amendments. In fact, offering debate and voting on amendments is what the Senate is supposed to be all about. That is how we craft legislation. But my offer was rejected.

It appears as if the other side may try to ram this deal through without a real amending process. I hope that even colleagues who may support the deal will oppose such a sham process. It makes no sense to agree to go forward without a guarantee that we will be allowed to actually try to improve the bill. It is a discourtesy to all Senators, not just me, to try to ram through controversial legislation without the chance to improve it.

In sum, I oppose the sham legislative process the Senate is facing, and I oppose the flawed deal we are being asked to ratify. Notwithstanding the improvements achieved in the conference report, we still have not adequately addressed some of the most significant problems of the PATRIOT Act. I must oppose proceeding to this bill which will allow this deal to go forward. I cannot understand how anyone who opposed the conference report back in December can justify supporting it now. The conference report was a beast 2 months ago, and it has not gotten any better looking since then.

I urge my colleagues to vote no on cloture. I reserve the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, James Inhofe, Richard Burr, Christopher Bond, Chuck Hagel, Saxby Chambliss, John E. Sununu, Wayne Allard, Johnny Isakson, John Cornyn, Jim DeMint, Craig Thomas, Larry Craig, Ted Stevens, Lindsey Graham, Norm Coleman.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Louisiana (Mr. VITTER).

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

The yeas and nays resulted—yeas 96, nays 3, as follows:

[Rollcall Vote No. 22 Leg.]

YEAS—96

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Dorgan	Menendez
Allen	Durbin	Mikulski
Baucus	Ensign	Murkowski
Bayh	Enzi	Murray
Bennett	Feinstein	Nelson (FL)
Biden	Frist	Nelson (NE)
Bingaman	Graham	Obama
Bond	Grassley	Pryor
Boxer	Gregg	Reed
Brownback	Hagel	Reid
Bunning	Harkin	Roberts
Burns	Hatch	Rockefeller
Burr	Hutchison	Salazar
Cantwell	Inhofe	Santorum
Carper	Inouye	Sarbanes
Chafee	Isakson	Schumer
Chambliss	Johnson	Sessions
Clinton	Kennedy	Shelby
Coburn	Kerry	Smith
Cochran	Kohl	Snowe
Coleman	Kyl	Specter
Collins	Landrieu	Stabenow
Conrad	Lautenberg	Stevens
Cornyn	Leahy	Sununu
Craig	Levin	Talent
Crapo	Lieberman	Thomas
Dayton	Lincoln	Thune
DeMint	Lott	Voinovich
DeWine	Lugar	Warner
Dodd	Martinez	Wyden

NAYS—3

Byrd	Feingold	Jeffords

NOT VOTING—1

Vitter

The PRESIDING OFFICER. On this vote, the yeas are 96, the nays are 3. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 2271 was agreed to, and the clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 2895

Mr. FRIST. Mr. President, I send an amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. FRIST) proposes an amendment numbered 2895.

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

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

The amendment is as follows:

At the end of the bill add the following: This Act shall become effective 1 day after enactment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2896 TO AMENDMENT NO. 2895

Mr. FRIST. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. FRIST) proposes an amendment numbered 2896 to Amendment No. 2895.

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

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

The amendment is as follows:

Strike all after the first word and insert: Act shall become effective immediately upon enactment.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion on the bill to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, Arlen Specter, Thad Cochran, Richard Burr, Mel Martinez, Jim Bunning, Jon Kyl, Craig Thomas, Mike Crapo, David Vitter, Bob Bennett, Norm Coleman, Michael B. Enzi, Lindsey Graham, Jeff Sessions, Saxby Chambliss, John Cornyn, John Thune.

Mr. FRIST. Mr. President, the actions just taken, coupled with the agreement we came to last night, set out a sequence I will review later today. We will have final passage once we get back from the recess. I am very disappointed in the fact that on a bill I know will pass overwhelmingly, by 90 to 10 or 95 to 5, it has been required of us from the other side of the aisle to be here all day yesterday, today, tomorrow, through the recess, Monday when

we get back, Tuesday when we get back, and final passage on Wednesday morning, when we know what the outcome will be. It bothers me in two regards. First of all, it is a very important piece of legislation. It breaks down and further defines that rough relationship between our law enforcement community and our intelligence community. It is an important tool for the safety and security of the American people and the protection of civil liberties. The bill has been improved and will be overwhelmingly supported.

Secondly, I am disappointed because it means that we effectively have to put off other important business before this body with this postponement and this delay, issues that are important, that are immediate, that need to be addressed. The issue of lobbying reform is underway, and we need to address that on the floor sometime in the near future, such as the issues of LIHEAP and heating, flood insurance, a whole range of bills.

It also plays into what has been this pattern of postponement and delay and obstruction. If you look back at what we finished yesterday, the asbestos bill, we were forced to file cloture on the motion to proceed, which delays, in essence, for 3 days, consideration of that bill. We had debate for a day, with the other side encouraging not to take amendments on that day, allowing 2 days for amendments, but, in effect, spending 2 weeks on a bill on which we could have been moving much quicker.

Another example—I mentioned it last night in closing—is the pensions bill, a bill that passed this body on November 16, 2005, last year, 3 months ago. We asked the Democrats to appoint conferees on December 15 of last year. We renewed that request on February 1. We have been prepared. We have our conferees ready to go. We know what the ratio is, but we still have not been able to send that important bill to conference. In that regard, I wanted to formally, again, make another request, but we absolutely must begin that conference.

UNANIMOUS-CONSENT REQUEST—H. R. 2830

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 357, H.R. 2830, that all after the enacting clause be stricken and the text of S. 1783, as passed by the Senate, be inserted thereof, that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, the Senate insist upon its amendment and request a conference with the House, and the Chair be authorized to appoint conferees at a ratio of 7 to 5.

Mr. REID. Mr President, reserving the right to object, first of all, on the PATRIOT Act, it is very unusual to bring a bill to the floor and allow no amendments.

I understand the history of this legislation. We had a cloture vote, and cloture was not invoked. It was a bipartisan vote that has now been resolved and that Senator SUNUNU has worked hard to bring it to the Senate. I think the majority of the Senate clearly favors this legislation, but Senator FEINGOLD wants to offer amendments. Senator LEAHY wants to offer an amendment.

First of all, we could agree to the motions that are now pending before the Senate on the PATRIOT Act. The so-called filling the tree was used to block Senator FEINGOLD. We could adopt those amendments just like that because they are only date changes and mean very little. They mean nothing, frankly.

We could move every bill quickly here if we had no amendments. The distinguished majority leader is saying we are taking time with these amendments. That is what we do. Senator FEINGOLD has agreed reluctantly, but he agreed, and I appreciate that very much. And Senator LEAHY also agreed that there would be two amendments offered, one dealing with section 215, the other would deal with the so-called gag order. These two amendments would take an extremely limited amount of time to debate. We could vote on them today and finish this legislation. The majority leader has decided not to do that. He filled the tree, and that is his right. We understand that. But I think it is a mistake. I think it sets a bad tone for what we are trying to accomplish.

In regard to the matter before the Senate now, the unanimous consent request, which I will respond to, deals with an important piece of legislation. I acknowledge that, and we need to complete it. It will affect millions of working Americans. The bill has strong bipartisan support. It passed out of here by a vote of 97 to 2. As I reminded the distinguished majority leader off microphone, we in the minority worked very hard to get the bill passed. We eliminated amendments that people wanted to offer. It was a bipartisan effort by virtue of the extremely good vote we had.

We are eager to get to work on producing a conference report that will both strengthen the Pension Benefit Guaranty Corporation and provide certainty to employers who sponsor other types of pensions. The virtual unanimity with which the bill passed the Senate does not mean, however, that there aren't issues that need to be resolved with the House.

We have 13 titles, and it involves many issues, including changing the myriad of rules that guide employers' pension funding requirements, establishes the proper interest rate for employer funding purposes, and for calculating lump-sum distributions paid to departing employees. There are a couple of other provisions, such as it increases premiums of the Pension Benefit Guaranty Corporation, protects older workers who are hurt by changes, the so-called cash balance pension plans, and finally, one of the issues is establishing rules to help employees with 401(k) plans get unbiased investment advice. It expands 401(k) plans to make it easier for employees to be automatically enrolled in these plans so they get better savings for their retirements and changes the rules to protect spousal benefits.

Some of these issues are very technical in nature, and there are very few Senators who understand them because they have worked on them. For example, on our side, Senator HARKIN is an expert, and all of those people on the Labor Committee acknowledge his expertise in one field. Senator MIKULSKI, the ranking member of the subcommittee, is an expert in other areas.

So the point I am making is that the majority has said you will have a conference committee with seven Republicans and five Democrats. I am saying we need eight Republicans and six Democrats. It would allow me to offer somebody who I think is vitally important in allowing a better product to come back from the conference, at least the ability to debate it better.

We are not holding up this pension conference. We are not holding it up. I say the argument is just as easily made that it is being held up by the majority because they refuse to allow us to have 6 members to conference, 6 out of 100, on something that will affect hundreds of millions of Americans. I don't think that is asking too much.

So we are willing to go to conference in 5 seconds, 5 minutes. I have my conferees ready to go. We need six. It may sound easy putting these conference committees together, but it is not. I see on the floor the former majority leader and the former minority leader of the Senate, and Senator FRIST, the present majority leader, is here. They know how difficult these conference committees are. But I have a unique problem on this bill, and I need another Democratic member. So I object, unless the ratio is eight Republicans and six Democrats.

This is not arm wrestling. This doesn't have to show who is the toughest, that we are all going to hang in there, and we are not going to allow this to happen. We are in the minority. We understand that. But we have certain rights also. I don't think it is asking too much to increase the size of this conference. One more Democrat is all we are asking for. In exchange for that, of course, you get another Republican.

So I hope the ratio—the majority will have two extra Republicans on the conference—is something to which the distinguished majority leader will agree.

Mr. LOTT. Reserving the right to object, if I can make a parliamentary inquiry: First of all, did Senator REID ask for a different UC?

Mr. REID. Yes, I did, Mr. President. I ask that the request of the distinguished majority leader be amended to allow an eight-to-six conference, eight Republicans, six Democrats.

Mr. LOTT. Reserving the right to object to that, Mr. President, I hesitate

to tread into these waters because I know how difficult it is to be in the position that these two leaders are in. They have to make tough choices. They have to take into consideration what happens once you get into conference. You have to look at personalities. But frankly, I think seven and five is too big. That is, to me, a pretty large number of Senators to be going to conference. I understand that Senator REID has other Senators who would like to be conferees, and I am sure Senator FRIST has other Senators who would like to be conferees. In fact, most Senators would like to be a conferee on everything, particularly coming out of their committee. That is what this is all about. I wanted to be a conferee on the tax reconciliation bill. I worked on it for a year, but I am not. The leader made the choice to go with two others, and I am off. I am not happy about that, and I have explained it to him. It is called leadership. It is called tough choices.

By the way, this has been hanging around since December 10. I believe that is when our leadership first said: Let's go to conference. I remind my colleagues and our leaders, this is a bipartisan bill. This is a bill that passed the Senate overwhelmingly. This is a bill that passed the House overwhelmingly. But it is a complex area. We need time to work out the difficulties and disagreements on pensions and how it affects aviation. None of it is going to be easy. I would think some Senators might want to take second thoughts about whether to be on this conference because it will be difficult.

But we have a time problem. If we don't appoint these conferees this week in the Senate and the House, we won't be able to begin when we come back, and then another week will be frittered away. When you look at the calendar, we will have something like maybe 25 days to reach an agreement because there is a drop-dead date on this.

First of all, at least two airlines are hanging in the balance of bankruptcy. They could very easily dump their pensions on the PBGC and say we are out of here. They are trying not to do that. They are trying to do the responsible thing for themselves, the taxpayers, and everybody.

Secondly, the reason why April 15 is a very serious date is because that is when the next quarterly payment is due. Within 2 weeks, companies are going to have to make a decision: Do I comply or not? Do I dump my pension on PBGC or do I go into bankruptcy?

We have a time problem. So I know it is not easy, but we need to get this done. I know the leaders have been talking back and forth trying to reach an agreeable number to deal with all this, but I say to my friends, it is time to make a decision, and we all have to understand we don't all get to be conferees. I understand that. I don't like it, but I understand it.

So I object to a larger number for a lot of reasons, and I urge the two leaders to come to a quick agreement. Let's get this done in the next 24 hours. Let's show for the first time this year that we can deal with something, as hard as it may be, in a bipartisan way. So I object.

The PRESIDING OFFICER. Objection is heard to modifying the unanimous consent request. Is there objection to the basic request?

Mr. REID. Mr. President, reserving the right to object, I say to my friend, the junior Senator from Mississippi, this is the first request we have had for a conference. The majority and minority staffs have worked on this. They have made significant headway, and I appreciate the work they have done. The House has not appointed their conferees, and they are certainly not going to today or tomorrow. So I think what we need to do is understand the importance of this and understand that we are ready to go to conference. We are ready to go to conference. It is a question of how many conferees we have.

I hope that my friends on the other side of the aisle would agree that it is important to go to conference and that we move forward as quickly as we can, allowing people from the Finance Committee—this isn't one committee. One reason it is complicated is that there are issues dealing with finance and the HELP Committee. So I object to the distinguished majority leader's request.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, the issue is an important one because of the time constraints that were outlined by my colleague from Mississippi. This is something we have to work through. It is pretty simple, pretty straightforward, as my colleague from Mississippi said. We just went through appointing the conferees for the tax reconciliation bill. I had on the floor here a few minutes ago three different people who passionately wanted to be conferees—who worked on it, who deserve to be, yet they are not. Part of leadership is basically saying no. Seven to five is a reasonable number that many people think is too large. Seven to five is what it will be. I am hopeful that over the next few hours we can come to some resolution and appoint conferees. The House is ready to go to conference. We are ready. We asked to go to conference on December 15 of last year, yet we are not to conference.

This is a specific problem. Both the Democratic leader and I have talked about this for days, that we both have challenges, but it is something that is pretty straightforward. The bill has been passed, it is ready to go to conference, is addressing a major problem facing people across America, and we need to address it.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the pending amendment be set aside so I may offer an amendment which is at the desk, amendment No. 2892.

Mr. REID. Will the distinguished Senator yield?

Mr. FEINGOLD. I yield to the Senator from Nevada.

Mr. REID. I should have done this. I have people sending me notes. Are we having anymore votes today?

Mr. FRIST. Let's decide within the next hour. With the schedule, I know there is still going to be an effort to offer amendments and the like. Why don't we get together and have some sort of announcement shortly to our colleagues.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent the pending amendment be set aside so I may offer an amendment at the desk, No. 2892.

The PRESIDING OFFICER. Is there objection?

Mr. FRIST. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FEINGOLD. Mr. President, we can obviously see what is going on here when the majority leader offered those two amendments earlier. He was filling the amendment tree. That means he is trying—in fact, he is going to do everything he can, and he will succeed, if he wishes—to refuse to allow Senators to improve this bill. Those amendments are nothing more than meaningless amendments, the amendments he has offered, that have to do with the effective date of the bill. They are nothing other than an attempt to prevent me or any other Senator from trying to amend this legislation.

Not only was this a take-it-or-leave-it deal from the White House, but now the majority leader and perhaps other Senators are apparently afraid of what happens if the Senate actually does its work on this issue and has open votes on the merits of these issues.

I want everyone to know that is the game that is being played here, on a bill that has major implications for the rights and freedom of the American people. Obviously, when the majority leader talks about how urgent it is that this be passed, he is conveniently ignoring the fact that this current law is in effect until March 10, and there is no risk whatsoever that the bill would not be renewed.

I am going to speak for a few minutes about the various amendments I have filed and that the majority leader is preventing me from offering.

AMENDMENT NO. 2892

Amendment No. 2892 is the amendment that would implement the standard for obtaining section 215 orders that was in the Senate bill the Judiciary Committee approved by a vote of 18 to 0 and that was agreed to in the Senate without objection. I hope my colleagues remember that. When the majority leader fills the tree, he is not preventing some type of esoteric amendments nobody has ever seen or heard of. Every member of the Judiciary Committee already voted for that

very provision and no Senator in the entire Senate, including the majority leader, objected to that being in the Senate bill. So this is not some kind of a last-minute deal. This is something the majority leader himself never objected to. It is a reasonable amendment that every Senator in one way or another has basically supported.

Of all the concerns that have been raised about the PATRIOT Act since it was passed in 2001, this is the one that has received the most public attention, and rightly so. This is the one that is often referred to as the ''library provision.'' A reauthorization bill that doesn't fix this provision, in my view, has no credibility.

Section 215 of the PATRIOT Act allows the Government to obtain secret court orders in domestic intelligence investigations to get all kinds of business records about people, including not just library records, but also medical records and various other types of business records. The PATRIOT Act allowed the Government to obtain these records as long as they were ''sought for'' a terrorism investigation. That is a very low standard. It didn't require that the records concern someone who was suspected of being a terrorist or spy, or even suspected of being connected to a terrorist or spy. It didn't require any demonstration of how the records would be useful in the investigation. Under section 215, if the Government simply said it wanted records for a terrorism investigation, the secret FISA court was required to issue the order—period. To make matters worse, recipients of these orders are also subject to an automatic gag order. They cannot tell anyone that they have been asked for records.

Because of the breadth of this power, section 215 became the focal point of a lot of Americans' concerns about the PATRIOT Act. These voices came from the left and the right, from big cities and small towns all across the country. So far, more than 400 State and local government bodies have passed resolutions calling for revisions to the PATRIOT Act. And nearly every one mentions section 215.

The Government should not have the kind of broad, intrusive powers that section 215 provides—not this Government, not any government. The American people shouldn't have to live with a poorly drafted provision that clearly allows for the records of innocent Americans to be searched, and just hope that Government uses it with restraint. A Government of laws doesn't require its citizens to rely on the good will and good faith of those who have these powers—especially when adequate safeguards can be written into the laws without compromising their usefulness as a law enforcement tool. Not one of the amendments I am offering would threaten the ability of law enforcement to do what is needs to do to investigate and prevent terrorism.

After lengthy and difficult negotiations, the Judiciary Committee came up with language that achieved that goal. It would require the Government to convince a judge that a person has some connection to terrorism or espionage before obtaining their sensitive records. And when I say some connection, that's what I mean. The Senate bill's standard is the following: No. 1, that the records pertain to a terrorist or spy; No. 2, that the records pertain to an individual in contact with or known to a suspected terrorist or spy; or No. 3, that the records are relevant—just relevant—to the activities of a suspected terrorist or spy. That's the three-prong test in the Senate bill and I think it is more than adequate to give law enforcement the power it needs to conduct investigations, while also protecting the rights of innocent Americans. It would not limit the types of records that the Government could obtain, and it does not go as far to protect law-abiding Americans as I might prefer, but it would make sure the Government cannot go on fishing expeditions into the records of innocent people.

The conference report did away with this delicate compromise. It does not contain the critical modification to the standard for section 215 orders. The Senate bill permits the Government to obtain business records only if it can satisfy one or more prongs of the three-prong test. This is a broad standard with a lot of flexibility. But it retains the core protection that the Government cannot go after someone who has no connection whatsoever to a terrorist or spy or their activities.

The conference report replaces the three-prong test with a simple relevance standard. It then provides a presumption of relevance if the government meets one of the three-prongs. It is silly to argue that this is adequate protection against a fishing expedition. The only actual requirement in the conference report is that the Government show that those records are relevant to an authorized intelligence investigation. Relevance is a very broad standard that could arguably justify the collection of all kinds of information about law-abiding Americans. The three-prongs now are just examples of how the Government can satisfy the relevance standard. That is not simply a loophole or an exception that swallows the rule. The exception is the rule, rendering basically meaningless the three-prong test that we worked so hard to create in the Senate version of the bill.

This issue was perhaps the most significant reason that I and others objected to the conference report. So how was this issue addressed by the White House deal to get the support of some Senators? It wasn't. Not one change was made on the standard for obtaining section 215 orders. That is a grave disappointment. The White House refused to make any changes at all. Not only would it not accept the Senate version of section 215, which, no member of this body objected to back in July—including the majority leader—it wouldn't make any change in the conference report on this issue at all.

So today I offer an amendment to bring back the Senate standard on section 215. It simply replaces the standard in the conference report with the standard from the Senate bill. I urge my colleagues to support this change, which we all consented to 6 months ago, and which was one of the core issues that many of us stood up for in December when we voted against cloture on the conference report.

I know that some will say they must oppose this amendment because it would disrupt a delicate agreement that has been achieved with the White House. I disagree. There is no reason we can't reauthorize the PATRIOT Act and fix section 215—in fact, there is every reason we should do so. This body has expressed its strongly held views on this issue before, and it should do so again. If this issue went to a vote in the House I'm confident we would have strong support because the House has already indicated a willingness to modify section 215 to protect the privacy of innocent Americans. That is the first amendment I wanted to offer. Let me next turn to amendment No. 2893.

AMENDMENT NO. 2893

The second one is amendment No. 2893. This amendment would ensure that recipients of business records orders under section 215 of the PATRIOT Act and recipients of national security letters can get meaningful judicial review of the gag orders that they are subject to.

Recipients of both section 215 orders and national security letters are subject to automatic, indefinite gag orders. This means both that a recipient cannot tell anyone what the section 215 order or NSL says, and that the recipient can never even acknowledge that he or she received a section 215 order or NSL. Now I understand there may very well be a need to protect the confidentiality of these business records orders and NSLs in many cases, particularly with regard to the identity of the people whose records they seek. But I do not understand why even the fact of their existence must be a secret, forever, in every case. Even classified information can undergo declassification procedures and ultimately become public, when appropriate.

So I think that meaningful judicial review of these gag orders is critically important. In fact, these automatic, permanent gag rules very likely violate the first amendment. In litigation challenging the gag rule in one of the national security letter statutes, two courts have found first amendment violations because there is no individualized evaluation of the need for secrecy.

So what does the reauthorization package do about this serious problem? Under the conference report, as modified by the Sununu bill, recipients would theoretically have the ability to challenge these gag orders in court, but

the standard for getting the gag orders overturned would be virtually impossible to meet. It is not the meaningful judicial review that the sponsors of the SAFE Act and so many others have been calling for.

Let me start with the NSL provision of the conference report. In order to prevail in challenging the NSL gag order, the recipient would have to prove that any certification by the Government that disclosure would harm national security or impair diplomatic relations was made in bad faith.

There would be what many have called a ''conclusive presumption'' the gag order stands—unless the recipient can prove that the Government acted in bad faith. We all know that is not meaningful judicial review. That is just the illusion of judicial review.

Does the White House deal address this problem? It does not. In fact, it applies that same very troubling standard of review to judicial review of section 215 gag orders.

The conference report that was rejected back in December did not authorize judicial review of the gag order that comes with a section 215 order at all. That was a serious deficiency. But the White House deal does not solve it. Far from it. Under the deal, there is judicial review of section 215 gag orders, but subject to two limitations that are very problematic. First, judicial review can only take place after at least a year has passed. And second, it can only be successful if the recipient of the section 215 order proves that the Government has acted in bad faith, just as I have described with the NSL provision.

My amendment would eliminate the ''bad faith'' showing currently required for overturning both section 215 and NSL gag orders. And it would no longer require recipients of section 215 orders to wait a year before they can challenge the accompanying gag orders.

That is not everything I would want to address with regard to this issue. I am also concerned that the judicial review provisions allow the Government to present its evidence and arguments to the court in secret. But this amendment which I would like to offer is a good solid start. At a time when the Government is asserting extraordinary powers and seeking to exercise them without any oversight by the courts, judicial review of Government assertions that secrecy is necessary more essential than ever.

We cannot face the American people and claim that overreaching by the government under the PATRIOT Act cannot happen because the courts have the power to stop it—and then turn around and prevent the courts from doing their job. The illusion of judicial review is almost worse that no judicial review at all. In America, we cannot sanction kangaroo courts where the deck is stacked against one party before the case is even filed. Obviously, I hope that my colleagues will support this very reasonable amendment, if we are given a chance to vote on it. I think many would find it quite pervasive and particularly some of the people who were part of the White House negotiations.

AMENDMENT TO ADD NSL SUNSET

The third amendment I would like to offer, No. 2891, would add to the conference report one additional 4-year sunset provision. It would sunset the national security letter authorities that were expanded by the PATRIOT Act. It would be simply add that sunset to the already existing 4-year sunsets that are in the conference report with respect to section 206, section 215, and the lone wolf provision.

National Security Letters, or NSLs, are finally starting to get the attention they deserve. This authority was expanded by sections 358 and 505 of the PATRIOT Act. The issue of NSLs has flown under the radar for years, even though many of us have been trying to bring more public attention to it. I am gratified that we are finally talking about NSLs, in large part due to a lengthy Washington Post story published last year about these authorities.

What are NSLs, and why are they such a concern? Let me spend a little time on this because it really is important.

National security letters are issued by the FBI to businesses to obtain certain types of records. So they are similar to section 215 orders, but with one very critical difference. The Government does not need to get any court approval whatsoever to issue them. It doesn't have to go to the FISA court and make even the most minimal showing. It simply issues the order signed by the special agent in charge of a field office or an FBI headquarters official.

NSLs can only be used to obtain certain categories of business records, While section 215 orders can be used to obtain ''any tangible thing.'' But even the categories reachable by an NSL are quite broad. NSLs can be used to obtain three types of business records: subscriber and transactional information related to Internet and phone usage; credit reports; and financial records, a category that has been expanded to include records from all kinds of everyday businesses like jewelers, car dealers, travel agents and even casinos.

Just as with section 215, the PATRIOT Act expanded the NSL authorities to allow the Government to use them to obtain records of people who are not suspected of being, or even of being connected to, terrorists or spies. The Government need only certify that the documents are either sought for or relevant to an authorized intelligence investigation, a far-reaching standard that could be used to obtain all kinds of records about innocent Americans. And just as with section 215, the recipient is subject to an automatic, permanent gag rule.

The conference report does nothing to fix the standard for issuing an NSL. It leaves in place the breathtakingly broad relevance standard. And the White House deal doesn't do anything about this either.

It is true that the Senate bill does not contain a sunset on the NSL provision. But the Senate bill was passed before the Post brought so much attention to this issue by reporting about the use of NSLs and the difficulties that the gag rule poses for businesses that feel they are being unfairly burdened by them. At the very least, I would think that a sunset of the NSL authorities is justified to ensure that Congress has the opportunity to take a close look at such a broad power. And let me emphasize, the sunset in this amendment would only apply to the expansions of NSL authorities contained in the PATRIOT Act, not to pre-existing authorities.

I suspect that the NSL power is something that the administration is zealously guarding because it is one area where there is almost no judicial involvement or oversight. It is the last refuge for those who want virtually unlimited Government power in intelligence investigations. And that is why the Congress should be very concerned, and very insistent on including a sunset of these expanded authorities. A sunset is a reasonable step here. It helps Congress conduct oversight of these authorities, and requires us to revisit them in 4 years. Ideally we could go ahead and actually fix the NSL statutes now, but sunsetting the expanded powers would at least be a step in the right direction.

Adding this sunset does not change the law in any way. I cannot imagine that adopting this amendment would blow up the White House deal. This is a reasonable amendment, and again I want my colleagues to have a chance to vote on it.

SNEAK AND PEEK AMENDMENT

The fourth amendment that I have, No. 2894, concerns so-called ''sneak and peek'' searches, whereby the Government can secretly search people's houses. The Senate bill included compromise language that was acceptable to me and the other proponents of the SAFE Act. The conference report departs from that compromise in one very significant respect, and the White House deal doesn't address this at all. My amendment would restore the key component of the Senate compromise by requiring that subjects of sneak and peek searches be notified of the search within 7 days, unless a judge grants an extension of that time because there is a good reason to still keep the search secret. It makes no other change to the conference report other than changing 30 days to 7 days.

Let me take a little time to put this issue in context and explain why the difference between 30 days and 7 days is necessary to protect an important constitutional right.

One of the most fundamental protections in the Bill of Rights is the fourth amendment's guarantee that all citizens have the right to ''be secure in

their persons, houses, papers, and effects'' against ''unreasonable searches and seizures.'' The idea that the Government cannot enter our homes improperly is a bedrock principle for Americans, and rightly so. The fourth amendment has a rich history and includes in its ambit some very important requirements for searches. One is the requirement that a search be conducted pursuant to a warrant. The Constitution specifically requires that a warrant for a search be issued only where there is probable cause and that the warrant specifically describe the place to be searched and the persons or things to be seized.

Why does the Constitution require that particular description? Well, for one thing, that description becomes a limit on what can be searched or seized. If the magistrate approves a warrant to search someone's home and the police show up at the person's business, that search is not valid. If the warrant authorizes a search at a particular address, and the police take it next door, they have no right to enter that house. But here is the key. There is no opportunity to point out that the warrant is inadequate unless that warrant is handed to someone at the premises. If there is no one present to receive the warrant, and the search must be carried out immediately, most warrants require that they be left behind at the premises that were searched. Notice of the search is part of the standard fourth amendment protection. It's what gives effect to the Constitution's requirement of a warrant and a particular description of the place to be searched and the persons or items to be seized.

Over the years, the courts have faced claims by the Government that the circumstances of a particular investigation require a search without notifying the target prior to carrying out the search. In some cases, giving notice would compromise the success of the search by causing the suspect to flee or destroy evidence. The two leading court decisions on so-called surreptitious entry, or what have come to be known as ''sneak and peek'' searches, came to very similar conclusions. They held that notice of criminal search warrants could be delayed, but not omitted entirely. Both the Second Circuit in U.S. v. Villegas and the Ninth Circuit in U.S. v. Freitas held that a sneak and peek warrant must provide that notice of the search will be given within 7 days, unless extended by the court. Listen to what the Freitas court said about such searches:

> We take this position because surreptitious searches and seizures of intangibles strike at the very heart of the interests protected by the Fourth Amendment. The mere thought of strangers walking through and visually examining the center of our privacy interest, our home, arouses our passion for freedom as does nothing else. That passion, the true source of the Fourth Amendment, demands that surreptitious entries be closely circumscribed.

So when defenders of the PATRIOT Act say that sneak and peek searches were commonly approved by courts prior to the PATRIOT Act, they are partially correct. Some courts permitted secret searches in very limited circumstances, but they also recognized the need for prompt notice after the search unless a reason to continue to delay notice was demonstrated. And they specifically said that notice had to occur within 7 days.

Section 213 of the PATRIOT Act didn't get this balance right. It allowed notice to be delayed for any ''reasonable'' length of time. What is ''reasonable''? Information provided by the administration about the use of this provision since 2001 indicates that delays of months at a time are now becoming commonplace. Those are hardly the kind of delays that the courts had been allowing prior to the PATRIOT Act.

I know that the conference report requirement of notice within 30 days was a compromise between the Senate and House provisions. And so, the Senator from Pennsylvania and others will strongly oppose this amendment, if I ever get to offer it. But let me point out that the House passed the Otter amendment to completely eliminate the sneak and peek provision by a wide bipartisan margin. I hardly think the House will balk at this reasonable amendment that allows these sneak and peek reviews but says that after 7 days you have to go back and get an application for more time, or you have to give notice to the persons whose house is intruded upon.

More importantly, here is the crucial question that no one has been able to answer so far. Listen carefully to the arguments made by the opponents of the amendment and see if they answer it this time, if we ever get a chance to debate it. What possible rationale is there for not requiring the Government to go back to a court within 7 days after a sneak and peek search and demonstrate a need for continued secrecy? What is the problem here? Why insist that the Government get 30 days of secrecy, instead of 7 days, without getting an extension from the court? Could it be that they think that the courts usually won't agree that continued secrecy is needed after the search is conducted, so they won't get the 90-day extension? If they have to go back to a court at some point, why not go back after 7 days rather than 30? From the point of view of the Government, I don't see the big deal.

It amazes me to hear Senators on the floor saying 7 days, 30 days. What is the difference? This is about big government coming into your home without your knowledge and saying it doesn't matter that you are not given notice in 7 days as opposed to 30 days. I tell you that it matters to people in my State, and it would matter to me. Government shouldn't be in your house without notice except for very narrowly identified circumstances that are consistent with the court decisions that allowed the sneak-and-peek provisions in the first place. There is a big difference between 1 week and 1 month when it comes to something like the Government secretly coming into your home.

Suppose, for example, that the Government actually searched the wrong house. As I mentioned, that is one of the reasons that notice is a fourth amendment requirement. The innocent owner of the place that had been searched might suspect that someone had broken in his house, and he might be living in fear that someone has a key or some other way to enter his house. The owner might wonder: When is the intruder going to return? Do the locks have to be changed?

I implore my colleagues to look at this issue from the point of view of an innocent person in their own home somewhere in their own home State. Why would we make that person wait a month to get an explanation rather than a week? Presumably, if the search revealed nothing, and especially if the Government realized the mistake and does not intend to apply for an extension, it will be no hardship other than a little embarrassment for notice to be given within 7 days.

If, on the other hand, the search was successful and revealed illegal activity and notifying the subject would compromise an ongoing investigation, the Government should have no trouble at all getting a 90-day extension of the search warrant. All they have to do is walk into the court and tell the judge: Judge, we found something, and we are now keeping the place under surveillance because there is ongoing criminal activity taking place there, so give us more time before we serve the search warrant.

That is all you have to say. What is so hard about that? We all know the judges will give them that. It is perfectly reasonable.

The Senate bill is already a compromise on this very controversial provision. There is no good reason not to adopt the Senate's position. I have pointed this out repeatedly and no one has ever come to the Senate and come up with any explanation of why the Government cannot come back to the court within 7 days of executing the search. The Senate provision was what the courts required prior to the PATRIOT Act. It worked fine then. It can work now.

Let me make one final point about sneak-and-peek warrants. Do not be fooled for a minute that this power has anything to do with just investigating terrorism or espionage. It does not. Section 213 is a criminal provision that applies in any kind of criminal investigation. In fact, most sneak-and-peek warrants are issued for drug investigations. So why do I say they are not needed in terrorism investigations? Because FISA, the Foreign Intelligence Surveillance Act, can also apply to these investigations. FISA search warrants are always executed in secret and never require notice—not in 7 days, not in 30 days, not in 180 days, not ever. So

if you do not want to give notice of a search in a terrorism investigation, you can get a FISA warrant. So any argument that adopting this amendment will interfere with sensitive terrorism investigations is false. It is false, plain and simple.

I look forward to hearing the response of the opponents on this issue. I am beginning to lose faith I will ever hear from them. But I also urge my colleagues to listen carefully: Will anyone come forward and argue convincingly that 7 days, which the entire Senate approved in July, is too short of a period of time? If not, we should adopt this amendment.

I have had the opportunity the last few minutes to describe the four remaining amendments I have filed. I have tried to explain them clearly. These are provisions that are either consistent with or the same as provisions that we approved in the Senate last year by unanimous vote in the Judiciary Committee and in a unanimous consent agreement in the Senate, which not one single Senator, including the majority leader, objected to. Or they were central to the concerns raised by so many Senators late last year. So these are obviously not extreme ideas. They are very reasonable ideas.

The idea that right after the motion to proceed was approved the majority leader would come and ''fill up the tree,'' which means preventing me from offering these amendments on the Senate floor, is a disservice to the Senate and it is a disservice to the American people. The American people are concerned about this legislation. Whether Members of this Senate want to admit it, there is a lot of concern about this legislation. The goal should be to make sure that the law enforcement in our country has the tools it needs to fight those who are involved in terrorism or spying. But the goal should also be to reassure the American people that we are not somehow trying to take away the rights and freedoms and privacy of perfectly innocent Americans. I would think all of us would want that to be the way this legislation is perceived.

The act of preventing reasonable amendments, under a limited timeframe, on provisions that have already been approved by the Senate or that so many Senators have raised concerns about, is a guarantee of causing anxiety and concern on the part of the American people that something is wrong, that somehow the power grab by this administration is out of control.

I implore my colleagues to join me in imploring the majority leader to allow us to offer these reasonable amendments. That is not only the right thing to do, it is our responsibility, as Members of this Senate.

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

The PRESIDING OFFICER (Mr. CHAMBLISS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. TALENT. Mr. President, I have come to the Senate floor this afternoon to speak for a few minutes about a specific provision, a significant provision in the PATRIOT Act, the Combat Meth Act. This is the most comprehensive antimethamphetamine legislation ever to be introduced, much less passed, in the Senate. I am hopeful that it will be passed in the Senate, of course, in this legislation and be sent to the President's desk for his signature and then for implementation.

Methamphetamine is the worst drug threat that I have confronted in my 20 years in public life. When I say that, I hope it has some impression on people. But when career law enforcement officers stand up in various forums and say that, I hope people are afraid because this drug should make us afraid. It is almost the ''perfect storm'' of drugs. It is almost immediately addictive.

Most people who try methamphetamine get addicted the first time they try it. There is no such thing as casual or recreational use of this drug. It is very damaging to the person who uses it. It changes the structure of the brain. It turns people who use it into more aggressive-type individuals. Other drugs, as bad as they are, tend to make people more passive. Methamphetamine makes them paranoid. I was speaking with another Senator about this bill a few minutes ago over the telephone, and he mentioned to me that in his State one woman who had been a meth user told him that when she was high on meth, she thought her 3-year-old was trying to kill her. This is not uncommon. There is almost no known medical cure for it.

Our substance abuse counselors do a heroic job and people have gotten off of methamphetamine, but I do want to state that we don't have a methadone for methamphetamine. On top of all of these things, as bad as they are by themselves, this is a drug which, to this point, has not only been consumed and sold in our neighborhoods, as other drugs are, it has been primarily, in many States, made in our own neighborhoods in local labs.

The process for making methamphetamine is highly dangerous and toxic. So in addition to all of the problems that go with addiction to deadly drugs, we have, on top of that, a whole set of other problems that you don't have with other drugs that are caused by the fact that methamphetamine is actually made in our neighborhoods. Since the process for making it is toxic, homes in which methamphetamine is made, or in cars—because sometimes they make it in vans—they become toxic waste dumps, huge environmental waste problems for local officials to clean up. The fact that the drug is made in home labs creates a whole new set of problems for kids. It is bad enough for a kid if they are growing up in a home where drugs are being used, but if methamphetamine is being cooked, the children become contaminated with toxins.

When they pull kids out of those environments, they have to decontaminate them. It can cause permanent health problems. I had a St. Louis County firefighting officer tell me that half of the vehicle fires they were fighting were methamphetamine related. Those are chemical fires. It has strained local budgets to the breaking point because our counties, in addition to all of the other law enforcement activity, have had to try to knock down, in some cases, hundreds of labs in rural counties. In many cases, there are more rural counties where they have 5, 6, 8, 10 or 12 deputies trying to patrol the whole county. It is the ''perfect storm'' of drugs.

The only silver lining in the cloud is the fact that in order to make methamphetamine, you must have pseudoephedrine. There are lots of ways to make it, but you need pseudoephedrine for making it. For local cooks, the only way to get pseudoephedrine is through cold medicines, antihistamines. This opened up the possibility for stopping the local labs that take advantage of this.

Before going any further—I only have a few minutes—I have to stop and congratulate and pay tribute to Senator FEINSTEIN. This bill that we are going to pass—I hope and believe—within the next week or 2, stands on the shoulders of the work that she has put in since the mid-1990s, when she recognized the danger of pseudoephedrine. She and I are the chief cosponsors of the measure in the Senate. She has been a pleasure to work with, and her knowledge and expertise were important in getting the bill this far. I think she can accurately regard this bill as a personal triumph.

What does the legislation do? It is a comprehensive approach. There are a number of things in it. It will put pseudoephedrine behind the counters in pharmacies and stores. Legitimate consumers will still be able to get it, but if you are buying medicines containing pseudoephedrine without a prescription, you are going to have to show an ID and sign a log book, and you won't be able to buy more than 3.6 grams of cold medicine at a time, and 9 grams in one month, which is far more than the average use of any adult for cold medicine anyway. The States that have experimented and have had measures such as this—and Oklahoma is a leader, and Iowa has been a leader, and they deserve credit. My home State of Missouri also has a law. The States that have passed laws such as this have experienced anywhere from a 70- to an 80-percent reduction in local labs.

Senator FEINSTEIN and I and all the cosponsors of the bill are hopeful that we will get the same results nationally, and we will protect our people, moreover, from people crossing State lines

to buy the pseudoephedrine in jurisdictions that don't have this legislation. We had a case in Missouri recently when a couple of meth cooks left Franklin County, MO, in eastern Missouri, drove across Illinois into Indiana and bought over 100 packages of cold medicine in Indiana, which is about 140 to 150 grams of pseudoephedrine; they were in the process of driving it back to Franklin County to support the local lab structure there, when they were caught by the Indiana troopers. We are grateful for those troopers.

That is what is going to go on until we have a national standard. This bill provides a national standard that will be effective 30 days after Presidential signature, and we can expect a 70- to 80-percent reduction in local labs around the country as a result of this.

There are a number of other provisions in the Combat Meth Act that are important, which will provide critical resources to local law enforcement to do the cleanup. When you cook meth in a home, it becomes a toxic waste dump, costing thousands of dollars to clean up. Thousands of our deputies and sheriffs and police officers have had to become trained in environmental cleanup because of this drug. We are going to provide additional resources to help them. It will enhance enforcement of meth trafficking by requiring additional reporting and certification from countries that export large amounts of pseudoephedrine. It is going to help local social services help the kids who are tragically trapped in this environment. There is money for drug-endangered children rapid response teams. We can help localities with that. We provide extra tools to prosecute meth cooks and traffickers.

It is a comprehensive measure, but it is by no means all that we need to do. This is a significant first step, and Senator FEINSTEIN and I believe it will at least substantially eliminate these labs, which then will eliminate a whole set of enormous problems above and beyond the problems caused by addiction to methamphetamine.

We are continuing to work with the State Department, the DEA, and other agencies to try to interdict shipments of methamphetamine or pseudoephedrine from abroad. We need to work with relevant committees to come up with a new kind of methamphetamine technical assistance center in Washington, which can help develop better protocols and assistance to help those people who are on meth and want to get off of it. I think it is an important part of the drug war to say to people: Look, if you are addicted to a drug and you want help, we want to help you. If what you want to do is cook this drug or make it and sell it to our kids, we are going to stop you.

That is a piece that we need to work on, and I think we will work on it. We have had assurances from the relevant Committee chairs and ranking members that we can do that. We need to pass this bill now. I am grateful—and I know Senator FEINSTEIN is as well—to the leaders in both parties for their bipartisan leadership and to the Judiciary Committee, Senator SPECTER and Senator LEAHY, for allowing us to put this bill on the PATRIOT Act. We are grateful, also, to the Senate for its unanimous support of this bill over the last few months.

Mr. President, we can do important things. We can do good things for people, and we can do them the right way. That is how I look at the Combat Meth Act. It is going to make a difference immediately in neighborhoods and communities around the country, and it has been done on a thoroughly bipartisan basis from the beginning, when Senator FEINSTEIN and I cosponsored it.

So I am pleased to be here to speak on behalf of the bill as a whole and also on behalf of this specific provision. I hope we can move expeditiously to final passage so that this important legislation can be signed by the President and can become law.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. TALENT). Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I rise to speak about S. 2271, Senator SUNUNU's bill to amend the PATRIOT Act. I commend Senator JOHN SUNUNU of New Hampshire for his extraordinary efforts on this bill.

For over 2 years he has been part of a bipartisan coalition, which I have been happy to join him in, working to reform the PATRIOT Act. We support the PATRIOT Act. We want it to include checks and balances to protect the constitutional rights of Americans. In other words, we want to improve the PATRIOT Act, not abandon it.

We came together across party lines for this effort because our national security and constitutional rights are important to every American. The PATRIOT Act should not be a political football.

When we launched this effort 2 years ago, the administration said changing even one word in the PATRIOT Act was unacceptable. I have said that when it comes to writing laws, with the exception of the Ten Commandments which were handed down on stone tablets, there are no perfect laws; we should always try to improve them.

Now, with Senator SUNUNU's bill and the PATRIOT Act conference report, we will reauthorize the PATRIOT Act with significant reforms, reforms we proposed as long as 2 years ago.

Let me say up front this outcome is far from perfect. There is still a lot of work to be done.

But the administration was willing to let the PATRIOT Act expire rather than accept some of the reforms we proposed. We will not let that happen. The PATRIOT Act will not expire on our watch.

We are going to reauthorize the PATRIOT Act with new checks and balances that will help protect innocent Americans, but we will not stop our fight for additional necessary reforms.

Let me take a few minutes to review the history of the PATRIOT Act. During a time of national crisis, shortly after September 11, the President came to us, asking Congress for new tools and new authority to fight terrorism. While the ruins of the World Trade Center were still smoldering, Congress responded on a bipartisan basis, with dispatch, to give this administration what they wanted to be able to fight terrorism. We passed the PATRIOT Act with overwhelming bipartisan support.

We understood it was a unique moment in history. We had to act quickly. Even then we were concerned that perhaps the PATRIOT Act went too far. So we included sunsets so we could review this law after four years and reflect on whether we had made the right decision.

There is now a widespread, bipartisan consensus that the PATRIOT Act went too far in several specific areas. The vast majority of the provisions of the PATRIOT Act are not controversial. But in a few specific areas, there is broad agreement that the PATRIOT Act does not include adequate checks and balances to protect the civil liberties of innocent Americans.

As a result, Senator LARRY CRAIG and I introduced the Security and Freedom Enhancement Act, also known as the SAFE Act, to address these specific areas of concern. We were joined by our colleagues Senators SUNUNU, FEINGOLD, MURKOWSKI, and SALAZAR.

We crossed a broad and wide political divide to come together. This is really the gathering of political odd fellows, but we all shared the same goal: protecting constitutional freedoms while still protecting the security of America.

The administration threatened to veto the SAFE Act if it ever came before them. They claimed that it would ''eliminate'' some PATRIOT Act powers. In fact, the SAFE Act would not repeal a single provision of the PATRIOT Act. It would retain the expanded powers created by the PATRIOT Act but place important limits on these powers.

The bill attracted an enormous amount of support from across the political spectrum, from the most conservative to the most liberal groups in Washington. I have never seen another bill like our SAFE Act that attracted that kind of support.

It also was supported by the American Library Association because it would prevent the Government from snooping through the library records of innocent Americans.

I thank America's librarians for their efforts and tell them that it paid off.

They were not taking a hysterical position, as some in the administration branded it. They were taking the right position—standing up for the freedoms we hold dear in this country.

The conference report, as amended by the Sununu bill, includes a number of checks and balances that are based on provisions of the SAFE Act.

Under the PATRIOT Act, the FBI is now permitted to obtain a John Doe roving wiretap, a sweeping authority never before authorized by Congress. A John Doe roving wiretap does not specify the person or phone to be wiretapped. In other words, the FBI can obtain a wiretap without telling a court whom they want to wiretap or where they want to wiretap.

Like the SAFE Act, the PATRIOT Act conference report would continue to allow roving wiretaps, but it places a reasonable limit on these so-called John Doe roving wiretaps. In order to obtain a John Doe roving wiretap, the Government would now be required to describe the specific target of the wiretap to the judge who issues the wiretap order. This will help protect innocent Americans.

Under the PATRIOT Act, the FBI can search your home without telling you until some later date. These sneak-and-peek searches are not limited to terrorism cases.

Like the SAFE Act, the conference report would require the Government to notify a person who is subjected to a sneak-and-peek search within a specific period of time, 30 days, rather than the undefined delay currently permitted by the PATRIOT Act. The court could allow additional delays of notice under compelling circumstances.

Section 215 of the PATRIOT Act is often called the library records provision. This section has been the focus of much of our efforts.

Under section 215, the FBI can obtain your library, medical, financial, or gun records simply by claiming they are seeking the records for a terrorism investigation. If the FBI makes this claim, the court must issue an order. It has no ability to even question the FBI about why they want to look into your sensitive personal information. This type of court approval is nothing more than a rubberstamp.

Defenders of this section often compare to it a subpoena by a grand jury in a criminal case, but it couldn't be more different. A person who receives a grand jury subpoena can challenge it in court. A person who receives a section 215 order cannot go to a judge to challenge the order, even if he believes his rights have been violated.

Courts have held that it is unconstitutional to deny someone the right to go to court to challenge an order like this.

Also, unlike a person who receives a grand jury subpoena, the recipient of a section 215 gag order is subject to an automatic permanent gag order.

And a person who receives a Section 215 order has no right to go to a judge to challenge the gag order. Courts have held that gag orders that cannot be challenged in court violate the first amendment.

Like the SAFE Act, the PATRIOT Act conference report, as amended by Senator SUNUNU's bill, will place some reasonable checks on section 215.

In order to obtain a section 215 order, the Government will now have to convince a judge that they have reasonable grounds to believe the information they seek is relevant to a terrorism investigation. The court will have the ability to question the FBI before issuing a section 215 order.

This is an improvement, but I'm still concerned that the Government is not required to show a connection to a suspected terrorist in order to obtain section 215 order. I will speak more about this later.

The FBI will also be required to follow so-called minimization procedures. These procedures should help to protect innocent Americans by limiting the retention and dissemination of information obtained with section 215 orders.

The recipient of section 215 order will now have the ability to consult with an attorney.

Judicial oversight will also be enhanced. The recipient of a section 215 order will now have the right to challenge the order in court on the same grounds as he could challenge a grand jury subpoena.

And, if Senator SUNUNU's bill passes, the recipient of a section 215 order will also have the right to challenge the gag order in court.

The PATRIOT Act expanded the Government's authority to use national security letters which are also known as NSLs.

An NSL is a type of administrative subpoena. It is a document signed by an FBI agent that requires businesses to disclose the sensitive personal records of their customers.

An NSL does not require the approval of a judge or a grand jury. A business that receives an NSL is subject to an automatic, permanent gag order.

As with section 215 orders, a person cannot go to a judge to challenge an NSL or the NSL's gag order, and he can't consult with an attorney.

Like the SAFE Act, the PATRIOT Act conference report, as amended by Senator SUNUNU's bill, will place some reasonable checks on NSLs.

Most important, the Sununu bill clarifies that the government cannot issue a national security letter to a library that is functioning in its traditional role, which includes providing computer terminals with basic Internet access.

As with section 215 orders, the recipient of an NSL will now have the right to consult with an attorney, and the right to challenge the NSL or the NSL's gag order in court.

Like the SAFE Act, the conference report will also require public reporting on the use of PATRIOT Act authorities, including the number section 215 orders and NSLs issued by the Government.

Finally, the conference report includes a sunset on three provisions of the law, including section 215, so Congress will again have an opportunity to review the PATRIOT Act at the end of 2009.

As I said earlier, the conference report is not perfect. That's the nature of a compromise.

I am especially concerned about the need for additional checks on section 215 and national security letters.

The conference report would allow the Government to use section 215 orders or NSLs to obtain sensitive personal information without showing some connection to a suspected terrorist. I fear that this could lead to Government fishing expeditions that target innocent Americans.

In this country, you have the right to be left alone by the Government unless you have done something to warrant scrutiny.

When the FBI is conducting a terrorism investigation they shouldn't be able to snoop through your library, medical, or gun records unless you have some connection to a suspected terrorist.

I am also very concerned about unnecessary limits on judicial review of section 215 national security letter gag orders. The conference report requires the court to accept the Government's claim that a gag order should not be lifted, unless the court determines the Government is acting in bad faith. This will make it difficult to get meaningful judicial review of a gag order.

As I said earlier, our bipartisan coalition is going to keep working for additional reforms to the PATRIOT Act.

In fact, Senator CRAIG, Senator SUNUNU and I plan to introduce an updated version of the SAFE Act to address the problems that still exist with the PATRIOT Act.

Our great country was founded by people who fled a government that repressed their freedom in the name of security. The Founders wanted to ensure that the United States Government would respect its citizens' liberties, even during times of war. That's why there is no wartime exception in the Constitution.

The 9/11 Commission said it best: The choice between security and liberty is a false one. Our bipartisan coalition believes the PATRIOT Act can be revised to better protect civil liberties. We believe it is possible for Republicans and Democrats to come together to protect our fundamental constitutional rights and give the Government the powers it needs to fight terrorism. We believe we can be safe and free.

That's why we're going to reauthorize the PATRIOT Act with new checks and balances. And that's why we'll keep fighting for additional reforms to the PATRIOT Act.

Senators CRAIG, SUNUNU, and others have joined me in improving the PATRIOT Act as originally written. There

are still serious problems with the PATRIOT Act, but I think this conference report, as amended by Senator SUNUNU's bill, is a positive step forward. That is why I am supporting it.

I promise, as they say, eternal vigilance, watching this administration and every administration to make certain they don't go too far. If they overstep, if they step into areas of privacy and constitutional rights, I will speak out and do my best to change the PATRIOT Act and make it a better law.

I yield the floor.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Iowa.

REPORT ON FDA APPROVAL PROCESS FOR VNS

Mr. GRASSLEY. Mr. President, I want to address my fellow Senators, in cooperation with my friend, Senator BAUCUS from Montana, on an issue that our respective staffs have been working on together for a long time. As chairman of the Finance Committee and as ranking member, we are releasing today a report. We come to the floor with our duties in mind to our constituents, to Medicaid and Medicare beneficiaries, and to all Americans, to speak of urgent matters that should concern all of us.

For more than 2 years, I have followed, with increasing concern, the performance of the Food and Drug Administration. It seems as though every week, if not every day, some new danger or risk is brought to light about an FDA-approved drug or device. As chairman and ranking member of the committee, Senator BAUCUS and I have a responsibility to American taxpayers to ensure that Medicare and Medicaid programs pay for medical products that have been appropriately approved in accordance with all laws and regulations. Whether a product is safe, whether a product is effective is not only a major public safety concern; it also has important financial concerns.

We understand there is a human element to the Food and Drug Administration's approval process. As a society, we recognize the anguish of families who must rely on the development of innovative, experimental, new medical products and treatments that may or may not save the life of a loved one. Our Nation is lucky to have a private marketplace that is incredibly resourceful and prolific in the field of medicine. An integral role of the Food and Drug Administration is to get these potentially lifesaving products to the market without undue delay. We also have a Government-regulated system where patients have the option to receive potentially lifesaving but unproven products by participating voluntarily in clinical trials. In the end, however, our Nation's well-founded medical system, despite its weaknesses, must always rest on sound science.

The report we are releasing today focuses on the FDA's approval process for medical devices. It is indisputable that all medical devices carry risks, but Food and Drug Administration approval is still considered the gold standard for safety and effectiveness. However, our committee staff report raises legitimate questions about the FDA's decision to approve a specific medical device. Last February, a number of concerns were raised to our committee about an implantable device called the vegus nerve stimulator or VNS, as I will refer to it. This product, VNS, is manufactured by a company called Cyberonics. Senator BAUCUS and I asked our committee staff to review the concerns that were given to us and report their findings. This report has three major findings which I will summarize briefly.

First, the Food and Drug Administration approved VNS for treatment-resistant depression, a new indication for this surgically implanted device. That was based upon a senior manager overruling more than 20 Food and Drug Administration scientists, medical, and safety officers, as well as managers, who reviewed the data on VNS. The high-level official approved the device despite a resolute conclusion by many at the FDA that the device did not demonstrate a reasonable assurance of safety and effectiveness.

Second, the Food and Drug Administration has not made public the level of internal dissent involved in this device approval, despite the fact that the FDA has publicized differences of scientific opinion within the agency when it has announced other controversial regulatory decisions.

Third, the Food and Drug Administration has not ensured that the public has all the accurate, science-based information on the safety and effectiveness of the VNS for treatment-resistant depression. So health care providers, relying on the FDA's information about this device, may not be able to convey complete risk information to each patient.

In the end, this senior Food and Drug Administration official not only overruled more than 20 Food and Drug Administration employees, but he stated to our committee staff that the public would not be made aware of the scientific dissent over whether the device is reasonably safe and effective. Until today, this official's detailed conclusions remain confidential and unavailable to the public. We are releasing these confidential conclusions in the appendix to the report. Some of his own conclusions raise serious questions in our minds. For example, I quote from his override memorandum:

> I think it needs to be stated clearly and unambiguously that [certain VNS data] failed to reach, or even come close to reaching, statistical significance with respect to its primary endpoint. I think that one has to conclude that, based on [that] data, either the device has no effect, or, if it does have an effect, that in order to measure that effect a longer period of follow-up is required.

The events and circumstances surrounding the Food and Drug Administration's review and approval of VNS for treatment-resistant depression, which you will find detailed in this report we are releasing, raises critical questions about the Food and Drug Administration's so-called ''authoritative'' approval process. I am greatly concerned that the Food and Drug Administration standard for approval may not have been met here. If that is the case, it raises further difficult questions, including whether Medicare and Medicaid dollars should be used to pay for this device now.

Accordingly, we are forwarding the report to Secretary Leavitt, Administrator McClellan, and Acting Commissioner von Eschenbach for their consideration and comment. These are difficult matters that deserve their full attention.

Before I close, I commend the commitment and dedication of the more than 20 FDA scientists who tried to do the right thing in this case, as they probably do in every case, and not stray from evidence-based science. I applaud their effort on behalf of the American people.

I ask unanimous consent that the executive summary of the report be printed in the RECORD.

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

I. EXECUTIVE SUMMARY

The United States Senate Committee on Finance (Committee) has exclusive jurisdiction over the Medicare and Medicaid programs. Accordingly, the Committee has a responsibility to the more than 80 million Americans who receive health care coverage under Medicare and Medicaid to oversee the proper administration of these programs, including the payment for medical devices regulated by the Food and Drug Administration (FDA). Given the rising health care costs in this country, and more importantly, in the interest of public health and safety, Medicare and Medicaid dollars should be spent on drugs and devices that have been appropriately deemed safe and effective for use by the FDA, in accordance with all laws and regulations.

In February 2005, Senator Charles Grassley (R–IA) and Senator Max Baucus (D–MT), Chairman and Ranking Member of the Committee, initiated an inquiry into the FDA's handling of Cyberonics, Inc.'s (Cyberonics) pre-market approval application to add a new indication—treatment-resistant depression (TRD)-to Cyberonics's Vagus Nerve Stimulation (VNS) Therapy System, an implanted pulse generator. The Chairman and Ranking Member initiated the inquiry in response to concerns that were raised regarding Cyberonics's VNS Therapy System for TRD. On July 15, 2005, the FDA approved the device for TRD.

The investigative staff of the Committee reviewed documents and information obtained and received from the FDA and Cyberonics and found the following:

As the federal agency charged by Congress with ensuring that devices are safe and effective, the FDA approved the VNS Therapy System for TRD based upon a senior official overruling the comprehensive scientific evaluation of more than 20 FDA scientists, medical officers, and management staff who reviewed Cyberonic's application over the course of about 15 months. The official approved the device despite the conclusion of the FDA reviewers that the data provided by Cyberonics in support of its application for a

new indication did not demonstrate a reasonable assurance of safety and effectiveness sufficient for approval of the device for TRD.

The FDA's formal conclusions on safety and effectiveness do not disclose to doctors, patients or the general public the scientific dissent within the FDA regarding the effectiveness of the VNS Therapy System for TRD. The FDA has publicized differences of scientific opinion within the agency when it has announced other controversial regulatory decisions. Throughout the review of Cyberonics's application, the team of FDA scientists, medical officers, and management staff involved recommended that the device not be approved for TRD. However, at every stage of the review, the team was instructed by the FDA official, who ultimately made the decision to approve the device, to proceed with the next stage of pre-market review.

The FDA has not ensured that the public has all of the accurate, science-based information regarding the VNS Therapy System for TRD it needs. Health care providers relying on the FDA's public information on the safety and effectiveness of this device may not be able to convey complete risk information to their patients, because not all of the relevant findings and conclusions regarding the VNS Therapy System have been made available publicly.

The FDA has an important mission:

The FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, our nation's food supply, cosmetics, and products that emit radiation. The FDA is also responsible for advancing the public health by helping to speed innovations that make medicines and foods more effective, safer, and more affordable; and helping the public get the accurate, science-based information they need to use medicines and foods to improve their health.

As part of that mission, the FDA weighs the risks and benefits of a product, in this case a medical device, to determine if the product is reasonably safe and effective for use.

The facts and circumstances surrounding the FDA's approval process for the VNS Therapy System for TRD raise legitimate questions about the FDA's decision to approve that device for the treatment of TRD. While all implantable medical devices carry risks, it is questionable whether or not the VNS Therapy System for TRD met the agency's standard for safety and effectiveness. The FDA's approval process requires a comprehensive scientific evaluation of the product's benefits and risks, including scientifically sound data supporting an application for approval. Otherwise health care providers and insurers as well as patients may question the integrity and reliability of the FDA's assessment of the safety and effectiveness of an approved product. In the case of VNS Therapy for TRD, the FDA reviewers concluded that the data limitations in Cyberonics's application could only be addressed by conducting a new study prior to approval. However, in the present case, instead of relying on the comprehensive scientific evaluation of its scientists and medical officers, it appears that the FDA lowered its threshold for evidence of effectiveness. Contrary to the recommendations of the FDA reviewers, the FDA approved the VNS Therapy System for TRD and allowed Cyberonics to test its device post-approval.

In addition, given the significant scientific dissent within the FDA regarding the approval of the VNS Therapy System for TRD, the FDA's lack of transparency with respect to its review of the device is particularly troubling. The FDA has limited the kind and quality of information publicly available to patients and their doctors and deprived them of information that may be relevant to their own risk-benefit analysis. Patients and their doctors should have access to all relevant findings and conclusions from the comprehensive scientific evaluation of the safety and effectiveness of the VNS Therapy System for TRD to enable them to make fully informed health care decisions.

Mr. GRASSLEY. I yield the floor for my colleague.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I join the chairman of the Finance Committee, Senator GRASSLEY, in commending our Finance Committee staff on the report that we release today. This report deals with an important public safety matter. The Food and Drug Administration approval process has long been considered the gold standard in this country. We rely on the FDA to review drugs and to review medical devices. We rely on the FDA to tell us, by providing a seal of approval, that drugs and devices are safe and that they are effective.

While all drugs and devices carry some risk, some are more risky than others. But if the FDA determines a drug or device is safe to bring to the market, Americans generally feel we can use the treatment without undue concern. We Americans rely on the FDA to ensure that manufacturers provide sufficient warnings of their products' risks so that health care providers and patients can make informed health care decisions.

The FDA has a complex approval process. A review team, including scientists, doctors, and specialists, surveys all the data and makes a recommendation regarding whether to approve a drug or device. The review team then forwards its recommendation to management for review. This process can be lengthy and intense.

Last year, concerns were brought to the Finance Committee regarding how the review process had unfolded in the case of a device known as the VNS Therapy system. Cyberonics makes the VNS system and was seeking approval of the device for use in patients with treatment-resistant depression. Chairman GRASSLEY and I asked our committee staffs to look into what had gone on.

The Finance Committee has the responsibility for the Medicare and Medicaid Programs and the millions of Americans who receive health care, including the use of safe and proper medical devices. Medicare and Medicaid only pay for drugs and devices which FDA has approved. So approval affects patients' budgets and the Federal budget, as well.

In the case of the VNS Therapy system, the FDA review team was comprised of more than a dozen FDA staff, including doctors, scientists, safety officers, and statisticians. This review team unanimously recommended against FDA approval. The team argued that the data were insufficient to justify approval and that additional premarket testing was in order. Three levels of management concurred with the team's recommendation. The uppermost manager—the Director of the Center for Devices—disagreed. With the stroke of a pen, he overruled the analysis and conclusions of his staff, and he approved the device. Now the FDA seal of approval has been attached to that VNS Therapy system by one person, over the objections of several technical experts who studied the device.

Without this report from the Finance Committee, the public would not know that the team of scientists and doctors who reviewed this device did not believe it should be approved. Without this report, there would be no way for providers and patients to make fully informed health care decisions because they would not be aware of all of the risks.

In short, we present this report out of a concern for public safety. We believe that doctors and patients considering this device should know that it was approved over the objection of a team of seasoned scientists. It is important for the public to know what the FDA scientists and doctors thought about the risk to which patients would be exposed. The FDA has not made public any information regarding the level of scientific dissent. So I am glad we have this report.

I am greatly concerned about this unusual turn of events at the FDA. I hope this is not a sign of things to come. I hope that FDA approval can remain the gold standard, and I hope Medicare and Medicaid can continue to pay for FDA-approved products knowing they are safe.

I thank Chairman GRASSLEY for his work. He has worked diligently, as he always does, particularly when wrongs should be exposed. I appreciate it when we can work together to improve the efficacy and safety of American health care.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

(The remarks of Mr. BAUCUS and Mr. DURBIN pertaining to the introduction of S. 2303 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, at this moment, I wish to address the bill pending before the Senate, and that is S. 2271.

I commend Senator JOHN SUNUNU of New Hampshire, who is here in the Chamber. Were it not for his hard work, we would not be here today. For weeks, while many of us were doing other things back home, Senator SUNUNU was working assiduously with the White House to find a way to address some very vexing and challenging issues when it came to modifying the PATRIOT Act. He has done an excellent job. I commend him and tell him that I have enjoyed working with him

over the last 2 years, where we have crossed party lines and tried to find ways to keep the PATRIOT Act as a tool to make America safe but also at the same time to protect our basic liberties.

Every step of the way, as we considered changes to the PATRIOT Act, we have been supported by our Nation's librarians. These are wonderful men and women—professionals—who are dedicated to the libraries across America, which are such rich resources. I thank the librarians of America, especially for their heroic efforts to amend the PATRIOT Act in a responsible way and, equally as important, to defend our Constitution.

I understand that section 5 of Senator SUNUNU's bill, S. 2271, will help protect the privacy of Americans' library records. I ask the indulgence of the Chair that I might enter into a colloquy with Senator SUNUNU relative to section 5. I would like to ask Senator SUNUNU, through the Chair, if he could explain to me what section 5 will accomplish.

Mr. SUNUNU. Mr. President, I am pleased to be on the floor today and pleased to be able to see the light at the end of the tunnel on PATRIOT reauthorization, thanks to the work of Senator DURBIN and others. We have legislation before us that will make the adjustments to the PATRIOT Act reauthorization conference report mentioned by the Senator from Illinois. He specifically mentioned section 5 of our legislation. As he began to describe, section 5 is intended to clarify current law regarding the applicability of National Security Letters to libraries.

A National Security Letter is a type of administrative subpoena, a powerful tool available to law enforcement officials, to get access to documents. It is a document signed by an FBI agent that requires a business to provide certain kinds of personal records on their customers to the Government. These subpoenas are not approved by a judge before being issued.

What we did in this legislation is add clarifying language that states that libraries operating in their traditional functions: lending books, providing access to digital books or periodicals in digital format, and providing basic access to the Internet would not be subject to a national security letter. There is no National Security Letter statute existing in current law that permits the FBI explicitly to obtain library records. But, as was indicated by the Senator from Illinois, librarians have been concerned that existing National Security Letter authority is vague enough so that it could be used to allow the Government to treat libraries as they do communication service providers such as a telephone company or a traditional Internet service provider from whom consumers would go out and get their access to the Internet and send and receive e-mail.

Section 5 clarifies, as I indicated, that a library providing basic Internet access would not be subject to a national security letter, simply by virtue of making that access available to the public.

Mr. DURBIN. I thank the Senator from New Hampshire. It is my understanding that most public libraries, as he explained, offer Internet access to the public. Because of this, they are concerned that the Government might consider them to be communications service providers similar to the traditional providers, such as AT&T, Verizon, and AOL.

So if I understand it correctly, your bill clarifies that libraries, simply because they provide basic Internet access, are not communications service providers under the law and are not subject to national security letters as a result. I ask the Senator from New Hampshire, through the Chair, is that a correct conclusion?

Mr. SUNUNU. Mr. President, I absolutely believe that the conclusion of the Senator from Illinois is correct. A library providing basic Internet access would not be subject to a National Security Letter as a result of that particular service and other services that are very much in keeping with the traditional role of libraries.

Some have noted or may note that basic Internet access gives library patrons the ability to send and receive e-mail by, for example, accessing an Internet-based e-mail service. But in that case, it is the Web site operator who is providing the communication service—the Internet communication service provider itself—and not the library, which is simply making available a computer with access to the Internet.

So I certainly share the concerns of the Senator from Illinois and others who have worked very long and hard on this and other provisions. I think it does add clarity to the law as he described, in addition to providing other improvements to the PATRIOT Act as they relate to civil liberty protections. All along, this has been about providing law enforcement with the tools that they need in their terrorism investigations while, at the same time, balancing those powers with the need to protect civil liberties. I think, in the legislation before us, we have added clarity to the law in giving access to the courts to object to section 215 gag orders and, of course, striking a very punitive provision dealing with counsel and not forcing the recipient of a National Security Letter to disclose the name of their attorney to the FBI.

All of these are improvements to the underlying legislation, and I recognize that we had a overwhelming, bipartisan vote today to move forward on this package. I anticipate that we will have similar bipartisan votes in the days ahead to conclude work on this legislation and get a much improved PATRIOT Act signed into law.

Mr. DURBIN. I thank the Senator from New Hampshire, as well, because that clarification is important. So if a library offers basic Internet access, and within that access a patron can, for example, send and receive e-mail by accessing an Internet-based e-mail service such as Hotmail, for example, that does not mean the library is a communications service provider and, therefore, it does not mean that a library could be subject to these national security letters of investigation.

By way of comparison, a gas station that has a pay phone isn't a telephone company. So a library that has Internet access, where a person can find an Internet e-mail service, is not a communications service provider; therefore, it would not fall under the purview of the NSL provision in 18 U.S.C. 2709. It is a critically important distinction. I thank the Senator from New Hampshire for making that clear and for all of his good work on this bill.

Libraries are fundamental to America. They symbolize our access to education. They are available to everyone, regardless of social or economic status.

When we first introduced the SAFE Act, I went to the Chicago Public Library to make the announcement. The library was established in 1873, and for over 130 years it has given the people of the City of Chicago the ability to read and learn and communicate. Here is what the mission statement says at that public library:

> We welcome and support all people and their enjoyment of reading and pursuit of lifelong learning. We believe in the freedom to read, to learn, and to discover.

We have to ensure, in the Senate and in Congress, in the bills that we pass, including the PATRIOT Act, that this freedom to read, learn, and discover is preserved for our children and our grandchildren.

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

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNFUNDED MANDATES

Mr. ALEXANDER. Mr. President, the National Governors Association meeting will be held in Washington during the week we return from recess. That brings back some fond memories for me because I remember the 8 years I served as Governor. Each time we came here, and the highlight of it every year, was a dinner in the White House with the Chief Executive of the United States and the chief executive of each of our States.

While the Governors are in town, or as they are coming to town, I want to take the opportunity to wave the lantern of federalism on a few issues under discussion here in the Senate that will affect strong State and local governments. I know the Presiding Officer cares deeply about the same issues because his service as mayor made him

aware of those issues, just as I was as Governor.

During the year after I came to the Senate, when we were debating the Internet tax issue, someone said in exasperation that I had appeared not to have gotten over being a Governor. I hope that can be said on the day I leave here, because most of our politics here in the Senate is about how we resolve conflicts of principles. One of the most important principles upon which our country is founded is the principle of federalism, the idea that we are a big, diverse, complex country and that we need strong States and strong cities and strong counties and strong communities to absorb all of our differences. We are not a small, homogeneous nation and our federalism is absolutely key to our success as a country.

I have not gotten over being Governor. It causes me especially to remember how the Republican majority came to power in 1994, a majority of which I am proud to be a part. There was a Contract with America. I wasn't part of the Congress at that time, but I remember it very well. I remember one of the most important aspects of the Contract With America was: no more unfunded Federal mandates. I remember also that a large number of Republicans, along with Leader Gingrich, stood on the Capitol steps and said: If we break our promise, throw us out.

Since I wish to make sure our majority doesn't get thrown out, I want to remind all of us, including many who serve in the Senate, who voted in 1995 to stop unfunded Federal mandates, this still is an important part of our responsibilities here. I have three examples of that in our discussions.

The Senate recently reaffirmed its commitment to the idea of avoiding unfunded Federal mandates. I suppose I should stop for a moment and explain what I mean by ''unfunded Federal mandate.'' That is a Washington phrase we throw around. Here is the way I understand it. Nothing used to make me madder as Governor—and I daresay it might also be true of the Presiding Officer, who was a mayor—than for some Senator or Congressman to come up with a big idea in Washington, pass it into law, hold a press conference and take credit for it, and send the bill to me to pay at the State capitol. Then the next thing you know, that same politician would be back somewhere in Tennessee making a big speech about local control. That is an unfunded Federal mandate—when the big idea is here and the law is passed here and then the bill is sent down to the county commissioner or to the mayor or to the legislature or to the Governor and it is said: It was our idea but you pay for it.

Ten years ago when Bob Dole was the majority leader, the first thing the new Republican Congress did—it was called S. 1 at that time—was to pass the Unfunded Mandates Reform Act. It created a new point of order that could be raised against legislation imposing unfunded Federal mandates on State and local governments. Everyone felt pretty good about that because they said this new law will create a so-called penalty flag that can be thrown when some Federal official came up with a good idea, passed it into law, and sent the bill back to us in the States. However, until recently that penalty flag has never been thrown, not in the first 10 years of its existence. However, last year, in our Budget Act, that point of order was given some more teeth. In the budget resolution under which we operate today, an unfunded mandate point of order raised in the Senate requires 60 votes in order to be waived instead of the simple majority required under the Unfunded Mandates Reform Act.

In October of last year, 2005, this 60-vote point of order was raised for the first time in the Senate against two amendments to an appropriations bill that would have raised the minimum wage. That would have been an unfunded Federal mandate. This new provision was put into the Budget Act by Senator GREGG, who had been the Governor of New Hampshire. It had my support as well as that of a number of other Senators. So I would like to call to the attention of my colleagues, and the Governors as they are coming to town, three issues that are currently under discussion here that raise the specter of unfunded Federal mandates.

No. 1 is the taxation of Internet access issue. State and local governments and members of the telecommunications industry, I believe, need to come up with a solution to that question before the current moratorium expires in 2007.

No. 2, the Federal Government needs to fully fund the implementation of the so-called REAL ID Act, which we passed last year and which has to do with border security.

No. 3, the Federal Communications Commission needs to exempt colleges and universities from expensive new requirements that will require colleges to modify their computer networks to facilitate surveillance, which will have the effect of adding about $450 to every tuition bill across this country.

Let's take those one by one. First is the Internet access tax moratorium. My colleagues will remember that after we had a spirited debate that went on for about a year and a half, President Bush signed into law the Internet Tax Nondiscrimination Act. There was a lot of discussion, a lot of compromise, a lot of negotiation. What we were arguing about was, on one hand we wanted to increase the availability of high-speed Internet access to all Americans—that is a national goal—but at the same time we didn't want to do harm to State and local governments by taking away from them, as a part of our act, billions of dollars upon which they relied for paying for schools, paying for colleges, paying for other local services.

The bill we came out with at the end of 2004 was a good compromise for several reasons. First, it was temporary, not permanent. It called for a 4-year extension of the Internet access tax moratorium that was already in place, so this one will expire in a year and a half.

Second, our agreement allowed States already collecting taxes on Internet access to continue to do so. That was a part of the ''do no harm'' theory that many of us championed.

Finally, it made clear that State and local governments could continue to collect taxes on telephone services even if telephone calls are made over the Internet, which they increasingly are.

In January of this year, the General Accounting Office released a report interpreting the Internet Tax Nondiscrimination Act. The GAO interpreted the moratorium in a more limited way than what I, and I am sure many of the other Senators, intended when we were drafting the bill.

While the interpretation may suit me fine because it goes in the direction I was arguing, the GAO interpretation may demonstrate very clearly how important it is to deal with this complex issue in some other way. That is why it needs to be resolved by representatives of industry and by mayors and Governors working together to suggest to us a path for the future. I understand the National Governors Association has convened meetings with representatives of the telecommunications industry and State and local governments. I hope all the parties will take those negotiations seriously, reinvigorate those efforts, and present us with a workable compromise we can then consider and enact.

Let me suggest again the principles that I believe should guide this discussion. No. 1, separate the issue of taxation and legislation. Both are very complex issues that can have serious implications for industry and State and local governments and consumers, but they are not the same effects. The goal should be simplicity. Regulations surely ought to be streamlined to allow new technology to flourish. Voice over Internet protocol or, in plain English, making telephone calls over the Internet, is very different than plain old telephone service, and our regulatory structure needs to recognize that and be welcoming to this change. The goal in taxing the industry should also be simplicity and certainty. For example, a company that operates in almost 11,000 State and local jurisdictions, all of whom might tax telecommunications, might have to file more than 55,000 tax returns a year. No one wants to see that happen and that is far too big a burden for a large company, much less a small startup company. But in searching for a solution, we do not want to do harm to State and local governments.

The Senator from California, the Senator from Delaware, the Senator

from Ohio—many Senators pointed out that State and local governments rely heavily today on telecommunications taxes as a part of their tax base.

In our State of Tennessee, our Governor said it is a matter of $300 million or $400 million in State revenues. That would be as much money as we would raise from instituting an income tax. It is a lot of money. So we should not take an action in Washington, even for a good purpose, that has the effect of undercutting State and local decision-making. My point very simply is, deregulate voice over Internet protocol? Yes. We absolutely should do it. But we must find a way to do it that doesn't force States and local governments to provide subsidies to the telephone companies. If the Federal Government wants to provide a subsidy to the telephone companies, the Federal Government ought to pay for it and not create an unfunded Federal mandate.

The second example of the possibility of an unfunded Federal mandate came with the passage of the REAL ID legislation. We are about to enter into a debate about immigration. We hear about it all the time. It is a serious problem. We have 10 million to 15 million people living in our country who are illegally here. That is not right for a country that honors the rule of law, and we have to fix it. One way some have suggested to fix it was the so-called REAL ID law. But the effect of that was basically to turn driver's license examiners in Tennessee and every other State into CIA agents by making State driver's licenses national ID cards, and then forcing the States to pay for it.

I don't want to talk today about whether it is a good idea or a bad idea to turn State driver's license employees into CIA agents, or whether we should have a national ID card. The fact is the law says that is what they are going to do and that is what we are going to have. What I want to talk about today is how do we pay for that.

REAL ID, according to the National Conference of State Legislators, will cost States $500 million over 5 years to implement. That is $100 million a year. This is not technically an unfunded mandate because the law actually gives States a choice, but here is the choice: In Minnesota or Tennessee or any other State, either upgrade your driver's licenses according to the Federal rules, or your residents will not have the ability to collect their Social Security check or board an airplane. So that is not much of a choice.

All across the country, because of the REAL ID law, this is a new responsibility for States and it is going to cost a half billion dollars. Yet in fiscal year 2006, only $38 million was appropriated for States to cover the cost of REAL ID. In fiscal year 2007, the President's budget contains no funding for REAL ID, even though $33.1 billion is to be spent on homeland security.

I intend to work this year to see that REAL ID does not become an unfunded mandate. If the Federal Government wants to create a national ID card and they want to force the States to do it, then the Federal Government ought to pay for it.

My final example: the Federal Communications Commission needs to make sure that compliance with the Communications Assistance for Law Enforcement Act, called CALEA, does not become an unfunded Federal mandate on colleges and universities.

This CALEA law is a law that communications systems have to be engineered in such a way as to make it easy for Federal agents to subject phone calls to surveillance. In August of last year, the Federal Communications Commission, recognizing that more and more telephone calls are being made over the Internet, extended the requirements of this law to colleges and university computer networks.

Implementing this order, according to technology experts, could cost $5 billion to $6 billion, a figure that translates into a $450 increase in annual tuition at most American universities.

The pages here who are listening to this are already looking forward to tuition increases when they go to college that are high enough, and they don't need another $450 on top of it.

Over the last several years, tuition college costs have increased faster than inflation. Public school tuition jumped 10 percent in 1 year—in 2004. Even though Federal funding for colleges and university has gone up, State funding has been fairly flat. So we have seen a big increase in tuition, and this is another $450.

Given these concerns, even though the FCC might have a laudable objective in making it easier to overhear or keep track of phone calls in computer networks on college campuses, if the Federal Government wants to order that, the Federal Government ought to pay for it.

I have written to the FCC urging it to exempt colleges and universities from the requirement of August 2005 in order to allow time for the development of an alternative to this $450 tuition increase.

I ask unanimous consent that my letter to the FCC on this issue be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, February 6, 2006.

Hon. KEVIN MARTIN,
Chairman, Federal Communications Commission, Washington, DC.

DEAR CHAIRMAN MARTIN: I am writing to urge the Commission to exempt private telecommunications networks operated by colleges, universities, and research institutions from coverage under the Communications Assistance for Law Enforcement Act (CALEA). Requiring these networks to come into compliance with the provisions of CALEA, according to the American Council on Education (ACE), could cost billions of dollars for new equipment alone. These compliance costs would constitute an enormous unfunded federal mandate and would more than likely be passed on to students in the form of increased college tuition.

According to the statute, private communications networks are not subject to CALEA. The Commission's order states that higher education networks ''appear to be private networks for the purposes of CALEA.'' However, other language in the order suggests that to the extent that these networks are connected to the Internet they *are* subject to CALEA. In considering how to resolve this apparent conflict, the Commission should take into account the enormous costs to higher education that would result if these private networks are not exempted. According to technology experts employed by higher education institutions, compliance costs could amount to billions of dollars for new switches and routers. Additional costs would be incurred for installation and the hiring and training of staff to oversee the operation of the new equipment. Cash-strapped schools—particularly state-funded, public schools—would be faced with the choice of bearing these additional costs or, according to ACE, increasing annual tuition by an average of $450. Coming on the heels of ten years of college costs increasing faster than inflation, such a tuition increase would make it even more difficult for students to take advantage of higher education in the United States.

At this time, no evidence has been presented that the current practice with regard to wiretaps within college and university networks has proven problematic. In 2003, only 12 of 1,442 state and federal wiretap orders involved computer communications. According to the Association of Communications Technology Professionals in Higher Education, few, if any, of those wiretaps involved college and university networks.

With the explosive growth of voice over Internet Protocol (VoIP) services in recent years, the number of wiretaps involving computer communications is likely to increase. However, before sending a multi-billion dollar bill to U.S. college students, I would urge the Commission to consider an exemption for these private networks. Such an exemption could give colleges and universities more time to work with the FCC to come up with a cost effective way to support law enforcement efforts with regard to computer communications. I appreciate your consideration of this request.

Sincerely,

LAMAR ALEXANDER.

Mr. ALEXANDER. Mr. President, these are some of the big ideas in Washington, all of which may be laudable. The idea of freeing high-speed Internet from overregulation and subsidizing it, the idea of national ID cards administered when you get your driver's license so that we can do a better job of protecting our borders, and the idea of reengineering computer systems on college campuses so that it will be easier for us to fight the war against terrorists—all three may be wonderful ideas, but all three amount to unfunded Federal mandates, if they are done the wrong way.

I began my remarks by reminding all my colleagues—and especially our colleagues on this side of the aisle, those in the majority—that the Republican Party came to a majority in 1994 on a platform of no more unfunded mandates. Republican leaders said: If we break our promise, throw us out. I don't want us thrown out any more than I want any more unfunded Federal mandates.

So my purpose today, as the Governors begin to come to town, is to

wave the lantern of federalism a little bit and raise a red flag to remind my colleagues that there is now a 60-vote point of order for any unfunded Federal mandates going through here and that I and others will be watching carefully to make sure that we keep our promise.

This is a body in which we debate principles, and one of the most important principles that we assert is the principle of federalism. It does not always trump every other principle that comes up, but my feeling is it has been too far down. I want to raise it up higher, and I intend to use that 60-vote point of order to assert the principle of federalism when unfunded Federal mandates appear on this floor.

Thank you, Mr. President. I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. KYL. Mr. President, I wish to speak for a moment, first of all, about the process we are going through and then about the substance of a couple of amendments that our colleague from Wisconsin would have liked to have introduced and have a vote on it with respect to the PATRIOT Act.

Our constituents might be wondering why we are on the floor of the Senate on this Thursday afternoon discussing the PATRIOT Act. After all, haven't we passed it? Of course, the answer is, in a sense, we have passed it now several times. But there are colleagues on the other side of the aisle who have decided that rather than let the will of the Senate be carried out with adoption of the PATRIOT Act so this bill can be sent to the President so he can then sign it, thus reauthorizing the act for another 4 years and giving the tools to fight terrorism to our intelligence and law enforcement officials that, rather, they are going to make us comply with all of the procedural technicalities which they can throw in our way which accomplishes absolutely nothing but requires us to take several more days to finish the process.

What can be gained from this? Nothing at all except that we waste more time thus making it more likely that we will not have time to do other business of the Senate, especially as it gets toward adjournment later on in the year.

What we are seeing is taking something very important for the protection of the American people—the PATRIOT Act—and using it for what I believe are improper purposes and simply delay action in the Senate so that we will have less time to act on other items.

There is no basis for delaying the PATRIOT Act. The votes are there to go to the conference and have the House of Representatives approve it, again, as it already has, so it can be sent to the President. There are no amendments that are going to be brought up. We are going to have a final vote on Tuesday—and that is it. But rather than being able to accomplish that result today, we are having to waste all of this time.

What kind of a message does this send to our allies who are, first of all, a little skittish about some of the news leaks about our surveillance programs in which they participate, to some extent. We get good information from our intelligence service, and I suspect they are worried about the lack of control over our intelligence process. They are not sure, I suspect, what to make of this debate about the PATRIOT Act. They thought we had it resolved so they could work with it on the basis of the laws they understood. They are not sure.

I often wonder what Osama bin Laden is thinking. I suspect he is not getting live coverage, but he is probably getting reports somehow or other, and he must be shaking his head: I thought I was pretty clear, I am really making threats against these guys, and they are playing around. They are not taking my threats seriously.

I, for one, am taking his threats very seriously—and so does the Director of the CIA and so does Ambassador Negroponte.

Our intelligence officials and the people we have asked to do this job for us take this threat dead serious. They have asked the Congress to give them the tools they need to fight this terrorist threat. Part of the tool is this PATRIOT Act, which has now been revised and reformed and amended and gone over again, and, finally, there are now three more changes to it—and it is done.

We have the ability now to simply pass it on to the President so he can sign it, and for 4 more years everybody knows exactly what we have to work with here.

Remember the 9/11 Commission following the tragedy of September 11, when we asked this commission to analyze what we could have done better and what went wrong, part of what they said was wrong was that there was confusion in our law enforcement intelligence community about what they could and should do.

In fact, legal interpretations differed so much they felt there was a wall that separated the intelligence agencies and the law enforcement agencies from even talking to each other.

One of the things the PATRIOT Act does is makes clear that there is no such wall; that at least our law enforcement and intelligence folks can talk to each other about these terrorists.

It is most distressing that we can't simply get this bill passed on to the President so that everybody knows we have it reauthorized again for another 4 years.

As I said, if there were any rationale behind this, other than simply delaying so that we can't do other business, you might have something to bite your teeth into and debate on the floor. But in truth, this thing, when it passes, is going to be overwhelming. I doubt that we will have a handful of votes against it. In fact, we may have less than a handful, which would be 5 votes against this when we vote on it. But I thought at least it would be interesting to see what some of the objectives posed by some of the most vociferous critics of the PATRIOT Act are, what those criticisms are, to examine them so we can see exactly what the complaints are about, about what the President has called an essential tool in the war on terrorism.

When you look at the suggested amendments—again, amendments which we are not going to be voting on because we have already been through that process three times and that has thankfully come to an end—I wanted to examine a couple of amendments our colleague from Wisconsin would have offered to illustrate it is not something we should be wasting our time on. One of them has to do with something that has been in existence for 40 years, called national security letters. It is essentially a subpoena for records that is just like a grand jury subpoena.

The county attorney or the district attorney goes to the grand jury and says: I think we need the following documents in order to see whether we can make our case. They write up this piece of paper, it is delivered, say, to a hotel, and it asks for the business records: We want to know everyone who checked in and out of the hotel for the last 3 days because we think maybe this person we are after may have checked into this hotel—that would verify his presence on the night of the murder, or whatever the case—so the hotel gives them the records.

There is no expectation of privacy in the records. When the hotel clerk says: Here, sign in—and he turns it over, you can see exactly everyone else who has signed into the hotel. There is nothing private about it.

These national security letters have been used for many different government agencies. If you are investigated for Medicare fraud, for example, your doctor might get one of these security letters asking for information.

Back when the security letters were authorized, we did not have terrorism. Now we have terrorism in a big way in the last decade or dozen years. Law enforcement authorities say: You know that process we have of getting business records through the security letters is a good process, and we ought to apply that to terrorism, too. Why not? If we can investigate drug dealers or bank fraud criminals or people like that with this kind of a subpoena for records, why shouldn't we be able to do it for terrorists? That is a much bigger deal.

Now for the first time our colleagues are saying maybe we should have a court process to review this. That process exists in a totally different context. If we want a much more formal procedure, there is something called a Section 215 warrant. That is court supervised. This is the sort of light version. If it is contested, of course, you have to go to court. Most of the time the records are easily given because they are not private records.

For the first time in the context of terrorism our colleagues are saying this is an invasion of privacy and we need a court to review this. My point is, it must be very confusing to law enforcement to have Congress debating something like this when there is no rationale for changing the law of 40 years that has been applied in everyday context throughout the country, and all of a sudden where we would want the most streamlined procedure, where we would care most about the cops, where we need speed because we do not know whether an attack is imminent, for example, in the situation that is much more serious, now we are saying we need to throw some roadblocks in the way of the law enforcement tool. It does not make sense.

I thought I would take two of the amendments—we are not going to be debating the amendments, but this is the kind of thing raised as an objection to the PATRIOT Act—the kind of amendments that would be offered. It shows how unnecessary this approach is.

Let me note one other thing. There have been a lot of unnecessary amendments attached to the PATRIOT Act. It is getting to the point where I wonder whether we can really do the job, our law enforcement community can really do the job that our constituents want it to do. For example, by my count, the final bill that we will send to the President requires 12 different reports or audits of our Nation's antiterror investigators. Obviously, oversight is important. Reports to the Congress are important. But it seems to me this is overkill. Our intelligence agencies should be devoting their resources primarily to investigating suspected terrorists, not to investigating each other. All of these reports simply add to the burden they already have.

And we wonder sometimes after the fact, when a September 11 commission reports that they were too burdened to do their job, how that could possibly be. Congress sometimes can be part of the problem as well as part of the solution.

All of the changes have been negotiated and renegotiated, as I said. At some point, we need to complete the bill. There are other amendments I would like to add, but I had my chance and this is not the time to be reopening the process for yet another round of amendments. It seems to me we ought to be moving on.

I will mention this one amendment. It is actually an amendment numbered 2893 that would have been offered by the Senator from Wisconsin. This amendment would strip away the protections for classified information about suspected terrorists and terrorist organizations in the manner I discussed a moment ago. The amendment not only risks revealing our level of knowledge of our data collection methods to those who would do us harm, but it also threatens to undermine our relations with allies who supply us with a lot of information in this war or terror. They do not do that so it can be given out to the public. The purpose of classification is to see that the information remains secret. But this particular amendment would allow classified information to be compromised during the challenge to a nondisclosure order for national security letters or a FISA business records order. FISA is the Foreign Intelligence Surveillance Act. It serves no substantial interest but, as I said, can be very damaging to our national security.

Let me put this in perspective. A section 215 order—which I discussed before, which is a FISA order and is always accompanied by a nondisclosure requirement—already is judicially reviewed, as I said. There has to be a court action on it before it can be issued. And under the amendment that was offered by the Senator from New Hampshire, a third party recipient of a section 215 order also would be able to have the courts review the section 215 order after its issue, which is a second round of review. We have added that in. To my mind this is redundant and unnecessary, but that has been added. That is one of those compromises to enable us to get to this point.

Let me put this issue in perspective. A section 215 order, which provides that second round of review, is much different than a national security letter which, as I said earlier, has been around since the 1970s. They have always been accompanied by a nondisclosure requirement. In other words, when the third party is served with this subpoena that says: Would you please give us these records, you are not supposed to tell the person that a law enforcement entity is seeking the records. Obviously, you do not want to tip them off that you are investigating them. There is a nondisclosure requirement. You cannot tell the person that the Government has come asking for the records. That requirement has always been automatic, and there has never been any provision for any judicial review of that nondisclosure requirement.

The national security letters, like virtually all other subpoenas, are also not judicially reviewed before they are issued. The conference report, for the first time in the history of these national security letters, authorizes judicial review of the need for the nondisclosure of the subpoenas. That was another compromise that was added. You not only have it in the formal section 215 requirement but also in the less formal security letter process. It allows the recipient to challenge the nondisclosure requirement, and it ensures the automatic nature of the nondisclosure requirement.

Now the FBI will have to evaluate each national security letter. The nondisclosure of the NSL and the nondisclosure requirement can only apply if the FBI certifies that the public disclosure of the service of the NSL will harm national security. In other words, before it is issued, the FBI has got to have a certification that the recipient of the letter may not disclose it because to do so would be to harm national security. That certification is based upon a very solemn judgment exercised by the Attorney General.

Critics condemn this provision as giving only the illusion of judicial review. When they say that, it bears mention that what they are condemning is language that is being added to a statute that never provided any kind of judicial review before that. For over a quarter of a century there has been none whatsoever, and yet there is a complaint this judicial review is not good enough. The sponsor of the amendment argues that the standard employed for the review of the security letter and the section 215 nondisclosure requirement is too high and can never be met.

It is high, but it is very high for a reason. If a challenge is made, the FBI needs to reevaluate whether there is a continued need for the disclosure. But if the FBI certifies that disclosure of the NSL would harm national security, that reclassification is conclusive. Now, when you say ''conclusive,'' that is a very high standard.

In this respect, the proponents of the amendment are correct; that is a high standard. But it is the only way the determination can work.

Think about it for a moment. Only the FBI, the people who are investigating the matter, not individual district judges, are in a position to determine when the disclosure of classified information would harm national security. Obviously, that is not something that a Federal district judge has any expertise on. You have to have, literally, a trial to determine whether that proposition were true in each particular case.

The reason nondisclosure might be necessary should be obvious. If a suspected terrorist or his associates, for example, are funneling money through a particular bank in a city, and if that bank were to make public the fact that it had received a security letter requesting records in a terrorism investigation, that disclosure would easily tip off the terrorists and their associates that they are under investigation. You do not want to do that.

It is also important that the FBI make the final determination whether the disclosure would harm national security. And only the agents in charge of these counterterrorism investigations will be able to evaluate how the

disclosure of a particular piece of information could potentially, for example, reveal sources and methods of intelligence and who, therefore, might be tipped off as a result of the disclosure.

We are all aware of this current controversy regarding the briefing of select members of the Intelligence Committee over a particular surveillance activity involving international communications with members of al-Qaida or people suspected of being with al-Qaida. The reason not every member of the Intelligence Committee is briefed is because of what we would call ''sources'' in this case. Methods of surveillance are so secret, so classified, that it has been determined that even some members of the Intelligence Committee should not be fully briefed on exactly how this methodology works.

So you can imagine when the FBI has sources of intelligence to protect or certain methods of intelligence gathering to protect, the last thing you want is for a judge to decide that those should simply be made public.

That is why this conclusive presumption is in the law, why it is so important, and why we cannot have this section amended to open that to public disclosure of that sensitive information. Yet this amendment numbered 2893 would allow every one of the 800 Federal district judges in the country, in fact, to be their own director of national intelligence and decide for themselves whether exposing classified information would inappropriately reveal the sources and methods I discussed, whether that might tip off terrorists to what we already know about them, and whether it would harm relations with our allies who, perhaps, have provided us with the information. Obviously, that cannot be allowed. We cannot expect our allies in the war on terror to cooperate with us if we treat this sensitive information that they provide to us with anything other than the most careful consideration. And we cannot expect our agents to be successful in detecting terrorist plots if every step of the way, every time they gather information through either a security letter or the more formal section 215 process, they can be sued and forced to divulge classified information about whom and where they are looking and what methods they are using.

This amendment would do serious harm to U.S. national security. And to what end? What powerful privacy interest or civil rights interest dictates a third party asked to produce business records in its possession must be allowed to disclose the existence of the investigation or must be given access to other classified information in order to plead that matter before the judge?

When the FBI is investigating organized crime in the United States and grand juries compel testimony or require the production of records, we do not let those witnesses or the parties holding the records publicize the fact that they had been subpoenaed or publicize that there was an ongoing investigation. We recognize that secrecy is important in an organized crime investigation and it outweighs any interest that third parties might have in talking about the investigation.

Why wouldn't we recognize the same realities in a terrorism investigation, an area where the safety and security of the American people are much higher? That is the kind of amendment that would be offered. Thankfully, as I said, we decided to go forward with the process and not have any more amendments and have the vote next week which will enable us to send this bill to the President.

My point in discussing this is to demonstrate there is no reason to have further debate or amendments, and we could have gotten done this afternoon and known we had reauthorized the act for another 4 years.

The only other amendment I want to discuss is amendment No. 2892, blocking these section 215 orders even where relevance is shown. This amendment is highly problematic because it would bar antiterrorism investigators from obtaining some third party business records even where they can persuade a court that those records are relevant to a legitimate antiterrorism investigation. We all know the term ''relevance.'' It is a term that every court uses. It is the term for these kinds of orders that are used in every other situation in the country. Yet the author of the amendment argues that relevance is too low a standard for allowing investigators to subpoena records.

Consider the context. The relevance standard is exactly the standard employed for the issuance of discovery orders in civil litigation, grand jury subpoenas in a criminal investigation, and for each and every one of the 335 different administrative subpoenas currently authorized by the United States Code. These national security letters have existed since the 1970s, and they have always employed a relevance standard.

Why now that we are faced with a terrorism threat, and we decide this same investigative tool should be available to investigate terrorists would we impose a higher standard to get the information? If anything, you would be talking about applying a lower standard because of the importance of the threat and the fact that sometimes speed is of the essence.

As the Department of Justice Office of Legal Policy recently noted in a published report—I want to quote this—''Congress has granted some form of administrative subpoena authority to most Federal agencies, with many agencies holding several such authorities.'' The Justice Department ''identified approximately 335 existing administrative subpoena authorities held by various executive-branch entities under current law.''

As I said, 215 orders already are harder to get than regular subpoenas, even though the subject matter would suggest that perhaps they ought to be easier to get. In the case of these section 215 orders, the law requires that the FBI first seek a determination of relevance from a judge, which makes it harder to get a 215 order than it is to get any other grand jury subpoena or virtually any other kind of administrative subpoena because none of them require preapproval from a judge. Even a grand jury subpoena is not approved or reviewed by a judge or the grand jury before it is issued. It is issued directly by the prosecutor.

It is interesting; there was a recent online article in National Review Online by Ramesh Ponnuru, a very good writer and student of this issue, who made the following comments. This is a quotation. He noted that critics say:

> that investigators shouldn't be able to get business records merely by convincing a judge that the records are ''relevant'' to an ongoing terrorism investigation. Yet that relevance standard, from Section 215 of the law, is the exact same standard employed for discovery orders in civil litigation, for grand-jury subpoenas in criminal investigation, and for each of the 335 different administrative subpoenas currently authorized by the U.S. Code. Getting a 215 order is harder than getting a grand-jury subpoena or almost any kind of administrative subpoena, since judges don't have to review the latter [before they are issued].

Again, this is the current law. So even without an amendment, which would make it even more difficult, the law we are talking about with regard to terrorism investigations makes it more difficult in a terrorism investigation to get a subpoena than in any other situation. Yet the proponents of this amendment would make it even more difficult than that.

Now, let's imagine what this means. Here is a scenario:

> Let's imagine that intelligence agents have discovered that suspected Al Qaida agent Mohammed Atta is in the United States and that he has hired another individual to work for him. Under the Patriot Act legislation being considered now, it will be easier for the federal government to subpoena records in order to make sure that Atta is paying that individual the minimum wage than it will be to obtain records to find out if Atta is using him to engage in international terrorism.

That is not right. I was going to say something else. I will just say that is not right. This is the existing law. This is before we would make it even more difficult with the amendment I discussed a minute ago.

So without making further arguments on this point, I think you can see that we have girded this PATRIOT Act with levels of civil rights protection and privacy rights protection that we do not have in any other part of the code, even though the need for speed and the need for agility to get after these terrorists is, I would argue, a much more important matter than investigating Medicare fraud or bank fraud or money laundering of whatever it might be.

We have not imposed all of those civil rights or privacy protections in those sections of the code, but here we

are going to add them and make it even more difficult for the FBI and other law enforcement and our intelligence agencies to do the job we want them to do. Then, of course, if something happens, we will haul them before Congress and say: Why couldn't you get your job done? And when they say: Well, the statute was a little tough for us to comply with, we will say: That will be no excuse.

So we need to be very careful what we do in considering further amendments to the law.

Mr. President, let me conclude by saying that the other amendments that would have been offered are in the same vein, making it unnecessarily difficult for our intelligence agents and our law enforcement officers to do the job we have asked them to do.

When my colleagues and I have had before us on the floor of the Senate amendments to add armor to humvees or to have better bulletproof vests or to have other kinds of equipment or tools for them to carry out the missions we ask them to perform when we send them into harm's way, we do not hesitate long to give our military everything they need because we want them to succeed in their mission. We do not want them to be left vulnerable in any way. Why? Because we want to be protected and we want them to be protected.

Yet when it comes to giving our intelligence agencies the tools to fight terrorism, we shirk back and say: Well, we are going to do it, but first we are going to add several layers of additional requirements to make it more difficult for you to do your job.

In the law and in this fight against terrorism, we are generally not fighting with airplanes and ships and the like. This is a different kind of war. This is a war against a very secretive enemy all over the globe. There is really only one way to get to this enemy, and that is with good intelligence to find out who they are, where they are, and what they are up to.

So the equipment we are giving to them, the tools for them to fight terror are these provisions of the PATRIOT Act and FISA and the other activities that have been discussed. This is what enables them to perform their missions. We cannot load these tools up with so many restrictions and legal loopholes that it is impossible for them to do their job. If we expect them to be able to protect us, we have to write these laws in clear, understandable, fair, and effective ways, certainly protecting our civil rights. But I think I have demonstrated we have done that.

If you do not need all these protections if you are investigating bank fraud, then I would say, as the lawyers say: A fortiori. They are less necessary in an investigation of terrorism, where speed may be required, where secrecy is absolutely critical, and therefore where the kind of protections that have been offered are very problematic to these folks doing their job.

So the bottom line is this: We have a good act, the PATRIOT Act. It is going to be reauthorized for another 4 years. We have already added numerous protections of civil liberties to it. It is, therefore, quite appropriate that the time for amendments has come to an end, that we not have any more of these amendments brought before us—I think I have demonstrated the harm those amendments would do—that we get on to the job of getting this legislation reauthorized so we can say to our constituencies we were able to provide the tools to fight terrorism that will protect them and their families.

That is our charge. There is only so much we as legislators can do, but this is something we can do, and we need to get about doing it.

The PRESIDING OFFICER. The Senator from Hawaii.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 2305 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I am sorry we are now facing another filibuster and delay of efforts to reauthorize the PATRIOT Act. We have taken 3 days this week to deal with legislation Senator SUNUNU introduced to assuage concerns he and others had about the bill. Senator SUNUNU's proposed bill guaranteed that at least four more Members of the Senate were on board to completely support a cloture vote on and final passage of the Conference Report. It certainly brought on board all the Republicans who expressed concern over the bill. But we are still going through the process of grinding down certain provisions to get an up-or-down vote on reauthorizing the PATRIOT Act. That is all we are asking for, an up-or-down vote, to determine whether we want to extend the provisions of the PATRIOT Act. That is being held up. We have many other things that are important for us to do for our country, but we have been forced to spend an extraordinary amount of time on this.

If you look around, you will see that people are not engaging the issue. The complaints—Senator KYL talked about some of them—are insubstantial. They are not the kind of serious concerns people have portrayed them to be. The act itself provides quite a number of provisions that simply allow investigators to use the same tactics to investigate terrorists, people who want to kill us, that they use to investigate wage-and-hour disputes, to investigate your taxes, to investigate drug dealers and pharmacists and drug dispensers and doctors. It is important that investigators continue to have these tools at their disposal.

It is unfortunate we have had this obstruction. We have seen a pattern of it, frankly. The more time we spend on delaying these kinds of provisions, means that at the end of the year there will be a jammed-up calendar. We will have appropriations bills that have to pass, and other bills that need to pass. All the days we had at the beginning of the year have now been frittered away on rearguing things that we have argued and settled before.

I don't mind debate. Senator FEINGOLD has come down and spent a number of hours expressing his concerns. I respect him. He is a most articulate opponent of the act. He has certainly studied the act. We don't agree, but I respect that. But we went through all this in December for days on the floor of the Senate, debating these same issues. With Senator SUNUNU's compromise and suggestions for improvement that have been accepted, the basis for many of those complaints have gone away. Now we are taking another big, long time to reargue settled issues. I believe the majority leader, Senator FRIST, is justified in his frustration that something that has been debated completely and fully and that now has a clear majority of Senators prepared to support it is being held up, delaying all the processes of the Senate.

Let's talk about the merits of the bill and how the law deals with certain issues for which we have heard objections. One of the biggest items and perhaps the biggest issue that Senator FEINGOLD and opponents have raised has been the delayed search warrants. The bill that came out of the Senate was passed by unanimous consent. We moved the PATRIOT Act reauthorization out of the Judiciary Committee by a unanimous vote. We moved it out of the Senate by a unanimous vote. The House passed a bill by an overwhelming majority. The House and the Senate bills went to conference, and they discussed it. We made concessions on each side.

Senator SPECTER, chairman of the Judiciary Committee, a man who certainly has been respectful to civil liberties, has stated that he believes about 80 percent of the compromise that was reached favored the Senate version, not the House version. The House conceded on more issues than the Senate. They gave more than the Senate did. The bill that came out of conference was very close to the Senate bill. Then we hit the Senate floor, after having a unanimous vote, and now we have a filibuster. It is, indeed, frustrating.

Let me talk about the delayed search warrants. What the PATRIOT Act does is to codify, to make a part of the law of the country, provisions for delayed notice search warrants. Delayed notice search warrants are not, as some have said in the Senate, an unusual procedure. Delayed notice search warrants have been in use for decades, long before we passed the PATRIOT Act. This act did not create any new authority or close any gap because there was no gap to close. The PATRIOT Act simply created a nationally uniform process and standard for obtaining a delayed notice search warrant.

Some have said: The court said 7 days is what you ought to delay notice. That is the maximum time you should delay notice. That is not quite accurate. The Ninth Circuit, the most liberal circuit in the United States, the most reversed circuit in the United States by the Supreme Court, has held in one case that delayed notice search warrants that explicitly provided for notice within a reasonable period of time by the judge issuing the warrant pass constitutional muster under the fourth amendment. They said a delayed notice search warrant does pass constitutional muster. Then they went on to ask, though, what is a reasonable period of time? They defined it as 7 days, absent a strong showing of necessity. That is what the Ninth Circuit said, the most liberal circuit in America. But other courts, such as the Fourth Circuit, have upheld much longer initial delays as constitutional. For example, the Fourth Circuit has determined that a 45 day period for delayed notice is constitutional. The Fourth Circuit did not even suggest that 45 days was the upper limit. They simply concluded it was reasonable in those circumstances. The truth is, there is no standard set under current law by the courts that would mandate a specific period of time for a delayed notice.

When the House of Representatives passed its version of PATRIOT Act reauthorization, it called for 180 day delayed notification period. The vote in the House was 257 to 171, a bipartisan vote of Republicans and Democrats, to approve overwhelmingly a delay of 180 days. The bill we sent to conference had a 7 day delayed notification provision in it. When the conference reported the bill, it tilted much closer to the Senate bill. It came out with 30 days, less than the 45 that the Fourth Circuit had approved, more than the Ninth Circuit had said. And it was a perfectly logical process we went through.

About the importance of delayed search warrants in terrorist investigations, I can't express how strongly I believe that this has the potential to be the most significant provision in our legislation, the PATRIOT Act. Time and time again, Federal investigators, working with State and local investigators, determine that groups are involved in terrorist activities. They don't know all the people who are involved. They don't know the full extent, but they have probable cause to establish that they are violating or planning to attack the United States or are participating in a conspiracy to kill people to further their terrorist goals. So what do you do then?

Under the PATRIOT Act—not the National Security Act or what we have talked about, the national security intercepts you have heard so much about in the paper; those are international and involve the President's inherent authority—under the traditional law of America, what do you do if you have probable cause to believe these groups are meeting, that there is some sort of sleeper cell in existence, you have proof, not just suspicion, proof to the level of probable cause that they are participating in this scheme?

One of the most potentially beneficial things would be to get a search warrant for that house. But if you do it under normal conditions, when you have to conduct a search warrant if the defendant is not there, you provide him notice that you have conducted a search warrant. When you come to the door and before you go in, if no one is there, you have to leave a return on the door showing that you searched the place and any items you seized and who to contact. That is what you normally do in a search warrant.

Police officers do that every day. But first they go to a judge and they swear under oath that they have probable cause, and not only say they have it, they spell it out. And judges, on appeal, can review it. If the judge who approved the search warrant was in error, they can reverse it or the evidence can be excluded from trial. So you go to a judge. We are not in any way changing that great principle that a U.S. Federal judge or a State judge would have to approve a search warrant. You are not changing in any way the principle that they have to have probable cause under oath that evidence exists at the scene of the place searched which would be relevant to an investigation. All of that is the same as it has always been.

But the one critical thing—and this has been legitimated by courts and approved by the U.S. Supreme Court—is that you can, in certain cases, ask that the notice which you would normally give to the owner of the residence or the person who has custody and control of that location be delayed.

Now, this can be absolutely critical in a case of national security. It is so important. Please, I want you to understand that. You may be able to go in that area and find names, phone numbers, records, or bank deposits that would identify a whole group of other people, and you are not ready to arrest them that moment because you don't know where they are located. You need to check this out and follow up on it. If you arrest that bad guy and give notice to the people right there, the whole world will know it, and they will spread the word and they will scatter. That is exactly what will happen. So that is why, in certain instances, law enforcement officers have sought, and courts have approved without the PATRIOT Act, delayed notice search warrants.

So then when do you notify the person? All the PATRIOT Act says is that the police officers can delay notification for 30 days. At the end of that 30 days, if they don't come back to the court and show a legal basis to continue to delay to notify the defendant, they have to notify the defendant on the 30th day. That is all this Conference Report says. That is reasonable. It is not an abuse of the power of the Congress. It is not in any way contradictory to the great traditions of law enforcement in America. It has nothing to do with the President's Executive powers to fight a war. This is under the criminal law aspect of American justice.

I asked for delayed notices on rare occasions when I was a Federal prosecutor. I am telling you, whether investigating a big drug gang or a Mafia group, these are the kinds of things which can make all the difference in the world. And it is even more important in terrorist investigations because these people will scatter and because it is a matter of life and death. That is all I am saying. There is nothing unusual or strange about it.

The Department of Justice wrote a letter which said that a delayed notice warrant differs from an ordinary search warrant only in that the judge authorizes the officer executing the warrant to wait for a limited period before notifying the subject of the search because immediate notice would have an adverse result, as defined by statute, that could undermine the investigation. So this is all this is about. I think few people would dispute it. Yet we have a filibuster because some Senators apparently believe that 30 days destroys the Constitution. They believe that it violates the Constitution to ask the police officer to wait 30 days before they notify the defendant.

The House of Representatives, by an overwhelmingly bipartisan vote of 257 to 174, voted to allow the officers to delay 180 days. So now we have been here 3 days debating this issue this week. This is the No. 1 complaint they have about the bill. I don't know what it is that got us to this point.

The conference report before us today eliminates the possibility of an open-ended delayed notice. It requires notice within 30 days unless the court grants an extension. Current law allows for simply a reasonable delay, which is whatever the judge may decide in a given case. Well, they say, why do you need 30 days? Well, the Fourth Circuit found that 45 days is good enough. I will give this example which the Department of Justice gave: Operation Candy Box. A delayed notice was permitted in a multijurisdictional investigation targeting a Canadian-based ecstasy and marijuana-trafficking organization. The delay allowed for a successful, uninterrupted, month-long investigation that resulted in the arrest of over 130 people. Without delayed notice, agents would have been forced to reveal the existence of the investigation prematurely.

As a Federal prosecutor myself, I want to tell you, one of the biggest decisions in any investigation of any organized criminal group or terrorist group is the decision of when to conduct the takedown. When do you arrest them? Do you run out as soon as you know there is a group and you have

evidence on one of them—do you run out and grab that one? How stupid can you be? If you grab one, the rest will know it and know you are going to come after them; they are going to scatter or they will destroy evidence. They will run and hide, and they may create a sleeper cell in a different city and continue their plans to kill Americans or to sell dope or whatever it is they are doing illegally. So you have to plan the takedown.

When you are dealing with cases involving life and death, you have to be very careful about it. Don't think the agents don't work with prosecutors and staff people and plan out these takedowns to the most minute detail. When do you do it? Do you catch six low-level flunkies and let the big guys get away? No. Someone might say the big guy is coming into town the next day, so we will have a team there and we will have probable cause to arrest him. Then you get a search warrant. When do you execute the warrant? You want to execute it at a time of your choosing so you can wrap up as many of the members of the organization as possible at one time. That is what it is all about.

Sometimes you need to know more about this organization. You don't know all the people who are involved. That is where a delayed notice warrant can allow you to obtain information about other people who are involved and do further investigations and find out, maybe, that two or three dangerous criminals should also be arrested at or about the same time. They will provide you the probable cause to arrest them because you cannot arrest people without probable cause in America. You have to have evidence. You cannot just arrest somebody on suspicion.

So where do you get the evidence? Some people in this Senate forget that police officers are not magicians; they have to gather evidence. How do you get it? One way you find out the evidence is to conduct a lawful search on a warrant approved by a Federal judge or a State judge. If it is a Federal crime, it would be a Federal judge. Then you may execute a delayed notice warrant, and you may find more evidence of other people that can be corroborated and you can build up probable cause. And instead of having probable cause to arrest just 2 defendants, you may have probable cause to arrest 8 of them, and maybe you take down the whole sleeper cell. Maybe there are 8 in this town and 4 more in Boston and some more in San Diego or in Washington, DC. You can arrest all three or four cells at the same time. Would that not be the ideal thing?

I am telling you that this is what law enforcement officers attempt to do every day. They do it according to the laws that we require.

In 2002, the issuance of a delayed notice search warrant helped break a massive multistate methamphetamine ring. The delayed notice allowed investigators to locate illegal drugs, which provided further leads, eventually resulting in the seizure of mass quantities of drugs and the identification of those involved in the criminal organization. More than 100 people were charged with drug-trafficking offenses, and a number of them have been convicted.

In another case, a delayed warrant was issued to search an envelope which was sent to the target of an investigation. An envelope had been sent to the person, and they got a warrant to search the envelope. The search confirmed that the target was operating an illegal money exchange and was funneling money to the Middle East, including to an associate of an Islamic jihad operative. Delayed notice allowed the investigators to conduct a search without compromising an ongoing wiretap they had been carrying on based on probable cause, and with the approval of a U.S. District judge. But they didn't just conduct a wiretap; they were conducting this wiretap and they needed to find out if money or drugs were moving so they could seize that or allow the package to continue and then arrest the person who received it.

That is what we are talking about here. That is why there is nothing extreme in any way about the delayed notice search warrant law.

Well, what about the national security letters? You have heard a lot about that issue. The complaint is that Senators have said this will allow you to obtain information from people not connected to terrorists or spies. The national security letters, which existed long before the PATRIOT Act, can only be in a certain specific and limited number of circumstances.

Now, I will talk about those in a moment, but they are listed in 5 statutes, so it is not an open-ended provision. It only deals with national security issues. The procedures set forth in this act which allow those letters to issue are in no way extreme. They in no way threaten the great liberties all of us share but indeed are essential tools in this age of national security threats to our country, and they can be critical, critical, critical facts for investigators to enable them to identify those cells which may be in this country trying to attack and kill American citizens, as we saw on September 11.

I want to emphasize that national security letters existed long before the PATRIOT Act and can be used in only very limited circumstances for national security issues. In fact, it is a particularly valuable tool that is utilized frequently by investigators. The New York Times said there have been a lot of national security letters issued since 9/11. Well, we are doing a lot more investigation. Every FBI office in America is pursuing every lead that pops up, unlike what we were doing before 9/11, and are verifying and checking out and determining the kinds of things that are necessary to find out, such as if someone may be connected to a terrorist organization and may be planning an attack on the United States. Isn't that what we demanded after 9/11? But the numbers that have been published are clearly exaggerated. They are not accurate, and they have been criticized by the officials who are involved. I add that parenthetically.

The PATRIOT Act originally made very few changes to the national security letter procedure. It merely made relevance the standard for obtaining a national security letter and allowed special agents in charge to issue them. The special agent in charge would be the special agent in charge of the FBI office in New York City, for example, or in Boston or in Birmingham, AL, and those special agents in charge supervise everyone in the office. They are considered to be high-ranking FBI officials responsible for the law enforcement issues relating to their agency in that district. So this was what we originally passed.

However, now under this conference report, the national security letters are to be used only for investigations involving terrorism and espionage, and they must pertain to ''an authorized investigation'' involving ''national security.''

These are national security investigations. National security letters cannot be used to obtain unlimited categories of material. They can only be used to obtain very limited categories of material in the possession of third parties, not the defendant. The great protections against the searching of your home have not been undermined. What we are talking about here are records that are under the dominion and control of a third party. You can say they are your bank records, but they are the bank's records. You can say they are your telephone company records, but they are the telephone company's records.

The law has always made a big distinction between the kind of proof you have to have for someone to come in and search your desk, to search your automobile, to search your home, than the kinds of procedures they have to go through to get the record at the local motel that might have your name on it. It is not your record, it is the motel's record. You have a diminished expectation of privacy. The courts have consistently held this view ever since the issue has been discussed. It is a fundamental part of daily law enforcement in America.

So they can be used only to obtain these kinds of records, not records you have under your control that would require a search warrant approved by a judge on probable cause, as I discussed earlier, as you would in a delayed search warrant case. It is a big deal. I am telling you, in a case such as this, I bet you search warrants would be 30 pages of affidavits to justify what they are searching for. But these are simply subpoenas, basically, for these records.

These records, as I said, belong to companies, and the individuals to

whom they refer have a reduced privacy interest in them. These national security letters cannot be used to obtain ''content information'' that involve any communications you may have made or the words of those communications with the phone company, but simply what the billing record said and the phone numbers you called. But you can't get, through a national security letter, the words of your phone call or intercept or record your phone call in any way, or your e-mails. The content of your e-mails can't be obtained with a national security letter. The national security letter is simply a request by a national security investigator for records.

If the recipient such as the bank, for example, objects, the FBI cannot compel production without going to court. The conference report specifically allows the recipient, however, of a national security letter to move to quash or dismiss or modify the national security letter and to challenge the nondisclosure order that accompanies the national security letter, and to talk to their attorneys about it if they choose, and other people who may be necessary to comply with the national security letter.

Some people say the nondisclosure requirement can keep you from speaking with your attorney. This legislation specifically allows you to talk to your attorney or anybody else who is related to it before you decide to utilize a motion to quash.

Let me share this with you. Imagine, now, you are an investigator, an FBI agent, and you have serious cause to believe that an individual may be connected to a terrorist organization. You want to find out if they have been calling Kabul, Baghdad or Islamabad. It is critically important, at a preliminary stage in an investigation such as this—critically important, I emphasize—that the people being investigated not know that they are being investigated, that the investigators are on to them. That is why we placed in the law the limitation that the person or entity subpoenaed should not go and tell the people that the Feds are out there asking for your bank records or your telephone records. How can you conduct an investigation? From these records is the way the police officers and FBI agents get the probable cause to conduct a search warrant.

How do you get probable cause to conduct a search warrant? You take lesser steps to obtain information that is available to you, and it builds up until you get enough to have probable cause to go a judge to get a search warrant to search the home and you may even want to delay notice to the people at the home until you can be sure that everybody in this organization is known to you and they can all be arrested before they can get away. So that is what this is all about. It is perfectly logical and part of our law enforcement heritage.

In the conference report that is before us, it also provides an express right to judicial review for all types of national security letters, allowing courts to modify or quash the order if compliance would be unreasonable, oppressive or otherwise unlawful. It also changed the certification requirement. It requires a higher level of certification before you can ask for nondisclosure in the issuance of a national security letter. The nondisclosure requirement is not automatic. Local FBI cannot ask it. The local special agent in charge can't ask for it. Now it has to be invoked by one of the top officials of the DOJ in Washington, an official who must certify that disclosure would ''endanger the national security of the United States.''

I want to say that is too high a standard. We are going to fail to execute requests for mere documents in control of banks and telephone companies and motels and records of that kind because a DOJ official in Washington is going to be nervous about whether he has enough proof to certify that this matter would endanger the security of the United States. That is too high a standard. But it is in this bill because the civil libertarians wanted to put it in here.

Any county district attorney in America this very day can issue a subpoena to a bank or to a telephone company to get your phone records or the records from your doctor. This is not unusual that investigators can obtain documents in the possession of third parties. Please hear me. I know Senator KYL made the comment that it is easier for an investigator to obtain your business records relating to whether you have paid withholding tax than it is for an investigator, under this case, to get records of whether you are connected to a terrorist organization.

I would add a few other examples. A Federal drug officer, a DEA agent, can walk into any pharmacy in America today and examine the pharmacy records that exist to see if somebody has submitted false documents, is overpurchasing drugs or the pharmacist is failing to keep records. He can examine all the records that are there. He doesn't have to have a warrant or a national security letter.

The IRS agents investigating whether you paid your taxes can subpoena your bank records by an administrative subpoena that does not require a grand jury approval or approval of any prosecutor. He can do it as an part of an administrative subpoena because they are not your records. But if he goes into your house and tries to take your personal documents, that is not so because he has to have a search warrant. A provision requiring this high level of certification is important protection for sure, and the standard imposed on the top FBI official I believe is too high. I believe one day we are going to regret it.

An express right to challenge the nondisclosure requirement is included in the conference report. An express right to disclose the receipt of a subpoena to a attorney is protected. There is the requirement that the Department of Justice Inspector General must audit certain past and future uses of national security letters and provide a public report on the aggregate number of national security letters issued concerning U.S. persons. But IRS agents out there in every community in America are issuing subpoenas for your records by the thousands every week. They don't have to maintain these records.

Senator FEINGOLD and others, I am sure, would be pleased to note that the House passed a 1-year misdemeanor for knowing and willful disclosure of a national security letter with no intent to obstruct the investigation, which the Senate dropped in conference. The House of Representatives' bill said if you violate the requirement that you not disclose, and run out and tell the people whose records have been subpoenaed, you would be subject to a misdemeanor. But, oh, no, they objected to that. So now, apparently, there is no penalty if someone violates the act and tells the terrorists that you are investigating them. That ought to make people happy. We ought to feel a lot better that our liberties are being protected.

Under the conference report, recipients of a national security letter can challenge the nondisclosure requirement after 2 years, a time period where the national security interests involved will be dissipated. The Sununu bill on the floor today, that was designed to complement the conference report and to alleviate some concerns a few Senators had, allows nondisclosure to be challenged after 1 year and each and every year thereafter. Some opponents of the report wish to see sunsets placed on National Security Letters. National security letters have never been subject to sunset. They are currently governed by six permanent statutes in the code already. No abuses of national security letters have surfaced, and a New York Times article that suggests these large numbers have been issued contains many inaccuracies and that is not accurate.

I want to emphasize that. Nondisclosure is absolutely critical in national security cases. Frankly, in reality, bankers and medical doctors and others who may have records subpoenaed or requested by the national security letter, for the most part, do not desire to tell the person if the FBI agent asks them not to. But they go to their lawyers, and we have gotten so lawyerly today, the lawyer may tell them: Well, I think you have an obligation to tell this bad guy that the FBI came by and picked up his records. If you don't tell him, maybe he can sue you.

So this is a protection for the bank, for the phone company, for the doctor who gets these records subpoenaed because then he can rightly tell anybody who complains after the fact: I would have told you, but the Federal Government told me not to.

Section 215, the FISA Court business record production orders, is another matter of importance. Section 215 orders for the production of business records allows the FBI to go to the FISA Court and seek these orders. You have to go to court now and seek a judicial order of the FISA Court for ''the production of tangible things, including books, records, papers, documents and other items'' for an investigation to obtain foreign intelligence information. It doesn't allow the FBI to go out and do it on their own. They have to go to court and present evidence that would justify production—basically, a form of subpoena authority. Section 215 orders must be preapproved by a judge and cannot be used to investigate ordinary crimes or even domestic terrorism, only foreign terrorism.

Orders for the production of business records under the USA PATRIOT Act, section 215, are not and cannot be used for so-called fishing expeditions. The fishing expedition complaint is wrong—wrong—wrong—for three reasons. First, section 215 orders are court orders that must be authorized by Federal judges prior to issuance. Judicial review will cull out fishing expedition requests. Second, section 215 orders are available only for authorized national security investigations, not your run-of-the-mill investigation, a category that certainly does not include fishing expeditions. And the conference report clarifies that the orders cannot be used for threat assessments. Third, rigorous guidelines issued by the Attorney General govern when the FBI may use a section 215 order.

There has also been uproar over the three-part relevance test. The Senate bill included an unworkable and burdensome three-part relevance test. You recall—relevance plus. I opposed it. It was not good. I steadfastly believe that it was the kind of confusion that blocks legitimate action under this law and would undermine the ability for the investigators to do what we intended to authorize them to do. The test would have compromised the ability of the Government to get section 215 orders. The language of the three-prong test was ambiguous and would inevitably have resulted in major complications in terrorist investigations.

As we saw by the attacks on 9/11, seemingly small or technical barriers can make a critical difference to the success of a terrorism investigation. That is exactly what the three-prong test would have done.

Senator KYL, who spoke earlier this afternoon, Senator ROBERTS, who is chairman of the Intelligence Committee, and I sent a letter to Chairman SPECTER, expressing our strong concerns with the three-prong test and asking him not to include it in the conference report. He did as we suggested. The conference report retains the three-part test only as a way to prove relevance. The conference report lists the three prongs of the Senate test as ways the materials sought are presumed to be relevant.

No. 1, the records pertain to a foreign power or an agent of a foreign power; No. 2, the records are relevant to the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or, No. 3, the records pertain to an individual in contact with or known to a suspected agent of a foreign power.

As Senator PATRICK LEAHY explained in 2001, the ranking Democrat on our committee:

> The FBI has made a clear case that a relevance standard is appropriate for counterintelligence and counterterrorism investigations as well as for criminal investigations.

Let me just say this. Your county attorney in every county in America can issue a subpoena for your bank records, your telephone records, on the basis of relevance to an ongoing investigation.

That is how subpoenas are issued. It has always been a relevance standard. I don't see anything unusual about this at all. We provided additional protection for relevance.

The conference report also requires the application for a 215 order to include a statement of fact which shows ''reasonable grounds to believe that the records are relevant to an authorized national security investigation.'' The original PATRIOT Act simply required a showing that the records ''were sought'' for an authorized investigation. This is a Senate provision which was included in the conference report which certainly made it more difficult to obtain these national security letters, and I assume it made colleagues who have been objecting happy to see this higher burden of proof placed on the investigators. Frankly, I believe that was unnecessary.

Both the conference report and bill we are currently debating—Senator SUNUNU's PATRIOT Act Amendments bill—imposed new civil rights safeguards on the use of section 215 orders contained in the PATRIOT Act as it currently exists. So by blocking the PATRIOT Act which presently exists from being reauthorized by the Conference Report, civil rights are being diminished since the report provides enhanced protection.

The conference report clarifies and makes clear that a recipient of a 215 order has an explicit right to disclose or seek an order through an attorney and to challenge the order in court. Senator SUNUNU's bill which we are debating today and which I am certain will pass goes a bit further. I do not know that it is critical, but I am willing to accept things that are not perfect by my standards because I know we need to reauthorize the PATRIOT Act, and this is a condition of reauthorizing it. Senator SUNUNU's bill lays out the process by which a person receiving a section 215 production order may challenge the legality of that order. They can file a petition with the FISA Court, and that petition is ''immediately'' assigned to a judge who, in 72 hours after the assignment, ''shall conduct an initial review of the petition.''

The conference report also retains a 4-year sunset on section 215. In other words, this provision will expire in 4 years unless reauthorized. I don't know why that is necessary, but people apparently believed it was, and so we put it in there.

The conferees added a requirement that the Justice Department institute ''minimization procedures'' limiting the retention and dissemination of information obtained through a section 215 order for certain particularly sensitive material. The FBI request for these orders must be approved by one of three top officials at the FBI: the Director, the Deputy Director, or the Executive Assistant Director. One of those three top officials in the FBI has to sign off on it if it includes library records, medical records that would identify a person, library patron lists, book sales records, firearms sales records, tax return records, or educational records. This is a Senate provision that was accepted by the conference.

The IRS agents can walk in any time and get your tax records, for heaven's sake, but we can't get a terrorist's tax records without going through the FISA Court. A DEA agent can go into a pharmacy and examine every record in there to find out how many drugs you may have bought or anybody else may have bought. The IRS can subpoena your bank records by administrative subpoena without even the approval of a Federal prosecutor. This is not any erosion of American liberties, is the only point I am making.

Again, this does not allow them to go into your house, into the desk you own at your office, and search your personal belongings. It does not allow any Federal agent to open the trunk of your automobile, to go in your automobile, open your glove compartment, and seize anything you may have that is in your personal custody and control. You still have to have a search warrant approved by a judge on probable cause. This involves materials held by third parties.

Documents which can be obtained in this fashion are limited to the types of tangible things which could be obtained under grand jury subpoena or other Federal court orders, and the FBI must craft procedures to minimize retention and dissemination of materials gathered under this provision. OK. We will try to destroy them in so many months to minimize the danger that somebody will have a file on you. I am telling you, if you like those shows on television, the real-life cold-case files, you see where the records held for 10, 15 years turn out to be the key documents in convicting some murderer 15 years down the road. I really do not like this idea that a properly obtained document or record kept as part of a confidential investigative file has to be destroyed prematurely. But that is what we have here so people's liberties won't be undermined.

Under the conference report, the Department of Justice must conduct two

audits of the FBI's use of 215 orders, enhanced congressional and public reporting is required, and the inspector general is required to conduct an audit of all section 215 requests since the passage of the PATRIOT Act. The ironic thing is if those who support a filibuster succeed in preventing a vote on the bill, these additional civil liberties safeguards won't become law.

The language about the libraries included in Senator SUNUNU's bill is also a concern of mine. Opponents of section 215 have tried to create the impression that the FBI is using section 215 to visit libraries nationwide to check the reading records of ordinary Americans. How often have you heard that?

Rebecca Mitchell, director of the Alabama Public Library Service, has a different point of view. She wrote me a letter on August 15 and said:

> I want to personally thank you for your strong leadership to stand on the PATRIOT Act. Our libraries should not be used as a tool for terrorism. I know you have received negative comments from the American Library Association on your stand, but this is not the opinion of most librarians in our State. Please continue to fight to keep our Nation free.

The point I tried to make was that there is no special protection for a library record which would bar a Federal terrorist investigator from obtaining those records. Your local county attorney can subpoena them the same as any Federal investigator to try to stop a terrorist.

Neither section 215 nor any other provision of the PATRIOT Act specifically mentions libraries or is directed at libraries. Nevertheless, as Director Mitchell points out, it is important that library records remain obtainable as one of the kinds of ''tangible records'' a section 215 order can reach. Intelligence or investigators may have good and legitimate reasons for extending to library/bookstore records.

I would just point out that I prosecuted a number of cases. I prosecuted one guy—they made a television show about it—and we got his records and got a search warrant and seized items he had. He had a book called ''Death Dealers Manual.'' He had a book called ''Deadly Poisons.'' That was relevant evidence to help convict him of a crime.

So we are not going to allow a prosecutor access to this information. A guy may say: I don't know anything about medicine; I have never studied it. If the prosecutor goes down and checks with the library and subpoenas the records and sees that he bought three books on medicine, that may be relevant evidence to an important case. So to say that somehow library records can't be subpoenaed as part of an investigation goes beyond the pale, frankly. But because the Library Association had a fit and they complained, we have put in special protections for libraries, virtually like the spousal privilege or the priest-penitent.

I will conclude my remarks by saying that I do remain frustrated—not at the good intentions of my colleagues. They are well intentioned. Our colleagues really want to improve liberty in America. But the truth is, they have gotten off base. We have let outside groups with agendas confuse people about this legislation—confuse them as to whether historic civil liberties are being undermined when they are not—and as a result, we have had more difficulty passing this bill than we should have.

I see the Senator from Texas is presiding. I appreciate his patience in listening to me. As a former attorney general of Texas and a former member of the Supreme Court of Texas, he is a thorough scholar in these issues. I am proud to say that though he wouldn't agree with everything I have said, but in general he agrees with my view that this act is sound. He has been a steadfast advocate for it and understands the necessity of it and that it does not undermine any of the classical liberties we as Americans take for granted.

I yield the floor.

Mr. OBAMA. Mr. President, 4 years ago, following one of the most devastating attacks in our Nation's history, Congress passed the USA PATRIOT Act to give our Nation's law enforcement the tools they needed to track down terrorists who plot and lurk within our own borders and all over the world—terrorists who, right now, are looking to exploit weaknesses in our laws and our security to carry out even deadlier attacks than we saw on September 11th.

We all agreed that we needed legislation to make it harder for suspected terrorists to go undetected in this country. Americans everywhere wanted that.

But soon after the PATRIOT Act passed, a few years before I ever arrived in the Senate, I began hearing concerns from people of every background and political leaning that this law didn't just provide law enforcement the powers it needed to keep us safe, but powers it didn't need to invade our privacy without cause or suspicion.

Now, at times this issue has tended to degenerate into an ''either-or'' type of debate. Either we protect our people from terror or we protect our most cherished principles. But that is a false choice. It asks too little of us and assumes too little about America.

Fortunately, last year, the Senate recognized that this was a false choice. We put patriotism before partisanship and engaged in a real, open, and substantive debate about how to fix the PATRIOT Act. And Republicans and Democrats came together to propose sensible improvements to the Act. Unfortunately, the House was resistant to these changes, and that's why we're voting on the compromise before us.

Let me be clear: this compromise is not as good as the Senate version of the bill, nor is it as good as the SAFE Act that I have cosponsored. I suspect the vast majority of my colleagues on both sides of the aisle feel the same way. But, it's still better than what the House originally proposed.

This compromise does modestly improve the PATRIOT Act by strengthening civil liberties protections without sacrificing the tools that law enforcement needs to keep us safe. In this compromise:

We strengthened judicial review of both national security letters, the administrative subpoenas used by the FBI, and Section 215 orders, which can be used to obtain medical, financial and other personal records.

We established hard-time limits on sneak-and-peak searches and limits on roving wiretaps.

We protected most libraries from being subject to national security letters.

We preserved an individual's right to seek counsel and hire an attorney without fearing the FBI's wrath.

And we allowed judicial review of the gag orders that accompany Section 215 searches.

The compromise is far from perfect. I would have liked to see stronger judicial review of national security letters and shorter time limits on sneak and peak searches, among other things.

Senator FEINGOLD has proposed several sensible amendments—that I support—to address these issues. Unfortunately, the Majority Leader is preventing Senator FEINGOLD from offering these amendments through procedural tactics. That is regrettable because it flies in the face of the bipartisan cooperation that allowed the Senate to pass unanimously its version of the Patriot Act—a version that balanced security and civil liberty, partisanship and patriotism.

The Majority Leader's tactics are even more troubling because we will need to work on a bipartisan basis to address national security challenges in the weeks and months to come. In particular, members on both sides of the aisle will need to take a careful look at President Bush's use of warrantless wiretaps and determine the right balance between protecting our security and safeguarding our civil liberties. This is a complex issue. But only by working together and avoiding election-year politicking will we be able to give our government the necessary tools to wage the war on terror without sacrificing the rule of law.

So, I will be supporting the PATRIOT Act compromise. But I urge my colleagues to continue working on ways to improve the civil liberties protections in the PATRIOT Act after it is reauthorized.

Mrs. FEINSTEIN. Mr. President, today the Senate will take up the conference report on the USA–PATRIOT Reauthorization and Improvement Act, as modified by an agreement reached last week.

I am the original Democratic cosponsor of the unanimously passed Senate bill, as well as a cosponsor of the Combating Methamphetamine Epidemic

Act and the Reducing Crime and Terrorism at America's Seaports Act, both of which are incorporated into the conference report.

I will vote in favor of cloture on this bill, and will vote in favor of the bill when and if it comes to a vote.

At the end of last year, after careful consideration, I voted against cloture on the conference report. I took this step because of two basic concerns, both of which have been substantially diminished by the agreement which is before us today. These changes, and the fact that a consensus agreement has been reached, are the reason I am changing my position.

My first concern was with some of the provisions of the conference report. Specifically, the conference report did not provide adequate judicial review of so-called gag orders associated with the issuance of national security letters, and required those who wanted to contest these orders before a court to disclose information about their legal counsel to the FBI. This was unnecessary and inappropriate, and it has been changed.

The revised conference report clarifies that a gag order will be reviewed by a Federal court and ensures that this review will include an inquiry into whether the Government is acting in bad faith. The compromise also eliminates the onerous requirement of prior notification to the FBI about legal counsel.

On the other hand, the revised conference report does not go as far as I would have preferred. It does not adopt the original Senate language with respect to the standard to be applied for granting a Foreign Intelligence Surveillance Act warrant for physical items, including business records. This issue, usually referred to by its PATRIOT Act section number, 215, remains very controversial, and I believe the language could permit inappropriate fishing expeditions if not carefully monitored. However, the agreed-upon language does make clear that libraries performing traditional functions are largely exempt from the more intrusive aspects of the law.

Importantly, the conference report retains and extends sunset provisions on the most controversial provisions, including section 215. This is critical, as these sunset provisions, which expire in 2009, are an important element of the continued vigorous oversight necessary to ensure this law is carried out in an appropriate manner.

The second concern I had was that it appeared that efforts to forge a compromise bill had fallen apart, with acrimony and rancor marking the progress of negotiations. This was, in my view, tragic.

I have long been a supporter of the USA–PATRIOT Act. I believe it is a critical tool in defending the Nation against terrorism. But I believe that it is a tool that is most effective when it is accepted as a bipartisan, nonpolitical, effort. Simply put, if there is one area where partisan debate and petty politics have no place, it is in the area of national defense against terrorism.

So I believed strongly that a compromise bill supported by Members of both parties was essential. I recognize that achieving consensus means, almost by definition, that nobody will be completely happy with the outcome. As I noted, there are changes I would have made to this law, and I am sure most of my colleagues, Democrats and Republicans, would like other changes. But compromise and consensus require concessions and flexibility. That is why I will vote today against cloture, and why I plan to vote for the bill itself.

I explained my views in a letter I sent to the Attorney General in December. In that letter I explained, and I quote:

> It was clear to me that Senate and House negotiators had come very close to reaching agreement on the Conference Report. I believe this was critical, because only through such a consensus approach can we ensure that the Patriot Act does not continue to be polluted with partisan rancor. This law is extremely important to the safety of America, and its effectiveness depends in large part on ordinary Americans believing it is a product not of partisan politics, but of reasoned debate and compromise. Because I believed consensus was so close at hand, and so important, I voted to provide Congress additional time to resolve the last points of disagreement.
>
> Thus I was disheartened to hear that the Administration has determined not to encourage further discussion on improving and refining the Conference Report—rather, to stand fast, and urge Senators to change their votes. I hope that this is not the case. . . .
>
> With that hope, I ask that you direct your staff to work with both Republicans and Democrats to address the few remaining issues. I am confident that good-faith discussion, honest debate, and careful drafting can reduce, perhaps even eliminate, some of the points of disagreement. . . .
>
> It is critical that the Congress and the Administration demonstrate our ability to work towards consensus and agreement. I hope you will work with me to that end.

The USA–PATRIOT Act has come to be terribly misunderstood. Some think it is related to Guantanamo Bay and the detention of prisoners. Others are convinced that it authorizes torture or the secret arrest of Americans. It does none of these things.

At the same time, some have irresponsibly sought to characterize anyone who seeks to improve, or criticize, the law as somehow ''playing into the hands of the terrorists.'' They have implied that the USA–PATRIOT Act would expire in its entirety, and that we would be left with no defenses against terrorist attacks. This, too, is untrue.

When I spoke on this floor in December, advocating working together, I said, ''Congress has a long, and honorable, tradition of putting aside party politics when it comes to national security . . . it is critical that this approach be carried forward to the end, and that Congress reauthorize the USA–PATRIOT Act in a way that Americans can be confident is not the product of politics.''

I am pleased that we followed that tradition and that we put aside our differences and reached agreement. The fact that the White House and the Attorney General backed down from their intransigence and were willing to discuss and compromise is also a welcome change, and hopefully a sign of a more open approach to these issues in the future.

I expect this bill will pass into law. I believe it will make America safer. It is the responsibility of the Congress to ''provide for the Common Defense,'' and I believe we live up to that duty in this bill.

But our job will not end here. We must immediately turn to our oversight responsibilities. For instance, I understand that Senator SPECTER will be continuing his inquiry into the NSA Surveillance Program, and tomorrow the Senate Intelligence Committee will hopefully agree to take up their oversight responsibilities with respect to this program. The Judiciary Committee will also soon be holding a hearing designed to look at the FBI's progress in accepting its newly expanded intelligence missions and assess whether these efforts have been successful and whether they conform with the rule of law.

I look forward to expanding on the spirit of compromise that this bill represents.

I ask unanimous consent the letter to the Attorney General dated January 9, 2006, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, January 9, 2006.

Hon. ALBERTO GONZALES,
Attorney General of the United States, Department of Justice, Washington, DC.

DEAR MR. ATTORNEY GENERAL, Last month the Senate decided to continue debate on the USA-Patriot Act Reauthorization and Improvement Act conference report, and extended the sixteen provisions of the USA–Patriot Act until February 3, 2006. Although I am the original Democratic co-sponsor of the unanimously passed Senate bill, I voted to continue debate. I explained my reasons at length on the floor, but in summary they are simple.

It was clear to me that Senate and House negotiators had come very close to reaching agreement on the Conference Report. I believe this was critical, because only through such a consensus approach can we ensure that the Patriot Act does not continue to be polluted with partisan rancor. This law is extremely important to the safety of America, and its effectiveness depends in large part on ordinary Americans believing it is a product not of partisan politics, but of reasoned debate and compromise. Because I believed consensus was so close at hand, and so important, I voted to provide Congress additional time to resolve the last points of disagreement.

Thus I was disheartened to hear that the Administration has determined not to encourage further discussion on improving and refining the Conference Report—rather, to stand fast, and urge Senators to change their votes. I hope that this is not the case.

With that hope, I ask that you direct your staff to work with both Republicans and Democrats to address the few remaining issues. I am confident that good-faith discussion, honest debate, and careful drafting can reduce, perhaps even eliminate, some of the points of disagreement.

As I understand it, the key remaining points involve: (1) the standard to be applied by courts in determining whether to issue a so-called ''gag order'' in the context of National Security Letters; (2) the time limitations applicable to delayed-notice search warrants; and (3) the legal standard applicable to orders to permit seizure of physical items pursuant to the Foreign Intelligence Surveillance Act (Section 215).

Although I am not an appointed conferee, I have asked my staff to work with representatives from the Department of Justice (including the Federal Bureau of Investigation) and the Office of the Director of National Intelligence. I ask you to facilitate that work.

It is critical that the Congress and the Administration demonstrate our ability to work towards consensus and agreement. I hope you will work with me to that end.

Yours truly,

DIANNE FEINSTEIN
U.S. Senator.

Mr. BYRD. Mr. President, as the Senate considers legislation to reauthorize the PATRIOT Act, I am concerned that these efforts fall far short in protecting the constitutional rights of American citizens.

Last December, a bipartisan group of Senators, including myself, was rightly concerned about the PATRIOT Act conference report's failure to safeguard civil liberties, and the Senate rightly rejected that conference report.

Now we have a bill that purports to address those earlier concerns but in fact fails to do so.

It is unfortunate that valiant efforts by Senators on both sides of the aisle have not produced more meaningful changes to the PATRIOT Act. Now we are faced with an alternative that is weak and unacceptable. This bill does not make the essential adjustments needed to protect the rights of the American people.

While this bill makes some changes, such as clarifying that recipients of national security letters do not have to disclose to the FBI whether they consult an attorney, most of the so-called improvements are anemic. Worse still, section 215 of the PATRIOT Act, which casts the net of surveillance so wide as to ensnare virtually any law-abiding citizen's business or medical records, has remained untouched and unimproved.

This bill pays lip service to judicial review of gag orders placed on recipients of section 215 business records and the national security letters. However, the bill goes on to set a nearly insurmountable barrier to Americans who wish to challenge the gag order or the seizure of their records. The bill requires that the recipient prove that the Government acted in bad faith in obtaining the information. An individual may not challenge a gag order for a year, infringing on that individual's right to seek redress in their own defense.

Under the current ''improvement'', the Government may conduct ''sneak and peek'' searches, without notifying individuals for 30 days. This is more than a three-fold increase in the time period for notification that the Senate bill allowed.

Safety, the American people are told, involves a trade. They are told they must surrender their liberty in order to preserve their safety. This Orwellian compact is an insult to the constitutional liberties guaranteed to American citizens.

Let me be clear. No one in this Chamber discounts the responsibility of government to keep the American people safe in their homes. Keeping the homeland safe obviously must be of the utmost concern for the Nation and this Congress. But such efforts cannot come at the expense of civil liberties. Freedom and safety are not mutually exclusive.

All Americans know the threat that al-Qaida poses to our country. Osama bin Laden and his ilk must be prevented from executing another terrorist attack on our country. But there are many ways to fight al-Qaida.

One of the ways is to protect those same freedoms that the Taliban took away from the people of Afghanistan living under their tyrannical rule. When Americans are free to speak our minds, when we are free from the intrusions of Big Brother, when we are free to exercise—rather than sacrifice—our most prized protections, that is a blow against those who seek to denigrate our country and our Constitution.

If there is any question about the seriousness with which we as a body hold our Nation's security, let us recall last July, when 100 hundred Senators stood together—something virtually unheard of in the current divisive and partisan climate. On July 29, 2005, the Senate came together to protect the Constitution and the basic rights it affords our citizens. Senators from every State of the Union, from every political persuasion, agreed to a version of the PATRIOT Act that would reauthorize the provisions that were set to expire and which provided the Government with the tools to aggressively pursue the war on terror, while protecting the rights of law-abiding citizens. We demonstrated that as a bipartisan body, we could stand strong against the enemy while preserving the privacy of our citizens. Sadly, the strength and zeal with which we once came together have languished, and the hopes of meaningful improvement of the PATRIOT Act have been abandoned.

We must continue to make national security our top priority, as it always has been, but we can do that without sacrificing sacred liberties. I cannot support this watered-down version of an improved PATRIOT Act. The safeguards in this bill are regrettably thin, and we must not claim that such shabby protections of the constitutional rights of our people are the best that we can do.

The PRESIDING OFFICER (Mr. CORNYN). The Democratic leader.

PENSION CONFERENCE

Mr. REID. Thank you very much, Mr. President.

I hope we have the opportunity as soon as we get back to move forward on the pension conference. I hope we can do it even tonight. I don't want to see this pension bill, which is a matter that has been moved to this point on our legislative calendar on a very bipartisan basis, turned into a partisan issue. There has been too much work on a bipartisan basis to advance this bill, and it is very important to the American business community and to American workers. Billions and billions of dollars are at stake.

In fact, once the majority got serious about pension reform, consideration of this bill in the Senate has been a model of bipartisan cooperation. It would not have passed late last year without the Senate's Democratic caucus pushing for its consideration and working with Republicans to create a process by which a bipartisan consensus could be forged and acted upon by the Senate in a reasonable amount of time.

I agree that there have been unnecessary delays with regard to this legislation, and I regret that the full Senate could not act on this legislation until late last year. Consideration in the House and Senate was delayed last year for two reasons.

First of all, the administration pension proposal was narrowly focused on improving the solvency problems at the PBGC and failed to strike the necessary balance between improving pension funding and continuing the attractiveness of defined benefit pension plans to employers. It would have hastened the demise of defined pension plans, which today cover about one in five workers and provide workers greater retirement security because they provide a guaranteed stream of retirement income. The administration proposal generated little support among Republicans, but they weren't willing to buck the White House on policy grounds and instead deferred action on this legislation. That was unfortunate, but that is the way it is.

Consideration of the bill was also delayed by the decision of the House Republican leadership to hold pension reform hostage in order to advance their failed Social Security privatization plan. The House Republican leadership, as late as June of last year, was still delaying even committee consideration of the pension bill and wanted to couple pension reform with the proposal to privatize Social Security. It wasn't fair to hold this important bill hostage in order to advance the politically unpopular Social Security privatization plan. The political message to all those who cared about fixing the pension system was: Get behind our privatization plan for Social Security or you won't get your pension bill.