PERSONAL EXPLANTION

Mr. ORTIZ. Mr. Speaker, I was unable to vote during the following rollcall votes. Had I been present I would have voted as indicated below. Rollcall vote No. 401—"no"; rollcall vote No. 402—"no."

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3199.

The SPEAKER pro tempore (Mr. ADERHOLT). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005

The SPEAKER pro tempore. Pursuant to House Resolution 369 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3199.

The Chair designates the gentleman from Florida (Mr. PUTNAM) as chairman of the Committee of the Whole, and requests the gentleman from Oregon (Mr. WALDEN) to assume the chair temporarily.

□ 1220

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3199) to extend and modify authorities needed to combat terrorism, and for other purposes, with Mr. WALDEN of Oregon (Acting Chairman) in the chair.

The Clerk read the title of the bill.

The Acting CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

General debate shall not exceed 2 hours, with 1 hour and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes and the gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN) each will control 15 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume, and I rise in strong support of H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005.

Mr. Chairman, the attacks of September 11, 2001, tragically affirmed the urgency of updating America's laws to address the clear and present danger presented by international terrorism. On that day, foreign terrorists maliciously and without provocation attacked the United States, murdered thousands of our citizens, and destroyed symbols of our freedom in a failed effort to break the spirit and resolve of the American people.

We must also recall that these terrorists exploited historic divisions between America's law enforcement and intelligence communities that had limited the dissemination of vital and timely information and increased America's vulnerability to terrorist attack.

In the wake of the 9/11 atrocities, broad bipartisan majorities in both Houses of Congress passed the PATRIOT Act that lowered the wall that prohibited our law enforcement and intelligence communities from effectively sharing information, and to enhance investigatory tools necessary to assess, detect, and prevent future terrorist attacks. U.S. law enforcement and intelligence authorities have utilized the expanded information sharing provisions contained in the PATRIOT Act to gain critical knowledge of the attentions of foreign-based terrorists before they occur, while preempting gathering terrorist threats at home.

While the PATRIOT Act and other anti-terrorism initiatives have helped avert additional attacks on our soil, that threat has not receded. Exactly 2 weeks ago, innocent citizens in London were murdered in a series of ruthlessly coordinated attacks. Earlier today, it appears, the London subway system came under renewed attack. Last year, the Madrid bombings brought unprecedented terror to the people of Spain, and ongoing terrorist operations around the globe demonstrate the imperative for continued vigilance.

When the House Committee on the Judiciary reported the PATRIOT Act in October 2001, I pledged to rigorously examine its implementation and the conduct of the war against terrorism. In my words and in my actions as committee Chair, I have maintained this commitment and emphasized the importance of better protecting our citizenry from terrorist attack while, at the same time preserving the values and liberties that distinguish us as Americans. The legislation we consider today reflects this careful balance.

H.R. 3199 is based upon 4 years of comprehensive bipartisan oversight consisting of hearing testimony, Inspector General reports, briefings, and oversight letters. Since April of this year alone, the committee has received testimony from 35 witnesses during 12 hearings on the PATRIOT Act. This extensive hearing and oversight record has demonstrated that the PATRIOT Act has been an effective tool against terrorists and other criminals. Of no less importance, and notwithstanding the vague and general suspicion expressed by some of its detractors, the record shows that there is no evidence whatsoever that the PATRIOT Act has been abused to violate Americans' civil liberties. None whatsoever.

To further allay concerns expressed by some, this bill makes important revisions to section 215 of the PATRIOT Act, which pertains to business records obtained through the Foreign Intelligence Surveillance Act, or FISA. I would note that section 215 is probably the most misunderstood and deliberately misrepresented provision of the PATRIOT Act. H.R. 3199 clarifies that the information likely to be obtained through a FISA warrant must relate to foreign intelligence information not concerning a U.S. person, or must be information pertaining to an ongoing international terrorism investigation or clandestine intelligence activities. The legislation also explicitly clarifies that a section 215 order will issue only "if the judge finds that the requirements have been met," and provides a judicial review process to authorize the court to set aside a section 215 order that has been challenged. Contrary to the unfounded allegations of some, there is no evidence that a single section 215 order has been served on any library since the PATRIOT Act was passed in October of 2001.

The Committee on the Judiciary last week conducted a nearly 12-hour markup of this legislation, at which 43 amendments were offered and debated. The reported version of this legislation extends for 10 years the sunset on sections 206 and 215 of the PATRIOT Act.

Section 206 pertains to roving wiretaps under FISA. This crucial provision updates the law to reflect contemporary communications technology by making a suspected terrorist, rather than a communications device, the proper target of a wiretap. This sunset provision was approved by the committee by an overwhelming bipartisan vote of 26 to 2. However, while the legislation sets expiration dates on certain provisions of the PATRIOT Act, congressional oversight of the entire PATRIOT Act must be perpetual.

Let me conclude with the following point: For too long opponents of the PATRIOT Act have transformed it into a grossly distorted caricature that bears no relationship whatsoever to the legislation itself. The PATRIOT Act has been misused by some as a springboard to launch limitless allegations that are not only unsubstantiated but are false and irresponsible. Our constituents expect and deserve substantive consideration of this vital issue, and I hope that today's debate reflects the bipartisan seriousness that this issue demands.

Mr. Chairman, the security of the American people is the most solemn responsibility of all entrusted to the Congress. Passage of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 is vital to maintaining the post-9/11 law enforcement intelligence reforms that have reduced America's vulnerability to terrorist attack. We must never return to the pre-

9/11 mindset that ignores the painful lessons of that day as well as the tragic experiences of our friends and allies.

I would urge my colleagues on both sides of the aisle to support this vital legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Ladies and gentlemen of the House, let me say from the outset that every Member of this body wants to make sure that law enforcement officials have the tools they need to protect the American people from terrorism. I also know that all of us want to make sure that we protect our civil liberties and freedoms as we fight terrorists anywhere in the world and in this country as well.

□ 1230

I support the majority of the 166 provisions of the PATRIOT Act. In fact, in the first original PATRIOT Act, I helped write many of them in a version of the bill that passed the Committee on the Judiciary 36–0, but a bill we never saw after it left the Committee on the Judiciary. It was replaced in the middle of the night in the Committee on Rules.

I did it, I wrote the provisions because I believe as technology changes, our laws need to keep up and change as well. I believe our law enforcement officials need to be able to talk with one another and connect the dots to prevent terrorist attacks.

In some sense this is not really about the PATRIOT Act, the debate that is going on here, or even most of the 16 provisions scheduled to sunset this year. It is about four areas that are subject to abuse and need greater checks and balances, and I would like to suggest what they are.

First, the business records, 215, allows the FBI to obtain any record considered relevant to an investigation. This includes library books, medical records, and bookstore purchases. The provision has been difficult to oversee since targets of FBI investigations under the law are not permitted to tell anybody about it, even their lawyer. The Department of Justice and the chairman of the Committee on the Judiciary say that this provision has never been used on libraries and bookstores. However, the American Library Association has reported that more than 200 requests for library records have been made since September 11.

Now, concerning national security letters, the second very serious issue here, which allows the FBI to obtain financial, telephone, Internet and other records relevant to any intelligence investigation without judicial approval. Again, this is for any intelligence investigation, which means it does not even have to deal with terrorism, or even a crime. Like section 215, recipients are forever prevented from telling anyone they received a letter under penalty of law. Thank goodness a New York Federal court struck down this provision as unconstitutional. Shame on an administration that keeps using it anyway.

Third, under section 213, the government can sneak and peek into your business, your office, your car, your home, anywhere, even if there is no emergency. This means the government can break into your home and search it without telling you. It was not in the bill originally reported by the Committee on the Judiciary and was slipped in by the Department of Justice or the administration when the bill was first written a few years back. This provision has been subject to exceedingly widespread abuse. It has been used more than 240 times, and it has been delayed sometimes for over a year before anybody can be told what happened, that they were broken into, they were burglarized, they had things taken out of their home.

Worse yet, only 10 percent of these uses had anything to do with terrorism, which is the whole purpose of the PATRIOT Act.

Finally, it is clear to me that we need to have additional sunsets in this legislation. What is wrong with sunsets? That is why we are here, because the bill is being sunsetted in more than a dozen ways. If we have learned anything over the last 4 years, the only thing that makes the administration give us any information on oversight on the use of these new powers was the sunset provision.

We have also learned of abuses during our oversight that has led to us making modifications. Given this history, it simply makes no sense to make these provisions permanent or near permanent. And 10 years is not a sunset; 10 years is semi-permanent.

The lessons of September 11 and London, and even today in London, are that if we allow law enforcement to do their work free of political interference, give them adequate resources and modern technologies, we can protect our citizens without intruding on our liberties.

We all fight terrorism, but we need to fight it the right way consistent with our Constitution and in a manner that serves as a model for the rest of the world. I believe that the committee-passed legislation that is on the floor right now does not meet that test. As such, it does not warrant passage until it is corrected.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I strongly support the USA PATRIOT Act of 2005. The continued threat of a terrorist attack in the United States and this month's terrorist attacks in London remind us of the need to prevent, investigate, and prosecute all terrorist acts.

The PATRIOT Act was a long-overdue measure that enhanced our ability to collect crucial intelligence information on the global terrorist network. It passed by a margin of 98–1 in the Senate and by a margin of 357–66 in the House.

Even the American Civil Liberties Union last April said, ''Most of the voluminous PATRIOT Act is actually unobjectionable from a civil liberties point of view. The law makes important changes that give law enforcement agents the tools they need to protect against terrorist attacks.''

Many of the tools of the act provided to law enforcement officials have been used for decades to fight organized crime and drug dealers. They have been reviewed and approved by the courts and found constitutional. For instance, prior to the PATRIOT Act, the FBI could get a wiretap to investigate the Mafia, but they could not get one to investigate terrorists. Well, what is good for the Mob should be good for terrorists.

America is a safer country today than before September 11 because of the PATRIOT Act. Giving the Department of Justice, the Central Intelligence Agency, and the FBI information-sharing powers enabled law enforcement officials to disrupt terrorist cells in New York, Oregon, Florida, and Virginia. Since September 11, 2001, over 200 people charged with crimes stemming from international terrorist investigations have been convicted or have pled guilty. The PATRIOT Act helped also investigate and apprehend an individual who in Texas threatened to attack a mosque.

Mr. Chairman, our success in preventing another attack on the American homeland would have been much less likely without the PATRIOT Act. Law enforcement and intelligence agencies must continue to have the powers they need to protect all Americans.

Mr. CONYERS. Mr. Chairman, I yield 4½ minutes to the gentleman from Virginia (Mr. BOUCHER), a distinguished member of the Committee on the Judiciary.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Chairman, I thank the gentleman for yielding me this time and commend him on his previous eloquent statement.

I rise this afternoon in opposition to this measure which would perpetuate the invasions of civil liberties that are embedded within the 4-year-old PATRIOT Act. I have deep concerns about many provisions of the original law, such as the use of the appropriately named sneak-and-peek warrants that allow secret searches of homes with delayed notification to the homeowner that a search has occurred. The secret search can be in almost any kind of investigation, and the notification to the

person whose premises are searched can be delayed almost indefinitely.

But I am going to focus my remarks this afternoon on the two provisions of the original law which I think cause the deepest civil liberties invasion and which the measure before us does not, in my opinion, appropriately reform.

In my view, the single most troubling provision confers on law enforcement the ability to use so-called national security letters. No prior review by a court is required. The FBI can issue a national security letter and then demand records from a business or from another record custodian. There is no requirement that the object of the search be an agent of a foreign power. The only requirement is that the seizure be relevant to a terrorism investigation, but there is no procedure by which a court would make that finding of relevance before the seizure occurs. Frankly, there is no meaningful way through the use of this provision to ensure that privacy and fundamental civil liberties are protected. It is the unilateral ability of law enforcement to issue these letters and seize records without prior court review that I find to be the most troubling.

I would note that one Federal court has found the section 505 national security letter provisions to be an abridgement of both the first and the fourth amendments to the U.S. Constitution. The bill before us does nothing to address this egregious provision or limit its use in any way.

Secondly, I strongly oppose the PATRIOT Act's grant to law enforcement of the ability to go to the Foreign Intelligence Surveillance Court and obtain an order permitting the seizure of library, bookstore, bank, or medical records of a person who is not even the subject of an investigation. Moreover, the library or other institution is barred from telling its customer that his records have been seized. All law enforcement has to do is say to the court that there is a reasonable expectation that foreign intelligence about a non-U.S. person will be obtained or that the information is relevant to an ongoing investigation and the records can be seized. Virtually anyone could have their records seized. You could be sitting in a concert near someone who is a suspected foreign agent, and potentially your records could be seized. You would never learn that seizure has occurred.

While the custodian of the records could challenge the seizure, the library, the hospital, the bookstore, or the bank in possession of those records has a lot less incentive to spend resources hiring a lawyer in order to resist the seizure than would the person whose records are about to be seized; but that person, the real party of interest, never knows that the seizure is about to occur.

The House recently voted by a margin of 238–187 to bar enforcement of this overly broad provision, but the bill before us with minor changes perpetuates it and, I think, in an inappropriate way.

Mr. Chairman, there is no need to short-circuit our normal processes that are designed to protect privacy and protect civil liberties. Law enforcement could go before a court and present evidence of probable cause that a crime has been committed, and by that showing obtain the records that it needs in both of these situations. These powers conferred by the original PATRIOT Act under sections 505 and 515 are designed primarily for the convenience of law enforcement, but mere convenience should not be a reason for a deep abridgement of privacy and individual rights.

The protection of our freedoms does not require surrender of our long-held civil liberties. For these reasons, I oppose the measure before us, and I urge others to do so.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute.

The gentleman from Virginia (Mr. BOUCHER) is sincere in his opposition to this bill, and I respect that. However, neither the national security letter scheme nor the delayed notification scheme were authorized for the first time by the PATRIOT Act. That was legislation that was in place prior to October 2001 when the original PATRIOT Act was passed and signed into law by the President.

What the PATRIOT Act did in both national security letters as well as in delayed notification warrants was simply to extend to anti-terrorism investigations authorities that already existed and up until that time had been found constitutional in investigations such as Mafia investigations, racketeering investigations, and drug-trafficking investigations.

□ 1245

So these complaints were not caused by the PATRIOT Act. They were caused by existing legislation, and we should deal with that, not in the context of this bill but elsewhere.

Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Chairman, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Chairman, I will reiterate what has been previously said this date about the PATRIOT Act, and I do so for emphasis.

The first point I want to emphasize is the assurance that the House Committee on the Judiciary and the Crime, Terrorism, and Homeland Security Subcommittee did not give the PATRIOT Act a mere wink and a nod. We, in fact, hosted 12 public hearings; three before the full committee, nine before our subcommittee. It was exhaustive, it was deliberate, it was thorough. So this matter was not accelerated and rushed through by any means, as some people seem to believe.

I mentioned during the rule debate earlier, Mr. Chairman, about a constituent of mine who complained about the PATRIOT Act but he had no specifics. He said he had heard it was bad, but he could give me no specifics where in any way civil liberties had been compromised or abused.

There has been some talk about sunsetting provisions of the act; 216 and 206 will, in fact, be sunsetted. But in these two instances, Mr. Chairman, there was no evidence of abuse or any violation at all, but these two were sunsetted because, among the other sections in the act, these two seemed to attract most of the controversy. So these are the two that stood out controversially but, I reiterate, still no evidence of abuse.

I think we in the Committee on the Judiciary have done a thorough job of exhausting and deliberating a very, very important act, and I believe that one reason why we have not been attacked subsequently from 9/11 is because of the presence of the PATRIOT Act. We expanded the provisions under which law enforcement and public safety officers must operate and must stay within, and as a result we are better for it.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from New York (Mr. NADLER), who has headed the Constitution Subcommittee.

Mr. NADLER. Mr. Chairman, war has been declared on this country by the Islamic terrorists, and we must protect the citizens of this country. The PATRIOT Act was an attempt in some respects to do this.

But before commenting on the specifics of the PATRIOT Act, I would be derelict if I did not mention that the majority party in this House and the Bush administration have really been derelict by not dealing more directly with the threats that we face. The biggest threats we face are sabotage, bombings in our mass transit systems, sabotage of our chemical farms, our nuclear plants that could kill thousands of people, yet we do not see funds to deal with this.

It is easy to be demagogic. The Bush administration does not want to throw money at the problem; they want to throw rhetoric at the problem. So we have the PATRIOT Act. I wish we had real measures to protect our mass transit systems, to protect our vulnerable infrastructure, to protect us against what happened in London again this morning.

The PATRIOT Act was an attempt to do several things, some of which were very necessary. Breaking down the wall between intelligence and police information was very necessary and was in the PATRIOT Act and is not before us today because most of the PATRIOT Act is not before us today. Most of the PATRIOT Act is permanentized. It is permanent law. But when we are expanding police powers and when we are expanding surveillance powers, the power of government to pry into the private affairs, the books, the records, the medical histories of individual citizens, sometimes it may be necessary

for security to do so. But it endangers liberty, and that has to be balanced. We should always be nervous about expanding police and surveillance powers, and that is one of the greatest weaknesses of this bill.

We were only able to pass the PATRIOT Act 4 years ago because most, not all but most of the sections of the PATRIOT Act that expanded the powers of the police to pry into the privacy of ordinary Americans, to go into their home, into their papers, into their Internet records, their telephone records, their bank records, were sunsetted.

So what? What is the point of sunsetting? It means that every 4 years at least Congress has to look at that again, has to revisit it, has to have oversight and determine whether those powers are being abused. Mr. SENSENBRENNER says they are not being abused. He knows. The Justice Department said so. They said, We are not abusing it. Glad to hear it. But every 4 years we should have to look into it and ask are these powers being abused? Should it be fine tuned? Should they be narrowed? Have we made the right balance between security and liberty?

This bill eliminates those sunsets, except for two, which it makes 10-year sunsets.

We have had 4 years since the PATRIOT Act was enacted. We did not do any oversight in this House until 6 months ago. Why? Because of the sunset. If it had not been for the sunsetting, we would not have had the oversight. We must have that oversight and we should have had all of these things sunsetted, continued another 4 years, another 4 years.

Secondly, Members have heard about section 215. The powers granted in section 215 of the PATRIOT Act, which is hardly modified by this bill, to look into anybody's library and medical records in secret and not tell anybody that they have done so, not tell the person whose records are pried into is a very disturbing invasion of liberty, and amendments to limit it were not made in order. Section 505 of the bill, which enables any FBI agent, any FBI field office director, to issue a national security letter to let them go and see their Internet records, their phone records, and so forth without even going to a judge and telling them it is relevant to a national security investigation is wrong, and it was declared unconstitutional by a federal court. The amendments to make this constitutional, to say that they have to at least allow for judicial review and to sunset the gag order were not made in order.

The CHAIRMAN. The gentleman's time has expired.

Mr. NADLER. This should be defeated for those reasons because it is not a proper balance between security and liberty.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Members are reminded to heed the gavel.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time.

This is an important day for us today, not just because of the explosions that have taken place in London today or those that took place several weeks ago, but rather because of 9/11 and our response to that wake-up call of the war on terrorism.

The Preamble to the United States Constitution posits that both the provision for the common defense and the need to secure the blessings of liberty are central to the constitutional order.

Freedom presumes security. The converse is equally true. In the delicate balance of these important interests. Our concern for liberty must not discount the consequences of a failure to keep Americans secure from another terrorist attack. While it is important to avoid hyperbole on such a serious matter, the very nature of American life and the traditional regard for liberty could itself be threatened. It is, therefore, imperative that principles that we take an oath to uphold not be reduced to empty platitudes. Rather, they must be applied to the facts which confront us in the war on terrorism.

The 12 oversight hearings conducted by the Committee on the Judiciary produced no evidence of abuse relating to the act itself. I hope other Members have taken the time to go to the Permanent Select Committee on Intelligence, as I have, to review the documents that are filed pursuant to the PATRIOT Act by the Justice Department, to see for themselves whether or not they have found any evidence of abuse. I did that. Those are available to any Member who wants to go over there as long as they make arrangements. And I keep hearing time and time again that, even though the Justice Department has not found any abuses, they are out there. It reminds me of those people who used to find communists under every bed: We know they are out there, we know they are there somewhere.

And I have heard on the floor people reciting: Well, the IG for the Justice Department has not found them, we have not found them, but we know they are there. Certainly our debate should be above that.

The provisions contained in the chairman's bill and the amendments adopted by the Committee on the Judiciary provide additional protections against any possible abuse in the future. The sunset of section 206 dealing with roving wiretaps and section 215, which has been referred to, was adopted by the full committee. The bill specifically requires that the government meet a relevant standard when applying for a court order for records of U.S. citizens under 215. Remember, it is an application to a court for an order. We have put in the statute the relevant standard, which was the practice we were told, but people wanted more. We have put that in there.

The chairman's bill, coupled with an amendment adopted by the full committee, explicitly provides that the subject of a court order under section 215 would have the right to consult with an attorney with respect to the order. The amendment at committee clarified that a recipient of such an order could disclose this information not only to comply with the order but to challenge it.

On these and other parts of this bill, we have done the work in the committee to deal with the problems that have been suggested.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to the gentleman from California (Mr. DANIEL E. LUNGREN), I am preparing a list of 10 instances of where there have been abuses that have been reported.

ABUSES OF THE USA PATRIOT ACT

(Prepared by the House Judiciary Democratic Staff)

While some have suggested that no abuses have occurred under the USA PATRIOT Act, the simple truth is that it appears that abuses have indeed occurred. The following are examples:

SECTION 215, SEIZURE OF RECORDS OR ''ANY TANGIBLE THING''

Since 9/11, the American Library Association found that libraries have received over 200 formal and informal requests for materials, including 49 requests from federal officers.

SECTION 218, COORDINATING CRIMINAL AND INTELLIGENCE INVESTIGATIONS

Abuse in the Brandon Mayfield case: The FBI used Section 218 to secretly break into his house, download the contents of four computer drives, take DNA evidence and take 355 digital photographs. Though the FBI admits Mr. Mayfield is innocent, they still will not divulge the secret court order to him, or allow him to defend himself in court. It is unclear how the search was for any reason but to find evidence incriminating Mr. Mayfield.

SECTION 805, MATERIAL SUPPORT FOR TERRORISM

Section 805 has been found UNCONSTITUTIONAL by three separate courts. The 9th Circuit found the provision prohibiting ''personnel'' and ''training'' was overly vague. The Central California District Court found the provisions prohibiting ''expert advice and assistance'' was overly vague. A New York District Court found the provisions prohibiting ''personnel'' and acting as a ''quasi-employee'' overly vague. In each instance, the courts found COMPLETELY LEGAL ACTIVITIES would violate Section 805.

Abuse in Lynne Stewart case: A District Court threw out charges of materials support against Lynne Stewart, holding that the law makes ANY action by a lawyer in support of an alleged foreign terrorist client illegal, including providing legal advice.

Abuse in Sami Al-Hussayen case: A federal jury in Idaho acquitted University of Idaho graduate student Al-Hussayen on all charges of providing material support for a terrorist organization by running a website for the Islamic Assembly of North America. Importantly, this group is NOT on the list of foreign terrorist organizations, and the links

posted by Al-Hussayen were available on the GOVERNMENT'S own website.

SECTION 213, ''SNEAK AND PEEK'' SEARCHES

In a July 5, 2005 letter to Rep. Bobby Scott, DOJ said Section 213 had been used 153 times as of 1/31/2005; ONLY EIGHTEEN (11.8%) uses involved terrorism investigations. Thus, ALMOST 90% of ''sneak and peek'' warrants were used in ordinary criminal investigations: 97 warrants were used in drug investigations and 38 were used in other criminal investigations.

Abuse of delays: In April 2005, DOJ said 90-day delays are common, and that delays in notification have lasted for as long as 180 days. In May 2003, DOJ said its longest delay was 90 days.

Abuse of delays for ''unspecified times'': Delays may be sought for an unspecified duration, including until the end of the investigation. In one such case, the delay lasted 406 DAYS.

Abuse of delay extensions: In May 2003, DOJ reported it had asked for 248 delay notification extensions, including multiple extension requests for a single warrant, and that the courts had granted EVERY SINGLE REQUEST.

Abuse of ''catch-all provision'': In an April 4, 2005 letter to Chairman Sensenbrenner, DOJ reports 92 out of 108 (85%) sneak and peek warrants were justified because notification would ''seriously jeopardize the investigation'' and in 28 instances that was the sole ground for delaying notice.

SECTION 505, NATIONAL SECURITY LETTERS

Section 505 has been found UNCONSTITUTIONAL. The Southern District of New York held Section 505 violated the 1st and 4th Amendments. Section 505 places a prior restraint on free speech with its gag order, and it prevents due process by barring the recipient's access to the courts. Specifically, an Internet Service Provider was unconstitutionally coerced to divulge information about e-mail activity and web surfing on its system, and the ISP was then gagged from disclosing this abuse to the public.

SECTION 411, REVOCATION OF VISAS

Abuse in Tariq Ramadan case: Professor Ramadan's visa to teach at Notre Dame was revoked upon charges that he supported terrorism; Notre Dame, Scotland Yard, and Swiss intelligence all agree the charges were groundless.

Abuse in Dora Maria Tellez case: Nicaraguan Professor Tellez was denied her visa to teach at Harvard due to her association with the Sandinistas in the 1980s, where she helped to overthrow a brutal dictator whom the U.S. supported.

PROTECTION MASS TRANSIT

Oddly, New York law enforcement has begun using the provision of the PATRIOT Act that protects against attacks on mass transit to forcefully kick homeless persons out of the New York train stations.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT), a subcommittee ranking member.

Mr. SCOTT of Virginia. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, we live in a democracy where we respect checks and balances. The PATRIOT Act is part of a pattern of lacking checks and balances. Military tribunals, not part of the PATRIOT Act but part of a pattern of reduced checks and balances. Military tribunals were presented with no public trials, no presumption of innocence, no guilt beyond a reasonable doubt. Secret evidence could be used, no judicial review.

Part of that pattern is the enemy combatant where the administration designates someone as an enemy combatant, can arrest them and hold them indefinitely without charges, never having an opportunity to contest the allegations.

We have seen material witnesses, people arrested under the material witness laws, held indefinitely, no charges.

That is the context that we are considering the PATRIOT Act. Those are not in the PATRIOT Act, but we are considering the PATRIOT Act in that context.

We considered a bill on the same day of the second bombing in Great Britain with no money for port security, no money to secure our rails or bus transportation, no money for first responders.

Mr. Chairman, I oppose this bill, frankly not so much for what is in the bill but for what is not in the bill, what we are not going to do today. We can have plenty of privacy without threatening security, and we missed an opportunity to require standards for wiretaps and ''sneak and peak'' searches. We missed an opportunity to require probable cause of a crime before invading people's privacy. We missed the opportunity to limit these provisions and extraordinary powers to terrorism.

Ninety percent of the ''sneak and peak'' searches have nothing to do with terrorism. Remember that when the government invades one's privacy, it is not robots and computers; it is government employees who may be neighbors looking at one's medical records, listening to their private conversations, sneaking and peaking into their homes without their knowledge or consent. The PATRIOT Act gives broad expansive powers to government agents to invade privacy.

The major check on any abuse in the act has been the sunset provisions. Provisions will expire if they are abused. During our deliberations, we got a lot of cooperation on those provisions that are sunsetting. When asked information on those, we got the information. Some of it came in right before the hearing, but because of the sunset we got a lot of cooperation. Because of the sunset we found no abuses in the libraries. That is because of the sunset. Although government agencies have gone to at least 200 libraries for information, that has not been abused because they know if they abused it they would lose the benefit of that provision.

□ 1300

Medical records have not been abused. There has not been any unnecessary sharing of sensitive information of a personal nature. We have not run criminal investigations without probable cause using the provisions of the PATRIOT Act. They could have, because of the broad discretion in the bill, but they did not, because of the sunset.

Without the sunset provision, the abuse could take place. Fourteen of the 16 sunset provisions are removed, and the two that are left, 10-year sunsets, which will get us through this administration, clean through the next Presidential term and most of the way through the next.

Mr. Chairman, we need to defeat this bill, go back to the Committee on the Judiciary and establish a much better piece of legislation that will protect our privacy and ensure our safety.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Florida (Mr. FEENEY).

Mr. FEENEY. Mr. Chairman, I thank the distinguished chairman for yielding me time.

Mr. Chairman, I note that since the 9/11 attacks, in part we all know due to the PATRIOT Act, there have been no new attacks on America. I also think Americans ought to know there is a bookstore in London, in the Leeds section, called the Iqra Bookstore; and among the books that Iqra Learning Center sells are extremist Muslim materials. We now believe that three out of four of the terrorists that attacked London 2 weeks ago and killed 56 people visited frequently this bookstore. If the British authorities had known about the possible link and had a 215 clause, the main clause being attacked by the opponents of the PATRIOT Act, perhaps there would be 56 people alive today.

So all the scare tactics can be done away with, all the hysterical allegations. Every American needs to know that this 215, which has been referred to as the library provision, nowhere mentions libraries. But what 215 does do is say a Federal judge must make findings before any warrant would ever be issued. This can only affect non-Americans in the first place, or Americans would only be affected if there is an ongoing terrorism or intelligence investigation.

Mr. Chairman, every American needs to know that unless there is an ongoing terror or intelligence investigation, unless a judge makes a decision, no American can ever be affected.

To the extent that we want to create safe harbors, either in bookstores or libraries or anywhere else by eliminating 215, we ought to be candid with Americans. We ought to be candid about the fact that we expect and are going to sit back as London-type bombings take place on our subways and bus systems.

We may not be able to prevent the next attack, but as long as Americans' liberties are protected by a judge ahead of time, as long as this is a reasonable provision affecting only non-Americans or during an intelligence or ongoing terrorism investigation, it is absolutely appropriate. I would not be doing my duty as a Congressman to not fight for 215 to be reenacted. We have added some protections. Everybody

who receives one of these warrants is guaranteed to see a lawyer, and, if they want to, challenge the warrant.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a distinguished member of the Committee on the Judiciary.

Ms. ZOE LOFGREN of California. Mr. Chairman, after 9/11, I worked on the drafting of the PATRIOT Act in the committee and in the weekend drafting session, and I voted for the act on the floor. I think it is important to know that most of what is in the PATRIOT Act is not actually before us today. It is only the 16 provisions that are so-called sunsetted, which means that we need to review them and renew them, that are actually before the House today.

First and foremost, as the Justice Department said in their letter to me today, the most important thing in the PATRIOT Act is to help remove the legal barriers that prevented law enforcement and intelligence officers from sharing information so they could, so-called, ''connect the dots.'' That is important. There are other important things in the act.

I think it is worth noting that there are some things that disturb Americans that are happening in the United States relative to the arrest of American citizens and the holding of American citizens without charge, without access to counsel; but they have nothing whatsoever to do with the PATRIOT Act. They are not in the PATRIOT Act, no matter how concerned we might be about them.

I believe, however, that even though there are important components to the PATRIOT Act, there are some things that deserve more attention and more fine-tuning than they have received in this bill.

For example, section 505 of the act grants law enforcement the authority to issue national security letters, which are essentially administrative subpoenas, for all sorts of personal records about anyone without judicial oversight. These records include telephone and Internet records, financial documents and consumer records.

In addition, we enhanced this section in subsequent legislation to ensure that even more records could be subpoenaed from travel agencies, pawn brokers, casinos, car dealers and more; but all of this is without oversight of a court.

Prior to the act, national security letters could only be used to get records when there was reason to believe that the subject of the record was an agent of a foreign power. Not only did the PATRIOT Act remove the requirement that the subject of the record is a foreign power; it lowered the standard by which those records could be obtained to the relevancy standard.

We have not had meaningful oversight, in my opinion, on this provision of the act. Assuming that law enforcement does need the ability to get some of these records, and I do not dispute that, we do need to have some standards in place. As has been mentioned by the gentleman from Virginia (Mr. BOUCHER), one court has already struck down this section of the act as violative of the Constitution.

We know from our inquiry to the Justice Department that this provision has been used hundreds of times. We got six pages back of redacted records, but we really do not know the full impact; and we need to know more than we do today before we allow this sweeping tool to be renewed.

I also want to mention section 215 of the act. I believe that it may be important to obtain certain records, as has been outlined. But, again, we need to have a standard that is beyond relevancy.

So the question here really is about balance. We need to prevent terrorism, we all agree on that; but we also need to protect and defend the Constitution that has served us so well. So I would urge that we have the oversight that we will need by having some sunsets, and particularly taking a look at the national security letter. We do not need to violate our Constitution to keep our country safe.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I thank the distinguished chairman for yielding me time, and especially I rise to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for his tireless efforts on behalf of the security and the liberty of the American people in developing this reauthorizing legislation.

Today in London we have seen yet again the work of terrorists on the soil of a freedom-loving people. The explosions in that city today, while less lethal than a few weeks ago, follow the deadly attacks that took place on July 7, and the anguish in London is a vivid reminder of why we cannot relent in taking the steps necessary to defend our homeland from a present terrorist threat.

We all lived through September 11. I was here at the Capitol that day. I saw the evil of our enemies written in the smoke rising above the Pentagon. And we are reminded yet today that their desire to do such violence in our homeland and in the homeland of our allies is real.

The PATRIOT Act is essential to our continued success in the war on terror here at home. In the last 4 years under the PATRIOT Act, we have seen a great increase in the ability of law enforcement officials to investigate and track terrorists. For example, aided by provisions of the PATRIOT Act, law enforcement officials in Ohio were able to arrest Iyman Faris, an Ohio truck driver who authorities said plotted attacks on the Brooklyn Bridge and a central Ohio shopping mall. In 2003, he pleaded guilty to charges of aiding and abetting terrorism and conspiracy, acknowledging that he had met with Osama bin Laden in the year 2000 at an al Qaeda training camp and then was provided assistance by al Qaeda. He is currently serving a 20-year prison sentence.

While 16 provisions of the PATRIOT Act are set to expire at the end of this year, the threat of terrorism to our families and our cities will not. Therefore, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 is as necessary today as the PATRIOT Act was when it was originally signed into law in October of 2001.

This reauthorization legislation does make permanent 14 of the 16 sections from the original PATRIOT Act that were set to expire this year. But under the bill, those sections of the act that have caused the greatest concern in the hearts of many millions of Americans are set to sunset, sections 206 and 215, within 10 years, thanks to the leadership of this committee and of this Congress.

The concerns that have been raised about abuses simply have not been borne out. With over 4 years of oversight hearings and six Department of Justice Inspector General reports, there is no evidence of abuse under the PATRIOT Act.

I know what the people of London are feeling today. I felt it that day, September 11, and my heart and my prayers go out to them. I am absolutely convinced that what we have done in this country in a bipartisan way has contributed mightily to the fact that there has not been another major terrorist event in our Nation since that awful day.

The PATRIOT Act and the elements which we will reauthorize today are central to the ongoing victory in the war on terror, and I urge its adoption.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from California (Mr. BERMAN), a senior member of the Committee on the Judiciary.

Mr. BERMAN. Mr. Chairman, I thank our wonderful ranking member for yielding me this time.

Mr. Chairman, I voted for the PATRIOT Act in 2001. I abstained in the Committee on the Judiciary this year because I was hoping that some of my concerns could be addressed through a rule that would allow some of these issues to be brought to the floor. But I am very disappointed to say that the rule that was adopted for this very important bill is designed to look like it is fair, because it allows a number of amendments, but those amendments are either so sweeping that they will never get anywhere near and should not get a majority of the House to vote for them, or they tinker on the edges of some critical issues.

There are, to my way of thinking, two critical things that need to be

done; and this rule does not allow them to be done. One is addressing the issue of sunsets.

The chairman bemoans the fact that out in the Nation so many people have such a misunderstanding of what the PATRIOT Act does or does not do. He may feel it is because of the bad motives of the people who talk about it. I would suggest it comes from this fundamental conflict between our desire for enhanced security and our love and commitment for continued liberty.

So people read about detentions of people without being indicted or without any deportation proceedings against them and wonder what is going on; and he is right, many of the things we have read about have nothing whatsoever to do with the PATRIOT Act. But part of the reason why the chairman can say we had such rigorous oversight, 10 hearings on this subject, continued letters from the chair and the ranking member pushing for information from the Justice Department, is because of the sunsets.

The failure of the rule to make the sunsets in order is a tremendous failure, not that all of them need to be reenacted, but on key sections at a time that is relevant for what the American people want, which is within the next 4 or 5 years there should be a chance to have those provisions sunsetted.

I want to get to just as fundamental an issue, to my way of thinking and that is the issue of the standards for secret orders from FISA courts that allow our law enforcement agencies to pursue terrorist investigations and break up terrorist cells.

Prior to the PATRIOT Act, and even under the SAFE Act, we have a standard which does not give law enforcement enough tools to gather the information through a carefully developed investigation to find out who the future terrorists are, who the people who might be planning terrorist attacks are.

Under the existing law, you have much too broad a standard. You are allowing orders that are not based on criminal information to be issued by FISA courts, required to be issued by FISA courts, allowing any kind of tangible records to be seized, whether or not they are pertaining to a specific person, if it is connected with, or, in the case of the base bill here, relevant to a terrorist investigation.

□ 1315

An amendment that the gentleman from Massachusetts (Mr. DELAHUNT) and the gentlewoman from California (Ms. HARMAN) and I proposed the Committee on Rules did not allow to come into the rule which would have provided the proper balance. It would have dealt with the limitations that are imposed on law enforcement by too restrictive a standard and, at the same time, clarify that even if it has not yet been misused, it is wrong to provide such a broad standard that records can be swept up that have no connection whatsoever with any relevant target of any terrorist investigation.

The Senate Committee on the Judiciary this morning unanimously passed the standard that we see on this chart. The standard says, if the target of the FISA order or the national security letter is an agent of a foreign power or is in contact with or known to an agent of a foreign power, a definition which deals with all the hypotheticals provided by my friend, the gentleman from California (Mr. DANIEL E. LUNGREN), in criticizing the SAFE Act and pre-PATRIOT Act standard, it provides every hypothetical created that I have heard about with the ability to be pursued under FISA orders. Why were we not allowed to vote on this? Why would the Senate Committee on the Judiciary unanimously pass that sensible correction in the PATRIOT Act and this body not be even allowed to debate and vote on it?

For these reasons, I am going to be forced to vote ''no'' on this bill for the lack of opportunity to sunset key provisions like the lone-wolf provision, like the issue of national security letters to provide a forcing mechanism for oversight and for our failure to deal with the overly broad standard in the existing law and in the base bill. I hope when it comes back from the conference committee, that we will have a more balanced product that I will be able to support.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, I sit here and listen to this debate, and I have been through a number of the 12-or-so hearings that we have had in the Committee on the Judiciary on the PATRIOT Act; and I want to compliment this Congress, this bipartisan Congress, that met almost with a sense of urgency and almost a sense of emergency to write this PATRIOT Act just 3-plus years ago.

And throughout all of those hearings, we needed to put security in place, we needed to be able to access information. One of the standards was, why can we not access information in an international terrorist investigation as we can in a criminal investigation? We set higher standards here in this Congress rather than lower standards and, still, the debate comes back.

But I am astonished and amazed and pleased and in admiration by the work done by this Congress to put this language in this PATRIOT Act that has withstood all legitimate criticism. It has protected people's rights. There is not a name of an individual who had their rights violated by the PATRIOT Act. We have had the hearings, and we have had serious deliberation. I hope we have a serious consideration of these amendments and final passage of a very good PATRIOT Act.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I hope we can characterize this debate in the manner that it should be, particularly as we rise in the backdrop of the tragedy of London, England.

Might I say that even though we would have preferred, many of us as Democrats, a lengthier time for debate in committee, I want to thank the gentleman from Michigan (Mr. CONYERS) and the gentleman from Wisconsin (Mr. SENSENBRENNER) for the ongoing debate and allowing for amendments over a period of time to discuss the PATRIOT Act.

It should be commented on that this is not a definition of patriotism, of who is more patriotic than the next person, for the underlying bill exists. But there also should be some concerns about limiting overreach and overbroadness, with Americans understanding one of the issues that we are debating today, and that is the very premise of civil liberties juxtaposed against the responsibility of fighting the war on terror.

I would have hoped my colleagues could have fought the war on terror by enhancing and making sure that the agencies responsible for sharing intelligence are really doing that. We find that that is not the case. Whether it is the FBI, the CIA, or other counterterrorism groups, they can do a better job. That certainly helps to stop terrorist acts.

Then, I would have hoped my colleagues would have supported an increased funding, which has not been done by the majority, on rail security and port security and, of course, the idea of insuring our buses and other public transportation modes. These are also components of making sure that we are safe.

But the reason why we raise the question today about the PATRIOT Act is that 14 provisions are being made permanent. Mr. Chairman, even though it is a different story, the Voter Rights Act in 1965, which goes to the core of our democracy, was sunsetted; and it has to be reauthorized. We only argue that it is important to reauthorize or to sunset so that we can have these debates, so that the American people can understand the limitation of their rights or the enhancement of their rights.

For example, I think my colleagues would be troubled by the fact that we know that the FBI could get any tangible record by a rubber stamp by what we call FISA and that the showing would only be relevance. I have signed probable cause warrants as a judge, and you have to ask hard questions when a policeman comes in late at night to go into your home.

We also know that these items can be used against Americans, not just a foreign power, or the national security letters that the FBI can get financial, telephone, Internet, and consumer

goods records relevant to intelligence investigations, not just against agents of foreign powers, but against Americans. Or what about the sneak-and-peek provision that allows someone to come into your home and take anything, of course, called search and seizure, without notice, suggesting that it is involved in an investigation, and most of you would not know, most of America would not know that this is not limited to terrorism. But it is far-reaching; it could be anyone.

So the question on debate today, I hope that we can center it around the question of restraint, but yet be vigorous in our fight for the war on terror. I hope that we will have that opportunity, and I hope as well that in the amendment that I offer that we will be able to say that if you are impacted by a terrorist act, that you can sue and enforce your civil judgement, and I hope to have mutual support on that.3

Mr. Chairman, I join my many colleagues, many victims of terrorism, and many victims of racial and religious profiling in opposing this legislation, H.R. 3199, for several reasons. First, we never have been given the facts necessary to fully evaluate the operation of the underlying bill, the USA PATRIOT Act. Second, there are numerous provisions in both the expiring and other sections of the PATRIOT Act that have little to do with combating terrorism, intrude on our privacy and civil liberties, and have been subject to repeated abuse and misuse by the Justice Department. Third, the legislation does nothing to address the many unilateral civil rights and civil liberties abuses by the administration since the September 11 attacks. Finally, the bill does not provide law enforcement with any additional real and meaningful tools necessary to help our Nation prevail in the war against terrorism. Since 2002, 389 communities and 7 States have passed resolutions opposing parts of the PATRIOT Act, representing over 62 million people. Additionally, numerous groups ranging the political spectrum have come forward to oppose certain sections of the PATRIOT Act and to demand that Congress conduct more oversight on its use, including the American Civil Liberties Union, American Conservative Union, American Immigration Lawyers Association, American Library Association, Center for Constitutional Rights, Center for Democracy and Technology, Common Cause, Free Congress Foundation, Gun Owners of America, Lawyers' Committee for Civil Rights, National Association for the Advancement of Colored People (NAACP), National Association of Criminal Defense Lawyers, People for the American Way, and numerous groups concerned about immigrants' rights. I sit as Ranking Democrat on the Subcommittee on Immigration, Border Security, and Claims. Of particular concern to me are a number of immigration-related provisions that cast such a broad net to allow for the detention and deportation of people engaging in innocent associational activity and constitutionally protected speech and that permit the indefinite detention of immigrants and non-citizens who are not terrorists.

Among these troubling provisions are those that:

Authorize the Attorney General (AG) to arrest and detain non-citizens based on mere suspicion, and require that they remain in detention ''irrespective of any relief they may be eligible for or granted.'' (In order to grant someone relief from deportation, an immigration judge must find that the person is not a terrorist, a criminal, or someone who has engaged in fraud or misrepresentation.) When relief from deportation is granted, no person should be subject to continued detention based merely on the Attorney General's unproven suspicions.

Require the AG to bring charges against a person who has been arrested and detained as a ''certified'' terrorist suspect within 7 days, but the law does not require that those charges be based on terrorism-related offenses. As a result, an alien can be treated as a terrorist suspect despite being charged with only a minor immigration violation, and may never have his or her day in court to prove otherwise.

Make material support for groups that have not been officially designated as ''terrorist organizations'' a deportable offense. Under this law, people who make innocent donations to charitable organizations that are secretly tied to terrorist activities would be presumed guilty unless they can prove they are innocent. Restrictions on material support should be limited to those organizations that have officially been designated terrorist organizations.

Deny legal permanent residents readmission to the U.S. based solely on speech protected by the First Amendment. The laws punish those who ''endorse,'' ''espouse,'' or ''persuade others to support terrorist activity or terrorist organizations.'' Rather than prohibiting speech that includes violence or criminal activity, these new grounds of inadmissibility punish speech that ''undermines the United States' efforts to reduce or eliminate terrorist activity.'' This language is unconstitutionally vague and overbroad, and will undeniably have a chilling effect on constitutionally protected speech.

Authorize the AG and the Secretary of State to designate domestic groups as terrorist organizations and block any noncitizen who belongs to them from entering the country. Under this provision, the mere payment of membership dues is a deportable offense. This vague and overly broad language constitutes guilt by association. Our laws should punish people who commit crimes, not punish people based on their beliefs or associations.

In addition, the current administration has taken some deeply troubling steps since September 11. Along with supporting the USA PATRIOT Act, it has initiated new policies and practices that negate fundamental due process protections and jeopardize basic civil liberties for non-citizens in the United States. These constitutionally dubious initiatives undermine our historical commitment to the fair treatment of every individual before the law and do not enhance our security. Issued without Congressional consultation or approval, these new measures include regulations that increase secrecy, limit accountability, and erode important due process principles that set our Nation apart from other counties.

I co-sponsored the Civil Liberties Restoration Act (CLRA), reintroduced from the 108th Congress by Representatives HOWARD BERMAN (D–CA) and WILLIAM DELAHUNT (D–MA), that seeks to roll back some of these egregious post-9/11 policies and to strike an appropriate balance between security needs and liberty interests. The CLRA would secure due process protections and civil liberties for non-citizens in the U.S., enhance the effectiveness of our nation's enforcement activities, restore the confidence of immigrant communities in the fairness of our Government, and facilitate our efforts at promoting human rights and democracy around the world.

While every step must be taken to protect the American public from further terrorist acts, our government must not trample on the Constitution in the process and on those basic rights and protections that make American democracy so unique.

My ''safe havens'' amendment that was made in order by the Committee on Rules relates to the civil forfeiture provision of 18 U.S.C. 981 and would add a section that would allow civil plaintiffs to attach judgments to collect compensory damages for which a terrorist organization has been adjudged liable.

It seeks to allow victims of terrorism who obtain civil judgment for damages caused in connection with the acts to attach foreign or domestic assets held by the United States Government under 18 U.S.C. 981(G). Section 981(G) calls for the forfeiture of all assets, foreign or domestic, of any individual, entity, or organization that has engaged in planning or perpetrating any act of domestic or international terrorism against the United States, citizens or residents of the United States.

The legislation, H.R. 3199, as drafted, fails to deal with the current limitation on the ability to enforce civil judgments by victims and family members of victims of terrorist offenses. There are several examples of how the current Administration has sought to bar victims from satisfying judgments obtained against the government of Iran, for example.

In the Sobero case, a U.S. national was beheaded by Abu Sayyaf, an Al-Qaeda affiliate, leaving his children fatherless. The Administration responded to this incident by sending 1,000 Special Forces officers to track down the perpetrators, and the eldest child of the victim was invited to the State of the Union Address. Abu Sayyaf's funds have been seized and are held by the U.S. Treasury at this time. The family of the victim should have access to those funds, at the very least, at the President's discretion.

Similarly, the Administration barred the Iran hostages that were held from 1979–1981 from satisfying their judgment against Iran. In 2000, the party filed a suit against Iran under the terrorist State exception to the Foreign Sovereign Immunity Act. While a federal district court held Iran to be liable, the U.S. Government intervened and argued that the cause should be dismissed because Iran had not been designated a terrorist state at the time of the hostage incident and because of the Algiers Accords—that led to the release of the hostages, which required the U.S. to bar the adjudication of suits arising from the incident. As a result, those hostages received no compensation for their suffering.

Similarly, American servicemen who were harmed in a Libyan sponsored bombing of the La Belle disco in Germany were obstructed from obtaining justice for the terrorist acts they suffered. While victims of the attack pursued settlement of their claims against the Libyan government, the Administration lifted sanctions against Libya without requiring as a condition the determination of all claims of American

victims of terrorism. As a result of this action, Libya abandoned all talks with the claimants. Furthermore, because Libya was no longer considered a state sponsor of terrorism, the American servicemen and women and their families were left without recourse to obtain justice. The La Belle victims received no compensation for their suffering.

In addition, a group of American prisoners who were tortured in Iraq during the Persian Gulf war were barred from collecting their judgment from the Iraqi government. Although the 17 veterans won their case in the District Court of the District of Columbia, the Administration argued that the Iraqi assets should remain frozen in a U.S. bank account to aid in the reconstruction of Iraq. Claiming that the judgment should be overturned, the Administration deems that rebuilding Iraq is more important than recompensing the suffering of fighter pilots who, during the 12-year imprisonment, suffered beatings, burns, and threats of dismemberment.

Finally, the World Trade Center victims were barred from obtaining judgment against the Iraqi government. In their claim against the Iraqi government, the victims were awarded $64 million against Iraq in connection with the September 2001 attacks. However, they were rebuffed in their efforts to attach the vested Iraqi assets. While the judgment was sound, the Second Circuit Court of Appeals affirmed the lower court's finding that the Iraqi assets, now transferred to the U.S. Treasury, were protected by U.S. sovereign immunity and were unavailable for judicial attachment.

While the PATRIOT Act may not deserve all of the ridicule that is heaped against it, there is little doubt that the legislation has been repeatedly and seriously misused by the Justice Department. Consider the following:

It's been used more than 150 times to secretly search an individual's home, with nearly 90 percent of those cases having had nothing to do with terrorism.

It was used against Brandon Mayfield, an innocent Muslim American, to tap his phones, seize his property, copy his computer, spy on his children, and take his DNA, all without his knowledge.

It's been used to deny, on account of his political beliefs, the admission to the United States of a Swiss citizen and prominent Muslim Scholar to teach at the Notre Dame University.

It's been used to unconstitutionally coerce an internet service provider to divulge information about e-mail activity and web surfing on its system, and then to gag the provider from even disclosing the abuse to the public.

Because of gag restrictions, we will never know how many times its been used to obtain reading records from library and book stores, but we do know that libraries have been solicited by the Department of Justice—voluntarily or under threat of the PATRIOT Act—for reader information on more than 200 occasions since September 11.

It's been used to charge, detain and prosecute a Muslim student in Idaho for posting Internet website links to objectionable materials, even though the same links were available on the U.S. Government's web site.

Even worse than the PATRIOT Act has been the unilateral abuse of power by the Administration. Since September 11, our government has detained and verbally and physically abused thousands of immigrants without time limit, for unknown and unspecified reasons, and target tens of thousands of Arab-Americans for intensive interrogations and immigration screenings. All this serves to accomplish is to alienate Muslim and Arab Americans—the key groups to fighting terrorism in our country—who see a Justice Department that has institutionalized racial and ethnic profiling, without the benefit of a single terrorism conviction.

Nor it is helpful when our government condones the torture of prisoners at home and abroad, authorizes the monitoring of mosques and religious sties without any indication of criminal activity, and detains scores of individuals as material witnesses because it does not have evidence to indict them. This makes our citizens less safe not more safe, and undermines our role as a beacon of democracy and freedom.

Right now, H.R. 3199 is the most appropriate and timely vehicle in which to address this issue and allow U.S. victims of terrorism to obtain justice from terrorist-supporting or terrorist-housing nations. Mr. Chairman, I oppose this legislation and ask my colleagues work to negotiate real fixes to the sunsetted provisions.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume, and I yield to the gentleman from Michigan (Mr. SCHWARZ).

Mr. SCHWARZ of Michigan. Mr. Chairman, I thank the chairman for this opportunity to address the PATRIOT Act. We must especially make sure our law enforcement and intelligence agencies have the resources they need to arrest, detain, and interrogate those who would do us harm before the deadly acts are committed.

I am very cognizant of the concerns brought to me by many of my constituents in Michigan regarding the PATRIOT Act. They have a concern which I believe we all share, that any legislation we pass to combat and prevent terror should not infringe upon the rights we cherish as Americans, the very same freedoms the terrorists themselves seek to destroy.

I appreciate the gentleman letting me inquire about these provisions in the bill that you have reported out of committee.

Mr. SENSENBRENNER. Mr. Chairman, reclaiming my time, I am pleased that this bill and the USA PATRIOT Act will continue to protect civil liberties, while also providing law enforcement the tools they need to fight terrorists intent on harming Americans.

I yield further to the gentleman from Michigan.

Mr. SCHWARZ of Michigan. Mr. Chairman, section 215 of the PATRIOT Act pertains to the government's abilities to gain access to what we commonly refer to as business records, records compiled by a business or an institution pertaining to a customer or visitor to that entity. This provision has come to be known as the ''library provision'' because many librarians and civil libertarians are concerned that this provision of the PATRIOT Act could authorize the government to pour through the library records of everyday private citizens.

Now, it is my understanding that your version of the bill has added protections to ensure that law-abiding citizens and residents of the United States do not see their cherished civil liberties violated. Specifically, the bill states that no search can be conducted unless, I repeat, unless a Federal judge impaneled at the Foreign Intelligence Surveillance Court makes a finding that the information likely to be obtained concerns an ongoing investigation; repeat, an ongoing investigation to prevent international terrorism, and that that investigation is geared toward gathering foreign intelligence.

Mr. SENSENBRENNER. Mr. Chairman, reclaiming my time, yes, that is an accurate reading of the bill.

I further yield to the gentleman from Michigan (Mr. SCHWARZ).

Mr. SCHWARZ of Michigan. Mr. Chairman, I thank the gentleman. Is it also the case that the recipient of such an order, such as a business or video store, is allowed to consult a lawyer and to contest these orders, and that judges are authorized to review such challenge? In other words, we are not devolving to the executive branch powers of the judicial branch?

Mr. SENSENBRENNER. Mr. Chairman, further reclaiming my time, again, that is an accurate reading of the bill. I further yield to the gentleman from Michigan.

Mr. SCHWARZ of Michigan. Mr. Chairman, I thank the gentleman for his time. I have, and I hope the American people have, an accurate understanding of the safeguards put in place by the USA PATRIOT Act.

Mr. SENSENBRENNER. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a former prosecutor and a member of the Committee on the Judiciary.

Mr. DELAHUNT. Mr. Chairman, I want to comment and express my appreciation for the remarks of the gentleman from Iowa (Mr. KING) when he suggested that this has been a good process. We have significant disagreements, and they are healthy disagreements, I would add.

But I think he made the point. There is no one, no Democrat and no Republican who wants to reconstruct that metaphorical wall that prevented the sharing of information. I do not know of anyone on either side. And that was the key and the linchpin, I would suggest, of the success of the PATRIOT Act.

Now, some have suggested that there has been no abuse discovered by the Department of Justice, and I will accept that premise. But I would also put forth that the reality of the sunsets were an encouragement on the part of the Department of Justice to ensure full compliance with the law as it was then written. If you will, one could argue that it served as a deterrence,

that it encouraged good behavior; and that is why some of us here on this side of the aisle are so passionate about the issue of sunsets.

It is my understanding that this morning in the Senate Committee on the Judiciary, there were a number of sunsets on various provisions that were approved, and they were full-year sunsets. I dare say, if various amendments relative to sunsets had been allowed and made in order, this debate could have been cut in half in terms of the time.

I also want to speak to the issue of library records. My good friend and colleague on the committee, the gentleman from Florida (Mr. FEENEY), talked about some using the library provision, if you will, as a red herring. Well, the reality is that library records under section 215 can be gleaned under section 215. Yes, according to the Attorney General, it has never been used, which just leads me to ask the question, well, why do we need it? But, yes, it ought to be a concern.

I would further suggest that in terms of if there is no concern about libraries, if it is a red herring, why does the first amendment that we will consider that was made in order have to do with the issue?

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE).

Ms. GINNY BROWN-WAITE of Florida. Mr. Chairman, I certainly want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for putting together this excellent extension and reauthorization of the USA PATRIOT Act.

Mr. Chairman, America faced a new kind of enemy on September 11, one that mercilessly attacked civilians on our own shores. In response, the Congress, I was not here at the time, passed the PATRIOT Act to give law enforcement agents appropriate tools to fight the new war on terror.

Today, we have a great opportunity to send a strong message of support for several provisions of this bill which would have expired on December 1.

I specifically want to mention the library section. For some reason, section 215 has come to be known as that.

□ 1330

Actually, it is one that allows law enforcement officers to gain access to business records. Why would we not want to have library records and bookstore records be available if there is a suspected terrorist? By doing so, we would only be making bookstores and libraries sanctuaries for these terrorists. The purpose of this legislation was when it was originally created and now as we extend it to protect Americans. We cannot afford to make libraries and bookstores havens for those bent on harming U.S. citizens.

Opponents have waged a campaign of misinformation. Recently, some Members on the other side have actually admitted that it has not been abused. We want to make sure that Americans are protected. For that reason, I fully support the reauthorization of the expiring PATRIOT Act, and I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for his work on this issue.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, I too rise in support of this bill. We have had some great debate, 11 hearings, and I appreciate my friend the gentleman from Massachusetts' point about Section 215, but the gentleman from Florida (Mr. FEENEY) is right. I mean, library records are being used as a red herring. We have seen over and over that libraries have been used by terrorists and this will help address that. The thing is so far that provision of 215 has not been used with regard to libraries. But if a terrorist is using that information, as a former judge, I would not hesitate if the information were there, raising probable cause. But there are safeguards in 215. There is a court. There is a judge reviewing.

I was terribly concerned about the right to an attorney not being in there. That is being amended to include that. I was concerned about not having a provision for appealing that power under 215. That has been added and amended. And so we are coming to a great bill here, and it has come about through great debate, back and forth.

And I would also point out though, with regard to the London bombings and the further activity today, you know, our hearts and prayers go out to our friends across the ocean. But we cannot lose sight of the fact either, we have not had one yet here, not since 9/11. And if you are in a position to review top secret records, you will see that this has been used effectively.

And as far as 215 and the passion my friend, the gentleman from Massachusetts (Mr. DELAHUNT), had about we have got to have a sunset, good news. The sunset is in here for 206 and 215. So I am proud to rise in support. I have had great concerns about some areas. They are being addressed. We do have some sunsets to provide some protection, and I am proud that this administration has not abused any of these until we can get these holes filled.

The Acting CHAIRMAN (Mr. SWEENEY). The Chair will advise Members that the gentleman from Wisconsin (Mr. SENSENBRENNER) has 16 minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 11 minutes remaining.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Chairman, I rise today in very strong support of the renewal of the USA PATRIOT Act. These changes that were enacted in response to the horrific terrorist attacks on our Nation of September 11, 2001 provided critical tools to our law enforcement in bringing the terrorists to justice and to stopping future attacks, and the result of this law cannot be disputed. Worldwide we have captured or killed nearly two-thirds of the al Qaeda's top leadership. We have broken up terrorist cells in Buffalo, in Seattle, in Portland, Northern Virginia and in Detroit, my home State of Michigan.

These tools have been critical in gathering knowledge on the activities and the targets of the terrorists. These tools have assisted in dismantling the terrorist financial network. And as I meet with constituents in my district they are continually saying what are we doing to help fight the terrorists?

However, I have never heard from one man or woman in my district who has said that their constitutional rights have been violated by any aspect of the PATRIOT Act. And while I care deeply about protecting the civil rights of law abiding Americans, I do not care one iota about the civil rights of terrorists bent on destroying our way of life.

Just yesterday over 300 Members of this House voted for an amendment that supported the capture and the detention and the interrogation of international terrorists.

Mr. Chairman, today we face a new type of enemy, an enemy who preys on the innocent, an enemy who lives in the shadows, an enemy whose tactics are the tactics of cowards. And as we saw in London on July 11 and as we are seeing again today, the terrorists are still out there targeting the murder of the innocent. And in fact I will predict that other countries will follow the lead of America and what we are doing on the floor of this House today as they enact similar protections for their citizens against these murderers. And now is not the time to take away tools that law enforcement needs to protect us. Now is the time to send a message to the terrorists that the we are not backing down from the fight.

I urge my colleagues to support this legislation.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. WATERS), a distinguished member of the Judiciary Committee.

Ms. WATERS. Mr. Chairman, I rise in strong opposition to H.R. 3199, the U.S. PATRIOT and Terrorism Prevention Reauthorization Act. This act grants the government overbroad and even unconstitutional powers that have not been adequately addressed.

The PATRIOT Act is misleading American citizens and causing them to forfeit their civil liberties in the interest of what has become a political war on terrorism. At the same time, the President's war on terrorism fails to fund protection for our transportation systems, our ports and, still today, uninspected cargo is being placed in the belly of the airplanes of all of our airlines.

Yet we continue in this act to violate the privacy of our citizens with section 505, the National Security Letters section of the PATRIOT Act, which allows

law enforcement to demand detailed information about an individual's private records without judicial review, without the individual ever being suspected of a crime, without a requirement that law enforcement notify the individual that they are the subject of an investigation.

Furthermore, this section contains an automatic permanent gag order on the recipient of a national security letter, not even allowing the recipient to consult with an attorney. And this act is very confusing. In one section of the law, 215, they can get an attorney. In section 505 they cannot. I do not know what we are doing here today.

Mr. Chairman, this power represents a clear violation of the fourth amendment against unreasonable search and seizure, as well as threatening speech protected under the first amendment. In fact, a U.S. district judge struck down section 505 in a case involving the government's collection of sensitive customer records from Internet service providers without judicial oversight. The judge found that the government seizure of these records constituted an unreasonable search and seizure under the fourth amendment, and found the broad gag provision to be an unconstitutional prior restraint on free speech.

To address this, I proposed an amendment that would have provided the recipients of national security letters that would allow them to consult with their attorneys and any person that was necessary to produce the required records. This amendment would not have greatly changed the real meaning of section 505. It was simply a common sense amendment that would have provided some legal recourse and balance for the recipients of national security letters. However, the amendment was not made in order.

Mr. Chairman, what makes this country so great is our respect and protection of individual rights and civil liberties, and we must continue to provide adequate safeguards and protection to these rights. While I agree that our national security is a top concern, we must find the appropriate balance.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. MCCAUL).

Mr. MCCAUL of Texas. Mr. Chairman, I want to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership on this important legislation, and I rise today in support of this bill.

I served in the Justice Department before and after 9/11. I led the Department's counterterrorism efforts in the United States Attorney's Office in the State of Texas. I worked with the Joint Terrorism Task Forces fighting this war on terror in the trenches. I know firsthand that this PATRIOT Act provides the necessary tools to win this war on terror at home.

Significantly, the PATRIOT Act tore down the wall between the criminal division and the intelligence side of the house. Prior to this it was dysfunctional. The left hand literally did not know what the right was doing. The 9/11 Commission reported this wall may have contributed to 9/11. An FBI agent testified that efforts to conduct a criminal investigation into two of the hijackers were blocked due to concerns over the wall. Frustrated, he wrote to the FBI headquarters and he said, some day someone will die. And wall or not, the public will not understand why we were not more effective at throwing every resource we had at certain problems. Let us hope that the national security law unit will then stand behind their decisions, especially since the biggest threat to us now is Osama Bin Laden.

Today, thanks to the PATRIOT Act, this wall has come down. It helps us connect the dots by removing the legal barriers that prevented law enforcement and the Intelligence Community from sharing information.

But the PATRIOT Act provides many other tools for law enforcement in this war on terrorism. It updates the law to the technology of today. The PATRIOT Act also takes laws which have long applied in drug cases and organized crime cases and applies them to the terrorists, such as the roving wiretaps, such as the delayed notification for searches. It makes no sense for us to apply these laws only in drug cases and not in the most important cases affecting our national security, cases involving terrorists. And contrary to critics' assertions, the Justice Department cannot do anything without court supervision. The U.S. PATRIOT Act does not abrogate the role played by the judiciary in the oversight of the activities of Federal law enforcement.

And while we are talking about libraries, let us not forget al Qaeda operative Mohammed Babar who used a computer in a library and when asked after he was arrested why, he said because the libraries will scrub the hard drives.

I can envision no bigger national security mistake than to go back to the way things were. We owe it to the citizens of this country to reauthorize the PATRIOT Act, for if we do not and another terrorist attack occurs on our shores we will surely all be held accountable.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from North Carolina (Mr. WATT), the chairman of the Congressional Black Caucus and a distinguished member of the Judiciary Committee.

Mr. WATT. Mr. Chairman, I thank the gentleman for yielding time.

Mr. Chairman, I suspect that the American people do not realize just how much the process of legislating is about reacting to events that take place around us. When something like Enron happens, we react to that. When accounting scandals happen, we react to it. When the events of 9/11 occurred, we obviously reacted to those events. And quite often when we react, we are looking for an appropriate new balance that takes into account some outrageous activity that took place.

And so when we passed the PATRIOT Act originally, our effort was to try to find a new security balance for people here in our country, and we thought we had done a tremendous job of doing that in the Judiciary Committee, only to find that the Rules Committee, which did not even have any jurisdiction over the matter or had any hearings about the matter, took the bill, rewrote it, brought it to the floor and struck a completely different balance between the rights of government on one hand and law enforcement and the rights of individuals on the other hand.

□ 1345

I voted against the original PATRIOT Act, and I still believe that the balance that was struck in that bill was inappropriate. I think the balance that we have struck in this bill is not the appropriate balance. And a number of my colleagues have said that, well, there have not been any abuses by law enforcement of the powers that we gave them. But the truth of the matter is that depends on how you define an abuse. And I do not like to define an abuse as something outrageous.

If we wait on something outrageous to happen, then we will react back in the opposite direction of against government and law enforcement in unreasonable ways, just as we are reacting in favor of law enforcement now.

So here are a couple of statistics that you need to know about: the American Library Association found that libraries have received over 200 formal and informal requests for materials including 49 requests from Federal officers. Well, maybe they did not find anything. Maybe that was not an abuse that people are going to get outraged about, but I think that is outrageous.

In section 213 it talks about sneak-and-peek searches. In a letter to the gentleman from Virginia (Mr. SCOTT), the Department of Justice said on July 5, 2005 that that section had been used 153 times as of January 2005. Only 18 of those times were the uses for terrorism investigations.

Well, what is happening with the other 80 percent is in my estimation an abuse of this provision because we passed the law so that we could make it easier for law enforcement to get to terrorists. The law is being used in ways that, but for the events of 9/11 and the terrorism that occurred, we would not have accepted as residents of this country.

I just think we have struck the wrong balance. We need to sunset this bill again for a shorter period of time, and I hope my colleagues will take that into account and vote against it.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I rarely disagree with my friend from North Carolina (Mr. WATT), but I want to take some time to correct the record.

The delayed notification or so-called ''sneak-and-peek'' warrants were authorized in the late seventies for purposes of racketeering and drug-trafficking investigations and were held constitutional by the Supreme Court in the early eighties as not violative of the fourth amendment.

What the PATRIOT Act did was expand this previously existing authority to terrorism investigations. So if the PATRIOT Act never existed, the 18 instances where the delayed-notification warrants were used for terrorism investigations would have been illegal. But all of the other investigations that the gentleman from North Carolina referred to would have been legal under existing practice which have been held constitutional.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, I rise in reluctant opposition to this bill.

In 2001 after an attack on the United States and the slaughter of innocent civilians, this Congress passed the PATRIOT Act, which I supported at that time. It gave our investigative agencies a wide variety of special powers to fight terrorism and to win this war on terrorism. However, these powers were not to be permanent. They were designed to help us win the war, not to change our country permanently.

Now we have the PATRIOT Act being handed to us again, but instead it is being handed to us in a permanent form. You do not make policy for the United States Government protecting the rights and freedoms of our people in an extraordinary time as this, a time of war, and then mandate it so it is going to be the rule of our country once we live in peacetime.

Our country was founded on the idea of limited government and individual liberty. I gladly supported PATRIOT I. Now they have taken all but two of the sunset provisions which would make those extraordinary new powers that we gave the government lapse once we have peace in this country.

Any real patriot will vote against this expansion of government at the expense of the individual even when peacetime comes.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1½ minutes to rebut my good friend from California.

Mr. Chairman, effective oversight is a function of effective congressional leadership and not as a result of legislative sunsets. If we restricted oversight to legislative sunsets, only about 5 percent of the laws that we pass are sunset, and most of those are appropriations bills.

Now, the gentleman from California (Mr. ROHRABACHER) is the chairman of an oversight subcommittee on the Committee on International Relations. I do not see any sunsets coming on bills coming out of the Committee on International Relations because I have faith in the gentleman from California's (Mr. ROHRABACHER) being able to do effective oversight.

The Committee on the Judiciary has done a huge amount of oversight. We have had extensive hearings. There has been more process and more hearings and more witnesses on more sides of the issue on the PATRIOT Act than practically any other piece of legislation that I have faced in my 26-plus years as a Member of Congress.

Thirty-five witnesses, 12 hearings, oversight letters, responses, inspectors general reports. I wish I had brought all of the paper that has come about as a result of the Committee on the Judiciary's oversight, because it would stack this high off the table here in the House Chamber.

Mr. Chairman, the following is a listing of the oversight activities so that the American public and everybody can see that this committee has done its job. It has done its job effectively, and it has made sure that the civil liberties of the people of this country have not been infringed upon.

HEARING CHRONOLOGY: HOUSE JUDICIARY COMMITTEE CONSIDERATION OF THE USA PATRIOT ACT, AS OF JUNE 21, 2005

FULL COMMITTEE CONSIDERATION

June 10, 2005: Full Committee—Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Carlina Tapia-Ruano, First Vice-President of the American Immigration Lawyers Association (Minority witness); Dr. James J. Zogby, President of the Arab American Institute (Minority witness); Deborah Pearlstein, Director of Human Rights First (Minority witness); and Chip Pitts, Chair of the Board of Amnesty International USA.

June 8, 2005: Full Committee—Oversight Hearing on the Reauthorization of the USA PATRIOT Act: Deputy Attorney General James B. Corney.

April 6, 2005: Full Committee—Oversight Hearing on the Department of Justice, The Use of the Law Enforcement Authorities Granted under the USA PATRIOT Act: Attorney General Alberto Gonzales.

SUBCOMMITTEE CONSIDERATION

May 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on Material Witness Provisions of the Criminal Code and the Implementation of the USA PATRIOT Act: Section 505 that Addresses National Security Letters, and Section 804 that Addresses Jurisdiction over Crimes Committed at U.S. Facilities Abroad: Chuck Rosenberg, Chief of Staff to the Deputy Attorney General of the Department of Justice (Majority witness); Matthew Berry, Counselor to the Assistant Attorney General of the Department of Justice (Majority witness); Gregory Nojeim, Acting Director of the Washington Legislative Office of the American Civil Liberties Union (Minority witness); and Shayana Kadidal, Staff Attorney, Center for Constitutional Rights (Minority witness).

May 10, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on the Prohibition of Material Support to Terrorists and Foreign Terrorist Organizations and on the DOJ Inspector General's report on Civil Liberty Violations under the USA PATRIOT Act: Honorable Glenn Fine, Inspector General of the Department of Justice (Majority witness); Honorable Gregory G. Katsas, Deputy Assistant Attorney General, Civil Division of the Department of Justice (Majority witness); Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice (Majority witness); and Ahilan Arulanantham, Staff Attorney for the American Civil Liberties Union of Southern California (Minority witness).

May 5, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on Section 212 of the USA PATRIOT Act that Allows Emergency Disclosure of Electronic Communications to Protect Life and Limb: Honorable William Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice (Majority witness); Willie Hulon, Assistant Director of the Counterterrorism Division, Federal Bureau of Investigation (Majority witness); Professor Orrin Kerr, Professor of Law at the George Washington University Law School (Majority witness); and James X. Dempsey, Executive Director of the Center for Democracy and Technology (Minority witness).

May 3, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on Sections 201, 202, 213, and 223 of the USA PATRIOT Act and Their Effect on Law Enforcement Surveillance: Honorable Michael J. Sullivan, U.S. Attorney for the District of Massachusetts (Majority witness); Chuck Rosenberg, Chief of Staff to the Deputy Attorney General (Majority witness); Heather Mac Donald, John M. Olin fellow at the Manhattan Institute (Majority witness); and the Honorable Bob Barr, former Representative of Georgia's Seventh District (Minority witness).

April 28, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Section 218 of the USA PATRIOT Act—If it Expires will the ''Wall'' Return?: Honorable Patrick Fitzgerald, U.S. Attorney for the Northern District of lllinois (Majority witness); David Kris, former Associate Deputy Attorney General for the Department of Justice (Majority witness); Kate Martin, Director of the Center for National Security Studies (Minority witness); and Peter Swire, Professor of Law at Ohio State University (Minority witness).

April 28, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Have sections 206 and 215 improved FISA Investigations? (Part II): Honorable Kenneth L. Wainstein, U.S. Attorney for the District of Columbia (Majority witness); James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice (Majority witness); Robert Khuzami, former Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York (Majority witness); and Greg Nojeim, the Associate Director and Chief Legislative Counsel of the American Civil Liberties Union's Washington National Office (Minority witness).

April 26, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing—Have sections 204, 207, 214 and 225 of the USA PATRIOT Act. and Sections 6001 and 6002 of the Intellience Reform and Terrorism Prevention Act of 2004, improved FISA Investigations? (Part I): Honorable Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania (Majority witness); James Baker, Office for Intelligence Policy and Review, U.S. Department of Justice (Majority witness); and Suzanne Spaulding, Managing Director, the Harbour Group, LLC (Minority witness).

April 21, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on Crime, Terrorism, and the Age of Technology—Section 209: Seizure of Voice-Mail Messages Pursuant to Warrants; Section 217: Interception of Computer Trespasser Communications: and Section 220: Nationwide Service of Search Warrants for

Electronic Evidence: Laura Parsky, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice (Majority witness); Steven M. Martinez, Deputy Assistant Director of the Cyber Division, Federal Bureau of Investigation (Majority witness); James X. Dempsey, Executive Director of the Center for Democracy and Technology (Majority witness as a favor to Minority); and Peter Swire, Professor of Law, Mortiz College of Law, the Ohio State University (Minority witness).

April 19, 2005: Crime, Terrorism, and Homeland Security Subcommittee—Oversight Hearing on Sections 203 (b) and (d) of the USA PATRIOT Act and their Effect on Information Sharing: Barry Sabin, Chief of the Counterterrorism Section of the Criminal Division of the Department of Justice (Majority witness); Maureen Baginski, Executive Assistant Director of FBI Intelligence (Majority witness); Congressman Michael McCaul (Majority witness); and Timothy Edgar, the National Security Policy Counsel for American Civil Liberties Union (Minority witness).

Witnesses (alphabetical)

1. Arulanantham, Ahilan T.—Staff Attorney, American Civil Liberties Union
2. Baker, James A.—Counsel for Intelligence Policy, Department of Justice *testified twice
3. Baginski, Maureen—Executive Assistant Director for the Office of Intelligence, Federal Bureau of Investigation
4. Barr, Bob—Former Member of Congress, Atlanta, Georgia
5. Berry, Matthew—Counselor to the Assistant Attorney General, United States Department of Justice
6. Buchanan, Mary Beth—United States Attorney, Western District of Pennsylvania
7. Comey, James B.—Deputy Attorney General, United States Department of Justice
8. Dempsey, Jim—Executive Director, Center for Democracy and Technology *testified twice
9. Edgar, Timothy—National Security Policy Counsel, American Civil Liberties Union
10. Fine, Glenn A.—Inspector General, United States Department of Justice
11. Fitzgerald, Patrick—U.S. Attorney, Northern District of Illinois
12. Gonzales, Alberto—Attorney General of the United States
13. Hulon, Willie T.—Assistant Director of Counterterrorism Division, Federal Bureau of Investigation
14. Kadidal, Shayana—Staff Attorney, Center for Constitutional Rights
15. Katsas, Gregory—Deputy Assistant Attorney General, United States Department of Justice
16. Kerr, Orin S.—Associate Professor of Law, The George Washington University
17. Khuzami, Robert S.—Former Assistant U.S. Attorney, Southern District of New York
18. Kris, David—Vice President for Corporate Compliance, Time Warner Corporation
19. Mac Donald, Heather—John M. Olin Fellow, The Manhattan Institute
20. Martin, Kate—Director, Center for National Security Studies
21. Martinez, Steven M.—Deputy Assistant Director of Cyber Division, Federal Bureau of Investigation
22. McCaul, Michael—U.S. Representative & former Chief of Counterterrorism and National Security for the U.S. Attorney's Office in Western Judicial District of Texas
23. Moschella, William—Assistant Attorney General, United States Department of Justice
24. Nojeim, Gregory T.—Associate Director/Chief Legisaltive Counsel, American Civil Liberties Union *testified twice
25. Parsky, Laura H.—Deputy Assistant Attorney General, Department of Justice
26. Pearlstein, Deborah—Director, U.S. Law and Security Program
27. Pitts, Chip—Chair of the Board, Amnesty International USA
28. Rosenberg, Chuck—Chief of Staff to Deputy Attorney General, United States Department of Justice *testified twice
29. Sabin, Barry—Chief of the Counterterrorism Section for the Criminal Division, Department of Justice *testified twice
30. Spaulding, Suzanne—Managing Director, the Harbour Group, LLC
31. Sullivan, Michael—United States Attorney, District of Massachusetts
32. Swire, Peter—Professor of Law, Ohio State University *testified twice
33. Tapia-Ruano, Carlina—First Vice President, American Immigration Lawyers Association
34. Wainstein, Kenneth L.—Interim U.S. Attorney, District of Columbia
35. Zogby, Dr. James J.—President, Arab American Institute

Government Witnesses

1. Baker, James A.—Counsel for Intelligence Policy, Department of Justice *testified twice
2. Baginski, Maureen—Executive Assistant Director for the Office of Intelligence, Federal Bureau of Investigation
3. Berry, Matthew—Counselor to the Assistant Attorney General, United States Department of Justice
4. Buchanan, Mary Beth—United States Attorney, Western District of Pennsylvania
5. Comey, James B.—Deputy Attorney General, United States Department of Justice
6. Fine, Glenn A.—Inspector General, United States Department of Justice
7. Fitzgerald, Patrick—U.S. Attorney, Northern District of Illinois
8. Gonzales, Alberto—Attorney General of the United States
9. Hulon, Willie T.—Assistant Director of Counterrorism Division, Federal Bureau of Investigation
10. Katsas, Gregory—Deputy Assistant Attorney General, United States Department of Justice
11. Martinez, Steven M.—Deputy Assistant Director of Cyber Division, Federal Bureau of Investigation
12. Moschella, William—Assistant Attorney General, United States Department of Justice
13. Parsky, Laura H.—Deputy Assistant Attorney General, Department of Justice
14. Rosenberg, Chuck—Chief of Staff to Deputy Attorney General, United States Department of Justice *testified twice
15. Sabin, Barry—Chief of the Counterterrorism Section for the Criminal Division, Department of Justice *testified twice
16. Sullivan, MichaeL—United States Attorney, District of Massachusetts
17. Wainstein, Kenneth L.—Interim U.S. Attorney, District of Columbia

Witnesses Testifying in Their Capacity as Former Government Officials

1. Khuzami, Robert S.—Former Assistant U.S. Attorney, Southern District of New York
2. McCaul, Michael—U.S. Representative & former Chief of Counterterrorism and National Security for the U.S Attorney's Office in Western Judicial District of Texas

Non-Government Witnesses

1. Arulanantham, Ahilan T.—Staff Attorney, American Civil Liberties Union
2. Barr, Bob—Former Member of Congress, Atlanta, Georgia
3. Dempsey, Jim—Executive Director, Center for Democracy and Technology *testified twice
4. Edgar, Timothy—National Security Policy Counsel, American Civil Liberties Union
5. Kadidal, Shayana—Staff Attorney, Center for Constitutional Rights
6. Kerr, Orin S.—Associate Professor of Law, The George Washington University
7. Kris, David—Vice President for Corporate Compliance, Time Warner Corporation
8. Mac Donald, Heather—John M. Olin Fellow, The Manhattan Institute
9. Martin, Kate—Director, Center for National Security Studies
10. Nojeim, Gregory T.—Associate Director/Chief Legisaltive Counsel, American Civil Liberties Union *testified twice
11. Pearlstein, Deborah—Director, U.S. Law and Security Program
12. Pitts, Chip—Chair of the Board, Amnesty International USA
13. Spaulding, Suzanne—Managing Director, the Harbour Group, LLC
14. Swire, Peter—Professor of Law, Ohio State University *testified twice
15. Tapia-Ruano, Carlina—First Vice President, American Immigration Lawyers Association
16. Zogby, Dr. James J.—President, Arab American Institute

Organizations represented

1. American Civil Liberties Union (*3 different witnesses)
2. Center for Democracy and Technology
3. Center for Constitutional Rights
4. Time Warner Corporation
5. The Manhattan Institute
6. Center for National Security Studies
7. U.S. Law and Security Program
8. Amnesty International USA
9. the Harbour Group, LLC
10. American Immigration Lawyers Association
11. President, Arab American Institute

*Not sure how to classify Universities that have professors testifying, since their testimony does not necessarily reflect the views of the institution. Also, was Barr representing anyone?

OVERSIGHT: HOUSE JUDICIARY COMMITTEE OVERSIGHT OF THE USA PATRIOT ACT

OVERSIGHT THROUGH LETTERS TO THE DEPARTMENT OF JUSTICE

House Judiciary Committee sent the Attorney General, John Ashcroft, a letter on June 13, 2002, with 50 detailed questions on the implementation of the USA PATRIOT Act. The questions were a result of extensive consultation between the majority and minority Committee counsel. Assistant Attorney General, Daniel Bryant, responded to Chairman Sensenbrenner and Ranking Member Mr. Conyers on July 26, 2002, providing lengthy responses to 28 out of the 50 questions submitted. On August 26, 2002, Mr. Bryant sent the responses to the remaining questions, after sending responses to six of the questions to the House Permanent Select Committee on Intelligence. Then, on September 20, 2002, Mr. Bryant sent the minority additional information regarding the Department of Justice's responses to these questions.

On April 1, 2003, Chairman Sensenbrenner and Ranking Member Mr. Conyers sent a second letter to the Department of Justice with additional questions regarding the use of pre-existing authorities and the new authorities conferred by the USA PATRIOT Act. Once again, the questions were the product of bipartisan coordination by Committee counsel. Acting Assistant Attorney General, Jamie E. Brown, responded with a May 13, 2003 letter that answered the questions she deemed relevant to the Department of Justice and forwarded the remaining questions to the appropriate officials at the Department of Homeland Security. On June 13, 2003,

the Assistant Secretary for Legislative Affairs at the Department of Homeland Security, Pamela J. Turner, sent responses to the forwarded questions.

On November 20, 2003, Chairman Sensenbrenner and Congressman Hostettler, Chairman of the Subcommittee on Immigration, Border Security, and Claims, sent a letter to the Comptroller General of the Government Accountability Office (GAO) requesting a GAO study of the implementation of the USA PATRIOT Act anti-money laundering provisions. This report was released on June 6, 2005.

OVERSIGHT THROUGH HEARINGS

On May 20, 2003, the Committee's Subcommittee on the Constitution held an oversight hearing entitled, ''Anti-Terrorism Investigations and the Fourth Amendment After September 11th: Where and When Can Government Go to Prevent Terrorist Attacks.''

On June 5, 2003, the Attorney General testified before the full Committee on the Judiciary at an oversight hearing on the United States Department of Justice. Both the hearing on May 20 and the hearing on June 5 discussed oversight aspects of the USA PATRIOT Act.

OVERSIGHT THROUGH BRIEFINGS

The Subcommittee on Crime, Terrorism, and Homeland Security of this Committee requested that officials from the Department of Justice appear and answer questions regarding the implementation of the USA PATRIOT Act. In response to our request, the Department of Justice gave two separate briefings to Members, counsel, and staff:

During the briefing held on August 7, 2003, Department officials covered the long-standing authority for law enforcement to conduct delayed searches and collect business records, as well as the effect of the USA PATRIOT Act on those authorities.

During the second briefing, held on February 3, 2004, the Department of Justice discussed its views of S. 1709, the ''Security and Freedom Ensured (SAFE) Act of 2003'' and H.R. 3352, the House companion bill, as both bills proposed changes to the USA PATRIOT Act.

The Department of Justice has also provided three classified briefings on the use of the Foreign Intelligence Surveillance Act (FISA) under the USA PATRIOT Act for Members of the Judiciary Committee:

On June 10, 2003, October 29, 2003, and June 7, 2005 the Justice Department provided these briefings.

The Department also provided a law enforcement sensitive briefing on FISA to the House Judiciary Committee Members and staff on March 22, 2005.

Mr. CONYERS. Mr. Chairman, I yield 15 seconds to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. I would suggest that we do not have to sunset all the legislation going through this Congress, but we have to pay particular attention to that legislation that affects the civil liberties of our people. And if we are going to in some way expand the power of government over our people in time of war because it is necessary, that should be sunsetted once the war is over. By permanently changing America, we are not furthering the cause of freedom in this country.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentlewoman from Wisconsin (Ms. BALDWIN), a former member of the Committee on the Judiciary.

Ms. BALDWIN. Mr. Chairman, I rise today to oppose H.R. 3199. As the gentleman just mentioned, I was a member of the Committee on the Judiciary on September 11, 2001. And in the weeks that followed, I joined my colleagues in committee to carefully craft a bill to give law enforcement personnel additional and powerful tools to fight terror. But as many of you recall, the work product of our committee was rejected at the eleventh hour in favor of a far more expansive act which has continued to raise concerns among those who cherish our constitutional liberties.

Through the PATRIOT Act and other anti-terrorism measures, we have become a country that permits secret surveillance, secret searches, denial of court review, monitoring of conversations between citizens and their attorneys, and searching of library and medical records of citizens. This does not sound like America to me.

Mr. Chairman, reauthorization of this act is an opportunity; it is an opportunity to restore the checks and balances that must exist in a free society. I urge my colleagues to vote ''no'' to allow us that chance.

Mr. CONYERS. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Chairman, September 11 made it clear that the world had changed, that our law enforcement and intelligence agencies needed to change accordingly.

Democrats and Republicans agreed on the need to update the tools necessary for law enforcement to address the threat of terrorism on American soil. What started as an effort to protect our country from terror has become a virtually uncontrolled vehicle for government to invade the privacy of every American.

It was with that possibility in mind that the Congress included in the PATRIOT Act a provision requiring a review after a few years to determine which parts should be retained, which parts should be modified, and which should be repealed. It is evident to me and to many Americans that the PATRIOT Act is inadequate in its protection of civil liberties.

Section 206's blanket, roving wiretaps, section 213's sneak-and-peek searches, and section 215's expansive power allowing the government to obtain any piece of information on any American are just three examples of how the PATRIOT Act is out of control.

Last week, the Committee on the Judiciary met to address these and other issues in an attempt to bring back some balance to the law enforcement power and civil liberties. Democrats on the committee offered dozens of amendments in an attempt to control this bill and bring balance to it. Virtually every single one of these amendments was rejected on a party-line vote. Most troubling was the extension of sunsetted provisions that should have been allowed to expire or at least require reauthorization in the next 4 years.

Periodically revisiting the PATRIOT Act is a good thing. To preserve our commitment to making the best and most up-to-date assessment of our law enforcement and intelligence policies, we should include more, not fewer, sunsets and make them shorter, not longer.

The PATRIOT Act was an effort to answer the most difficult question our democracy faces: How much freedom are we willing to give up to feel safe? Too much freedom, giving up too much power given to the Justice Department.

Today we are asking not to hinder the pursuit of terrorists, but to return some sanity and balance to the law.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1½ minutes.

Mr. Chairman, we have heard another attack on delayed notification or sneak-and-peek warrants. Let me tell you what has happened earlier this month. A U.S. district judge in Washington State executed or authorized a delayed-notification warrant to look into a building on the U.S. side of the northern border. And what was discovered but a rather sophisticated tunnel between Canada and the United States to smuggle contraband, and perhaps terrorists, through the border and into this country without being detected by our border patrol.

Using a delayed-notice search warrant, the DEA and other agents entered the home on July 2 to examine the tunnel. Shortly thereafter, a U.S. district judge authorized the installation of cameras and listening devices in the home to monitor the activities in the home.

Using these twice, Federal, State and local law enforcement officials observed multiple trips by three defendants through the tunnel carrying large hockey bags or garbage bags. These bags were loaded into a van on the U.S. side and driven south for delivery.

Ninety-three pounds of marijuana were found in these bags when the Washington State Patrol stopped the car. That never would have happened without a delayed-notification warrant. And if they can bring 93 pounds of marijuana in, they can bring terrorists in as well.

These warrants are good. They protect us. They ought to be kept.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SWEENEY). The gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN) each will control 15 minutes of debate from the Permanent Select Committee on Intelligence.

The Chair recognizes the gentleman from Michigan (Mr. HOEKSTRA).

□ 1400

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. ROGERS), the only

former FBI member on the Permanent Select Committee on Intelligence.

Mr. ROGERS of Michigan. Mr. Chairman, I thank the gentleman for yielding me this time and for his great work on this, and I want to thank my friends on the Democrat side of the aisle for the work they have given for the PATRIOT Act. Thanks for at least bringing this debate up.

Mr. Chairman, as a former FBI agent, I had occasion to work some pretty bad folks in the City of Chicago in working organized crime and public corruption. I developed the sources for wiretaps and applied wiretaps for things like murder and extortion, gambling, prostitution, racketeering, child pornography.

There was a case of a child pornographer who was producing child pornography tapes where we used the legal system, a legal instrument, through due process of law, to get records that we needed from businesses, from his home, from other places to make sure that we could find the entire network of distribution of criminals who were preying on our children. America said something interesting. The people of America said, you know, Agent Rogers, at the time we trust you, but we trust our Constitution more, so you have to follow the law. You have to follow the Constitution even to go after these child molesters and people who are promoting child pornography, people who are involved in murder and racketeering. And we did, and we used the law as we knew it to put somebody in jail.

We said if a child molester goes into the library and sits down next to your child, there is going to be no safe haven in America. We are going to use due process according to the Constitution and make sure our children, our libraries, our personnel are safe. We used that before the PATRIOT Act got here.

I worked a bombing case where they were trying to sell bombs to individuals who were blowing up other gangsters; gangsters blowing up gangsters and gangsters blowing up strip clubs and other things to gain influence over them. We used all the processes, including a delayed search warrant, because we needed to know who they were getting their materials from. We used due process under the Constitution and we brought them to justice. And America is grateful for that, and it made an impact. And we never, ever, ever once deviated from the Constitution.

This whole debate is almost ridiculous, Mr. Chairman. All we do in the PATRIOT Act is say, look, if we can go after child molesters sitting in the library and bombers who we need to sneak and peak on a warrant, we ought to be able to go after terrorists. That is all the PATRIOT Act did. There is no subversion of the Constitution, no suspension of the Constitution.

Mr. Chairman, it is maddening to me that somebody in America and in England and around the world is getting up in the morning thinking, I am going to kill somebody in an act of terror, and that we somehow fiddle while Rome is burning and argue should it be 10 years or 5 years on a renewal or a sunset. This is ridiculous. We have people who are committed to killing Americans today. We are at war. This bill helps protect America and does not suspend the Constitution of the United States.

For those who argue there are some emergency powers in here, you are wrong. You should get up and argue against the criminal code every day on this floor, and you should put in bills to remove our ability as agents of the FBI to do that. You do not because it is legal and it is proper under our Constitution.

Mr. Chairman, we must support this act. We must do it today for the future safety of the United States of America.

Ms. HARMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, the London attacks this morning, be they copycat terrorism or yet another al Qaeda attempt, are one more reminder of how vulnerable we are. We need effective tools to combat terrorism. The terrorist threat is real, and if we are going to demand that the FBI uncover terror cells in the U.S., we need to give them the tools to do that.

The al Qaeda organization that attacked us on 9/11 has changed. It is no longer a top-down centralized terror group planning acts from overseas. Instead, we face a loose network of homegrown terror cells, or what I call franchise terrorism. Their attacks draw inspiration from al Qaeda, but they act independently, making it tougher to disrupt their plans.

I want to make two points about the PATRIOT Act. First, it gave law enforcement some important new legal authorities. But new legal authorities, Mr. Chairman, on their own, will not protect us from terrorism. We need to shift priorities, to develop better strategies and devote greater resources to protect our soft targets, like rail, subways, and ports, and that we have not yet done.

Second, on the issue of reauthorizing the 16 provisions that are sunsetting, my view is ''mend it, don't end it.'' The PATRIOT Act was passed 45 days after 9/11, with little debate. We were bracing for more terror. The invasion of Afghanistan had begun and Capitol Hill was hit with anthrax attacks. Congress did a fairly decent job, and I supported the bill, but we can do better.

We should reauthorize the PATRIOT Act, which modernized law enforcement tools, but we should clarify and tailor the authorities so that the government does not have a license to engage in fishing expeditions for your personal information or conduct FBI surveillance on innocent Americans.

The bill on the floor today is better than the original PATRIOT Act. And if some of the amendments we will consider pass, it will be even better. But my colleagues on the Permanent Select Committee on Intelligence will describe in a moment amendments which we offered in committee and before the Committee on Rules. Those amendments are solid, moderate, and bipartisan, and they should be able to be debated today. The good news is that the Senate Judiciary Committee, on a bipartisan basis, has just reported a bill that includes many of them. That bill, I hope, will serve as the model in conference committee. That bill could have been the House bill.

In conclusion, protecting America from terrorism is not a Democrat or Republican issue, it is an American issue. As I have often said, the terrorists are not going to check our party registration before they blow us up. So when we defend America, let us forget party labels and focus on what will provide security and liberty for the American people. Balancing liberty and security is not a zero sum game. You either get more of both or less. The American people deserve more of both.

Mr. Chairman, I reserve the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. CUNNINGHAM), a member of the committee.

Mr. CUNNINGHAM. Mr. Chairman, I thank the gentleman for yielding me this time.

I listened to my colleagues on the committee, the gentlewoman from California (Ms. HARMAN), the gentleman from Massachusetts (Mr. DELAHUNT), and also the gentleman from California (Mr. ROHRABACHER), and they have legitimate concerns. I do not think there is anybody in this body on either side of this issue that does not have concerns. I would like to see, in particular, a sunset provision, although I do not know what the timing should be. God willing, there should be a day we will not need a PATRIOT Act, and it is easier to vote it back than it is to get rid of it.

Mr. Chairman, 26 nations have been attacked by al Qaeda, and we just saw today England, but look at France and Japan. It also tells us the United States is behind in its security for our mass rail and bus transportation systems, not just aviation but those as well.

Let me cite an example of what happened before 9/11 and how the PATRIOT Act, in my opinion, would have stopped an event, not just may have.

Agencies knew of an outspoken extremist group. They were outspoken in support of Osama bin Laden before 9/11, and they were outspoken about their ethnic intolerance and raising money for al Qaeda. Agencies like CIA, FBI and law enforcement had thousands of leads and limited manpower. Their primary issue at the time was getting out two agents in a foreign country that were under extreme conditions. They were concerned also about if they questioned this group that they would be taken to court on profiling. The rhetoric was there, but no action. The FBI and the CIA were limited in their ability to check out this group.

Mr. Chairman, this particular group was the group that was training in Arizona, the pilots and the crews that flew into New York City, that flew into the Pentagon, and that crashed in Pennsylvania. Mohammed Atta is another example. His roommate, the limitations that our agencies had on questioning him, he knew about the 9/11 bombings, is another reason why I think that we need this act.

I am conflicted, just like my colleague, the gentlewoman from California (Ms. HARMAN) and others, because there are things that all of us are concerned about. But Khalid Sheik Mohammed is the guy who planned 9/11. We caught this rascal. His replacement was a guy named Abu al-Libbi, and we caught that rascal. And some of the documents showed that it is only a matter of time, Mr. Chairman, until this country is hit, so we must be diligent. This act helps us do that, and weighing the concerns and is the reason I think all of us need to support the PATRIOT Act.

Ms. HARMAN. Mr. Chairman, it is my pleasure to yield 2 minutes to the gentleman from Texas (Mr. REYES), a member of our committee.

Mr. REYES. Mr. Chairman, I thank the gentlewoman for yielding me this time on this very important issue. I also rise, like my colleagues, understanding that we face a situation that is potentially very dangerous, especially given the events of this morning again in London. But I also think it is important and prudent that we craft legislation that protects our country not just from the terrorists but also from abuses.

I rise today, Mr. Chairman, to express my disappointment with this House for not allowing my fellow colleague on the Permanent Select Committee on Intelligence, the gentleman from Florida (Mr. HASTINGS), to offer an amendment which is important to H.R. 3199, the USA PATRIOT Act reauthorization. His amendment would have extended until 2010 the sunset date of section 6001 of the Intelligence Reform and Terrorism Prevention Act, also known as the ''Lone Wolf'' provision. Instead, the bill before us makes that provision permanent. It has only been in effect for 7 months, which is, in my opinion, an inadequate amount of time for the government and the public to assess the impact this significant expansion of government authorities has.

We are having this debate today, Mr. Chairman, because 4 years ago Congress had the wisdom to include sunset provisions in the PATRIOT Act. These sunsets are key to ensuring individual rights and liberties as well as allowing Congress to continue to evaluate the effectiveness of this act.

Mr. Chairman, I understand the need for this legislation, and I will support the passage today. However, I hope that my colleagues understand that if we are to continue much further down this road we may be doing irreparable damage to civil liberties in this country without sunset provisions.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentlewoman from New Mexico (Mrs. WILSON), another member of the committee.

Mrs. WILSON of New Mexico. Mr. Chairman, I thank the gentleman for yielding me this time and for his leadership on this issue.

Over the last several months, the Committee on the Judiciary has had numerous oversight hearings, as has the House Permanent Select Committee on Intelligence, to look at the PATRIOT Act and see where we need to improve it and what we need to do to extend the expiring provisions.

My colleague from southern California said that we should have sunsets on this because once we have peace we should not have these provisions. Once the war is over. Once the war is over.

The war against foreign terrorists and spies will not end, any more than the police's efforts to combat organized crime or drug kingpins. The tools that we have put into the PATRIOT Act are identical to the tools that law enforcement have had for a long time in criminal cases, but we did not have those authorities in foreign intelligence and counterterrorism cases.

There are plenty of myths about the PATRIOT Act, and I think we need to put a few of them to rest. One of them is the myth that the local sheriff can go into your library and find out what you have been reading. They cannot. Under the PATRIOT Act, they need a court order in order to get any business records or library records or anything else, under the supervision of a Federal judge. And it has to be as part of a foreign terrorist investigation or counterintelligence investigation against foreign spies. It is directed not against Americans but against those who might come to this country to do us harm.

The most important thing that the PATRIOT Act did was to break down the walls between law enforcement and intelligence to be able to share information across that wall in order to protect us before the attack comes. The intention of the PATRIOT Act is to prevent the next terrorist attack, instead of just letting the FBI gather the criminal evidence to convict somebody after thousands more have died.

□ 1415

We need to reauthorize this act, and we also collectively as Americans need to dispel the myths about the act and make some important strengthening of the act so that in the future it can continue to protect us.

Ms. HARMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa (Mr. BOSWELL), a valued member of the Permanent Select Committee on Intelligence and the only one of us successful enough to get his language adopted in the bill before us today.

(Mr. BOSWELL asked and was given permission to revise and extend his remarks.)

Mr. BOSWELL. Mr. Chairman, I thank the gentlewoman for yielding me this time to discuss this very important issue.

The PATRIOT Act has sparked important discussion about protecting ourselves from terrorists and protecting our civil liberties. It is clear we can make reforms to better ensure we are giving law enforcement all of the tools they need while maintaining the appropriate safeguards to protect the very freedoms we cherish.

Last week as the ranking member of the Subcommittee on Human Intelligence with the gentleman from California (Mr. CUNNINGHAM) as the chairman, I was able to include a reform so the PATRIOT Act ensures greater judicial oversight of government wiretaps. The so-called John Doe roving wiretaps are a critical tool in our efforts to fight terrorism because they allow surveillance when neither the target's identity nor location of the interception is known.

This amendment allows these wiretaps to continue, but requires the government to report back to the courts with an explanation of the facts and circumstances surrounding the rationale of the wiretap. This will allow greater oversight of the wiretaps without impeding the government's need to obtain information on potential terrorist plots quickly. If we focus on commonsense reforms, we can protect our communities from terrorists, and we can protect our civil liberties.

Mr. HOEKSTRA. Mr. Chairman, I reserve the balance of my time.

Ms. HARMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. ESHOO), a member of the Permanent Select Committee on Intelligence.

(Ms. ESHOO asked and was given permission to revise and extend her remarks.)

Ms. ESHOO. Mr. Chairman, I thank the distinguished ranking member for yielding me this time.

One of the most prudent things, in my view, that Congress did in passing the original PATRIOT Act was to sunset certain provisions, thus ensuring that a future Congress would review and revise them and have a very healthy and sobering debate. Rather than sunsetting these provisions again, this bill makes permanent 14 of the 16 provisions set to expire without addressing the important civil liberty issues.

I am somewhat taken aback as I listen to different parts of the debate on the floor. One would think that the Constitution is something that can be set aside when it is not convenient to follow. The Constitution is the soul of our Nation. There are magnificently written constitutions around the world, but their countries do not heed their constitution. The American people take our Constitution seriously.

And so this debate, not allowing the sunsets in the future, I think is very, very important to bring up today. The

bill continues to allow the FBI to get financial, telephone, Internet and consumer records relevant to an intelligence investigation without judicial approval.

Prior to the PATRIOT Act, these requests had to be directed at agents of a foreign power. Under the PATRIOT Act, they can be used against anyone, including American citizens.

The bill continues to allow the FBI to execute a search and seizure warrant without notifying the target of a warrant for 6 months if it is deemed that providing advance notice would interfere with the investigation. This section is not limited to terrorism investigations and is not scheduled to sunset.

The bill does not sufficiently address the issues in section 206 which deal with the roving John Doe wiretaps. Under the PATRIOT Act, the FBI can obtain a warrant and intelligence investigations without identifying the person or the phone in question.

This bill dose nothing to protect library records and bookstore receipts. I offered an amendment in the Intelligence Committee to modify Section 215 of the PATRIOT Act to prohibit the FBI from using this section to obtain library circulation records, library patron lists, book sales records, or book customer lists, but the amendment was not allowed by the Rules Committee.

In conclusion, the American people love and cherish their liberties, and they want and deserve to be safe. I think we can do both. I do not believe this bill does both. We need a better bill.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. CHOCOLA).

Mr. CHOCOLA. Mr. Chairman, I appreciate the gentleman yielding me this time.

Over the past 3 years, the PATRIOT Act has played a key role in the prevention of terrorist attacks right here in the United States. Prior to the PATRIOT Act, the ability of government agencies to share information with each other was limited, which kept investigators from fully understanding what terrorists might be planning and to prevent their attacks.

The U.S. Attorney for the Northern District of Indiana, Joseph Van Bokkelen, explained, ''If an assistant U.S. Attorney learned through the use of a grand jury that there was a planned terrorist attack in northern Indiana, he or she could not share that information with the CIA.''

The PATRIOT Act brought down the wall separating intelligence agencies from law enforcement and other entities charged with protecting the Nation from terrorism. It has given law enforcement the tools they need to investigate terrorist activities while striking a delicate balance between preventing another attack and preserving citizens' constitutional rights. And to date, there has not been one verified case of civil liberties abuse.

Mr. Chairman, I urge my colleagues to join me in supporting the reauthorization of the PATRIOT Act and to give our government the tools it needs to succeed in the war on terrorism.

Ms. HARMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey (Mr. HOLT), another valued member of our committee.

Mr. HOLT. Mr. Chairman, I rise in opposition to the PATRIOT Act. Even if all of the amendments before us today are passed, it will not bring this bill into the shape that it should be.

We worked on this in the Permanent Select Committee on Intelligence. I am sorry to say that most of our reasonable amendments were voted down on a party-line basis. But to make matters worse, even those improvements made in the Permanent Select Committee on Intelligence did not find their way through the Committee on Rules to the floor. So I remain deeply concerned about what this bill does to the American people.

The police and prosecution powers of government are among the most important powers for preserving life and liberty, but they are also among the most fearsome. Section 213, the so-called sneak-and-peek searches, it would allow investigators to come into your home, my home, take pictures, seize personal items, and when they discover they have made a mistake, there is no time in which they have to notify you that they have been there. One does not have to be a paranoid to be concerned that somebody has been in your house.

Members might say it only applies to terrorists; it does not apply to law-abiding citizens like you and me. Well, tell that to Brandon Mayfield, tell that to the Portland attorney who was detained by investigators under the PATRIOT Act. Now, the FBI in that case apologized, but this is something that hits home, and we have a responsibility to preserve the freedoms of people at home.

Mr. Chairman, I rise today in opposition to the reauthorization of the PATRIOT Act. As you know, the PATRIOT Act was passed in the aftermath of the attacks of September 11, 2001. The Act was an immediate reaction to the state of shock the country was in—being drafted, briefly debated, approved, and signed into law by October 26, 2001, just weeks after the attacks. At the time I, and many other Members of Congress, voted for the Act under the condition that a number of the provisions contained within it would sunset and thus would need to be reviewed and reauthorized.

The police and prosecution powers of the government are important and necessary to preserving life and liberty, but they are also the most fearsome powers of government and, if abused, can rob us of life and liberty. For generations, thousands upon thousands of people have come to America's shores to be free of the oppressive hand of authorities in other countries, to be free of the fear of the knock on the door in the middle of the night, to be free of the humiliation and costs and stigma of inappropriate investigations.

As the only Member of Congress from New Jersey, a state which suffered great loss on September 11th, on the House Permanent Select Committee on Intelligence, I looked forward to working within the committee during our mark up of the PATRIOT Act to address a number of valid concerns that have arisen over the last few years about the sun-setting provisions. However, most of the important amendments that were offered were defeated on party lines. And what we did accomplish—the improvements we made—did not make it through the Rules Committee for consideration on the floor.

I remain deeply concerned about many of the provisions in the PATRIOT Act as reported to the House, but I would like to specifically discuss two of them. I am deeply troubled by Section 213, which will be permanently reauthorized by this legislation. The so called ''sneak and peek'' searches allow federal agents to literally go in to your home, my home, anyone's home and conduct a secret search. Investigators can take pictures and even seize personal items or records and unbelievably they do not need to tell you about it for an indefinite period of time. When they discover they made a mistake or they discover you are not engaged in terrorist actions, they are under no obligation to ever let you know promptly.

Another provision of the PATRIOT Act, Section 215, allows investigators broad access to any record without probable cause of a crime. This means that investigators can review your deeply personal medical records and also library records without telling you about it and without any probable reason to do it. Investigators under Section 215 would be able to access all the medical records at a local hospital with only the indication that there may be potentially valuable records contained therein. In other words, most of the records searched are of innocent people, but because there is a terrorist investigation underway or a terrorists records might be somewhere in the batch, they get swept up in the search.

These provisions and many others have a deep impact on the freedoms and civil liberties all Americans. Some will say we need these provisions to track down terrorist and build cases against them. But what goes unsaid is that these provisions will also be used against people who have committed no crime and who are completely innocent. It is because of this that the PATRIOT Act must be understood as affecting all of us. A small number of unnecessary intrusions can have a broadly chilling effect. Proponents of the Patriot bill before us will say that it is directed at terrorists, not law abiding citizens, but they should try to tell that to Mr. Brandon Mayfield of Portland, Oregon.

Brandon Mayfield, a Portland attorney, was detained by investigators last year as a material witness under authority granted by the PATRIOT Act. They alleged that his finger prints were found on a bag linked to the terrorist bombings in Madrid, Spain last year. More so called evidence was collected when his residence was searched, without his knowledge, under Section 213 of the Act. However, the investigators were wrong. The FBI has issued an apology for his wrongful detention. But this is no conciliation for a lawyer and Muslim American whose reputation was tarnished by this investigation, made possible by the overly-broad powers granted under the PATRIOT Act. How can we allow this to happen in America? Of course, some mistakes will occur, but this bill strikes the wrong balance and makes those errors more likely.

In 2001, I voted in favor of the PATRIOT Act with reservations, and my reservations have only increased over time. At the time, I said that in the anxious aftermath of the attacks of September 11, 2001, we were likely to get wrong the balance between freedom and security. I insisted on a sunset clause so that the law would expire after several years and Congress would adjust the balance. Because those sunsets were adopted we have an opportunity to revisit this important legislation today. Unfortunately, the Majority has prevented many amendments which have bipartisan support from being offered. These amendments would have helped restore the proper balance between freedom and security that the bill gets wrong. And they would have provided the important sunsets that would force review of the bill in four years.

James Madison, speaking in 1788 before the Virginia Convention (not all that far from where we are today) explained what I believe is the unanswered problem with the PATRIOT Act. He said, "I believe there are more instances of the abridgement of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations." As Madison said over 200 years ago, the liberty and freedoms we as Americans cherish are being eroded today not at the barricade, but in the library, and at our local doctor's office. It is for this reason that I urge my colleagues to vote "no" on the PATRIOT Act.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Kansas (Mr. TIAHRT), a member of the Permanent Select Committee on Intelligence.

Mr. TIAHRT. Mr. Chairman, I thank the gentleman for his leadership on this action as well as others that involve the Permanent Select Committee on Intelligence.

I want to remind Members why we are here. We are here because the PATRIOT Act will sunset. It will sunset so we can see if there were any violations of civil liberties during the time it was in effect, which will be approximately 4 years by the end of this year.

There were over 7,000 alleged violations filed by the American Civil Liberties Union, as Members heard before from the gentleman from Indiana. However, we have no violations of civil liberties under the PATRIOT Act. Of those 7,000 allegations, some were under other parts of the law, but none under the PATRIOT Act. So what we are talking about in this bill is sort of splitting hairs.

We have heard comments about how there is no judicial oversight for what is going on. There is judicial oversight for almost everything involved in the PATRIOT Act with few exceptions, like national security letters, which does require a certification of relevance before they move forward.

We use these tools in the PATRIOT Act so we can catch terrorists and prevent acts of violence against American citizens. We use these same tools in other parts of the law, like when we are trying to find patent infringement, when we are trying to catch organized criminals, when we are trying to stop drug trafficking. This is a good law. I hope my colleagues will support it. It does protect civil liberties, and we should pass it.

Ms. HARMAN. Mr. Chairman, to the last speaker, I agree it is good, but I think it could be a lot better.

Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER), the former rookie of our committee.

Mr. RUPPERSBERGER. Mr. Chairman, we are all watching what is happening in London; and with that backdrop, we are discussing reauthorizing the PATRIOT Act today. We are all committed to finding and fighting terrorists. No one party, Democrats or Republicans, has exclusivity over this issue. We are all for stopping terrorists and protecting our citizens.

While we are all committed to this fight, it is still our congressional duty to exercise our oversight responsibilities. We can do this effectively with sunset provisions. Sunset provisions hold Congress accountable for reexamining and determining the effectiveness and impact of the PATRIOT Act.

As a member of the Permanent Select Committee on Intelligence, I hold this oversight responsibility as one, if not my most, important function. Let me say up front that I think the PATRIOT Act provides essential tools for law enforcement authorities that were not available before the 9/11 attacks. These tools are essential to identifying and tracking terrorists inside the United States.

The House Permanent Select Committee on Intelligence held two open hearings for the PATRIOT Act. These hearings led me to conclude that the PATRIOT Act, while good, is not perfect. Additional time is needed to assess many of these provisions' effectiveness and impact on civil liberties, and that is why we need to call for sunsets.

It is clear to me that we still face serious threats and we need some of the powers of the PATRIOT Act. Sunset provisions are important because they allow for review and oversight. Oversight allows us to protect civil liberties; but more importantly, it allows us to enhance law enforcement tools to keep pace with the terrorists.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, the Cold War is over and the world is a more dangerous place. The strategy that we used to have of containment, react and mutually assured destruction went out the window on 9/11. Lord, it probably went out earlier, we just did not get it.

We need now to be able to detect in order to prevent, and our intelligence community needs the capability and the tools so they can detect and prevent.

We are not going to be able to harden a subway site, a bus station, a train station. We can have more people, dogs, cameras, lights, we can do a lot of things to help, but we cannot stop it unless we have the tools. We do not want to use the criminal means to go after terrorists because you have to wait until the crime has been committed. We want to prevent not a crime from being committed; we want to prevent a terrorist attack from being committed. So give them the tools.

The PATRIOT Act does it. We have seen it operate for 4 years. It has been amazing how well it has operated.

When people talk about libraries, why in the world would we want to make a library a free terrorist zone? We allow our forces to go in for a crime in a library. Why should they not be allowed to go in for a terrorist issue?

Ms. HARMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, the devastation of 9/11 shook our collective consciousness to the core; but it should not have shattered the foundation that defines who we are as a people and serves as a beacon of individual rights and liberties throughout the world.

Our Nation has been able to overcome the challenges of the past by proving to ourselves and to the world around us that our rights and our values are the indispensable conditions of being an American. If we allow the threat of fear and terror to undermine our civil liberties, we will have failed not only the Founding Fathers who bestowed upon us the philosophical foundations of this great Nation, but more importantly, we will have failed the future of America as the last great hope of mankind.

□ 1430

Mr. Chairman, an unforeseen consequence of these infringements on American citizens' civil liberties is the erosion of our standing as the international leader of the rights of people. With each fundamental mistreatment of our own citizenry, we broadcast an image around the world that will, in fact, come back to haunt us. We will become what we deplore: a hypocritical pseudo-democracy of freedoms granted from the government down instead of from the people up.

Mr. Chairman, do not rewrite our precious Bill of Rights. Vote against this bill just as our Founding Fathers would have.

Mr. HOEKSTRA. Mr. Chairman, I reserve the balance of my time.

Ms. HARMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Chairman, I thank the gentlewoman for yielding me this time.

Mr. Chairman, I voted for the first PATRIOT Act, and I strongly supported the creation of the Homeland Security Department and have voted for every large increase in intelligence, homeland security funding, and defense funding.

But I am very troubled here. I am very troubled by the fact that we are

eliminating the sunsets. I am very troubled by the fact that the administration and the leadership here are just going full steam ahead without listening to the very sincere problems that many of us have with the erosion of civil liberties. I do not think we should be trying to save our freedom by killing the safeguards that keep our liberties. These are very serious issues.

The FBI can get a court order to demand confidential medical and financial records and gag their doctor or banker from telling them. They can even search people's homes and not tell them until weeks or months later. We have had many colleagues talk about the problems with library records and bookstore records. These are very serious civil liberties problems.

And it is not on the abstract. There are people like me who support a strong defense. There are people like me who support strong intelligence and homeland security funding. But this is a balancing act, and my fear is that we have gone too far.

The administration should listen to us, have a moderate bill, have sunsets, and then we could all vote for this bill.

Ms. HARMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as prior speakers on our side have made clear, we should be mending it, not ending it. That is my view under this legislation.

Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), minority leader and my predecessor as ranking member on the Permanent Select Committee on Intelligence.

Ms. PELOSI. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I salute her for her extraordinary leadership on issues relating to the national security of our country, her excellent leadership as the ranking member on the Permanent Select Committee on Intelligence, and her important comments today.

I also salute the gentleman from Michigan (Mr. CONYERS) and commend him for being such a guardian of our Constitution. Mr. Chairman, we take an oath of office to protect and defend the Constitution. No one is more committed to that oath than the gentleman from Michigan (Mr. CONYERS). I thank him for his tremendous leadership.

I join them and each and every one of our colleagues in expressing our admiration for the people of Great Britain for their strength and their courage. Together our two nations will defeat terrorism, and we will do so by pursuing real security measures and by providing law enforcement the tools they need.

Mr. Chairman, as we close debate on this important bill, I want to thank again the gentleman from Michigan (Mr. CONYERS), the gentlewoman from California (Ms. HARMAN), and so many other colleagues on both sides of the aisle for their thoughtful consideration of this very important matter. I am very impressed by the comments of the gentleman from Virginia (Mr. BOUCHER), who has contributed enormously to this debate.

Our first responsibility to the American people is to provide for the common defense, to protect and defend the American people. In doing so, we must also protect and defend the Constitution, as I mentioned. We must pursue real security measures that prevent terrorism. We must make a strong commitment to homeland security. And we cannot, because of any negligence in terms of protecting the American people in terms of homeland security, take it out on their civil liberties.

Our Founding Fathers in their great wisdom understood the balance between security and liberty. They lived at a time when security was all about homeland security. The war was fought on our shores and continued into the War of 1812 here. And so they knew that in order to have a democracy and to have freedom and to have liberty and to ensure it and to protect the people, they had to create that balance.

Today we are considering the extension of certain provisions of the USA PATRIOT Act. I want to add my voice to those who have made it clear to this body that the PATRIOT Act is the law of the land. Ninety percent of it is in the law. About 10 percent of it, 16 provisions, are what we are considering today. They are the provisions that were considered controversial 4 years ago when the bill was passed. And because they were controversial, in a bipartisan way, these provisions were sunsetted. There was a limit to how long they would be in effect. I supported the bill because of these sunset provisions and because of the rigorous oversight that was promised.

We have not seen that oversight. It simply has not happened in an effective way. And today there is an attempt on the part of the Republicans to eliminate the sunset of 14 of the 16 provisions and on the two remaining provisions to have a sunset of 10 years. That is a very, very long day when you are curtailing the liberties of the American people.

I again listened intently to the gentleman from Virginia (Mr. BOUCHER) when he described in detail the serious constitutional issues concerning section 505, national security letter orders, by which government possesses power to seize citizens' medical and other personal records without notice, without the ability to challenge these orders, and without meaningful time limitations. And for this reason, I will join the gentleman from Virginia (Mr. BOUCHER) in opposing this legislation but with the hope that it will be improved in conference and then, when it comes back to this body, that we will be able to all support a PATRIOT Act extension that protects the American people, gives law enforcement the tools they need without seriously curtailing the privacy and civil liberties of the American people.

I think it is important to note that the bill before us fails to ensure accountability. Again, when Congress voted for this 4 years ago, Members clearly understood that it would be accompanied by strong congressional oversight so that the implementation would not violate our civil liberties. In fact, the Attorney General has admitted that the information on its use of the PATRIOT Act has not been forthcoming to Congress in a timely manner. If not for the sunset provisions, there is no doubt that Congress would not have even received insufficient information we have received to date.

Today we are deciding whether the government will be accountable to the people, to the Congress, and to the courts for the exercise of its power. It is about whether broad surveillance powers that intrude on Americans' privacy rights contain safeguards and actually materially enhance security to target terrorists and those who wish to harm the United States, not needlessly intrude on the constitutional rights of innocent and law-abiding American citizens.

Unfortunately, Republicans refused to permit amendments that would have extended the sunset by 4 years and created sunsets for the national security letter provisions to ensure that these provisions would never be abused. Perhaps they thought that these amendments would have been too appealing to the many Members of this House on the Republican side who are strong supporters of privacy rights for the American people and they did not want these amendments to pass. For whatever reason, the American people are not well served by not having as open a debate with the opportunity for these sunset provisions to be considered. These amendments should have been considered as a minimum part of any effort to improve the PATRIOT Act and this bill.

USA today said in an editorial: ''Congress has an opportunity to . . . ensure'' that these provisions ''remain temporary, the best way to monitor the law's use and keep law enforcement accountable.''

We have a duty to protect the American people from terrorism but also to protect law-abiding citizens from unaccountable and unchallengeable government power over their personal lives, their personal records, and their thoughts. Because I believe this bill fails to meet these objectives, as I said, I will oppose it today with the hope that there will be an improved bill coming from the conference committee.

Again, our Founding Fathers left us with the ever present challenge of finding the balance between security and liberty. It is the story of America. We must honor their legacy in however we vote today. I would hope that even those who support the bill do so in the hope that it will come back a better bill from conference. All Members should honor their oath of office and

carry out their duty to protect and defend our Nation while protecting and defending our Constitution and our civil liberties.

I thank all who have participated in this very important debate and hope that at the end of the day, and I hope it is not a day with a very long sunset, but at the end of the day that we can all get behind a PATRIOT Act extension that does respect the civil liberties of the American people.

Again, I remind my colleagues, the PATRIOT Act is the law. The sunsetted provisions are what are being considered today. The sunsets, by and large, have been removed or extended to such an extent that they do not even matter, and we can do better. We have an obligation to do better for the American people.

Mr. HOEKSTRA. Mr. Chairman, as we close general debate on the U.S. PATRIOT Act, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER), the author of the bill, chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentleman for yielding me this time.

After listening to the speech of the distinguished minority leader, I have reached the conclusion she has not read the bill. She has not looked at the oversight that the Committee on the Judiciary has done over the last 3½ years.

We have an oversight record of bipartisan letters sent to the Justice Department, Inspector General's reports, and hearings that have a stack of paper that is about 2 feet high. In this bill we have had 12 hearings with 35 witnesses, people who have come from all over the spectrum; and 13 of the 16 sections of the PATRIOT Act that are sunsetted are not controversial. The three controversial sections, two of them are sunsetted; the third one, as a result of some of the testimony, has been amended, and that is the delayed notification warrants.

The fact of the matter remains that no federal court has found that any of the 16 sunsetted sections are unconstitutional, and the Inspector General, who is required by the PATRIOT Act itself to report to the Congress twice a year, has not found any civil liberties violations.

Let us stick to the facts. Let us stick to the result of the oversight. Let us stop the hyperbole. And let us stop the scare tactics that seem to surround the debate of those who are opposed to this law for whatever purpose.

Mr. HOEKSTRA. Mr. Chairman, I yield myself the balance of my time.

The greatest responsibility of the intelligence community is to protect our country from attack. Today's debate should flow from this simple premise which should not be controversial, contentious, or partisan.

The 9/11 attacks have led us to war, to war with an unconventional enemy that hides literally around the globe. The full energies of the intelligence community are directed to finding and monitoring that enemy abroad, but our most pressing and immediate concern is with those foreign terrorists who may be even closer to home, those within the borders of the United States. The USA PATRIOT Act has provided basic and fundamental tools to investigators to help them find foreign spies and terrorists who may seek to harm our Nation.

The continued acts of alleged terrorism in London today should continue to highlight the urgency of these efforts and the critical nature of the PATRIOT Act authorities. Within days of the first London bombings, British authorities were able to rapidly identify the bombers and follow their trail to other terrorists. The PATRIOT Act would be essential to do the same in the United States to investigate or prevent an attack.

□ 1445

By now, you have all seen the chilling photograph of the very first group of London bombers to gather in a rail station. In the United States the authorities of the PATRIOT Act likely would have been used to obtain that photograph.

In the London investigation, there has been extensive cooperation between the London Metropolitan Police and the British intelligence agencies. In the United States, that cooperation would not be possible without the PATRIOT Act.

British investigators then obtained leads from a terrorist phone to tie them to the coconspirators of the first group of bombers. In the United States, the authorities of the PATRIOT Act likely would have been used to obtain those records.

Mr. Chairman, our counterterrorism investigators in the intelligence community can do truly remarkable work to find terrorists and to piece together the puzzle of their networks, but to do that they need modern legal authorities to deal with modern threats.

Behind all the rhetoric, the PATRIOT Act is simple, sensible, reasonable and necessary. I urge all Members to support the intelligence community in its effort to fight terrorism. Support this bill and keep America safe.

Ms. KILPATRICK of Michigan. Mr. Chairman, I rise today to oppose H.R. 3199, the USA PATRIOT and Terrorism and Prevention Reauthorization Act. I want to emphasize at the outset that I share the concern of my House colleagues that it is essential to protect our Nation and its citizens from terrorists seeking to harm our homeland and its citizens. I agree with my colleagues that no safe harbor should be available to terrorists. There should be no doubt that I wholeheartedly support enabling law enforcement officials with the authority to surveil and prosecute terrorists. But it is critical that we resist the temptation to develop laws that assault the constitutional protections afforded to Americans.

I am alarmed about the scope of a number of provisions in the bill that are likely to lead to the abuse of personal freedoms enjoyed by Americans. Section 215, Seizure of Records, causes me great concern. This provision allows the FBI, based on the premise of conducting a terror investigation, to obtain any record, after receiving approval from a secret Foreign Intelligence Surveillance Act, FISA, Court. My concern is that law enforcement agencies can engage in such activity without meeting the standard legal threshold of "probable cause", thereby leading to potential cases of abuse.

I am also very concerned about the ability of law enforcement agencies to conduct "Roving John Doe Wiretaps". Under this scenario, criminal investigators can obtain wire tap authority to employ devices that roam with someone who has been designated as involved in terrorist activity; that device can be attached to an instrument that can be transported through multiple jurisdictions.

Section 213 that allows for "Sneak and Peek" authority related to searches and seizures. This is a provision that allows for run-of-the-mill criminal investigations to be employed while conducting the war on terrorism. The problem with this provision is that 90 percent of the searches are used for drug and fraud cases and not for terrorism. I am concerned about the lack of oversight that could apply to these types of investigations.

I recognize that some of the provisions of the PATRIOT Act have served a useful purpose and are scheduled to end. The process of reviewing provisions and determining whether to extend them allows the House to evaluate the effectiveness and appropriations of the provisions. Two of the provisions in this bill are now being scheduled to extend for 10 years as opposed to the 4 years in the expiring legislation. In this scenario, a flawed provision could extend 6 years beyond the normal time frame. Fourteen sections of H.R. 3199 bill will become permanent, and will have virtually no oversight.

I continue to have great reservations about the use of National Security Letters, NSLs. National Security Letters are applicable within Section 505. The NSLs deny individuals due process by barring targets of investigations access to court and the right to challenge the NSLs. The NSLs allows institutions, i.e. banks, Internet Service Providers, ISPs, to divulge critical information about individuals under investigation. Private information about an individual can be shared with law enforcement, but the organization would be "gagged" from revealing its efforts. This is a terribly flawed and wrong process.

Mr. Chairman, I content that it is essential to protect the constitutional rights of American citizens as we engaged in the ongoing war on terrorism. I urge my colleagues to stand up for the Bill of Rights and resist the temptation to curtail those rights in our collective pursuits to develop legislation to counter the threats posed by terrorists. My review of H.R. 3199 causes my great concern that we are undermining the civil liberties of Americans. I stand as a patriot for America and our Constitution, and in opposition to H.R. 3199. I urge my colleagues to join my in defeating this measure. I support sending this over-reaching legislation back to committee, and ask the Judiciary Committee to come back with a better bill that does not shed our civil liberties that are guaranteed in the Constitution. It is vital that we

address terrorism specifically, while simultaneously ensuring that these statutory provisions continued to be forced to comply with the legal threshold of probable cause.

Mr. DEFAZIO. Mr. Chairman, as we learned here on 9/11 and in London today and on 7/7, we must crack down on terrorism, and we must ensure that law enforcement officials have the tools they need to assess, detect and prevent future terrorist attacks. However, I don't believe we have to shred the Constitution and Bill of Rights in order to fight terrorism. We must be vigilant that the rights and liberties we are fighting to protect are not jeopardized in the name of the war against terrorism. Regrettably, H.R. 3199, the USA PATRIOT Act and Terrorism Prevention Reauthorization Act, does not provide adequate protections for the civil liberties of law abiding citizens and I must rise in opposition to the bill.

When the House considered the original USA PATRIOT Act in 2001, I expressed concerns with the bill both for substantive and procedural reasons. And, unfortunately, I have both substantive and procedural concerns with this reauthorization bill, as well.

With that said, I support a number of provisions in H.R. 3199. Law enforcement officials need tools to find and track domestic criminals and international terrorists. Federal law has not kept pace with emerging technological and communications systems, so I support judicially approved wire-taps to obtain email communications and internet records related to potential terrorist offenses.

I also support provisions which authorize law enforcement officials to share information with foreign intelligence officials. Allow judicially approved wire-taps on cell phones and disposable cell phones, permit judicially approved seizure of voice mail and not make permanent the provision making it a federal crime to provide material support to terrorists, among other meritorious provisions.

However, as I mentioned earlier, I also have very serious concerns with a number of other provisions in the bill. Many of the provisions in the bill that expand law enforcement authority to conduct domestic intelligence gathering, either do not require judicial review, or require that law enforcement only assert relevance to an investigation, rather than show probable cause that the information is relevant to a terrorist investigation. These expanded powers go a long way toward tearing down protections that were put in place in the post-Watergate era when we learned of presidential abuses of domestic intelligence-gathering against individuals because of political affiliation or citizen activism.

I am particularly concerned with a provision authorizing national security letters, NSL's, which allow law enforcement officials unlimited access to business and personal records without any sort of judicial oversight. This provision is extraordinarily broad and intrusive and could apply to any tangible records on any and all Americans whether or not they are suspected of a terrorist act. Prior to the Patriot Act, NSL's could be used to get records only when there was "reason to believe" someone was an agent of a foreign power. Now they are issued simply when an agent asserts that it could be relevant to an investigation. According to the Department of Justice, this new power has been used hundreds of times since the USA PATRIOT Act was signed into law in 2001. A Federal court has found this authority to be in violation of the 1st and 4th amendments of the Constitution, but the administration continues to use it, and this bill would sanction this extraordinary expansion of unchecked governmental authority.

I am also concerned that the bill extends the government's so-called "sneak and peek" authority which allows the government to conduct secret searches and seizure of property without notice, in violation of the 4th amendment. This authority has also been used hundreds of times since enactment of the USA PATRIOT Act, including against Brandon Mayfield in Portland who was suspected of being involved in the Madrid bombings. Mr. Mayfield was later exonerated of all charges related to the bombings because it was shown that the FBI based its investigation on incomplete and faulty information. But his life was changed forever as a result of the investigation and intrusive searches, and under this bill, it could happen to other law abiding citizens.

I am disturbed that the bill extends many of these controversial provisions either permanently or up to 10 years, even though Congress has not been properly provided information on the sue of many provisions of the Act to date. Without that information, it is difficult to know how this new law enforcement authority is being used, whether it's necessary at all, or whether it needs to be modified to protect the civil rights and liberties of law abiding citizens. We know of some abuses that have occurred under the act, like the Mayfield case. However, the Administration has refused to provide information on some of the most broad and intrusive powers under the Act, and the bill should provide for adequate disclosure and proper oversight of these provisions, but it doesn't.

Finally, I am concerned that the bill is being brought up with limited debate and amendments. I am particularly concerned that the Republican leadership refused to allow a vote on an amendment to remove library and bookstore records from Sec. 215 of the Act, which grants law enforcement officials the authority to seize business records without notification. A similar amendment was approved by the House of Representatives earlier this summer by an overwhelming vote of 238–187.

I would like to be able to support this bill, and as I said earlier, I support a number of provisions in the bill. I also believe we could have reached an agreement on protections to address most of my concerns with the bill by providing for judicial review and shorter-sunset provisions. Unfortunately, the leadership chose to bring a bill to the floor which simply gives too much broad, intrusive and unchecked authority to the federal government, and does not provide for adequate legislative oversight of how these powers are being used, therefore, I cannot support the bill. I hope the Senate and conference committee will address these concerns.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to H.R. 3199, the reauthorization of 16 expiring sections of the PATRIOT Act, which weakens the safeguards currently in place to protect innocent Americans from sweeping searches and surveillance by the government.

I am not opposed to the original PATRIOT Act. In fact, I supported the original bill passed in 2001 because it included provisions which were legitimately needed by law enforcement in order to better pursue terrorists. Commonsense improvements have been made to update our intelligence and law enforcement capabilities, and to reflect modern-day realities. These will remain intact, and today's vote will not affect such core provisions of the PATRIOT Act. Whether or not H.R. 3199 passes, 90 percent of the PATRIOT Act will continue to be enforced.

My objection, however, is that H.R. 3199 retains numerous objectionable provisions of the PATRIOT Act that intrude on our privacy and civil liberties, have been subject to repeated abuse and misuse by the Justice Department, and have little to do with combating terrorism. This legislation does nothing to address the many unilateral civil rights and civil liberties abuses by the administration since the September 11 attacks. Nor does the bill provide law enforcement with any additional real and meaningful tools necessary to help our Nation prevail in the war against terrorism.

Since 2002, 389 communities, including Los Angeles, have passed resolutions opposing parts of the PATRIOT Act, representing over 62 million people. This outcry from America is due to the repeated and serious misuse of the legislation by the Justice Department. Consider that the PATRIOT Act has been used more than 150 times to secretly search an individual's home, with nearly 90 percent of those cases having had nothing to do with terrorism. It was used against Brandon Mayfield, an innocent Muslim American, to tap his phones, seize his property, copy his computer files, spy on his children, and take his DNA, all without his knowledge. Furthermore, because of gag restrictions, we will never know how many times it has been used to obtain the reading records of average Americans from libraries and bookstores.

H.R. 3199 also extends or makes permanent 16 provisions of the PATRIOT Act concerning the government's expanded surveillance authorities, which are otherwise scheduled to sunset on December 31, 2005. It is simply irresponsible to make these provisions permanent when there continues to be wide spread concern that these sections of the PATRIOT Act can lead to violations of individual civil liberties, as well as tread on our country's professed support of basic civil rights for all individuals. Preserving a 4-year sunset for these 16 provisions in the PATRIOT Act is one of Congress's strongest mechanisms for maintaining oversight and accountability over expanded government controls that could potentially undermine civil rights and civil liberties. We are talking about critical issues that will set the precedence for the rights of people in our country for many years to come.

The Intelligence Committee tried to offer sensible amendments to the bill, but was denied by the Republican-controlled Rules Committee. One amendment would have tightened the ability of the FBI to conduct roving wiretaps to ensure that only terror suspects—not innocent Americans—are wire-tapped. Another amendment would have included the sunset provisions originally in the PATRIOT Act to promote accountability and congressional oversight. A final amendment would have prohibited the FBI from using the broad powers to get bookstore or library documentary records about any patron.

Even though some in our government may claim that civil liberties must be compromised in order to protect the public, we must be wary

of what we are giving up in the name of fighting terrorism. Striking the right balance is a difficult, but critically important task. History has taught us to carefully safeguard our civil liberties—especially in times of fear and national outrage.

The lessons of September 11 are that if we allow law enforcement to do their work free of political interference, if we give them adequate resources and modern technologies, we can protect our citizens without intruding on our liberties. We all want to fight terrorism, but we need to fight it the right way, consistent with the Constitution, and in a manner that serves as a model for the rest of the world. Unfortunately, H.R. 3199 does not meet those tests and, without the critical safeguards of sunset provisions, does not warrant reauthorization.

Mr. DELAY. Mr. Chairman, I rise in strong support of the reauthorization and extension of the USA PATRIOT Act, the provisions of which have protected the American people and our soil from terrorism since their enactment 4 years ago.

The PATRIOT Act has been instrumental to our prosecution of the war on terror since 9/11, and, specifically, instrumental to the prosecution of terrorists who have threatened our homeland.

Our law enforcement and intelligence communities have vigorously and appropriately used the PATRIOT Act to investigate, charge, and prosecute terrorists.

Five terrorist cells in Buffalo, Detroit, Seattle, Portland, and northern Virginia have been disbanded. Terrorists around the world have been brought to justice. The notorious wall between law enforcement and intelligence gathering organizations has been broken down. Prosecutors and investigators have been given more tools to go after terrorists without the outdated redtape that, prior to 9/11, always hamstrung such efforts. Loopholes have been closed, safe-havens have been shut, and the war in being won. Meanwhile, civil liberties are being protected.

Opponents of the PATRIOT Act suggest that we have an either/or choice when it comes to safety and civil liberties, but the PATRIOT Act—the ultimate legislative boogeyman for conspiracy theorists—has worked exactly as the American people were told it would be.

To date, 4 years after Big Brother supposedly imposed this draconian usurpation of liberty on the American people, no one has suggested a single instance of a single person's civil liberties being violated.

This point bears repeating: on one, not the Justice Department, not the ACLU, not even moveon.org has produced evidence of a single, verifiable PATRIOT Act civil liberties abuse.

It just hasn't happened.

Neither has the government's abuse of the PATRIOT Act's ''delayed notification search warrants,'' which since the Act's passage have comprised fewer than 2 of every 1,000 search warrants sought by the Justice Department.

The USA PATRIOT Act, then, Mr. Speaker, has been a boon to the law enforcement and intelligence community, a crushing blow to our terrorist enemies—212 more of whom, I repeat, are now behind bars—and a protector of security and freedom to the American people.

Of course, this law should be re-examined. That's why we've subjected it to such vigorous scrutiny: Six Inspector General reports; 12 Committee hearings, just since this April; 41 witnesses, 15 of whom were called by the Democrats; 43 proposed amendments in Committee, 8 of which were approved.

The American people have had ample opportunity to witness the PATRIOT Act in action, and in the 4 years since its passage, our Nation has been safer, our civil liberties more secure than ever, and our enemies have been hunted, caught, and prosecuted.

We are winning the war on terror, and the PATRIOT Act is a big reason why.

I urge all members to protect the American people, protect civil liberties, and extend the PATRIOT Act.

Mr. PORTER. Mr. Chairman, I rise today to express my support for the PATRIOT Act. As we all learned on September 11, 2001, terrorists will use any and all means available to them to attack the United States of America.

Since its passage following the September 11 attacks, the PATRIOT Act has played a key role in a number of successful operations to protect innocent Americans from terrorists. The PATRIOT Act removed major legal barriers that prevented the law enforcement, intelligence, and national defense communities from talking and coordinating their work to protect the American people and our national security. Now FBI Agents, Federal prosecutors, and intelligence officials can protect our communities by ''connecting the dots'' to uncover terrorist plots before they are completed. Simply put, the PATRIOT Act allows the United States to become proactive, rather than reactive.

Mr. Chairman, the simple truth is that while key provisions of the PATRIOT Act are set to expire, as we have learned twice in the past two weeks from events in Great Britain the terrorist threat that faces the world will not expire.

Southern Nevada is visited by over 35 million people each year; many of these tourists are our friends from foreign countries. Unfortunately we have learned that mixed in with these friendly tourists are some who wish to inflict harm on our Nation. This sentiment is supported by the fact that we now know that planning meetings of the 9/11 hijackers took place in Las Vegas.

While this may not be a perfect bill, I do believe that the legislation before us today reflects a compromise that includes the proper balance between security and privacy to face the challenges of the current world we live in as well as the necessary safeguards to protect our fellow citizens against an over-encroaching government.

I understand and appreciate the privacy concerns that have been expressed by many and will continue to protect civil rights and insist that the proper and regular oversight exists when possible infringements on Americans' civil rights are concerned.

Mr. HONDA. Mr. Chairman, I rise today in opposition to H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005. While Congress should be revising the flawed aspects of the PATRIOT Act, we are instead poised to make permanent the provisions that were supposed to sunset at the end of this year.

My fear is that the actions of our government pursuant to the PATRIOT Act amount to nothing short of a taking, not a taking of property, rather of our rights and our liberties. For example, the House Judiciary Committee Democrats have uncovered the following regarding the Act:

It has been used more than 150 times to secretly search an individual's home, with nearly 90 percent of those cases having had nothing to do with terrorism.

It was used against Brandon Mayfield, an innocent Muslim American, to tap his phones, seize his property, copy his computer files, spy on his children, and take his DNA, all without his knowledge.

It has been used to deny, on account of his political beliefs, the admission to the United States of a Swiss citizen and prominent Muslim Scholar to teach at Notre Dame University.

It has been used to unconstitutionally coerce an Internet Service Provider to divulge information about e-mail activity and web surfing on its system, and then to gag that Provider from even disclosing the abuse to the public.

It has been used to charge, detain and prosecute a Muslim student in Idaho for posting Internet website links to objectionable materials, even though the same links were available on the U.S. Government's web site.

These are just a few of the incidents we know of, yet they are enough to raise plenty of concerns in my mind. Because of gag restrictions, we will never know how many times it has been used to obtain reading records from libraries and bookstores, but we do know that libraries have been solicited by the Department of Justice—voluntarily or under threat of the PATRIOT Act—for reader information on more than 200 occasions since the 9/11 terrorist attacks.

Rather than making the provisions in question permanent, we should be reviewing and amending the most intrusive of these provisions that are subject to the sunset clause such as:

Sec. 215: Secret searches of personal records, including library records. The bill does not provide a standard of individual suspicion so that the court that examines these extraordinary requests can ensure personal privacy is respected, and also falls short by failing to correct the automatic, permanent secrecy order.

Sec. 206: ''Roving'' wiretaps in national security cases without naming a suspect or telephone. The bill does nothing to correct this overbroad provision of the Patriot Act that allows the government to get ''John Doe'' roving wiretaps—wiretaps that fail to specify the target or the device. The bill also does not include any requirement that the government check to make sure its ''roving'' wiretaps are intercepting only the target's conversations.

The Patriot Act originally had sunsets on some provisions so we could reexamine the extraordinary powers that were given to the executive branch, in a calmer atmosphere. Instead we are here today ignoring the more troubling provisions such as: the ''delayed notice'' of a search warrant, the intrusive ''national security letters'' power of the FBI, and the overbroad definition of domestic terrorism.

There is no more difficult task I have as a legislator than balancing the nation's security with our civil liberties, but this task is not a zero sum game. By passing a bill that largely ignores the most serious abuses of the PATRIOT Act, that ignores the abuse of power by the Bush Administration, and which fails to give adequate resources and money to those on the ''front line'' in the fight against terrorism.

Ms. DELAURO. Mr. Chairman, there is no greater responsibility of government than to protect its people from harm. That was the intent of the PATRIOT Act—legislation authored a month after the September 11th attacks 4 years ago. And like any bill quickly passed into law, particularly one this expansive, the PATRIOT Act has worked well in some respects, but less so in others, and in some cases, with unintended consequences. All that is understandable, but making the entire bill work well with the benefit of 4 years hindsight ought to be the challenge before us today.

But this legislation is not the entire PATRIOT Act passed into law 4 years ago—it is only 16 provisions of that law, most of which were set to expire or sunset. This year, we are failing to consider some of the most ineffective and overreaching provisions of the PATRIOT Act. We are making only the most modest changes to others. And, in the case of the so-called ''sneak and peek'' provision, we are actually making matters worse.

Indeed, under this bill, judges can order searches or seizures without telling the targets for up to 6 months after the search. This bill also expands authority to access medical records and bookstore and library records. And even though it allows recipients of such subpoenas to consult an attorney, there is no requirement that law enforcement show that the information they are seeking is even part of a terrorism investigation.

And while this provision will be revisited again in 10 years, almost all the others are made permanent—access to e-mail and Internet records, wiretap authority, the disclosure of Internet records in emergencies, the use of search warrants to seize voice mail. These are all fundamental matters of privacy—privacy we would all agree terrorists are not entitled to, but the average American is.

By insisting 14 of the 16 expiring provisions in this bill be made permanent, we are essentially abdicating our responsibility as Members of Congress to make sure we strike the right balance of giving law enforcement the tools they need to catch terrorists while still upholding the basic rights to which every American is entitled.

Mr. Chairman, this bill is a matter of security—of homeland security, national security and the security of every American's right to privacy. Let us honor our obligations and uphold each of those responsibilities.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 3199. This bill does very little other than to make permanent, onerous sections of an onerous law.

Four years ago, Congress passed and the President signed into law the USA PATRIOT Act. Substituted in the dark of night, the Administration's bill was inserted as the final bill and became law with very little Congressional deliberation or consideration. I was appalled by the process we used then and am only slightly more comforted now.

We are considering making 14 of the 16 provisions in the PATRIOT Act permanent, and making the other 2 provisions semi-permanent. Are we going to yield more of our institutional power by granting the permanency of these provisions? We must remain vigilant against terrorism, but we must also remain vigilant against abuses of power that curtail Americans' civil liberties in a time of war.

Mr. Chairman, I have heard a lot during the last four years that we will not yield to the terrorists. That we will fight tyranny with freedom and democracy, and the power of our ideas will prevail. I agree.

Yet, today, we are considering limiting American freedoms by extending these sections of the PATRIOT Act permanently. As a former prosecutor, I understand the need for tools to prosecute those who would do us harm. However, the law that was passed four years ago and the bill we consider today go too far.

We must provide commonsense tools to prosecutors, but we must weigh the important needs to safeguard liberty. We must not make these temporary provisions permanent while we remain at war. What will generations to come think when they have seen we have permanently lowered the bar in protecting their civil liberties?

Mr. Chairman, I am reminded of a very wise saying by one of our founding fathers, Benjamin Franklin. He said ''They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.''

I will vote against this bill and urge my colleagues to do the same.

Mr. FARR. Mr. Chairman, I rise in strong opposition to the PATRIOT and Terrorism Prevention Reauthorization bill. This bill tramples on the Bill of Rights in the name of patriotism.

To be patriotic means to be loyal and devoted to one's country. As Thomas Paine once said, ''It is the duty of the Patriot to protect his country from his government.'' We are all Patriots today in the finest sense of the word, but just because some of us want to ensure that Congress retains its legislative oversight over these draconian provisions, some will call us unpatriotic. To quote Thomas Jefferson, ''Dissent is the highest form of patriotism''.

While not one of us in the Chamber takes lightly our Oath to protect and defend the United States, the permanent extension of the Patriot Act, as the expense of our civil liberties, will not in and of itself make our country safer.

I voted against the original PATRIOT Act that was hastily passed in October 2001. The same concerns regarding the abuse of power still exist. With such broad, sweeping provisions as roving wire taps and sneak and peek searches, Congress must retain its ability to exercise legislative oversight to ensure the civil liberties of the people are upheld. The provisions of the misnamed Patriot Act should be reauthorized periodically, not made permanent.

This Administration consistently hides behind the fear of terrorism to achieve their legislative agenda. In this case, they are trying to convince the American people that giving up their civil liberties is necessary to combat terrorism. My constituents remain unconvinced. In my district, the local governments of Pacific Grove, Salinas, Santa Cruz, and Watsonville, California have all passed resolutions expressing their concerns with the anti-privacy and anti-liberty portions of the Patriot Act.

Mr. Chairman, homeland security means protecting the civil rights of Americans.

Mr. UDALL of New Mexico. Mr. Chairman, almost four years ago, our country was traumatized by the vicious attacks on September 11, 2001. We will never forget that day or the days immediately following the attacks, and once it became clear who was behind the attacks and what their motives were, we realized that we were facing a threat unlike any other. In the years since, we have seen these senseless attacks continue on our allies across the world. As a former state attorney general, I fully understand the need to balance the security of our nation and the liberties of our citizens. The gravity of the situation is not lost on me, or any of my colleagues in this chamber.

On October 24, 2001, a justified sense of urgency resulted in an unjustifiably rushed vote on the PATRIOT Act. Many members had outstanding questions about the bill, which the Rules Committee put in place of another bill that had been passed by the Judiciary Committee. In the years since that bill passed, over 374 cities, towns, and counties in 43 states have passed resolutions expressing concern about the PATRIOT Act or an extension of it. In New Mexico alone, ten cities and four counties have passed resolutions. I have received over 3,000 letters and emails from constituents on this issue, and I have met with hundreds of constituents in my district to discuss the PATRIOT Act in town hall meetings. I have found that Americans of all stripes share my concerns about the Act.

The long awaited House floor debate of this bill has arrived. Many of my colleagues and I are eager to make some commonsense changes to this law, and to bring to light our concerns. Unfortunately, the bill before us today is just more of the same. It gives blanket reauthorization to the bill with only very minor improvements. All but two of the expiring provisions are made permanent, and 10-year sunsets are applied to Sections 206 and 215, the roving wiretaps provision and the ''library provision,'' respectively. All amendments brought to the Rules Committee that would have shortened the sunset period, so that Congress could continue to conduct important oversight and review of this legislation, were not allowed a vote on the floor.

I brought two amendments to the Rules Committee, both of which were rejected. The first, sponsored by Representative BERNIE SANDERS, would have reined in what is probably the most notorious provision in this bill—Section 215. This section grants law enforcement authorities unprecedented powers to search, or order the search of, library and bookstore records without probable cause or the need for search warrants. Because these surveillance powers were cast so broadly and the law prohibits them from revealing to the subject that an investigation is occurring, librarians, storeowners and operators are left in an impossible position. Just one month ago, this House passed an amendment to the FY06 Science-State-Justice-Commerce bill denying funding for this section. Why, then, does the majority insist on giving this section a blanket renewal for 10 years? Librarians and library and bookstore patrons in my district will have a difficult time understanding why their concerns have not been heard by the House leadership. Moreover, in July 2003, the American Civil Liberties Union filed a case against the Department of Justice over Section 215 in a Federal District Court in Detroit, Michigan. Despite promises by the judge that she would issue a prompt ruling, the ruling is still pending two years later. I am very concerned that this ruling has not yet been issued.

I also brought to the Rules Committee, along with Representative CAROLYN MALONEY and Representative CHRIS SHAYS, an amendment that would strengthen the Privacy and

Civil Liberties Board created in last year's intelligence reform bill. Unfortunately, in its current form, the Board does not have the tools to adequately do its job. My amendment would have changed the Civil Liberties Board to be an independent agency within the Executive Branch, have true subpoena power, make full and frequent reports to Congress, have access to information through privacy and civil liberties officers, and have fair composition. It is our responsibility to ensure that the Executive Branch has checks and balances, and I am disappointed that this amendment was not allowed a vote today.

I must also express my grave concern about a section of the bill that was not given a sunset, and thus has not been given the debate that I believe it deserves. Section 213, known as the ''sneak and peek'' provision, allows federal agents to search homes and businesses without giving notice for months. Changes to this section should have been included in the bill before us.

Mr. Chairman, I will vote against this bill today not because I oppose the PATRIOT Act in its entirety, but because I do not believe this bill represents the will of the people or their representatives. I think that if we were allowed a vote on an amendment to Section 215, for example, a majority of members would probably support it. And I think many members here would feel more comfortable attaching four-year sunsets to the expiring provisions than permanently reauthorizing them. But we will not be given that chance today.

In their final report, the 9/11 Commissioners brilliantly stated, ''The choice between security and liberty is a false choice,'' and that ''if our liberties are curtailed, we lose the values that we are struggling to defend.'' We must continue to encourage debate on this law, the events leading up to its passage, and the long-term implications. Because the bill before us today does not reflect this need, I will oppose it.

Mr. NEUGEBAUER. Mr. Chairman, I rise today in support of the USA PATRIOT Act. Nearly four years ago and shortly after terrorists maliciously killed thousands of Americans on September 11, 2001, Congress passed the PATRIOT Act. This act provides law enforcement officials the tools they need to save lives and protect this country from future terrorist attacks. Today, we are at a critical point as Congress considers extending 16 important provisions of the law.

I have looked carefully at the law and I have heavily weighed the constitutional questions some have raised. In the end, I wholeheartedly support all 16 provisions. I believe that the tools provided under the law are consistent with our long cherished values and consistent with our rights under the Constitution.

I especially support the provisions which take important steps to ensure information sharing and cooperation among government agencies. By providing these necessary tools, the PATRIOT Act builds a culture of prevention and makes certain that our government's resources are dedicated to defending the safety and security of the American people.

For decades, terrorists have waged war against freedom, democracy, and U.S. interests. Now America is leading the global war against terrorism. As President Bush has said, ''Free people will set the course of history.''

Mr. CUMMINGS. Mr. Chairman, I rise in opposition to this bill, the USA PATRIOT and Intelligence Reform Reauthorization Act of 2005, H.R. 3199.

Mr. Chairman, after the tragic events of September 11, every American knows, in every nuance of the truism, that freedom is not free. I firmly believe that in order to have security in our homeland we must have a reasonable expectation of infringement of some of our civil liberties. The stakes are too high to maintain a pre-9/11 mentality and the threats of terrorism are too real. However, this bill crosses the reasonableness threshold by abrogating rights guaranteed under the Constitution without a corresponding increase in the real tools law enforcement needs to fight the war on terrorism.

I believe that we should focus on securing our homeland, not by infringing on civil liberties as outlined in the PATRIOT Act—but, by securing our rail and transit systems, by securing our ports and waterways systems, by securing our airspace, and by refining our intelligence organizations for maximum outcomes, just to name a few. But I digress.

Subsequent to passage of the USA PATRIOT Act, a hastily devised bill brought to the floor 45 days after 9/11, I received many letters from my constituents who applauded my voting against its passage. While they were opposed to the bill, many were comforted by the fact that the provisions would sunset and Congress would take a closer look when clearer heads might prevail. As the sunset date approached for the more troubling PATRIOT Act provisions, I received even more letters concerned about the prospect of extending or making permanent the more intrusive aspects of the USA PATRIOT Act.

I also received reports from people who believed that their rights had been unduly violated under the PATRIOT Act. That is why I held a PATRIOT Act Town hall earlier this ear to further examine the extent of the problem.

Mr. Speaker, let me give you an example reported to my office.

Some months ago, a Maryland-based engineer of Iranian descent was at work when the State Police showed up at his employer's doorstep and started questioning him. Without explaining the reason for their interrogation, they asked him where he had gone to school, where he had lived, how many times he traveled internationally and whether he had ever rented a car.

Then, they demanded that he hand over his laptop—equipment that belonged to his employer—and, after some haggling, they took the device without ever obtaining a warrant.

Later, the engineer (whom I'll call ''Mr. L'') was told that a former police officer had seen a group of people who ''looked Middle Eastern'' driving around an airport and ''acting suspicious.''

Fortunately, Mr. L had proof that he was nowhere near the airport during the time in question. He has since been cleared of any wrongdoing.

Yet, Mr. L. remains convinced that his professional reputation has been seriously damaged, and in all likelihood, he is correct.

Far too many Americans of ethnic descent can relate to Mr. L's story of being accused of wrongdoing based only upon a racial or ethnic ''profile.'' Although our U.S. Constitution protects us against unreasonable searches and seizures, we know that this guarantee has not always been uniformly assured.

Sadly, the governmental intrusion into Mr. L's life seems to be one of these cases. It was an erosion of his personal freedom clearly allowed under the PATRIOT Act, which as Americans the rest of us take lightly at our peril. Mr. L's story is not unique; the danger his experience illustrates is not limited to Islamic Americans; and the erosion of our freedom is not confined to investigations of terrorism.

Mr. Speaker, the expressed purpose of the PATRIOT Act was to assure that U.S. law enforcement agencies would possess the legal tools that they said they needed to protect us from acts of terrorism. From the time of its initial passage, however, there has been serious concern that the wider police powers granted to our law enforcement agents by the legislation—as well as other assertions of executive power by the Bush Administration—were not adequately balanced by sufficient constitutional safeguards.

The purposes of this bill are the same and it suffers from the same infirmities as its predecessor. As the Dissenting Views to Accompany H.R. 1399 reports, and I paraphrase, ''there are numerous provisions in both the expiring and other sections of the USA Patriot Act that have little to do with combating terrorism, that intrude on our privacy and civil liberties and that have been repeatedly abused and misused by both the Justice Department and the Administration.''

These include, but are not limited to, the inadequate judicial oversight permitted by this bill and the roving wiretaps targeting innocent Americans—Americans not involved in terrorism in any way. Further, the ''sneak and peak'' provisions authorize federal agents to enter our homes, search them and even seize our property, notifying us only after the fact.

It should come as no surprise that since 2002, 389 communities and seven States representing over 62 million people have passed resolutions opposing parts of the USA-PATRIOT Act. It may come as a surprise however, that groups ranging the political spectrum from the ACLU to Gun Owners of America are equally opposed to many sections of the bill. They are concerned, like my constituents and many other citizens around the country, that the PATRIOT Act has been used more than 150 times to secretly search an individual's home, with nearly 90 percent of those cases having nothing to do with terrorism.

They are concerned that the PATRIOT Act has been used to coerce an internet service provider to divulge information about e-mail activity and websurfing of its members.

They are concerned that it has been used on innumerable occasions to obtain reading records from libraries and bookstores—and that on at least 200 occasions has been used to solicit reader information from libraries.

They are concerned that they may be next for these unreasonable intrusions.

Yet we never had a discourse on these issues. Unfortunately, again the House process has been distorted to leave us to consider a one-sided partisan bill. Instead of thoughtfully considering the tough questions like: how much governmental power is truly required to protect us and what constitutional freedoms are we going to leave in place for our children and generations yet to be born, we consider a partisan bill of which the Minority members inform they never received the facts necessary to fully evaluate.

For this and other reasons, I decided to cosponsor the bipartisan bill spearheaded by

BUTCH OTTER and BERNIE SANDERS, the Security and Freedom Ensured Act of 2005, H.R. 1526, the SAFE Act.

Among other corrections to the PATRIOT Act, this bill would require ''specific and articulable facts'' (rather than a more generalized suspicion) that a suspect is an agent of a foreign power when the government wishes to seize records. It would require a far more detailed justification before ''roving wiretaps'' could be utilized and it would protect our library and bookstore records from unwarranted inspection.

In addition, H.R. 1526 would re-define the new crime of ''domestic terrorism'' in far more narrow terms, making it clear that our traditional freedom to assemble and challenge governmental action must not be chilled.

Although this bill does not resolve every concern about the USA PATRIOT Act, I believe it represents a better beginning for the House debate than the bill under consideration. Democrats and Republicans alike are seeking to better protect the freedom of Americans—without reducing our ability to protect ourselves against terrorist threats.

Since September 11, Americans have learned to accept some additional intrusions into our privacy as the price that we must pay to protect ourselves. Yet, we must also remain vigilant.

Mr. L.'s experience should be a lesson to us all. As we defend freedom against foreign terrorism and promote freedom abroad, we must be ever-mindful not to destroy the freedoms that make us America.

Mr. STARK. Mr. Chairman. I rise in strong opposition to H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act, because I swore to uphold the Constitution. The PATRIOT Act clearly violates all Americans' Fifth Amendment right to due process and Fourth Amendment guarantee against unreasonable search and seizure, among others. If the Government takes our rights away in order to supposedly defend them, what are we even fighting for?

Using the PATRIOT Act over the last four years, the Bush Administration has monitored meetings of citizens who dare to criticize their government. It has searched homes without warrants and listened in on phone conversations without any reasonable justification.

If this is the price of security, now is a fair time to ask: what security have we gained? The terrorist who mailed anthrax to the U.S. Capitol and shut down a Senate office building for two weeks is still at large, but a University of Connecticut graduate student who studies anthrax in Petri dishes was charged with bioterrorism. The cargo that rides aboard almost every commercial flight remains unsecured, but a New Jersey man faces up to 20 years in prison under the PATRIOT Act for looking at star's with his seven year old daughter because he shone a laser beam on an airplane.

I am proud to represent one of the most diverse congressional districts in the country. The people of the 13th District know that your ethnicity, religion or country of origin is not indicative of your commitment to community—or anything else, for that matter. That's why cities across the East Bay were among the first in the nation to pass resolutions condemning the PATRIOT Act. I stand with them in support of those actions.

Mr. Chairman, searching my constituents' homes and not telling them, collecting information about what they read, and tracking their e-mail and web usage is a war on liberty to create a false sense of security. To paraphrase one of our founding fathers, Ben Franklin, the nation that sacrifices liberty for security deserves neither. I urge my colleagues to join me in opposing this unpatriotic act.

Mr. OXLEY. Mr. Chairman, anyone who was serving in Congress on September 11, 2001, will never forget the day. We watched television in horror as the World Trade Center collapsed, and then were rushed out of the U.S. Capitol when Flight 77 crashed into the Pentagon. President Bush immediately challenged us to provide U.S. citizens with protections against the new threat of worldwide terrorism, and within weeks we responded with the USA PATRIOT Act.

As Chairman of the House Financial Services Committee, I was proud to help author the antiterrorist financing provisions in the Act. My committee has held numerous oversight hearings on the implementation of the provisions since then. I can report progress. More than $147 million in assets have been frozen and roughly $65 million seized since 9/11. The U.S. has broken up suspected terrorist financing networks, including one in my home state of Ohio. Our terrorist financing tools were further augmented by the intelligence reform act approved in the wake of the 9/11 Commission report.

As a former FBI agent, I have found other parts of the PATRIOT Act just as vital in the defense of our freedoms. As we have been reminded by the two rounds of bombings in London, the reality of terrorism remains very much with us. The toll that these attacks take is so terrible that the only acceptable approach is to prevent them in the first place. To that end, today we are working to make permanent 14 of the 16 expiring provisions of the PATRIOT Act.

I would note that one of the two provisions being extended for only ten years rather than permanently concerns the use of ''roving wiretaps.'' As one of the only Members of Congress who has conducted undercover surveillance, I can tell you now that the need for this authority will not go away. Tying intercept authority to an individual rather than a particular communication device is simply common sense in this era of throwaway cell phones and e-mail. Sunsetting this authority sends the wrong message to our law enforcement agencies: it indicates that our trust in them is incomplete at a time when their services have never proven more important. They should have our full support and every reasonable tool we can give them to help fight the Global War on Terror.

The PATRIOT Act has been a success and we are safer for it. The law has come under misguided criticism from some quarters, and I am constantly answering questions from my congressional district in response to myths surrounding the Act. There is absolutely no evidence that the PATRIOT Act has been used to violate Americans' civil liberties. Congress recognizes the delicate balance between deterring terrorists and preserving our precious freedoms. I feel confident in saying that terrorists make no such distinction. I support the reauthorization of the PATRIOT Act and hope that we can continue to work on remaining issues—including making the roving wiretap provision permanent.

Mr. BLUMENAUER. Mr. Chairman, the PATRIOT Act was enacted in the wake of the 9/11 terrorist attacks, rushed through the House as a suspension bill the day after it was introduced. This process didn't permit the public, let alone Congress, to fully understand it.

The original bill was rewritten in the Rules Committee instead of the bipartisan bill that was unanimously passed out of the Judiciary Committee. Luckily, there were a few sunset provisions that were intended to help keep people honest and evaluate the impacts on the public.

We have now been fighting the war on terror longer than World War II with no end in sight. The policy decisions we make affect the lives of everyday Americans. It is important to keep these policies narrowly focused on items that are necessary for dealing with terrorism and today's modern communication developments while not encroaching on American's fundamental rights. This version is a missed opportunity to narrow the provisions and time limit their applications.

The good news is the public is becoming more aware and involved. Thirteen municipalities in Oregon, including Portland, have already passed resolutions expressing their opposition to the PATRIOT Act.

It seems that the majority of Congress has at least some reservations about this bill. There were more ''no'' votes than four years ago and a bipartisan effort to provide more checks and balances is growing. The Senate version will be better, making it likely that the fiscal legislation will be an improvement over the existing law.

I will continue working to give voice to the concerns and the experiences of Oregonians, as together we fight against terrorism and protect the rights of each American.

Mr. SHUSTER. Mr. Chairman, I rise today in support of the renewal of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005 and strongly encourage my colleagues to join me in supporting this important tool in the war on terror. It is vital that we continue to provide the resources and necessary tools that allow for our law enforcement agents in all communities to search out terrorists wherever they may hide among us.

The continued success of the war on terrorism strongly depends upon our law enforcement and counter-terrorism officers being able to adapt and improve as our ever evolving enemies present new threats. Al Qaeda has shown that they will use various tactics to kill innocent civilians, we must be able to effectively prevent each attack regardless of what form it is to come in. In order to do that, we must have numerous tools to track suspects and gather detailed information about possible attacks. Additionally, we must be able to effectively use this information to bring would-be attackers to justice before they have a chance to strike.

We must also remain diligent in dismantling the terrorist financial network. To date, many of the provisions of the PATRIOT Act have allowed our law enforcement agencies to designate 40 terrorist organizations, freeze $136 million in assets around the world, and charge more than 100 individuals in judicial districts throughout the country with terrorist financing-related crimes. Taking away their resources is an important method of decapitating and slowing the growth of many of these terror networks.

To date, the PATRIOT Act has been an extremely effective weapon in the war on terror. We cannot allow the terrorists to find any safe havens in this nation. This will continue to be a long and hard fight to protect and defend our homeland against this ruthless and fanatical enemy, but with the necessary tools to root them out wherever they may hide, I am certain we will continue to be victorious. I would again strongly encourage my colleagues to join me in supporting the USA PATRIOT Act and Terrorism Prevention Reauthorization Act of 2005.

Mr. LEVIN. Mr. Chairman, the fight against terrorism is very serious business and we need to give law enforcement the tools it needs to prevent terrorist attacks against the American people. When the Congress approved the PATRIOT Act four years ago, we recognized that the serious nature of the threat required giving law enforcement broad new powers to help prevent it. But we were wise enough to also recognize that under our Constitution, laws and traditions, such broad power requires checks and balances as well as continuous congressional oversight to ensure that this power is not abused.

I voted for the PATRIOT Act four years ago. I support most of the 166 provisions of the PATRIOT Act; indeed, today's debate has nothing to do with the vast majority of these provisions, which are already the permanent law of the land. The bill before the House today concerns only the 16 provisions of the PATRIOT Act subject to sunset—the provisions that have the most serious potential impact on the fundamental liberties of innocent Americans if they are abused. These 16 provisions involve the power of the government to enter and search people's homes without notice, to tap people's communications with roving wiretaps, and obtain people's library and health records. Because these provisions touch on the most basic liberties of citizens, we included sunsets so Congress would be required to revisit them. The sunsets balance the extraordinary powers given to law enforcement with oversight and accountability. More than that, the sunsets give Congress the opportunity to regularly review the PATRIOT Act and fine-tune it to adapt to changing circumstances.

The bill before the House takes away the sunset provisions for 14 of these sensitive provisions, and sets ineffectively long ten-year sunsets for the other two provisions. In so doing, this bill throws assured oversight and accountability out the window.

Let me say this. Many of us voted for the PATRIOT Act four years ago with the assurances that there would be meaningful oversight by Congress. For much of the past four years, the rigorous oversight we were promised simply didn't happen. It has only been in the last few months, as the sunset dates approached, that Congress has asked questions, and held the Administration's feet to the fire to provide basic information about how the PATRIOT Act is being implemented. Now the Majority proposes to discard the sunset provisions. The experience of the last four years shows that without sunsets, there is no oversight and no accountability.

I had hoped that the serious shortcomings in this bill could be corrected on the Floor today, but the Majority has blocked a number of important amendments Democrats sought to offer. I believe that many of these amendments would have been adopted had they been put to a vote. It didn't have to be this way. I understand that the Senate Judiciary Committee has unanimously approved its own version of the PATRIOT Act today that contains many of the improvements that the House Leadership denied us the opportunity to debate. I regret that the Leadership of the House has not embraced a similar bipartisan process.

I will vote for the motion to recommit the bill, which would correct the most serious shortfalls in the legislation; in particular, the lack of sunsets of key provisions—sunsets that were contained in the original PATRIOT Act.

I will therefore oppose passage of this legislation today in the hope that the bipartisan Senate Judiciary Committee's version will prevail in the Senate.

Mr. VAN HOLLEN. Mr. Chairman, I rise to explain my decision to vote against this version of the PATRIOT Act. This has not been an easy decision. Some of the provisions that are being reauthorized in this bill provide law enforcement officials with important tools that may be helpful in detecting and disrupting terrorist activities. I support those provisions. Other provisions, however, fail to provide adequate safeguards to ensure that the privacy rights of innocent citizens are protected. It is very important that, in our effort to defend the liberties that Americans cherish, we not enact measures that erode the very freedoms we seek to protect. We can ensure that the government has the necessary surveillance powers without sacrificing the privacy rights of Americans. Indeed, many amendments to the PATRIOT Act were proposed in both the Judiciary Committee and the Rules Committee to address legitimate concerns. Unfortunately, many of these amendments were either rejected or blocked from coming up for a vote.

In the aftermath of September 11, 2001, it is essential that we strengthen our ability to detect, deter, and disrupt terrorist activities. Many provisions in the PATRIOT Act accomplish this objective in a balanced way. Other provisions, however, leave citizens vulnerable to unchecked, unwarranted, and potentially abusive invasions of privacy. I am hopeful that the Senate will address these shortcomings in the House bill so that, at the end of the day, we can enact a balanced bill that protects both our security and the rights and liberties we seek to secure.

We can do better. I look forward to continuing to work with my colleagues—both Democrats and Republicans—to develop a bill of which we can all be proud and which can be a true testament to American patriots and to the Constitution we all seek to uphold and defend.

Mr. CARDIN. Mr. Chairman, I rise in support of H.R. 3199, the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005.

Following the terrorist attacks on September 11, 2001, Congress undertook a review of Bush Administration proposals to strengthen our laws relating to counterterrorism. Congress passed the Patriot Act in October 2001—which I supported—recognizing that it needed to give law enforcement the proper tools to effectively combat new terrorist threats. The law took account of new changes in technology that are used by terrorists, such as cell phones, the Internet, and encryption technologies.

The original Act gives federal officials greater authority to track, intercept, and share communications, both for law enforcement and foreign intelligence gathering purposes. It vests the Secretary of the Treasury with regulatory powers to combat corruption of U.S. financial institutions for foreign money laundering purposes. It seeks to further close our borders to foreign terrorists and to detain and remove those within our borders. It creates new crimes, new penalties, and new procedural efficiencies for use against domestic and international terrorists. Indeed, the PATRIOT Act gives federal prosecutors many of the same tools to use against terrorists that Congress has already granted them to use against drug traffickers, for example.

The original Act also creates judicial safeguards for e-mail monitoring and grand jury disclosures; recognizes innocent owner defenses to forfeiture; and entrusts enhanced anti-money laundering powers to those regulatory authorities whose concerns include the well being of our financial institutions.

Congress did not grant all of the authority the President sought in the first Patriot Act, and sunsetted much of the Act's authority in 2005. Many of the wiretapping and foreign intelligence amendments sunset on December 31, 2005. The sunset provisions require Congressional oversight because Congress must take an affirmative action to keep these provisions in effect. I believe that Congress should exercise greater oversight of the use of new authority under the PATRIOT Act, as I have some misgivings about the Administration's use of the new powers under the PATRIOT Act.

Over the past few years I have continued to insist on greater oversight by Congress of the Justice Department as it executes its new powers. I am pleased that the Committee includes sunsets for two provisions: access to business and other records, and roving wiretaps. I support additional sunsets for other provisions in this legislation such as the "sneak and peek" provision which allows delayed notification for search warrants—and I am hopeful that the House will ultimately adopt the additional sunsets approved by the Senate Judiciary Committee when this bill returns from conference committee.

I am disappointed that the House leadership did not make in order amendments that would have: exempted library and bookstore records from Foreign Intelligence Surveillance Act (FISA) searches; reformed the roving wiretap authority in FISA cases to contain the same privacy safeguards as roving wiretaps in criminal cases; established the traditional FISA standards for search warrants; required individual suspicion for records orders; allowed citizens to challenge secrecy orders in records requests; and extended the sunset clauses for numerous other provisions of the Patriot Act.

I voted in favor of a number of bipartisan amendments to limit the Justice Department's power and increase Congressional and judicial oversight of the executive branch, including: requiring the FBI Director to personally approve searches of library or bookstore records; additional reporting to courts by law enforcement when they change surveillance locations under a "roving wiretap"; allowing recipients of National Security Letters to consult with an attorney and challenge the letters in court; and increasing reporting requirements and making it more difficult to obtain "sneak and peak"

search warrants, which entail secret searches of homes and offices with delayed notice.

We must not repeat the mistakes of the past, when the United States sacrificed the civil rights of particular individuals or groups in the name of security. Whether in times of war or peace, finding the proper balance between government power and the rights of the American people is a delicate and extremely important process. It is a task that rightly calls into play the checks and balances that the Founders created in our system of government. All three branches of government have their proper roles to play in making sure the line is drawn appropriately, as we upheld our oaths to support the Constitution.

I support H.R. 3199 but I hope as this legislation works its way through Congress, we will include sunsets on the provisions we are reauthorizing, so that Congress will continue to oversee the executive branch's use of these new powers.

Mr. LARSON of Connecticut. Mr. Chairman, I rise today disappointed at the missed opportunity for the House to strike a reasonable balance within the PATRIOT Act that empowers law enforcement and protects civil liberties. There is more to protecting American's security than peeking into people's reading habits or medical records. Protecting America means securing our ports and borders, supporting our first responders, and ensuring that our transit systems, nuclear power plants and schools are safe from those who seek to do us harm. Frankly, Americans are still at risk. There are large gaps that still remain in critical areas that leave Americans vulnerable to the threat of terrorism. For example:

Our greatest threat remains an attack by a weapon of mass destruction. But funding for cooperative threat reduction programs to secure unaccounted for nuclear material in the former Soviet Union have remained stagnant since 9/11, taking a backseat to other priorities like expanding tax cuts and privatizing Social Security.

There are almost 2,000 fewer border inspectors and agents than were called for in the 2001 PATRIOT Act. The hard truth is we need more. Of the 2,000 border patrol agents called for in the Intelligence Reform Act, the Republican majority has funded only 500 this year. This leaves our borders dangerously unprotected.

Funding for first responder programs, our front line defense against terrorists at home, has dropped 27 percent in the past three years, from a high of $3.3 billion in 2003 to $2.4 billion in 2006—funds which help our towns and cities hire, train and equip our police, firefighters and medical responders.

While 32 million Americans use public transportation every day, we have spent only $250 million on transit since 9/11, compared to the $18.2 billion we've spent on aviation. This leaves our buses, trains, subways, highways and bridges dangerously vulnerable to the kind of attacks we saw in London.

Almost four years after 9/11, only five percent of incoming cargo containers are inspected for hazardous materials. Ninety-five percent of American trade comes through our 361 seaports every year, yet there is no dedicated funding steam for port security. Despite the threat, the President requested no money for port security in FY 2006.

Every day, Americans are asked to empty their pockets, remove their shoes and have their baggage inspected before boarding an airplane. However, most of the cargo loaded onto passenger and cargo airplanes still goes uninspected.

Protecting America is not a partisan issue, it is a matter of priorities. This version of the PATRIOT Act may be slightly improved over the last one, but let's not take our eye off the ball. There is still much more to be done to protect America. Either we take real action to close our security gaps, or the terrorists will find them and exploit them.

The debate today is not about the key issues that will really protect America. It is not even about the whole PATRIOT Act. It is about the reauthorization of 16 highly controversial provisions of the original PATRIOT Act scheduled to expire at the end of the year.

This sunset was critical to earn support for such sweeping legislation, when in the shadow of the September 11th terrorist attack, the Administration pushed Congress to quickly pass legislation that would provide vast new powers to law enforcement. The sunset provisions would ensure Congress would be able to take a closer look how this authority was implemented and at its effectiveness of balancing security and liberty.

I was hopeful that that an open amendment process would allow the House to address the many concerns of the Members of this House and the American public have with the PATRIOT Act. Unfortunately, the House Majority has chosen to prohibit an open debate and consideration on the most sensitive and controversial issues surrounding this bill. In fact, most of the amendments they have allowed to be considered have very little to do with the provisions that are up for reauthorization. This means some of the most controversial provisions of the bill would become permanent, including Section 213, the "sneak and peek" provision that allows secret searches and seizures. Only two of the most controversial provisions, such as Section 215, the "library provision" that allows access to library and bookstore records, credit card information, medical records and employment histories, would be allowed to be reexamined, but not for another 10 years. Amendments that could have strengthened the protection of privacy and civil liberties that could have made this a better bill were prohibited from even being considered or debated.

The single most alarming part of this bill is that it would remove the protection of sunsets to most of the PATRIOT Act. Oversight, review and debate are all the result of a healthy democracy. We should not be afraid to improve that the PATRIOT Act every two or four years. Revisiting the PATRIOT Act is a good thing. Congressional oversight over one of the most fundamental challenges of our time would not hinder our society but enhance it.

The 9/11 Commission warned, "the terrorists have used our open society against us. In wartime, government calls for greater powers, and then the need for those powers recedes after the war ends. This struggle will go on. Therefore, while protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right." This bill does not keep it right. The American public deserves better, they deserve security and liberty. I stand with Benjamin Franklin who said, "he who would trade liberty for some temporary security, deserves neither liberty nor security." Congress' record should match its rhetoric. Protecting America from terrorism means inspecting cargo on passenger planes, inspecting cargo in our ports, securing unaccounted nuclear material in the former Soviet Union and providing our first responders with the resources they need to be our first line of defense in the war on terror. Protecting America is about real priorities that can and will protect the homeland, which unfortunately are not part of the bill before us today.

Mr. HOEKSTRA. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. SWEENEY). All time for general debate has expired.

In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute printed in part A of House Report 109–178. That amendment shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 3199

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005".

SEC. 2. REFERENCES TO USA PATRIOT ACT.

A reference in this Act to the USA PATRIOT ACT shall be deemed a reference to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

SEC. 3. USA PATRIOT ACT SUNSET PROVISIONS.

(a) IN GENERAL.—Section 224 of the USA PATRIOT ACT is repealed.

(b) SECTIONS 206 AND 215 SUNSET.—Effective December 31, 2015, the Foreign Intelligence Surveillance Act of 1978 is amended so that sections 501, 502, and 105(c)(2) read as they read on October 25, 2001.

SEC. 4. REPEAL OF SUNSET PROVISION RELATING TO INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3742) is amended by—

(1) striking subsection (b); and

(2) striking "(a)" and all that follows through "Section" and inserting "Section".

SEC. 5. REPEAL OF SUNSET PROVISION RELATING TO SECTION 2332B AND THE MATERIAL SUPPORT SECTIONS OF TITLE 18, UNITED STATES CODE.

Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3762) is amended by striking subsection (g).

SEC. 6. SHARING OF ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION UNDER SECTION 203(B) OF THE USA PATRIOT ACT.

Section 2517(6) of title 18, United States Code, is amended by adding at the end the following: "Within a reasonable time after a disclosure of the contents of a communication under this subsection, an attorney for the Government shall file, under seal, a notice with a judge whose order authorized or approved the interception of that communication, stating the fact that such contents

were disclosed and the departments, agencies, or entities to which the disclosure was made.''.

SEC. 7. DURATION OF FISA SURVEILLANCE OF NON-UNITED STATES PERSONS UNDER SECTION 207 OF THE USA PATRIOT ACT.

(a) ELECTRONIC SURVEILLANCE.—Section 105(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(e)) is amended—

(1) in paragraph (1)(B), by striking '', as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''; and

(2) in subsection (2)(B), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''.

(b) PHYSICAL SEARCH.—Section 304(d) of such Act (50 U.S.C. 1824(d)) is amended—

(1) in paragraph (1)(B), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''; and

(2) in paragraph (2), by striking ''as defined in section 101(b)(1)(A)'' and inserting ''who is not a United States person''.

(c) PEN REGISTERS, TRAP AND TRACE DEVICES.—Section 402(e) of such Act (50 U.S.C. 1842(e)) is amended—

(1) by striking ''(e) An'' and inserting ''(e)(1) Except as provided in paragraph (2), an''; and

(2) by adding at the end the following new paragraph:

''(2) In the case of an application under subsection (c) where the applicant has certified that the information likely to be obtained is foreign intelligence information not concerning a United States person, an order, or an extension of an order, under this section may be for a period not to exceed one year.''.

SEC. 8. ACCESS TO CERTAIN BUSINESS RECORDS UNDER SECTION 215 OF THE USA PATRIOT ACT.

(a) ESTABLISHMENT OF RELEVANCE STANDARD.—Subsection (b)(2) of section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is amended by striking ''to obtain'' and all that follows and inserting ''and that the information likely to be obtained from the tangible things is reasonably expected to be (A) foreign intelligence information not concerning a United States person, or (B) relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities.''.

(b) CLARIFICATION OF JUDICIAL DISCRETION.—Subsection (c)(1) of such section is amended to read as follows:

''(c)(1) Upon an application made pursuant to this section, if the judge finds that the application meets the requirements of subsections (a) and (b), the judge shall enter an ex parte order as requested, or as modified, approving the release of records.''.

(c) AUTHORITY TO DISCLOSE TO ATTORNEY.—Subsection (d) of such section is amended to read as follows:

''(d)(1) No person shall disclose to any person (other than a qualified person) that the United States has sought or obtained tangible things under this section.

''(2) An order under this section shall notify the person to whom the order is directed of the nondisclosure requirement under paragraph (1).

''(3) Any person to whom an order is directed under this section who discloses that the United States has sought to obtain tangible things under this section to a qualified person with respect to the order shall inform such qualified person of the nondisclosure requirement under paragraph (1) and that such qualified person is also subject to such nondisclosure requirement.

''(4) A qualified person shall be subject to any nondisclosure requirement applicable to a person to whom an order is directed under this section in the same manner as such person.

''(5) In this subsection, the term 'qualified person' means—

''(A) any person necessary to produce the tangible things pursuant to an order under this section; or

''(B) an attorney to obtain legal advice with respect to an order under this section.''.

(d) JUDICIAL REVIEW.—

(1) PETITION REVIEW PANEL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(e)(1) Three judges designated under subsection (a) who reside within 20 miles of the District of Columbia, or if all of such judges are unavailable, other judges of the court established under subsection (a) as may be designated by the Presiding Judge of such court (who is designated by the Chief Justice of the United States from among the judges of the court), shall comprise a petition review panel which shall have jurisdiction to review petitions filed pursuant to section 501(f)(1).

''(2) Not later than 60 days after the date of the enactment of the USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005, the court established under subsection (a) shall develop and issue procedures for the review of petitions filed pursuant to section 501(f)(1) by the panel established under paragraph (1). Such procedures shall provide that review of a petition shall be conducted ex parte and in camera and shall also provide for the designation of an Acting Presiding Judge.''.

(2) PROCEEDINGS.—Section 501 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861) is further amended by adding at the end the following new subsection:

''(f)(1) A person receiving an order to produce any tangible thing under this section may challenge the legality of that order by filing a petition in the panel established by section 103(e)(1). The Presiding Judge shall conduct an initial review of the petition. If the Presiding Judge determines that the petition is frivolous, the Presiding Judge shall immediately deny the petition and promptly provide a written statement of the reasons for the determination for the record. If the Presiding Judge determines that the petition is not frivolous, the Presiding Judge shall immediately assign the petition to one of the judges serving on such panel. The assigned judge shall promptly consider the petition in accordance with procedures developed and issued pursuant to section 103(e)(2). The judge considering the petition may modify or set aside the order only if the judge finds that the order does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the order, the judge shall immediately affirm the order and order the recipient to comply therewith. A petition for review of a decision to affirm, modify, or set aside an order by the United States or any person receiving such order shall be to the court of review established under section 103(b), which shall have jurisdiction to consider such petitions. The court of review shall immediately provide for the record a written statement of the reasons for its decision and, on petition of the United States or any person receiving such order for writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

''(2) Judicial proceedings under this subsection shall be concluded as expeditiously as possible. The judge considering a petition filed under this subsection shall provide for the record a written statement of the reasons for the decision. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States in consultation with the Attorney General and the Director of National Intelligence.

''(3) All petitions under this subsection shall be filed under seal, and the court, upon the government's request, shall review any government submission, which may include classified information, as well as the government's application and related materials, ex parte and in camera.''.

SEC. 9. REPORT ON EMERGENCY DISCLOSURES UNDER SECTION 212 OF THE USA PATRIOT ACT.

Section 2702 of title 18, United States Code, is amended by adding at the end the following:

''(d) REPORT.—On an annual basis, the Attorney General shall submit to the Committees on the Judiciary of the House and the Senate a report containing—

''(1) the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and

''(2) a summary of the basis for disclosure in those instances where—

''(A) voluntary disclosure under subsection (b)(8) was made to the Department of Justice; and

''(B) the investigation pertaining to those disclosures was closed without the filing of criminal charges.''.

SEC. 10. SPECIFICITY AND NOTIFICATION FOR ROVING SURVEILLANCE AUTHORITY UNDER SECTION 206 OF THE USA PATRIOT ACT.

(a) INCLUSION OF SPECIFIC FACTS IN APPLICATION.—Section 105(c)(2)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)(2)(B)) is amended by striking ''where the Court finds'' and inserting ''where the Court finds, based upon specific facts provided in the application,''.

(b) NOTIFICATION OF SURVEILLANCE OF NEW FACILITY OR PLACE.—Section 105(c)(2) of such Act is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) that, in the case of electronic surveillance directed at a facility or place that is not known at the time the order is issued, the applicant shall notify a judge having jurisdiction under section 103 within a reasonable period of time, as determined by the court, after electronic surveillance begins to be directed at a new facility or place, and such notice shall contain a statement of the facts and circumstances relied upon by the applicant to justify the belief that the facility or place at which the electronic surveillance is or was directed is being used, or is about to be used, by the target of electronic surveillance.''.

SEC. 11. PROHIBITION ON PLANNING TERRORIST ATTACKS ON MASS TRANSPORTATION.

Section 1993(a) of title 18, United States Code, is amended—

(1) by striking ''or'' at the of paragraph (7);

(2) by redesignating paragraph (8) as paragraph (9); and

(3) by inserting after paragraph (7) the following:

''(8) surveils, photographs, videotapes, diagrams, or otherwise collects information with the intent to plan or assist in planning any of the acts described in the paragraphs (1) through (7); or''.

SEC. 12. ENHANCED REVIEW OF DETENTIONS.

Section 1001 of the USA PATRIOT ACT is amended by—

(1) inserting ''(A)'' after ''(1)''; and

(2) inserting after ''Department of Justice'' the following: '', and (B) review detentions of persons under section 3144 of title 18, United States Code, including their length, conditions of access to counsel, frequency of access to counsel, offense at issue, and frequency of appearance before a grand jury''.

SEC. 13. FORFEITURE.

Section 981(a)(1)(B)(i) of title 18, United States Code, is amended by inserting ''trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or'' after ''involves''.

SEC. 14. ADDING OFFENSES TO THE DEFINITION OF FEDERAL CRIME OF TERRORISM.

Section 2332b)(g)(5)(B)(i) of title 18, United States Code, is amended—

(1) by inserting '', 2339D (relating to military-type training from a foreign terrorist organization)'' before '', or 2340A'' ; and

(2) by inserting ''832 (relating to nuclear and weapons of mass destruction threats),'' after ''831 (relating to nuclear materials),''.

SEC. 15. AMENDMENTS TO SECTION 2516(1) OF TITLE 18, UNITED STATES CODE.

(a) PARAGRAPH (c) AMENDMENT.—Section 2516(1)(c) of title 18, United States Code, is amended—

(1) by inserting ''section 37 (relating to violence at international airports), section 175b (relating to biological agents or toxins)'' after ''the following sections of this title:'';

(2) by inserting ''section 832 (relating to nuclear and weapons of mass destruction threats), section 842 (relating to explosive materials), section 930 (relating to possession of weapons in Federal facilities),'' after ''section 751 (relating to escape),'';

(3) by inserting ''section 1114 (relating to officers and employees of the United States), section 1116 (relating to protection of foreign officials), sections 1361–1363 (relating to damage to government buildings and communications), section 1366 (relating to destruction of an energy facility), '' after ''section 1014 (relating to loans and credit applications generally; renewals and discounts),'';

(4) by inserting ''section 1993 (relating to terrorist attacks against mass transportation), sections 2155 and 2156 (relating to national-defense utilities), sections 2280 and 2281 (relating to violence against maritime navigation),'' after ''section 1344 (relating to bank fraud),''; and

(5) by inserting ''section 2340A (relating to torture),'' after ''section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),''.

(b) PARAGRAPH (p) AMENDMENT.—Section 2516(1)(p) is amended by inserting '', section 1028A (relating to aggravated identity theft)'' after ''other documents''.

(c) PARAGRAPH (q) AMENDMENT.—Section 2516(1)(q) of title 18 United States Code is amended—

(1) by inserting ''2339'' after ''2232h''; and

(2) by inserting ''2339D'' after ''2339C''.

SEC. 16. DEFINITION OF PERIOD OF REASONABLE DELAY UNDER SECTION 213 OF THE USA PATRIOT ACT.

Section 3103a(b)(3) of title 18, United States Code, is amended—

(1) by striking ''of its'' and inserting '', which shall not be more than 180 days, after its''; and

(2) by inserting ''for additional periods of not more than 90 days each'' after ''may be extended''.

The Acting CHAIRMAN. No amendment to the amendment in the nature of a substitute is in order except those printed in part B of the report. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 109–178.

It is now in order to consider amendment No. 2 printed in House Report 109–178.

AMENDMENT NO. 2 OFFERED BY MR. FLAKE

Mr. FLAKE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. FLAKE:

At the end of section 8 add the following new subsection:

(e) FBI DIRECTOR REQUIRED TO APPLY FOR ORDER OF PRODUCTION OF RECORDS FROM LIBRARY OR BOOKSTORE.—Section 501(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1861(a)) is amended—

(1) in paragraph (1), by striking ''The Director'' and inserting ''Subject to paragraph (3), the Director''; and

(2) by adding at the end the following new paragraph:

''(3) In the case of an application for an order requiring the production of tangible things described in paragraph (1) from a library or bookstore, the Director of the Federal Bureau of Investigation shall not delegate the authority to make such application to a designee.''.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, I offer this amendment with my colleague the gentleman from California (Mr. SCHIFF), a Democrat.

Mr. Chairman, this amendment simply states that the Director of the FBI must personally approve any library or bookstore request for records by the FBI under section 215 of the PATRIOT Act. This amendment provides a higher standard for the use of section 215 by the FBI.

At a minimum, what it will prevent I think is some kind of fishing expedition that might be undertaken by an overzealous agent or official at the Bureau. Having the Director of the FBI sign off on the request, it also sends a signal to the library and bookstore owners that a request for information from the FBI is well thought out and comes from the highest level.

This amendment compliments other amendments I have offered in the Committee on the Judiciary, two of which were accepted by the chairman and the committee. Those were: With regard to section 215, we clarified that if there is an inquiry, you not only as a respondent have access to an attorney to respond to the inquiry, but also to challenge it. The other had to do with another section in committee. We will stick with this one.

With these two amendments on 215 combined, I think we have provided strong protections for the contested section of the PATRIOT Act. There has been a lot of attention, as has been noted here, across the country at this provision, which has been termed the library provision. It obviously has a lot more to do than with libraries. Libraries are not even mentioned in it. But we see the need to make protections to be sure that no overzealous agent at the FBI or anybody goes and searches somebody's library records or bookstore purchases. So that is what this amendment is prepared to do.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I ask unanimous consent to control the time in opposition, although I am not in opposition.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, I rise in support of the amendment, but I do not believe it is a good enough cure to make this sick legislation well.

I believe that most of what America needs to know about the PATRIOT Act is reflected in its deceptive title. Its authors deliberately designed a name to question the patriotism of anyone who questions them. Are you for patriotism, or are you against patriotism? Are you with America, or are you against America?

The American patriots who declared our independence in 1776 were true patriots who risked their lives in order to secure our liberties.

True patriots defend liberty.

Real patriots do not surrender our freedom, unless there is absolutely no other way to protect our lives.

Patriots demand accountability, restraint, and judicial review of encroachments on the freedoms that make our country unique.

While some portions of this proposed renewal of the PATRIOT Act strike the right balance, other provisions simply strike out. We must balance the demands of keeping our Nation secure with the freedoms that we cherish. We must not sacrifice our democracy in a misguided attempt to save it.

Wrapping this collection of misguided policies under the rubric ''the PATRIOT Act'' is a true mark of how really weak the underlying arguments are for this measure.

Surely we can secure our families' safety without becoming more like a police state, which would deny the freedoms that define us as Americans.

The dangerous road to government oppression begins one step at a time. It does not all happen at once. This bill, I believe, is a step in the wrong direction, a step in the direction of suppressing our freedoms. I believe that it

is very important that we patriotically preserve our liberties and freedoms as Americans by rejecting the measure in its current form.

Mr. SCHIFF. Mr. Chairman, although not in opposition, I ask unanimous consent to control the balance of the time in opposition to the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SCHIFF. Mr. Chairman, I yield myself such time as I may consume.

Mr. FLAKE. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. SCHIFF), the cosponsor of the amendment.

(Mr. SCHIFF asked and was given permission to revise and extend his remarks.)

Mr. SCHIFF. Mr. Chairman, I rise today to urge my colleagues to support the Flake-Schiff amendment, which would make an important change to section 215 if it is ever used in the library or bookstore context. This amendment is substantially similar to one I offered in the Committee on the Judiciary with the gentlewoman from California (Ms. WATERS), but one I agreed to withdraw in order to work with the gentleman from Arizona (Mr. FLAKE) in a bipartisan fashion on a proposal for consideration on the House floor.

I am sure that every Member of Congress has heard from their constituents regarding this very provision of the PATRIOT Act. Even if possibly based on misplaced fears, some of the public are now apprehensive about going to their local library or bookstore.

Our amendment would not prevent law enforcement from investigating alleged terrorist activity wherever it may occur. It creates no safe haven for terrorists. Instead, our amendment would aim to restore some measure of public confidence that this provision will not be abused.

The Flake-Schiff amendment says that vis-a-vis the records that pose the greatest concern for all of our constituents, library records or bookstore records, the existing authority which allows lower level FBI agents to seek those records should be significantly amended.

If our amendment is adopted, only the FBI Director himself or herself can approve such an order for an investigation to protect against international terrorism or clandestine intelligence activities.

As of the latest public disclosure, the Justice Department has reported that section 215 has never been used in a library. The fact, however, that this provision may never have been used in a library to date does not alter the fact that it affects the behavior of all of our constituents who are concerned that their records may one day be the subject of a search.

Given the sensitivity of this section, I believe it is worthwhile and necessary to make changes to existing law and that this added protection is warranted.

During the Committee on the Judiciary markup last week, I offered an additional amendment to section 215 that would have lifted the prohibition on disclosure when a United States citizen was impacted and when the investigation had concluded if there was no good cause to continue to prohibit the disclosure. Unfortunately, this amendment was rejected on party lines.

The Flake-Schiff amendment will still make another important and needed change. I believe it makes very good sense for the FBI Director and the Director alone to make the decision, and not to delegate it away. The bipartisan PATRIOT Act proposal in the Senate makes a similar change, restricting this authority to the FBI Director or Deputy Director. I think our amendment provides an even stronger safeguard and strikes a balance that will restore a measure of public confidence in this area.

Before closing, Mr. Chairman, I want to take a moment to discuss the Sanders amendment and other efforts to make important changes to section 215. While I am appreciative that the Committee on Rules made the Flake-Schiff amendment in order, I am disappointed that the Sanders amendment was not also made in order. I believe that this House and the American people are better served if all proposals are duly and fairly considered on the House floor.

As you know, last month the House decisively adopted the Sanders amendment during consideration of the Science, State, Justice and Commerce appropriations bill. I supported that amendment, which prohibited the use of funds for a section 215 search of a library record patron list, book sale record or book customer list.

The Sanders amendment, however, did not amend the underlying PATRIOT law, which I believe we must do as a first step. We must permanently limit the statutory authorization to use section 215 in libraries and bookstores. The Sanders amendment also made no changes to the ability to search library computer and Internet records.

I expect and encourage the gentleman from Vermont (Mr. SANDERS) to bring his amendment before the House floor each year to further limit the use of section 215 with respect to specific lists and records in libraries and bookstores. But, for now, since the amendment only applies for 1 year and only applies to specific items in the library, I think it is important and necessary for the House to pass this broader and permanent change to the PATRIOT Act.

Mr. Chairman, I reserve the balance of my time.

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a valued member of the Committee on the Judiciary

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Chairman, I thank the gentleman from Arizona for yielding me time. I thank the gentleman from Arizona (Mr. FLAKE) and the gentleman from California (Mr. SCHIFF) for their tireless advocacy of the liberties of the American people, and I rise in strong support of the bipartisan Flake-Schiff amendment.

President Harry Truman, I am told, had a plaque on his desk that simply read ''The buck stops here.'' It seems to me that the Flake-Schiff amendment is all about saying that when it comes to that sacred relationship that the American people feel between their local library and their local bookstore, that the FBI Director himself or herself must be directly involved if that relationship is to be intruded upon in the name of an investigation into the war on terror.

The Flake-Schiff amendment requires the Director of the FBI to personally approve any library or bookstore request for records under section 215 of the PATRIOT Act. Currently the law permits a designee of the Director whose rank cannot be lower than an Assistant Special Agent in Charge to approve section 215 orders, and that will change.

Also under this amendment, the Director of the FBI cannot delegate the duty to personally approve a section 215 request for library and bookstore records. This amendment, as the gentleman from Arizona (Mr. FLAKE) said earlier, will prevent section 215 from being abused or used in a fishing expedition intruding upon the privacy of ordinary Americans in the name of the war on terror.

Again I quote President Harry Truman's famous plaque or missive, ''The buck stops here.'' The Flake-Schiff amendment is simply about saying if the war on terror demands it, when it comes to intruding upon that sacred relationship between the American people and a bookstore or a library, we have to have those who are of the highest accountability in our political system to answer to that.

I strongly support the Flake-Schiff amendment and the commonsense underpinning that brings it to the floor today, and urge its passage.

Mr. SCHIFF. Mr. Chairman, I yield 1½ minutes to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. Mr. Chairman, I will certainly vote for this amendment, but I fear that it does not fully solve the problem that has been identified by many. Before the PATRIOT Act, the government could obtain only limited records from hotels, storage facilities and car rental companies, and only if those documents pertained to an agent of a foreign power.

□ 1500

Now, the government can seek any records from anyone as long as it is relevant to an investigation. The FISA

court does not really have any discretion to deny these requests and, once they are granted, they are subject to a gag order.

Now, the Justice Department has told us that they have never once used section 215 relative to libraries, and I have no reason to disbelieve them; but the American Library Association reports that they have received 200 formal or informal requests for materials, presumably under some other section of the law, perhaps grand jury subpoenas, I do not know.

The fact is that Americans are aware of this issue, and I believe this is having a chilling effect on first amendment rights in terms of reading and speaking.

I believe it is important that government have the opportunity to obtain records when it is necessary to fight terrorism. I do believe, however, that the relevance standard is too low.

I also believe that when the House that previously approved a carve-out for identifiable information from libraries it spoke about the chilling impact. I believe we have a better way to get these records and also to untrouble readers.

So while I will support the amendment, it falls short of what is necessary.

Mr. FLAKE. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. DANIEL E. LUNGREN), another member of the Committee on the Judiciary.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of the Flake-Schiff amendment.

This is another effort in our continuation to support section 215 in all of its aspects, with the protections that I think are reasonable that allow us to take into consideration some of the concerns that people have expressed, even though there have been no examples, I repeat, no examples of abuses under this act.

The Justice Department has told us they have not used this section in the area of libraries. Therefore, I hope they would not object to the gentleman's amendment, because this is going to be used very, very seldom, based on past history. Yet, it is relevant, and we already discussed the ways in which it may be relevant to terrorism cases.

So I would hope that we would have strong support for this amendment, recognizing that this, along with the other changes that we have added to section 215, will allow us to have this still be utilized and utilized in a way that is not undone, as I thought the amendment that we had on the floor just a few weeks ago would have done so.

This is a commonsense amendment. I hope we will get unanimous support for it.

Mr. SCHIFF. Mr. Chairman, it is my pleasure to yield 1 minute to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Chairman, I rise in support of this amendment on two grounds.

First, I think it moves us in the right direction. I have said several times on this floor today about the PATRIOT Act that we should mend it, not end it. This does tighten section 215, which has probably been, more than any other section in the PATRIOT Act, the subject of intense worry for outside groups and especially those who use libraries.

But, second, I support it because of the process involved. The gentleman from Arizona (Mr. FLAKE) and the gentleman from California (Mr. SCHIFF) have worked on a bipartisan basis to craft something they could both support and to persuade the leadership of the Committee on the Judiciary and the Committee on Rules to embrace it. This is what we should see more of, and I wish we were seeing more of it in connection with this bill.

Finally, the gentlewoman from California (Ms. ZOE LOFGREN) does make important points. There is an even better way to amend section 215, and that way has just been embraced unanimously, obviously on a bipartisan basis, by the Senate Committee on the Judiciary, and that is to connect section 215 orders to specific facts which show the target is connected to an agent of a foreign power. That would be best; and, hopefully, we will get there before this bill becomes law.

Mr. FLAKE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, I believe this amendment is a good one because it centralizes responsibility in the hands of the Director of the FBI in signing off on 215 applications for bookstore and library records.

But in the context of the overall debate, what I think is missing from this debate is not whether there is a potential for abuse by the Justice Department, but whether there is an actual record of abuse. And there has been no record of abuse by the Justice Department with bookstores and libraries. They have publicly responded repeatedly that they have not used the 215 order to look at the records of people checking out books or buying books at either bookstores or libraries.

Now, what this bill does is it makes an improvement to the law where there is a specific method of contesting a 215 order by the recipient. But to say that all of these records should be exempt from law enforcement scrutiny is to turn our bookstores and libraries into a sanctuary. We cannot allow that to happen.

Mr. SCHIFF. Mr. Chairman, I yield 30 seconds to the distinguished ranking member of the Subcommittee on Crime, the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, there are a lot of problems with section 215. This amendment does not take care of many of them; but by requiring the FBI Director to personally approve the warrant, that will significantly reduce the chance that there will be abuses.

So far as the ability to contest these, it is very unlikely that someone receiving one of these warrants will go through the cost of actually contesting it for someone else's rights. There are no attorneys' fees allowed in these proceedings, and it is just more likely that they will just give up somebody's information.

This requirement will reduce the chances that there will be abuses; and although it does not solve all the problems, it will reduce the abuses, and, therefore, I will be voting for it.

Mr. FLAKE. Mr. Chairman, I yield myself 1 minute. I just wanted to say that the gentleman from Indiana (Mr. PENCE) brought up the point that the buck stops here, and that is what we are really trying to do with the FBI Director, to ensure that that person is in charge and there is less likely to be a fishing expedition by a lower-ranking official. When you combine that with what we already have in law, which is a requirement that the FBI Director report to Congress every 6 months about the use of this statute, you really have a strong provision and strong protections.

Think of it: you have the FBI Director himself, or herself, saying, I want to use this authority for this specific purpose, and then having to report that every 6 months to Congress. I think we really have curtailed the possibility for abuse.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHIFF. Mr. Chairman, I want to return the courtesy extended by my friend, and I am happy to yield 3 minutes to the gentleman from Arizona (Mr. FLAKE) to be subsequently yielded as he chooses.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Without objection, the gentleman from Arizona (Mr. FLAKE) has an additional 3 minutes.

There was no objection.

Mr. FLAKE. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. ISSA), another member of the Committee on the Judiciary.

Mr. ISSA. Mr. Chairman, I thank the gentleman from Arizona for yielding me this time, and I thank the gentleman from California (Mr. SCHIFF).

I have the distinction of being one of the few members on the Committee on the Judiciary who is not an attorney, and I got a little applause on that, I think. But I came to Congress from the business of automobile security. The one thing I know about what we are dealing with in terrorism is that if you leave an open window on an automobile, no amount of security will protect you. If you leave the automobile or your home unlocked, no security system will protect you.

There is absolutely no doubt that we must protect America. To do so, we have to be able to go anywhere and never take anything completely off the table.

I believe that this amendment allows us to guarantee that there are no safe havens for terrorists while, at the same time, we will protect the privacy and the fair expectation that there will not be unreasonable rifling through the records at libraries or, for that matter, I hope, anywhere else under this act.

Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume.

Let me just conclude by thanking the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for running a fair and thorough process.

Much has been said about these things being rushed through. I can tell my colleagues that over the past 12 months or so, we have had 12 hearings on this subject, 35 witnesses. We have gone through this very thoroughly. On each of these sections that we are dealing with, we heard excellent testimony from the administration, from other witnesses, from experts in the field; and that is why these amendments have been crafted. We have sought to protect the civil liberties of Americans every bit as much as we can here, while offering effective tools for the war on terrorism, giving the administration the tools that they need to fight this war.

I am persuaded that we have done well with this section, with section 215, that we have put the protections that we need in place; and I would urge my colleagues to support this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. SCHIFF. Mr. Chairman, I am delighted to yield 15 seconds to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I just want to make the simple point that the amendment that was offered that was not made in order by myself, the gentlewoman from California (Ms. HARMAN), and the gentleman from California (Mr. BERMAN) would not have allowed, under any circumstances, a safe haven anywhere for terrorists. It was a different approach. The standards were higher. I think that is an important point to make as a matter of record.

Mr. SCHIFF. Mr. Chairman, I yield myself such time as I may consume.

I want to conclude by thanking my colleague, the gentleman from Arizona (Mr. FLAKE) for his work on this issue.

The fact that the library provision has not been used as of the last public disclosure does not affect the fact that many Americans are concerned about their expectation of privacy when they go to the library, when they check out books on family matters, on health matters, on other matters. They do not want to fear that the government may be scrutinizing what they are reading. And because this has an impact on the behavior of Americans, on the freedom to use libraries, it is an important issue, merely that fear.

This amendment, I think, takes a small, but important, step to provide at least the confidence to the people of this country that no less than the Director of the FBI himself or herself can authorize the use of this provision for library and bookseller records. I think it is an important step forward. I hope we make further progress.

Mr. Chairman, I urge support for the amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

It is now in order to consider amendment No. 3 printed in House Report 109–178.

AMENDMENT NO. 3 OFFERED BY MR. ISSA

Mr. ISSA. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. ISSA:

Page 10, line 23, strike ''within a reasonable period of time, as determined by the court,'' and insert ''at the earliest reasonable time as determined by the court, but in no case later than 15 days,''.

Page 11, line 6, after ''surveillance'' insert the following: ''and shall specify the total number of electronic surveillances that have been or are being conducted under the authority of the order''.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from California (Mr. ISSA) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the threat we face as Americans today is all too real. The recent bombings in London could have happened on American soil, and it is only through the vigilance of our many law enforcement entities that we can combat this occurrence.

The PATRIOT Act, as it was originally adopted, contains many needed tools to fight those who would harm us here in America. One of those tools was the expansion of roving wiretap authority. This vital tool allowed us to reach out and touch those who had discovered that using a new cell phone every day would have gotten around existing wiretap laws. It did not take the terrorists long to realize that, and it would not take them long if that ceased to exist for them to begin using that technique prior to the PATRIOT Act.

We made America safer when we expanded these surveillance authorities, because now law enforcement can continue to monitor a terrorist's activity without undue interruption. But this new authority must be balanced with our fundamental civil liberties.

It is not that law enforcement has ever misused the roving wiretap provision. I repeat: law enforcement has not been, through our oversight, seen to have abused the roving wiretap provision. However, this is such a serious, serious potential that we must take all measures necessary to ensure that it will not be in the future.

For that reason, I seek to amend H.R. 3199 to add a level of judicial oversight not in the current bill. The current bill gives the issuing court blanket discretion on when law enforcement must report back on a roving wiretap. My amendment requires law enforcement to report back to the court within 15 days of using the roving aspect of the warrant. My amendment also requires law enforcement to report on the total number of electronic surveillances that have been conducted.

These are simple steps that will help guard against possible abuses in the future, while doing nothing to hamper the value of the roving wiretap.

Mr. Chairman, I thoroughly appreciate the opportunity to offer this amendment; but I also want to comment that we have, as a committee, worked like never before on a bipartisan basis to dramatically improve a law when it came to civil liberties that already had good teeth when it came to the security of our people.

Mr. Chairman, I reserve the balance of my time.

□ 1515

Mr. SCOTT of Virginia. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I will not oppose the amendment.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, this involves a roving wiretap, and I think you have to put these in perspective. You can get one of these roving wiretaps under the Foreign Intelligence Surveillance Act without any probable cause that a crime has been committed. You are just getting foreign intelligence. It does not have to be a crime. It does not have to be terrorism. It could be negotiations on a trade deal, anything that will help foreign intelligence, you can get one of these roving wiretaps. So you are starting off without probable cause of a crime.

And also, you can start off without it being the primary purpose of the wiretap, which suggests if it is not the primary purpose, what is the primary purpose? So there is a lot of flexibility and potential for abuse in these things.

There are also some gaps. You can get one of these roving wiretaps against a person, or in some cases, if you know which phone people are using, you can get a John Doe warrant. And there are actually gaps in it where you are not sure which phone, you are not sure which person, you kind of get authority to just kind of wiretap in the area. And so this kind of reporting I think is extremely important.

We have, for example, asked several people, if you get a roving wiretap and foreign intelligence was not the primary purpose, what was the primary purpose? We have had high officials suggest, well, running a criminal investigation would be the primary purpose, which means you are running a criminal investigation without probable cause of a crime being committed. And you get these roving wiretaps. You put a roving wiretap.

I have had amendments that have been defeated in committee which would require what is called ascertainment. When you put the bug there you have got to ascertain that the target is actually there doing the talking, not somebody else using the same phone. Those amendments have been defeated.

And so we need some oversight. And these reports will go a long way in making sure that you are not abusing, you are not listening in on the wrong people, you are not putting these bugs where they do not need to be. You started off with no probable cause. You are not abusing the roving aspect, putting wiretaps everywhere where they do not need to be. I think this kind of review can go a long way in reducing the potential of abuse, using the FISA wiretaps for criminal investigations without probable cause, listening in to the wrong people and a lot of other problems that can occur with the roving wiretaps.

And I thank the gentleman from California (Mr. ISSA). Although it does not solve all of the problems, it solves a lot of them and I thank the gentleman for offering the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. ISSA. Mr. Chairman, it is with great pleasure that I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the entire Judiciary Committee.

Mr. SENSENBRENNER. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of his amendment. And let me say first that the amendment that was made by the PATRIOT Act to allow a Federal judge, and only a Federal judge, to authorize a roving wiretap simply brought the law up to where the technology has gone because before the PATRIOT Act was passed you could not get an effective wiretap order on a cell phone. So the terrorists and the drug smugglers and the racketeers simply conducted their business on cell phones because you could not determine whether or not the cell phone was actually being used within the district in which the Federal court that issued the roving wiretap order sat.

So by passing the PATRIOT Act we were able to get the Justice Department the authority to ask a Federal judge to give a wiretap order against the cell phone or any communications device that might be used by the target. And that gets around the disposable cell phone issue.

The Issa amendment merely states that the judge has to be notified at the earliest reasonable time, but no later than 15 days after a roving wiretap order directs surveillance at a location not known at the time when the wiretap order was issued. And this increases judicial supervision and accountability and protects the civil liberties of the American people.

Now, earlier today both the minority leader and her deputy, the minority whip, were talking about the fact that there has been no oversight done by the Judiciary Committee over the PATRIOT Act. That, frankly, insults what both Democrats and Republicans have done on oversight of the PATRIOT Act on a bipartisan basis. Right here is the result of the oversight that the Judiciary Committee has done in the last 3½ years on this law. This is a stack of paper that is almost 2 feet high. I doubt that any other committee of Congress has done as much oversight on a single law as my committee has done on the PATRIOT Act.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, just to acknowledge that as the chairman has indicated, some of these roving wiretaps do put us into the 21st century with the use of cell phones and disposable cell phones. So the roving wiretap is necessary. But it needs oversight. And I think this amendment will go a long way to making sure that that process is not abused.

Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa (Mr. BOSWELL).

Mr. BOSWELL. Mr. Chairman, I thank the gentleman for yielding me the time. I also thank the gentleman from California (Mr. ISSA) for this amendment. This section of the PATRIOT Act authorizes expansive authority for John Doe roving wiretaps, taps of phones and computers when neither the location nor the identity of the target are known.

The Issa amendment further improves the amendment that I offered during the Intelligence Committee markup of the PATRIOT Act reauthorization bill. My amendment, I am pleased to say, was unanimously accepted by the entire committee and is included in the base bill before the House today.

The Issa amendment appropriately defines the term ''reasonable period for filing return'' as not more than 15 days. It assures the Foreign Intelligence Surveillance Court, we often call it the FISA court, will receive information related to John Doe roving wiretaps in a timely manner by removing any ambiguity associated with the term ''reasonable.'' It makes it clear to every FBI agent, DOJ lawyer and judge from the start, this is a 15-day limit on providing the court with information related to John Doe roving wiretaps. This is a good fix to a good provision that further strengthens the amendment to the PATRIOT Act.

I urge my colleagues to support this amendment. I thank the gentleman from California for offering it.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 1½ minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a member of the Judiciary Committee.

Ms. ZOE LOFGREN of California. Mr. Chairman, I support this amendment although it does not make some of the changes recommended by Mr. SCOTT in committee about ascertainment and minimization that we believe are important. It would allow for the requirement of oversight, which I think is important. The chairman has said many times that hearings have been held. They were, but they were basically held since April. We do have a tendency to postpone our work until it must be done.

One of the things that I hope we will take a look at that has not been discussed is section 209 relative to obtaining electronic information with a subpoena. That is a routine matter that caused no concern because it stored electronic data and that is not new law.

The reason why we need to look at it before 10 years from now is that as technology changes and all telephone communication becomes Voice Over Internet Protocol, theoretically every phone call would be subject to seizure by subpoena, which is not something I think any of us would agree we intend to do. That should be a wiretap standard and it may drift down to a subpoena standard. That is why we need oversight, not because there is a bad guy out there necessarily, but because the technology is going to change and change swiftly and potentially very much alter what we think we are doing here today.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), a member of the Judiciary Committee.

Mr. DELAHUNT. I thank the gentleman for yielding me this time.

Mr. Chairman, I want to associate myself with the remarks of the gentlewoman from California (Ms. ZOE LOFGREN). And I also want to address the issue of oversight. And let me be very clear. The chairman has been most aggressive when it comes to oversight, and I want to publicly commend him, not just in terms of the PATRIOT Act, but many other issues that are within the jurisdiction of the Judiciary Committee.

However, this is not about this particular chairman. It is about the responsibility of future members of the

Judiciary Committee to exercise that responsibility. And I have a concern about oversight because, let us be honest, it is not easy dealing with the executive branch. We have all had that experience. We reach conclusions, but we really do not know.

I can remember when the chairman himself discussed issuing a subpoena to bring the former Attorney General, Mr. Ashcroft, before the committee to provide us information on the so-called heavy guidelines. That is what was necessary.

Just recently, I read where the vice chair of the Government Reform Committee, looking into the expenditures of monies involving the development for the Fund of Iraq, expressed frustration with the lack of cooperation coming from the Pentagon.

I have served on an invitation basis under Chairman DAN BURTON investigating the misconduct of the FBI in the Boston office, and again, it required the threat of a contempt petition to gain information from the Department of Justice. If we need to go that far then to exercise our oversight constitutional responsibility, it is not an easy job to do. So that is why all of the discussions today about oversight are framed in that context.

Mr. ISSA. Mr. Chairman, I yield myself such time as I may consume.

I want to assure the gentlewoman from California that her concerns on electronic data and the fact that in an era of VOIP that we do have to look at that. I serve with the gentlewoman in California on many of the caucuses that deal with that. I look forward to both in Judiciary and, quite candidly, in other committees of jurisdiction here in the Congress to continue to work on properly identifying and modernizing how that is going to be interpreted. I think it is beyond the scope of the PATRIOT Act today, but it certainly is not beyond the Congress to have to bring things up to snuff, and I look forward to working with the gentlewoman from California.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield back the balance of my time.

Mr. ISSA. Mr. Chairman, I yield myself such time as I may consume.

I will just close quickly in thanking the chairman, the ranking member, the staffs for the hard work that led to the underlying bill, but also to this particular amendment. This was done on a bipartisan basis. There was give and take.

Over on the Senate side there is a companion that is somewhat similar that has, I believe, a 7-day timeline, and undoubtedly we will work together in conference to reconcile those two. But the good work done on a bipartisan basis in the House has led to what I believe is the right compromise, although I certainly will work with the other body.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. ISSA).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. ISSA. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. ISSA) will be postponed.

□ 1530

The Acting CHAIRMAN (Mr. HASTINGS of Washington). It is now in order to consider amendment No. 4 printed in House Report 109–178.

AMENDMENT NO. 4 OFFERED BY MRS. CAPITO

Mrs. CAPITO. Mr. Chairman, I offer an amendment.

The Acting Chairman. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mrs. CAPITO:

Add at the end the following:

SEC.___. ATTACKS AGAINST RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

"§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air

''(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly—

''(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

''(2) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, and without the authorization of the railroad carrier or mass transportation provider—

''(A) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle; or

''(B) releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (3);

''(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

''(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without the authorization of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck railroad on-track equipment;

''(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, without the authorization of the mass transportation provider, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider; or

''(4) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, without authorization from the railroad carrier or mass transportation provider;

''(5) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining railroad on-track equipment or a mass transportation vehicle;

''(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on property described in subparagraph (A) or (B) of paragraph (3), except that this subparagraph shall not apply to rail police officers acting in the course of their law enforcement duties under section 28101 of title 49, United States Code;

''(7) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

''(8) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (7);

shall be fined under this title or imprisoned not more than 20 years, or both.

''(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—

''(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

''(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

''(3) the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

''(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

''(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations; or

''(4) the offense results in the death of any person;

shall be fined under this title or imprisoned for any term of years or life, or both. In the case of a violation described in paragraph (2) of this subsection, the term of imprisonment shall be not less than 30 years; and, in the case of a violation described in paragraph (4) of this subsection, the offender shall be fined under this title and imprisoned for life and be subject to the death penalty.

''(c) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

''(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider or railroad carrier engaged in or affecting interstate or foreign commerce.

''(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

''(d) DEFINITIONS.—In this section—

''(1) the term 'biological agent' has the meaning given to that term in section 178(1);

''(2) the term 'dangerous weapon' means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of more than 2½ inches in length and a box cutter;

''(3) the term 'destructive device' has the meaning given to that term in section 921(a)(4);

''(4) the term 'destructive substance' means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term 'radioactive device' does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

''(5) the term 'hazardous material' has the meaning given to that term in chapter 51 of title 49;

''(6) the term 'high-level radioactive waste' has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

''(7) the term 'mass transportation' has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

''(8) the term 'on-track equipment' means a carriage or other contrivance that runs on rails or electromagnetic guideways;

''(9) the term 'railroad on-track equipment' means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

''(10) the term 'railroad' has the meaning given to that term in chapter 201 of title 49;

''(11) the term 'railroad carrier' has the meaning given to that term in chapter 201 of title 49;

''(12) the term 'serious bodily injury' has the meaning given to that term in section 1365;

''(13) the term 'spent nuclear fuel' has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

''(14) the term 'State' has the meaning given to that term in section 2266;

''(15) the term 'toxin' has the meaning given to that term in section 178(2); and

''(16) the term 'vehicle' means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.''.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) by striking ''**RAILROADS**'' in the chapter heading and inserting ''**RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR**'';

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

''1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.''.

(2) The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

''97. Railroad carriers and mass transportation systems on land, on water, or through the air ..... 1991''.

(3) Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking ''1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),'';

(B) in section 2339A, by striking ''1993,''; and

(C) in section 2516(1)(c) by striking ''1992 (relating to wrecking trains),'' and inserting ''1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),''.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentlewoman from West Virginia (Mrs. CAPITO) and the gentleman from Virginia (Mr. SCOTT) each will control 5 minutes.

The Chair recognizes the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, millions of Americans travel to work, school and other activities aboard trains, buses, planes, and other forms of mass transportation. Our railways are also a primary method of shipping raw materials and manufactured goods across the country.

The openness of our rail and mass transportation network makes it a target for terrorists who would attack our Nation. The network is also a target for people to make empty threats or disable on-track materials. These actions put rail employees and passengers at risk. Threats and sabotage against railways also harm interstate commerce by causing delays on important transportation corridors.

Richard Reid, now known as the Shoe Bomber, actually had a charge against him dismissed because current law does not explicitly define an airplane as a vehicle for the purpose of prosecuting. This amendment would change that and bring updated and uniform protections to all forms of railroad carriers and mass transportation providers.

My amendment establishes penalties of up to 20 years for a person who knowingly wrecks, derails, or sets fire to a rail or mass transportation vehicle or knowingly disables on-track equipment or signals. The same penalty applies for conspiracy or threats against a rail or mass transportation system.

The penalty is increased with life imprisonment with death-penalty eligibility if an attack results in the death of a person.

My amendment allows the courts to consider an attack against a train carrying hazardous materials as an aggravated circumstance. The amendment includes a 30-year minimum sentence for an attack on a train carrying high-level radioactive waste or spent nuclear fuel.

I first offered this amendment last October in the wake of the terrorist attack against the rail system in Madrid. The House passed this amendment on the 9/11 Commission Implementation Act, but it was removed in conference with the Senate. The tragic attacks on London on July 7 and another attack there earlier today have demonstrated again the dangers facing rail and transit systems in the U.S. and throughout the world.

We must not wait for another attack here at home to modernize our criminal penalties for attacks and sabotage against our transportation system.

Mr. SENSENBRENNER. Mr. Chairman, will the gentlewoman yield?

Mrs. CAPITO. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I am pleased to support the gentlewoman's amendment and believe that it is an important consolidation in the criminal law relative to attacks against mass transportation systems.

First, we should not have different crimes and different penalties depending upon which type of mass transportation system is attacked. We should have uniform penalties and uniform definitions of criminal activity so someone who attacks a railroad will get the same penalty as someone would in a similar attack against a subway system or a bus or an airplane.

Secondly, I think we have to broaden the definition of what is ''attacked'' to make sure that attacks against support systems for mass transportation systems are treated the same way as an attack against the transportation system itself. We should not have a lesser penalty if you put a bomb in the station than if you blow up a train while it is crossing a bridge over a big gorge.

And I also think we ought to ensure that terrorists who attack these systems are punished with appropriate severity. The gentlewoman's amendment does all of these things, and I would urge its support and unanimous adoption by the House.

Mrs. CAPITO. Reclaiming my time, I thank the gentleman for his support.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, as it has been indicated, this amendment involves a lot of new definitions. It would be helpful if we had considered this in committee where we could have gotten the definitions straight.

This is a complex rewrite of two different sections, 18 U.S.C. 1992 and 1993, which involve wrecking trains and attacks on mass transportation systems.

First, it involves mandatory minimums, and we know from our committee deliberations that the Judicial Conference writes us a letter every time we consider a new mandatory minimum to remind us that mandatory minimums violate common sense. If it is a commonsense sentence, it should

be applied. If it is not a commonsense sentence, it has to be applied anyway.

In addition to that, there are problems with the death penalties in the bill. It would allow death penalties for conspiracy. That offers up constitutional questions. It also would create new death penalties even in States that do not include a death penalty.

Mr. Chairman, if we are going to deal with attacks on mass transit, it would be helpful if we would put the money into port security and rail security and bus security and fund those resources. That would go a long way in making us more secure. Having four amendments like this when we have insufficient time to deliberate is not substantially as helpful as the money would have been in making us more secure.

Mr. Chairman, I reserve the balance of my time.

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume. I would like to respond to the gentleman from Virginia (Mr. SCOTT). I appreciate his comments.

The mandatory minimums in this amendment do not apply to threats or conspiracies. A person found guilty of a threat or conspiracy could face a sentence up to 20 years. A 30-year mandatory sentence is required for someone who attacks a train carrying nuclear fuel and high-level radioactive waste. Quite frankly, I think that is extremely appropriate and severe, and what we are trying to do here is create these statutes as a deterrent.

Certainly I agree we need to put money into port security around the Nation, and we are doing that; but we need to go at this problem of terrorism with a full frontal attack.

I would like to say when we considered this, this amendment has been around for about a year. We considered it last year and the gentleman from Virginia (Mr. SCOTT) asked that we consider it in the PATRIOT Act and that is what we are dealing with today. So I think it is appropriate.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Virginia (Mr. SCOTT) for yielding me time.

Could I ask the gentleman from Virginia (Mr. SCOTT) or the gentleman from Massachusetts (Mr. DELAHUNT), is this not kind of unusual? There have been no hearings and we are combining the death penalty by putting together two substantial terrorist crimes, section 1992 and 1993.

Well, maybe I should ask the author of the bill, if he is on the floor, why this has not had committee consideration.

Mr. SCOTT of Virginia. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chairman, I would say that it would have been extremely helpful if we could have considered that. We could have got the definition straight, and we could have considered it in a more deliberative process rather than trying to deal with it here on the floor where we have some constitutional questions such as the death penalty for conspiracy.

Mr. CONYERS. Right. Is the author of the amendment here?

I was wondering if this was sent over to the chairman of the committee at some earlier point in time.

Mrs. CAPITO. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentlewoman from West Virginia.

Mrs. CAPITO. Yes. This is the identical amendment that was considered last year in October, and it was also passed in the House Intelligence Reauthorization Act that we passed. So this amendment has been considered several times in this House.

Mr. CONYERS. Reclaiming my time, I am sorry I was not on the committee the day they had the hearing, but normally death penalty matters are not brought to the floor this way. Normally I thought it was the jurisdiction of the Subcommittee on Criminal Justice in the Committee on the Judiciary of the House that would be considering this matter.

The Acting CHAIRMAN. The gentlewoman from West Virginia (Mrs. CAPITO) has 30 seconds remaining. The gentleman from Virginia (Mr. SCOTT) has the right to close.

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would say in closing this has been considered in the past. It has passed. It passed on a voice vote last October. I think in view of what is happening to the mass transit systems around the world, we have heard a lot of hue and cry about helping to protect our mass transit systems in this country. And I think by making standard criminal penalties, we are going a step in the right direction to use these penalties as a deterrence to terrorism on our mass transit and rail systems. I urge passage of the amendment.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 10 seconds. I say that we need money for port security and rail security funding.

Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. Mr. Chairman, I would just note that we have spent since 9/11 only a couple hundred million dollars in homeland security to secure our rail systems. That is the real problem here. We spent nearly $25 billion on air security and a couple of hundred million on rail.

I would also not that although I do not oppose the death penalty, I doubt very much the death penalty is going to deter the suicide bombers. I think we need to look at not deterrents but at actually preventing the terrorists from harming Americans by protecting the systems and putting our money where our mouth is and in securing these rail systems which we have failed to do.

As my colleague on the Committee on the Judiciary knows, I also serve on the Committee on Homeland Security. We are well aware of how deficient our efforts have been in this regard. That is the crux of this problem, not threatening suicide bombers with the death penalty.

The Acting CHAIRMAN. The question is on the amendment offered by the gentlewoman from West Virginia (Mrs. CAPITO).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mrs. CAPITO. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from West Virginia (Mrs. CAPITO) will be postponed.

It is now in order to consider amendment No. 5 printed in House Report 109–178.

AMENDMENT NO. 5 OFFERED BY MR. FLAKE

Mr. FLAKE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. FLAKE:

At the end of the bill, insert the following:

SEC. ___. JUDICIAL REVIEW OF NATIONAL SECURITY LETTERS.

Chapter 223 of title 18, United States Code, is amended—

(1) by inserting at the end of the table of sections the following new item:

''3511. Judicial review of requests for information.''

; and

(2) by inserting after section 3510 the following:

"§ 3511. Judicial review of requests for information

''(a) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may, in the United States district court for the district in which that person or entity does business or resides, petition for an order modifying or setting aside the request. The court may modify or set aside the request if compliance would be unreasonable or oppressive.

''(b) The recipient of a request for records, a report, or other information under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, may petition any court described in subsection (a) for an order modifying or setting aside a nondisclosure requirement imposed in connection with such a request.

''(1) If the petition is filed within one year of the request for records, a report, or other information under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of

the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. The certification made at the time of the request that disclosure may endanger of the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.

''(2) If the petition is filed one year or more after the request for records, a report, or other information under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114 (a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the issuing officer, within ninety days of the filing of the petition, shall either terminate the nondisclosure requirement or re-certify that disclosure may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person. In the event or re-certification, the court may modify or set aside such a nondisclosure requirement if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with a criminal, counterterrorism, or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person. The re-certification that disclosure may endanger of the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the re-certification was made in bad faith. If the court denies a petition for an order modifying or setting aside a nondisclosure requirement under this paragraph, the recipient shall be precluded for a period of one year from filing another petition to modify or set aside such nondisclosure requirement.

''(c) In the case of a failure to comply with a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947, the Attorney General may invoke the aid of any court of the United States within the jurisdiction in which the investigation is carried on or the person or entity resides, carries on business, or may be found, to compel compliance with the request. The court may issue an order requiring the person or entity to comply with the request. Any failure to obey the order of the court may be punished by the court as contempt thereof. Any process under this section may be served in any judicial district in which the person or entity may be found.

''(d) In all proceedings under this section, subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent an unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947. Petitions, filings, records, orders, and subpoenas must also be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a request for records, a report, or other information made to any person or entity under section 2709(b) of this title, section 625(a) or (b) or 626(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947.

''(e) In all proceedings under this section, the court shall, upon the Federal Government's request, review the submission of the Government, which may include classified information, ex parte and in camera.''.

SEC. ____. CONFIDENTIALITY OF NATIONAL SECURITY LETTERS.

(a) Section 2709(c) of title 18, United States Code, is amended to read:

''(c) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no wire or electronic communications service provider, or officer, employee, or agent thereof, shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

''(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

''(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice with respect to the request shall inform such person of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).''.

(b) Section 625(d) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d)) is amended to read:

''(d) CONFIDENTIALITY.—

''(1) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained the identity of financial institutions or a consumer report respecting any consumer under subsection (a), (b), or (c), and no consumer reporting agency or officer, employee, or agent of a consumer reporting agency shall include in any consumer report any information that would indicate that the Federal Bureau of Investigation has sought or obtained such information on a consumer report.

''(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

''(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).''.

(c) Section 626(c) of the Fair Credit Reporting Act (15 U.S.C. 1681v(c)) is amended to read:

''(c) CONFIDENTIALITY.—

''(1) If the head of a government agency authorized to conduct investigations or, or intelligence or counterintelligence activities or analysis related to, international terrorism, or his designee, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no consumer reporting agency or officer, employee, or agent of such consumer reporting agency, shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request), or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

''(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

''(3) Any recipient disclosing to those persons necessary to comply with the request or to any attorney to obtain legal advice with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).''.

(d) Section 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(5)(D)) is amended to read:

''(D) PROHIBITION OF CERTAIN DISCLOSURE.—

''(i) If the Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge in a Bureau field office designated by the Director, certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no financial institution, or officer, employee, or agent of such institution, shall disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request) that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under paragraph (5).

''(ii) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

''(iii) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).''.

(e) Section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) is amended to read as follows:

''(b) PROHIBITION OF CERTAIN DISCLOSURE.—

''(1) If an authorized investigative agency described in subsection (a) certifies that otherwise there may result a danger to the national security of the United States, interference with a criminal, counterterrorism, or counterintelligence investigation, interference with diplomatic relations, or danger to the life or physical safety of any person, no governmental or private entity, or officer, employee, or agent of such entity, may disclose to any person (other than those to whom such disclosure is necessary in order to comply with the request or an attorney to obtain legal advice with respect to the request) that such entity has received or satisfied a request made by an authorized investigative agency under this section.

''(2) The request shall notify the person or entity to whom the request is directed of the nondisclosure requirement under paragraph (1).

''(3) Any recipient disclosing to those persons necessary to comply with the request or to an attorney to obtain legal advice with respect to the request shall inform such persons of any applicable nondisclosure requirement. Any person who receives a disclosure under this subsection shall be subject to the same prohibitions on disclosure under paragraph (1).''.

SEC. ___. VIOLATIONS OF NONDISCLOSURE PROVISIONS OF NATIONAL SECURITY LETTERS.

Section 1510 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever knowingly violates section 2709(c)(1) of this title, sections 625(d) or 626(c) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) shall be imprisoned for not more than one year, and if the violation is committed with the intent to obstruct an investigation or judicial proceeding, shall be imprisoned for not more than five years.''.

SEC. ___. REPORTS.

Any report made to a committee of Congress regarding national security letters under section 2709(c)(1) of title 18, United States Code, sections 625(d) or 626(c) of the Fair Credit Reporting Act (15 U.S.C. 1681u(d) or 1681v(c)), section 1114(a)(3) or 1114(a)(5)(D) of the Right to Financial Privacy Act (12 U.S.C. 3414(a)(3) or 3414(a)(5)(D)), or section 802(b) of the National Security Act of 1947 (50 U.S.C. 436(b)) shall also be made to the Committees on the Judiciary of the House of Representatives and the Senate.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am offering this amendment with my good friend, the gentleman from Massachusetts (Mr. DELAHUNT). I want to assure my colleagues that this amendment has nothing to do with exporting freedom to Cuba. We have teamed up on a few of those items. We are also teaming up with other Members of the PATRIOT Act Reform Caucus, the gentleman from Idaho (Mr. OTTER) and the gentleman from New York (Mr. NADLER), on this amendment.

The Flake-Delahunt-Otter-Nadler amendment provides critical reforms to national security letters. We have heard a lot about this today.

First, this amendment specifies that the recipient of a national security letter may consult with an attorney and may also challenge national security letters in court. A judge may throw out the national security letter by request of the government ''if compliance would be unreasonable or oppressive to the recipient of the national security letter.''

The amendment also allows the recipient to challenge the nondisclosure requirement in the national security letter request. A judge could modify or remove the nondisclosure requirement of the national security letter ''if it finds that there is no reason to believe that disclosure may endanger the national security of the United States, interfere with criminal counterterrorism or counterintelligence investigation, interfere with diplomatic relations, or endanger the life or physical safety of any person.''

Another important reform to this amendment is that it modifies the nondisclosure requirements so that recipients may tell individuals whom they work with about the national security letter request in order to comply with the national security request.

The amendment also contains penalties for individuals who violate the nondisclosure requirements of a national security letter and requires that reports on national security letters by Federal agencies to Congress must also be sent to the House and Senate Committees on the Judiciary so we can exercise proper oversight.

□ 1545

Mr. Chairman, I would like to thank again the gentleman from Wisconsin (Mr. SENSENBRENNER) and his staff in helping to write and to work with me on this amendment. It is important to strengthening the rights of average American citizens who receive these national security letters, and I urge my colleagues to accept this amendment.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. FLAKE. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentleman for yielding to me, and, Mr. Chairman, I rise in support of the amendment offered by the gentleman from Arizona (Mr. FLAKE).

One of the things that the bill did in section 215 was to provide a procedure for challenging a section 215 order. What this does is it codifies procedures for challenging the receipt of national security letters, and I think that this is a step in the right direction.

Let me say that a national security letter is never issued to the target of an investigation. A place where it would be issued would be to get records that are in the custody of someone who may have information relative to the target of the investigation. For example, it appears that one of the people who was involved in the London bombing 2 weeks ago studied at the University of North Carolina. To get the records of this person's attendance at the University of North Carolina would be a subject of a national security letter. Now, I do not know whether one has been issued or one has not been, but that is an example of the type of information that the NSLs are used for.

This is a good amendment, Mr. Chairman, and I support it.

Mr. FLAKE. I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, though I am in support of the amendment.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Without objection, the gentleman from New York (Mr. NADLER) is recognized for 10 minutes.

There was no objection.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time, and I applaud the cosponsors of this particular amendment because it is a significant amendment.

As it was indicated, under the PATRIOT Act the FBI can merely assert at this point in time that records are relevant to an intelligence investigation. That can be just simply about foreign policy objectives. In addition, it added a permanent nondisclosure requirement which, if violated, imposed severe sanctions on the recipient of the so-called national security letter.

This was truly a profound expansion of government power where the subject of the order need not be suspected of any involvement in terrorism whatsoever, where there was no judicial review, where there was no statutory right to challenge, and where the order gags the recipient from telling anyone about it. A Federal District Court in New York has already ruled that the national security letters for communication records, as amended by the PATRIOT Act, are unconstitutional because they are coercive and violate the fourth amendment prohibition against unreasonable searches and the first amendment as a result of the gag order.

This amendment, I would submit, attempts to salvage the use of national security letters in intelligence investigations so as to comply with constitutional standards. It gives the recipient of a national security letter his day in court. He can consult a lawyer. A judge can reject or modify the FBI demand upon a finding that compliance would be unreasonable or oppressive.

The recipient can also seek to modify or set aside the gag order if the court makes certain findings that it was unnecessary. The amendment goes further to modify the nondisclosure requirement so that the recipients can tell other people with whom they work about the demand so that they can comply with the order.

As I suggested, the current law is of dubious constitutionality, and I would suggest this amendment would permit appropriate use of so-called national security letters that would not only pass constitutional muster but would be sound policy. It also, I believe, strikes a more reasonable balance between privacy and freedom on the one hand and national security on the other with only a negligible burden imposed on the government, and so I urge passage.

Mr. FLAKE. Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, section 505 is one of the most, perhaps the most egregious provision of the PATRIOT Act, and it provides essentially, as was said before, that any Director of an FBI field office can issue a national security letter directing the production of financial, telephone, Internet and other records, period, without a court order, without any judicial approval, and there is no provision for going to courts to oppose that. The person whose privacy it is sought to invade never knows about it because it is directed to a third party; namely, the Internet service provider, the telephone company, or whoever. Furthermore, they are prevented by the gag order provision of section 505 from ever telling the person whose privacy is affected or anyone else about this.

The Federal Court in New York has ruled it unconstitutional for two reasons. One, you cannot issue this kind of what amounts to an intrusive search warrant without any judicial approval or provision for getting judicial approval. That is a violation of the fourth amendment. And, two, the gag order, the nondisclosure provision, was ruled as a prior restraint on speech, the first amendment.

This amendment, which I am pleased to cosponsor, is an attempt to solve these problems. It goes a considerable distance towards solving these problems. I do not think it solves all the problems. It does not make section 505 acceptable or even, in my opinion, constitutional, but it goes a good distance towards doing that.

It solves the first problem by saying that you can get a national security letter without going to court, but the recipient can go to court to quash it. That is a minimum standard that ought to be adhered to. This amendment does that, and I am very pleased it does that. It allows the recipient of a national security letter to ask that the gag order be set aside, and it sets limits on the gag order and says it has to be renewed after a certain time period and you have to apply to a court to extend it.

It fails, in my opinion, in that second provision to reach constitutional status by saying that the showing the government has to make to get an extension of the gag order, the affidavit by the government officer asking for the extension, shall be treated as conclusive unless the court finds that certification was made in bad faith. So that is not really up to the judgment of the judge, and I do not think that would satisfy the court on the first amendment. But it goes a long way, as I said, toward making this less egregious a violation of civil liberties and towards making it more constitutional. I do not think it goes far enough but it is a step forward.

It also does not deal with the fact that section 505 should be sunsetted. Because section 505, like some of the other sections we have talked about, is a great expansion of surveillance and police powers, and it may be a necessary one, although I do not agree with that, but even if it is necessary we should be nervous about the expansion of surveillance and police powers and we should revisit that and force Congress to revisit it through using a sunset every so often.

So this amendment goes a considerable distance in the right direction. It does not go far enough, in my opinion, to solve the problems with section 505, but it does go several steps in the right direction, and I commend the sponsor for introducing it, the main sponsor for drafting it, and I support the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. FLAKE. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the Committee on the Judiciary.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of this amendment.

Mr. Chairman, national security letters are sort of a strange beast. It is kind of difficult to figure out what they are. They are sort of like administrative subpoenas, but they are not actually administrative subpoenas. They are limited in their scope. NSLs do not allow the FBI to read the contents of communications but rather the records of communication. That may seem like a legal nicety, but it is a major difference. The Supreme Court has recognized those kinds of differences.

Nonetheless, the recipients of these, while the Justice Department has told us that they allow them to talk to their lawyers, if you look at the statute as it exists now there seems to be a question about that. This amendments makes its explicit. Also, currently under the law, there is no enforcement mechanism when they do issue a national security letter. This amendment allows such an enforcement mechanism by going to a court.

So in a very real sense this amendment both protects those who would receive one of these letters, and if they object to it they can go to an attorney, they can fight it, and it also gives the government a means of attempting to try and secure compliance with it. So in both instances, I think what we have done is give a little more regularity to it. We have given it a little terra firma here, and for that reason I support it and would urge my colleagues to do the same.

Mr. NADLER. Mr. Chairman, how much time do I have remaining?

The Acting CHAIRMAN. The gentleman from New York has 3 minutes remaining.

Mr. NADLER. Mr. Chairman, I yield the balance of my time to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member on the committee.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding me this time, the floor manager who is, I think, supporting the amendment, but he gives some very compelling arguments against the amendment.

Let me pick up from there. The major problem is that under this amendment the FBI can still compel personal records of anyone if they are relevant to an investigation, even if the person whose records they seek is not suspected of criminal or terrorist activities.

Is that correct? May I ask the author of this bill whether or not that is true? Is it not true that the FBI can still compel personal records even if a person is not suspected of any criminal or terrorist activities?

Mr. FLAKE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Arizona.

Mr. FLAKE. Mr. Chairman, what the PATRIOT Act did was to move or to change the standard to relevance. There has to be a finding of relevance. If it is relevant to an investigation, then it is in my view proper they should be able to compel records.

Mr. CONYERS. Reclaiming my time, Mr. Chairman, what is new then? We have got the law now, we have the amendment here.

Well, let me ask you this. Is the national security letter still unconstitutional under the court ruling?

Mr. FLAKE. Mr. Chairman, if the gentleman will continue to yield, there is a disagreement on what the court was actually ruling on, whether they were ruling on the access to counsel or, my understanding of it, whether or not the request itself was unconstitutional. If that is the case, let the legal process take its course.

But I think what we need to do here is make sure that the agencies have the tools they need, offering the protections we are offering here.

Mr. CONYERS. So we do not know what the court was doing. It is not clear, depending on what someone's interpretation is.

Well, let me ask you this. The amendment allows the recipient to challenge the letter in court, but it can be quashed only if compliance would be unreasonable or oppressive to the recipient?

□ 1600

Mr. FLAKE. Mr. Chairman, if the gentleman would continue to yield, we are offering in this amendment additional protections. We are ensuring that those who receive these letters, and we have in other amendments as well, have access to counsel, not only to respond to the inquiry, but also to challenge in court.

Mr. CONYERS. Mr. Chairman, I thank the gentleman.

Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. FLAKE. I yield to the gentleman from California.

Mr. BERMAN. I think underlying the gentleman from Michigan's question, is this not about the difference between the FBI and law enforcement using a national security letter to ask a bank to give it the financial records of all of its customers versus asking the bank to give it the financial records of the specific individuals it suspects might be involved or that it is interested in? I think that is at the heart of the question of the standard. That is why relevance to a terrorist investigation is not an adequate standard. You want the focus on something specific, rather than all of the bank's records of everybody who uses that bank. You want the people who might have had contact with the terrorist or suspected terrorist.

Mr. FLAKE. Mr. Chairman, part of what we have done in this amendment is offer individuals the opportunity to challenge the scope of the request. So whether or not it applies to them or additional people is challengeable through this amendment. That is part of what we are doing here.

Mr. BERMAN. Mr. Chairman, if the gentleman would continue to yield, that requires the bank, not the customers who had nothing to do with anything, to make the challenge.

Mr. FLAKE. The bank can make the challenge itself. The bank can challenge the scope. They are the recipient of the national security letter.

Mr. BERMAN. The bank is, not the customers of the bank.

Mr. FLAKE. That is correct.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FLAKE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would ask the gentleman from Arizona if he feels that this cures the problem, or does he have some of the reluctance that the gentleman from New York, a co-author of the amendment, has about it not going far enough.

Mr. FLAKE. Mr. Chairman, I have a great deal of respect for the gentleman from New York. I tend not to be as concerned as he is at this point. I share many of his concerns about the overall PATRIOT Act, and we have worked to put many of the amendments in place to put ourselves at rest. I thank him for his involvement. We have had great involvement from both sides of the aisle here.

These amendments that I am offering today, virtually all of them, are offered with Democrat support and cosponsorship. My name is not even at the top of some of them. We have had good cooperation. I feel good about this amendment, about the protection we have offered here, and also to ensure that in cases where it is needed, we offer additional tools for compliance with these requests as well. I am pleased with the amendment. I urge my colleagues to support it.

Mr. CONYERS. Mr. Chairman, if the gentleman would continue to yield, and we do not have any more time over here, that is why we are using this process. But does the gentleman know there are new criminal penalties in this part of 505 now added as a result of this amendment?

Mr. FLAKE. Yes.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for his information.

Mr. FLAKE. Mr. Chairman, reclaiming my time, I just want to say in closing, this has been a collaborative process. I appreciate those who have worked with us, and again my appreciation goes to the chairman of the committee for having such a thorough process and allowing us to have amendments. As I mentioned, we had a markup that lasted over 12 hours. Many of these amendments were discussed at length, as were other amendments. I appreciate that and urge support of the amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

It is now in order to consider amendment No. 6 printed in House Report 109–178.

AMENDMENT NO. 6 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Ms. WATERS:

Add at the end the following:

SEC. 17. DEFENSE AGAINST GAG ORDERS.

A person who has received a non-disclosure order in connection with records provided under the provisions of law amended by sections 215 and 505 of the USA PATRIOT Act may not be penalized for a disclosure if the disclosing person is mentally incompetent or under undue stress, or for a disclosure made because of a threat of bodily harm or a threat to discharge the disclosing person from employment. In order to avoid the penalty, the disclosing person must notify the Federal Bureau of Investigation immediately of the existence of the circumstance constituting the exemption.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentlewoman from California (Ms. WATERS) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 10 minutes.

The Chair recognizes the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have this amendment that I place before this body. It is an amendment that talks about gag orders. It talks about a provision of law both in sections 215 and 550 that does not allow one who is the target of an investigation or one who has assisted the FBI in gaining records, access to records, to talk about the investigation, to let people know they have been contacted, or that they in some way have been involved in assisting the authorities in seeking information.

This amendment of mine is a very, very simple amendment that talks about what happens to someone who is under a gag order who may, through no fault of their own, place themselves in danger of being harmed or being killed because someone finds out that they have been involved, they are involved in the investigation in some way, and they are threatened by the person who discovers that they have been involved in the investigation; or what happens to someone who is employed at a particular business where they give the FBI access to information. The employer wants to know did they give out information, they cannot tell them, they get fired from their job.

So I have raised the question about this gag order of what happens when someone is placed in a position through no fault of their own that they have to give up information. And someone may argue that in one section of the law, 215, they have the right to get a lawyer and this could be included in the information that they share with the lawyer that would attempt to get them out from under the gag order. But we know that there is nothing in 215 or 550 specifically that would protect this person under the gag order.

Mr. Chairman, what I am attempting to do, and in the scheme of things perhaps it is not that important because we have a PATRIOT Act, PATRIOT Act II, that will basically extend two sections of the PATRIOT Act for 10 years, sections 206 and 215, access to businesses and other records and roving wiretaps; and we have these 14 other sections of the PATRIOT Act that are made permanent.

I suppose my colleagues and the people of America should be worried about

all of this, all of what is being done in this PATRIOT Act in the name of fighting terrorism. People should be wondering whether or not they are being asked to give up their civil liberties, if they are being led by the people that they elect to protect them to undermine their own civil liberties.

This is not simply about the gag order under 215 or 550. This is about gagging Americans, period. This is about saying shut up, do not tell me what the Constitution guarantees you, we do not want to hear that. We want you to understand that there are enough people in power who believe that in order to exercise the power as they see it, they have a right to undermine the Constitution of the United States of America. Not only do they believe it, but they are selling it to you based on fear and intimidation.

So my amendment in the scheme of things is not that important to try and protect a person or some persons. My amendment really is about giving me a platform to talk about how America and American citizens are being gagged, how we are being told that no matter that folks have really fought for this Constitution, no matter that we really had some true times when we have had to stand up for the Constitution, and even go to war to protect the Constitution. We are now being led to believe that anything that is done, and that is what this PATRIOT Act is all about, it goes beyond what anybody should have to expect in order to fight terrorism.

This PATRIOT Act is not in the best interest of Americans. There are those on the other side of the aisle who have gotten up today and said I talked to a constituent who complained about the PATRIOT Act and I said to that constituent how have you been harmed, and the constituent could not explain it.

It is not about whether or not I feel my rights have been denied or not. It is about whether or not the children of this Nation, the children of the future, it is about whether all Americans are being denied their civil liberties because they have been led into the support of a PATRIOT Act that really just flies in the face of the Constitution of the United States of America.

And so when I talk about the gag orders and I reference them in order to frame an amendment or to have this platform to talk about this PATRIOT Act, it is really about whether or not I am talking about all Americans being gagged in a very, very clever and sophisticated way.

There are those who will not oppose this PATRIOT Act because they do not want to be considered unpatriotic. I stand here in the Congress of the United States questioning the wisdom of my colleagues on the PATRIOT Act, and I dare anyone to say I am unpatriotic because I do it. I do it because I am patriotic, and I live in an America that has taught me that there is a Constitution that demands we as American citizens question our government, that we do not allow our government to do anything that they want to do.

I have been elected by the people, and I could be a part of this charade of the government doing whatever we want to do in the name of so-called terrorism, but I do not see myself as an elected official nor do I see myself simply as a citizen that believes that the government is right in everything that it does.

Because I do not believe that, I dare to question those on the other side of the aisle and those on this side of the aisle. I dare those who would wish to stand up and challenge me and charge me with not being patriotic because I do so to get up here and debate me now on patriotism.

And I will tell Members what patriotism is all about. Patriotism is about a Constitution and a democracy that says America is different from everybody else and that we have come through a time and a history that has taught us that if you are to have a democracy, you must have certain guarantees, and those guarantees are embodied in the Constitution that guarantees us freedom of speech, freedom of movement, freedom of religion, and freedom of privacy. Those are the things that we should hold dear and we should fight to protect and we should hold onto with everything that we have, with every ounce of energy that we have.

Nobody, no elected official, no so-called leader is so smart they should tell the American people do not worry about it, give up your rights and give up your freedom, I know better than you. I hope that somewhere in America, in some fourth and fifth grade out there, there are teachers who are watching the debate on the PATRIOT Act. I hope that these are the teachers who are teaching the Constitution of the United States and the history of this Constitution, about how it evolved and how it developed; and I hope they will teach them about the amendments to the Constitution that strengthen it to make sure that we embody in this Constitution all that may not have been thought about in the original framing of it by way of amendment.

I hope that the teachers are able to say watch the debate on the floor of the Congress of the United States so that you can understand that there are some intrusions that are taking place today with the PATRIOT Act that fly in the face of the Constitution.

□ 1615

I want you to be aware of it because when you leave this class, when you grow up to be whatever it is you are going to be, I expect that no matter where you are, whether you are in the United States, abroad, no matter where you are, you know how to stand up and fight for the Constitution of the United States that guarantees certain rights and privacies that are now being intruded upon with this kind of act.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think every Member of this Congress, liberal or conservative, Republican or Democrat, takes seriously the oath that we took at the beginning of this Congress to preserve, protect, and defend the Constitution of the United States against all enemies, foreign and domestic.

The amendment that the gentlewoman from California has introduced is going to make it very difficult to conduct any type of criminal or terrorist investigation using a national security letter because it basically eviscerates the nondisclosure rules that national security letters and literally all other tools in criminal investigations have attached to them.

I think the last thing in the world the American public wants to see is if somebody gets a national security letter or a grand jury subpoena or testifies before the grand jury, something in the newspaper that says that John Doe is being investigated. And if John Doe is really involved in criminal or terrorist activities, that is going to be a tip-off that the feds are on the heels of John and maybe he ought to flee the country or do other things to eliminate the evidence that would be used to convict that person of the crime that he has either committed or a crime that he is in a conspiracy with others to commit.

Let me say that by their very nature national security letters involve our national security, and the national security letters are usually not issued against the targets of investigations but to get records that would establish evidence that could be used against the target of the investigation. And if that evidence that was being collected ended up being disclosed and became a matter of discourse in the public press, I do not know how law enforcement would be able to complete its investigation to go after those that are suspected of criminal or terrorist activities.

But let me say there is another aspect to the gentlewoman's amendment that I think is really bad policy and can really hurt somebody who is innocent. Because of the nature and threat of terrorism, when there is a tip that is sent to law enforcement, law enforcement is obligated to investigate it. Now, that tip might be false. That tip might be a malicious tip by a personal enemy against the person who had information given to law enforcement. But, nonetheless, law enforcement has got to proceed. And if they do their investigation and issue national security letters and find out that the person that the tip was lodged against is up to absolutely no criminal or terrorist activity, if that person's name gets in the newspaper, their reputation is destroyed even though they are innocent. So I think that the amendment of the

gentlewoman from California is one that will end up leaking information about an investigation of someone who may be guilty but also leaking information about an incomplete investigation of someone where the evidence would exonerate them before that exoneration has been established. And that is why, either way we see it, the gentlewoman's amendment is bad news and should be rejected.

Ms. LEE. Mr. Chairman, I rise in strong support of the Waters' Amendment and in strong opposition to H.R. 3199, the USA PATRIOT and Intelligence Reform Act of 2005.

''National security letters'' subpoena personal records including telephone, internet, financial and consumer documents, but almost all records are included in this category.

The Waters' Amendment protects the rights of those individuals who are mentally incompetent, under undue stress, at risk for bodily harm or losing their employment from being forced to disclose information.

It is an honest attempt to reinstate some balance to protect those who are among the most vulnerable under this legislation.

But the underlying bill, Mr. Chairman, like the original PATRIOT Act, continues to trample on civil liberties. But this bill goes further. It makes fourteen of the most egregious components of the PATRIOT Act permanent. This is outrageous.

This bill damages fundamental freedoms:

by invading medical privacy

by allowing the FBI to search in any location showing minimal justification

by allowing for sneak and peak, national security letters, and roving ''John Doe'' wire tap provisions

by forcing libraries to police their patrons (an act that this body just voted to overturn I might add)

and by stripping Congress of the right to review and amend these provisions.

These all are examples that blatantly undermine our constitution and do nothing to make us safer.

Mr. Chairman, all of us understand the need to balance civil liberties with national security. And we can do this without sacrificing one for the other.

Mr. Chairman, simply said, this bill is absolutely overreaching. The Waters amendment protects the rights of those who are the overlooked victims of national security letters—upholding the constitution is patriotic, even in times of national security crises.

Mr. SMITH of Texas. Mr. Chairman, we should oppose this amendment.

First, we are revisiting an issue that we just covered in the Flake/Delahunt/Otter/Nadler amendment—protections for recipients of a National Security Letter, which is an administrative subpoena used in terrorism investigations or in covert Intelligence activities. They are a necessary and critical tool in our fight against terrorism.

Current laws prohibit the recipient of a National Security Letter from disclosing the fact that they received it. This amendment creates a safe haven for individuals who tell others that they received a National Security Letter, by prohibiting them from being punished for violating the order not to tell.

Non-disclosure orders prevent others being investigated for involvement in terrorist activities from being alerted to that investigation. If a person knows he is being investigated, he may destroy evidence, tell others with whom he is working about the investigation, and flee the country.

While I understand the motive behind not punishing mentally incompetent individuals or those under duress, the law already allows for that through the use of an affirmative defense.

Any amendment that makes it easier to tip off terrorists to the fact that they are being investigated is irresponsible and should not be supported. The Waters amendment should be opposed.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentlewoman from California (Ms. WATERS).

The amendment was rejected.

The Acting CHAIRMAN. It is now in order to consider amendment No. 7 printed in House Report No. 109–178.

AMENDMENT NO. 7 OFFERED BY MR. DELAHUNT

Mr. DELAHUNT. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. DELAHUNT:

Add at the end the following:

SEC. 9. DEFINITION FOR FORFEITURE PROVISIONS UNDER SECTION 806 OF THE USA PATRIOT ACT.

Section 981(a)(1)(G) of title 18, United States Code, is amended by striking ''section 2331'' each place it appears and inserting ''2332b(g)(5)(B)''.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Massachusetts (Mr. DELAHUNT) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, again, this is an amendment. My cosponsors are the gentleman from Idaho (Mr. OTTER) and the gentleman from Arizona (Mr. FLAKE).

But, again, let me begin by saying this is not about Cuba. So let us make that very clear. This is about domestic terrorism and the definition of domestic terrorism. And while it does not create a new crime under the PATRIOT Act, the definition triggers an array of expanded governmental authorities, including enhanced civil asset seizure powers. It is so broadly defined that it could include acts of civil disobedience because they may involve acts that endanger human life, one of the elements that goes into the definition of domestic terrorism.

For example, they could implicate anti-abortion protesters who illegally block access to federal clinics, which could be interpreted by a liberal activist Attorney General as endangering the lives of those seeking abortions, or environmental protesters who trespass on private land and climb trees to prevent logging, which could be interpreted by a conservative activist Attorney General as endangering their own lives or the lives of the loggers. Since such actions are usually undertaken to influence government policy, another of the elements that go into the definition of domestic terrorism, such activities could be treated in such a way as to have severe unintended consequences, particularly with regard to the government seizure of property and/or assets.

For example, any property used to facilitate the acts, such as a church basement, or property affording a source of influence over the group, like a bank account of a major donor to a direct action anti-abortion group, could be seized without any criminal conviction and without a prior hearing notice under section 806, which is implicated into the PATRIOT Act.

This amendment curbs those unintended consequences and possibilities and appropriately limits the qualifying offenses for domestic terrorism to those that constitute a Federal, substantive crime of terrorism, instead of any Federal or State crime. It also limits the definition to actions that are actually intended to influence government policy on a civilian population by coercion or intimidation, instead of the current standard that the actions ''appear to be intended'' to have that effect.

I would conclude by reminding my colleagues on the Committee on the Judiciary that this amendment is drawn from the version of the PATRIOT Act that was unanimously approved by the Committee on the Judiciary in October of 2001, and I urge its passage.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent to claim the time in opposition, even though I am not in opposition to the amendment.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I believe that this is a good amendment and ought to be supported. It makes important changes to the reference in the forfeiture statute to the definition of international terrorism from the definition of domestic terrorism.

There are various definitions of terrorism under Federal law. In title XVIII there has been a confusion over a new definition created in the USA PATRIOT Act for domestic terrorism. That provision is supposed to be used for administrative procedures such as nationwide searches, but another part of the PATRIOT Act, section 806, uses the reference for asset forfeiture, which is more of a penalty. This has raised

concerns about those who exercise their first amendment rights. As a result, groups from both sides of the political spectrum have wanted to change the definition of domestic terrorism.

The amendment fixes the problem by changing the reference in section 806, asset forfeiture, to the definition of a Federal crime of terrorism under section 2332b(g)(5)(B) instead, which lists specific crimes that constitute terrorism. Thus the more general definition may still be used for administrative purposes and the more narrow definition for penalties and criminal prosecutions.

I believe that this is a good amendment.

Mr. Chairman, I yield such time as he may consume to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I thank the gentleman for yielding me this time.

Let me just briefly thank the gentleman from Massachusetts for working on this amendment. In the committee, with regard to other bills that we have considered, one having to do with providing a death penalty for terrorist criminals, this issue came up as well. ''Domestic terrorism,'' is that too broad a term and how should it be applied? If one causes injury to a Federal building by mistake, are they then subject to these fines? And nobody really believes that the death penalty would be imposed in that case; however, the threat of something like that is out there, acts as a form of intimidation to people from engaging in lawful protest. So the overly broad definition does come up as a problem sometimes, and in this case it comes up as a problem when it has to do with seizure of assets.

So I thank the gentleman for bringing this amendment forward. I am glad to join him and I am glad the chairman has articulated so well the need for this amendment.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

I thank the chairman for his support, and I thank the gentleman from Arizona in helping draft this particular amendment, and I particularly appreciate the example that he enumerated.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. DELAHUNT. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT) will be postponed.

The Acting CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 109–178.

AMENDMENT NO. 8 OFFERED BY MR. FLAKE

Mr. FLAKE. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. FLAKE:

Add at the end the following:

SEC. 17. LIMITATION ON AUTHORITY TO DELAY NOTICE.

(a) IN GENERAL.—Section 3103a(b)(1) of title 18, United States Code, is amended by inserting '', except if the adverse results consists only of unduly delaying a trial'' after ''2705''.

(b) REPORTING REQUIREMENT.—Section 3103a of title 18, United States Code, is amended by adding at the end the following:

''(c) REPORTS.—On an annual basis, the Administrative Office of the United States Courts shall report to the Committees on the Judiciary of the House of Representatives and the Senate the number of search warrants granted during the reporting period, and the number of delayed notices authorized during that period, indicating the adverse result that occasioned that delay.''.

The Acting CHAIRMAN. Pursuant to House Resolution 369, the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am offering this amendment today with the gentleman from Idaho (Mr. OTTER), my fellow cochairman of the PATRIOT Act Reform Caucus.

This amendment addresses two important issues regarding delayed notification of the so-called sneak-and-peek searches. The amendment removes the clause that allows judges, when deciding whether initially to grant a sneak-and-peek search, to allow it for the reason that it would unduly delay a trial to notify the target of the search. This amendment strikes ''unduly delaying a trial'' because we believe it is too low a standard to allow for a delayed notification search under the adverse impact clause of section 2705 of title XVIII.

□ 1630

This amendment also requires on an annual basis that the Administrative Office of the Courts must report to the House and Senate Judiciary Committees on the number of search warrants granted and the number of delayed notices authorized. The AOC would also be required to indicate the cause of delay in each instance. This important information will help improve Congress' oversight role on delayed notification for so-called sneak-and-peak searches in the future by providing Members with this information on an annual basis.

Again, I want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) and his staff for once again working to address the concerns we had on delayed notification. I urge my colleagues to accept this amendment.

Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I support this amendment. I do not think that there should be a delayed notification warrant excuse for unduly delaying a trial, but we have heard an awful lot about delayed notification warrants here. Let me again repeat the fact that delayed notification warrants were not created by the PATRIOT Act when it was passed 3½ years ago. It was existing law for drug-trafficking and racketeering investigations, and the PATRIOT Act only expanded it to include terrorism investigations.

Mr. Chairman, I would like to give Members today a very vivid pictorial example on how these warrants work. Using a delayed notification search warrant, the DEA and other Federal agents entered a home along the border between Washington State and Canada on July 2, 2005, because there was information that the first-ever tunnel under the border between Canada and the United States has being used for drug trafficking.

What did they find? They found a very sophisticated tunnel, and took a picture of it. There were various camera devices and listening devices that the agents put into this tunnel, and they ended up finding that the tunnel had been used to transport 93 pounds of marijuana from Canada into the United States.

This is a picture of the U.S. entrance to the tunnel on our side of the border, very close to Canada. It probably is best described as the U.S. exit. But on the Canadian side of the border the entrance to the tunnel was in a building. So the contraband was stored in this building, was put into the tunnel, taken underneath the border and exited in the United States.

Now, the tunnel that I showed in the first picture was big enough to smuggle terrorists across the border, should it be used for that purpose. All this ended up being exposed as a result of a delayed notification warrant. The amendment is a good one; so are delayed notification warrants.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to claim the time in opposition, although I am not opposed to the amendment.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). Is there objection to the request of the gentlewoman from Texas?

There was no objection.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me first of all continue to remind my colleagues and remind America that juxtaposed along this debate today is an existing Bill of Rights that is embedded in our Constitution. It obviously says there is the right to a trial by jury, the right to due process, the right to association, the right to freedom of speech. So as we have been debating through the day, I

appreciate the tone of my colleagues, because on both sides of the aisle we have raised concerns about overreach and over-breadth when it comes to denying or eliminating the rights and freedoms of Americans.

Mr. Chairman, I would have hoped that we would have had the opportunity to debate an amendment on section 213 that would have sunsetted it; not eliminated it, but sunsetted it.

I heard in earlier debates that none of these provisions have been found unconstitutional by Federal courts. Let me remind the chairman that this legislation is barely, barely, 3 years old. In fact, I would argue that it is not sufficient time to know the extensiveness of the over-breadth on this legislation.

Mr. Chairman, I rise to compliment the gentleman from Arizona (Mr. FLAKE) and the gentleman from Idaho (Mr. OTTER) for at least working to find some limitations on a section that allows the FBI to execute a search and seizure warrant, again in violation of one of our prime tenets of the Constitution, the fourth amendment, without notifying the owner for 6 months, if providing advance notice would interfere with the investigation. How broad can that be, to suggest if it is not where it would intrude on the investigation.

Mr. Chairman, as a local sitting judge, I spent many a night, 11, 12 o'clock at night, hearing from undercover police officers who were in fact searching for a search warrant, one to be signed by this judge. I listened to probable cause statements, PC statements. I would argue vigorously that none of that took an excessive amount of time. The probing that was allowed at that time, I believe, was a good firewall to protect the rights, the innocent rights, of Americans.

Last night we saw on the news media a recounting of a tragic incident that occurred with out-of-control bounty hunters, many times used by local law enforcement. This is not exactly the same issue; but upon going into a home or insisting that someone was someone who was not someone, a woman who was innocent was dragged down to the courthouse or to jail. Unfortunately, she called the police when the bounty hunter came and the police insisted she was the right person. She was not. That is just an example of what happens with overreach.

So this particular amendment that requires reporting on an annual basis of the Administrative Office of the Courts to the Committees on the Judiciary in the House and Senate gives us a limited way for oversight, the number of search warrants during the reporting period and the number of delayed notices authorized in the period, indicating the adverse result that occasioned that delay, a mere bringing to the attention of those of us who have the responsibilities of oversight as to what is happening out there.

The difficulty with this amendment, however, is it leaves us with no action, because section 213 does not have a sunset provision. Because it continues to exist, we then have no way to respond as to whether or not there is overreach.

I emphasize to my colleagues, again, that we are all in the business of fighting terror. In the backdrop of the incidents in London 2 weeks ago and today, we recognize we are united around that issue. But I have never talked to any American who concedes they cannot balance their civil liberties and freedom with the idea of fighting in a war on terror.

I would hope simply that we would have the opportunity to debate this further and recognize that this body has gone on record, particularly by its work in CJS funding, where we offered not to fund section 213. I hope my colleagues will support this amendment, but recognize the dilemma we are in.

Mr. FLAKE. Mr. Chairman, I yield 2½ minutes to the gentleman from Idaho (Mr. OTTER).

(Mr. OTTER asked and was given permission to revise and extend his remarks.)

Mr. OTTER. Mr. Chairman, in my rush to get over here, I had not realized that the chairman had already accepted this amendment, and I thank the chairman for that. But there are a couple of thoughts that I would like to add to the discussion that have already been provided.

Mr. Chairman, I thank my colleague, the gentleman from Arizona (Mr. FLAKE), who is cochair of the PATRIOT Act Caucus with myself. I know the gentleman from Arizona (Mr. FLAKE) and the chairman worked very hard in committee to make sure that they came out with a product that would at least not be as bad as it was when we first passed it in 2001. I thank the gentleman from Arizona (Mr. FLAKE) and also the gentleman from Wisconsin (Chairman SENSENBRENNER).

Mr. Chairman, I rise in support of this amendment, and I appreciate the opportunity to discuss this issue today as we engage in one of the most important debates that we will have during the 109th Congress—that is, how to ensure that neither our national security nor the individual liberties guaranteed by our Constitution are sacrificed to the threat of terrorism.

The amendment we are offering today narrows the scope of so-called "sneak-and-peek" delayed notification search warrants and reins in the far-reaching power that we hastily gave the federal government in the frightening and chaotic days following the 9/11 attacks. We have often heard that "sneak and peek" warrants were used before the passage of the USA PATRIOT Act, and I recognize that the courts have upheld their use in limited and extraordinary circumstances.

However, it deeply disturbs me that in codifying this practice we did not employ the notification procedure upheld by most courts before the PATRIOT Act or practice due caution in an effort to protect our Fourth Amendment rights. Instead, we took this already questionable practice and made it the standard rather than the exception.

Our amendment today is an important step toward reinstituting those precious checks and balances that make this a valuable tool for protecting security instead of a threat to the liberties that are given by our Creator, recognized by the Framers and embodied in our Constitution.

One of my basic concerns with the way that sneak-and-peek was crafted under the PATRIOT Act is the extraordinarily broad list of situations in which the power can be used. Section 213 of this Act lists circumstances, including threat to life and destruction of evidence, in which notification of the execution of a search warrant may be delayed. I understand that these are extreme situations which may call for extraordinary tools. However, the last provision of this list is so vague, so broad, and so all-encompassing that it essentially expands the use of this tool to any investigation in which it would be easier for law enforcement to deny suspects the Constitutional right of notification.

Our amendment today takes one of the first steps toward rectifying this serious flaw in the original PATRIOT Act language by eliminating part of this "catch-all" provision. In addition, it includes reporting language so that we in Congress know when delayed notification is requested and in what circumstances it is used. Armed with this knowledge, we will be better able to conduct proper oversight to ensure that this tool is used to protect personal freedoms while it advances the cause of preventing and prosecuting terrorism.

In the Fourth Amendment, the Framers endorsed the principle that it is the government's role to protect our right to individual privacy, not to encroach upon it. This idea of individual rights—that each person is created uniquely and with certain inalienable rights that government cannot take away—is the most basic expression of who we are as a nation and a people.

That is why it is so vital that this amendment becomes law. While I confess that I would have liked to see stronger language protecting our Fourth Amendment rights included as part of this bill, I am pleased that with this amendment we have the opportunity to reinstate some of the constitutional safeguards that were compromised during passage of the PATRIOT Act.

Such a move would strengthen rather than weaken our ability to fight against those who wish to destroy the essence of what it means to be an American.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentlewoman's courtesy in permitting me to speak on this amendment. I am pleased with the efforts that are under way here on the floor to help try to deal with the shape of the PATRIOT Act. This is a critical discussion.

We have been fighting the war on terror longer than we fought World War II, and it appears to be that this is going to be in the American landscape for as far into the future as we can see.

This amendment helps get a handle on the sneak-and-peak provisions. Section 213, which authorizes the sneak-

and-peak investigation, is not restricted to terrorists or terrorism offenses. It may be used in connection with any Federal crime, including misdemeanors. The PATRIOT Act did not establish oversight standards for these investigations.

The public has a right to know how these activities are being undertaken. We saw one of these searches in Oregon go sideways and devastate the life of a local attorney. Brandon Mayfield was jailed for 2 weeks as his name was leaked to the media, falsely linking him to the Madrid bombing. Now this man is suing the FBI; but he will never, never be able to clear his name.

I appreciate what my friends, the gentleman from Arizona (Mr. FLAKE) and the gentleman from Idaho (Mr. OTTER), have attempted to do here, narrowing the application and providing more information to Congress. This is critical. I would hope we would be able to push the limits a little further. I am very apprehensive about this, but we are involved with a process that is very important for Congress.

As I mentioned, this is what we see for as long as the eye can view. In 2001, just days after 9/11, we rushed through a bill that simply cast aside the important by-products that were developed by the Committee on the Judiciary on a bipartisan basis. I am hopeful that this is going to give us a chance to work together to deal with the important security provisions.

Nobody wants America at risk; but it is important that we narrow provisions, wherever possible, that we have appropriate sunset provisions and that we are monitoring carefully. It is critical both for the civil liberties of Americans and for developing the right tools to fight terrorism.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member of the Committee on the Judiciary, and thank him for his constant moral compass on civil liberties and civil rights for the American people.

Mr. CONYERS. I thank my colleague from Texas for yielding me time.

Mr. Chairman, I would like to just point out that this is another one of the famous half-loaf amendments that we are being peppered with this afternoon.

The amendment leaves ''interferes with an investigation'' open, but it does take away ''when it would delay a trial.'' We get half a loaf here again, so I cannot oppose the amendment, because it did make some improvement. After all, what is progress, even if it may be slow?

But at the same time, this may be a nonterrorist provision within the PATRIOT Act, because we already have a provision for secret searches for terrorists. So letting this section expire altogether would not interfere with secret searches for terrorists at all.

What we found out in our examination, the staff examination, is that 90 percent of the uses of the sneak-and-peak authority have been for nonterrorism cases. It seems to me that this amendment goes along in that same direction.

Mr. FLAKE. Mr. Chairman, I reserve the balance of my time.

□ 1645

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is my great pleasure to yield 1½ minutes to the gentleman from Rhode Island (Mr. LANGEVIN), a former attorney general of the great State of Rhode Island.

Mr. LANGEVIN. Mr. Chairman, I thank the gentlewoman for yielding me this time.

I rise in support of the Flake-Otter sneak-and-peek amendment to drop this provision. Keeping America safe is not a partisan issue; but, unfortunately, several provisions of H.R. 3199 are.

Now, we could have had a bipartisan solution that extends the provisions that are effective and modifies those that need changes. This amendment addresses one of those changes by preventing the use of sneak-and-peek searches when the sole purpose of the delayed notification is to postpone a trial. The current provision is too broad, and this amendment would limit these searches to terrorism cases.

Now, I recognize the need for our laws to keep pace with new technology and a changing world, and I am committed to ensuring that our law enforcement has the tools they need to keep our Nation safe. However, providing these tools need not come at the expense of the liberties and freedoms that we hold so dear. If we cede these, we have already given up the very values the terrorists are trying to destroy.

I look forward to working with my colleagues to make many changes to H.R. 3199 to fight terrorism and to protect our freedoms. I urge the Senate to take a more bipartisan approach to the renewal of the USA PATRIOT Act, and I hope that they are more open to sunsets which require Congress to review the act, extend what is working, and change what is not. Sunsets would make the bill better, but the rule does not permit us to vote on this important modification.

I hope my colleagues will join me in supporting this responsible amendment.

Mr. FLAKE. Mr. Chairman, I yield myself the remaining time to conclude briefly, simply to say that the distinguished ranking minority member of the committee, the gentleman from Michigan (Mr. CONYERS), mentioned that the amendment represents half a loaf, and I will freely concede that it does. Rarely do you get an amendment to a bill that represents the full loaf.

But I should point out that in committee we considered another half-a-loaf amendment, if you will, to section 213; and that amendment by myself and the gentleman from New York (Mr. NADLER) clarified or, not clarified, but actually put in some false stops with regard to delayed notification searches where you have to appear before a judge after 80 days to justify delayed notifications. After 90-day increments beyond that time, you have to appear again and justify that search as well. That is the other half a loaf.

We have also had many other amendments in committee, and here on the floor, that could be considered half a loaf. With that, I think we got a pretty good product in the end, and that is what we are seeking to have here.

I would urge support of the amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. HASTINGS of Washington). The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. FLAKE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Arizona (Mr. FLAKE) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in part B of House Report 109–178 on which further proceedings were postponed, in the following order: amendment No. 2 offered by Mr. FLAKE of Arizona; amendment No. 3 offered by Mr. ISSA of California; amendment No. 4 offered by Mrs. CAPITO of West Virginia; amendment No. 5 offered by Mr. FLAKE of Arizona; amendment No. 7 offered by Mr. DELAHUNT of Massachusetts; amendment No. 8 offered by Mr. FLAKE of Arizona.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 2 OFFERED BY MR. FLAKE OF ARIZONA

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Arizona (Mr. FLAKE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 402, noes 26, not voting 5, as follows:

[Roll No. 403]

AYES—402

Abercrombie	Akin	Andrews
Ackerman	Alexander	Baca
Aderholt	Allen	Baird

Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Butterfield
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—26

Bachus
Biggert
Bonilla
Bono
Burton (IN)
Buyer
Calvert
Cole (OK)
Davis (KY)
Hoekstra
Hostettler
Johnson, Sam
Lewis (CA)
Linder
Myrick
Oxley
Price (GA)
Renzi
Rogers (MI)
Sessions
Shadegg
Souder
Thomas
Thornberry
Tiahrt
Walsh

NOT VOTING—5

Brown (SC)
Cox
Hastings (FL)
Hinojosa
Miller (FL)

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (Mr. HASTINGS of Washington) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1711

Mr. BUYER, Mrs. BONO, Messrs. HOEKSTRA, ROGERS of Michigan, LEWIS of California, COLE, CALVERT, WALSH, SESSIONS, Mrs. MYRICK, Messrs. PRICE of Georgia, BACHUS, OXLEY and THOMAS changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. MILLER of Florida. Mr. Chairman, on rollcall No. 403, I was unavoidably detained. Had I been present, I would have voted ''aye.''

AMENDMENT NO. 3 OFFERED BY MR. ISSA

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. ISSA) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 406, noes 21, not voting 6, as follows:

[Roll No. 404]

AYES—406

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Butterfield
Calvert
Camp
Cannon
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup

Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rohrabacher
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—21

Bachus
Biggert
Bonilla
Bono
Buyer
Cantor
Cole (OK)
Davis (KY)
DeLay
Everett
Hefley
Hunter
Johnson, Sam
Linder
Oxley
Rogers (MI)
Shuster
Souder
Thornberry
Tiahrt
Westmoreland

NOT VOTING—6

Brown (SC)
Burton (IN)
Cox
Hastings (FL)
Hinojosa
Ros-Lehtinen

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (Mr. HASTINGS of Washington) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1720

Mr. INGLIS of South Carolina changed his vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 4 OFFERED BY MRS. CAPITO

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from West Virginia (Mrs. CAPITO) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 362, noes 66, not voting 5, as follows:

[Roll No. 405]

AYES—362

Ackerman
Aderholt
Akin
Alexander
Andrews
Baca
Bachus
Baird
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carnahan
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole (OK)
Conaway
Cooper
Costa
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Fattah
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hobson
Hoekstra
Holden
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Meek (FL)
Melancon
Menendez
Mica
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore (KS)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Ortiz
Osborne
Otter
Oxley
Pallone
Pascrell
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sanchez, Loretta
Sanders
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Walden (OR)
Walsh
Wamp
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—66

Abercrombie
Allen
Baldwin
Becerra
Blumenauer
Brown (OH)
Capuano
Carson
Clay
Cleaver
Conyers
Costello
Cummings
Davis (IL)
DeGette
Delahunt
Farr
Filner
Frank (MA)
Grijalva
Gutierrez
Hinchey
Holt
Honda
Jackson (IL)
Johnson, E. B.
Kucinich
Lee
Lewis (GA)
Markey
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meehan
Meeks (NY)
Michaud
Mollohan
Moore (WI)
Nadler
Neal (MA)
Olver
Owens
Pastor
Paul
Payne
Rangel
Rush
Sabo
Sánchez, Linda T.
Schakowsky
Scott (VA)
Serrano
Slaughter
Stark
Tierney
Towns
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Woolsey

NOT VOTING—5

Brown (SC)
Cox
Hastings (FL)
Hinojosa
Saxton

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1729

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 5 OFFERED BY MR. FLAKE

The Acting CHAIRMAN (Mr. HASTINGS of Washington). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Arizona (Mr. FLAKE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 394, noes 32, not voting 7, as follows:

[Roll No. 406]

AYES—394

Abercrombie
Ackerman
Akin
Alexander
Allen
Andrews
Baca
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—32

Aderholt
Bachus
Barton (TX)
Bonner
Bono
Cantor
Conyers
Cubin
Everett
Franks (AZ)
Hall
Hostettler
Hunter
Hyde
Johnson, Sam
Kilpatrick (MI)
LaHood
Lee
Lewis (CA)
Linder
McKinney
Oxley
Rogers (AL)
Rogers (MI)
Ryun (KS)
Sessions
Shadegg
Souder
Thornberry
Tiahrt
Westmoreland
Whitfield

NOT VOTING—7

Brown (SC)
Cox
Hastings (FL)
Hinojosa
Johnson (CT)
Mica
Taylor (NC)

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1736

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. DELAHUNT

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Massachusetts (Mr. DELAHUNT) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 418, noes 7, not voting 8, as follows:

[Roll No. 407]

AYES—418

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Bonilla
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver

Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—7

Bono
Cantor
Cubin
Hayes
Hunter
Rogers (MI)
Saxton

NOT VOTING—8

Boehner
Brown (SC)
Brown, Corrine
Cox
Gohmert
Hastings (FL)
Hinojosa
Hoekstra

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1743

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. FLAKE

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Arizona (Mr. FLAKE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 407, noes 21, not voting 5, as follows:

[Roll No. 408]

AYES—407

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Shaw
Shays
Sherman
Sherwood
Shimkus
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Spratt
Stark
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—21

Barton (TX)
Bonilla
Bono
Cantor
Cole (OK)
Davis (KY)
Hayworth
Hostettler
Hunter
Knollenberg
Linder
Oxley
Renzi
Rogers (MI)
Sessions
Shadegg
Shuster
Souder
Thornberry
Tiahrt
Westmoreland

NOT VOTING—5

Brown (SC)
Cox
Gohmert
Hastings (FL)
Hinojosa

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN (Mr. HASTINGS of Washington) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1750

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PUTNAM) having assumed the chair, Mr. HASTINGS of Washington, Acting Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3199) to extend and modify authorities needed to combat terrorism, and for other purposes, had come to no resolution thereon.

SURFACE TRANSPORTATION EXTENSION ACT OF 2005, PART IV

Mr. YOUNG of Alaska. Mr. Speaker, I ask unanimous consent that the Committees on Transportation and Infrastructure, Ways and Means, Science,