 3395, in the nature of a substitute.

AMENDMENT NO. 3391 TO AMENDMENT NO. 3395

(Purpose: In the nature of a substitute.)

Mr. COATS. Mr. President, I call up amendment No. 3391.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS] proposes an amendment numbered 3391.

(The amendment is printed in the RECORD of December 17, 2012, under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I am cognizant of the fact that we will have a series of votes beginning in just 15 minutes, and so even though the unanimous consent request on this amendment is for 30 minutes equally divided, I am going to try to judiciously use this time between myself and Senator ALEXANDER to explain why we are offering this amendment, and hopefully our colleagues will be persuaded to support us when we vote on this probably tomorrow.

We are all, of course, sensitive to the pain and damage inflicted by Mother Nature in the Northeast. In fact, some of the Northeast is getting some more of that pain with a storm up there today.

No State or region in our country should be left to fend for itself after a storm as devastating as Hurricane Sandy. It is important to understand that many things have overwhelmed the ability of the States and local communities to deal with some of the effects of this, and that is why the Sandy emergency supplemental is before us attached to H.R. 1 and why we will be voting on that, I assume, tomorrow.

There are two versions before us; one is the Senate Democrats' emergency supplemental proposal. That totals $60.4 billion. It includes nearly $13 billion in mitigation funding. That goes for the next storm, not this storm. There is $3.46 billion for Army Corps of Engineers, $500 million of which is projects from previous disasters; $3 billion to repair or replace Federal assets that do not fall into the category of emergency need. There is $56 million for tsunami cleanup on the west coast, which, of course, does not relate to Sandy. There is a lot of new authorizing language for reform of disaster relief programs, which I would support through the regular process. But without having gone through the authorizing committee, I don't think that is a good idea.

Our proposed alternative provides $23.8 billion in funding for the next 3 months. We are not saying this is the be-all and end-all of what Congress will ultimately fund to meet the needs of those who have been impacted by Sandy. We are simply saying that before rushing to a number, which has not been fully scrubbed, fully looked at, plans haven't been fully developed yet—and that is understandable—we think it most important we provide emergency funding for those in immediate need over the next 3 months.

We have carefully worked with FEMA Director Fugate and we have worked with Secretary Donovan at HUD. We have worked through the Appropriations Committee to identify those specific needs that get to the emergency situations under which this bill is titled. It provides funding for States to allow them to begin to rebuild but also leaves us time to review what additional funds might be needed.

So rather than throwing out a big number and simply saying let us see what comes in under that number, let us look at the most immediate needs that have to be funded now and provide a sufficient amount of funds in order to do that. In fact, the amount we are providing would extend, in terms of outlays, far beyond March 27, but we want those mayors and we want those Governors to be able to begin the planning process of looking how they would go forward. We also want, in respect to our careful need, to carefully look at how we extend taxpayer dollars.

We want to allow this 3-month period of time for which the relevant committees in the Senate and the House of Representatives can look at these plans, can document the request, can examine the priorities that might be needed and then put a sensible plan in place that hopefully will be an efficient and effective use of taxpayer dollars. Therefore, we have struck from the Democratic proposal all moneys that would go to mitigation funding, not saying mitigation funding isn't necessary but simply saying it doesn't meet the emergency need this first 3-month proposal addresses. This will give States time to begin to rebuild but also allow us time to review what additional funds are needed for that rebuilding.

We don't allow authorizing language because we don't believe in authorizing something on an emergency appropriations bill that ought to go through the

authorizing committee. We focus specifically on Sandy-related needs. There are a number of other needs, as I have just addressed, that are perhaps legitimate, that ought to come through the regular process.

With that, let me turn to my colleague from Tennessee who has been working with me. I would say our Appropriations Committee, our Republican staff, has gone through this very carefully and tried to identify how we can get money for the essential needs to those people, to those communities that need them now. We want to be responsible in terms of spending taxpayer dollars by having a period of time in which we can look at the plans for the future and see what additional funds might be needed.

With that, I yield for the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am here to join the Senator from Indiana, and I think I can presumptively speak for everybody in this body. We want to help the people in New York, New Jersey, and other Northeastern States that were hurt by Sandy. We have had some pretty tough disasters in Tennessee as well. We had a 1,000-year flood 2 years ago—not a 100-year flood but a 1,000-year flood. We knew the Federal Government wasn't going to make us whole. We had billions of dollars of damage, 52 counties hurt, but we knew the Federal Government could help and it did help and it helped swiftly and that is what we want to do in this case.

With all the talk about the money we are about to appropriate, I think it is important to remind those who live in New York, New Jersey, and Connecticut what is already being done with money we have already appropriated. For example, there are 4,402 FEMA personnel working in those States. There are 514,343 citizens of those States who have already filed individual assistance applications. This is when your home is gone and you need money for rent or you need money to rebuild. Those applications are in.

Already $1.13 billion has been paid. There are 24 disaster recovery centers in New York, 24 in New Jersey and 1 in Connecticut. $150 million in disaster loans have already been approved by the Small Business Administration, and more than 360,000 applications have been sent out.

The important fact to know is that help for victims of Hurricane Sandy doesn't depend on what we are about to do tonight. We already have money in the bank. We already have FEMA people on the ground. There is already help available. In my experience in our Tennessee disasters, that help comes in a matter of days, in most cases.

So what are we about to do? As Senator COATS said—and I wish to congratulate him for making a very sensible approach toward this—what we are about to say is this is $24 billion more for the accounts that are already helping people in the areas hurt by Sandy.

For example, there is over $5 billion for the Disaster Relief Fund. That is just to make sure there is enough money to fund those half million requests that are already in. There is $9.7 billion for flood insurance. If you have flood insurance, the Federal Government will be able to pay your claim. There is $3.4 billion to repair roads and bridges. There is $2 billion for community development block grants. We found in Tennessee that is especially flexible money, which is very helpful. That is $2 billion between now and March. There is also $500 million for the Small Business Administration.

So what is not included in the proposal we are offering. It doesn't include items that are not related to Hurricane Sandy. This is supposed to be about Hurricane Sandy. It doesn't make changes to the Stafford Act. What that means is we don't go in, in this emergency appropriations bill for the next 3 months, and make wholesale changes in the law, make things permanent that are temporary, and streamline regulations. They all may be good things to do, but we have a process for making legislative changes.

We don't include $13 billion for unspecified future projects. They may be good projects, but if they are, we have a process to consider those projects. The distinguished Senator from California and I are the ranking members of one of the subcommittees that does some of that. We expect to do that next year. So we are filling the accounts that are already being used to help many people.

Finally, if I may say something about process—which I think would be more interesting to the Senators than to the people of New York and New Jersey—but it is important to know this bill came to the floor in record time. No one objected to its coming to the floor.

It was virtually unanimous, before we even started voting on amendments, that we agreed to invoke cloture and to have a final vote of 51 votes so the bill in some form will pass. In return for that, those of us on the minority side, so far as I know, got the amendments we wanted.

I simply want to say to my colleagues that it is still far from a perfect process in our effort to continue to improve the way the Senate works. The bill should have gone to committee to begin with. It did not. It could have been amended there. When it came to the floor on Monday, and we said come right on, no one objected to that, we should have started voting. We could have voted for 3 days on this bill: Tuesday, Wednesday, Thursday, instead of running around trying to see who had amendments. Let us just put them up and vote on them. Then we should have had the cloture vote which, as I said, was done with, I think, only one dissenting objection.

So the process has been better but not as good as it should be for the Senate. But Senator COATS' substitute is the right proposal. It is 24 billion more dollars now for the accounts that are already being used to help victims of Sandy.

The last thing I would say is this. When there is an emergency, Congress has always acted. We don't always do everything in the first week or second or third week because we already have money in the bank for those needs. But in Katrina, for example, there were nine different supplemental appropriations bills over time. The next wave of appropriations requests can come to us, and we will go to work on them in a few weeks. We can get to work in the committee right away, for example, and Senator FEINSTEIN and I could work on it a few weeks after that. Then the majority leader will bring the bills to the floor—which he did not last year—and we can vote on them and have the second round of funding.

So I thank the Senator from Indiana, Mr. COATS, for his hard work on this. We want the people of New York and New Jersey to know we want to help them, we are helping them, and will continue to be interested in the things that need to be done. It will not make them whole, but it will help them get on their feet, just as we have in Tennessee and just as we have in other States across the country after large disasters.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, may I inquire as to how much time is still available before the call up of the vote on the FISA legislation?

The PRESIDING OFFICER. The Senator from Indiana has approximately 2 minutes remaining.

Mr. COATS. Mr. President, I would like to use those 2 minutes, if I could, to sum up.

I thank the Senator from Tennessee for his support throughout this whole process. He has been instrumental in helping us work through this to find what we believe is a reasonable way to move forward and provide that immediate emergency help that is so badly needed up in the Northeast.

Let me just give one example of how we came to these numbers. We do provide, through the Transportation, Housing and Urban Development appropriations, $32 million for repairs of Amtrak's infrastructure, dewatering of tunnels, electrical systems, overhead wires. These are immediate needs, and we want to provide funding for them.

There is funding for highway emergency relief directly related to Sandy. We fund for that. We fund for public transportation infrastructure, immediate needs between now and March. Again, we are not saying there might not be need for more funding after this, but we will at least have had the opportunity to vet that and look to ensure that the money is correctly spent. What we didn't do under that appropriations was $30 million of damages

that come under the FAA existing budget, the funding for highway projects not related to Sandy that are in the Democratic bill and mitigation projects unrelated to Sandy.

Again, we are not against mitigation, but we are saying let us focus on Sandy. Let us get the emergency help to those who need it now. Let us get it there in an ample amount of time and money for them. Then let us take up, through the regular process and we carefully examine how we spend the taxpayers' money, providing those needed funds for the real emergency but not using this as a bill to lard up with all kinds of excessive spending that isn't needed for this particular emergency.

With that, I yield back the remainder of my time.

FISA AMENDMENTS ACT REAUTHORIZATION ACT OF 2012—Continued

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 5949.

AMENDMENT NO. 3437

Under the previous order, there will now be 2 minutes of debate equally divided prior to a vote in relation to amendment No. 3437 offered by the Senator from Vermont.

The Senator from Vermont.

Mr. LEAHY. Mr. President, this is a matter I care a great deal about. I am concerned that we are rushing to rubberstamp a House bill that is going to extend the surveillance authorities of the FISA Amendments Act for another 5 years. My amendment would allow the authorities to continue, but it would give a lot better and more timely oversight.

We passed this—and it was not on a last-minute thing—out of the Senate Judiciary Committee in July. We acted quickly so that we would not be acting in this last-minute manner.

This has no operational impact on the intelligence community, but it does ensure the strongest of oversight. I hope Senators will support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise to oppose this amendment and to indicate that the administration opposes the amendment as well.

We have just 4 days to reauthorize this critical intelligence tool before it expires. That is the reason for having the House bill before us today. The House bill is a clean bill. It extends the program to 2017, when it would sunset and would need another reauthorization. I believe we must pass the House bill now. I believe 2017 is the appropriate date.

I am very worried that if we do anything else, if we pass any one of these amendments, we will jeopardize the continuation of what is a vital intelligence tool. So regretfully, I oppose the Leahy amendment.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the Leahy amendment.

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Ohio (Mr. BROWN), the Senator from New York (Mrs. GILLIBRAND), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from Oklahoma (Mr. INHOFE), the Senator from Illinois (Mr. KIRK), and the Senator from Alaska (Ms. MURKOWSKI).

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

The result was announced—yeas 38, nays 52, as follows:

[Rollcall Vote No. 232 Leg.]

YEAS—38

Akaka	Franken	Reed
Baucus	Johnson (SD)	Reid
Begich	Klobuchar	Schatz
Bennet	Kohl	Schumer
Bingaman	Leahy	Shaheen
Blumenthal	Lee	Stabenow
Cantwell	Levin	Tester
Cardin	Manchin	Udall (CO)
Carper	Menendez	Udall (NM)
Casey	Merkley	Webb
Conrad	Murray	Whitehouse
Coons	Nelson (NE)	Wyden
Durbin	Paul	

NAYS—52

Alexander	Grassley	Moran
Ayotte	Hagan	Nelson (FL)
Barrasso	Hatch	Portman
Blunt	Heller	Pryor
Boozman	Hoeven	Risch
Brown (MA)	Hutchison	Roberts
Burr	Isakson	Rockefeller
Chambliss	Johanns	Rubio
Coats	Johnson (WI)	Sessions
Coburn	Kerry	Shelby
Cochran	Kyl	Snowe
Collins	Landrieu	Thune
Corker	Lieberman	Toomey
Cornyn	Lugar	Vitter
Crapo	McCain	Warner
Enzi	McCaskill	Wicker
Feinstein	McConnell	
Graham	Mikulski	

NOT VOTING—10

Boxer	Harkin	Murkowski
Brown (OH)	Inhofe	Sanders
DeMint	Kirk	
Gillibrand	Lautenberg	

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

AMENDMENT NO. 3435

Under the previous order, there will be 2 minutes of debate equally divided prior to the vote in relation to amendment No. 3435, offered by the Senator from Oregon, Mr. MERKLEY.

Mr. REID. Mr. President, we are going to have two more votes tonight. They will both be 10 minutes in duration in addition to the debate time that has already been established. Then we are going to move in a very direct way to complete as much of the debate time as possible on the amendments on the supplemental. It is extremely important that we get this debate completed tonight so we can start voting in the morning. We have already set up that we will have some votes in the morning. We are going to come in probably about 9:30 and start voting. We have a lot to do.

It would really be good if people who have amendments on the supplemental use their debate time tonight. We are going to have no more votes tonight, but tomorrow there will be a limited amount of debate time. Senator MIKULSKI will be here tonight, Senator SCHUMER will be here tonight, and Senator MENENDEZ will be here tonight to help move this, in addition, of course, to the managers of the bill on the other side. We hope people will work hard to get debate out of the way tonight so we can vote tomorrow. We have a lot of votes tomorrow. I am led to believe there are a number of amendments the managers of this bill will pass either by voice or some other quick fashion.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, following up Leader REID's comments, to my colleagues on both sides of the aisle, if you have these amendments, Senator SCHUMER and I would like to know. We will stay here to offer and debate them, as you were accorded under the unanimous consent agreement. If you come up and tell Senator SCHUMER and me now, we can get an order and sequence and tell you when we will call you up. Instead of everybody standing around, we would actually get a regular order and you would know when your amendments are coming up and what order you are coming up so that you could plan your evening. Please see Senator SCHUMER and me, and we will work with you to accomplish this.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, is it time to speak to amendment No. 3435?

The PRESIDING OFFICER. Yes.

Mr. MERKLEY. Mr. President, I rise in support of the Merkley-Lee amendment. I thank him for being lead cosponsor.

I say to my colleagues, this is all about supporting the fourth amendment and opposing secret law. As we all know, in this Nation law consists of both the plain language and the court interpretations of what the plain language means. In the case of the FISA rulings, the public never finds out the second half and therefore doesn't really know when information will be collected, if you will, that is relevant to an investigation. No one ever knows

what that means. The public should be able to know and should be able to weigh in.

This amendment is constructed so it protects national security. It says this will only happen in cases when it is compatible with national security to release the FISA findings, and, second, you can do summaries instead, and if summaries are still causing a national security problem, a schedule is sufficient as to how the administration is reviewing these. It balances national security while it fights for the fourth amendment.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, the vice chairman of the committee opposes this amendment, as does the administration. We have only 4 days to authorize this intelligence tool before it expires. Sending this legislation to the President without amendment is the only sure way to do it.

The Director of National Intelligence is engaged in an ongoing process to declassify significant FISA Court opinions where it is possible to do so. I have agreed to work with Senator MERKLEY to get summaries of FISA Court decisions that can be made public.

In sum, the intelligence community strives to be as transparent as possible with the public, but legislation that would force its hand and potentially risk the exposure of classified information is both unnecessary and unwise.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the Merkley amendment.

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

The PRESIDING OFFICER. 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 California (Mrs. BOXER), the Senator from Ohio (Mr. BROWN), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from Oklahoma (Mr. INHOFE), the Senator from Illinois (Mr. KIRK), and the Senator from Alaska (Ms. MURKOWSKI).

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

The yeas and nays resulted—yeas 37, nays 54, as follows:

[Rollcall Vote No. 233 Leg.]

YEAS—37

Akaka	Cantwell	Franken
Baucus	Cardin	Gillibrand
Begich	Carper	Heller
Bennet	Conrad	Klobuchar
Bingaman	Coons	Leahy
Blumenthal	Durbin	Lee
Levin	Pryor	Tester
Manchin	Reed	Udall (CO)
Menendez	Reid	Udall (NM)
Merkley	Schatz	Webb
Murray	Schumer	Wyden
Nelson (NE)	Shaheen	
Paul	Stabenow	

NAYS—54

Alexander	Graham	McConnell
Ayotte	Grassley	Mikulski
Barrasso	Hagan	Moran
Blunt	Hatch	Nelson (FL)
Boozman	Hoeven	Portman
Brown (MA)	Hutchison	Risch
Burr	Isakson	Roberts
Casey	Johanns	Rockefeller
Chambliss	Johnson (SD)	Rubio
Coats	Johnson (WI)	Sessions
Coburn	Kerry	Shelby
Cochran	Kohl	Snowe
Collins	Kyl	Thune
Corker	Landrieu	Toomey
Cornyn	Lieberman	Vitter
Crapo	Lugar	Warner
Enzi	McCain	Whitehouse
Feinstein	McCaskill	Wicker

NOT VOTING—9

Boxer	Harkin	Lautenberg
Brown (OH)	Inhofe	Murkowski
DeMint	Kirk	Sanders

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

AMENDMENT NO. 3436

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to the vote in relation to amendment No. 3436 offered by the Senator from Kentucky, Mr. PAUL.

Mr. PAUL. Mr. President, I rise today to support the Fourth Amendment Protection Act. The fourth amendment guarantees that people should be secure in their persons, houses, and papers against unreasonable searches and seizures. Somewhere along the way we became lazy and haphazard in our vigilance. We allowed Congress and the courts to diminish our fourth amendment protections, particularly when papers were held by third parties.

I think most Americans would be shocked to know that the fourth amendment does not protect their records if they are banking, Internet, or Visa records. A warrant is required to read their snail mail and to tap their phone, but no warrant is required to look at their e-mail, text, or Internet searches; they can be read without a warrant. Why is a phone call more deserving of privacy protection than an e-mail?

This amendment would restore the fourth amendment protections to third-party records, and I recommend a ''yes'' vote.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I oppose this amendment, as does the vice chairman and the administration. This amendment is not germane to FISA. It has not been reviewed by the Judiciary Committee, which would have jurisdiction over this matter. It seeks to reverse 30 years of Supreme Court precedence of interpreting the fourth amendment. According to the administration talking points received this afternoon: The amendment would severely limit the effectiveness of law enforcement authorities at all levels of government and will effectively repeal the FISA Amendments Act.

I urge a ''no'' vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

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

The PRESIDING OFFICER. 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 California (Mrs. BOXER), the Senator from Ohio (Mr. BROWN), the Senator from Iowa (Mr. HARKIN), the Senator from New Jersey (Mr. LAUTENBERG), and the Senator from Vermont (Mr. SANDERS) are necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from South Carolina (Mr. DEMINT), the Senator from Oklahoma (Mr. INHOFE), the Senator from Illinois (Mr. KIRK), and the Senator from Alaska (Ms. MURKOWSKI).

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

The result was announced—yeas 12, nays 79, as follows:

[Rollcall Vote No. 234 Leg.]

YEAS—12

Baucus	Lee	Tester
Begich	Merkley	Udall (NM)
Cantwell	Paul	Webb
Heller	Stabenow	Wyden

NAYS—79

Akaka	Franken	Moran
Alexander	Gillibrand	Murray
Ayotte	Graham	Nelson (NE)
Barrasso	Grassley	Nelson (FL)
Bennet	Hagan	Portman
Bingaman	Hatch	Pryor
Blumenthal	Hoeven	Reed
Blunt	Hutchison	Reid
Boozman	Isakson	Risch
Brown (MA)	Johanns	Roberts
Burr	Johnson (SD)	Rockefeller
Cardin	Johnson (WI)	Rubio
Carper	Kerry	Schatz
Casey	Klobuchar	Schumer
Chambliss	Kohl	Sessions
Coats	Kyl	Shaheen
Coburn	Landrieu	Shelby
Cochran	Leahy	Snowe
Collins	Levin	Thune
Conrad	Lieberman	Toomey
Coons	Lugar	Udall (CO)
Corker	Manchin	Vitter
Cornyn	McCain	Warner
Crapo	McCaskill	Whitehouse
Durbin	McConnell	Wicker
Enzi	Menendez	
Feinstein	Mikulski	

NOT VOTING—9

Boxer	Harkin	Lautenberg
Brown (OH)	Inhofe	Murkowski
DeMint	Kirk	Sanders

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

The Senator from Maryland.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT—Continued

Ms. MIKULSKI. I ask unanimous consent that the Senate now resume consideration of H.R. 1, the legislative vehicle for the Hurricane Sandy supplemental.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill has been reported.

Ms. MIKULSKI. Mr. President, I would like to give a sense of the order of amendments so Senators may plan their time.

We are now back on the supplemental bill, and we have great cooperation in getting the pending amendments and debate done this evening so we could actually start voting tomorrow morning.

So that Senators can have an understanding of how we will start our work this evening, I want to lay out a bit of the schedule. This is not a unanimous consent request. It is kind of an outline.

Our intention is to have the following amendments called up after I yield the floor: Senator CARDIN to be recognized to call up his amendment No. 3393; Senator TESTER to be recognized for up to 2 minutes to call up his amendment No. 3350; Senator LANDRIEU to be recognized for up to 2 minutes to call up her amendment No. 3415; Senator COBURN to be recognized for up to 30 minutes to call up his six amendments: Nos. 3368; 3369; 3370, as modified; 3371; 3382; and 3383; following that, Senator MERKLEY to be recognized for up to 5 minutes to call up his amendment No. 3367; and then I have a few I will call up on behalf of other Senators.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 3393 TO AMENDMENT NO. 3395

Mr. CARDIN. Mr. President, I call up the Cardin amendment that was made in order, amendment No. 3393.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. CARDIN], for himself and Ms. LANDRIEU, proposes an amendment numbered 3393 to amendment No. 3395.

The amendment is as follows:

(Purpose: To strike section 501)

Strike section 501.

Mr. CARDIN. Mr. President, this amendment is totally noncontroversial. In the bill, they increase the surety bond limits for small businesses from $2 million to $5 million. It was an amendment I worked with Senator LANDRIEU on in the Small Business Committee. It was included in the Recovery Act. It expired. It has been very successful. It has generated a lot more contracts than anticipated. Making the limit permanent has no cost.

This amendment would strike the provision from this bill since it has already been included in the National Defense Authorization Act, which has passed this body at $6.5 million, made permanent. So there is no need to include this provision in the supplemental appropriations bill.

I know of no controversy on this amendment. We do not need any debate time. I am hopeful we will clear this for a voice vote tomorrow.

I wish to thank Senator LANDRIEU for her work and Senator SNOWE on the Small Business Committee and thank Senator MIKULSKI for her work.

The Small Business Administration's surety bond program provides a guarantee on surety bonds, which are issued by contractors to assure customers that contract work will be completed.

The surety bond program gives small businesses critical support to secure work, which will be especially important during recovery and rebuilding efforts after Superstorm Sandy.

The underlying bill contains a provision, requested by the administration, which would increase the maximum surety bond guaranteed by SBA from $2 million to $5 million.

The Defense authorization conference agreement contains a provision that would raise the maximum to $6.5 million.

The amendment strikes the provision in the supplemental related to SBA surety bonds in order to avoid conflicting with the House and Senate's conference agreement in the Defense authorization bill.

This amendment is a simple but important technical fix supported by Chairwoman LANDRIEU and Ranking Member SNOWE of the Small Business Committee.

I urge my colleagues to support this amendment.

Mr. TESTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Ms. MIKULSKI. Mr. President, wait. Before the Senator from Montana speaks, why don't we voice vote the amendment now.

Mr. CARDIN. Fine. I know of no further requests for time and I am prepared for a vote.

I yield the floor.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

Ms. MIKULSKI. Would the Chair withhold?

There seems to be—Mr. President, if we could have order, I think it would be helpful for us.

The PRESIDING OFFICER. The Senate will come to order.

Ms. MIKULSKI. The Senator from Maryland may proceed.

Mr. CARDIN. I have no further debate. I am prepared to let it go on a voice vote.

The PRESIDING OFFICER. Is there any further debate on the amendment?

Mr. COBURN. Inquiry of the Chair, Mr. President.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. It was my understanding we were going to have ordered votes tomorrow rather than this evening, and I would ask, through the Chair, the chairwoman of the committee if my understanding is correct.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Replying to the Senator from Oklahoma, for those amendments we know we have cleared on both sides of the aisle that we can do by voice votes or by consent, we are going to get those done this evening.

Does the Senator have an objection to that?

Mr. COBURN. I would on this particular—I think we ought to have a recorded vote on this. That would be my request.

Ms. MIKULSKI. Senator CARDIN's amendment No. 3393 will be voted on tomorrow.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 3350 TO AMENDMENT NO. 3395

Mr. TESTER. Mr. President, I call up amendment No. 3350.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. TESTER], for himself, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. WYDEN, Mr. BAUCUS, and Mr. JOHNSON of South Dakota, proposes an amendment numbered 3350 to amendment No. 3395.

The amendment is as follows:

(Purpose: To provide additional funds for wildland fire management)

On page 76, between lines 4 and 5, insert the following:

WILDLAND FIRE MANAGEMENT

For an additional amount for ''Wildland Fire Management'', $653,000,000, to remain available until expended: *Provided*, That such amount is designated by Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)); *Provided further*, That, not later than December 31, 2013, the Comptroller General of the United States shall submit to the Committees on Appropriations of the House of Representatives and the Senate a report on new models or alterations in the model that may be used to better project future wildfire suppression costs.

Mr. TESTER. Mr. President, Senator UDALL of Colorado and I are offering this amendment to provide the Forest Service with sufficient resources to meet the demands of wildfire fighting this fiscal year.

Our amendment to the Sandy supplemental would close the gap between the budget request and the actual expected need for wildfire management this year. Over the last 15 years, the cost of wildfire suppression has increased fivefold, but the Forest Service's budget certainly has not. The reason we have had wildfire suppression increasing by fivefold is because the frequency and severity of fires have both increased.

The Forest Service, instead, has had to borrow money set aside for nonfire purposes, cutting into important programs such as timber production and watershed restoration. Borrowing

against other accounts is occasionally unavoidable, but it is generally bad policy. We have a chance to avoid this situation by adopting my amendment No. 3350.

The West experienced its worst fire season in decades this past year. Over 1 million acres burned in Montana and over 9 million acres burned across the country. Three States had major emergency disaster declarations due to fire. We cannot afford to get caught unprepared this coming summer. Nearly one-fifth of the West remains in extreme or exceptional drought, and over 60 percent of the High Plains remains in extreme or exceptional drought. Let's be prepared. Let's be responsible. I would urge a ''yes'' vote on this amendment tomorrow.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I rise in support of amendment No. 3350 proposed by Senator TESTER. These funds are needed because the agency predicts it will spend more to fight these fires in fiscal year 2013, causing severe hardship on the agency.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3415 TO AMENDMENT NO. 3395

Ms. LANDRIEU. Mr. President, I rise to discuss amendment No. 3415. It is my understanding there is no opposition to this amendment. We may be able to voice vote it tonight. But let me take 1 minute to explain it.

This is a technical correction to an underlying provision that is already in the bill we will be voting for.

In the current law, there is a perverse incentive for local governments, when they are recovering, to hire outside contractors as opposed to maybe working with the workers who are already on the payroll—firefighters and police officers. It was not intended to be that way. But because FEMA only reimburses for contractors and not for the local police or firefighters under certain circumstances, we believe and FEMA believes it is actually spending more money.

So the essence of this amendment is to save money, being neutral in the law, so the local officials can make the best decisions whether they want to hire either contractors, if it makes sense, or their own people, if it makes sense, so the recovery can go more efficiently and, hopefully, save money.

FEMA supports it. The firefighters support it. It is technical in nature, which is why I asked the chairwoman tonight if we could voice vote it. I do not think there is any opposition.

Ms. MIKULSKI. I say to the Senator, we have been advised that we will not be voice voting amendments tonight.

But I want to just comment that we support the Landrieu amendment No. 3415, which clarifies the intent of section 609(e) of the pending amendment to provide FEMA reimbursements for the first responders. This amendment clarifies the intent that first responders can be reimbursed for wages during a disaster response. But it does not change the conditions of reimbursement that already aid an effective disaster response.

We do want to reinforce that both the International Association of Fire Fighters and the International Association of Fire Chiefs support this amendment.

At such time a vote is taken, I will urge a ''yes'' vote.

Ms. LANDRIEU. Mr. President, I would like to call up the amendment, if I could. The staff reminds me I did not do that.

The PRESIDING OFFICER. Without objection, the clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] proposes an amendment numbered 3415 to amendment No. 3395.

The amendment is as follows:

(Purpose: To clarify the provision relating to emergency protective measures)

On page 51, strike lines 8 through 23 and insert the following:

''(1) IN GENERAL.—If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to—

''(A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—

''(i) the work is not typically performed by the employees; and

''(ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals; or

''(B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section.

''(2) OVERTIME.—The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

''(3) NO EFFECT ON MUTUAL AID PACTS.—Nothing in this subsection shall effect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.''.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that two letters—one from the International Association of Fire Chiefs and one from the International Association of Fire Fighters—be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF FIRE CHIEFS,
Fairfax, Va., December 27, 2012.

Hon. MARY LANDRIEU,
Chairman, Subcommittee on Homeland Security, U.S. Senate Committee on Appropriations, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LANDRIEU: On behalf of the nearly 12,000 members of the International Association of Fire Chiefs, I would like to express our support for S.A. 3415, an amendment to the supplemental appropriations bill for the relief of communities affected by Hurricane Sandy (H.R. 1). This amendment is technical in nature, but serves an important purpose.

The national emergency response system is based on mutual aid agreements in which neighboring fire departments help a community that requires assistance in its response to a disaster. These mutual aid agreements can be local-to-local, intra-state, or interstate. Many of these agreements include provisions to ensure that the aiding jurisdictions will be reimbursed for their emergency response activities. Because many localities are facing shrinking emergency response budgets, it is important that they be reimbursed soon after they provide assistance through a mutual aid agreement.

This amendment makes it clear that the reimbursement provisions in H.R. 1 will not affect these mutual aid agreements. The amendment also will ensure that local jurisdictions receive some assistance for the extraordinary measures that they take to provide aid to their citizens during a disaster. In many cases, the local taxpayers cannot afford these costs on their own.

Thank you for offering this amendment that will help many jurisdictions around the nation provide an effective response to disasters in their communities. On behalf of the leadership of America's fire and emergency services, I urge the Senate to adopt this amendment.

Sincerely,
CHIEF HANK C. CLEMMENSEN,
President and Chairman of the Board.

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Washington, DC., December 27, 2012.

Hon. MARY LANDRIEU,
U.S. Senate,
Washington, DC.

DEAR SENATOR LANDRIEU: On behalf of the nation's nearly 300,000 professional fire fighters and emergency medical personnel, I am writing to express our support for your amendment to the Disaster Relief Supplemental Appropriation which is scheduled for consideration by the full Senate.

Super Storm Sandy jeopardized the safety of thousands of Americans and required an extraordinary response from emergency workers throughout the region. The costs associated with this response cannot and should not be borne solely by the taxpayers of the affected jurisdictions.

Senate Amendment #3415 would ensure that municipalities are eligible to seek reimbursement for costs associated with emergency response operations directly related to Super Storm Sandy. The amendment also builds in protections that prevent federal tax dollars from being used for costs that would have normally been incurred by state and local jurisdictions. This careful balance serves the best interests of both communities impacted by the storm and American taxpayers.

We greatly appreciate your diligent efforts to address this important issue, and look forward to working with you to see S. Admt. 3415 become law.

Sincerely,
BARRY KASINITZ,
Director of Governmental Affairs.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I ask, through the Chair, if the chairwoman of the Appropriations Committee would like for me to begin calling up amendments.

Ms. MIKULSKI. Yes. I wish to thank the Senator from Oklahoma for being willing to debate these amendments

this evening. I know he has a pressing engagement, and he may proceed in whatever order he so chooses.

Mr. COBURN. I thank the chairwoman.

Mr. President, a little perspective before I offer these amendments.

We have before us a $60 billion-plus bill. There is no question there is great need in response to the devastation that occurred from Sandy. But what the American people need to know as this bill goes through the Senate is this bill is not going to be paid for. There is no amendment that has been approved that will allow offsets for this bill.

So as we clear this bill through the Senate—the $60-some billion we are going to clear—we are actually going to borrow that money. That is indisputable. I have spent the last 8 years outlining the waste, the duplication, and the fraud in the Federal Government. Those amendments were not made in order that would offset and actually pay for this by eliminating programs of the Federal Government that do not actually do anything to actually better the lives of Americans.

I am very appreciative of the opportunity to offer these amendments. I would also note we could have done these last week had we had an open and moving amendment process. We would not be here today working on Sandy. We would have finished it last week, but we chose not to do that.

AMENDMENT NO. 3369 TO AMENDMENT NO. 3395

Mr. President, I ask that amendment No. 3369 be called up.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 3369 to amendment No. 3395.

Mr. COBURN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To reduce the amount that triggers the requirement to notify Congress of the recipients of certain grants and to require publication of the notice)

Strike section 1003 and insert the following:

SEC. 1003. None of the funds provided in this title to the Department of Transportation or the Department of Housing and Urban Development may be used to make a grant unless the Secretary of such Department notifies the House and Senate Committees on Appropriations and posts the notification on the public website of that agency not less than 3 full business days before either Department (or a modal administration of either Department) announces the selection of any project, State or locality to receive a grant award totaling $500,000 or more.

Mr. COBURN. Mr. President, this is a fairly straightforward amendment, and this is not to be construed as an amendment against the appropriators but, rather, an amendment for transparency.

What the underlying bill states is that 3 days before any grants are made under this process that the Appropriations Committee will be notified—not the whole Congress, not the American people but the Appropriations Committee. The reason for that is so the Members of the Appropriations Committee can then put out the information to the constituencies who are going to benefit from the grants that come through this.

Actually, the American people need to know the grants that are going to be granted through this process, the money that is going to be spent. So all this amendment does is change it to where the American people get notified of the grants that are going to be placed as a result of this bill.

This is about good government. This is about transparency. This is about letting all the Americans, who are actually going to pay for these grants, know what is going on, when it is going on, and how it is going on, who is going to get the money, and how much money they are going to get.

It is straightforward, very simple. It just says let everybody know—not a select group of Senators or House Members but everybody in this country who is footing the bill ought to know where this money is going to be spent. They ought to know it at the same time anybody else knows. It is just a transparency amendment so we all know where the money is spent, and we know it at the same time.

AMENDMENT NO. 3371 TO AMENDMENT NO. 3395

Mr. President, I ask unanimous consent that amendment be set aside and call up amendment No. 3371.

The PRESIDING OFFICER. Without objection, the clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] for himself and Mr. MCCAIN, proposes an amendment numbered 3371 to amendment No. 3395.

The amendment is as follows:

(Purpose: To ensure that Federal disaster assistance is available for the most severe disasters, and for other purposes)

At the appropriate place insert the following:

SEC. 52007. (a) Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Emergency Management Agency (in this section referred to as the ''Administrator'') shall review the public assistance per capita damage indicator and shall initiate rulemaking to update such damage indicator. Such review and rulemaking process shall ensure that the per capita indicator is fully adjusted for annual inflation for all years since 1986, by not later than January 1, 2016.

(b) Not later than 365 days after the date of enactment of this Act, the Administrator shall—

(1) submit a report to the committees of jurisdiction in Congress on the initiative to modernize the per capita damage indicator; and

(2) present recommendations for new measures to assess the capacities of States to respond and recover to disasters, including threat and hazard identification and risk assessments by States and total taxable resources available within States for disaster recovery and response.

(c) As used in this section, the term ''State'' means—

(1) a State;

(2) the District of Columbia;

(3) the Commonwealth of Puerto Rico;

(4) any other territory or possession of the United States; and

(5) any land under the jurisdiction of an Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Mr. COBURN. This is another good government amendment.

One of the things that has happened since FEMA was set up is that what has occurred has created a disparity between the States. Let me outline, in the last 6 years the State with the most disasters—most of you would not realize—is Oklahoma. We have had 25 certified disasters in my State.

Now, how did that happen? It has happened because the per capita damage calculation has not been updated through inflation on a regular basis. So what is the effect of that? The effect of that is a State such as New York or California or Texas can have exactly the same disaster as Oklahoma, but it will not be declared a disaster because Oklahoma has less than 4 million people but we have X amount of dollars, but because we have such a smaller population, we qualify for a disaster declaration, whereas if the same thing happened in any of those three larger populated States, they would not qualify.

So this is actually an amendment that will not be beneficial to my State but is beneficial to us as American citizens to create equality in how we describe and how we grant disaster declarations.

So all I am doing is saying that between now and 2016, FEMA has to update. It will not have any application to what we are doing today, but it is a good-government amendment so that we will actually have a uniform process throughout the country so that disaster declarations are appropriately granted to States that appropriately need the Federal Government's help.

Remember, our definition on this is when we have overwhelmed local resources. That is the key. Then we use a per capita damage assessment to grant the declaration of emergency. So what I am trying to do is to create some clarity and also equality among the States so that everybody is treated equally. Right now, they are not. Quite frankly, my State is much advantaged, to the detriment of the larger States, because of our lower population, with the same amount of damage.

I would ask for concurrence on that amendment.

AMENDMENT NO. 3382 TO AMENDMENT NO. 3395

Mr. President, I ask unanimous consent that amendment 3382 be called up.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 3382 to amendment No. 3395.

Mr. COBURN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To require merit-based and competitive awards of disaster recovery contracts)

After section 1105, insert the following:

SEC. 1106. (a) PROHIBITION ON USE OF FUNDS FOR FUTURE DISASTER RECOVERY CONTRACTS NOT COMPETITIVELY AWARDED.—Amounts appropriated or otherwise made available by this Act may not be obligated or expended for any contract awarded after the date of the enactment of this Act in support of disaster recovery if such contract was awarded using other than competitive procedures as otherwise required by chapter 33 of title 41, United States Code, section 2304 of title 10, United States Code, and the Federal Acquisition Regulation.

(b) CURRENT NO-BID CONTRACTS.—

(1) REVIEW OF CONTRACTS.—Not later than 60 days after the date of the enactment of this Act, Federal agencies shall conduct a review of all contracts to support disaster recovery that were awarded before the date of the enactment of this Act using other than competitive procedures in order to determine the following:

(A) Whether opportunities exist to achieve cost savings under such contracts.

(B) Whether the requirements being met by such contracts can be met using a new or existing contract awarded through competitive procedures.

(2) COMPETITIVE AWARD OF CONTRACTS.—If a Federal agency determines pursuant to the review under paragraph (1) that either subparagraph of that paragraph applies to a contract awarded using other than competitive procedures, the agency shall take appropriate actions with respect to the contract, whether to achieve cost savings under the contract, to use a new or existing contract awarded through competitive procedures to meet applicable requirements, or otherwise to discontinue of the use of the contract.

Mr. COBURN. This is an amendment some people do not like, I will grant you that. But I have some specific examples that are going on in New Jersey right now on why this amendment is needed. We have multiple contracts that were available that could have been utilized in New Jersey for debris removal. The company that got the contract actually is going to charge in excess of 20 percent more to the Federal Government for doing the same thing another competitive bid would have done. So we are going to spend at least 20 percent more on the contract for debris removal in New Jersey than we need to. That is because competitive bidding was not a requirement of Federal funds.

Here is some history. During Katrina, we know that $11 billion of U.S. taxpayer money was either defrauded or wasted. Let me say that again—$11 billion. Let me give the prime example of that. The Corps of Engineers was paid $62 per cubic yard to manage debris removal in Katrina. Through five layers of contracting, the people who actually did the debris removal in Katrina were paid $9 a cubic yard. So we paid six times what it actually cost to get the debris removal done because we did not have competitive bidding and we had multiple layers coming from the Corps of Engineers to national contractors, to regional contractors, to local contractors, to the actual guy with a backhoe and with a scoop and a dump truck. So we paid five to six times what it should have cost to actually get the debris removal taken care of. The same thing is going on in New Jersey right now. Right now.

So requiring competitive bidding—can there be exceptions to it? Yes. Are there times when you cannot do that? Yes. But as a general rule, especially since we are borrowing this money, we ought to be the best stewards of it that we can be. All this says is that we ought to require competitive bidding on these types of contracts to make sure we get value.

Why did New Jersey choose the more expensive contractor? Because the Federal Government is paying for it. This was a contract that was set that had been executed once in Connecticut. Because the Federal Government is paying for it, there is less decisionmaking about prudence and efficiency and effectiveness because there is not State money paying for it.

So what has happened is what was easiest, what was well-connected, what was well-heeled got the contract, and the one that would have cost considerably less did not get the contract. I would be happy to demonstrate for any of my colleagues showing them the difference between these two contracts on debris removal in New Jersey. So the same thing that happened in Katrina we are not learning from.

I agree that the debris needs to be picked up. We need to do it expeditiously. We had great opportunity to do that with both contractors, except we are going to pay a lot more because we chose to go a way that greased the sleds for those who were well connected.

AMENDMENT NO. 3383 TO AMENDMENT NO. 3395

Mr. COBURN. Mr. President, I ask unanimous consent that that amendment be set aside and amendment No. 3383 be called up.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 3383 to Amendment No. 3395.

Mr. COBURN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike a provision relating to certain studies of the Corps of Engineers)

On page 16, strike lines 17 through 20 and insert ''*Provided*''.

Mr. COBURN. This amendment attacks one of the features of this bill that I think steals from the authorizing committees the authority they need to have on authorizing projects. Let me quote the language in the bill:

Provided further that any project that is under study by the Corps of Engineers for reducing flooding and storm damage risks in the future and that the Corps studies demonstrate will cost effectively reduce those risks is hereby authorized.

With one sentence, we have just taken away the total capability of the authorizing committee to hold the Corps accountable. All I am saying is that we at least ought to have authorizers say whether this is a priority. It does not mean they need to stop it, but they ought to at least be informed, and the authorization of that ought to go through a committee.

In this bill, 64 percent of the money is not going to even be started to be spent until 2 years from now, so there is plenty of time for us to create the authorization process rather than to deem the Corps of Engineers their own order and desire in terms of projects they wish to do. It is about good government. It is about good input. It is about good oversight. Allowing the Corps just to deem something authorized without the input of the appropriate committee of this Senate I think is inherently wrong and potentially very wasteful.

AMENDMENT NO. 3368 TO AMENDMENT NO. 3395

Mr. COBURN. Mr. President, I ask unanimous consent that that amendment be set aside.

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

Mr. COBURN. I ask unanimous consent that Amendment No. 3368 be called up.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an Amendment numbered 3368 to Amendment No. 3395.

Mr. COBURN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify cost-sharing requirements for certain Corps of Engineers activities)

In title IV, under the heading ''CONSTRUCTION (INCLUDING TRANSFER OF FUNDS)'' under the heading ''CORPS OF ENGINEERS–CIVIL'' under the heading ''DEPARTMENT OF THE ARMY'' under the heading ''DEPARTMENT OF DEFENSE–CIVIL'' strike ''*Provided further*, That cost sharing for implementation of any projects using these funds shall be 90 percent Federal and 10 percent non-Federal exclusive of LERRDs:'' and insert ''*Provided further*, That the Secretary shall determine the Federal and non-Federal cost share for implementing any project using these funds in accordance with section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213):''.

Mr. COBURN. Mr. President, the Sandy supplemental bill provides the

U.S. Army Corps of Engineers $3.5 billion in funding for new construction projects. Of that, $3 million from this account is directed toward future mitigation projects, future flood risks for areas associated with large-scale flood and storm events, and areas along the Atlantic coast within the boundaries of the North Atlantic Division of the Corps that were affected by Hurricane Sandy.

The legislation also increases the Federal cost share for these projects that are funded with this appropriation. It changes it from 65 percent to 90 percent. The purpose of this amendment is to bring that back to 65 percent. It is not about being a miser. It is not about wanting to save money. It is about prudence. It is about sound judgment. It is about common sense.

What do we know from the 1988 Stafford Act? Here is what we know. What we know is that when we changed the cost share to an appropriate level so that we did not get things done on the Federal Government's, the taxpayers' dime without significant participation of local input, what the studies show is that during that 1-year period, the Federal Government saved $3 billion because projects did not get funded that were not priorities because of the 65 percent Federal contribution and the 35-percent cost share. So what this does is reintroduce the 65-percent Federal payment and the 35-percent cost share to do that. Again, most of these projects are not going to start until 2015. So priorities are important.

So we are borrowing $60 billion—and this is just the first bill, I am told, and I am sure we are going to have to spend more, but shouldn't we be more prudent with how we spend dollars that are going to be borrowed against our children's future? All this says is revert it back to what has been done.

The second point I would make is that this is the first time in recent history where we have said—the people of Louisiana had a 65-percent cost share to the Federal Government, the people of Texas, the people of Mississippi, the people of Alabama, and all of a sudden, we are now going to say: No, that does not apply to the people in the Northeast. So it is unfair to the other areas that had major catastrophes that now all of a sudden, in time of extremis in terms of our debt and deficit, we are going to all of a sudden change that. Why are we changing that, especially since most of this money is not going to be spent—is not even going to be initialized—for at least 2 years?

AMENDMENT NO. 3370, AS MODIFIED, TO AMENDMENT NO. 3395

Mr. COBURN. I ask unanimous consent that that amendment be set aside and amendment No. 3370 be called up.

The PRESIDING OFFICER (Mr. CASEY.) Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. COBURN], for himself and Mr. MCCAIN, proposes an amendment numbered 3370, as modified, to amendment No. 3395.

Mr. COBURN. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 1106. PROHIBITION ON EMERGENCY SPENDING FOR PERSONS HAVING SERIOUS DELINQUENT TAX DEBTS.

(a) DEFINITION OF SERIOUSLY DELINQUENT TAX DEBT.—In this section:

(1) IN GENERAL.—The term ''seriously delinquent tax debt'' means an outstanding debt under the Internal Revenue Code of 1986 for which a notice of lien has been filed in public records pursuant to section 6323 of that Code.

(2) EXCLUSIONS.—The term ''seriously delinquent tax debt'' does not include—

(A) a debt that is being paid in a timely manner pursuant to an agreement under section 6159 or 7122 of Internal Revenue Code of 1986; and

(B) a debt with respect to which a collection due process hearing under section 6330 of that Code, or relief under subsection (a), (b), or (f) of section 6015 of that Code, is requested or pending.

(b) PROHIBITION.—Notwithstanding any other provision of this Act or an amendment made by this Act, none of the amounts appropriated by or otherwise made available under this Act may be used to make payments to an individual or entity who has a seriously delinquent tax debt during the pendency of such seriously delinquent tax debt.

SEC. 1107. PROHIBITION ON EMERGENCY SPENDING FOR DECEASED INDIVIDUALS.

None of the amounts appropriated by or otherwise made available under this Act may be used for any person who is not alive when the amounts are made available. This does not apply to funeral costs.

SEC. 1108. PROHIBITION ON EMERGENCY SPENDING FOR FISHERIES.

None of the funds appropriated or made available in this Act may be used for any commercial fishery that is located more than 50 miles outside of the boundaries of a major disaster area, as declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.), for Hurricane Sandy.

Mr. COBURN. Per the further request of Senator SCHUMER, I put a division in this amendment so we would have two votes on it, separating out the fisheries. Because he felt that was important, I was glad to accommodate his needs.

Mr. SCHUMER. Would the Senator yield?

Mr. COBURN. I would be happy to yield.

Mr. SCHUMER. I thank the Senator. The Senator was gracious. There are two separate issues here, one of which I think most of us on this side would accept. The other we could not. To lump them together would have tied two issues together that were not fair. The Senator from Oklahoma was extremely gracious. He said right away: We will divide them. He did not have to do that. I very much appreciate that.

Mr. COBURN. I am happy to do that. Let me tell you what crux of this amendment is. When we have disasters, we have real, legitimate needs. We have families who are hurting. We have businesses that are belly-up. We have homes that are destroyed. We have lives that are never going to be put back together no matter how much money we spend.

But there are people in our country who do not play by the rules. This amendment is specifically designed to not grant any of this $60 billion to true tax cheats. That does not mean something that is under discussion or under litigation; that is the ones who have already been deemed tax cheats. And the second thing is to not pay money to people who are deceased already.

What did we learn from Katrina? We learned that nearly $1 billion of Katrina money went to people who owed billions of dollars to the Federal Government. These were not disputable facts, these were real facts. We also learned that we spent significantly over $100 million giving grants and money to people who were deceased. So all we are saying is, on this bill, let's learn from our mistakes and let's not do the same thing.

So this puts a prohibition on money going to people who have a legitimate, adjudicated claim by the IRS that they are not paying taxes that are due to the Federal Government; that they, in fact, will not participate because they did not participate.

The second thing is if, in fact, you really don't exist any more in life, you really shouldn't be collecting money off our kids to pay for something that isn't a real need.

The final point of it is to really focus this on the Sandy supplemental, and that is the division on which we will have a separate vote, is for funding fisheries. I have no problem with funding fisheries. I have a big problem with borrowing from my kids to fund those very fisheries.

It is about priorities. We refuse to make priorities, and now that we have a bill that we don't have to cut spending anywhere from—we are going to borrow it all—we decide that we are going to add everything into it we can. I am not saying there is not a need in Alaska or on the west coast for this. What I am saying is there is a need for us to start making choices. The choice has to be not whether we will pay for it, it is what is a lower priority than funding the fishery? We tend to want to not want to make those choices. I am saying, in this amendment, that we ought to have to.

We will see what the will of the Senate is. I probably already know the answer to it. But the fact is that all we are doing is stealing from our kids. All of you know I can document over $200 billion a year in duplication, fraud, and waste in the Federal Government. We are not offering any of that to eliminate to be able to pay for this.

So if we are going to do the $150 million for fisheries, ought we not to cut spending somewhere else to pay for it? That is the whole point of this.

I would ask unanimous consent that amendment be set aside.

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

Mr. COBURN. I believe I am through, Mr. Chairman, and I would make the following point—

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Again, I wish to thank the Senator from Oklahoma for offering all those amendments.

I would like to comment on Coburn 3370, division 1 on the tax cheats. I certainly want to compliment him on that amendment. Every single Senator wants to prevent tax cheaters from receiving any funding in this bill. I am for all of those prohibitions on tax cheats. I carry a similar provision in my usual customary Commerce-Justice bill.

The Senator from Oklahoma also was very tentative about modifying it, but he still covers the tax cheats, and also dead people can't get Federal funds. The Senator modified it to cover funeral expenses. But we are also being told that this—by the Finance Committee—that this amendment is not a blue slip issue.

I support the Senator's amendment, and if it is agreeable with the Senator from Oklahoma, on this side, we would like to take his amendment tonight.

Mr. COBURN. I am happy to have you take it. I have no objection.

Ms. MIKULSKI. Now on the fisheries part, we don't take the fisheries part.

Mr. COBURN. I understand that.

Ms. MIKULSKI. I oppose the division 2, the fisheries amendment. I understand the Senator's intention, but his point is that he tries to say that fishery disaster funding should be for communities affected primarily by Stafford Act requirements. The Stafford Act covers FEMA-certified disasters. So in order to get help from FEMA, which is governed by the Stafford Act, it has to be certified by the President.

Fisheries are different because fisheries are covered under an agency called NOAA, the National Oceanic and Atmospheric Agency. It is under the Department of Commerce. So if you think you have a fisheries disaster, you take that to the Secretary of Commerce, who has an explicit criteria in order to qualify. You just can't say: Well, I don't have the fish I used to. Oh, my lobster pots are a little rusty. No. You have to have real criteria that you have been hit. Therefore, you cannot get fisheries assistance unless a fishery disaster has been declared by the Secretary of Commerce.

Fishery disasters are necessary and urgent. Coastal fisheries, our coastal communities—our fisheries are part of their identity, and they are certainly part of our economy. They certainly are in my State. And those are the disasters that are covered here. So I hope the amendment of the Senator from Oklahoma is defeated.

His other amendments, I could comment upon, but I didn't know if the gentlelady from Louisiana, who chairs the Subcommittee on Homeland Security, of which FEMA is a member—I presume she would want to comment on the Senator's amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I would like to just say a word broadly in response to Senator COBURN's statement and his offering of several amendments to substantially in some cases and in other cases not so substantially change this bill.

I thank the Senator from Michigan for yielding just a minute, and I know the Senator from New York wants to respond as well.

Generally, I would like to say that I know the Senator from Oklahoma is very sincere. Literally no one in this Chamber has worked harder to try to get more reform and eliminate duplication. But I just wish to say one thing in response. When we have emergencies in this country, like when we go to war, no one comes to the floor to debate how we are going to offset $1.4 trillion worth of expense for two wars, Iraq and Afghanistan. When we came to the floor a couple of years ago to vote for tax cuts, many of us claimed and said at the time there would not be enough money to cover them, we had to borrow money to do that. The other side sat quietly and didn't say a word. Why is it that when Americans—when a building is blown up in Oklahoma or when the levees break in Louisiana or when the worst storm in 50 years comes, we have to debate an offset?

Now, this bill is not going to be offset; it is going to pass, I hope. And I understand Senator COBURN's comments, but I want to say that when Americans are hurting, people can recover if we give them the adequate response early enough in the disaster.

Secondly, and then I am going to sit down, the thresholds, the debris, and the contracting—there are some legitimate concerns, but there are reforms in the underlying bill that will help to do better contracting, better debris removal, and more efficient cleanup and recovery after a disaster.

So I ask the Senator, please, I understand we have a big budget issue, but this is not the time to debate the cost of this bill. What it is time to debate is what should be in it and what shouldn't, and I think the Senator from New York has more specifics about some of the recommendations.

But I thank the chairlady from Maryland for organizing this effort tonight, and I will submit more for the record in the morning.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I have a lot I want to say in reference to my good friend from Oklahoma, but I know my colleagues from Oregon and Michigan have a time commitment, so I am just going to ask unanimous consent that they be allowed to offer their amendment and then I, using our time on this amendment.

Mr. COBURN. I would object to that at this point in time. I would have liked to have had 5 minutes. I have to be somewhere at 7:30. I came down here, but I wanted to make some points before I leave. I was trying to sum up.

Mr. SCHUMER. Then I will go after the Senator from Oklahoma as well.

Mr. COBURN. That is fine.

Ms. MIKULSKI. Did I inadvertently interrupt you?

Mr. COBURN. That is fine. I have to leave, but I want to make some points.

Mr. SCHUMER. Let me ask unanimous consent that first, for 5 minutes, the Senators from Michigan and Oregon introduce their amendment, then the Senator from Oklahoma sums up, and then that I be given time to rebut their amendments.

Mr. MENENDEZ. Reserving the right to object—I am not going to object, but I would like to amend the request so that I would be recognized after him.

Mr. SCHUMER. No problem.

Mr. MENENDEZ. After the Senator from New York.

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

AMENDMENT NO. 3367 TO AMENDMENT NO. 3395, AS FURTHER MODIFIED

Mr. MERKLEY. Mr. President, I call up amendment No. 3367 and ask that it be further modified with the changes at the desk.

Mr. MERKLEY. Mr. President, I ask that Senator BLUNT be added as a cosponsor.

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

The clerk will report the amendment, as further modified.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. MERKLEY] proposes an amendment numbered 3367, for himself, Mrs. STABENOW, Mrs. MCCASKILL, Mr. BAUCUS, Mr. WYDEN, Mr. FRANKEN, Mr. JOHNSON of South Dakota, Mr. UDALL, and Mr. BLUNT, as further modified.

The amendment is as follows:

At the end of title I, add the following:

GENERAL PROVISIONS—THIS CHAPTER

SEC. 101. SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE PROGRAMS.

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE PRODUCER ON A FARM.—

(A) IN GENERAL.—The term ''eligible producer on a farm'' means an individual or entity described in subparagraph (B) that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock.

(B) DESCRIPTION.—An individual or entity referred to in subparagraph (A) is—

(i) a citizen of the United States;

(ii) a resident alien;

(iii) a partnership of citizens of the United States; or

(iv) a corporation, limited liability corporation, or other farm organizational structure organized under State law.

(2) FARM.—

(A) IN GENERAL.—The term ''farm'' means, in relation to an eligible producer on a farm, the total of all crop acreage in all counties that is planted or intended to be planted for harvest, for sale, or on-farm livestock feeding (including native grassland intended for haying) by the eligible producer.

(B) AQUACULTURE.—In the case of aquaculture, the term ''farm'' means, in relation

to an eligible producer on a farm, all fish being produced in all counties that are intended to be harvested for sale by the eligible producer.

(C) HONEY.—In the case of honey, the term ''farm'' means, in relation to an eligible producer on a farm, all bees and beehives in all counties that are intended to be harvested for a honey crop for sale by the eligible producer.

(3) FARM-RAISED FISH.—The term ''farm-raised fish'' means any aquatic species that is propagated and reared in a controlled environment.

(4) LIVESTOCK.—The term ''livestock'' includes—

(A) cattle (including dairy cattle);

(B) bison;

(C) poultry;

(D) sheep;

(E) swine;

(F) horses; and

(G) other livestock, as determined by the Secretary.

(b) LIVESTOCK INDEMNITY PAYMENTS.—

(1) PAYMENTS.—For fiscal year 2012, the Secretary shall use such sums as are necessary of the funds of the Commodity Credit Corporation to make livestock indemnity payments to eligible producers on farms that have incurred livestock death losses in excess of the normal mortality, as determined by the Secretary, due to—

(A) attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves; or

(B) adverse weather, as determined by the Secretary, during the calendar year, including losses due to hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

(2) PAYMENT RATES.—Indemnity payments to an eligible producer on a farm under paragraph (1) shall be made at a rate of 65 percent of the market value of the applicable livestock on the day before the date of death of the livestock, as determined by the Secretary.

(3) SPECIAL RULE FOR PAYMENTS MADE DUE TO DISEASE.—The Secretary shall ensure that payments made to an eligible producer under paragraph (1) are not made for the same livestock losses for which compensation is provided pursuant to section 10407(d) of the Animal Health Protection Act (7 U.S.C. 8306(d)).

(c) LIVESTOCK FORAGE DISASTER PROGRAM.—

(1) ESTABLISHMENT.—There is established a livestock forage disaster program to provide 1 source for livestock forage disaster assistance for weather-related forage losses, as determined by the Secretary, by combining—

(A) the livestock forage assistance functions of—

(i) the noninsured crop disaster assistance program established by section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333); and

(ii) the emergency assistance for livestock, honey bees, and farm-raised fish program under section 531(e) of the Federal Crop Insurance Act (7 U.S.C. 1531(e)) (as in existence on the day before the date of enactment of this Act); and

(B) the livestock forage disaster program under section 531(d) of the Federal Crop Insurance Act (7 U.S.C. 1531(d)) (as in existence on the day before the date of enactment of this Act).

(2) DEFINITIONS.—In this subsection:

(A) COVERED LIVESTOCK.—

(i) IN GENERAL.—Except as provided in clause (ii), the term ''covered livestock'' means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of an eligible forage loss, as determined by the Secretary, the eligible livestock producer—

(I) owned;

(II) leased;

(III) purchased;

(IV) entered into a contract to purchase;

(V) was a contract grower; or

(VI) sold or otherwise disposed of due to an eligible forage loss during—

(aa) the current production year; or

(bb) subject to paragraph (4)(B)(ii), 1 or both of the 2 production years immediately preceding the current production year.

(ii) EXCLUSION.—The term ''covered livestock'' does not include livestock that were or would have been in a feedlot, on the beginning date of the eligible forage loss, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(B) DROUGHT MONITOR.—The term ''drought monitor'' means a system for classifying drought severity according to a range of abnormally dry to exceptional drought, as defined by the Secretary.

(C) ELIGIBLE FORAGE LOSS.—The term ''eligible forage loss'' means 1 or more forage losses that occur due to weather-related conditions, including drought, flood, blizzard, hail, excessive moisture, hurricane, and fire, occurring during the normal grazing period, as determined by the Secretary, if the forage—

(i) is grown on land that is native or improved pastureland with permanent vegetative cover; or

(ii) is a crop planted specifically for the purpose of providing grazing for covered livestock of an eligible livestock producer.

(D) ELIGIBLE LIVESTOCK PRODUCER.—

(i) IN GENERAL.—The term ''eligible livestock producer'' means an eligible producer on a farm that—

(I) is an owner, cash or share lessee, or contract grower of covered livestock that provides the pastureland or grazing land, including cash-leased pastureland or grazing land, for the covered livestock;

(II) provides the pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land that is physically located in a county affected by an eligible forage loss;

(III) certifies the eligible forage loss; and

(IV) meets all other eligibility requirements established under this subsection.

(ii) EXCLUSION.—The term ''eligible livestock producer'' does not include an owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis.

(E) NORMAL CARRYING CAPACITY.—The term ''normal carrying capacity'', with respect to each type of grazing land or pastureland in a county, means the normal carrying capacity, as determined under paragraph (4)(D)(i), that would be expected from the grazing land or pastureland for livestock during the normal grazing period, in the absence of an eligible forage loss that diminishes the production of the grazing land or pastureland.

(F) NORMAL GRAZING PERIOD.—The term ''normal grazing period'', with respect to a county, means the normal grazing period during the calendar year for the county, as determined under paragraph (4)(D)(i).

(3) PROGRAM.—For fiscal year 2012, the Secretary shall use such sums as are necessary of the funds of the Commodity Credit Corporation to provide compensation under paragraphs (4) through (6), as determined by the Secretary for eligible forage losses affecting covered livestock of eligible livestock producers.

(4) ASSISTANCE FOR ELIGIBLE FORAGE LOSSES DUE TO DROUGHT CONDITIONS.—

(A) ELIGIBLE FORAGE LOSSES.—

(i) IN GENERAL.—An eligible livestock producer of covered livestock may receive assistance under this paragraph for eligible forage losses that occur due to drought on land that—

(I) is native or improved pastureland with permanent vegetative cover; or

(II) is planted to a crop planted specifically for the purpose of providing grazing for covered livestock.

(ii) EXCLUSIONS.—An eligible livestock producer may not receive assistance under this paragraph for eligible forage losses that occur on land used for haying or grazing under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), unless the land is grassland eligible for the grassland reserve program established under subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838n et seq.).

(B) MONTHLY PAYMENT RATE.—

(i) IN GENERAL.—Except as provided in clause (ii), the payment rate for assistance for 1 month under this paragraph shall, in the case of drought, be equal to 60 percent of the lesser of—

(I) the monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined under subparagraph (C); or

(II) the monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer.

(ii) PARTIAL COMPENSATION.—In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to drought conditions in 1 or both of the 2 production years immediately preceding the current production year, as determined by the Secretary, the payment rate shall be 80 percent of the payment rate otherwise calculated in accordance with clause (i).

(C) MONTHLY FEED COST.—

(i) IN GENERAL.—The monthly feed cost shall equal the product obtained by multiplying—

(I) 30 days;

(II) a payment quantity that is equal to the feed grain equivalent, as determined under clause (ii); and

(III) a payment rate that is equal to the corn price per pound, as determined under clause (iii).

(ii) FEED GRAIN EQUIVALENT.—For purposes of clause (i)(II), the feed grain equivalent shall equal—

(I) in the case of an adult beef cow, 15.7 pounds of corn per day; or

(II) in the case of any other type of weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed the livestock.

(iii) CORN PRICE PER POUND.—For purposes of clause (i)(III), the corn price per pound shall equal the quotient obtained by dividing—

(I) the higher of—

(aa) the national average corn price per bushel for the 12-month period immediately preceding March 1 of the year for which the disaster assistance is calculated; or

(bb) the national average corn price per bushel for the 24-month period immediately preceding that March 1; by

(II) 56.

(D) NORMAL GRAZING PERIOD AND DROUGHT MONITOR INTENSITY.—

(i) FSA COUNTY COMMITTEE DETERMINATIONS.—

(I) IN GENERAL.—The Secretary shall determine the normal carrying capacity and normal grazing period for each type of grazing land or pastureland in the county served by the applicable Farm Service Agency committee.

(II) CHANGES.—No change to the normal carrying capacity or normal grazing period established for a county under subclause (I) shall be made unless the change is requested by the appropriate State and county Farm Service Agency committees.

(ii) DROUGHT INTENSITY.—

(I) D2.—An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having a D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph in an amount equal to 1 monthly payment using the monthly payment rate determined under subparagraph (B).

(II) D3.—An eligible livestock producer that owns or leases grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the county, as determined by the Secretary, shall be eligible to receive assistance under this paragraph—

(aa) in an amount equal to 3 monthly payments using the monthly payment rate determined under subparagraph (B);

(bb) if the county is rated as having a D3 (extreme drought) intensity in any area of the county for at least 4 weeks during the normal grazing period for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period, in an amount equal to 4 monthly payments using the monthly payment rate determined under subparagraph (B); or

(cc) if the county is rated as having a D4 (exceptional drought) intensity in any area of the county for at least 4 weeks during the normal grazing period, in an amount equal to 5 monthly payments using the monthly rate determined under subparagraph (B).

(iii) ANNUAL PAYMENT BASED ON DROUGHT CONDITIONS DETERMINED BY MEANS OTHER THAN THE U.S. DROUGHT MONITOR.—

(I) IN GENERAL.—An eligible livestock producer that owns grazing land or pastureland that is physically located in a county that has experienced on average, over the preceding calendar year, precipitation levels that are 50 percent or more below normal levels, according to sufficient documentation as determined by the Secretary, may be eligible, subject to a determination by the Secretary, to receive assistance under this paragraph in an amount equal to not more than 1 monthly payment using the monthly payment rate under subparagraph (B).

(II) NO DUPLICATE PAYMENT.—A producer may not receive a payment under both clause (ii) and this clause.

(5) ASSISTANCE FOR LOSSES DUE TO FIRE ON PUBLIC MANAGED LAND.—

(A) IN GENERAL.—An eligible livestock producer may receive assistance under this paragraph only if—

(i) the eligible forage losses occur on rangeland that is managed by a Federal agency; and

(ii) the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(B) PAYMENT RATE.—The payment rate for assistance under this paragraph shall be equal to 50 percent of the monthly feed cost for the total number of livestock covered by the Federal lease of the eligible livestock producer, as determined under paragraph (4)(C).

(C) PAYMENT DURATION.—

(i) IN GENERAL.—Subject to clause (ii), an eligible livestock producer shall be eligible to receive assistance under this paragraph for the period—

(I) beginning on the date on which the Federal agency excludes the eligible livestock producer from using the managed rangeland for grazing; and

(II) ending on the last day of the Federal lease of the eligible livestock producer.

(ii) LIMITATION.—An eligible livestock producer may only receive assistance under this paragraph for losses that occur on not more than 180 days per year.

(6) ASSISTANCE FOR ELIGIBLE FORAGE LOSSES DUE TO OTHER THAN DROUGHT OR FIRE.—

(A) ELIGIBLE FORAGE LOSSES.—

(i) IN GENERAL.—Subject to subparagraph (B), an eligible livestock producer of covered livestock may receive assistance under this paragraph for eligible forage losses that occur due to weather-related conditions other than drought or fire on land that—

(I) is native or improved pastureland with permanent vegetative cover; or

(II) is planted to a crop planted specifically for the purpose of providing grazing for covered livestock.

(ii) EXCLUSIONS.—An eligible livestock producer may not receive assistance under this paragraph for eligible forage losses that occur on land used for haying or grazing under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), unless the land is grassland eligible for the grassland reserve program established under subchapter D of chapter 2 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3838n et seq.).

(B) PAYMENTS FOR ELIGIBLE FORAGE LOSSES.—

(i) IN GENERAL.—The Secretary shall provide assistance under this paragraph to an eligible livestock producer for eligible forage losses that occur due to weather-related conditions other than—

(I) drought under paragraph (4); and

(II) fire on public managed land under paragraph (5).

(ii) TERMS AND CONDITIONS.—The Secretary shall establish terms and conditions for assistance under this paragraph that are consistent with the terms and conditions for assistance under this subsection.

(7) NO DUPLICATIVE PAYMENTS.—An eligible livestock producer may elect to receive assistance for eligible forage losses under either paragraph (4), (5), or (6), if applicable, but may not receive assistance under more than 1 of those paragraphs for the same loss, as determined by the Secretary.

(8) DETERMINATIONS BY SECRETARY.—A determination made by the Secretary under this subsection shall be final and conclusive.

(d) EMERGENCY ASSISTANCE FOR LIVESTOCK, HONEY BEES, AND FARM-RAISED FISH.—

(1) IN GENERAL.—For fiscal year 2012, the Secretary shall use not more than $5,000,000 of the funds of the Commodity Credit Corporation to provide emergency relief to eligible producers of livestock, honey bees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered under subsection (b) or (c).

(2) USE OF FUNDS.—Funds made available under this subsection shall be used to reduce losses caused by feed or water shortages, disease, or other factors as determined by the Secretary.

(3) AVAILABILITY OF FUNDS.—Any funds made available under this subsection shall remain available until expended.

(e) TREE ASSISTANCE PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE ORCHARDIST.—The term ''eligible orchardist'' means a person that produces annual crops from trees for commercial purposes.

(B) NATURAL DISASTER.—The term ''natural disaster'' means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary.

(C) NURSERY TREE GROWER.—The term ''nursery tree grower'' means a person who produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale, as determined by the Secretary.

(D) TREE.—The term ''tree'' includes a tree, bush, and vine.

(2) ELIGIBILITY.—

(A) LOSS.—Subject to subparagraph (B), for fiscal year 2012, the Secretary shall use such sums as are necessary of the funds of the Commodity Credit Corporation to provide assistance—

(i) under paragraph (3) to eligible orchardists and nursery tree growers that planted trees for commercial purposes but lost the trees as a result of a natural disaster, as determined by the Secretary; and

(ii) under paragraph (3)(B) to eligible orchardists and nursery tree growers that have a production history for commercial purposes on planted or existing trees but lost the trees as a result of a natural disaster, as determined by the Secretary.

(B) LIMITATION.—An eligible orchardist or nursery tree grower shall qualify for assistance under subparagraph (A) only if the tree mortality of the eligible orchardist or nursery tree grower, as a result of damaging weather or related condition, exceeds 15 percent (adjusted for normal mortality).

(3) ASSISTANCE.—Subject to paragraph (4), the assistance provided by the Secretary to eligible orchardists and nursery tree growers for losses described in paragraph (2) shall consist of—

(A)(i) reimbursement of 65 percent of the cost of replanting trees lost due to a natural disaster, as determined by the Secretary, in excess of 15 percent mortality (adjusted for normal mortality); or

(ii) at the option of the Secretary, sufficient seedlings to reestablish a stand; and

(B) reimbursement of 50 percent of the cost of pruning, removal, and other costs incurred by an eligible orchardist or nursery tree grower to salvage existing trees or, in the case of tree mortality, to prepare the land to replant trees as a result of damage or tree mortality due to a natural disaster, as determined by the Secretary, in excess of 15 percent damage or mortality (adjusted for normal tree damage and mortality).

(4) LIMITATIONS ON ASSISTANCE.—

(A) DEFINITIONS OF LEGAL ENTITY AND PERSON.—In this paragraph, the terms ''legal entity'' and ''person'' have the meaning given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)).

(B) AMOUNT.—The total amount of payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this subsection may not exceed $100,000 for any crop year, or an equivalent value in tree seedlings.

(C) ACRES.—The total quantity of acres planted to trees or tree seedlings for which a person or legal entity shall be entitled to receive payments under this subsection may not exceed 500 acres.

(f) PAYMENT LIMITATIONS.—

(1) DEFINITIONS OF LEGAL ENTITY AND PERSON.—In this subsection, the terms ''legal entity'' and ''person'' have the meanings given those terms in section 1001(a) of the Food Security Act of 1985 (7 U.S.C. 1308(a)).

(2) AMOUNT.—The total amount of disaster assistance payments received, directly or indirectly, by a person or legal entity (excluding a joint venture or general partnership) under this section (excluding payments received under subsection (e)) may not exceed $100,000 for any crop year.

(3) DIRECT ATTRIBUTION.—Subsections (d) and (e) of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) or any successor provisions relating to direct attribution shall apply with respect to assistance provided under this section.

(g) EMERGENCY DESIGNATION.—This section is designated by Congress as being for an emergency requirement pursuant to—

(1) section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)); and

(2) section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139; 2 U.S.C. 933(g)).

SEC. 102. NONINSURED CROP ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—

''(A) COVERAGES.—In the case of an eligible crop described in paragraph (2), the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverages based on individual yields (other than for value-loss crops) equivalent to—

''(i) catastrophic risk protection available under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)); or

''(ii) additional coverage available under subsections (c) and (h) of section 508 of that Act (7 U.S.C. 1508) that does not exceed 65 percent.

''(B) ADMINISTRATION.—The Secretary shall carry out this section through the Farm Service Agency (referred to in this section as the 'Agency').''; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clause (i), by striking ''and'' after the semicolon at the end;

(II) by redesignating clause (ii) as clause (iii); and

(III) by inserting after clause (i) the following:

''(ii) for which additional coverage under subsections (c) and (h) of section 508 of that Act (7 U.S.C. 1508) is not available; and''; and

(ii) in subparagraph (B)—

(I) by inserting ''(except ferns)'' after ''floricultural'';

(II) by inserting ''(except ferns)'' after ''ornamental nursery''; and

(III) by striking ''(including ornamental fish)'' and inserting ''(including ornamental fish, but excluding tropical fish)'';

(2) in subsection (d), by striking ''The Secretary'' and inserting ''Subject to subsection (l), the Secretary'';

(3) in subsection (k)(1)—

(A) in subparagraph (A), by striking ''$250'' and inserting ''$260''; and

(B) in subparagraph (B)—

(i) by striking ''$750'' and inserting ''$780''; and

(ii) by striking ''$1,875'' and inserting ''$1,950''; and

(4) by adding at the end the following:

''(l) PAYMENT EQUIVALENT TO ADDITIONAL COVERAGE.—

''(1) IN GENERAL.—The Secretary shall make available to a producer eligible for noninsured assistance under this section a payment equivalent to an indemnity for additional coverage under subsections (c) and (h) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) that does not exceed 65 percent, computed by multiplying—

''(A) the quantity that is less than 50 to 65 percent of the established yield for the crop, as determined by the Secretary, specified in increments of 5 percent;

''(B) 100 percent of the average market price for the crop, as determined by the Secretary; and

''(C) a payment rate for the type of crop, as determined by the Secretary, that reflects—

''(i) in the case of a crop that is produced with a significant and variable harvesting expense, the decreasing cost incurred in the production cycle for the crop that is, as applicable—

''(I) harvested;

''(II) planted but not harvested; or

''(III) prevented from being planted because of drought, flood, or other natural disaster, as determined by the Secretary; or

''(ii) in the case of a crop that is produced without a significant and variable harvesting expense, such rate as shall be determined by the Secretary.

''(2) PREMIUM.—To be eligible to receive a payment under this subsection, a producer shall pay—

''(A) the service fee required by subsection (k); and

''(B) a premium for the applicable crop year that is equal to—

''(i) the product obtained by multiplying—

''(I) the number of acres devoted to the eligible crop;

''(II) the yield, as determined by the Secretary under subsection (e);

''(III) the coverage level elected by the producer;

''(IV) the average market price, as determined by the Secretary; and

''(ii) 5.25-percent premium fee.

''(3) LIMITED RESOURCE, BEGINNING, AND SOCIALLY DISADVANTAGED FARMERS.—The additional coverage made available under this subsection shall be available to limited resource, beginning, and socially disadvantaged producers, as determined by the Secretary, in exchange for a premium that is 50 percent of the premium determined for a producer under paragraph (2).

''(4) ADDITIONAL AVAILABILITY.—

''(A) IN GENERAL.—As soon as practicable after October 1, 2013, the Secretary shall make assistance available to producers of an otherwise eligible crop described in subsection (a)(2) that suffered losses—

''(i) to a 2012 annual fruit crop grown on a bush or tree; and

''(ii) in a county covered by a declaration by the Secretary of a natural disaster for production losses due to a freeze or frost.

''(B) ASSISTANCE.—The Secretary shall make assistance available under subparagraph (A) in an amount equivalent to assistance available under paragraph (1), less any fees not previously paid under paragraph (2).''.

(b) TERMINATION DATE.—

(1) IN GENERAL.—Effective October 1, 2017, subsection (a) and the amendments made by subsection (a) (other than the amendments made by clauses (i)(I) and (ii) of subsection (a)(1)(B)) are repealed

(2) ADMINISTRATION.—Effective October 1, 2017, section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) shall be applied and administered as if subsection (a) and the amendments made by subsection (a) (other than the amendments made by clauses (i)(I) and (ii) of subsection (a)(1)(B)) had not been enacted.

(c) EMERGENCY DESIGNATION.—This section is designated by Congress as being for an emergency requirement pursuant to—

(1) section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)); and

(2) section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111-139; 2 U.S.C. 933(g)).

Mr. MERKLEY. Mr. President, I would like to thank very much Senator BLUNT and Senator STABENOW, who have worked so hard to bring together a common vision in how we can address the terrible disasters of drought and wildfires that ravaged many parts of the country this last summer.

Now, we are no longer in the summer, so we are months late but better now than to wait a single additional day.

With that, I yield to Senator STABENOW from Michigan and thank her so much for working so hard and well on this.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. I first wish to thank Senator MERKLEY, who has been tireless in bringing forward the issues of farmers and ranchers in Oregon. And to my colleagues who are here on the floor from New York and New Jersey, I had the opportunity to be in New Jersey with Senator MENENDEZ and to see firsthand, also with Senator LANDRIEU and Senator TESTER. It is very, very clear that this is a horrific situation and deserves our attention and support.

What we are doing with this amendment, as modified—and I want to thank Senator BLUNT for working with us and cosponsoring the amendment—is to basically take what we have done and already passed in the farm bill and putting it into this very important disaster assistance bill.

In the spring, we experienced late freezes that wiped out many fruit crops in a number of States, including Michigan, New York, and Pennsylvania. In my home State, we had a 98-percent loss of cherry crops, and they don't have access to any crop insurance. We are talking about those who don't have that option to be able to help mitigate their losses.

In the summer, we saw the worst drought since 1956. It left crops withering in the field. All across our country, over 80 percent of the contiguous United States experienced drought conditions. Eleven States still have exceptional drought conditions, and there are 17 States with severe drought conditions.

I can't imagine having a disaster assistance bill come through this Senate without including help for our farmers and ranchers who have been hit so very hard this year.

I urge my colleagues to support our amendment and thank my colleague very much for allowing us to offer it.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. I am sorry that the Senator from Louisiana has left the floor because if she would have checked my voting records, I have not voted for

extending the Bush tax cuts because they weren't paid for. I said that on the floor. I have not voted to fund the wars in Iraq and Afghanistan because they weren't paid for.

So when we hear blanket statements that the other side—''the other side'' does not tow the line, as would be expected by the Senator from Louisiana, I have to object. The fact is, I have been very consistent on those issues.

I don't think you give a tax cut without cutting spending in the Federal Government. That is what the debate is all about.

The reason we are here tonight—and we have a $60 billion bill that is not going to be paid for except by our grandkids, with interest, which is going to become $120 billion by the time it is ever paid back—is because we don't have the courage to actually go through and make hard choices about what works and what doesn't, what is a priority and what is not.

Now, I don't have any illusions about my amendments passing. I am very thankful that a couple of them have been accepted. But the real problem that America sees at the end of this year is a problem with us, that we think we can continue to do business the way we have always done it. You know what. We can't.

We are going to pass this bill, and it is going to die because the House isn't going to take it up this year, and we are going to have to come back and do it again. Hopefully, we are going to do it in the best way that helps the most people in New York and New Jersey and everybody else who was involved there.

Right now, the FEMA money is flowing, and we need to increase the money. I am all for that. We need to make sure the flood insurance money goes out right away. But we better get hold of ourselves as a Senate and as a nation. We can say we have always done it this way. We can say we can spend $60 billion and not pay for it. We can add all sorts of things. We have a crop insurance program for apples, but we are not going to cover it. We are going to go—even the people who weren't covered are going to get covered even though they didn't participate. Under this bill, they are going to get covered. So what we are going to do is actually undermine the crop insurance program for apples.

But the point is that we are doing the same thing that got us into the trouble we are in. We are at $16.4 trillion in debt. When you include all the debt the country has in terms of municipalities and States, that is how you compare apples to apples with everybody else. We are at 120 percent debt to GDP ratio. It is killing our economy right now. Multiple studies show that it is probably hurting our GDP by 1.5 percent. That is 1.5 million jobs every year, and we are sitting here talking about we are in a different time, that we don't have $16 trillion worth of debt, that we are not going to have trillion-dollar deficits as far as the eye can see. We are totally disconnected from reality.

So I am not going to win. I understand that. I understand there is a need, and I want to supply that need, but how we do it is important for the future of this country. It is also important for our kids.

So we can rationalize and say that we have always done it this way, that this is the way the rules work, but there is going to be a very big price to pay, and when that price comes, those who are sitting in opposition to my amendments are going to see the consequences of that opposition played out in the worst possible way.

The debt bomb in this country is going to explode, and we are going to be held accountable for it whether we are still here or not. Our lineage, our reputation, our history as Senators in this Congress is going to come back to us that we weren't up to the task of making the hard decisions that would actually save this country, that would fix the problems and put us on track to grow again and be the America we can be.

I thank the Presiding Officer for the time and the chairwoman for her consideration. I thank Senator SCHUMER for his consideration on the amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank my colleague and very much appreciate my colleague from Oklahoma. He has left, but we do have a friendship. I do believe he is a person of integrity. His views about government and politics are quite different from mine. He has put his money where his mouth is in a number of places when he has not asked to pay for things that many on the other side did, et cetera. So I thank him.

I don't agree with almost anything—well, I agree with maybe one or two of his amendments. And Senator MIKULSKI summed up the amendment on fisheries very well, so I will talk about some of the other amendments and why we object to them. It will take a few minutes, but I think it is important to set the record straight.

Let me take them in numerical order—first, amendment No. 3368, to strike enhanced cost share for the Army Corps. Well, Mr. President, in past supplementals we established an important precedent for local cost share on Army Corps projects that this amendment will strike. We have crucial projects with the Army Corps. As my colleague from New York, Senator GILLIBRAND, knows, and Senators MENENDEZ and LAUTENBERG from New Jersey, we are naked in heavily populated areas after the storm. This storm was huge. But you would have to be foolish to think there won't be another one, and we need the Army Corps. They are brilliant in the way they are able to protect our coasts. So this needs to be done.

If the local cost share were to go to 35 percent—we don't have just one big State government, we have lots of little localities. Take Long Beach, a city of 35,000. It was wiped out—gone, basically. If they were to have to come up with 35 percent of the project, it would be hopeless.

Now, Katrina got 100 percent. We are not even asking for that. But the 90 percent that has traditionally been given to Army Corps projects when the damage is so large that it is realized the locality cannot pay for it alone makes eminent sense. The village of Lindenhurst, the village of Massapequa, the villages on Fire Island all do not have the wherewithal.

If we were to pass the amendment of the Senator from Oklahoma, we would get no Army Corps relief. Then when storms much smaller than Sandy come along, we would be wiped out again. So it doesn't make sense. The Long Beach Storm Damage Reduction Project, for instance, has a local cost share of $35 million. That is more than a quarter of the entire city's annual budget. If they had to pay this share, it wouldn't get built. The same thing for the little village of Asharoken, which was terribly damaged.

Again, in the past, when there has been large damage, the Army Corps has paid 90 percent, localities 10 percent. To change those rules now for New York, after New York taxpayers and New Jersey taxpayers paid hundreds of millions of dollars toward projects on the Mississippi or the Missouri River or down in the gulf at a 90–10 percent ratio, would be totally unfair.

This amendment would be a crippling amendment, and I strongly urge its rejection.

On fisheries, again, my colleague from Maryland, our wonderful new chair—off to a great start, and I might say, Madam Chair, this being your first bill, you are going like gangbusters, but we didn't expect anything less—has laid out the arguments for those fisheries. The only thing I would say about them is, hey, that is a disaster too. As she said, this is not just a case of needing new lobster pots, this is a disaster, and traditionally we have funded disaster relief in supplemental bills, and it doesn't have to be just one area.

So I thank my colleagues, particularly those from Maine and from Alaska, who put such good work into this, and I also again thank Senator COBURN for separating out the tax cheat provisions. Nobody behind in their taxes should get Federal aid. That is a provision I can accept and I think most of us on this side will accept.

Amendment No. 3371 is the Coburn amendment on the per capita damage thresholds. The amendment would require FEMA to actually change the indicator by which FEMA determines the locality's eligibility for FEMA public assistance. It would make it much harder for States and local governments in the future to get Federal aid after a disaster. It sounds benign, but

this is a choke hold on FEMA for many localities and particularly for larger States, such as those we represent.

As my colleagues know, the current per capita damage thresholds are pegged to the Consumer Price Index, and CPI measures the average change over time in the prices paid by urban consumers for a specific market of basket goods.

For New York, the per capita threshold that has to be reached for a county to be declared a major disaster area is $1.37. The amendment of my colleague would peg the per capita threshold starting at the timeline of 1986. There would have to be such enormous damage in so many localities to get money, and in effect it would double the per damage threshold needed to be declared a disaster area.

In every State, we have watched as disasters occurred and kept our fingers crossed to see if the Federal Government would declare that area a disaster. It is based on a formula. The formula is not easy to reach. I have had countless counties disappointed, asking me: Why didn't we meet the threshold? But to now make the threshold almost doubly hard to meet wouldn't work.

I say to my good friend from Oklahoma—and I know this may not change his view on the amendment because, as I said, he is a person of integrity—for the six major disaster declarations declared in Oklahoma over the last 2 years, the damage per person would have had to be double its current level. I imagine those in Oklahoma who were impacted by severe winter storms, tornadoes, and floods wouldn't be happy to hear it is harder now—if this amendment were to pass—to repair roads, remove debris, and support emergency response efforts.

So I would say to every one of my colleagues in every State, if you want to pull back on Federal disaster assistance by changing to an arcane formula when there is substantive damage, support this amendment. I hope we will reject it.

The next amendment is No. 3382, and I urge my colleagues to vote no on this. This would place a lot more bureaucratic redtape between disaster victims and the Federal assistance they deserve.

Our good friend from Louisiana coached Senator MENENDEZ, Senator GILLIBRAND, Senator LAUTENBERG, and myself about what went wrong with Katrina, and one of those things was that the contracting procedure had become so arcane and so rigid and so difficult that contracts either never happened or they took much too long to do. Now, should we expect every contract to be competitively bid? What about emergency contracts? Do we want to have a 6-month bidding process when the damage needs correction in 90 days—picking up debris, building back a beach that might face a storm in 30 days? Second, we in New York have our own competitive bidding requirements. Those can suffice. Why have double sets of them? And sometimes the States and localities have to waive them when there are true emergencies.

So sometimes our colleagues are placing us in a catch-22. They say: You don't spend disaster relief fast enough; you stretch it out over such long periods of time. Then they impose requirements that make sure we don't spend the money fast enough. It doesn't make sense.

If the amendment by Senator COBURN passes, it will guarantee disaster aid could be delayed for months and years, and the consequences of that—the economic cost, the danger to our coastlines, our localities, our small businesses, and the human cost—would be a terrible, terrible way to go. I believe this is a Trojan horse that will cripple efforts to bring quick, efficient, and honest disaster aid to our localities, and I urge its defeat.

Amendment No. 3383. This strikes ACOE studies and authorization. Now, again, we don't want the rules changed on us. Sometimes we have improved the rules to make sure we learn from the mistakes of past disasters, but to just change the rules from past supplementals makes no sense.

As many of us here know, the project of getting coastal protection built by the Army Corps can be mired in redtape and delays. Every one of us has experience there. What is taking you so long, Army Corps? The provision being struck by amendment No. 3383 is designed to accelerate critical protection projects and get rid of the redtape.

I know my colleague from Oklahoma believes in less bureaucracy and more efficiency. Well, if this passed, we would be giving the people of Staten Island or Massapequa more bureaucracy. For a decade, for instance, the Corps had delayed a protection project for the South Shore of Long Island due to lack of funding and authorizations from Congress. They decided and they said it made sense, but they didn't get it done. Had these seawalls been built, it is almost certain lives would have been saved and millions of dollars in property damage avoided.

So in this bill, such as with Katrina, we are accelerating the ability to do that. We are accelerating it in Long Beach. In 2005 Long Beach rejected a project I helped to push to build dunes to protect that flat, low-lying area with low-lying homes from storms. The Army Corps has done the study. The Army Corps has said: Here is what is right; let's move forward. Under the amendment of my friend, we could not, even though all the preliminary work has been done.

So I urge a ''no'' vote on this amendment.

OK, I think I have addressed the major amendments to which I object. As I said, I don't object to every one of my colleagues' amendments, but I object to the major ones, and I hope we can have a bipartisan amendment.

Mr. President, for 100 years, when disaster has struck, we have been one America. We have said: We know any locality, even large localities such as New York, New Jersey, and Maryland, won't be able to handle that sort of disaster relief on its own. And in wisdom, we have said: We are one united people. And the people of the other regions, the other States, will come to the aid of this area that has been crippled. We can't change the rules now.

Those of us from New York and New Jersey say: Aha. Some of my constituents and I am sure some of the constituents of Senator MENENDEZ are saying: Aha—now that it is New York and New Jersey, they are changing the rules. Not fair. We have been there. We have been there for our colleagues whenever they have had disasters, and praise God, we haven't had that many until recently, but we need you.

You will need us. Given all the changes in the world, there will be disasters that strike everywhere else. We want to be with you, and we don't want to see the process so encumbered and so weighted down that relief cannot come. The sum total of these amendments would be to do that.

I strongly urge my colleagues, hopefully in a bipartisan vote, to reject them.

I yield the floor to my colleague from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. MENENDEZ. First, I wish to thank the distinguished chairwoman of the Appropriations Committee for the work she and her staff have put together. It is remarkable considering the timeframe they were in. Of course, the late Senator Inouye, with his staff as well that the chairwoman has inherited, did an exceptional amount of work along with Senator LANDRIEU. Certainly the people of the Northeast thank you very much.

I think Senator SCHUMER has done a good job overall of talking about our concerns about these amendments, but I want to give a little greater depth and certainly a New Jersey perspective to them.

I do not question the motives of our distinguished colleague from Oklahoma. He has been consistent in that. I don't question his consistency. Even though I haven't checked the record, I will take his word that even on tax cuts and war spending he has been consistent. But I do question the consequences of some of his amendments—consequences to the people of the Northeast, consequences to the people of New Jersey, consequences in the future as it relates to other disasters.

At one point, he talked about courage in a fiscal sense. Let me tell you, courage is what people in New Jersey are looking at each and every day when they find their businesses closed and are trying to sum up the courage to open again. Courage is those who have lost their homes and are trying to reopen their homes, which they could not even do for the holidays. They were certainly not home for Christmas.

Courage is looking at that every day and trying to figure how you move forward. Courage is many of the small municipalities, many that lost their police and fire departments and are working with others to create public safety as they rebuild the very essence of their departments. That is courage, real courage in the face of incredible challenge.

Two of the amendments dealing with the Army Corps go straight to that courage. I came to the floor over the last 2 weeks several times and showed a host of visuals to our colleagues to understand that we are at the lowest level of protection. It is akin to an individual whose immune system is virtually gone. I said then, all we need is a nor'easter to come through and we will see the consequences of having no defenses.

Unfortunately, yesterday we suffered a nor'easter. It wasn't the worst of what we could have received, but for several parts of New Jersey it was certainly bad news because those communities that are defenseless as a result of not having Army Corps-engineered beaches caught the worst of it again. In Sea Bright and Mantoloking and a host of other communities along the Jersey shore, they caught the worst of it again and all the fears and all the nightmares of what they went through under Sandy were relived once again.

When you talk about changing the rules on the Army Corps' participation in terms of what he wants as a 90–10 split, No. 1, that changes the rules. Just to make sure I was right about this, I asked Senator LANDRIEU of Louisiana: Wait a minute. In Katrina, wasn't there a 90–10 split? She said, Yes; and in some cases up to 100.

The people of the Northeast, the people of New Jersey and New York, deserve no less in their disaster. There are a whole host of communities even with a 90–10 split that are going to find it incredibly difficult—when 20 or 25 percent of their ratable base is gone—to fund the 10 percent that we are asking them. We believe they should have skin in the game. But even at that 10 percent, they are going to have enormous difficulties funding that 10 percent to get the lifesaving, property-saving, fiscally responsible solution in having Army Corps-engineered beaches.

So 90–10 is still a challenge to a whole host of communities. Go to the proposition that our colleague from Oklahoma has, and we basically nullify their ability to protect their citizens. I always thought the No. 1 priority of any government—Federal, State or local—was to protect their citizens. Certainly, the Senate should be protecting its citizens, whether it is abroad or at home. In this respect, we cannot protect our citizens along the New Jersey coastline if, in fact, we cannot have these engineered beaches and if, in fact, we cannot afford to have those engineered beaches.

So talk about being fiscally responsible. Instead, we will pay billions in repetitive-loss damages, and we will lose lives as we lost in New Jersey. I want to save lives and I want to save property and I want to save the Federal Government from paying repetitive losses. That is why that amendment is certainly not one we can accept by any stretch of the imagination. It is unfair to the people of the Northeast because it changes the rules of the game, and it is unfair in terms of our obligation to the public safety. I, for one, do not want to be casting a vote that ultimately leaves my fellow New Jerseyans or fellow Americans at risk when I could have saved their lives. I am certainly not going to do that, and I hope this Chamber is not going to do that.

Secondly, with reference to the other Army Corps of Engineers amendment, which would suggest that those projects that are already well underway to being determined and that, in fact, are cost-effective and can save lives and save property and save ratables and save repetitive losses cannot be approved, would be, in essence, to guarantee that at the lowest rate of our defenses we will just suffer an entire winter of incredible misery, no, we cannot have that amendment pass.

Thirdly, with reference to the question of acquisition, the Governor of New Jersey made that decision. I can't speak for him, but my understanding is he made that decision from FEMA-approved contracts. If FEMA needs a better process to go ahead and negotiate and/or bid in advance of a generic contract, so be it. But a delayed recovery is a failed recovery. I want my colleagues to remember that 10 days after Hurricane Katrina, this Chamber passed two separate bills amounting to $60 billion. It has been nearly 2 months since we had Superstorm Sandy and nothing has passed. Who among us would be content with the counsels of patience and delay if, in fact, we were shivering in the cold; if, in fact, our families had no home; if, in fact, they had been displaced from their schools; if, in fact, their businesses that they worked a lifetime and took out debt and now are closed may never open, who among us would be happy with the counsels of patience and delay? So we cannot have a set of circumstances that creates a series of delays.

I am all for the good governing amendments of saying to those who are in debt to the Nation that they, in fact, cannot receive any benefits or those who are deceased. Of course, they should not receive any benefits. But the rest of this is about creating delay after delay that is in the midst of a biting winter. We just had the first nor'easter yesterday. We cannot ultimately accept those types of changes that put us in a process in which, in fact, we will not be able to successfully move the elements of being able to recover.

This constant reference that a great part of the money—the overwhelming part of the money will not be spent, I think I heard 2015, is simply not the case. Whether it be Army Corps of Engineers projects that have already been approved and authorized but not funded that are critical to our defenses, those are ready to go. They just need money. The flexibility we have sought in this bill, working with an incredible insight from what happened in Hurricane Katrina and what worked and did not work, that flexibility will allow money to flow to business people are at the crucial point of trying to decide: Can I open? Because I need to know what the government is going to do for me, as part of my equation as to whether I open this business. Because low-interest loans from the SBA, even a long-term proposition, is still more debt. Many of these businesspeople that I have met up and down New Jersey have told me: Senator, I took out money to start this business. I took a debt to start this business. I took out further debt through the great recession. More debt doesn't necessarily mean I will succeed, but a grant, as we authorize through CDBG block grants, can very well make the difference between me reopening and not and hiring back people and being able to have and be part of that ratable base and paying toward the greater good of the State and the Nation. That is what is at stake as well. That money is going to flow if we do this the right way as this bill envisions. So this suggestion that it is going to take years down the road is simply not true.

Secondly, I think we lose sight that while, yes, this is about New Jersey and New York and Connecticut, it is about a region—a region that employs 10 percent of the Nation's workforce and accounts for 11 percent of the entire Nation's GDP. That is 12.7 million workers and $1.4 trillion in productivity. If we want to see that region continue to contribute to the gross domestic product growth of this country, to continue to contribute to the employment, to continue to contribute to the Federal coffers, we need to help it to be able to help themselves, not to turn our back on them. That is what is at stake.

Finally, I would just say there is a whole host of other disasters, and the committee has been very focused on saying nothing goes into this bill that isn't disaster related, one disaster or another. Because there has been no other disaster funding that there has been a vehicle for, whether it be wildfires or crop disasters—I personally welcome that, because as I have said many times, this is the United States of America. There is a reason we call it the United States of America. It is so we are all in this together. So I welcome the fact that we can help other fellow Americans through this vehicle, whether it be about wildfires or crop disasters or estuaries and fisheries that were hurt in other parts of the country at different times. So be it. Because that is what being the United States of America is all about.

But we need to pass this bill tomorrow. We need to reject these amendments—particularly the ones that I and Senator SCHUMER have talked about—because they will fail us in our recovery. It will undermine our ability to protect our people.

Finally, I would just simply say we need to pass it so the House can consider this bill as its vehicle when they come back on Sunday. This bill has been out there for weeks. The President's proposal has been out there for over 1 month. Everybody knows what has been asked. Everybody knows what is involved. Everybody has seen that the Senate already voted for cloture; therefore, there is going to be a bill here at the end of the day. There is no reason why the House cannot seek to pass this and respond to our fellow citizens in the Northeast. That is what being the United States of America is all about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I seek recognition to rebut the Coburn amendment and also to offer two amendments. But before I do, I just wish to thank my colleagues, particularly those who have amendments. I wish to thank them for their cooperation and being willing to offer them and speak tonight, on both sides of the aisle.

I would also note the Senator from New York and the Senator from Connecticut also wish to speak. Senators whose States have been very hard hit should have the opportunity to speak, and I am going to take my rebuttal of the Coburn amendments and just abbreviate them.

With the exception of being willing to accept the amendment where you cannot get emergency assistance if you are a tax cheater or if you passed away, with the exception of a funeral benefit, I object to the Coburn amendments. My objections have been so well articulated by the Senator from New York, Mr. SCHUMER, and by the Senator from New Jersey, Mr. MENENDEZ.

Mr. President, I rise in opposition to the Coburn amendment No. 3369. This amendment makes no sense. It would require the Departments of Transportation and Housing and Urban Development to make public any grant announcement three days before either department announces the grant. In other words, do something three days before you are going to do it.

I understand the Senator's intent, which is to eliminate the ability of Members to have a brief advance notice of pending grant announcements. However, in trying to weaken Congress' legitimate oversight role, the amendment overreaches. More importantly, I don't agree with this effort to cede Congress' role in these notifications. Therefore, I ask my colleagues to vote against this amendment.

Mr. President, not everything in the Senator's amendment No. 3371 is objectionable. Unfortunately, it is loaded down with at least two provisions that make it impossible to support related to FEMA efforts to aid disaster victims and help communities rebuild.

First, returning funds appropriated in this bill that have not been obligated and spent within two years to the Treasury is unreasonable. FEMA will of course obligate the funds provided in this bill in less than two years. However, spending the funds to complete the rebuilding of schools, hospitals, police stations, surge barriers, floodgates, and levees will take longer. Communities will need time to do the proper planning, competently bid for projects, fulfill State action plans, do site selection and development, complete audits and then request for the federal government to reimburse the eligible costs in the right amount. To do this responsibly and within the bounds of proper oversight, it will take more than two years to reimburse the eligible expenditures.

On the one hand, the Senator wants FEMA to spend the money faster while on the other hand he imposes more restrictive and time consuming Federal standards for competition.

The second objectionable provision in this amendment is to cap FEMA's recovery assistance to States at 75 percent of the costs of damages. This ties the hands of the Nation to support the needs of the victims of the most severe disasters.

The Stafford Act currently requires that FEMA provide assistance at 75 percent of the cost of the recovery. However, in cases where damages have proven to be extremely severe FEMA can increase its share to 90 percent. The adjustment to 90 percent is based on an objective formula that considers per capita damage, which must reach over $131 per person. The threshold is difficult for states to reach unless they experience a severe event.

I oppose this amendment.

AMENDMENT NO. 3382

This amendment would require merit-based and competitive awards of disaster recovery contracts. This amendment would prohibit the use of any disaster funds for contracts not competitively awarded pursuant to the Federal Acquisition Regulation FAR. This would appear unnecessary, because the FAR already limits non-competitive contracts to one year, in general.

The amendment would also require a review of disaster recovery contracts that were awarded prior to enactment of the Supplemental that weren't competitively bid. For any contracts not competitively bid, agencies would be required to achieve cost savings or to award a new competitive contract, and discontinue the original contract.

The requirement for retroactive review of contracts that were awarded before the date of enactment for which other than competitive procedures were used for the purpose of determining if additional cost savings can be achieved or whether a new contract should be pursued would pose a significant burdensome and disruptive task.

The amendment would require hiring up additional contracting staff to handle the ''looking back review'' and potential ''re-competition'' envisioned in order for the current staff to contract for the supplies and services needed to respond to and recover from Hurricane Sandy. Since there is a limited number of contracting officers available to Federal agencies, complying with this provision, should it be enacted, has the very real potential to limit DHS's ability to meet ongoing mission requirements.

Furthermore, no date or parameters are established for conducting and completing these reviews, so agencies would not know how far back to review. One could assume the amendment means only those currently operating contracts, but it does not specify.

For those agencies in the midst of recovery efforts for Hurricane Sandy, is the intent that they stop ongoing efforts (to include obligating those additional funds that are coming) to undertake such a review? How can the workforce still supporting the disaster be handling the ongoing efforts to support the disaster and at the same time be reviewing what they did in November?

Complying with this mandate, should it be enacted, has the very real potential to adversely impact the Government's ability to meet their ongoing disaster recovery missions.

This amendment requires agencies to terminate contracts if cost savings can be realized. The burden of the analysis alone would be daunting especially since no threshold is specified. This amendment would require agencies to review even purchase card orders. Terminating contracts for convenience is not inexpensive—there significant administrative costs, and it is labor-intensive.

This amendment would be onerous and costly and will hinder the recovery and repair effort. Therefore, Mr. President, I recommend that this amendment be opposed.

AMENDMENT NO. 3383

Mr. President, I rise in opposition to amendment No. 3383. The proviso that my friend proposes to strike authorizes projects for the Corps to construct that would reduce the impacts from flooding and provide storm damage reduction. I agree with my friend that the provision that he proposed to strike could be read as overly broad and authorized projects for construction that were not intended nor could they be constructed with the amount of funding that was provided.

Senators FEINSTEIN and BOXER have addressed the shortcoming of that provision by striking it with an earlier amendment—No. 3421 and replacing it with new text. This new text no longer authorizes an undefined set of projects. Rather, it directs funding to be utilized to construct projects in areas that suffered direct inundation impacts from

Hurricanes Sandy and Isaac. This provides a defined scope for the work that the Corps can construct with the funds provided.

The provision requires that the projects to be undertaken must be cost effective, technically feasible and environmentally acceptable. I think my friend would agree that should be the goal of all of the Corps projects that we fund. Voting for this amendment would undo the defined requirements and scope for these projects that we previously voted for.

I urge my colleagues to vote against this amendment.

AMENDMENT NO. 3370

Mr. President, I oppose Division 2 of amendment No. 3370. Division 2 of this amendment tries to steer fishery disaster funding for communities only affected by Hurricane Sandy by citing Stafford Act requirements and limiting funding for area within ½ mile from shore.

But the Stafford Act overseas disasters on land. The Act has absolutely no bearing on fishery disasters, fishery disasters are declared by the Secretary of Commerce according to Federal Fishery and Commerce laws at the request of the State Governors.

Fishery disaster needs are necessary, urgent, unanticipated and these coastal fisheries are not bound by some arbitrary ½ mile boundary.

Under this amendment all federally declared fishery disasters would miss out on much needed financial assistance, even those communities affect by Hurricane Sandy. Fishery disaster funding is not just about fixing damaged boats and waterfronts. It is about rebuilding smarter fisheries so that businesses and coastal communities stand a better shot of avoiding future disasters. I strongly urge my colleagues to oppose this amendment.

Mr. President, in the interest of time, I think we all agree why the very intent to save money by adding delay and bureaucracy will cost money and will cost time, in terms of getting people back on their feet, both in their home and in their livelihood. Remember what we seek: helping people get their life back and helping them get their livelihood back. I think that has been very well articulated.

I would now also like to take the opportunity to call up and dispose of two amendments.

AMENDMENT NO. 3403

I call up, on behalf of Senator LEAHY, amendment No. 3403.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for Mr. LEAHY, proposes an amendment numbered 3403.

Ms. MIKULSKI. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide authority to transfer previously appropriated funds to increase security at United States embassies and other overseas posts)

At the appropriate place, insert the following:

SEC. _____. INCREASED EMBASSY SECURITY.

Funds appropriated under the heading ''Administration of Foreign Affairs'' under Title VIII of Division I of Public Law 112–74 and as carried forward under Public Law 112–175, may be transferred to, and merged with, any such other funds appropriated under such title and heading: *Provided*, That such transfers shall be subject to the regular notification procedures of the Committees on Appropriations.

Ms. MIKULSKI. Mr. President, this amendment simply provides authority to the State Department to transfer up to approximately $1 billion in Overseas Contingency Operations funds appropriated in Fiscal Year 2012 for operations. in Iraq, which are no longer needed in Iraq due to reduced operations there, and to use these funds for increased security at U.S. embassies and other overseas posts identified in the Department's security review after the Benghazi attack.

Making additional funds available for these purposes is one of the recommendations of the Accountability Review Board chaired by Ambassador Pickering and Admiral Mullen.

The amendment permits the transfer of funds between the Diplomatic and Consular Programs and Embassy Security Construction and Maintenance accounts, which would otherwise be precluded due to percentage limitations on such transfers.

According to CBO the amendment has no outlay scoring impact.

We all want to do what we can to prevent another tragedy like what occurred in Benghazi. The State Department has done a review, and these funds will be used to expedite construction of Marine security guard posts at overseas posts, and to build secure embassies in Beirut, Lebanon and Harare, Zimbabwe.

There is nothing controversial about this amendment. These are existing funds. There is no new appropriation. The amendment has no scoring impact. It is simply a matter of allowing unobligated, prior year funds to be used for a different purpose of higher priority—protecting our diplomats stationed in dangerous places around the world.

That amendment will be voted on tomorrow.

AMENDMENT NO. 3426 TO AMENDMENT NO. 3395

Ms. MIKULSKI. Mr. President, I have an amendment on behalf of Senator HARKIN. I call up amendment No. 3426.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Ms. MIKULSKI], for Mr. HARKIN, proposes an amendment numbered 3426.

Ms. MIKULSKI. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To make a technical correction)

On page 81, strike lines 9 through 13 and insert the following: ''*Provided further*, That obligations incurred for the purposes provided herein prior to the enactment of this Act may be charged to this appropriation: *Provided further*, That funds appropriated in this paragraph may be used to make grants for renovating, repairing, or rebuilding non-Fed-''.

Ms. MIKULSKI. Mr. President, this amendment makes two very technical corrections that are necessary for proper implementing of funding for the Department of Health and Human Services in the supplemental. First, it deletes the term ''response activities for hurricane Sandy'' and replaces it with ''the purposes provided herein.'' That is a small verbal change but ''response activities'' has a limited meaning. This change does clarify that funds may also be used to cover additional recovery and related costs connected to Hurricane Sandy. Second, it adds the phrase ''to make grants'' to clarify that the Department of HHS has specific grant-making authority for renovating, repairing, and rebuilding non-Federal facilities involved in NIH research. For example, an academic center of excellence, well known for its work, particularly in cancer research, will have the opportunity to rebuild.

I recommend support of this amendment. Senator SHELBY has signed off on it. I believe it is not controversial. CBO says it does not score at all, and I understand the minority staff on the Labor-HHS Appropriations Committee has also signed off on those changes.

Mr. President, that amendment, too, will be voted on tomorrow if not accepted. Tonight we are just not accepting amendments and we are not voice voting them.

I also want to note we have two Members on the floor whose States were hard hit. One is the Senator from New York about whom Senator SCHUMER has spoken. I know Senator GILLIBRAND wishes to speak. The order we will follow is Senator GILLIBRAND will speak for such time as she may consume to be followed by the Senator from Connecticut and such time as he may consume in speaking on behalf of the bill.

Before the Senator speaks, though, a word to the Senator from Connecticut. Connecticut has been hit twice—first by the hurricane and then by what happened at Sandy Hook Elementary. For those of us who join with you, we just want the people of Connecticut to know they are not alone. As the Senator from New Jersey who spoke earlier said, you know we are the United States of America. Where there was a disaster in one State, we all have to respond as if it were a disaster in all States. The attack on one child in Connecticut—we have to protect all children, in Connecticut and in every single State in this Union. I hope, as we find those solutions, we do act as a union, the United States of America.

Once again, our sympathy and condolences, and I yield the floor to these very able Senators.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I thank the chairwoman for her leadership on this essential bill. I can't thank her enough for her tenacity and determination to meet the needs of so many affected families in our State.

I also thank Senator LANDRIEU for her leadership to help craft this bill in a way that has transparency and accountability and to learn from the mistakes of the past with Hurricane Katrina. She has worked overtime to make this bill a reality and I thank her.

Of course, I thank my colleague Senator SCHUMER for his extraordinary leadership and Senators MENENDEZ and LAUTENBERG on behalf of their State. It makes a huge difference. But I do want to start where Senator MIKULSKI left off and give recognition to Senator BLUMENTHAL.

During the holidays, we often reflect on our blessings. We think about what is going well in our lives. We are very thankful for what has been given to us, whether it is the health of our children, being in a safe, warm home, whether it is having a good job, whether it is having a business that is profitable—whatever those blessings are, that is what the holidays are about, being grateful for them.

This holiday will be a very difficult time for so many families in New York and New Jersey and Connecticut. There were many loved ones lost during Hurricane Sandy. There were many children lost in Connecticut. When a loved one is no longer around the dining room table, when there are gifts that were bought that were not able to be given, it is a very sad time for our country.

What I am urging my colleagues to remember is what that loss feels like in their own States. We have seen so many tragedies this last year. We have seen so many disasters over the last several years. As Senator MIKULSKI has said and Senator SCHUMER has said: This country always stands together in these times of disaster and grave need. When it was Hurricane Katrina, we stood by that State, that region; immediately, within 10 days, we delivered $60 billion of aid and relief to the families in need. We did the same thing for Florida. Hurricane Andrew left devastation in its wake. We did the same thing when tornadoes hit Joplin, MO, and Tuscaloosa, AL. We stand by families in times of need. It is the job of the Federal Government to keep our families and communities safe. It is what we do. It is that gratitude we have when others come to our side in that moment of great need that draws this body together.

What I am urging most is that we all do count our blessings during these holidays, we do look to what we have and know there are many families who are going without—without a warm home, without that loved one who has been lost. We know from this disaster children were taken, grandparents were taken, husbands and wives were lost. So the least we can do is help a community rebuild from that devastation.

It starts with homes. We saw so much loss in our State. We worked out that we needed about $17 billion to rebuild the homes in New York and we asked for a community development block grant to cover that. Our colleagues on the other side of the aisle will have a substitute bill, a substitute bill that will cut funding drastically. It is akin to, if you have 5-alarm fire, you are just sending one firetruck because that is all you want to pay for today.

They have cut that money for housing from $17 billion to $2 billion, so what you are saying to the families in New York, New Jersey, and Connecticut in the region: We are just not going to rebuild your house.

FEMA right now provides individual assistance up to $31,000 for each homeowner. You cannot rebuild a home for $31,000—particularly not in New York. If you did not have insurance that covered or your insurance claims didn't pay out or your insurance companies said, sorry, it was a flood, you are not covered, what are you supposed to do? You are homeless. You have nowhere to go with your family.

That is what we have to address in this bill. We have to provide the resources for these families to rebuild. The businesses are suffering. I can tell you, I saw many businesses where the structures were in rubble, but every business owner I talked to said to me: I am a New Yorker. I am going to rebuild. I am going to rebuild better. I was born here. I am going to stay here.

That determination and that gratitude for what they have and what they will have is what is going to make the difference.

I thank you, Mr. President, for giving us a chance to advocate on behalf of our families. We do need the help of everyone in this Chamber to do the right thing, to stand by others in their gravest time of need. That is what we have always done and that is what we must do now.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I wish to begin by thanking my colleague from Maryland, Senator MIKULSKI, for her kind and generous words about the recent tragedies we suffered in Connecticut and her sense of compassion and kindness. I also thank her for her vision, courage, and leadership on the legislation that is before us.

I want to associate myself with the very eloquent and powerful remarks made by both Senators from New York and the Senator from New Jersey today.

I strongly oppose the amendments that would constrict and delay aid that is as vital to Connecticut as it is to the other States of the region that were hammered and pummeled by Superstorm Sandy on the night it hit our area. The scope and scale of destruction made it one of the largest natural disasters to affect our Nation. It left millions of people without homes or electricity, and it cost tens of billions of dollars in damages to governments, businesses, and residents. The sweep and depth of destruction in human impact and financial effect was simply staggering. Our response should match its historic magnitude. We must think big, act big, and go forward with a vision to meet the needs of the people in America.

As has been said, we are the United States of America. We meet catastrophe with the resources and commitment that is necessary to make sure people are treated fairly. Delay or reduction in resources is unfair. In effect, delay is denial, just like justice delayed is justice denied. It would be unjust to delay the resources by the kinds of amendments and proposals that have been offered and in effect reduce the amount of resources that can be available.

The estimates about the disaster can occupy much time on this floor, and I am going to be brief in describing what I think is necessary because I have spoken previously before committees of this body. Suffice it to say that right away we need to redouble our efforts to reduce the personal costs and property damage from this storm and also to prevent that kind of damage in future storms. We can invest now or pay later. We will pay much more later if we fail to invest now.

The path toward enlightened protection and preparation must include infrastructure improvements for Stamford's floodgate, the efforts on the Housatonic River to stop flooding, and electricity security measures such as the establishment of microgrids and increased availability of generators for senior citizen housing. These are examples of what can be done if we invest wisely now, and that is part of what this supplemental can do.

It is vitally necessary that we are prepared because these kinds of disasters are, in fact, becoming the new normal. This storm is the fourth major disaster for the State of Connecticut in the past 19 months, and it is the fourth major disaster declaration for our State in that time. There was record snowfall in January of 2011, and later in 2011 Tropical Storm Irene hit our State, as well as a highly unusual October snowstorm. Now we have Superstorm Sandy. These kinds of natural disasters demand the kind of response that the Senate can do if it approves this measure without these amendments that restrict and delay these efforts.

We are building our infrastructure to 100-year storm levels, but unfortunately 100-year storms are happening just about every year. We have to be

prepared for the new normal by hardening critical infrastructure and taking time and spending money to construct an infrastructure assessment that will allow States and municipalities to know what infrastructure is at risk and what needs to be done to mitigate that risk. Failing to meet the immediate needs of these areas is not only unkind, it is unwise.

As the Senator from New York just remarked, sending one firetruck to a 5-alarm fire is not only unkind, it is unwise. Rebuilding a house for a family that had three bedrooms and restricting it to one bedroom or no bedrooms is unkind and unwise because it will fail to provide housing for that family.

I urge this body to provide the funding that Connecticut, New York, and New Jersey need to mitigate flooding and other damage from this storm and from future storms and make sure these States receive the kind of aid that is necessary so we can not only repair and rebuild but also prepare and prevent this kind of catastrophe in the future.

Again, I thank all of my colleagues who have been so instrumental in reaching this point. I urge my colleagues to come together in the spirit that the United States has always done when it has faced these kinds of catastrophes. We have always done the right thing even in the face of fiscal austerity for regions and areas of our country that have been hard hit through no fault of their own and that need this kind of immediate relief.

Mr. UDALL of Colorado. Mr. President, I rise to speak in favor of two critical issues for my state—much-needed Emergency Watershed Protection Funds in the Supplemental Appropriation for Disaster Assistance and a Udall-Tester amendment that would add $653 million for U.S. Forest Service firefighting and wildfire prevention.

Let me begin by making one point absolutely clear: this is an emergency. Some have questioned the need for this funding and have asked why we wouldn't limit dollars just to Hurricane Sandy areas. The short answer is that it is the smart thing to do, the right thing to do and the fair thing to do. I know these fires may seem like just another story on CNN for some folks, but they have had devastating impacts in my state and throughout the west. Wildfires destroy communities and their devastation persists for decades.

The country faced the third worst wildfire season in the nation's history last year, with more than 9.2 million acres burned—including the Waldo Canyon and High Park fires, the two most destructive fires in Colorado history. Next year is projected to be much worse, yet the U.S. Forest Service will enter the 2013 fire season with a projected budget shortfall for preparing for and fighting these fires. They will also have only eight large air tankers compared to 44 in 2000—which puts them at a serious disadvantage in being able to attack these blazes. The Udall-Tester amendment would address this critical issue and provide $653 million to close the budget gap between what the Forest Service has and what they absolutely need. This is nothing to sneeze at, but for perspective this amounts to only one percent of the emergency funds that would be sent to support Hurricane Sandy recovery.

These funds will enable pre-positioning of ground crews, hot shots, and air support in places where wildfire risk is very high. This is a smart investment because early attack is critical to stop fires from becoming megafires that devastate communities, take lives and property, and threaten water supplies. It also helps ensure that the Forest Service doesn't have to rob other accounts such as timber, watershed, and wildlife programs. Raiding other Forest Service funds is robbing Peter to pay Paul: These other funds help eliminate dead wood and other fuels in our national forests, thus reducing future fire risks.

And the risks wildfires pose persist long after the final embers are extinguished. That is why we also are seeking to fully fund the Emergency Watershed Protection Program. Communities across this country—including many impacted by Hurricane Sandy—are at risk of catastrophic flooding and contaminated drinking water. This investment of $125 million in the bill before us is critical to help ensure that these communities do not face further debilitating and life-threatening impacts from these recent disasters.

In my state, the Emergency Watershed Protection Program is essential to protecting and restoring critical watersheds that are damaged by wildfires. This is especially true of the most devastating wildfires in Colorado's history last summer—which, if left unaddressed, could cause serious flooding, landslide and other risks that threaten the lives of residents in my state.

The High Park and Waldo Canyon fires tragically took lives, burned more than 100,000 acres, and led to catastrophic loss of property, including well over 300 homes in Colorado's second-largest city. But the initial impact could pale in comparison to the long-term impacts.

Without rehabilitation and restoration, the watersheds that provide municipal and agricultural water supplies are at risk from landslides, flooding and erosion, which could result in serious infrastructure damage, water supply disruptions and even loss of life. Stabilizing and protecting these communities' watersheds is not only the right thing to do, it is also fiscally responsible.

If we do not quickly address these watersheds, taxpayers could face hundreds of millions of dollars in costs from what otherwise would have been a minor storm.

We need to fix what is wrong, and give these communities the peace of mind they deserve.

And I want to remind my colleagues that Congress has historically provided Emergency Watershed Protection (or EWP) assistance for earlier disasters before moving on to confront the needs created by subsequent events. As of December 10, 2012, an estimated $47 million is needed to mitigate damaged watersheds in the aftermath of other presidentially-declared Stafford-Act disaster areas in Arizona, Colorado, Louisiana, Florida, Minnesota, Mississippi, New York, Utah, and Wisconsin. This is in addition to the $40 million needed for communities affected by Hurricane Sandy. We cannot leave these communities behind to suffer the effects of less recent disasters—whether they faced disaster from wildfire, hurricane or flood.

Mr. President, Coloradans unfortunately have already experienced some of these effects. For example, the usually crystal-clear Poudre River has been flowing black due to ash and runoff from the fire. This forced the downstream city of Fort Collins to shut off their water intake for over 100 days. Further downstream, the city of Greeley shut off their water intakes for 36 days and are still only able to take a small fraction of their normal intake.

This photo shows a water main that supplies 75 percent of the backup drinking water supply for the City of Colorado Springs—our second largest city. This pipe used to be buried 8 feet deep but is now exposed due to runoff from the fire area.

How much more of an emergency do we need, when our most basic resource—drinking water supplies for three of Colorado's largest cities and its families and businesses—is threatened?

I'll give you one more example. The flood potential in the burned areas is now 20 times higher than before the fire, which means that areas are experiencing 100-year floods from the same amount of rainfall that would have caused a 5-year flood before the wildfires.

Look at this photo. This is Highway 14, which is the major east-west artery through northern Colorado. This mudslide is one of many that occurred during one very minor rainstorm after the High Park fire. These mudslides on our major roads put people, property, and commerce at risk. Already, families in the Colorado Springs vicinity have received at least four flash-flood warnings since the Waldo Canyon fire. The need for stabilizing this ground and restoring the burned areas on both federal and private land is critical to public safety, public health and the prevention of another disaster.

I stand to support the recovery of the communities devastated by Hurricane Sandy. But, I want to ensure that my colleagues here understand the gravity of the situation we're facing in Colorado and other states that are also confronting disaster needs. If we do not act right away, communities across this nation will see unnecessary flood

risks, contaminated water supplies, and even tragic deaths caused by our inaction.

So when someone asks whether EWP is necessary or critical, the answer emphatically is yes! For many of our communities in Colorado, this is their #1 priority in Congress and I'm not going to let their critical needs go unmet. I ask each of my colleagues to support this important funding in the bill before us today.

I thank you for your attention and request that my statement appear in the appropriate place in the RECORD.

Mr. REED. Mr. President, I rise in support of the Emergency Supplemental Appropriations bill for Hurricane Sandy. This is a critically important bill for the States that were affected by this storm—not only New York and New Jersey, which saw almost unimaginable devastation and loss of life, but States like my home State of Rhode Island, which experienced significant damage.

There has been a long tradition in the Senate in working together to respond to major disasters in our States. The Appropriations Committee has been an important venue for the kind of bipartisan cooperation that has made these efforts possible. In large part that has been the result of the efforts of members like our late-Chairman Dan Inouye who created, by his example, an environment of comity and respect. That has been the unique ethos of our committee. Under the leadership of our new chairwoman, Senator MIKULSKI, it will continue.

As chairman of the Subcommittee on the Interior, Environment, and Related Agencies, I also want to take a moment to talk about the $1.45 billion included in the bill for environmental recovery and restoration needs.

We must fund recovery efforts and rebuild public facilities that were damaged. But we also need to look ahead to projects that will allow our communities and our public lands to withstand future storms and natural disasters. I am pleased that the Interior section of this bill addresses both needs.

The bill contains $435 million in essential funding to rebuild national parks, wildlife refuges, national forests, and other public facilities damaged by Hurricane Sandy.

I particularly want to call attention to the $348 million included to fund immediate construction needs at more than 25 Park Service units that were damaged during the storm. These funds will help the Park Service take necessary steps to reopen a number of heavily visited units to the public—including the Statue of Liberty and Ellis Island, which suffered extensive damage during the storm.

We need to get this work started now so that we can get these parks reopened. And because the need is so great—the amount requested by the President is nearly five times the annual line-item construction budget—it's imperative that we give the service the funds in this supplemental as soon as possible.

I also want to note that the bill also provides $78 million for immediate reconstruction and recovery needs for the more than 30 wildlife refuges that also sustained tremendous damage during the storm.

These funds will be used for emergency stabilization needs, to replace or reconstruct facilities, roads, and trails, and to fund improvements needed to lessen anticipated damage from future storms.

The bill also provides $810 million for the EPA State Revolving Fund programs, including $700 million for clean water needs and $110 million for drinking water needs, for States that faced the greatest impact from Hurricane Sandy. These funds will complement funds from other Federal agencies and provide targeted funding to upgrade water infrastructure to protect against future flooding, storm damage, and other natural disasters.

Already, there is a huge estimated need for these funds. In fact, EPA estimates that there are approximately 700 drinking water and wastewater facilities in States affected by Sandy that need to make infrastructure upgrades that will make them less susceptible to flooding and extreme weather events.

This is exactly the kind of work that needs to be undertaken so that we can get ahead of the curve and prepare for the next storm or natural disaster. I understand that there are some who believe that some of these investments do not constitute an emergency, but as those who lived in the path of storms from Andrew to Katrina to Sandy can attest, there is no time to waste or wait. I hope that this chamber can move swiftly to pass this supplemental appropriations bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. 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. SCHUMER. Mr. President, I ask unanimous consent that on Friday, December 1, when the Senate resumes consideration of H.R. 1, the legislative vehicle for the Sandy supplemental, the Senate proceed to vote in relation to the amendments to the bill under the previous order; that all remaining time under the previous order with respect to the amendments be yielded back; that there be 2 minutes equally divided prior to each vote, with the exception of the following: 4 minutes equally divided prior to each of the votes in relation to the Coburn amendments; 10 minutes equally divided prior to the votes in relation to each of the Paul amendments; 8 minutes equally divided prior to the vote in relation to the McCain amendment No. 3355; and 10 minutes equally divided prior to the vote in relation to the Lee amendment; and that all other provisions of the previous order remain in effect.

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

Mr. SCHUMER. I said December 1—wishful thinking. The order should say Friday, December 28.

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

I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

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

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

TRIBUTES TO DEPARTING SENATORS

DANIEL AKAKA

Mr. LEAHY. Mr. President, the great State of Hawaii has been represented in the United States Senate by two of the longest serving Senators, and they happen to have shared the name Daniel. This year, Senator AKAKA—with more than 3 decades of service in Congress—now the Senior Senator from Hawaii will return to his native State and enjoy retirement.

Senator AKAKA has represented the people of Hawaii in a variety of ways. Most recently, as Chairman of the Committee on Indian Affairs, he has worked tirelessly to support vital programs that provided education, healthcare, housing and other basic services for tribes across the country. Having attended college on the GI bill, he has been an advocate for improving education for all students. He also has been a strong supporter of veterans and a proponent of protections for whistleblowers seeking to expose waste, fraud and abuse in government.

On a personal note, I have always appreciated Senator AKAKA's strong support for the National Guard, and in particular the Hawaii Guard. His military roots go back to his own distinguished service in World War II. But he was one of the earliest and most senior adopters of the Guard empowerment legislation when I teamed with Senator Bond, Senator GRAHAM, and so many others to enact. Senator AKAKA stood with the men and women of the National Guard in demanding representation among the Nation's most senior

military advisory body. This stand was not an easy one to take. He was, in fact, the most senior Democrat on the Senate Armed Services Committee to co-sponsor the Leahy-Graham bill, and his support sent a powerful statement that some of our most knowledgeable Senators with the specific responsibility of overseeing our armed services recognized that it was time to give the Guard a stronger voice. Among his many other achievements, Senator AKAKA will be remembered for his strong support of and friendship with the Guard.

Senator AKAKA has brought a calm and insightful presence to his work and the people of Hawaii are fortunate to have had such a great representative in both the House and the Senate. I wish Senator AKAKA and his family the best in his retirement from Congress.

KENT CONRAD

Mr. President, for more than 2 decades, Senator KENT CONRAD has represented the people of North Dakota in the United States Senate.

I have had the privilege to serve with several hundred senators since I came to the Senate nearly 38 years ago. The list is short for those who are extraordinary both for their talents, and for their personal friendship. KENT CONRAD is on that list. In fact, he defines it in many ways. Senator CONRAD has reached across the aisle and demonstrated what bipartisanship truly means.

Rooted in his days as a tax commissioner in North Dakota, Senator CONRAD has been a leading voice in Congress in difficult and complex budget debates. His floor charts are legendary, explaining complicated fiscal matters in terms many others can understand. As Chairman of the Budget Committee, and as a senior member of the Finance Committee, he has been a key player in the fiscal debates that have dominated the discourse in Washington as the country has recovered from the Great Recession. He has led bipartisan efforts to reduce the deficit, and helped create the 2007 taskforce with Republican Senator Judd Gregg to address long-term fiscal challenges. Senator CONRAD has also been dedicated to advancing American interests abroad. I have been fortunate to travel with Senator CONRAD and his wife overseas, most recently to the Eurozone, where he again brought his expertise in economic, budgetary and fiscal policies to the table as we discussed the potential U.S. impacts of the European Union's financial crisis.

He has always put North Dakota first, but Senator CONRAD has never neglected the needs of other parts of the country. He is a champion of the farm bill, and understands the details and nuances of agriculture commodity programs perhaps better than any other member of the Senate Agriculture Committee. Whether fighting for North Dakota's farmers, or fighting for the Nation's fiscal health, he has been a great partner. I was particularly moved by his support for Vermont in the wake of Tropical Storm Irene.

Senator CONRAD has been one of the most important voices in the United States Senate for the past 25 years. He is one of the giants of the Chamber today. We will miss his expertise, but we know our friendships will continue. Both Marcelle and I wish our friends KENT and his wife, Lucy, the best.

JOE LIEBERMAN

Mr. President, a Senator of 24 years, Senator JOE LIEBERMAN this year retires from this Chamber. He has represented the people of Connecticut for years, first as a State Senator, and then as the State's Attorney General.

Senator LIEBERMAN has been a constant voice in national security matters. I worked with him in the aftermath of the terrorist attacks of September 11, 2001, to establish the Department of Homeland Security, and since then, he has served as the top Democrat on the Homeland Security and Government Affairs Committee. He has worked to strengthen the Federal Emergency Management Agency in the aftermath of disasters, including Hurricanes Katrina and Rita.

I worked with Senator LIEBERMAN in 2002 on the E-Government Act, a key privacy law that required the government to improve access to information on the Internet. A chief architect of that bill, it has become an important transparency law and a valuable tool in protecting individual privacy protections.

Senator LIEBERMAN has been a dedicated proponent of examining the impacts of climate change. He has worked to find a compromise to move the Senate forward on meaningful climate change and cap-and-trade legislation. And, despite Connecticut's small dairy industry, Senator LIEBERMAN has been a true partner in advancing the needs of dairy farmers in Vermont and across the country.

Senator LIEBERMAN has earned the respect of both Democrats and Republicans. Like so many other retiring Senators, he has urged the Senate to pursue avenues of bipartisanship. The bipartisan legacy he leaves is one example we can all follow moving forward. I wish him and his wife, Hadassah, the best in his retirement.

JEFF BINGAMAN

Mr. President, born in Texas and raised in New Mexico, Senator JEFF BINGAMAN for nearly 30 years has represented the State he has been proud to call home. Lawyer, advocate, environmental stalwart these are just a few of the terms that can be used to describe Senator BINGAMAN.

A longtime public servant, Senator BINGAMAN has served his Nation in the Army Reserves, in his State as an Attorney General, and, since 1983, has served the people of New Mexico in the United States Senate. Along the way, he has earned a reputation for being fair and bipartisan no small feat in today's polarized Congress.

Senator BINGAMAN has been a fierce advocate for the environment, and has worked hard to expand conservation and end tax breaks for big oil companies. I was proud to work with him on legislation to increase the production of biofuels and to modernize the Federal Government's approach to protecting the environment. As chairman of the Senate's Energy and Natural Resources Committee, he has worked tirelessly to advance energy independence, an issue so important to many, including those in New Mexico.

A supporter of a comprehensive approach to reforming our immigration system, Senator BINGAMAN has supported a responsible and thoughtful approach to protecting our Nation's borders. Like me, he opposed ill-advised legislation which was regrettably enacted in 2006 to build electronic and other forms of surveillance along every land and maritime border. A Senator of a southern State, Senator BINGAMAN opposed the effort to construct a costly fence along our southern border.

Senator BINGAMAN has been a force here in Washington, but he has never lost sight of the needs of the constituents at home that he represents. He has worked to secure Federal funds for critical needs in New Mexico, and for education development and transportation improvements.

JEFF's moderate temperament has led to many successes both in the halls of Congress, and in his home State. I wish him and his wife Anne all the best in retirement.

HERB KOHL

Mr. President, the people of Wisconsin have elected and reelected Senator HERB KOHL to represent them in the United States Senate four times. Since coming to the Senate in 1989, I have been honored to serve with him on the Senate Judiciary Committee, where his commitment to matters involving antitrust, juvenile justice, and technology has afforded us many opportunities to work together. We have partnered in other important areas, too from our states' shared interest in a vibrant and supported dairy industry, to important housing assistance.

Everyone likes Senator KOHL. He is a consensus builder, and is always seeking a bipartisan solution. That approach led to a bipartisan investigation in the Judiciary Committee over Ruby Ridge. It led to enactment of the Juvenile Justice and Delinquency Prevention Reauthorization Act, and economic espionage bills.

Senator KOHL has been a constant champion for the nation's dairy farmers from those in Wisconsin to those in Vermont. His Superb Milk House at the Wisconsin State Fair is a hit every year. A tradition he began in 1990, it still sells glasses of milk for just 25 cents. I was delighted to hear he intends to keep the Milk House running even after he leaves the Senate. Wisconsin and Vermont dairy farmers have not always agreed on how best to support the industry, but Senator KOHL's commitment has never wavered.

As chairman of the Special Committee on Aging, Senator KOHL has

kept the needs of some of the most vulnerable around us the elderly front and center during his time in the Senate. His support for the Housing Assistance Council, which helps improve housing conditions for the rural poor with an emphasis on the poorest of the poor has been steadfast, and I was pleased to work with him to ensure that in an age without earmarks, this important council was qualified to compete for Federal financial support. He has been a longtime partner in rural housing issues a partnership I will miss.

Senator KOHL has worked tirelessly for the people of Wisconsin both as a Senator and as a philanthropist. Since 1990, he has provided annual grants totaling $400,000 to Wisconsin students, teachers, and schools through the HERB KOHL Educational Foundation Achievement Award Program.

When Senator KOHL announced his retirement, he stated that he never believed it was his Senate seat, but that it belonged to the people of Wisconsin, and that is just who HERB KOHL is. Even in retirement, I have no doubt he will remain dedicated to the people of Wisconsin. Serving with him for more than two decades has been an honor and a privilege. The Senate will miss him.

JIM WEBB

Mr. President, although he has served just one term in the U.S. Senate, retiring Senator JIM WEBB is no stranger to public service. A highly decorated combat veteran of Vietnam, JIM WEBB's prior public service as an Assistant Secretary of Defense and a former Secretary of the Navy uniquely suited him as a fierce defender of our troops serving overseas, and when they come back home.

Senator WEBB has been a positive force on a number of issues, and particularly through his roles on the Foreign Relations Committee, the Armed Services Committee, and the Veterans' Affairs Committee. His commitment to our Nations' veterans and to supporting and strengthening our military has been a cornerstone of his Senate career.

I worked with Senator WEBB on a number of issues in the last 6 years, especially on prison reform and the criminal justice commission. His initiative is something the Senate and our judicial system, should follow and set as a guide.

Senator WEBB brought a unique perspective to the Senate based on his years of dedicated public service. He has been a powerful advocate for military and veterans' issues and criminal justice reform, all while promoting Virginia's best interests. I wish him and his family the very best in the future.

BEN NELSON

Mr. President, as a Senator from a rural State, supporting our Nation's farmers is something close to my heart. Senator BEN NELSON shares that commitment, and has been a long-time champion of legislation to protect American agriculture and our Nation's farms in a rough economy. Senator NELSON's work for rural communities has benefited his home State of Nebraska, but his support of agriculture has helped Vermonters, too. These are among the legislative issues on which Senator NELSON has had an impact since he came to the Senate in 2001.

As a member of the Committee on Agriculture, Nutrition and Forestry, Senator NELSON has been an active participant as we have tried to move the 2012 Farm Bill through Congress. One of the most pressing pieces of legislation before us today, he has fought tirelessly for Nebraska's interests in that bill, as well as the interests of the Nation's agricultural industry as a whole.

While he has worked on a number of legislative matters in the last decade, I particularly appreciated Senator NELSON's support for my effort to give the National Guard a seat at the table of the Joint Chiefs of Staff as a former Governor. He understood that this multi-year effort was done to recognize that the men and women of the National Guard serve our country with unmatched loyalty and that they and their families make sacrifices every day. He recognized that they are indeed deserving of full representation at the highest levels of the Pentagon. In 2010, Senator BEN NELSON was awarded the Harry S. Truman Award for his commendable work with the Guard. Since the National Guard has taken on an increased role in overseas conflicts, Senators like BEN NELSON have stepped up to give them the recognition and support they deserve.

I commend BEN's loyalty to Nebraska and to economic sustainability across the country. His dedication to sustainable energy is rare in our modern political climate. Rather than folding to the issues that divide us and ignoring the future of our farms and environment, Senator NELSON has taken a strong stance on controversial and difficult issues and has managed to open the minds of many of his colleagues with time, bringing people together around the possibility of creating positive change. Through it all, he has kept the needs of his State in mind, even as he has worked to create a brighter future for the entire country.

Senator NELSON is an honest man, a level-headed public servant, and a friend to many. True to his roots, he has built a legacy in the Senate that will last after he has moved on from the halls of the Capitol. I wish him the best in his retirement from Congress.

JON KYL

Mr. President, there are many times when those of us in the Senate disagree. It is when we can find ways to work together, across party lines, to advance meaningful legislation that we can really make a difference. One of the things I have always appreciated about Senator JON KYL is his commitment to his word. This year will mark his last in the U.S. Senate. I have welcomed his partnership on many issues, from cyber legislation to matters protecting crime victims. He was a key ally in our efforts to make the first meaningful reforms to the Nation's patent system in nearly 60 years. And we have worked together on issues relating to National security and border security.

Fewer Senators are more hard working than JON KYL. He is a constant presence in the Judiciary Committee, where he has served as the top Republican on the Crime and Terrorism Subcommittee. He is active in the Finance Committee. And of course, he holds a key position within his caucus, serving as the Republican Whip.

I have, of course, most closely worked with Senator KYL in his nearly 2 decades of service on the Judiciary Committee. There, he has championed a number of important issues, from crime victims' rights to antiterrorism legislation. We have been close partners on intellectual property legislation, from patent reform to copyright and trademark protections. And, even in the most contentious of national security issues, we have worked to find common ground on such issues as the PATRIOT Act.

On Capitol Hill, Senator KYL is known throughout the Senate for his dedication and work ethic. He is a great ally and a formidable adversary; in Congress, there is often no higher praise. He is a good personal friend and, I wish him and his family all the best as he takes on his next challenge.

RICHARD LUGAR

Mr. President, I have served with hundreds of Senators in my nearly 38 years representing Vermont in Washington. Few embody the statesmanship that you find in Senator RICHARD LUGAR. For more than 36 years, Senator LUGAR has represented the State of Indiana in the United States Senate—the longest-serving Republican Senator here today. It has been an honor, a privilege and a joy to work with him to advance so many important legislative issues.

Senator LUGAR exemplifies the ideal of bipartisanship that is too often lacking today in Washington. Although we come from different political views, Senator LUGAR and I worked shoulder-to-shoulder to reach across the aisle to find compromise and common ground on two Farm Bills—the Leahy-Lugar bill, and the Lugar-Leahy bill. That collaborative effort, which led to reforms at the Department of Agriculture resulting in the savings of billions of dollars, is an example of how well the Senate can function when bipartisanship is the order of business. Whether he chaired the Agriculture Committee, or I did, we always found a way to work together.

Perhaps Senator LUGAR is most well-known for yet another bipartisan effort, the 1991 Nunn-Lugar Cooperative Threat Reduction. Nunn-Lugar was enacted to protect Americans from the threat of nuclear weapons in the

former Soviet Union. Ever since it became law, Senator LUGAR has continued his efforts to reduce the threat of nuclear annihilation. In 2007, after a trip to Russia, Azerbaijan, and Ukraine, Senator LUGAR and then-Senator Barack Obama crafted the Lugar-Obama Proliferation and Threat Reduction Initiative to decrease the number of hidden traditional weapons around the world. Senator LUGAR's ability to build strong relationships with party opposites such as President Obama resulted in legislation that benefits citizens of Indiana, but also the entire Nation.

As a leading member and former Chairman of the Senate Foreign Relations Committee, Senator LUGAR has championed human rights around the world. Most recently he advocated aggressively for ratification of the bipartisan Convention on the Rights of Persons with Disabilities. A recognized leader in international affairs, Senator LUGAR has supported causes eradicating hunger, to combatting terrorism wherever it occurs. He has promoted sound, reasonable immigration reforms to encourage the best and brightest to come to America. And he has warned of the catastrophic risks of climate change.

Earlier this year, Senator LUGAR and I reached a pair of milestones together. I was honored to cast my 14,000th vote in the United States Senate. I was delighted that Senator LUGAR, on the same vote, reached the 13,000 marker. Ours has been a partnership of more than three decades, and to share this milestone with Senator LUGAR was a memory I will cherish.

A couple of years ago, DICK and I found ourselves sitting down together in the Senate Judiciary Committee hearing room, speaking with a reporter about the importance of bipartisanship in Congress. We both recalled with fondness our earliest days in the Senate, sitting on the farthest ends of the dais, and struggling to hear what the most senior members of the panel were saying. We suspected—no doubt correctly—that this was not happening by accident. From those days sitting together was born a friendship that has spanned three decades. In his farewell in this Chamber, Senator LUGAR cautioned that many in Congress ''have not lived up to the expectations of our constituents to make excellence in governance our top priority.'' Every day in this Chamber, DICK LUGAR made excellence his top priority. He is a pillar of the Senate, a mentor to many, and a role model to those to come. And I will miss my friend.

OLYMPIA SNOWE

Mr. President, in today's U.S. Senate, moderates are few. At the end of this Congress, we will lose another: Senator OLYMPIA SNOWE, who has served the State of Maine in the U.S. Senate for nearly 2 decades. She has spent nearly her entire adult life in public service, and the people of Maine have revered her dedication to her home State and to civic engagement.

Just the 23rd woman to serve in the United States Senate, Senator SNOWE has risen through the ranks in her tenure in this body, most recently serving as the top Republican on the Small Business and Entrepreneurship Committee. There she has focused on promoting women in small business. She was instrumental in establishing Women's Business Centers through the Small Business Administration, a network of nearly 100 centers designed to level the playing field for women looking to start a small business. Most recently, she has worked to advance legislation to establish a task force specifically devoted to women entrepreneurs.

Senator SNOWE has been a great friend to the environment as well. She has worked closely with me to protect our national forests and environment. She has partnered with me to strengthen the Forest Legacy Program—important to both Vermont and Maine—as well as the Land and Water Conservation Fund. She has been a stalwart advocate for the Community Development Block Grant program, and for years, she and I teamed together to protect this important community development program. Senator SNOWE has been a strong supporter of the Low Income Home Energy Assistance Program, LIHEAP. The shared challenges of our States—rural, New England States have given us many reasons to work together, and our partnership in these issues is one that I will miss.

Notably, Senator SNOWE, at a time when so many simply tow the party line, never feared voting her conscience over her political affiliation. Her support for the American Recovery and Reinvestment Act, which spurred development amid the worst economic crisis since the Great Depression, was instrumental in funneling necessary resources to the States. She supported advancing comprehensive health care reform legislation to the Senate floor, so the Senate as a whole could debate the issue. And she has stood up for women in important health care choices.

When Senator SNOWE announced earlier this year that she intended to retire, she lamented the partisan shift she has seen in Congress. During her long career in public service, Senator SNOWE put her State and the Nation first. It's a lesson we can all follow. I wish OLYMPIA the best in her retirement and I will truly miss serving with her. Her farewell speech to the Senate should be required reading in every High School and college—civics and government classes.

KAY BAILEY HUTCHISON

Mr. President, when the 112th Congress adjourns, Senator KAY BAILEY HUTCHISON will retire, having been the 22nd woman to serve in the United States Senate. With nearly 20 years of service to this Chamber, Senator HUTCHISON has been a pioneer in her home State of Texas. The first woman elected to the U.S. Senate from that State, her record of public service began long before she came to Washington.

Senator HUTCHISON's dedication to her constituents, and to the advancement of the Nation, has been easy to see. When she helped to establish the Academy of Medicine, Engineering, and Science of Texas, TAMEST in 2004, she put a spotlight on the importance of encouraging advancements in science and of supporting research and development. She has understood that protecting our Nation's ability to innovate is as vital to our economic security as anything else.

I am proud to have worked with Senator HUTCHISON on a variety of pieces of legislation over the years, having served with her on several subcommittees of the Senate Appropriations Committee. Among our greatest achievements, I believe was our partnership on federal AMBER Alert legislation, which won unanimous support in the Senate and which was enacted in 2003. The AMBER Alert Act was a signature achievement, and an example of what can be done when partisanship is cast aside, and we work together.

Senator HUTCHISON has worked tirelessly to advocate for her State and for the good of the Nation. I wish her and her family all the best.

SCOTT BROWN

Mr. President, Senator SCOTT BROWN came to the Senate in an untraditional manner: winning a special election to fill the seat left by one of the giants of the Senate, Ted Kennedy. While his tenure has been just 3 years, I have appreciated Senator BROWN's willingness to work across the aisle on two very important issues: reauthorizing the Violence Against Women Act, and working to end human trafficking.

It happens that I have authored legislation to address these two very issues, and so it has been through the Violence Against Women Reauthorization Act and the Trafficking Victims Protection Reauthorization Act that I have seen Senator BROWN take a dedicated approach to protecting victims of violence. He is a cosponsor of both these bills, a strong supporter of the goals behind them, and a vocal proponent of their enactment.

Senator BROWN has also been a friend of National Guard. Himself a Guardsman for over 30 years, he was one 68 cosponsors of my Guard Empowerment Act, to give the head of the National Guard a seat with the Joint Chiefs of Staff, where decisions are made every day about our Nation's military, including the National Guard and Reserve. As a Guardsman himself, he understands the strains placed on families here at home when the Guard, like any unit of the military, is deployed, as has happened so many times in the last decade. I appreciated Senator BROWN's support on this important law.

Senator BROWN has charted his own path in his short time here in the Senate, and I expect the ventures he undertook while serving here will continue. I wish him and his family the best.

THANKING LUTHERAN CHURCH CHARITIES

Mr. DURBIN. Mr. President, this past week we have all watched, grief-stricken, the terrible school shooting in Newtown, CT, and the heart-breaking funerals of those beautiful little children. There are no words to adequately express our sorrow for those touched by this tragedy. But there is an organization that is helping to bring comfort and healing to Newtown in a way that requires no words.

One day after the massacre at Sandy Hook Elementary School, a group of golden retrievers from the Chicago area made a cross-country journey to provide solace to the Newtown community. The Lutheran Church Charities sent five of their ''comfort dogs'' to help console grieving family members and others touched by the Sandy Hook Elementary School shooting. Accompanying these special dogs are handlers who are trained to speak or pray with mourners or simply to sit quietly with them.

In all, nine comfort dogs from Lutheran Church Charities have helped to comfort Newtown residents. Some of these remarkable dogs attended President Obama's speech at an interfaith gathering at Newtown High School, another comforted mourners at Newtown's Christ the King Lutheran Church, the location of funerals for two of the slain children. The dogs even made an appearance on CNN with host Don Lemon.

This is how Tim Hetzner, president of Lutheran Church Charities, explained the dogs' healing powers: ''Dogs are nonjudgmental,'' he says, ''They are loving. They are accepting of anyone. It creates the atmosphere for people to share.''

That is exactly what they have done in Newtown.

A woman visiting a Newtown memorial told one reporter: ''It's a very solemn time. With the dogs here, it seems like it's a little ray of sunshine.''

A child from Newtown said simply that the dogs ''help you get over how sad it is.''

Sadly, the comfort dog program began after another gun tragedy. In 2008, after a gunman killed five students at Northern Illinois University, a group of dog caretakers associated with Lutheran Church Charities visited the NIU campus in hopes of offering a healing distraction to students. The trip was so successful that a few weeks later students petitioned university leaders to bring the comfort dogs back.

The initiative has since grown from a handful of dogs in the Chicago area to 60 dogs in 6 states. Comfort dogs have traveled across the Nation to console people in the aftermath of major tragedies such as Hurricane Sandy and the tornado that hit Joplin, MO.

When the K–9 comfort dogs are not responding to a tragedy, they visit people in hospitals, nursing homes, and parks. Each dog has a Facebook page, Twitter account, and email so those who meet the dogs can keep in touch.

The unconditional love of comfort dogs has helped countless children and adults to cope with tragedy and begin to heal from their suffering. On behalf of a heartbroken but grateful Nation, I want to express my heartfelt thanks to all of the comfort dogs of Lutheran Church Charities especially Abbi, Barnabas, Chewie, Chloe, Hannah, Luther, Prince, Ruthie, and Shami—and to their handlers.

I yield the floor.

TRIBUTE TO CHRIS COWART

Mr. LEVIN. Mr. President, I rise to pay tribute to a staff member of the Senate Armed Services Committee who will be retiring at the end of this session of Congress. Her name is Christine Cowart, and for the past 6 years, she has served as the Chief Clerk of the Committee. She had previously served a term of 8 years as Chief Clerk under Senator Sam Nunn.

I know that 14 years sounds like a lot of time to most people, but that barely scratches the surface of Chris' service to the Senate. In fact, Chris holds a special place in the record books. In an organization like the Senate, known for some long-serving members, Chris would fall within the top ten list of longevity for senators, and no member currently serving has been here in the Senate longer than Chris.

The mere fact that she will be completing almost 41 years of service to the Senate is truly a remarkable accomplishment, especially in today's world where changing jobs has become the norm. And if that were all of her record, that would be amazing. But that is only part of the story. Chris made invaluable contributions to getting each of 41 of the 51 total National Defense Authorization Acts we have done annually since 1961. As Chief Clerk, it was her duty to shepherd the Armed Services Committee's annual set of hearings, meetings, and briefings that lead up to the DOD Authorization Act each year. Her duties also included showing the ropes to new senators and new staffers alike.

Chris took to heart the ideals of service she dedicated almost all of her adult life to service to her country and to the Senate. I remember Chris recounting how her father had escorted her here to the Russell Senate Office Building for her first interview with the Committee in the summer of 1972, shortly after she graduated from college. She said she didn't have any difficulty in deciding what to do after her father told her, ''Take the job.''

Chris' father was a career Navy man, having flown maritime patrol aircraft for the Navy during World War II and thereafter. He instilled in Chris the value of patriotism and service to country that she so exemplifies in her life.

During her service to the Committee, she served as mentor, confidant and advisor to the staff as they experienced weddings, divorces, births and deaths.

Chris has been a rock for the Committee, and I know I speak for all of the members and staff when I say, ''Chris, thank you for your service to the Armed Services Committee, to the Senate and to the country. You have set a standard of dedication and professionalism for all of us, and we will miss you!''

BALANCED BUDGET

Mr. SESSIONS. Mr. President, I rise today to discuss our Nation's need to adopt a balanced budget amendment and to bring the Senate's attention to the Alabama Legislature's recent call for Congress to send such an amendment to the States for ratification. This is a thoughtful and well-reasoned resolution. Many other States have made similar resolutions. Our Nation is on the precipice of the most predictable fiscal disaster in our history and Congress has failed to act to remove the danger. U.S. gross Federal debt is now over $16.3 trillion; U.S. debt per person is over $53,000, higher than that of Greece; and for the fourth straight year, our Nation's deficit will exceed $1 trillion. The Federal Government cannot continue spending more than it takes in, and the people of Alabama clearly know that.

The American people understand the necessity of living within one's means and balancing budgets. We see that as American families across the Nation are working to pay off their debt. In fact, American families have improved their balance sheets by reducing their outstanding credit card debt by 17 percent since 2008, over $150 billion. The people expect no less of their State governments. Forty-three of the 50 States, including my home State of Alabama, have balanced budget requirements.

Unfortunately, as States and families across the Nation cut spending and balance budgets, the Federal Government continues to spend more and has increased its debt by more than $4 trillion since 2008. This spending course will at some point wreck our economy, just as it has wrecked that of Greece, Spain, and Italy. Now, more than ever, it is crucial that Congress adopt a balanced budget amendment and send it to the States for ratification. The surging debt crisis we face is so significant that we must have a balanced budget constitutional amendment. It has come close to passing before. When Senators and Congressmen have no alternative but to live within their means, like so many of our States, they will figure out a way to do it. But if Congress is not required by the Constitution to

budget responsibly, then history has shown that Congress will not act responsibly.

The people of Alabama understand these issues and the importance of balancing the budget. That is why the Alabama State Legislature has passed a resolution urging Congress to send a balanced budget amendment to the States for ratification. The people of Alabama are well aware of the dangers we face. Introduced by Senator Arthur Orr of Decatur, AL, with several of his colleagues in the legislature, this resolution acknowledges that ''the budget deficits of the United States of America are unsustainable and constitute substantial threat to the United States government.'' The resolution calls for Congress to pass a balanced budget amendment, and if the Congress fails to do so, then for Congress to call a constitutional convention to propose such an amendment. I applaud Senator Orr and his colleagues, Senators Scofield, Sanford, Holtzclaw, Williams, McGill, and Beason, for bringing attention to this issue and introducing this resolution. We will only see more grassroots movements like this to pass a balanced budget amendment if Washington continues to fail to meet the challenges of our time.

It is not just my constituents in Alabama who are upset. Recent polling has shown that this Congress has one of the lowest approval ratings in history. The American people are becoming disillusioned and losing faith in their elected government as we fail to address the crises of our day. Indeed, we are not even working openly to deal with this great challenge. It is sad that Congress cannot even perform its basic business, as seen in the failure of the Senate to pass one regular appropriations bill this year or a budget in nearly 4 years.

The Senate is supposed to be the world's great deliberative body. Unfortunately, the leader of this body and his majority party will not even propose a budget to the American people. When I came to the Senate in 1997, I voted for a balanced budget amendment that fell one vote short of the 67 it required for adoption. How much better off would we have been today, how much less debt would we have placed on our children and grandchildren had that amendment been passed? Last year, Republicans put forward a plan to cut, cap, and balance our Nation's budget which would have solved all our fiscal problems. But the Democrat majority would not let it pass.

I applaud the members of the Alabama legislature for adopting and Governor Robert Bentley for signing this resolution. House Speaker Mike Hubbard and Senate Pro Tempore Del Marsh and their members have spoken clearly. This resolution exhibits leadership and wisdom not found here in Washington, DC. It is time we listen to the States and to our constituents and adopt a balanced budget amendment to the United States Constitution.

Mr. President, I ask unanimous consent to have printed in the RECORD this resolution adopted by the Alabama Legislature and signed by Governor Robert Bentley urging the United States Congress to submit a balanced budget amendment to the States or to call a convention to propose such an amendment to the United States Constitution.

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

Whereas, the reluctance of the federal government to incur debt and other obligations was established early in American history, with deficits occurring only in relation to extraordinary circumstances such as war; yet for much of the 20th century and into the 21st, the United States has operated on a budget deficit, including the 2010 budget year, which surpassed an astounding $1,300,000,000,000, an annual deficit that exceeded the entire gross state product of many of the states; and

Whereas, an exception to this pattern was at the turn of the 21st century; in FY 2001, America enjoyed a $128 billion budget surplus; and

Whereas, since FY 2001, America has been burdened with 10 consecutive years of deficits, to-wit:

FY 2002: $158 billion deficit
FY 2003: $377 billion deficit
FY 2004: $413 billion deficit
FY 2005: $318 billion deficit
FY 2006: $248 billion deficit
FY 2007: $161 billion deficit
FY 2008: $459 billion deficit
FY 2009: $1.4 trillion deficit
FY 2010: $1.3 trillion deficit
FY 2011: $1.5 trillion deficit (estimated); and

Whereas, as of January 2011, America's accumulated national debt exceeded $12 trillion now estimated at over $13 trillion: and

Whereas, the Congressional Budget Office projects that, if current trends continue under the White House's proposed budget, each of the next 10 years has a projected deficit exceeding $600 billion and

Whereas, the budget deficits of the United States of America are unsustainable and constitute a substantial threat to the solvency of the federal government as evidenced by the comments of Standard and Poor's on April 18, 2011, regarding the longer term credit outlook for the United States; and

Whereas, Congress has been unwilling or unable to address the persistent problem of overspending and has recently increased the statutory limit on the public debt and enacted a variety of legislation that will ultimately cause the federal government to incur additional debt; and

Whereas, the National Commission on Fiscal Responsibility and Reform in its report The Moment of Truth includes recommendations to reduce the Federal deficit that have not been considered by the United States Congress; and

Whereas, the consequences of current spending policies are far-reaching; United States indebtedness to governments of foreign nations continues to rise; costly federal programs that are essentially unfunded or underfunded; mandates to states threaten the ability of state and local governments to continue to balance their budgets; moreover, future generations of Americans inevitably face increased taxation and a weakened economy as a direct result of the bloated debt; and

Whereas, many states have previously requested that Congress propose a constitutional amendment requiring a balanced budget, but Congress has proven to be unresponsive; anticipating situations in which Congress at times could fail to act, the drafters of the United States Constitution had the foresight to adopt the language in Article V that establishes that on application of the Legislatures of two-thirds of the several states, Congress shall call a convention for proposing amendments; and

Whereas, in prior years the Alabama Legislature has called on Congress to pass a Balanced Budget Constitutional Amendment, many other states have done the same, all to no avail; and

Whereas, a balanced budget amendment would require the government not to spend more than it receives in revenue and compel lawmakers to carefully consider choices about spending and taxes; by encouraging spending control and discouraging deficit spending, a balanced budget amendment will help put the nation on the path to lasting prosperity; Now therefore, be it

Resolved by the Legislature of Alabama, both Houses thereof concurring, That the Legislature of the State of Alabama hereby respectfully urges the Congress of the United States to propose and submit to the states for ratification a federal balanced budget amendment to the United States Constitution; and be it further

Resolved, That, in the event that Congress does not submit a balanced budget amendment to the states for ratification on or before December 31, 2011, the Alabama Legislature hereby makes application to the United States Congress to call a convention under Article V of the United States Constitution for the specific and exclusive purpose of proposing an amendment to that Constitution requiring that, in the absence of a national emergency (as determined by the positive vote of such members of each house of Congress as the amendment shall require), the total of all federal appropriations made by Congress for any fiscal year not exceed the total of all federal revenue for that fiscal year; and be it further

Resolved, That, unless rescinded by a succeeding Legislature, this application by the Alabama Legislature constitutes a continuing application in accordance with Article V of the United States Constitution until at least two-thirds of the Legislatures of the several states have made application for a convention to provide for a balanced budget; and be it further

Resolved, That, in the event that Congress does not submit a balanced budget amendment to the states for ratification on or before December 31, 2011, the Alabama Legislature hereby requests that the legislatures of each of the several states that compose the United States apply to Congress requesting Congress to call a convention to propose such an amendment to the United States Constitution; and be it further

Resolved, That this application is rescinded in the event that a convention to propose amendments to the United States Constitution includes purposes other than providing for a balanced federal budget; and be it further

Resolved, That the copies of this resolution be provided to the following officials:

1. The President of the United States.
2. The Speaker of the United States House of Representatives.
3. The President of the United States Senate.
4. All members of the Alabama Delegation to Congress with the request that this resolution be officially entered in the Congressional Record as an application to the Congress of the united States of America for a convention to propose an amendment to provide for a federal balanced budget in the

event that Congress does not submit such an amendment to the states for ratification on or before December 31, 2011; and be it further

Resolved, That copies of this resolution be provided to the Secretaries of State and to the presiding officers of the Legislatures of the other states.

ADDITIONAL STATEMENTS

IN MEMORY OF LOST LIVES

Mr. LIEBERMAN. Mr. President, I rise in honor of the innocent lives that were lost in Newtown, CT, on December 14, when a madman murdered 26 students, teachers, and administrators, as well as his own mother. The terrible act of violence that occurred that day has left the whole Nation wounded and shaken. In the wake of this tragedy, Mr. Albert Caswell penned the following poem:

WE NOW SO WEEP

IN MEMORY OF ALL THE LOST LIVES AND THE TRAGEDY AT SANDY HOOK ELEMENTARY SCHOOL

(By Albert Carey Caswell)

We Now So Weep
We . . .
We now so weep . . .
All in our hearts so very deep!
All in this pain to so repeat!
Forever now so to keep!
We now so weep!
And from all of this heartache!
What must we now so take!
And what sense from all of this,
must we now so make?
All so very deep,
deep down inside all of our souls to so create . . .
That there is a battle!
And there is a fight!
That which but so rages on this very night!
Of Good Vs. Evil . . .
Of wrong or so right!
And that hate is hard,
as it makes me weep!
It makes me cry!
When, I so see those tears in your parent's eyes!
And that our moments together upon this earth,
are such so very short ones there so first!
So hold your families close,
and always remember what but means the most!
All in your hearts so very deep!
As all across this nation,
we now so weep . . .
As the tears run down our faces so deep!
At this evil our souls so tries to defeat!
All in these our darkest hours of heartbreak,
which now so beat . . .
As it's for them we now so weep!
And for all of those love ones,
who so lost their most precious daughters and sons . . .
Thy Kingdom Come,
for heaven but lies for each of them!
Their parent's most precious children so to keep!
And for all of those educators,
who were so slain so all in such grief!
Knowing full well,
all of the pain that their loved ones must now so keep!
The kind of pain,
that which only Heaven can bring such relief!
For a child!
Is but the very hope of the world!
So very innocent and so very precious,
oh such beautiful little boys and so girls . . .
With their sweet little smiles unto us as so unfurled . . .
As all around them such happiness so swirls . . .
Touching all of our hearts,
as was their part,
these most precious boys and so girls!
With their little voices and so little curls . . .
And who could so cast out such vile evil upon as so hurled?
Because, a child is but The Brightest of All Lights!
The Brightest of all Bright!
So listen on the wind,
and you will hear this my friend . . .
our Lord crying for all of them!
To take a child's life,
but stands at the very top of evil's darkest of all heights!
With all of their futures so up ahead,
so very shinny and bright!
As it's for all of them,
we now so weep!
And for all of those dedicated teachers,
whose very being was to so nurture our true heart's delights!
Who so heroically towards evil so ran,
''lock the doors, look the doors'',
as she so cried out all in her most courageous fight!
As all of their children are but so now motherless now!
As a young teacher who so hid her children,
to so escape past a door,
as the evil came in she so fooled and so lured . . .
sacrificing herself . . .
All so they could escape,
why now up in heaven she's so adored!
Our children,
are but our most precious of all gifts from above!
For these are our greatest gifts to our world,
of our true loves!
Such shear delights!
As no more joyful Christmas mornings,
will they so see so in sight . . .
Or Hanukkah's,
so surrounded by their families with such smiles so very bright!
Not to grow up to be so very tall!
Not to have children at all . . .
Oh but the sad shame of it all!
No Weddings, No Birthdays, No Proms, or Graduations for one and all!
As a parent's greatest of all nightmares,
has now come to call!
To bury our children,
with tears in eyes to their knees they now fall!
As out across this nation,
we so try to so make sense of it all . . .
But, the answer is so very clear,
as it's as old as time is so here!
It's The Struggle!
It's The Fight!
As out across this great nation . . .
I bid to you to so hold your families close . . .
On this very night!
And remember our love and time together,
but means the most!
And that this battle is not over,
so wrap your hearts all in this clover,
of all of those teachers love and courage so showed!
All in that selfless sacrifice!
Because, the darkness is no match . . .
for the light in our hearts that which evil ignites!
Goodness!
Evil!
Darkness!
Light!
Those brave hearts who evil must fight!
Who bring their light!
As against the darkest of all evils,
as onward we fight!
Rise!
Rise Up To Heaven My Child,
with but tears in your eyes!
As our Lord's Littlest of Angels now so fill the skies!
And do not so worry because in our Lord's arms you now lie!
Mommy!
Daddy!
I'm already in Heaven so don't you so cry!
Up here, there are candy canes to so taste,
and Christmas trains to so ride!
And there are puppies up in heaven,
and the most beautiful of all butterflies . . .
And because you won't ever turn seven it now makes me so cry!
And when their comes a gentle rain,
your tear drops shall wash down upon your parents to so ease their pain . . .
Until, one day up in Heaven you shall all so meet again . . .
And you won't have to cry anymore!
Mothers, Fathers, Sisters, Brothers, Grand Parents and all the others . . .
Somehow!
Someway!
Find the strength on this day!
All in what their short live's so had to say!
And so try!
To so carry them all in your hearts out on your way!
As you so wipe all of those tears from your eyes . . .
And from out of all of this heartache you must so realize,
that your children and your loved ones are Angels now up in Heaven on high!
And isn't that but where we all so wish to wake, so you and I?
Goodness!
Evil!
Darkness!
Light!
Those brave hearts who evil must fight!
Together in enjoined,
as we battle on into the darkest of all nights!
And now we so weep!
Amen!

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. BOXER, from the Committee on Environment and Public Works, with amendments:

S. 847. A bill to amend the Toxic Substances Control Act to ensure that risks from chemicals are adequately understood and managed, and for other purposes (Rept. No. 112–264).

By Mr. AKAKA, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1763. A bill to decrease the incidence of violent crimes against Indian women, to strengthen the capacity of Indian tribes to exercise the sovereign authority of Indian tribes to respond to violent crimes committed against Indian women, and to ensure that perpetrators of violent crimes committed against Indian women are held accountable for that criminal behavior, and for other purposes (Rept. No. 112–265).

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 2251. A bill to designate the United States courthouse located at 709 West 9th Street, Juneau, Alaska, as the Robert Boochever United States Courthouse.

S. 2326. A bill to designate the new United States courthouse in Buffalo, New York, as the ''Robert H. Jackson United States Courthouse''.

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 Mr. BLUMENTHAL:

S. 3710. A bill to amend the Carl D. Perkins Career and Technical Education Act of 2006 to establish a career and technical innovation fund; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BLUMENTHAL (for himself and Mr. FRANKEN):

S. 3711. A bill to provide secondary school students with the opportunity to participate in a high-quality internship program as part of a broader districtwide work-based learning program; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 2620

At the request of Mr. SCHUMER, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2620, a bill to amend title XVIII of the Social Security Act to provide for an extension of the Medicare-dependent hospital (MDH) program and the increased payments under the Medicare low-volume hospital program.

S. 3077

At the request of Mr. PORTMAN, the names of the Senator from South Dakota (Mr. THUNE), the Senator from Maine (Ms. COLLINS), the Senator from Georgia (Mr. ISAKSON), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Arkansas (Mr. BOOZMAN) and the Senator from Tennessee (Mr. CORKER) were added as cosponsors of S. 3077, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the Pro Football Hall of Fame.

S. 3659

At the request of Mr. CONRAD, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 3659, a bill to repeal certain changes to contracts with Medicare Quality Improvement Organizations, and for other purposes.

AMENDMENT NO. 3367

At the request of Mr. MERKLEY, the name of the Senator from Missouri (Mr. BLUNT) was added as a cosponsor of amendment No. 3367 proposed to H.R. 1, a bill making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3435. Mr. MERKLEY (for himself, Mr. LEE, Mr. COONS, Mr. WYDEN, Mr. FRANKEN, Mrs. SHAHEEN, Mr. TESTER, and Mr. DURBIN) proposed an amendment to the bill H.R. 5949, to extend the FISA Amendments Act of 2008 for five years.

SA 3436. Mr. PAUL (for himself and Mr. LEE) proposed an amendment to the bill H.R. 5949, supra.

SA 3437. Mr. LEAHY (for himself, Mr. DURBIN, Mr. FRANKEN, Mrs. SHAHEEN, Mr. AKAKA, and Mr. COONS) proposed an amendment to the bill H.R. 5949, supra.

SA 3438. Mr. WYDEN (for himself, Mr. UDALL of Colorado, Mr. LEE, Mr. DURBIN, Mr. MERKLEY, Mr. UDALL of New Mexico, Mr. BEGICH, Mr. FRANKEN, Mr. WEBB, Mrs. SHAHEEN, Mr. TESTER, Mr. BINGAMAN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 5949, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3435. Mr. MERKLEY (for himself, Mr. LEE, Mr. COONS, Mr. WYDEN, Mr. FRANKEN, Mrs. SHAHEEN, Mr. TESTER, and Mr. DURBIN) proposed an amendment to the bill H.R. 5949, to extend the FISA Amendments Act of 2008 for five years; as follows:

At the appropriate place, insert the following:

SEC. __. DISCLOSURE OF DECISIONS, ORDERS, AND OPINIONS OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) FINDINGS.—Congress finds the following:

(1) Secret law is inconsistent with democratic governance. In order for the rule of law to prevail, the requirements of the law must be publicly discoverable.

(2) The United States Court of Appeals for the Seventh Circuit stated in 1998 that the ''idea of secret laws is repugnant''.

(3) The open publication of laws and directives is a defining characteristic of government of the United States. The first Congress of the United States mandated that every ''law, order, resolution, and vote [shall] be published in at least three of the public newspapers printed within the United States''.

(4) The practice of withholding decisions of the Foreign Intelligence Surveillance Court is at odds with the United States tradition of open publication of law.

(5) The Foreign Intelligence Surveillance Court acknowledges that such Court has issued legally significant interpretations of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) that are not accessible to the public.

(6) The exercise of surveillance authorities under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as interpreted by secret court opinions, potentially implicates the communications of United States persons who are necessarily unaware of such surveillance.

(7) Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861), as amended by section 215 of the USA PATRIOT Act (Public Law 107–56; 115 Stat. 287), authorizes the Federal Bureau of Investigation to require the production of ''any tangible things'' and the extent of such authority, as interpreted by secret court opinions, has been concealed from the knowledge and awareness of the people of the United States.

(8) In 2010, the Department of Justice and the Office of the Director of National Intelligence established a process to review and declassify opinions of the Foreign Intelligence Surveillance Court, but more than two years later no declassifications have been made.

(b) SENSE OF CONGRESS.—It is the sense of Congress that each 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 section 501 or section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861 and 1881a) should be declassified in a manner consistent with the protection of national security, intelligence sources and methods, and other properly classified and sensitive information.

(c) REQUIREMENT FOR DISCLOSURES.—

(1) SECTION 501.—

(A) IN GENERAL.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by adding at the end the following:

''(i) DISCLOSURE OF DECISIONS.—

''(1) DECISION DEFINED.—In this subsection, the term 'decision' means 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 this section.

''(2) REQUIREMENT FOR DISCLOSURE.—Subject to paragraphs (3) and (4), the Attorney General shall declassify and make available to the public—

''(A) each decision that is required to be submitted to committees of Congress under section 601(c), not later than 45 days after such opinion is issued; and

''(B) each decision issued prior to the date of the enactment of the _____ Act that was required to be submitted to committees of Congress under section 601(c), not later than 180 days after such date of enactment.

''(3) UNCLASSIFIED SUMMARIES.—Notwithstanding paragraph (2) and subject to paragraph (4), if the Attorney General makes a determination that a decision may not be declassified and made available in a manner that protects the national security of the United States, including methods or sources related to national security, the Attorney General shall release an unclassified summary of such decision.

''(4) UNCLASSIFIED REPORT.—Notwithstanding paragraphs (2) and (3), if the Attorney General makes a determination that any decision may not be declassified under paragraph (2) and an unclassified summary of such decision may not be made available under paragraph (3), the Attorney General shall make available to the public an unclassified report on the status of the internal deliberations and process regarding the declassification by personnel of Executive branch of such decisions. Such report shall include—

''(A) an estimate of the number of decisions that will be declassified at the end of such deliberations; and

''(B) an estimate of the number of decisions that, through a determination by the Attorney General, shall remain classified to protect the national security of the United States.''.

(2) SECTION 702.—Section 702(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)) is amended by adding at the end the following:

''(4) DISCLOSURE OF DECISIONS.—

''(A) DECISION DEFINED.—In this paragraph, the term 'decision' means 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 this section.

''(B) REQUIREMENT FOR DISCLOSURE.—Subject to subparagraphs (C) and (D), the Attorney General shall declassify and make available to the public—

''(i) each decision that is required to be submitted to committees of Congress under section 601(c), not later than 45 days after such opinion is issued; and

''(ii) each decision issued prior to the date of the enactment of the _____ Act that was required to be submitted to committees of

Congress under section 601(c), not later than 180 days after such date of enactment.

''(C) UNCLASSIFIED SUMMARIES.—Notwithstanding subparagraph (B) and subject to subparagraph (D), if the Attorney General makes a determination that a decision may not be declassified and made available in a manner that protects the national security of the United States, including methods or sources related to national security, the Attorney General shall release an unclassified summary of such decision.

''(D) UNCLASSIFIED REPORT.—Notwithstanding subparagraphs (B) and (C), if the Attorney General makes a determination that any decision may not be declassified under subparagraph (B) and an unclassified summary of such decision may not be made available under subparagraph (C), the Attorney General shall make available to the public an unclassified report on the status of the internal deliberations and process regarding the declassification by personnel of Executive branch of such decisions. Such report shall include—

''(i) an estimate of the number of decisions that will be declassified at the end of such deliberations; and

''(ii) an estimate of the number of decisions that, through a determination by the Attorney General, shall remain classified to protect the national security of the United States.''.

SA 3436. Mr. PAUL (for himself and Mr. LEE) proposed an amendment to the bill H.R. 5949, to extend the FISA Amendments Act of 2008 for five years; as follows:

At the appropriate place, insert the following:

SEC. _____. FOURTH AMENDMENT PRESERVATION AND PROTECTION ACT OF 2012.

(a) SHORT TITLE.—This section may be cited as the ''Fourth Amendment Preservation and Protection Act of 2012''.

(b) FINDINGS.—Congress finds that the right under the Fourth Amendment to the Constitution of the United States of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures is violated when the Federal Government or a State or local government acquires information voluntarily relinquished by a person to another party for a limited business purpose without the express informed consent of the person to the specific request by the Federal Government or a State or local government or a warrant, upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(c) DEFINITION.—In this section, the term ''system of records'' means any group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular associated with the individual.

(d) PROHIBITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Federal Government and a State or local government is prohibited from obtaining or seeking to obtain information relating to an individual or group of individuals held by a third-party in a system of records, and no such information shall be admissible in a criminal prosecution in a court of law.

(2) EXCEPTION.—The Federal Government or a State or local government may obtain, and a court may admit, information relating to an individual held by a third-party in a system of records if—

(A) the individual whose name or identification information the Federal Government or State or local government is using to access the information provides express and informed consent to the search; or

(B) the Federal Government or State or local government obtains a warrant, upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

SA 3437. Mr. LEAHY (for himself, Mr. DURBIN, Mr. FRANKEN, Mrs. SHAHEEN, Mr. AKAKA, and Mr. COONS) proposed an amendment to the bill H.R. 5949, to extend the FISA Amendments Act of 2008 for five years; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''FAA Sunsets Extension Act of 2012''.

SEC. 2. EXTENSION OF FISA AMENDMENTS ACT OF 2008 SUNSET.

(a) EXTENSION.—Section 403(b)(1) of the FISA Amendments Act of 2008 (Public Law 110-261; 50 U.S.C. 1881 note) is amended by striking ''December 31, 2012'' and inserting ''June 1, 2015''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 403(b)(2) of such Act (Public Law 110-261; 122 Stat. 2474) is amended by striking ''December 31, 2012'' and inserting ''June 1, 2015''.

(c) ORDERS IN EFFECT.—Section 404(b)(1) of such Act (Public Law 110-261; 50 U.S.C. 1801 note) is amended in the heading by striking ''DECEMBER 31, 2012'' and inserting ''JUNE 1, 2015''.

SEC. 3. INSPECTOR GENERAL REVIEWS.

(a) AGENCY ASSESSMENTS.—Section 702(l)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)(2)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''authorized to acquire foreign intelligence information under subsection (a)'' and inserting ''with targeting or minimization procedures approved under this section'';

(2) in subparagraph (C), by inserting ''United States persons or'' after ''later determined to be''; and

(3) in subparagraph (D)—

(A) in the matter preceding clause (i), by striking ''such review'' and inserting ''review conducted under this paragraph'';

(B) in clause (ii), by striking ''and'' at the end;

(C) by redesignating clause (iii) as clause (iv); and

(D) by inserting after clause (ii), the following:

''(iii) the Inspector General of the Intelligence Community; and''.

(b) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REVIEW.—Section 702(l) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

''(3) INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY REVIEW.—

''(A) IN GENERAL.—The Inspector General of the Intelligence Community is authorized to review the acquisition, use, and dissemination of information acquired under subsection (a) in order to review compliance with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f), and in order to conduct the review required under subparagraph (B).

''(B) MANDATORY REVIEW.—The Inspector General of the Intelligence Community shall review the procedures and guidelines developed by the intelligence community to implement this section, with respect to the protection of the privacy rights of United States persons, including—

''(i) an evaluation of the limitations outlined in subsection (b), the procedures approved in accordance with subsections (d) and (e), and the guidelines adopted in accordance with subsection (f), with respect to the protection of the privacy rights of United States persons; and

''(ii) an evaluation of the circumstances under which the contents of communications acquired under subsection (a) may be searched in order to review the communications of particular United States persons.

''(C) CONSIDERATION OF OTHER REVIEWS AND ASSESSMENTS.—In conducting a review under subparagraph (B), the Inspector General of the Intelligence Community should take into consideration, to the extent relevant and appropriate, any reviews or assessments that have been completed or are being undertaken under this section.

''(D) REPORT.—Not later than December 31, 2014, the Inspector General of the Intelligence Community shall submit a report regarding the reviews conducted under this paragraph to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) consistent with the Rules of the House of Representatives, the Standing Rules of the Senate, and Senate Resolution 400 of the 94th Congress or any successor Senate resolution—

''(I) the congressional intelligence committees; and

''(II) the Committees on the Judiciary of the House of Representatives and the Senate.

''(E) PUBLIC REPORTING OF FINDINGS AND CONCLUSIONS.—In a manner consistent with the protection of the national security of the United States, and in unclassified form, the Inspector General of the Intelligence Community shall make publicly available a summary of the findings and conclusions of the review conducted under subparagraph (B).''.

SEC. 4. ANNUAL REVIEWS.

Section 702(l)(4)(A) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a(l)(4)(A)), as redesignated by section 3(b)(1), is amended—

(1) in the matter preceding clause (i)—

(A) in the first sentence—

(i) by striking ''conducting an acquisition authorized under subsection (a)'' and inserting ''with targeting or minimization procedures approved under this section''; and

(ii) by striking ''the acquisition'' and inserting ''acquisitions under subsection (a)''; and

(B) in the second sentence, by striking ''The annual review'' and inserting ''As applicable, the annual review''; and

(2) in clause (iii), by inserting ''United States persons or'' after ''later determined to be''.

SA 3438. Mr. WYDEN (for himself, Mr. UDALL of Colorado, Mr. LEE, Mr. DURBIN, Mr. MERKLEY, Mr. UDALL of New Mexico, Mr. BEGICH, Mr. FRANKEN, Mr. WEBB, Mrs. SHAHEEN, Mr. TESTER, Mr. BINGAMAN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 5949, to extend the FISA Amendments Act of 2008 for five years; which was ordered to lie on the table.

At the appropriate place, insert the following:

SEC. _. CLARIFICATION ON PROHIBITION ON SEARCHING OF COLLECTIONS OF COMMUNICATIONS OF UNITED STATES PERSONS.

Section 702 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1881a) is amended—

(1) in subsection (b), by redesignating paragraphs (1) through (5) as subparagraphs (A) through (E), respectively, and indenting such subparagraphs, as so redesignated, an additional two ems from the left margin;

(2) by striking ''An acquisition'' and inserting the following:

''(1) IN GENERAL.—An acquisition''; and

(3) by adding at the end the following:

''(2) CLARIFICATION ON PROHIBITION ON SEARCHING OF COLLECTIONS OF COMMUNICATIONS OF UNITED STATES PERSONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no officer or employee of the United States may conduct a search of a collection of communications acquired under this section in an effort to find communications of a particular United States person (other than a corporation).

''(B) CONCURRENT AUTHORIZATION AND EXCEPTION FOR EMERGENCY SITUATIONS.—Subparagraph (A) does not apply to a search for communications related to a particular United States person if—

''(i) such United States person is the subject of an order or emergency authorization authorizing electronic surveillance or physical search under section 105, 304, 703, 704, or 705, or title 18, United States Code, for the effective period of that order;

''(ii) the entity carrying out the search has a reasonable belief that the life or safety of such United States person is threatened and the information is sought for the purpose of assisting that person; or

''(iii) such United States person has consented to the search.''.

MEASURES CONSIDERED EN BLOC

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Homeland Security and Governmental Affairs Committee be discharged from the following postal naming bills en bloc: H.R. 2338 and H.R. 3892; that the Senate proceed to their consideration and the consideration of the following bills, en bloc, which were received from the House and are at the desk: H.R., 3869, H.R. 4389, H.R. 6260, H.R. 6379, and H.R. 6587.

There being no objection, the Senate proceeded to consider the bills en bloc.

Mr. SCHUMER. I ask unanimous consent that the bills be read a third time and passed en bloc; the motions to reconsider be laid upon the table en bloc, with no intervening action or debate; and that any related statements be printed in the RECORD.

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

The bill (H.R. 2338) to designate the facility of the United States Postal Service located at 600 Florida Avenue in Cocoa, Florida, as the ''Harry T. and Harriette Moore Post Office,'' the bill (H.R. 3892) to designate the facility of the United States Postal Service located at 8771 Auburn Folsom Road in Roseville, California, as the ''Lance Corporal Victor A. Dew Post Office,'' the bill (H.R. 3869) to designate the facility of the United States Postal Service located at 600 East Capitol Avenue in Little Rock, Arkansas, as the ''Sidney 'Sid' Sanders McMath Post Office Building,'' the bill (H.R. 4389) to designate the facility of the United States Postal Service located at 19 East Merced Street in Fowler, California, as the ''Cecil E. Bolt Post Office,'' the bill (H.R. 6260) to designate the facility of the United States Postal Service located at 211 Hope Street in Mountain View, California, as the ''Lieutenant Kenneth M. Ballard Memorial Post Office,'' the bill (H.R. 6379) to designate the facility of the United States Postal Service located at 6239 Savannah Highway in Ravenel, South Carolina, as the ''Representative Curtis B. Inabinett, Sr. Post Office,'' and the bill (H.R. 6587) to designate the facility of the United States Postal Service located at 225 Simi Village Drive in Simi Valley, California, as the ''Postal Inspector Terry Asbury Post Office Building,'' were ordered to a third reading, were read the third time, and passed.

KAY BAILEY HUTCHISON SPOUSAL IRA

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Committee on Finance be discharged from further consideration of S. 3667 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3667) to rename section 219(c) of the Internal Revenue Code of 1986 as the KAY BAILEY HUTCHISON Spousal IRA.

There being no objection, the Senate proceeded to consider the bill.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

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

The bill (S. 3667) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3667

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. KAY BAILEY HUTCHISON SPOUSAL IRA.

The heading of subsection (c) of section 219 of the Internal Revenue Code of 1986 is amended by striking ''SPECIAL RULES FOR CERTAIN MARRIED INDIVIDUALS'' AND INSERTING ''KAY BAILEY HUTCHISON SPOUSAL IRA''.

ORDERS FOR FRIDAY, DECEMBER 28, 2012

Mr. SCHUMER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m. on Friday, December 28, 2012; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders be reserved for their use later in the day; that following any leader remarks, the Senate resume consideration of H.R. 5949, the FISA bill, under the previous order; and that following the disposition of H.R. 5949, the Senate resume consideration of H.R. 1, the legislative vehicle for the emergency supplemental appropriations bill, under the previous order; and further, that the Senate recess from 12:30 p.m. until 2:15 p.m. to allow for caucus meetings.

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

PROGRAM

Mr. SCHUMER. Mr. President, the first vote tomorrow will be at approximately 9:45 a.m. There will be several rollcall votes beginning at that time in order to complete action on the FISA bill and on the supplemental bill. Additional rollcall votes in relation to executive nominations are possible as well.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. SCHUMER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 8:47 p.m., adjourned until Friday, December 28, 2012, at 9 a.m.