United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, TUESDAY, JULY 8, 2008 No. 111

# Senate

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

## PRAYER

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

Let us pray.

O maker of the seas and the Earth, speak to our hearts today that we may cling to things that cannot fail. Speak to our lawmakers that they may embrace Your purposes and do Your will. Give them rest—not from labor but strength for the work before them. And, God, we also ask You to bless this land. Defend it from the forces that seek to destroy our freedoms. May its citizens never forget that ''righteousness exalts a nation, but sin is a reproach to any people.''

Today, be with the family members of former Senator Jesse Helms as they mourn his death. Give traveling mercies to our Senators who will attend the funeral.

We pray in Your compassionate Name. Amen.

## PLEDGE OF ALLEGIANCE

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

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, July 8, 2008.*

*To the Senate:*

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

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

## RECOGNITION OF THE MAJORITY LEADER

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

## SCHEDULE

Mr. REID. Mr. President, following the leader remarks, the Senate will be in a period of morning business for an hour, with Senators permitted to speak for up to 10 minutes each during that morning hour. Following morning business, the Senate will resume consideration of the FISA legislation. We will offer and debate amendments to the bill today and begin voting sometime tomorrow morning. When we come in tomorrow morning, there will be 105 minutes left of debate time.

As previously announced, to accommodate Senators wanting to attend the funeral of Jesse Helms, there will be no votes today. We do that to honor our departed friend Jesse Helms. So there will be no votes today. That will work out just fine. It is appropriate that we do that and have no votes today.

We will be in recess from 12:30 to 2:15 today to allow our weekly Democratic caucus luncheon. Republicans, who normally have theirs the same time we do, will have theirs tomorrow. I have indicated to the Republican leader that we will protect his caucus. There will be no votes tomorrow during that period of time. Having said that, we are going to do everything we can to complete all the votes before the Republican caucus tomorrow. If we do not finish, we may have a vote after lunch. We will do that.

Around 4 o'clock tomorrow afternoon, we are going to have another vote on the Medicare doctors fix, which is so important to our country. We hope by 4 o'clock tomorrow afternoon we will pick up another vote, that we will have the 60 votes. That certainly would be good news for senior citizens, all those people on Medicare, and the doctors who want to take care of those patients.

## MEASURE PLACED ON THE CALENDAR—H.R. 6377

Mr. REID. Mr. President, I understand that H.R. 6377 is at the desk, and it is due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will read the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (H.R. 6377) to direct the Commodity Futures Trading Commission to utilize all its authority, including its emergency powers, to curb immediately the role of excessive speculation in any contract market within the jurisdiction and control of the Commodity Futures Trading Commission, on or through which energy futures or swaps are traded, and to eliminate excessive speculation, price distortion, sudden or unreasonable fluctuations or unwarranted changes in prices, or other unlawful activity that is causing major market disturbances that prevent the market from accurately reflecting the forces of supply and demand for energy commodities.

Mr. REID. Mr. President, I object to any further proceedings on this legislation at this time.

The ACTING PRESIDENT pro tempore. Objection has been heard. The bill will be placed on the calendar under rule XIV.

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



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RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to a period of morning business for up to 1 hour, with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, 232 years ago the Declaration of Independence established that humans have the right to self-government because of their unalienable rights to life, liberty and the pursuit of happiness. Preserving these principles requires the same wisdom, courage and spirit of sacrifice that characterized many 18th century Americans.

''What will our children say,'' wrote Boston attorney Josiah Quincy II in 1768, ''When they read the history of these times, should they find we tamely gave away, without one noble struggle, the most invaluable of earthly blessings? . . . let us . . . swear we will die, if we cannot live freemen!''

Indeed, the Americans chose to fight nobly and courageously. After the British surrender at the Battle of Saratoga, Lord Chatham, a member of the British House of Lords, concluded, ''I know that the conquest of English America is an impossibility. You cannot, I venture to say it, you cannot conquer America . . .''

These principles to which the representatives of the 13 colonies pledged their lives, their resources, and their honor still apply to our Nation today.

It was on this day, July 8, 1776, that the Declaration of Independence was first read publicly, having been unanimously adopted by the Congress only 4 days before.

So, today, I am pleased to join with my colleague Senator LIEBERMAN in starting a new, bipartisan tradition in the U.S. Senate. We will read the Declaration of Independence again.

During the next hour, we will also hear from important leaders in our Nation's history who saw these principles of liberty, equality, and justice as timeless.

Patrick Henry urges us to consider the consequences of weakly submitting to a tyrannical authority in the hopes of obtaining peace, rather than persisting in the fight to secure our freedom. In his famous speech at the Touro Synagogue, George Washington establishes the importance of religious freedom for the Nation.

A few days before his inauguration, Abraham Lincoln makes an impromptu speech at Independence Hall in Philadelphia, where he argues that the principles of the Declaration are incompatible with slavery. Finally, in his last letter, Thomas Jefferson reflects on the significance of the Declaration and its timeless value.

I ask unanimous consent that Senator LIEBERMAN and myself may enter into a colloquy on the reading of the Declaration of Independence and that following our colloquy, Senators WHITEHOUSE, MURKOWSKI, WEBB, MARTINEZ, and LIEBERMAN be, in that order, speakers for the remainer of morning business.

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

Mr. COBURN. ''When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.''

Mr. LIEBERMAN. ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it; and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.''

Mr. COBURN. ''He has refused his Assent to Laws, the most wholesome and necessary for the public good.

''He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

''He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.''

Mr. LIEBERMAN. ''He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

''He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

''He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.''

Mr. COBURN. ''He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

''He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

''He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.''

Mr. LIEBERMAN. ''He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

''He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

''He has affected to render the Military independent of and superior to the Civil power.

''He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended legislation:''

Mr. COBURN. ''For Quartering large bodies of armed troops among us:

''For protecting them, by a mock Trial, from punishment for any murders which they should commit on the Inhabitants of these States:

''For cutting off our Trade with all parts of the world:''

Mr. LIEBERMAN. ''For imposing Taxes on us without our Consent:

''For depriving us in many cases, of the benefits of Trial by Jury:

''For transporting us beyond Seas to be tried for pretended offences:

''For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:''

Mr. COBURN. ''For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

''For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.''

Mr. LIEBERMAN. ''He has abdicated Government here, by declaring us out of his Protection and waging War against us.

''He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the Lives of our people.

''He is at this time transporting large Armies of foreign Mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

''He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

''He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.''

Mr. COBURN. ''In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.''

Mr. LIEBERMAN. ''Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.——''

Mr. COBURN. ''We, therefore, the representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be free and independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do.—And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.''

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

## TOURO SYNAGOGUE

Mr. WHITEHOUSE. Mr. President, my home State of Rhode Island has the distinction of being home to the oldest Jewish house of worship in the United States, the Touro Synagogue in historic Newport. This synagogue was founded in 1763. Today, the synagogue stands as a handsome landmark, designed by the famous colonial architect Peter Harris, a reminder of historic days past for a community that this year, 2008, will celebrate the 350th anniversary of the first Jewish settlement in Rhode Island and a living expression today of our Jewish community's faith.

But during the infancy of our young Nation, Touro Synagogue played a major political role in defining what religious freedom would come to mean to Americans.

In 1790, the congregation at Touro Synagogue wrote to President George Washington, then in only his second year in office, when he visited Newport on a political tour to rally support for an American bill of rights. The warden of the synagogue, Moses Seixas, sought Washington's assurance that religious freedom would be guaranteed to Jews throughout the country.

In those first tumultuous years of our Republic, there was much uncertainty as to the guaranteed rights of individuals. Our Declaration of Independence had declared certain unalienable rights to be self-evident, but our Constitution did not yet include our Bill of Rights. There was no guarantee of an American's right to freely exercise his or her religion as we have today in the first amendment.

President Washington's public letter to the Touro congregation, coming from a political leader whose word was gold, left no doubt that the United States Government would defend the religious freedoms of all people, including those whose beliefs were different from the common ones, and it assured that this Government would have no part in stifling the beliefs of any who chose to worship as their conscience and traditions directed.

It was, at the time, a revolutionary promise from a revolutionary man, and I am pleased to read the full text of this historic correspondence.

To the President of the United States of America.

Sir: Permit the children of the Stock of Abraham to approach you with the most cordial affection and esteem for your person and merits, and to join with our fellow citizens in welcoming you to NewPort.

With pleasure we reflect on those days, those days of difficulty and danger, when the God of Israel, who delivered David from the peril of the sword, shielded your head in the day of battle: and we rejoice to think, that the same Spirit, who rested in the Bosom of the greatly beloved Daniel, enabling him to preside over the Provinces of the Babylonish Empire, rests and ever will rest, upon you, enabling you to discharge the arduous duties of Chief Magistrate in these States.

This was before the Civil War, so it was ''these States'' and not the ''United States.''

Deprived as we heretofore have been of the invaluable rights of free Citizens, we now with a deep sense of gratitude to the Almighty disposer of all events behold a Government, erected by the Majesty of the People, a Government, which to bigotry gives no sanction, to persecution no assistance—

You will see in Washington's reply that the wily fox knew a good phrase when he saw one.

—but generously affording to all Liberty of conscience, and immunities of Citizenship: deeming every one, of whatever Nation, tongue, or language equal parts of the great governmental Machine: This so ample and extensive Federal Union whose basics is Philanthropy, Mutual confidence and Public Virtue, we cannot but acknowledge to be the work of the Great God, who ruleth in the Armies of Heaven, and among the Inhabitants of the Earth, doing whatever seemeth him good.

For all these Blessings of civil and religious liberty which we enjoy under an equal benign administration, we desire to send up our thanks to the Ancient of Days, the great preserver of Men, beseeching him, that the Angel who conducted our forefathers through the wilderness into the promised Land, may graciously conduct you through all the difficulties and dangers of this mortal life: And, when, like Joshua full of days and full of honour; you are gathered to your Fathers, may you be admitted into the Heavenly Paradise to partake of the water of life, and the tree of immortality.

Done and Signed by order of the Hebrew Congregation in NewPort, Rhode Island August 17th 1790. Moses Seixas, Warden.

And then came the President's reply.

To the Hebrew Congregation in Newport Rhode Island.

Gentlemen,

While I receive, with much satisfaction, your Address replete with expressions of affection and esteem; I rejoice in the opportunity of assuring you, that I shall always retain a grateful remembrance of the cordial welcome I experienced in my visit to Newport, from all classes of Citizens.

The reflection on the days of difficulty and danger which are past is rendered the more sweet, from a consciousness that they are succeeded by days of uncommon prosperity and security. If we have wisdom to make the best use of the advantages with which we are now favored, we cannot fail, under the just administration of a good Government, to become a great and happy people.

The Citizens of the United States have a right to applaud themselves for having given to mankind examples of an enlarged and liberal policy: a policy worthy of imitation. All possess alike liberty of conscience and immunities of citizenship. It is now no more

that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

It would be inconsistent with the frankness of my character not to avow that I am pleased with your favorable opinion of my Administration, and fervent wishes for my felicity. May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other Inhabitants: while every one shall sit in safety understood his own vine and figtree, and there shall be none to make him afraid. May the father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in his own due time and way everlastingly happy.

G. Washington.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend from Rhode Island, Senator WHITEHOUSE, for that magnificent exchange of correspondence between the Hebrew congregation of Newport, RI, and President Washington.

May I say that Senator WHITEHOUSE, in his own bearing and substance, lives out the promise of religious freedom that our first President gave to all Americans.

Perhaps I should say I say that as one of the descendants of the Stock of Abraham who is privileged to be a Member of the Senate today. I thank Senator WHITEHOUSE. I thank Senator COBURN.

I am going to take the liberty, if I may, to speak for a few minutes while we are waiting for either Senator MURKOWSKI, Senators WEBB or MARTINEZ, who are going to read documents before I conclude.

But I particularly want to give a statement of appreciation to our colleague, Senator CORNYN of Texas, whose idea this was. He came to me and said: Why do we not try to establish a new Senate tradition, where every year, either on July 8, which, as Senator COBURN indicated, was the first public reading of the Declaration, or the day closest to July 4 when the Senate is in session, we read the Declaration, this magnificent statement of America's founding principles, purpose, destiny, and other patriotic documents of the moment to remind us what we are about as a Nation, and in some sense, to refresh our sense of national purpose and to build on the celebrations that are part of July 4.

We all love the fireworks, we all love the time to be with our family, we love the parades and, of course, we are struck now, as we are at war, in the expressions of gratitude toward those who have put on the uniform of the United States of America to defend our freedom and our security.

But this all goes back to the beginning, to the extraordinary founding of this country by an extraordinary group of human beings. The truth is we do not celebrate enough that America, unique among Nations, was not defined from the beginning by its borders, by its geography, if you will, but by its ideology, by its values, as the founding generation of Americans expressed magnificently in the first official documents.

Those words of the Declaration about the self-evident truth that all of us are created equal and endowed not by Jefferson, the great American who wrote the Declaration, not by the philosophers of the enlightenment but by our Creator, with these unalienable rights to life, liberty, and the pursuit of happiness, that paragraph, and then it says, in order to secure those rights, the Government is formed; in other words, to secure the rights to life, liberty, and the pursuit of happiness, I always like to say America is a faith-based initiative founded on those endowments from our Creator. Building this magnificent architecture of freedom stated in the poetry of the founding generation of Americans has probably had more effect, has definitely had more effect on more people and more political activity in the 200-plus years since 1776 than any other single document. Of course, other documents stating other ''isms'' have come along, Nazism, Communism, Islamism, but the Declaration of Independence, Americanism, has prevailed.

The other thing that struck me as I read the Declaration was the anger and the passion we sometimes forget our founding generation had toward Great Britain and the King for all the tyrannical usurpations of their freedom that were the cause of the Declaration.

Finally, the document is a magnificently aspirational document. It states noble goals. But let us all be honest, at this moment on this floor, particularly at the moment in 1776, where the Declaration of Independence was signed and issued, America was nowhere near realizing the glorious values stated, of equality, of life and the pursuit of life and happiness. People of color had no rights. They were not even counted equal with White people. Women had effectively no rights. I was forced, by the validity of the document, to read a terribly bigoted and offensive reference to Native Americans. But that is the story of America. The Declaration gave us our purpose. It gave us our destiny. It put us on a journey. Succeeding generations of Americans have come closer to realizing the aspirations stated in that document. Of course, the work goes on in our time as it has for every previous generation of Americans.

I appreciate very much that Senator WEBB has come to the Chamber. I am pleased to yield to him for a reading of Thomas Jefferson's last letter.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. WEBB. Mr. President, it is my pleasure to participate in this remembrance today.

For more than 200 years, the American experiment in self-government has been a witness to all nations about the power of ''the people.'' The Declaration of Independence establishes a fundamental principle that a government exists, not because some humans have a hereditary right to dominate others, but because the people themselves have consented to be governed by others.

In 1826, the Mayor of Washington, Roger Weightman, invited Thomas Jefferson to attend the 50th anniversary of the Declaration. In his letter of reply, dated June 26, Jefferson reiterates one last time, his belief in the principles of the Declaration. Thomas Jefferson died a week later, on the Fourth of July.

In that letter, Thomas Jefferson stated:

I should, indeed, with peculiar delight, have met and exchanged there congratulations personally with the small band, the remnant of that host of worthies, who joined with us on that day, in the bold and doubtful election we were to make for our country, between submission or the sword; and to have enjoyed with them the consolatory fact, that our fellow citizens, after half a century of experience and prosperity, continue to approve the choice we made.

May it be to the world, what I believe it will be (to some parts sooner, to others later, but finally to all), the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government.

That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man.

The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.

These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Virginia for a characteristically purposive and eloquent reading of a great document. I thank him for carrying the torch of Jefferson, along with that other great Virginian, Senator JOHN WARNER, in our time in the Senate.

While we await, hopefully soon, Senators MURKOWSKI and MARTINEZ, I thought I would go on and perhaps read the final document that I was going to read at the end. Before I do so, I thank Senator CORNYN of Texas whose idea this was, hoping this might form the basis of not only the Senate celebrating the documents but, of course, more than that, the values, the principles, the destiny, the American destiny captured in them and in the glorious words of our founding generation, but that we might, in doing so, perhaps carry out or begin a national civics lesson in all that we have to be

grateful for as Americans, as each succeeding generation of Americans has not only taken on the responsibility to try to move the country closer to the aspirations that are expressed in these founding documents but, of course, each succeeding generation has benefited from the promise of equality stated in these documents. I thank Senator CORNYN.

I wish to now thank the people working for him. Senators have good ideas occasionally, but it is the staff who makes sure we implement them. I wish to particularly thank Nicole Gustafson, of his staff, and Michelle Chin and also Clarine Nardi Riddle, who is my chief of staff, who has worked on this on behalf of my office.

I have always been struck by the extent to which the founding generation of Americans was powerfully religious. In fact, they came to this country, most of them, to escape religious persecution. So it is no surprise that the original documents, as you can hear, of our country, as we read this morning, are full of references to God, the Almighty, nature's God, a whole series of descriptions. That is why, I said earlier and I say with pride and gratitude, America is a faith-based institution. That is why it always seems to me that anyone who tries to separate America and religion is doing something unnatural. The remarkable balance the Founders established was of a nation premised on faith in God, whose purpose was, as a government, to secure the rights each of us have as an endowment from our Creator and yet to do that in a way that, as the Declaration, as the Constitution, as the magnificent letter from our first President, George Washington, to the Hebrew congregation of Newport, RI, makes clear, respects everybody's right to believe in whatever they wish to believe in.

It struck me once, reading the Declaration, when we say that the right to life, liberty, and the pursuit of happiness is an endowment of our Creator, that one of the rights our Founders recognized is the right not just to believe in the Creator as one who chooses but, in fact, not to believe in our Creator and to equally enjoy the protections and rights that come to all Americans. It is perhaps because the Declaration of Independence is a faith-based document that it has had such universal application and effect across the world, inspiring generation after generation of people throughout the world, in every continent of the world, to essentially pick up the torch, to accept the destiny, to revolt against tyranny and despotism, to fight in the same revolutionary spirit that comes through the Declaration of Independence that we read a few moments ago for the freedom of their own people.

Of course, if you say, as our Founders did and as we believe, that the rights to life, liberty, and the pursuit of happiness that are the premise of the Declaration of Independence were the endowment of our Creator, surely our Creator, who created heaven and the Earth and all who live on it, did not intend for those rights to life, liberty, and the pursuit of happiness to be the exclusive possession of Americans. This is the most universal declaration of human rights. It still guides our foreign policy because it is what we are all about—freedom and the extension of freedom.

I do wish to say it has inspired enormous numbers of people throughout the world to fight, as our founding generation fought, for freedom.

The document I wish to read now, chosen by staff but a fascinating one, I must say—I had never seen it before—speaks to the profound faith of the founding generation, their knowledge of the Bible. In fact, I suppose it was at the Constitutional Congress, there was a debate about the symbol of the United States of America. And before the symbol that we have now was chosen, a few of the Founders suggested—argued, in fact—that it be a portrayal of the children of Israel crossing the sea divided by God's will because they felt they were, as some of them said, establishing here a new Jerusalem.

The letter I wish to read was written by John Quincy Adams, one of the great members of the founding generation, eloquent, a fighter for freedom. He delivered an address to the New York Historical Society, celebrating the 50th anniversary of George Washington's inauguration.

In that address, he urges the people to embrace the fundamental principles that motivated the founding generation, of which he was a part, and to make them a part of daily living. He premised it all on his own belief in the Bible. So let me read it to you now:

> When the children of Israel, after forty years of wanderings in the wilderness, were about to enter the promised land, their leader Moses, who was not permitted to cross the Jordan with them, just before his removal from among them, commanded that when the Lord their God should have brought them into the land, they should put the curse upon Mount Ebal, and the blessing upon Mount Gerizim.
>
> The injunction was faithfully fulfilled by his successor Joshua. Immediately after they had taken possession of the land, Joshua built an altar to the Lord, of whole stones, upon Mount Ebal. And there he wrote, upon the stones, a copy of the law of Moses, which he had written in the presence of the children of Israel: and all Israel and their elders and officers, and their judges, stood on the two sides of the ark of the covenant, borne by the priests and Levites, six tribes over against Mount Gerizim, and six over against Mount Ebal. And he read all the words of the law, the blessings and cursings, according to all that was written in the book of the law.

Now John Quincy Adams brings it home from the Bible to America when he says:

> Fellow-citizens, the ark of your covenant is the Declaration of Independence. Your Mount Ebal, is the confederacy of separate state sovereignties, and your Mount Gerizim is the Constitution of the United States.

He continues:

> In that scene of tremendous and awful solemnity, narrated in the Holy Scriptures, there is not a curse pronounced against the people, upon Mount Ebal, not a blessing promised them upon Mount Gerizim, which your posterity may not suffer or enjoy, from your and their adherence to, or departure from, the principles of the Declaration of Independence, practically interwoven in the Constitution of the United States.

So Adams brings it right from the Bible to America, to the Declaration and the Constitution. Then he says, in conclusion:

> Lay up these principles, then in your hearts, and in your souls—

And then quoting from the Bible, or picking the metaphor up, he says—

> bind them for signs upon your hands, that they may be as frontlets between your eyes—teach them to your children—

He is speaking now of the Declaration of Independence and the Constitution—

> speaking of them when sitting in your houses, when walking by the way, when lying down and when rising up—write them upon the doorplates of your houses, and upon your gates—cling to them as to the issues of life—adhere to them as to the cords of your eternal salvation.
>
> So may your children's children at the next return of this day of jubilee—

Remember, it was 50 years after Washington's inaugural—

> after a full century of experience under your national Constitution—

Today, we are now into our third century of experience—

> celebrate it again in the full enjoyment of all the blessings recognized by you in the commemoration of this day, and of all the blessings promised to the children of Israel upon Mount Gerizim, as the reward of obedience to the law of God.

A remarkable statement of the enduring bases of our great national documents that guide us to this very day.

I am very grateful to see our friend and colleague from Alaska, Senator MURKOWSKI, in the Chamber, and I will yield now to her for the Abraham Lincoln Independence Hall speech regarding slavery.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Ms. MURKOWSKI. Thank you, Mr. President.

I am honored this morning to join with my colleagues to observe the anniversary of the Declaration of Independence and to participate by reading some of the documents that had underscored the principles of that great declaration.

Near the end of President-elect Abraham Lincoln's inaugural journey from Springfield, IL, to Washington, DC, he stopped in the city of Philadelphia. It was the occasion of George Washington's birthday.

Lincoln gave an impromptu speech at Independence Hall on February 22, 1861, and it was a speech that demonstrated his deep commitment to the principles of the Declaration of Independence. It was a commitment that would be tested in the years to come and for which he, too, gave his life.

So with that little introduction, I wish to read this impromptu address

delivered by Abraham Lincoln. He stated:

I am filled with deep emotion at finding myself standing here, in this place, where were collected together the wisdom, the patriotism, the devotion to principle, from which sprang the institutions under which we live. You have kindly suggested to me that in my hands is the task of restoring peace to the present distracted condition of the country. I can say in return, sir, that all the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated and were given to the world from this hall.

I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. I have often pondered over the dangers which were incurred by the men who assembled here, and framed and adopted that Declaration of Independence. I have pondered over the toils that were endured by the officers and soldiers of the army who achieved that Independence.

I have often inquired of myself what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of the separation of the Colonies from the motherland; but that sentiment in the Declaration of Independence which gave liberty, not alone to the people of this country, but, I hope, to the world, for all future time. It was that which gave promise that in due time the weight would be lifted from the shoulders of all men. This is the sentiment embodied in that Declaration of Independence.

Now, my friends, can this country be saved upon that basis? If it can, I will consider myself one of the happiest men in the world if I can help to save it. If it can't be saved upon that principle, it will be truly awful. But, if this country cannot be saved without giving up that principle—I was about to say I would rather be assassinated on this spot than to surrender it.

Now, in my view of the present aspect of affairs, there is no need of bloodshed and war. There is no necessity for it. I am not in favor of such a course, and I may say in advance, there will be no bloodshed unless it be forced upon the Government. The Government will not use force unless force is used against it.

My friends, this is a wholly unprepared speech. I did not expect to be called upon to say a word when I came here—I supposed I was merely to do something towards raising a flag. I may, therefore, have said something indiscreet, but I have said nothing but what I am willing to live by, and, in the pleasure of Almighty God, die by.

Mr. President, those were the words—the very eloquent words—given by President-elect Abraham Lincoln at Independence Hall on February 22, 1861—again, words that were impromptu, words that were inspired by his deep commitment, truly, to the principles embodied in our Declaration of Independence.

It is most fitting that as a Senate, as a body, we recognize those principles; that we again read those speeches from those great leaders from so many years ago, those leaders who have shaped our Nation to be the great Nation it is.

With that, I again thank the Senators who have given us the opportunity to read these profound words again and to share them with citizens across this great Nation.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank Senator MURKOWSKI for that moving reading of the statement by President Lincoln and for all she does in our time to carry on those principles.

It struck me—I said earlier the Declaration was an aspirational document and positing the self-evident truth that all of us are created equal, having this endowment from our Creator to the rights of life, liberty, and the pursuit of happiness—the great promise of equality of opportunity—that it was not realized at the time, July 4, 1776, when it was written.

One of the groups I mentioned—women—had essentially no equal rights at that time. The story of America is the story of trying to, over time, reach the aspirations of the founding generation.

It was only into the last century, as you well know, I say to my friend from Alaska, that women got the right to vote, and only more recently that women began to be elected to the Senate in some numbers. So the work goes on. Obviously, you were elected because of your qualities as a person, not because of your gender.

But I note both the progress that has been made and the progress that yet has to be made to realize the fullest range of the goals of the Founders.

Senator MARTINEZ, the final Member to speak, is on his way. I will fill in a little bit.

I say to the Senator, your reading of Lincoln inspires me to recall that I recently read a book—I forget the name of the book, but I remember the author, William Lee Miller. I remember it well because he was a teacher of mine at Yale, who has now been teaching for many years at the University of Virginia. He wrote a book recently on Lincoln, and in it he analyzes Lincoln's first inaugural address.

I thought he made a powerful point that reminded me of the extent to which Lincoln in that first inaugural address talked about the oath of office he was taking and how it transformed him. In other words, he said when he raised his hand—the right hand—and put the other hand on the Bible and said he was now pledging to protect, preserve, and defend the Constitution, it transformed him as a person. Yes, he was still Abraham Lincoln, American citizen, but he was now the President, with a solemn and sacred obligation to protect, preserve, and defend the Constitution of the United States.

That was a powerful insight, and one I think all of us—as thrilled as I remember I was, and I am sure every Member of the Senate was when we walked to the well of the Senate the first time, and every time since, on the day we were sworn in as Senators, to feel transformed by the oath we take, which puts the interests of the Constitution and our Nation first above personal interests, above party interests.

In this particularly partisan chapter of American political history, it is worth remembering that the oath we took, as Lincoln's first inaugural instructs us, was not to protect and defend and preserve ourselves or our parties but to protect, preserve, and defend the Constitution of the United States, and, of course, the United States itself most of all.

I am grateful to see my friend from Florida in the Chamber and now yield to Senator MARTINEZ for the reading of Patrick Henry's speech.

The ACTING PRESIDENT pro tempore. The Senator from Florida.

Mr. MARTINEZ. Mr. President, I thank the Senator from Connecticut and very much appreciate his contribution this morning.

I am incredibly honored to have the opportunity to talk about Patrick Henry and the words he expressed at such a vital time for our Nation. As the Senator from Connecticut knows, I am an immigrant to this land. I am one who has been the beneficiary of the fruits of liberty that were obtained by others, and I am incredibly grateful for those opportunities to live in freedom that I have been afforded by this great Nation. So the Fourth of July always ranks as a very special day on my calendar.

The words of Patrick Henry have to do with a people who felt oppression, as I did in my youth. It is, at that time in someone's life, a little difficult to determine whether it is better to resist or reconcile, whether we move in the direction of conflict or in the direction of peace.

It was in that kind of a moment that Americans in the years preceding 1776 found themselves. So on March 23, 1775, at a meeting of delegates at St. John's Church in Richmond, Patrick Henry made the case for action.

There is a picture of the inside of the church which was taken from Patrick Henry's pew. Here are some excerpts from that famous speech.

It reads:

Mr. President, it is natural to man to indulge in the illusions of hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren 'til she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? . . .

. . . We have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament.

Our petitions have been slighted; our remonstrations have produced additional violence and insult; our supplications have been disregarded; and we have been spurned, with contempt, from the foot of the throne!

In vain, after these things, may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope.

If we wish to be free—if we mean to preserve inviolate those inestimable privileges for which we have been so long contending—

if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained—we must fight! I repeat, sir, we must fight! An appeal to arms and to the God of hosts is all that is left us!

They tell us, sir, that we are weak; unable to cope with so formidable an adversary. But when shall we be stronger?

Will it be next week, or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house?

Shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual resistance by lying supinely on our backs and hugging the delusive phantom of hope, until our enemies shall have bound us hand and foot? . . .

. . . The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us.

Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us. The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave . . .

. . . It is in vain, sir, to extenuate the matter. Gentlemen may cry, Peace, Peace—but there is no peace.

The war is actually begun! The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field! Why stand we here idle?

What is it that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!

Those are the words of Patrick Henry, which I feel terribly inadequate delivering myself, but I am so honored to have this incredible opportunity, and the words ring so true today.

As we know how history unfolded, he was so correct about the fact that it was a time for action and that there would be an almighty who would stand on the side of freedom and on the side of liberty, which is still true today. I know the Senator from Connecticut would share that view with me.

I so much appreciate this wonderful opportunity, and I yield back to the Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank Senator MARTINEZ for that wonderful reading and for all that his person speaks to. He said he was an immigrant to this country, born in Cuba. The truth is, we are all immigrants, the founding generation. We are all immigrants. The original Americans were Native Americans. I think some of us whose families have been here a while may forget all of that.

The country in its founding documents posited these magnificent ideas based on faith, the endowment of our Creator, but then this openness and equality. The Senator from Florida, in his lifetime, his fresh memory, reminds us all how we have to be grateful for each succeeding generation as an obligation to accept the responsibility and, if you will, the destiny that is included in these documents—the Declaration and the Constitution—but we are also beneficiaries of those. Certainly, I have been in my life, and the Senator from Florida has been in his life.

It is great to have somebody such as the Senator from Florida, by virtue of his own ability and hard work being a Senator, to be here and to read Patrick Henry's inspiring words. That is really what America is about.

Mr. MARTINEZ. It is very special.

Mr. LIEBERMAN. Mr. President, I am honored that Senator WARNER has come to the floor. He is a great Virginian in the tradition of Jefferson, and I wish to call on him because I believe he would like to add just a few words here at the end of this hour of celebration of our independence.

Mr. WARNER. Mr. President, I see our distinguished colleague from Missouri on the floor.

Mr. BOND. Mr. President, I apologize to my friend from Virginia, but we were going to start the FISA debate at 11. I understand there is a request to extend. I would like to lock in a time when we can accommodate those Senators wishing to speak but establish a firm time when Senator ROCKEFELLER and I may begin the discussion of FISA.

Mr. WARNER. Mr. President, I am going to speak for maybe 4 minutes. My distinguished colleague from Connecticut, who is too humble to say so, perhaps, deserves credit for what is going on this morning, together with Senator CORNYN. We are about to wind up in less than 15 minutes. I would think that at 11:15 we would be ready to go on the bill, and I wish to join the Senator from Missouri on this bill.

Mr. LIEBERMAN. Mr. President, if I may, I am going to finish up in a moment with just a minute because I have had plenty of time to speak, so we will be there before 11:15.

Mr. BOND. Mr. President, are there other requests of people wishing to speak?

Mr. WARNER. No.

Mr. LIEBERMAN. No.

Mr. WARNER. So I would put it in the form of a unanimous consent request that we be allowed to continue at this point.

## EXTENSION OF MORNING BUSINESS

Mr. BOND. Mr. President, I think Senators CORNYN and DURBIN wish to speak. So after the Senator from Virginia and the Senator from Connecticut finish speaking, if we could—I would suggest that we give them the remaining time on morning business until 11:30. I ask unanimous consent to establish morning business until 11:30.

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

The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I am very heart warmed that this concept is giving us the opportunity to talk about these magnificent documents. I was fortunate at one time to be designated by the President and actually confirmed by the Senate in a position for the Nation's bicentennial to lead discussions all across America in all 50 States—and indeed I traveled to 22 foreign countries—working on the concept of America's bicentennial and of the magnificence of the Constitution, the Declaration of Independence, and the Bill of Rights. I remember so well when talking to audiences the rapt attention that was given at that period in our history about the importance of these documents. Not one, not two—I don't know how many people would say to me that they felt the hand of divine providence came down and rested upon the shoulders of the Founding Fathers to put together such a magnificent framework of government.

That framework of government today stands as the longest and oldest surviving form of a democratic republic on Earth. It is something to think about. All the other forms of government—monarchies and so forth—have either been changed or have gone into the dust bin of history but not ours. It is because of the genius of these individuals that enables us to carry forward.

I remember I was challenged one time that Switzerland's Government was continuous. I reminded them that Napoleon crossed the Alps, I think it was in—and I will check it and correct it for the record—in about 1827 and annexed Switzerland to France. That persisted for some 18 months, and then Napoleon decided it was too cold over there, didn't want it, and cut it loose and let it go. I will polish that history later on.

I believe we should focus on the magnificence of this document, its endurance, and that we are proudly the trustees of this framework of government, to make it work as envisioned by the Founding Fathers. We recognize that with the passage of time, there are things that have overtaken some of the original—not their basic concepts, but just the electronic world in which we live now, the instantaneous information world and all of those things have contributed. Nevertheless, we are the oldest surviving democratic republic on Earth today because of the magnificent work of the Founding Fathers.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I wish to thank Senator WARNER for those very eloquent words. I can't think of a better way to end this celebration of the Declaration of Independence written by Thomas Jefferson of Virginia than with the words of the great Senator from Virginia today, JOHN WARNER. I appreciate all of the Members of the Senate having participated in this celebration of our founding documents and of the principles that have given America its purpose and destiny over these many decades. Of course, we hope this will serve in its way as a teaching instrument, a civics

lesson for those around the country who may be listening.

For our own part here in the Senate, let's pledge today to uphold these principles and their values and the eloquence with which they were expressed, with the same dedication and persistence in courage as the great first generation of Americans who wrote them.

I thank the Chair, and I yield the floor.

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

Mr. DURBIN. Mr. President, it is my understanding that the time between now and 11:30 is equally divided between myself and a Senator on the Republican side?

The ACTING PRESIDENT pro tempore. That is not part of the unanimous consent agreement.

Mr. DURBIN. Is there any pending unanimous consent or any pending consent relative to the time?

The ACTING PRESIDENT pro tempore. Only that morning business continue until 11:30.

Mr. DURBIN. I ask unanimous consent to speak for 10 minutes—well, let me just make that request, that the remaining time between now and 11:30 be equally divided between the Democratic side and the Republican side and that I be allocated the Democratic time.

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

Mr. DURBIN. I thank the Chair.

## MEDICARE

Mr. DURBIN. Mr. President, after this debate on the history of our country and this institution, it is worth reflecting on the fact that were it not for this Chamber, this Senate, we may not be a United States of America. They couldn't reach an agreement on what to do with small Colonies when they became States. Would they be overwhelmed by some House of Representatives where the big Colonies with the big populations would dominate? So the small Colonies held back, and they reached a compromise. They said: We will create a Senate of small Colonies and large Colonies, soon to become States; they will each have two Senators. So even if you are small in population, you will have an equal voice as a large Colony and a large State. That is why today in the Senate, every State has two Senators regardless of its size, and that is why the Senate is of equal import in the legislative process as the House. That was the great compromise.

Then the Senate wrote its rules consistent with that compromise and said: And then within the Senate, each of these States will be recognized and respected as a minority. So it takes more votes to do things in the Senate than it does in the House. It isn't strictly a majority rules.

They created something called a filibuster. A filibuster, which some of you recall from Jimmy Stewart in ''Mr. Smith Goes to Washington,'' is when a Senator would stand and start to speak, hold the floor, stop the debate, and this Senator, by himself or herself, really controlled the Chamber. For the longest time, that is the way it worked or, in fact, didn't work. Any Senator could stop the train. Any Senator could stop the Senate.

Then, in the early 1900s, they said: Well, there ought to be a way to stop one Senator from bringing the Senate to a halt. Maybe if we came up with 67 votes or a two-thirds vote of the Senate, then we could make that Senator stop filibustering and go on with our business. That was the rule for a long time. Then in the 1960s it was changed again to 60 votes. Today that is the rule. If any Senator starts a filibuster to amend or stop any nomination, any bill, any treaty, it takes 60 votes to stop the filibuster and move forward on the bill.

How often are filibusters used? In the history of the Senate, rarely. But now there is a new game in town. The history of the Senate tells us that the largest number of filibusters in any 2-year period in the history of the Senate has been 57 filibusters.

Look at the record for this session of Congress. We have had 79 Republican filibusters, and we are still counting. In other words, 79 different times the Republican minority Senators have tried to stop the business of the Senate, stop the debate, stop the amendment, and force this vote, the 60 votes to resume business in the Senate.

Of course, every time we have to come up with 60 votes, we have to burn 30 hours off the clock. So we waste a day and a few hours. And every time we need 60 votes to move something forward, we need at least nine Republican Senators joining the 51 Democrats. That is the math of the Senate today, 51 to 49.

On many occasions, when 79 Republican filibusters were initiated, the matter before the Senate came to a halt. We could not come up with 60 votes. The filibuster prevailed. We had to move on to another item of business.

You say to yourself: How do you ever get anything done? If any Senator can stand up and stop the Senate, and 79 times in the last year and a few months this has happened, how do you ever get anything done? The answer is, there are some Senators who do not want anything to get done. They are determined that the Senate not take up controversial issues, that the Senate not pass legislation, and they are the dominant voice in the minority today.

The most recent issue that brought this before the Senate is one that affects 40 million Americans directly. I am talking about senior citizens under Medicare and another 8 or 9 million Americans under TRICARE, which is the health insurance plan for those members of the military and their families and some veterans. Here is the issue.

On July 1, there went into effect a provision that reduced the reimbursement for doctors who treated Medicare patients by 10.6 percent. We knew this was coming. We have tried to address it. Many doctors have said: This would be a disaster. If you reduce our reimbursement for Medicare, many of us cannot afford to take Medicare patients. We will reduce our caseloads, which means senior citizens will not have the choice and doctors they want.

Some of the doctors they trusted will say: I am sorry, we have to reduce the number of Medicare patients because we are not getting paid adequately by the Federal Government.

We had a provision before the Senate, and we said let's stop the 10-percent reimbursement cut from going into effect. That is what it said. The House considered that same provision, and the House passed it by a margin of 6 to 1. A majority of the Republicans joined the overwhelming number of Democrats and said: We don't want the pay cut for physicians treating Medicare patients to go into effect. It passed 6 to 1.

Then it came over here, and we thought it was fairly routine. Guess what. Filibuster No. 79. The Republicans stood up and said: We don't want you to consider this issue. You will need 60 votes to move forward on this Medicare issue. So we called it for a vote before the Fourth of July recess, and we lost. How many votes did we put on the board? We needed 60. We put 59 on the board. Of course, Senator KENNEDY is recovering. He was not here. But all the other Democrats—including Senator CLINTON who was back from the Presidential campaign, and Senator OBAMA came back—voted in favor of suspending this cut in Medicare reimbursement for physicians. But only nine of the Republicans crossed the aisle. We needed the 10th Republican, and we could not get it. We could not get 60 votes. As a result, we went home.

We are back because the issue is back because across America we are hearing from doctors, we are hearing from seniors, the American Medical Association, the American Association of Retired Persons, and scores of other health and senior groups that are saying to us: This is irresponsible. The Senate has a responsibility to stop this cut from going into effect and jeopardizing the medical care for 40 million seniors and 8 or 9 million members of military families.

So when the vote comes up tomorrow to strengthen Medicare, we need one more Republican vote. We need one more Republican Senator to join us. We are hoping that out of those who voted against this provision the last time, some have gone home and heard from seniors, heard from the doctors, and believe Medicare is important.

What I have just described to you is the centerpiece of this debate. But there is another part to it which I have to mention. The way we pay for this reimbursement to Medicare physicians is

to slightly—slightly—reduce the compensation given to private health insurance companies which are offering Medicare coverage. They are called Medicare Advantage companies. These companies were given this right to compete with Medicare a number of years back. Some of them have never been fans of Medicare. Some of them believe the private insurance companies can do a better job than the Government's Medicare Program, so they said: Let these private health insurance companies compete. Let them offer Medicare coverage.

They started offering it, and guess what happened. They started charging dramatically more for the same service that the Government Medicare Program was already providing. How much more? It was 13 to 17 percent more in cost.

Secondly, we found out they were not providing the basic health care they said they were going to provide to the Medicare people. And, third, they were using marketing practices that were unacceptable.

We reduced slightly the reimbursement to these companies so we can pay doctors under Medicare, and many of the Republicans objected saying they were more devoted to standing by these private health insurance companies than providing reimbursement for Medicare physicians.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. DURBIN. Mr. President, I ask for an additional 30 seconds.

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

Mr. DURBIN. That is the vote tomorrow. On the vote tomorrow, we need one more Republican Senator to join in this effort. We hope Senator MCCAIN will be back. I don't know Senator MCCAIN's position on this issue. I hope he is for Medicare. I hope he is against this physician Medicare cut. It is time for Senator MCCAIN to make his position clear and return to the Senate for this critically important vote, this historic vote. We want to make sure tomorrow that Medicare's future is bright. We have confidence that the doctors will be reimbursed and that seniors across America can receive their Medicare services without fear of having them cut off. We need JOHN MCCAIN on the Senate floor tomorrow. We need to make sure we have enough Republican votes tomorrow to make this bipartisan measure the same success in the Senate as it was in the House.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. CARDIN. Mr. President, I understand there is no Republican who will claim the time remaining in morning business. I ask unanimous consent that I may have the time until 11:30 a.m.

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

## FOREIGN INTELLIGENCE SURVEILLANCE AMENDMENTS ACT OF 2008

Mr. CARDIN. Mr. President, I rise today in opposition to final page of this legislation, H.R. 6304, the Foreign Intelligence Surveillance Act of 1978, FISA, Amendments Act of 2008, if it is not amended to change the retroactive immunity provisions.

The President must have the necessary authority to track terrorists, intercept their communications, and disrupt their plots. Our Nation still faces individuals and groups that are determined to do harm to Americans, as well as our interests throughout the world.

I have spent many hours at the National Security Agency, which is located in Fort Meade, MD. The men and women of our intelligence agencies are dedicated public servants who are doing a great job on behalf of their country. They are trying to do their jobs correctly, and comply with all applicable laws and regulations.

As a member of the Judiciary Committee, I have received classified briefings about the advice and requests that were given to the telecommunications companies by the U.S. Government. I have seen the opinions of counsel on this issue. I have attended numerous hearings on this issue.

Congress must indeed make needed changes to FISA to account for changes in technology and rulings from the FISA Court involving purely international communications that pass through telecommunications routes in the United States. While we have a solemn obligation to protect the American people, we must simultaneously uphold the Constitution and protect our civil liberties.

After learning about executive branch abuses in the 1960s and 1970s, Congress passed very specific laws which authorize electronic surveillance. Congress has regularly updated these measures over the years to provide the executive branch the tools it needs to investigate terrorists, while preserving essential oversight mechanisms for the courts and the Congress. FISA requires the Government to seek an order or warrant from the FISA Court before conducting electronic surveillance that may involve U.S. persons. The act also provides for postsurveillance notice to the FISA Court by the Attorney General in an emergency.

I am very concerned that the FISA law was disregarded by the administration, and want to ensure that we put an end to this type of abuse. We are a nation of laws and no one is above the law, including the President and Attorney General. The President deliberately bypassed the FISA Court for years with his warrantless wiretapping program—long after any emergency period directly following the 9/11 terrorist attacks—and did not ask Congress to change the FISA statute. In fact, President Bush refused to fully brief Congress on the Terrorist Surveillance Program, TSP, the existence of which was only exposed through a New York Times story. After the story broke, the administration reluctantly agreed to place this program under the supervision of the FISA Court.

I do believe that many of the telecommunications companies cooperated with the Government in good faith, and may be entitled to relief. But the FISA statute of 1978 already lays out procedures for the Government to seek a court order and present this order to the telecommunications companies and require their assistance. The 1978 FISA statute also provides certain immunities to telecommunications companies that provide this type of assistance to the Government.

The President chose to ignore the FISA statute. If the President did not want to use the FISA statute or wanted to change it, he had the responsibility to come to Congress and ask for that change. He cannot change the law by fiat, or by issuing a Presidential signing statement. Congress must change the law, and the courts must interpret the law. Congress and the courts have the power, and often the responsibility, to disagree with the President, and these co-equal branches have the constitutional checks to override his veto, disapprove of a request for a warrant, or strike down an action as unconstitutional.

I will vote against retroactive immunity for the telecommunications companies. The current bill only authorizes the district court to review whether the companies received written requests from the U.S. Government stating that the activity was authorized by the President and determined to be lawful by the executive branch. The Court would have to simply accept the executive branch's conclusion that the warrantless wiretapping outside of the FISA statute and without FISA Court approval was legal, which means the executive branch—not the judiciary—gets to decide whether the law was broken. I want the courts to be able to look at what the executive branch is doing. I want the court to protect individual rights. Granting this type of immunity would violate the basic separation of powers. It would also create a dangerous precedent for future administrations and private actors to violate the law, and then seek relief in Congress or from the President through an after-the-fact amnesty or pardon.

There was a way to provide the telecommunications companies with appropriate relief. Senator FEINSTEIN's amendment would have allowed the courts to grant relief to the telecommunications companies if they acted reasonably under the reasonable assumption that the Government's requests were lawful. This amendment would have preserved the independent judgment of the judiciary, and preserved the necessary check and balance in our system of government. Unfortunately, the negotiators for this legislation rejected this compromise.

I also want to note the improvements made to title I of this legislation, compared to current law and the Senate-passed Intelligence Committee version. I thank the Members of the House and Senate who worked hard on improvements to this legislation, particularly House majority leader STENY HOYER.

Title I is not perfect, but it is does bring the President's program under the FISA statute and FISA Court, and provides for oversight by Congress and the courts.

Title I contains a sunset of December 2012 for this legislation. I feel strongly that the next administration should be required to come back and justify these new authorities to Congress. As a member of the Judiciary Committee, I believe the only meaningful cooperation we received from the executive branch on this issue occurred when they were facing a sunset and a potential lapsing of their authorities and powers under the statute. Congress will then have time to evaluate how the new law has been implemented, and debate whether further changes are needed.

This legislation also requires the inspector general to review compliance with: (1) Targeting and minimization procedures; (2) reverse targeting guidelines; (3) guidelines for dissemination of U.S. person identities; and (4) guidelines for acquisition of targets who turned out to be in the United States. The inspector general review will be provided to the Attorney General, Director of National Intelligence, and the Judiciary and Intelligence Committees of the Senate and House. The public would also be given an unclassified version of these reviews, reports, and recommendations. These reviews will help Congress evaluate the new authorities under the FISA statute, and how the executive branch and the FISA Court are using these new authorities, before the legislation sunsets. Congress can then decide how best to reauthorize this program.

The bill strengthens the exclusivity language of FISA and the criminal wiretap laws. Congress is making very clear that these statutes are the exclusive means by which electronic surveillance can be legally conducted by the U.S. Government. The bill also removes a troubling attempt to unduly broaden the definition of ''electronic surveillance.''

Supreme Court Justice Anthony Kennedy, in his opinion in the recent Boumediene case on the Guantanamo detainees, stated: ''The laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law.''

I believe title I should have been strengthened by more effective court review. However, absent the retroactive immunity provisions in title II, I would support the compromise legislation, because it is important for the intelligence community to have the tools it needs. However, I regret that if the retroactive immunity provision remains unchanged in the final legislation, I will vote against the legislation, because of the fundamental problem with that provision.

In conclusion Mr. President, shortly we will be considering the amendments to the Foreign Intelligence Surveillance Act, the FISA act. I must tell you, I think it is important that our intelligence community have the tools they need to obtain information from foreign sources. That is what this legislation is about. We need to modernize the FISA law. Communication methods have changed, and we need to give the tools to the intelligence community to meet their modern needs of communication.

I serve on the Judiciary Committee. I was privy to many hearings we had, some of which were classified, to find out the information as to what we could do. We brought forward legislation that I think was the right legislation that would have given the necessary tools to the intelligence agencies to get information from foreign sources without being burdened by unnecessary court approval and protect the civil liberties of the people of this Nation. Unfortunately, that compromise was rejected.

We are in this situation today where we have had major disagreements on how to amend the FISA statutes because of the action of the Bush administration. It is absolutely clear to me that the President went beyond the legal or constitutional authority that he has in doing wiretaps without court approval. I want to make it clear, the men and women who work at our intelligence agencies, many of whom are in Maryland at NSA, are doing a great job. They are trying to do everything that is correct to protect our Nation and do it in the correct manner. It was the Bush administration that went beyond the law. It was the Bush administration that went beyond the Constitution.

It is important for us to balance the needs of our community to get information to protect us but also protect the civil liberties with the proper checks and balances in our system.

That brings me to H.R. 6304, the legislation that will shortly be before us.

Title I is a much better bill than the bill that left the Senate earlier this year. I think this bill has been worked on in a very constructive environment. I compliment not only Senator ROCKEFELLER, who is on the Senate floor, for his hard work on this legislation, I also compliment my colleague from Maryland, Congressman HOYER, the majority leader of the House of Representatives, for the work he did in bringing us together on a bill that I think is a better bill than the bill that left the Senate.

This bill provides for a sunset in 2012. That is important because I find we do not get the attention from the administration on this issue unless they are faced with a deadline from Congress. This will force the next administration to take a look at this legislation and come back to the Congress with modifications or justifications for the continuation of the legislation. I think that is an important improvement.

The legislation provides for the inspector general to review the targeting and minimization provisions. The targeting is when a U.S. citizen, perhaps indirectly, is targeted. And the minimization procedures deal with when the intelligence community gets information about an American without court approval, to minimize the use of that information or to seek court approval. Both of those provisions will be reviewed by the inspector general and reports issued back to the Congress with unclassified versions available for public inspection.

The FISA Court is strengthened through the compromise that has been reached. Let me make it clear, I would have liked to have seen the Judiciary Committee's bill passed and enacted into law. I think we can still improve title I. But I believe in the legislative process, and I think there has been a fair compromise reached on title I.

If title I were before us as an individual action, I would support the compromise because I think it is time to move forward. But there is title II, and title II is the retroactive immunity. It gives retroactive immunity to our telecommunications companies, our telephone companies. They are entitled to some relief. They acted under the urgency of the attacks on our country on September 11 and with the request of the President of the United States. They are entitled for some relief. But this provision goes way too far.

It authorizes the executive branch to determine the legality of their actions. In other words, the agency, the President who asked for the information, will determine whether the telephone companies acted properly. It should be the courts. This takes too much away from the judicial branch. It, in my view, compromises the checks and balances that are so important in our constitutional system.

We didn't have to be here. I thought Senator FEINSTEIN offered a fair compromise, and I am surprised it was not taken by the negotiators. Senator FEINSTEIN said: Why don't we let the FISA Court make a decision as to whether the telephone companies acted legally? That is a compromise I could have supported. I think it would have been a fair compromise. Unfortunately, that was rejected. Title II is a fundamental flaw in the separation of powers, in the proper protection of civil liberties of the people of this Nation, and a dangerous precedent for future action by this Congress.

I will vote to remove or modify title II by the amendments that will be presented later today. I prefer to modify it. As I suggested, I think we have compromises that can work, but I will vote

to remove it if there are no other options presented. If we do not modify title II, reluctantly I will not be able to support the compromise legislation that has been presented.

I urge my colleagues to try to get this done right. This is an important bill. Unfortunately, it is fatally flawed with the legislation that is before us.

I yield the floor.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Without objection, morning business is closed.

## FISA AMENDMENTS ACT OF 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 6304, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 6304) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the motion to proceed is agreed to and the motion to reconsider is made and laid on the table.

The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the time I consume be allocated to the Dodd amendment.

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

Mr. FEINGOLD. Mr. President, I strongly support Senator DODD's amendment to strike the immunity provision from this bill, and I especially thank the Senator from Connecticut for his leadership on this issue. Both earlier this year, when the Senate first considered FISA legislation, and again this time around, he has demonstrated tremendous resolve on this issue, and I have been proud to work with him.

Some have tried to suggest that the bill before us will leave it up to the courts to decide whether to give retroactive immunity to companies that allegedly participated in the President's illegal wiretapping program. But make no mistake, this bill will result in immunity being granted—it will—because it sets up a rigged process with only one possible outcome. Under the terms of this bill, a Federal district court would evaluate whether there is substantial evidence that a company received . . .

a written request or directive from the Attorney General or the head of an element of the intelligence community indicating that the activity was authorized by the President and determined to be lawful.

We already know, from the report of the Senate Intelligence Committee that was issued last fall, that the companies received exactly such a request or directive. This is already public information. So under the terms of this proposal, the court's decision would actually be predetermined.

As a practical matter, that means that regardless of how much information the court is permitted to review, what standard of review is employed, how open the proceedings are, and what role the plaintiffs are permitted to play, it won't matter. The court will essentially be required to grant immunity under this bill.

Now, our proponents will argue that the plaintiffs in the lawsuits against the companies can participate in briefing to the court, and this is true. But they are not allowed any access to any classified information. Talk about fighting with both hands tied behind your back. The administration has restricted information about this illegal wiretapping program so much that roughly 70 Members of this Chamber don't even have access to the basic facts about what happened. Do you believe that? So let's not pretend that the plaintiffs will be able to participate in any meaningful way in these proceedings in which Congress has made sure their claims will be dismissed.

This result is extremely disappointing. It is entirely unnecessary and unjustified, and it will profoundly undermine the rule of law in this country. I cannot comprehend why Congress would take this action in the waning months of an administration that has consistently shown contempt for the rule of law—perhaps most notably in the illegal warrantless wiretapping program it set up in secret.

We hear people argue that the telecom companies should not be penalized for allegedly taking part in this illegal program. What you don't hear, though, is that current law already provides immunity from lawsuits for companies that cooperate with the Government's request for assistance, as long as they receive either a court order or a certification from the Attorney General that no court order is needed and the request meets all statutory requirements. But if requests are not properly documented, the Foreign Intelligence Surveillance Act instructs the telephone company to refuse the Government's request, and it subjects them to liability if they instead decide to cooperate.

When Congress passed FISA three decades ago, in the wake of the extensive, well-documented wiretapping abuses of the 1960s and 1970s, it decided that in the future, telephone companies should not simply assume that any Government request for assistance to conduct electronic surveillance was appropriate. It was clear some checks needed to be in place to prevent future abuses of this incredibly intrusive power; that is, the power to listen in on people's personal conversations.

At the same time, however, Congress did not want to saddle telephone companies with the responsibility of determining whether the Government's request for assistance was legitimate. So Congress devised a good system. It devised a system that would take the guesswork out of it completely. Under that system, which is still in place today, the company's legal obligations and liability depend entirely on whether the Government has presented the company with a court order or a certification stating that certain basic requirements have been met. If the proper documentation is submitted, the company must cooperate with the request and it is, in fact, immune from liability. If the proper documentation, however, has not been submitted, the company must refuse the Government's request or be subject to possible liability in the courts.

This framework, which has been in place for 30 years, protects companies that comply with legitimate Government requests while also protecting the privacy of Americans' communications from illegitimate snooping. Granting companies that allegedly cooperated with an illegal program this new form of retroactive immunity in this bill undermines the law that has been on the books for decades—a law that was designed to prevent exactly the type of abuse that allegedly occurred here.

Even worse, granting retroactive immunity under these circumstances will undermine any new laws we pass regarding Government surveillance. If we want companies to obey the law in the future, doesn't it send a terrible message, doesn't it set a terrible precedent, to give them a ''get out of jail free'' card for allegedly ignoring the law in the past?

Last week, a key court decision on FISA undercut one of the most popular arguments in support of immunity; that is, that we need to let the companies off the hook because the State secrets privilege prevents them from defending themselves in court. A Federal Court has now held that the State secrets privilege does not apply to claims brought under FISA. Rather, more specific evidentiary rules in FISA govern in situations such as that. Shouldn't we at least let these cases proceed to see how they play out, rather than trying to solve a problem that may not even exist?

That is not all. This immunity provision doesn't just allow telephone companies off the hook; it will also make it that much harder to get at the core issue I have been raising since December 2005, which is that the President broke the law and should be held accountable. When these lawsuits are dismissed, we will be that much further away from an independent judicial review of this illegal program.

On top of all this, we are considering granting immunity when roughly 70 Members of the Senate still have not been briefed on the President's wiretapping program. The vast majority of this body still does not even know what we are being asked to grant immunity for. Frankly, I have a hard

time understanding how any Senator can vote against this amendment without this information.

I urge my colleagues to support the amendment to strike the immunity provision from the bill.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, would the distinguished Senator from Wisconsin yield for a question?

Mr. FEINGOLD. I will.

Mr. SPECTER. As the Senator from Wisconsin doubtless knows, there was a very extensive analysis of these issues by Chief Judge Walker of the San Francisco District Court handed down last Wednesday, and I think it was no coincidence that the decision preceded just a few days—after everybody knew, including Chief Judge Walker—of the Senate taking up this question.

In that opinion, Chief Judge Walker finds the Terrorist Surveillance Program unconstitutional. He says, flatly, that the language of the Foreign Intelligence Surveillance Act of 1978 means what it says on the exclusive remedy for warrants, and that the President exceeded his article II powers as Commander in Chief.

As we all know, the Detroit District Court came to the same conclusion, was reversed by the Sixth Circuit in a 2-to-1 opinion on standing, and then the Supreme Court of the United States handily ducked the question by the noncert. That is the principal constitutional confrontation of our era, on article I powers by Congress and article II powers of the President as Commander in Chief. They denied cert. And on the standing issue, as disclosed by the Senate opinion in the Sixth Circuit, the Supreme Court could easily have taken the case to resolve this big issue.

But now Judge Walker has decided, and it is very significant, because Judge Walker has these more than 40 cases pending on the effort to grant retroactive immunity. The case he decided it on is the Oregon case where State secrets are involved, with the inadvertent disclosure by the Federal agents.

It is hard for me to see how you have a State secret which is no longer secret. And you have a document, just electronic surveillance, which was disclosed, so it is no longer a secret. That remains to be decided under the opinion of Chief Judge Walker, but he says there is a ''rich lode'' of material on the standing issue.

These questions involve extraordinarily complex matters. The Senator from Wisconsin knows that. He has been deeply involved in it. And the distinguished chairman knows that, because he has been deeply involved in these matters. My question to the Senator from Wisconsin is twofold:

One, what do you see as the immediate ramifications of Chief Judge Walker's opinion handed down a few days before we are to decide it?

And a related question: What do you think of the likelihood that Members of the Senate have had or could have an adequate opportunity to review that 59-page opinion with all of its detailed ramifications?

Mr. FEINGOLD. Mr. President, I thank the Senator for asking the question. Yes, I referred to this decision in my brief comments about this amendment. I think it is obviously a significant decision. As I indicated, it deals with the State secrets issue. It says that FISA is in fact the exclusive means and that the evidentiary rules regarding FISA should control, rather than State secrets. That is an important finding. But even more important is what the Senator from Pennsylvania is alluding to, which is the broader issue that the judge didn't decide, but clearly he indicated where he would head on the question of whether the President's TSP program was illegal—and I have long believed that it was illegal. In fact, the Senator and I were the first Members to comment on the revelation of this program in December of 2005 on the floor of the Senate.

I have examined it closely myself, as a member of the Intelligence Committee and the Judiciary Committee, and I feel even more strongly today than I did then that this program was illegal and there needs to be accountability for that illegality. That accountability can come in part from litigation of the kind that involved this district court decision, and it can come from other cases that are pending. But my concern, of course, is that if we jam this bill through, it may have an impact on the ability to pursue that underlying legal issue because of the effective granting of immunity to telephone companies. So this decision has significance, but I can't tell you that I know all the ramifications.

Obviously, Members of the Senate, to answer your question, should review the opinion and have a chance to find out more about the opinion. But there are 70 Members of the Senate who haven't even had the benefit of what you and I have had, which is the briefing on the actual TSP and what happened from 2001 to 2007 with regard to wiretapping.

I thank the Senator for making this important point about Senators being ready to grant this immunity without reviewing the litigation.

Mr. SPECTER. Mr. President, if the Senator from Wisconsin will yield for just one more question? And that is, in the context, is the Senator—I asked him to yield for one more question, and I will use a microphone so perhaps he can hear me, perhaps some people on C–SPAN2 will hear me, perhaps some Senators will hear me, because we need to be heard on this subject because of its complexity.

The question relates to what the Senator from Wisconsin has said. He puts it at some 70 Members of the Senate have not been briefed on the program. I have heard from House leadership that most of the Members of the House have not been briefed on the program. There has been no official determination. The language is picked up from the allegations of the complaint as to what is alleged.

The question is, How can the Congress intelligently decide—maybe that is too high a standard. But how can the Congress, especially the world's greatest deliberative body, the U.S. Senate—how can the decision be made on electronic surveillance, granting retroactive immunity, when we don't know what we are granting retroactive immunity to?

The second part is, How can we fly in the face of the decision by the judge who is ruling on these cases—we are sending them all to him—when he, speaking for the court: The law of the case is that the terrorist surveillance program is unconstitutional, that it exceeds the authority.

The Foreign Intelligence Surveillance Act also covers the pen register and related items, so—not specifying what is involved here—whatever is involved, sending it to the judge who has already said it is unconstitutional. How can we deal in an intelligent manner given those two critical factors?

Mr. FEINGOLD. Mr. President, I again thank the Senator from Pennsylvania for his comments and question. Really, the only appropriate answer is to say ''amen'' to everything he just said. Think about this: To vote on anything when 70 Members of the Senate haven't been briefed on it seems unbelievable, and then you add to it that it has to do with the most critical issue of our time: How can we best protect our country from those who attacked us while also observing the rule of law? That would be bad enough. But then you add to it, as the Senator from Pennsylvania has indicated, that this goes to the very core issue of the structure of the Constitution. Is it really true, as the administration puts forward in defense of the TSP program, that article II of the Constitution somehow allows the executive and Commander in Chief power to override an absolutely clear, exclusive authority adopted by Congress pursuant to Justice Jackson's third tier of the test set out in his Youngstown opinion?

All of these levels are implicated by this. The Senator could not be more correct. This is an amazingly inappropriate use of legislative interference, pushed by this administration, and Senators should take a very hard look at whether they want to be associated with such an attack on the rule of law in this country.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time? The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I am opposing the amendment. So I would be taking time from Senator BOND. I ask for approximately 20 minutes.

The ACTING PRESIDENT pro tempore. Duly noted.

Mr. ROCKEFELLER. Mr. President, my colleagues have submitted two amendments seeking to accomplish somewhat the same goal before, and in a sense now down to one. Senators DODD and FEINGOLD have an amendment to strike title II of the FISA bill. It is very plain and simple, and they are very clear about that. The amendments have the same effect—eliminating the title that provides a mechanism for a U.S. district court to decide whether pending suits against telecommunications companies should be dismissed.

Two other amendments with respect to title II, to be offered by Senator SPECTER and Senator BINGAMAN, will follow. While I address those amendments in separate statements, I would like to say now with respect to the amendments that I oppose each of them and I urge that the Senate pass H.R. 6304 without amendment so that the delicate compromise which serves as best it can to protect both national security and privacy and civil liberties can, in fact, become law.

Six and a half years ago, instead of consulting with Congress about changes that might be needed to FISA, the President made the very misguided decision to create a secret surveillance program that circumvented the judicial review process and authorization required by FISA and was kept from the full congressional oversight committees. That is calling it running around the end altogether. We are right to be angry about the President's actions, but our responsibility today is to look forward. That is what this bill is about, to make sure we have adequately dealt with the numerous issues that have arisen from the President's very poor decision, bad decision.

The bill in front of us today accomplishes three important goals with respect to the President's warrantless program.

First, the bill establishes a sure and realistic method of learning the truth about the President's program—I repeat, learning the truth about the President's program. It requires the relevant inspectors general—that is a term of art. What I mean by that is the inspectors general of the CIA, DOD, NSA, et cetera, people who oversee and know what is in this program altogether—to submit an unclassified report about the program to the Congress. This report will ensure that both Congress and, by the way, therefore, obviously, the public will have as complete a picture of the President's warrantless surveillance program as possible or as messy as it may be for them to ingest.

Second, the bill tightens the exclusivity of the FISA law, making it improbable for any future President to argue that acting outside of FISA is lawful. That is huge. That means the President can never again, ever use what he has used—his all-purpose powers—and say he can just walk right around the end of FISA. He has to have a statutory authority, it has to come from us, and he cannot bypass FISA as he did altogether.

Third, the bill addresses the problems the President's decision has caused for the telecommunications companies that were told their cooperation was both legal and necessary to prevent another terrorist attack. They were not told a lot, but they were certainly told that. The bill does not provide those companies with a free pass. It requires meaningful district court review of whether statutory standards for protection from liability have been met for the companies having relied on the Government's written representations of legality.

You remember there was a period when we were using the FISA Court to make these kinds of judgments, and we bent to the better wisdom of the House with respect to the district court, which is a more public court. So they have that responsibility.

All of these pieces fit together, and not just because they are part of a larger compromise on this bill. Private companies that cooperated with the Government in good faith, as the facts before the congressional intelligence committees demonstrate they did, should not be held accountable for the President's bad policy decisions. But if the court ultimately dismisses the litigation against those companies, it is important that there be a mechanism for public disclosure about the President's program, and it is precisely, therefore, in this bill that the inspectors general report, which has to be provided to us within a year, provide that public accountability.

Likewise, we can only put past actions behind us if we can be reassured that this will not happen again, and therefore the strength in the exclusivity language in the FISA bill addresses that concern. That it does.

Together, the three components of the bill provide accountability for the mistakes of the past as well as a way to move forward.

Although title II in the bill before us today differs in important ways from the title II we passed out of the Senate this past February, the two bills address the same underlying problems faced by the telecommunications companies.

Because the majority of the information in the cases is classified, there has been no substantial progress in the cases against the telecommunications companies—several of them have been going on for years. Classified information, they can't have it; state secrets, can't have it. The Government has not even allowed the telecommunications companies in the many pending lawsuits to disclose publicly whether they assisted the Government. These companies, therefore, have not been permitted to invoke the defense to which they are entitled. But sued they are. The companies cannot reveal, for example, whether they did not participate in the program. That would be a false accusation against some company, but they cannot say that they didn't participate or that they only participated pursuant to a court order—they can't talk about that—or participated in reliance on written Government representation of legality—cannot talk about that. The bill before us today allows these defenses to be presented to the district court, the public court—not the FISA Court, which is kind of a secret court, but to the district court, which is not a secret court. It is a public court.

The Attorney General is authorized to certify to the court that particular statutory requirements have been met without requiring public acknowledgment of whether particular providers assisted the Government.

The bill then requires the district court to determine whether the Attorney General's certification is supported by ''substantial evidence.'' That is a higher, tougher standard than the ''abuse of discretion'' test we had in the Senate bill. In making this assessment, the district court is specifically authorized to review the underlying documents on which the Attorney General's certification is based. The court can, therefore, ''review any court orders, statutory directives or certifications authorizing providers' cooperation.''

Importantly, the court may also review the highly classified documents provided to the companies indicating that the President had authorized the program and that it had been determined to be lawful. Explicitly allowing the court to base its decision on whether companies are entitled to liability protection on relevant underlying documents is an important improvement to the bill, and I am happy it is in it.

Because such documents would be classified, any review of those documents in the litigation prior to this bill would have been limited to a court assessment of whether the documents were privileged. The court could not have relied on what the Government's communications to the providers actually said in making its assessment about whether the cases should be dismissed. The court could not have relied on what those Government communications said—it is different.

This bill before the Senate, therefore, gives the district court both an important role in determining whether statutory requirements for liability protection have been met and the tools to make that assessment.

The FISA bill also provides a more explicit role for the parties to the litigation—this is new and better—to ensure that they will have their day in court open—sort of, and so to speak—but they will have their day in court.

But they will have their day in court. They are provided the opportunity to brief the legal and constitutional issues before the court and may submit documents to the court for review. Whatever it is they want to submit, they can submit.

A few of my colleagues have argued that including any sort of mechanism that would allow the district court to resolve these cases will prevent the public from hearing the details about the President's program. But even if the litigation were to continue indefinitely, it would never tell the full story.

Lawsuits have now been pending for, as I indicated, over 2 years. The fight during all that time, and the likely fight in the future, has been about whether the plaintiffs will have access to any classified information about the program. The plaintiffs in the litigation, they have never been and will never be provided with wide-ranging information about the President's classified program that would enable them to put together a comprehensive picture of what happened.

This capability is reserved for those who have complete access to information about the program. And that again is why I come back to the importance of the inspectors general aspect of this oversight. You can say: inspectors general, them and their reports. Well, inspectors general can take apart their agencies, and they are sort of in there to do that.

That is why we have asked the inspectors general of these relevant intelligence agencies, including the DOD, who do, in fact, have complete access to information about the program, to conduct a comprehensive review of that same program, the whole thing.

The FISA bill requires a report of the review be submitted to the Congress in a year and requires that the report, apart from any classified annex, be submitted in an unclassified form that can be made available to the public.

That is not a dodge, that is simply a fact. You cannot release classified information to the public. So this is an appropriate way to obtain answers to questions about the President's program and ensure the public's accountability.

Critics have also claimed that granting immunity will suggest to the telecommunications companies that that compliance with the law is optional or that Congress believes that the President's program was legal. An examination of the bill that is before us in the Senate would make it impossible for anyone to come to either conclusion.

The administration made very strained arguments to circumvent existing laws in carrying out the President's warrantless surveillance program: a claim, for example, that the 2001 authorization for use of military force was a statutory authorization for electronic surveillance outside FISA, even though that authorization did not mention electronic surveillance.

What role did we expect telecommunications companies to play in those assessments of legality? To answer that question, we must consider the legal regime under which these companies were operating. Numerous statutes over the years have stressed the importance of cooperation between the telephone companies and the Federal Government, particularly in times of emergency. This has a fairly long history.

FISA itself allows the Attorney General to authorize electronic surveillance for short periods of time in emergencies prior to the submission of an application for an order. The law, as it existed in 2001 and as it exists today, grants immunity to telecommunications companies, based solely on a certification from the Attorney General that no warrant or court order is required by law, that the statutory requirements have been met, and that the specified assistance is required.

Given the need for speedy cooperation in times of emergency, Congress has never asked companies to question the Government's legal analysis that their cooperation is legal and necessary. Thus, although the telecommunications companies have always been and will always be expected to comply with the law, Congress has told them, prior to 2001, that they were entitled to rely on representations from the highest levels of Government as to what conduct was legal.

That is the way it worked. In the case of the President's surveillance program, representations of legality were made to providers from the very highest levels of Government. The FISA bill before the Senate, therefore, eliminates any possible loopholes in existing law, ensuring that neither the telecommunications companies nor any future Presidents have any doubt about what is required to comply with the law.

It strengthens the exclusivity language of FISA—I have mentioned that, I do again—making it absolutely clear that the Congress does not intend general statutes to be an exception to FISA's exclusivity requirements. In other words, no future President can therefore claim that an authorization for use of military force allows the Government to circumvent FISA.

Even more importantly for the telecommunications companies, the bill before us makes it a criminal offense to conduct electronic surveillance outside of specifically listed statutes. Unlike existing criminal and civil penalties which exempt electronic surveillance that is authorized by statute, the bill puts telecommunications companies on notice that any electronic surveillance outside FISA or specifically listed criminal intercept provisions, in the future, is a criminal offense that is subject to civil penalties for claims brought by individuals who are free to do so.

This clear language provides no room for any future President or Attorney General to argue that criminal and civil penalties should not attach for any circumvention of FISA.

Now, the improvements to this bill address many of the concerns raised with the possibility that the court might dismiss the lawsuits against the telecommunications companies. The bill before us makes clear that Congress expects compliance with the laws, and it assures that public accountability is on the Government, where it belongs, and not on the companies that acted in good faith in cooperating with the Government.

It is important to say that whatever the inspectors general come up with in their analysis of this, and believe me, they will be under the gun to do it right, that they have to report that, both unclassified and classified, to the Intelligence Committees and the Judiciary Committees in both Houses. So the oversight factor again comes in.

I think it is time to pass this bill and move forward. I urge my colleagues to oppose the Dodd-Feingold amendment.

Mr. SPECTER. Mr. President, would the Senator yield for a question; two questions, very briefly?

Mr. ROCKEFELLER. Of course.

Mr. SPECTER. The first question relates to the fact, as represented, that some 70 Members of the Senate will not have been briefed on the program.

I have been advised by the leadership in the House that most of the Members of the House have not been briefed on the program. The chairman, in detail, went over what the telephone companies cannot do because they cannot make any public disclosures.

And my question is: How can we intelligently grant retroactive immunity on a program that most Members of Congress do not know what we are granting retroactive immunity on?

Mr. ROCKEFELLER. First of all, I should point out to the distinguished Senator from Pennsylvania that there was a period when members of the Intelligence Committee, members of the Judiciary Committee, were not even able to go to the Executive Office Building to look at any of the orders that came down, President to Attorney General to National Security Advisor, then a letter to the companies. We were not allowed to do that.

The chairman and the vice chairman were allowed to do that. Nobody else was. That changed. And it changed because this Senator and a number of others put tremendous pressure, because it was such a ridiculous situation that I could not even talk to my committee members about it. And so they expanded that to include not only committee members but also some staff from both the Intelligence and Judiciary Committees.

So I would say to the good Senator that intelligence is difficult, and it is difficult to legislate it on the floor of the Senate. Let me phrase it this way. There is a common view held by many that members of the Intelligence Committee and then, to some extent, the Judiciary Committee, in fact, have the intelligence, they control the intelligence, it is all theirs.

I wish to debunk that right now. We control no intelligence. It is entirely controlled, meted out or not, by the executive branch. This executive branch

has been extremely cautious, stingy, I would say undemocratic, in doing this.

The good Senator from Missouri who is coming in now, the vice chairman of the Intelligence Committee and I have fought like bears to expand the number of people who can have access to these programs. But I cannot argue that the Senator—his point is worthy of thought.

I think then one has to consider, are the people on the Judiciary Committee and the people on the Intelligence Committee representative of good faith, people of reasonable intellect, people who know their business, and people who exercise fair judgment? I have been handed a note to say something I have already said, that the public reporting accompanying the Senate Intelligence Committee bill, detailed, with a great deal of specificity, what the companies received from the Federal Government.

That still does not allow me to argue the Senator's point. It is a peculiar and difficult nature of legislating intelligence legislation on the floor of the Senate. But it is not weakened by so doing because of what I have indicated, because of what the inspectors general, granted, not in time for this, will come up with, and, secondly, what I would call the very high standard of people who serve on both the Republican and the Democratic side of the Senate and House Judiciary Committee and Intelligence Committee.

Mr. SPECTER. Mr. President, my second question is, very briefly——

Mr. BOND. Mr. President, I would like to reclaim my time.

The ACTING PRESIDENT pro tempore. There are 34 minutes remaining in opposition. The Senator from West Virginia has the floor.

Mr. SPECTER. Mr. President, very briefly on the second question, and I will be very brief—the chairman has gone over the ineffectiveness of Congress in dealing with the statutory requirement for notice to the Intelligence Committees which wasn't followed. We have gone over the ineffectiveness of the courts in dealing with enforcing the Foreign Intelligence Surveillance Act, where the Supreme Court, as I detailed earlier, had ducked the question. So given the ineffectiveness of Congress—and I know, I chaired the Intelligence Committee in the 104th Congress and could find out hardly anything; I found the Director of the CIA knew so little about what was going on—and then the signing statements, the only recourse we have now is to the courts and to Chief Judge Walker.

So my question to you is, if we are to maintain separation of powers and determination of constitutionality, article I versus article II powers, how in the world can we act to divest Chief Judge Walker of his jurisdiction in the case, especially in light of the opinion he handed down last Wednesday?

Mr. ROCKEFELLER. I respond to the Senator from Pennsylvania by saying he indicated that Judge Walker said this was not a constitutional effort between 2001 and 2007, and it was not constitutional. But when the Senator offers his own amendment this afternoon, I will make the point I make now, that even if it is determined that the program is unconstitutional—and that, for reasons I will explain after lunch when we do the amendment, will not be possible—the immunity fact is not compromised. It is not changed. You are talking about the constitutionality of the White House's action. This bill talks about title I and then title II and a couple of other titles which referred to protecting basic rights, reverse targeting, all kinds of things such as that, which, in fact, came from Senator FEINGOLD, and it is not involved in the constitutionality. It is not involved in that. Even if the judge ruled it unconstitutional, it would make no difference whatsoever on title II.

Mr. SPECTER. I respect Senator BOND's time, and I will pursue this with the chairman when my amendment is called up later today.

I thank my colleagues.

Mrs. BOXER. I have a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mrs. BOXER. Senator DODD has yielded me 10 minutes of his time to speak in favor of his amendment to strike the immunity clause. I am wondering how I may get recognition here and how much time does Senator DODD have left in this debate?

The ACTING PRESIDENT pro tempore. There is 43 minutes remaining for the Senator from Connecticut.

Mrs. BOXER. I wonder if Senator BOND would allow me to take 10 minutes of the 43 minutes Senator DODD has remaining?

Mr. BOND. Mr. President, I am happy to accommodate the Senator from California. With respect to the comments by the Senator from Pennsylvania, I had asked that those be reserved for the arguments in favor of the amendment. How much time remains on the chairman and my side of the aisle?

The ACTING PRESIDENT pro tempore. There is 30 minutes.

Mr. BOND. We will reserve that and accommodate the Senator from California. I thank the Chair and my colleagues.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from California is recognized for 10 minutes.

Mrs. BOXER. Mr. President, I rise today to speak in strong support of the amendment offered by Senator DODD to strike the provision from the bill providing immunity to the telecom companies who assisted President Bush with his warrantless surveillance program; in essence, breaking the law they were supposed to live by. I also note that not every telecom company went along with this. There was at least one, Qwest, that refused to go along because they said it would break the law if they did so. I thank Senators DODD, FEINGOLD, LEAHY, and others for their leadership. I know these are difficult debates to have because people could say: My goodness, they are offering an amendment to the intelligence bill and, ipso facto, that must be a bad thing because they are slowing things down.

I have to say, when you are standing up to fight for liberty and justice and the truth, you should never be afraid to slow something down. As a matter of fact, it is our job to do so. I do thank my colleagues for their leadership.

I am proud to be a cosponsor of this amendment. In my support of this amendment to strike the immunity to the telecom companies who went along with the President's secret and, I believe, illegal program, I wish to say I am not seeking punishment for them. As a matter of fact, I have stated a long time ago that I support indemnification for the telecom companies. I believe Senator WHITEHOUSE took the lead on that. Senator SPECTER, at one point, I think, was involved in that and others. I thank them for their leadership on that issue.

I understand the predicament of a company that is facing the White House and the White House is saying: You need to spy on your customers because we are asking you to do it for the safety of the people. I understand their predicament. But I do believe, at this point in time, to give retroactive immunity kind of makes a mockery of the fact that we are supposed to be a government of laws, not people. We are a government of laws. Do we then come back and say: By the way, there are three laws over here we don't like so we are going to say to the people who broke them, it is OK, because we have looked at it and we think it is OK? This is America. We are a country of laws. So this issue is so important. I can't overstate how deeply I feel about it.

We cannot place the interests of the companies and, frankly, of this administration, that doesn't want the truth to come out, ahead of the constitutional rights of our citizens who seek justice in our courts. This administration is so desperate to have this immunity because they have no interest in the American people finding out the truth.

In another subject area, I had a press conference today with a wonderful man who stood up and quit the Environmental Protection Agency because they were thwarting him every step of the way as he tried to tell the truth about the real dangers, as a matter of fact, the endangerment posed by global warming. He sent the White House an e-mail, and it was entitled ''Endangerment Finding.'' The White House called and said: Take it back. We don't want to open it. And he said: It is too late. So that e-mail is floating around in cyberspace because the

White House knows, if they open it, it becomes public domain. So secrecy is what this administration lives by.

This is a blatant example of where they want to keep secret an illegal program. I don't think we should be complicit. I don't think we should enable them to avoid the constitutional scrutiny of our Federal courts. We can't sacrifice—we can't—the truth for convenient expediency. It is not American. We have a system of government that is built not only on our Constitution but on the notion of checks and balances. The Federal courts are doing their job by checking this administration's broad exercise of Executive power. That is why I will be supporting other amendments that will be coming up that deal with this matter.

Last week, Chief Judge Walker, of the Northern District of California, issued an opinion rejecting this administration's claim to have ''inherent authority'' to eavesdrop on Americans outside of statutory law. What does this Senate want to do? A lot of the leaders you hear speaking on this want to make it possible to give retroactively to this administration the inherent authority to eavesdrop on Americans outside the law. In the future, we are fixing it. Good, I am glad. I am happy. But you can't then say, but we are going to look back and change the law. It is not right.

Listen to what Judge Walker wrote:

> Congress appears clearly to have intended to establish the exclusive means for foreign intelligence activities to be conducted. Whatever power the executive might otherwise have had in this regard, FISA limits the power of the executive branch to conduct such activities and it limits the executive branch's authority to assert the State secrets privilege in response to challenges to the legality of its foreign intelligence surveillance activities.

So we, Congress, limited the power of the executive. We said: You can't assert the state secrets privilege in response to challenges to the legality of its foreign intelligence activities. And here we are rolling over with bravado to say to this administration—and by the way, I would feel the same way whoever was the President, this administration or any administration—oh, you are the absolute ruler, the King. You can do whatever you want. You can roll over. You can do all of that.

We need to protect this country from terrorists. We must. I voted to go to war against bin Laden, and I will not rest until he is gone and we break the back of al-Qaida. Unfortunately, that has gone awry. I will be very willing to have our Government listen in on conversations of the bad actors out there, but I don't want good people being spied on. That was the whole reason FISA came into being in the first place. People seem to forget the original FISA was to protect the people from being spied on, ordinary people. Suddenly, it has been turned on its head. I believe the current process works. Our system of government works. The Federal courts are exercising their constitutional duty to review Executive power.

So why in this bill are we seeking to stop that process? Why are we attempting to tie the capable hands of the Federal courts and deny our citizens their day in court? Covering up the truth is not the way to gain or regain the trust of the American people. The truth is the basis of the American ideal.

I always marveled, as a little girl and as a young woman, growing up, watching as the truth came out about America. I remember my dad, who loved this country so much, saying to me: Honey, you just watch this country. We are not afraid to admit a mistake. We are not fearful of giving people rights. We will stand up and tell the truth, even when we make the biggest mistakes.

Covering up the truth is not the way to gain the trust of the American people. Since learning, in late 2005, that the President violated the trust of our people by spying on our citizens, Congress and the American people have struggled to find out what happened. Last week, we celebrated the day we adopted the Declaration of Independence, Independence Day, July 4. In that historic document is the following phrase:

> To secure these rights, governments are instituted among men deriving their just powers from the consent of the governed.

''The consent of the governed,'' that means the law has to be behind you when you undertake to do something such as this administration did. They didn't care about the consent of the governed. They didn't care about the law that was in place. Truth is the centerpiece of justice. I don't see how we ever get to the truth if we grant this immunity. I don't. It is not, to me, about the punishment.

As I said, I will be happy to have substitution, to have the Government step in. That is not the issue. We need to get to the truth, and we all know how that happens in our country. The immunity provision in this bill sweeps the warrantless program under the carpet. It hides the truth. The people deserve better from us.

I will close with a quote by former Supreme Court Justice Sandra Day O'Connor:

> It is during our most challenging and uncertain moments that our nation's commitment to due process is severely tested. It is in those times we must preserve our commitment at home to the principles for which we fight abroad.

I hope we will support the Dodd amendment to strike the immunity provision.

I thank the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I understand we are coming up on a hard break, as they say in television, for the party lunches.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. BOND. Mr. President, I note only before we go into that break that the Senator from Pennsylvania has made a number of comments on time for the supporters of the bill that actually deserve a response.

One clear point that needs to be made in response to the Senator from Pennsylvania and the Senator from California is that Judge Walker's actions will not be dismissed if retroactive liability protection is accorded carriers. It is a case against the United States, not a case against the telephone companies.

Furthermore, I would say that the dictum in Judge Walker's opinion is contrary to higher, more authoritative courts. So Judge Walker was not correct, and I believe should his case go up on appeal, he will be found not to be accurate. But that does not go, as my colleague from West Virginia has said, to the issue of whether carriers deserve retroactive liability protection. So I will reserve my comments, and I will ask to be recognized when—when will the Senate return to session?

The ACTING PRESIDENT pro tempore. At 2:15 p.m.

Mr. BOND. Mr. President, I ask unanimous consent that I be recognized for what remains of time on this side.

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

## RECESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

## FOREIGN INTELLIGENCE SURVEILLANCE AMENDMENTS ACT OF 2008—Continued

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri is recognized for 29 minutes.

Mr. BOND. Thank you, Mr. President. I appreciate the recognition.

To begin, to clarify for the floor and our colleagues the arrangement the chairman and I have on this bill, I ask unanimous consent that Senator ROCKEFELLER manage the time in opposition to the Specter amendment and that I manage the time in opposition to the Dodd and Bingaman amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BOND. Mr. President, as I mentioned earlier today, the Senate is poised to wrap up consideration of the Foreign Intelligence Surveillance Amendments Act of 2008 in the form of H.R. 6304. Now, most of my colleagues know this legislation has had a way of hanging around for quite awhile, being caught up in the congressional process. Many, including myself, believe we should have passed it well before now, but it appears that we are on about the

5 yard line and ready to move it across into the end zone. As one who believes this badly needed update to FISA will enhance our Nation's security and advance and protect America's civil liberties and privacy rights, I certainly hope a strong majority of the Senate will pass this legislation unamended tomorrow.

Some of my colleagues have been intent on using Senate procedures to slow this legislation to a snail's pace. They have succeeded in doing so, first by choosing to ignore the Director of National Intelligence—and I will call him the DNI from now on—the DNI's pleas for modernization of the Foreign Intelligence Surveillance Act, or FISA, as we will call it, in April 2007, for over 3 months, until August of 2007, and back in December of 2007 when a Democratic Member filibustered us past the end of the year and into the recess, into 2008. It came to the floor in February when it took us several weeks to work out a way to move forward; then, once again, over the past few weeks, with another Democratic Member filibuster of sorts that pushed us past last week's recess. Up until now, we have been delayed, but one thing is sure in the Senate. Just as they say in military and basic training: No matter what you do, you can't stop the clock. Now that some of my colleagues are out of time in delaying any further, the Senate will move ahead this week, despite all of these delays.

I am very proud of the comprehensive compromise legislation before us today which passed out of the House with a strong bipartisan vote of 293 to 129. That was almost 3 weeks ago. As with the Senate's original FISA bill that passed several months ago, the compromise that is before us required a little give from all sides but, in essence, what we have before us today is basically the Senate bill all over again. Everyone who studied the language recognizes that. I have here a detailed legislative history that I will ask unanimous consent to be printed in the RECORD that explains the provisions of the bill. Chairman ROCKEFELLER submitted his own legislative history before the recess, and while we largely agree on the description of the legislation, we do have a few key differences. So as Vice Chairman of the Intelligence Committee, I believe it is important to make my views and those of several other Senators a part of the legislative history of this bill by including it in the RECORD. I therefore ask unanimous consent to have this legislative description printed in the RECORD as part of my remarks.

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

H.R. 6304, FISA AMENDMENTS ACT OF 2008

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

This section-by-section analysis is based almost entirely upon the good work of Senator John D. Rockefeller IV, Chairman of the Select Committee on Intelligence. Time did not permit us to reach an agreement on text that may have been mutually agreeable to both of us, so I have modified his section-by-section analysis to reflect my own perspective as a co-manager on this important legislation. A careful comparison of these two versions will reveal that there are fewer areas in which our analyses diverge than in which they agree.

The consideration of legislation to amend the Foreign Intelligence Surveillance Act of 1978 (''FISA'') in the 110th Congress began with the submission by the Director of National Intelligence (''DNI'') on April 12, 2007 of a proposed Foreign Intelligence Surveillance Modernization Act of 2007, as Title IV of the Administration's proposed Intelligence Authorization Act for Fiscal Year 2008. The DNI's proposal was the subject of an open hearing on May 1, 2007 and subsequent closed hearings by the Senate Select Committee on Intelligence, but was not formally introduced. It is available on the Committee's website: http://intelligence.senate.gov/070501/bill.pdf.

In May 2007, a decision by the Foreign Intelligence Surveillance Court (FISA Court) led to the creation of significant gaps in our foreign intelligence collection. As a result of this decision, throughout the summer of 2007, the DNI asked Congress to consider his FISA modernization legislation. In response to the DNI's concerns, Congress passed the Protect America Act of 2007, Pub. L. 110–55 (August 5, 2007) (''Protect America Act''). As a result of the Protect America Act, the Intelligence Community was able to close immediately the intelligence gaps that had been created by the court's decision. While the Protect America Act provided important authorities for the collection of foreign intelligence, it did not contain any retroactive civil liability protections for those electronic communication service providers who had assisted with the President's Terrorist Surveillance Program following the September 11th terrorist attacks on our nation.

The Protect America Act included a sunset of February 1, 2008. After the passage of the Protect America Act, the Chairman and Vice Chairman began to draft permanent FISA legislation. S. 2248 was reported by the Select Committee on Intelligence on October 26, 2007 (S. Rep. No. 110–209 (2007)), and then sequentially reported by the Committee on the Judiciary on November 16, 2007 (S. Rep. No. 110–258 (2008)). In the House, the original legislative vehicle was H.R. 3773. It was reported by the Committee on the Judiciary and the Permanent Select Committee on Intelligence on October 12, 2007 (H. Rep. No. 110–373 (Parts 1 and 2) (2007)). H.R. 3773 passed the House on November 15, 2007. S. 2248 passed the Senate on February 12, 2008, and was sent to the House as an amendment to H.R. 3773. On March 14, 2008, the House returned H.R. 3773 to the Senate with an amendment.

No formal conference was convened to resolve the differences between the two Houses on H.R. 3773. Instead, following an agreement reached without a formal conference, the House passed a new bill, H.R. 6304, which contains a complete compromise of the differences on H.R. 3773.

H.R. 6304 is a direct descendant of the Protect America Act and S. 2248, which became the basis for the Senate amendment to H.R. 3373 (February 12, 2008) and influenced the House amendment to H.R. 3373 (March 18, 2008). The Protect America Act, H.R. 3773, as well as the original Senate bill, S. 2248, and the legislative history of those measures constitutes the legislative history of H.R. 6304.

The section-by-section analysis and explanation set forth below is based on the analysis and explanation in the report of the Select Committee on Intelligence on S. 2248, at S. Rep. No. 110–209, pp. 12–25, as expanded and edited to reflect the floor amendments to S. 2248 and the negotiations that produced H.R. 6304.

OVERALL ORGANIZATION OF ACT

The FISA Amendments Act of 2008 (''FISA Amendments Act'') contains four titles.

Title I includes, in Section 101, a new Title VII of FISA entitled ''Additional Procedures Regarding Certain Persons Outside the United States.'' This new title of FISA (which will sunset in four and a half years) is a successor to the Protect America Act, with amendments. Sections 102 through 110 of the Act contain a number of amendments to FISA apart from the collection issues addressed in the new Title VII of FISA. These include a provision that FISA is the exclusive statutory means for electronic surveillance, important streamlining provisions, and a change in the definitions section of FISA (in Section 110 of the bill) to facilitate foreign intelligence collection against proliferators of weapons of mass destruction.

Title II establishes a new Title VIII of FISA, entitled ''Protection of Persons Assisting the Government.'' This new title establishes a long-term procedure, in new FISA Section 802, for the Government to implement statutory defenses and obtain the dismissal of civil cases against persons, principally electronic communication service providers, who assist elements of the intelligence community in accordance with defined legal documents, namely, orders of the FISA Court or certifications or directives provided for and defined by statute. Section 802 also incorporates a procedure with precise boundaries for civil liability relief for electronic communication service providers who are or may be defendants in civil cases involving an intelligence activity authorized by the President between September 11, 2001, and January 17, 2007. In addition, Title II provides for the protection, by way of preemption, of the federal government's ability to conduct intelligence activities without interference by state investigations.

Title III directs the Inspectors General of the Department of Justice, the Department of Defense, the Office of National Intelligence, the National Security Agency, and any other element of the intelligence community that participated in the President's Surveillance Program authorized by the President between September 11, 2001, and January 17, 2007, to conduct a comprehensive review of the program. The Inspectors General are required to submit a report to the appropriate committees of Congress, within one year, that addresses, among other things, all of the facts necessary to describe the establishment, implementation, product, and use of the product of the President's Surveillance Program, including the participation of individuals and entities in the private sector related to the program.

Title IV contains important procedures for the transition from the Protect America Act to the new Title VII of FISA. Section 404(a)(7) directs the Attorney General and the DNI, if they seek to replace an authorization under the Protect America Act, to submit the certification and procedures required in accordance with the new Section 702 to the FISA Court at least 30 days before the expiration of such authorizations, to the extent practicable. Title IV explicitly provides for the continued effect of orders, authorizations, and directives issued under the Protect America Act, and of the provisions pertaining to protection from liability, FISA Court jurisdiction, the use of information acquired, and Executive branch reporting requirements, past the statutory sunset of that act. Title IV also contains provisions on the

continuation of authorizations, directives, and orders under Title VII that are in effect at the time of the December 31, 2012, sunset, until their expiration within the year following the sunset.

TITLE I. FOREIGN INTELLIGENCE SURVEILLANCE

*Section 101. Targeting the Communications of Persons Outside the United States*

Section 101(a) of the FISA Amendments Act establishes a new Title VII of FISA. Entitled ''Additional Procedures Regarding Certain Persons Outside the United States,'' the new title includes, with important modifications, an authority similar to that granted by the Protect America Act as temporary sections 105A, 105B, and 105C of FISA. Those Protect America Act provisions had been placed within FISA's Title I on electronic surveillance. Moving the amended authority to a title of its own is appropriate because the authority involves not only the acquisition of communications as they are being carried but also while they are stored by electronic communication service providers.

*Section 701. Definitions*

Section 701 incorporates into Title VII the definition of nine terms that are defined in Title I of FISA and used in Title VII: ''agent of a foreign power,'' ''Attorney General,'' ''contents,'' ''electronic surveillance,'' ''foreign intelligence information,'' ''foreign power,'' ''person,'' ''United States,'' and ''United States person.'' It defines the congressional intelligence committees for the purposes of Title VII. Section 701 defines the two courts established in Title I that are assigned responsibilities under Title VII: the FISA Court and the Foreign Intelligence Surveillance Court of Review. Section 701 also defines ''intelligence community'' as found in the National Security Act of 1947. Finally, Section 701 defines a term, not previously defined in FISA, which has an important role in setting the parameters of Title VII: ''electronic communication service provider.'' This definition is connected to the objective that the acquisition of foreign intelligence pursuant to this title is meant to encompass the acquisition of stored electronic communications and related data.

*Section 702. Procedures for Targeting Certain Persons Outside the United States Other than United States Persons*

Section 702(a) sets forth the basic authorization in Title VII, replacing Section 105B of FISA, as added by the Protect America Act. Unlike the Protect America Act, the collection authority in Section 702(a) cannot be exercised until the FISA Court has conducted its review in accordance with subsection (i)(3), or the Attorney General and the DNI, acting jointly, have made a determination that exigent circumstances exist, as defined in Section 702(c)(2). Following such determination and subsequent submission of a certification and related procedures, the Court is required to conduct its review expeditiously. Authorizations must contain an effective date and may be valid for a period of up to one year from that date.

Subsequent provisions of the Act implement the prior order and effective date provisions of Section 702(a): in addition to Section 702(c)(2) which defines exigent circumstances, Section 702(i)(1)(B) provides that the court shall complete its review of certifications and procedures within 30 days (unless extended under Section 702(j)(2)); Section 702(i)(5)(A) provides for the submission of certifications and procedures to the FISA Court at least 30 days before the expiration of authorizations that are being replaced, to the extent practicable; and Section 702(i)(5)(B) provides for the continued effectiveness of expiring certifications and procedures until the court issues an order concerning their replacements.

Section 105B and Section 702(a) differ in other important respects. Section 105B authorized the acquisition of foreign intelligence information ''concerning'' persons reasonably believed to be outside the United States. To make clear that all collection under Title VII must be targeted at persons who are reasonably believed to be outside the United States, Section 702(a) eliminates the word ''concerning'' and instead authorizes ''the targeting of persons reasonably believed to be located outside the United States to collect foreign intelligence information.''

Section 702(b) establishes five related limitations on the authorization in Section 702(a). Overall, the limitations ensure that the new authority is not used for surveillance directed at persons within the United States or at United States persons. The first is a specific prohibition on using the new authority to target intentionally any person within the United States. The second provides that the authority may not be used to conduct ''reverse targeting,'' the intentional targeting of a person reasonably believed to be outside the United States if the purpose of the acquisition is to target a person reasonably believed to be in the United States. If the purpose is to target a person reasonably believed to be in the United States, then the electronic surveillance should be conducted in accordance with FISA or the criminal wiretap statutes. The third bars the intentional targeting of a United States person reasonably believed to be outside the United States. In order to target such United States person, acquisition must be conducted under three subsequent sections of Title VII, which require individual FISA court orders for United States persons: Sections 703, 704, and 705. The fourth limitation goes beyond targeting (the object of the first three limitations) and prohibits the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. The fifth is an overarching mandate that an acquisition authorized in Section 702(a) shall be conducted in a manner consistent with the Fourth Amendment to the U.S. Constitution, which provides for ''the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.''

Section 702(c) governs the conduct of acquisitions. Pursuant to Section 702(c)(1), acquisitions authorized under Section 702(a) may be conducted only in accordance with targeting and minimization procedures approved at least annually by the FISA Court and a certification of the Attorney General and the DNI, upon its submission in accordance with Section 702(g). Section 702(c)(2) describes the ''exigent circumstances'' in which the Attorney General and Director of National Intelligence may authorize targeting for a limited time without a prior court order for purposes of subsection (a). Section 702(c)(2) provides that the Attorney General and the DNI may make a determination that exigent circumstances exist because, without immediate implementation of an authorization under Section 702(a), intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance of an order pursuant to Section 702(i)(3) prior to the implementation of such authorization. Section 702(c)(3) provides that the Attorney General and the DNI may make such a determination before the submission of a certification or by amending a certification at any time during which judicial review of such certification is pending before the FISA Court.

Section 702(c)(4) addresses the concern, reflected in Section 105A of FISA as added by the Protect America Act, that the definition of electronic surveillance in Title I might prevent use of the new procedures. To address this concern, Section 105A redefined the term ''electronic surveillance'' to exclude ''surveillance directed at a person reasonably believed to be located outside of the United States.'' In contrast, Section 702(c)(4) does not change the definition of electronic surveillance, but clarifies the intent of Congress to allow the targeting of foreign targets outside the United States in accordance with Section 702 without an application for a court order under Title I of FISA. The addition of this construction paragraph, as well as the language in Section 702(a) that an authorization may occur ''notwithstanding any other law,'' makes clear that nothing in Title I of FISA shall be construed to require a court order under that title for an acquisition that is targeted in accordance with Section 702 at a foreign person outside the United States.

Section 702(d) provides, in a manner essentially identical to the Protect America Act, for the adoption by the Attorney General, in consultation with the DNI, of targeting procedures that are reasonably designed to ensure that collection is limited to targeting persons reasonably believed to be outside the United States. As provided in the Protect America Act, the targeting procedures are subject to judicial review and approval. In addition to the requirements of the Protect America Act, however, Section 702(d) provides that the targeting procedures also must be reasonably designed to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. Section 702(d)(2) subjects these targeting procedures to judicial review and approval.

Section 702(e) provides that the Attorney General, in consultation with the DNI, shall adopt, for acquisitions authorized by Section 702(a), minimization procedures that are consistent with Section 101(h) or 301(4) of FISA, which establish FISA's minimization requirements for electronic surveillance and physical searches. Unlike the Protect America Act, Section 702(e)(2) provides that the minimization procedures, which are essential to the protection of United States persons, shall be subject to judicial review and approval.

Section 702(f) provides that the Attorney General, in consultation with the DNI, shall adopt guidelines to ensure compliance with the limitations in Section 702(b), including prohibitions on the acquisition of purely domestic communications, targeting persons within the United States, targeting United States persons located outside the United States, and reverse targeting. Such guidelines shall also ensure that an application for a court order is filed as required by FISA. It is intended that these guidelines will provide clear requirements and procedures governing the appropriate implementation of the authority under this title of FISA. The Attorney General is to provide these guidelines to the congressional intelligence committees, the judiciary committees of the House of Representatives and the Senate, and the FISA Court. Subsequent provisions implement the guidelines requirement. See Section 702(g)(2)(A)(iii) (certification requirements); Section 702(l)(1) and 702(l)(2) (Attorney General and DNI assessment of compliance with guidelines); and Section 707(b)(1)(G)(ii) (reporting on noncompliance with guidelines).

Section 702(g) requires that the Attorney General and the DNI provide to the FISA Court, prior to implementation of an authorization under subsection (a), a written certification, with any supporting affidavits. In

exigent circumstances, the Attorney General and DNI may make a determination that, without immediate implementation, intelligence important to the national security may be lost or not timely acquired prior to the implementation of an authorization. It is expected that the Attorney General and the DNI will utilize this ''exigent circumstances'' exception as often as necessary to ensure the protection of our national security. For this reason, the standard to use this authority is much lower than in traditional emergency situations under FISA. In exigent circumstances, if time does not permit the submission of a certification prior to the implementation of an authorization, the certification must be submitted to the FISA Court no later than seven days after the determination is made. The seven-day time period for submission of a certification in the case of exigent circumstances is identical to the time period by which the Attorney General must apply for a court order after authorizing an emergency surveillance under other provisions of FISA, as amended by this Act.

Section 702(g)(2) sets forth the requirements that must be contained in the written certification. The required elements are: (1) the targeting and minimization procedures have been approved by the FISA Court or will be submitted to the court with the certification; (2) guidelines have been adopted to ensure compliance with the limitations of subsection (b); (3) those procedures and guidelines are consistent with the Fourth Amendment; (4) the acquisition is targeted at persons reasonably believed to be outside the United States; (5) a significant purpose of the acquisition is to obtain foreign intelligence information; and (6) an effective date for the authorization that in most cases is at least 30 days after the submission of the written certification. Additionally, as an overall limitation on the method of acquisition permitted under Section 702, the certification must attest that the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider.

Requiring an effective date in the certification serves to identify the beginning of the period of authorization (which is likely to be a year) for collection and to alert the FISA Court of when the Attorney General and DNI are seeking to begin collection. Section 702(g)(3) permits the Attorney General and DNI to change the effective date in the certification by amending the certification.

As with the Protect America Act, the certification under Section 702(g)(4) is not required to identify the specific facilities, places, premises, or property at which the acquisition under Section 702(a) will be directed or conducted. The certification shall be subject to review by the FISA Court.

Section 702(h) authorizes the Attorney General and the DNI to direct, in writing, an electronic communication service provider to furnish the Government with all information, facilities, or assistance necessary to accomplish the acquisition authorized under Section 702(a). It is important to note that such directives may be issued only in exigent circumstances pursuant to Section 702(c)(2) or after the FISA Court has conducted its review of the certification and the targeting and minimization procedures and issued an order pursuant to Section 702(i)(3). Section 702(h) requires compensation for this assistance and provides that no cause of action shall lie in any court against an electronic communication service provider for its assistance in accordance with a directive. It also establishes expedited procedures in the FISA Court for a provider to challenge the legality of a directive or the Government to enforce it. In either case, the question for the court is whether the directive meets the requirements of Section 702 and is otherwise lawful. Whether the proceeding begins as a provider challenge or a Government enforcement petition, if the court upholds the directive as issued or modified, the court shall order the provider to comply. Failure to comply may be punished as a contempt of court. The proceedings shall be expedited and decided within 30 days, unless that time is extended under Section 702(j)(2).

Section 702(i) provides for judicial review of any certification required by Section 702(g) and the targeting and minimization procedures adopted pursuant to Sections 702(d) and 702(e). In accordance with Section 702(i)(5), if the Attorney General and the DNI seek to reauthorize or replace an authorization in effect under the Act, they shall submit, to the extent practicable, the certification and procedures at least 30 days prior to the expiration of such authorization.

The court shall review certifications to determine whether they contain all the required elements. It shall review targeting procedures to assess whether they are reasonably designed to ensure that the acquisition activity is limited to the targeting of persons reasonably believed to be located outside the United States and prevent the intentional acquisition of any communication whose sender and intended recipients are known at the time of acquisition to be located in the United States. The Protect America Act had limited the review of targeting procedures to a ''clearly erroneous'' standard; Section 702(i) omits that limitation. For minimization procedures, Section 702(i) provides that the court shall review them to assess whether they meet the statutory requirements. The court is to review the certifications and procedures and issue its order within 30 days after they were submitted unless that time is extended under Section 702(j)(2). The Attorney General and the DNI may also amend the certification or procedures at any time under Section 702(i)(1)(C), but those amended certifications or procedures must be submitted to the court in no more than 7 days after amendment. The amended procedures may be used pending the court's review.

If the FISA Court finds that the certification contains all the required elements and that the targeting and minimization procedures are consistent with the requirements of subsections (d) and (e) and with the Fourth Amendment, the court shall enter an order approving their use or continued use for the acquisition authorized by Section 702(a). If it does not so find, the court shall order the Government, at its election, to correct any deficiencies or cease, or not begin, the acquisition. If acquisitions have begun, they may continue during any rehearing en banc of an order requiring the correction of deficiencies. If the Government appeals to the Foreign Intelligence Surveillance Court of Review, any collection that has begun may continue at least until that court enters an order, not later than 60 days after filing of the petition for review, which determines whether all or any part of the correction order shall be implemented during the appeal.

Section 702(j)(1) provides that judicial proceedings are to be conducted as expeditiously as possible. Section 702(j)(2) provides that the time limits for judicial review in Section 702 (for judicial review of certifications and procedures or in challenges or enforcement proceedings concerning directives) shall apply unless extended, by written order, as necessary for good cause in a manner consistent with national security.

Section 702(k) requires that records of proceedings under Section 702 shall be maintained by the FISA Court under security measures adopted by the Chief Justice in consultation with the Attorney General and the DNI. In addition, all petitions are to be filed under seal and the FISA Court, upon the request of the Government, shall consider ex parte and in camera any Government submission or portions of a submission that may include classified information. The Attorney General and the DNI are to retain directives made or orders granted for not less than 10 years.

Section 702(l) provides for oversight of the implementation of Title VII. It has three parts. First, the Attorney General and the DNI shall assess semiannually under subsection (l)(1) compliance with the targeting and minimization procedures, and the Attorney General guidelines for compliance with limitations under Section 702(b), and submit the assessment to the FISA Court and to the congressional intelligence and judiciary committees, consistent with congressional rules.

Second, under subsection (l)(2)(A), the Inspector General of the Department of Justice and the Inspector General (''IG'') of any intelligence community element authorized to acquire foreign intelligence under Section 702(a) are authorized to review compliance of their agency or element with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f). Subsections (l)(2)(B) and (l)(2)(C) mandate several statistics that the IGs shall review with respect to United States persons, including the number of disseminated intelligence reports that contain references to particular known U.S. persons, the number of U.S. persons whose identities were disseminated in response to particular requests, and the number of targets later determined to be located in the United States. Their reports shall be submitted to the Attorney General, the DNI, and the appropriate congressional committees. Section 702(l)(2) provides no statutory schedule for the completion of these IG reviews; the IGs should coordinate with the heads of their agencies about the timing for completion of the IG reviews so that they are done at a time that would be useful for the agency heads to complete their semiannual reviews.

Third, under subsection (l)(3), the head of an intelligence community element that conducts an acquisition under Section 702 shall review annually whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition and provide an accounting of information pertaining to United States persons similar to that included in the IG report. Subsection (l)(3) also encourages the head of the element to develop procedures to assess the extent to which the new authority acquires the communications of U.S. persons, and to report the results of such assessment. The review is to be used by the head of the element to evaluate the adequacy of minimization procedures. The annual review is to be submitted to the FISA Court, the Attorney General and the DNI, and to the appropriate congressional committees.

*Section 703. Certain Acquisition Inside the United States Targeting United States Persons Outside the United States*

Section 703 governs the targeting of United States persons who are reasonably believed to be outside the United States when the acquisition of foreign intelligence is conducted inside the United States. The authority and procedures of Section 703 apply when the acquisition either constitutes electronic surveillance, as defined in Title I of FISA, or is of stored electronic communications or stored electronic data. If the United States person returns to the United States, acquisition under Section 703 must cease. The Government may always, however, obtain an

order or authorization under another title of FISA.

The application procedures and provisions for a FISA Court order in Sections 703(b) and 703(c) are drawn from Titles I and III of FISA. Key among them is the requirement that the FISA Court determine that there is probable cause to believe that, for the United States person who is the target of the surveillance, the person is reasonably believed to be located outside the United States and is a foreign power or an agent, officer, or employee of a foreign power. The inclusion of United States persons who are officers or employees of a foreign power, as well as those who are agents of a foreign power as that term is used in FISA, is intended to permit the type of collection against United States persons outside the United States that has been allowed under Executive Order 12333 and existing Executive branch guidelines. The FISA Court shall also review and approve minimization procedures that will be applicable to the acquisition, and shall order compliance with such procedures.

As with FISA orders against persons in the United States, FISA orders against United States persons outside of the United States under Section 703 may not exceed 90 days and may be renewed for additional 90–day periods upon the submission of renewal applications. Emergency authorizations under Section 703 are consistent with the requirements for emergency authorizations in FISA against persons in the United States, as amended by this Act; the Attorney General may authorize an emergency acquisition if an application is submitted to the FISA Court in not more than seven days.

Section 703(g) is a construction provision that clarifies that, if the Government obtains an order and targets a particular United States person in accordance with Section 703, FISA does not require the Government to seek a court order under any other provision of FISA to target that United States person while that person is reasonably believed to be located outside the United States.

*Section 704. Other Acquisitions Targeting United States Persons Outside the United States*

Section 704 governs other acquisitions that target United States persons who are outside the United States. Sections 702 and 703 address acquisitions that constitute electronic surveillance or the acquisition of stored electronic communications. In contrast, Section 704 addresses any targeting of a United States person outside of the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required if the acquisition occurred within the United States. It thus covers not only communications intelligence, but, if it were to occur, the physical search for foreign intelligence purposes of a home, office, or business of a United States person by an element of the United States intelligence community, outside of the United States.

Pursuant to Section 704(a)(3), if the targeted United States person is reasonably believed to be in the United States while an order under Section 704 is in effect, the acquisition against that person shall cease unless authority is obtained under another applicable provision of FISA. The Government may not use Section 704 to authorize an acquisition of foreign intelligence inside the United States.

Section 704(b) describes the application to the FISA Court that is required. For an order under Section 704(c), the FISA Court must determine that there is probable cause to believe that the United States person who is the target of the acquisition is reasonably believed to be located outside the United States and is a foreign power, or an agent, officer, or employee of a foreign power. An order is valid for a period not to exceed 90 days, and may be renewed for additional 90–day periods upon submission of renewal applications meeting application requirements.

Because an acquisition under Section 704 is conducted outside the United States, or is otherwise not covered by FISA, the FISA Court is expressly not given jurisdiction to review the means by which an acquisition under this section may be conducted. Although the FISA Court's review is limited to determinations of probable cause, Section 704 anticipates that any acquisition conducted pursuant to a Section 704 order will in all other respects be conducted in compliance with relevant regulations and Executive Orders governing the acquisition of foreign intelligence outside the United States, including Executive Order 12333 or any successor order.

*Section 705. Joint Applications and Concurrent Authorizations*

Section 705 provides that if an acquisition targeting a United States person under Section 703 or 704 is proposed to be conducted both inside and outside the United States, a judge of the FISA Court may issue simultaneously, upon the request of the Government in a joint application meeting the requirements of Sections 703 and 704, orders under both sections as appropriate. If an order authorizing electronic surveillance or physical search has been obtained under Section 105 or 304, and that order is still in effect, the Attorney General may authorize, without an order under Section 703 or 704, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.

*Section 706. Use of Information Acquired Under Title VII*

Section 706 fills a void that has existed under the Protect America Act which had contained no provision governing the use of acquired intelligence. Section 706(a) provides that information acquired from an acquisition conducted under Section 702 shall be deemed to be information acquired from an electronic surveillance pursuant to Title I of FISA for the purposes of Section 106 of FISA, which is the provision of Title I of FISA that governs public disclosure or use in criminal proceedings. The one exception is for subsection (j) of Section 106, as the notice provision in that subsection, while manageable in individual Title I proceedings, would present a difficult national security question when applied to a Title VII acquisition. Section 706(b) also provides that information acquired from an acquisition conducted under Section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to Title I of FISA for the purposes of Section 106 of FISA; however, the notice provision of subsection (j) applies. Section 706 ensures a uniform standard for the types of information acquired under the new title.

*Section 707. Congressional Oversight*

Section 707 provides for additional congressional oversight of the implementation of Title VII. The Attorney General is to fully inform ''in a manner consistent with national security'' the congressional intelligence and judiciary committees about implementation of the Act at least semiannually. Each report is to include any certifications made under Section 702, the reasons for any determinations made under Section 702(c)(2), any directives issued during the reporting period, a description of the judicial review during the reporting period to include a copy of any order or pleading that contains a significant legal interpretation of Section 702, incidents of noncompliance and procedures to implement the section. With respect to Sections 703 and 704, the report must contain the number of applications made for orders under each section and the number of such orders granted, modified and denied, as well as the number of emergency authorizations made pursuant to each section and the subsequent orders approving or denying the relevant application.

*Section 708. Savings Provision*

Section 708 provides that nothing in Title VII shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of FISA. This language is designed to ensure that Title VII cannot be interpreted to prevent the Government from submitting applications and seeking orders under other titles of FISA.

*Section 101(b). Table of Contents*

Section 101(b) of the bill amends the table of contents in the first section of FISA.

*Subsection 101(c). Technical and Conforming Amendments*

Section 101(c) of the bill provides for technical and conforming amendments in Title 18 of the United States Code and in FISA.

*Section 102. Statement of Exclusive Means by which Electronic Surveillance and Interception of Certain Communications May Be Conducted*

Section 102(a) amends Title I of FISA by adding a new Section 112 of FISA. Under the heading of ''Statement of Exclusive Means by which Electronic Surveillance and Interception of Certain Communications May Be Conducted,'' the new Section 112(a) states: ''Except as provided in subsection (b), the procedures of chapters 119, 121 and 126 of Title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communication may be conducted.'' New Section 112(b) of FISA provides that only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to FISA or chapters 119, 121, or 206 of Title 18 shall constitute an additional exclusive means for the purpose of subsection (a). The new Section 112 is based on a provision which Congress enacted in 1978 as part of the original FISA that is codified in Section 2511(2)(f) of Title 18, United States Code, and which will remain in the U.S. Code.

Section 102(a) strengthens the statutory provisions pertaining to electronic surveillance and interception of certain communications to clarify the express intent of Congress that these statutory provisions are the exclusive means for conducting electronic surveillance and interception of certain communications. This section makes it clear that any existing statute cannot be used in the future as the statutory basis for circumventing FISA. Section 102(a) is intended to ensure that additional exclusive means for surveillance or interceptions shall be express statutory authorizations.

In accord with Section 102(b) of the bill, Section 109 of FISA that provides for criminal penalties for violations of FISA, is amended to implement the exclusivity requirement added in Section 112 by making clear that the safe harbor to FISA's criminal offense provision is limited to statutory authorizations for electronic surveillance or the interception of domestic wire, oral, or electronic communications which are pursuant to a provision of FISA, one of the enumerated chapters of the criminal code, or a

statutory authorization that expressly provides an additional exclusive means for conducting the electronic surveillance. By virtue of the cross-reference in Section 110 of FISA to Section 109, that limitation on the safe harbor in Section 109 applies equally to Section 110 on civil liability for conducting unlawful electronic surveillance.

Section 102(c) requires that, if a certification for assistance to obtain foreign intelligence is based on statutory authority, the certification provided to an electronic communication service provider is to include the specific statutory authorization for the request for assistance and certify that the statutory requirements have been met. This provision is designed to assist electronic communication service providers in understanding the legal basis for any government request for assistance.

In the section-by-section analysis of S. 2248, the report of the Select Committee on Intelligence (S. Rep. No. 110–209, at 18) described and incorporated the discussion of exclusivity in the 1978 conference report on the original Foreign Intelligence Surveillance Act, in particular the conferees' description of the analysis in *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579, 637 (1952) and the application of the principles described there to the current legislation. That full discussion should be deemed incorporated in this section-by-section analysis.

Section 102 of the bill will not—and cannot—preclude the President from exercising his Article II constitutional authority to conduct warrantless foreign intelligence surveillance. At most, this exclusive means provision only places the President at his ''lowest ebb'' under the third prong of the Youngstown case analysis. That is exactly where the President was when FISA was passed back in 1978 and the ''revised'' exclusive means provision in this bill does not change this fact. Even at his lowest ebb, the President's authority with respect to intercepting enemy communications is still quite strong, especially when compared to the nonexistent capability of Congress to engage in similar interception activities.

Further, Section 102(c) actually reinforces the President's Article II authority, stating that ''if a certification . . . for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision and shall certify that the statutory requirements have been met.'' The implication from such language is that if a certification is not based on statutory authority, then citing statutory authority would be unnecessary. This language thus acknowledges that certifications may be based on something other than statutory authority, namely the President's inherent constitutional authority.

*Section 103. Submittal to Congress of Certain Court Orders under the Foreign Intelligence Surveillance Act of 1978*

Section 6002 of the Intelligence Reform Act and Terrorism Prevention Act of 2004 (Pub. L. 108–458), added a Title VI to FISA that augments the semiannual reporting obligations of the Attorney General to the intelligence and judiciary committees of the Senate and House of Representatives. Under Section 6002, the Attorney General shall report a summary of significant legal interpretations of FISA in matters before the FISA Court or Foreign Intelligence Surveillance Court of Review. The requirement extends to interpretations presented in applications or pleadings filed with either court by the Department of Justice. In addition to the semiannual summary, the Department of Justice is required to provide copies of court decisions, but not orders, which include significant interpretations of FISA. The importance of the reporting requirement is that, because the two courts conduct their business in secret, Congress needs the reports to know how the law it has enacted is being interpreted.

Section 103 adds to the Title VI reporting requirements in three ways. First, as significant legal interpretations may be included in orders as well as opinions, Section 103 requires that orders also be provided to the committees. Second, as the semiannual report often takes many months after the end of the semiannual period to prepare, Section 103 accelerates provision of information about significant legal interpretations by requiring the submission of such decisions, orders, or opinions within 45 days. Finally, Section 103 requires that the Attorney General shall submit a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, from the period five years preceding enactment of the bill that has not previously been submitted to the congressional intelligence and judiciary committees. The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of documents submitted in accordance with subsection 103(c) as necessary to protect national security.

OVERVIEW OF SECTIONS 104 THROUGH SECTION 109; FISA STREAMLINING

Sections 104 through 109 amend various sections of FISA for such purposes as reducing a paperwork requirement, modifying time requirements, or providing additional flexibility in terms of the range of Government officials who may authorize FISA actions. Collectively, these amendments are described as streamlining amendments. In general, they are intended to increase the efficiency of the FISA process without depriving the FISA Court of the information it needs to make findings required under FISA.

*Section 104. Applications for Court Orders*

Section 104 of the bill strikes two of the eleven paragraphs on standard information in an application for a surveillance order under Section 104 of FISA, either because the information is provided elsewhere in the application process or is not needed.

In various places, FISA has required the submission of ''detailed'' information, as in Section 104 of FISA, ''a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance.'' The DNI requested legislation that asked that ''summary'' be substituted for ''detailed'' for this and other application requirements, in order to reduce the length of FISA applications. In general, the bill approaches this by eliminating the mandate for ''detailed'' descriptions, leaving it to the FISA Court and the Government to work out the level of specificity needed by the FISA Court to perform its statutory responsibilities. With respect to one item of information, ''a statement of the means by which the surveillance will be effected,'' the bill modifies the requirement by allowing for ''a summary statement.''

In aid of flexibility, Section 104 increases the number of individuals who may make FISA applications by allowing the President to designate the Deputy Director of the Federal Bureau of Investigation (''FBI'') as one of those individuals. This should enable the Government to move more expeditiously to obtain certifications when the Director of the FBI is away from Washington or otherwise unavailable.

Subsection (b) of Section 104 of FISA is eliminated as obsolete in light of current applications. The Director of the Central Intelligence Agency is added to the list of officials who may make a written request to the Attorney General to personally review a FISA application as the head of the CIA had this authority prior to the establishment of the Office of the Director of National Intelligence.

*Section 105. Issuance of an Order*

Section 105 strikes from Section 105 of FISA several unnecessary or obsolete provisions. Section 105 strikes subsection (c)(1)(F) of Section 105 of FISA which requires minimization procedures applicable to each surveillance device employed because Section 105(c)(2)(A) requires each order approving electronic surveillance to direct the minimization procedures to be followed.

Subsection (a)(6) reorganizes, in more readable form, the emergency surveillance provision of Section 105(f), now redesignated Section 105(e), with a substantive change of extending from 3 to 7 days the time by which the Attorney General must apply for and obtain a court order after authorizing an emergency surveillance. The purpose of the change is to ease the administrative burdens upon the Department of Justice, the Intelligence Community, and the FISA Court currently imposed by the three-day requirement.

Subsection (a)(7) adds a new paragraph to Section 105 of FISA to require the FISA Court, on the Government's request, when granting an application for electronic surveillance, to authorize at the same time the installation and use of pen registers and trap and trace devices. This change recognizes that when the Intelligence Community seeks to use electronic surveillance, pen register and trap and trace information is often essential to conducting complete surveillance, and the Government should not need to file two separate applications.

*Section 106. Use of Information*

Section 106 amends Section 106(i) of FISA with regard to the limitations on the use of unintentionally acquired information. Currently, Section 106(i) of FISA provides that unintentionally acquired radio communication between persons located in the United States must be destroyed unless the Attorney General determines that the contents of the communications indicates a threat of death or serious bodily harm to any person. Section 106 of the bill amends subsection 106(i) of FISA by making it technology neutral on the principle that the same rule for the use of information indicating threats of death or serious harm should apply no matter how the communication is transmitted.

*Section 107. Amendments for Physical Searches*

Section 107 makes changes to Title III of FISA: changing applications and orders for physical searches to correspond to changes in Sections 104 and 105 on reduction of some application paperwork; providing the FBI with administrative flexibility in enabling its Deputy Director to be a certifying officer; and extending the time, from 3 days to 7 days, for applying for and obtaining a court order after authorization of an emergency search.

Section 303(a)(4)(C), which will be redesignated Section 303(a)(3)(C), requires that each application for physical search authority state the applicant's belief that the property is ''owned, used, possessed by, or is in transmit to or from'' a foreign power or an agent of a foreign power. In order to provide needed flexibility and to make the provision consistent with electronic surveillance provisions, Section 107(a)(1)(D) of the bill allows the FBI to apply for authority to search property that also is ''about to be'' owned, used, or possessed by a foreign power or agent of a foreign power, or in transit to or from one.

*Section 108. Amendments for Emergency Pen Registers and Trap and Trace Devices*

Section 108 amends Section 403 of FISA to extend from 2 days to 7 days the time for applying for and obtaining a court order after an emergency installation of a pen register or trap and trace device. This change harmonizes among FISA's provisions for electronic surveillance, search, and pen register/trap and trace authority the time requirements that follow the Attorney General's decision to take emergency action.

*Section 109. Foreign Intelligence Surveillance Court*

Section 109 contains four amendments to Section 103 of FISA, which establishes the FISA Court and the Foreign Intelligence Surveillance Court of Review.

Section 109(a) amends Section 103 to provide that judges on the FISA Court shall be drawn from ''at least seven'' of the United States judicial circuits. The current requirement—that the eleven judges be drawn from seven judicial circuits (with the number appearing to be a ceiling rather than a floor) has proven unnecessarily restrictive or complicated for the designation of the judges to the FISA Court.

Section 109(b) amends Section 103 to allow the FISA Court to hold a hearing or rehearing of a matter en banc, which is by all the judges who constitute the FISA Court sitting together. The Court may determine to do this on its own initiative, at the request of the Government in any proceeding under FISA, or at the request of a party in the few proceedings in which a private entity or person may be a party, i.e., challenges to document production orders under Title V, or proceedings on the legality or enforcement of directives to electronic communication service providers under Title VII.

Under Section 109(b), en banc review may be ordered by a majority of the judges who constitute the FISA Court upon a determination that it is necessary to secure or maintain uniformity of the court's decisions or that a particular proceeding involves a question of exceptional importance. En banc proceedings should be rare and in the interest of the general objective of fostering expeditious consideration of matters before the FISA Court.

Section 109(c) provides authority for the entry of stays, or the entry of orders modifying orders entered by the FISA Court or the Foreign Intelligence Surveillance Court of Review, pending appeal or review in the Supreme Court. This authority is supplemental to, and does not supersede, the specific provision in Section 702(i)(4)(B) that acquisitions under Title VII may continue during the pendency of any rehearing en banc and appeal to the Court of Review subject to the requirement for a determination within 60 days under Section 702(i)(4)(C).

Section 109(d) provides that nothing in FISA shall be construed to reduce or contravene the inherent authority of the FISA Court to determine or enforce compliance with an order or a rule of that court or with a procedure approved by it. The recognition in subsection (d) of the FISA Court's inherent authority to determine or enforce compliance with a court order, rule, or procedure does not authorize the Court to assess compliance with the minimization procedures used in the foreign targeting context. This conclusion is based upon three observations.

First, Section 702 contains no explicit statutory provision that authorizes the FISA Court to assess compliance with the minimization procedures in the foreign targeting context. If it had so desired, Congress could have included a specific statutory authorization like those included in Sections 105(d)(3), 304(d)(3), and 703(c)(7). In fact, there were several unsuccessful efforts during the legislative process to include a specific statutory authorization in this bill.

Second, the Court's inherent authority to review and approve minimization procedures in the context of domestic electronic surveillance or physical searches is different from its inherent authority to review and approve minimization procedures in the foreign targeting context. In the domestic context, the Court must direct that the minimization procedures be followed. See Sections 105(c)(2)(A), 304(c)(2)(A), and 703(c)(5)(A). There is no such requirement in the foreign targeting context. Instead, the Court's judicial review is limited to assessing whether the procedures meet the definition of minimization procedures under FISA. See Section 702(i)(2)(C). When the Court issues an order under Section 702, it merely enters an order approving the use of the minimization procedures for the acquisition. See 702(i)(3)(A). This limitation on the scope of the Court's order in the foreign targeting context should be interpreted as not providing the Court with any inherent authority to assess compliance with the approved minimization procedures in the foreign targeting context.

Finally, assessing compliance with minimization procedures in the foreign targeting context has historically been a responsibility performed by the Executive branch. This bill preserves that responsibility by requiring the Attorney General and the Director of National Intelligence to assess compliance with the minimization procedures on a semi-annual basis. See Section 702(l)(1). Inspectors General of each element of the Intelligence Community are authorized to review compliance with the adopted minimization procedures. See Section 702(l)(2). Also, the heads of each element of the Intelligence Community are required to conduct an annual review to evaluate the adequacy of the minimization procedures used by their element in conducting a particular acquisition. See Section 702(l)(3). Conversely, the FISA Court has little, if any, historical experience with assessing compliance with minimization in the context of foreign targeting. There are significant differences between the scope, purpose, and means by which the acquisition of foreign intelligence is conducted in the domestic and foreign targeting contexts. While the FISA Court is well-suited to assess compliance with minimization procedures in the domestic context, such assessment is better left to the Executive branch in the foreign targeting context.

*Section 110. Weapons of Mass Destruction*

Section 110 amends the definitions in FISA of foreign power and agent of a foreign power to include individuals who are not United States persons and entities not substantially composed of United States persons that are engaged in the international proliferation of weapons of mass destruction. Section 110 also adds a definition of weapon of mass destruction to the Act that defines weapons of mass destruction to cover explosive, incendiary, or poison gas devices that are designed, intended to, or have the capability to cause a mass casualty incident or death, and biological, chemical and nuclear weapons that are designed, intended to, or have the capability to cause illness or serious bodily injury to a significant number of persons. Section 110 also makes corresponding technical and conforming changes to FISA.

TITLE II. PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

This title establishes a new Title VIII of FISA. The title addresses liability relief for electronic communication service providers who have been alleged in various civil actions to have assisted the U.S. Government between September 11, 2001, and January 17, 2007, when the Attorney General announced the termination of the Terrorist Surveillance Program. In addition, Title VIII contains provisions of law intended to implement statutory defenses for electronic communication service providers and others who assist the Government in accordance with precise, existing legal requirements, and provides for federal preemption of state investigations. The liability protection provisions of Title VIII are not subject to sunset.

*Section 801. Definitions*

Section 801 establishes definitions for Title VIII. Several are of particular importance.

The term ''assistance'' is defined to mean the provision of, or the provision of access to, information, facilities, or another form of assistance. The word ''information'' is itself described in a parenthetical to include communication contents, communication records, or other information relating to a customer or communications. ''Contents'' is defined by reference to its meaning in Title I of FISA. By that reference, it includes any information concerning the identity of the parties to a communication or the existence, substance, purport, or meaning of it.

The term ''civil action'' is defined to include a ''covered civil action.'' Thus, ''covered civil actions'' are a subset of civil actions, and everything in new Title VIII that is applicable generally to civil actions is also applicable to ''covered civil actions.'' A ''covered civil action'' has two key elements. It is defined as a civil action filed in a federal or state court which (1) alleges that an electronic communication service provider (a defined term) furnished assistance to an element of the intelligence community and (2) seeks monetary or other relief from the electronic communication service provider related to the provision of the assistance. Both elements must be present for the lawsuit to be a covered civil action.

The term ''person'' (the full universe of those protected by Section 802) is necessarily broader than the definition of electronic communication service provider. The aspects of Title VIII that apply to those who assist the Government in accordance with precise, existing legal requirements apply to all who may be ordered to provide assistance under FISA, such as custodians of records who may be directed to produce records by the FISA Court under Title V of FISA or landlords who may be required to provide access under Title I or III of FISA, not just to electronic communication service providers.

*Section 802. Procedures for Implementing Statutory Defenses*

Section 802 establishes procedures for implementing statutory defenses. Notwithstanding any other provision of law, no civil action may lie or be maintained in a federal or state court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General makes a certification to the district court in which the action is pending. (If an action had been commenced in state court, it would have to be removed, pursuant to Section 802(g) to a district court, where a certification under Section 802 could be filed.) The certification must state either that the assistance was not provided (Section 802(a)(5)) or, if furnished, that it was provided pursuant to specific statutory requirements (Sections 802(a)(1–4)). Three of these underlying requirements, which are specifically described in Section 802 (Sections 802(a)(1–3)), come from existing law. They include: an order of the FISA Court directing assistance, a certification in writing under Sections 2511(2)(a)(ii)(B) or 2709(b) of Title 18, or directives to electronic

communication service providers under particular sections of FISA or the Protect America Act.

The Attorney General may only make a certification under the fourth statutory requirement, Section 802(a)(4), if the civil action is a covered civil action (as defined in Section 801(5)). To satisfy the requirements of Section 802(a)(4), the Attorney General must certify first that the assistance alleged to have been provided by the electronic communication service provider was in connection with an intelligence activity involving communications that was (1) authorized by the President between September 11, 2001 and January 17, 2007 and (2) designed to detect or prevent a terrorist attack or preparations for one against the United States. In addition, the Attorney General must also certify that the assistance was the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head (or deputy to the head) of an element of the intelligence community to the electronic communication service provider indicating that the activity was (1) authorized by the President and (2) determined to be lawful. The report of the Select Committee on Intelligence contained a description of the relevant correspondence provided to electronic communication service providers (S. Rep. No. 110–209, at 9).

The district court must give effect to the Attorney General's certification unless the court finds it is not supported by substantial evidence provided to the court pursuant to this section. In its review, the court may examine any relevant court order, certification, written request or directive submitted by the Attorney General pursuant to subsection (b)(2) or by the parties pursuant to subsection (d).

If the Attorney General files a declaration that disclosure of a certification or supplemental materials would harm national security, the court shall review the certification and supplemental materials in camera and ex parte, which means with only the Government present. A public order following that review shall be limited to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the basis for the certification of the Attorney General. The purpose of this requirement is to protect the classified national security information involved in the identification of providers who assist the Government. A public order shall not disclose whether the certification was based on an order, certification, or directive, or on the ground that the electronic communication service provider furnished no assistance. Because the district court must find that the certification—including a certification that states that a party did not provide the alleged assistance—is supported by substantial evidence in order to dismiss a case, an order failing to dismiss a case is only a conclusion that the substantial evidence test has not been met. It does not indicate whether a particular provider assisted the government.

Subsection (d) makes clear that any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court for review and be permitted to participate in the briefing or argument of any legal issue in a judicial proceeding conducted pursuant to this section, to the extent that such participation does not require the disclosure of classified information to such party. The authorities of the Attorney General under Section 802 are to be performed only by the Attorney General, the Acting Attorney General, or the Deputy Attorney General.

In adopting the portions of Section 802 that allow for liability protection for those electronic communication service providers who may have participated in the program of intelligence activity involving communications authorized by the President between September 11, 2001, and January 17, 2007, the Congress makes no statement on the legality of the program. The extension of immunity in Section 802 also reflects the Congress's determination that the electronic communication service providers acted on a good faith belief that the President's program, and their assistance, was lawful. Both of these assertions are in accord with the statements in the report of the Senate Intelligence Committee. S. Rep. No. 110–209, at 9.

*Section 803. Preemption of State Investigations*

Section 803 addresses actions taken by a number of state regulatory commissions to force disclosure of information concerning cooperation by state regulated electronic communication service providers with U.S. intelligence agencies. Section 803 preempts these state actions and authorizes the United States to bring suit to enforce the prohibition.

*Section 804. Reporting*

Section 804 provides for oversight of the implementation of Title VIII. On a semi-annual basis, the Attorney General is to provide to the appropriate congressional committees a report on any certifications made under Section 802, a description of the judicial review of the certifications made under Section 802, and any actions taken to enforce the provisions of Section 803.

*Section 202. Technical Amendments*

Section 202 amends the table of contents of the first section of FISA.

TITLE III. REVIEW OF PREVIOUS ACTIONS

Title III directs the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the Department of Defense, the National Security Agency, and any other element of the intelligence community that participated in the President's surveillance program, defined in the title to mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, to complete a comprehensive review of the program with respect to the oversight authority and responsibility of each Inspector General.

The review is to include: (1) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the program; (2) access to legal reviews of the program and information about the program; (3) communications with, and participation of, individuals and entities in the private sector related to the program; (4) interaction with the FISA Court and transition to court orders related to the program; and (5) any other matters identified by any such Inspector General that would enable that inspector general to complete a review of the program with respect to the Inspector General's department or element. While other versions of this Inspector General audit provision may have included the requirement that the Inspectors General review the ''substance'' of the legal reviews or opinions regarding the President's Terrorist Surveillance Program, this bill expressly excludes that language. Thus, it is not intended for the Inspectors General to determine or consider the legality of the Terrorist Surveillance Program.

The Inspectors General are directed to work in conjunction, to the extent practicable, with other Inspectors General required to conduct a review, and not unnecessarily duplicate or delay any reviews or audits that have already been completed or are being undertaken with respect to the program. In addition, the Counsel of the Office of Professional Responsibility of the Department of Justice is directed to provide the report of any investigation of that office relating to the program, including any investigation of the process through which the legal reviews of the program were conducted and the substance of such reviews, to the Inspector General of the Department of Justice, who shall integrate the factual findings and conclusions of such investigation into its review.

The Inspectors General shall designate one of the Senate confirmed Inspectors General required to conduct a review to coordinate the conduct of the reviews and the preparation of the reports. The Inspectors General are to submit an interim report within sixty days to the appropriate congressional committees on their planned scope of review. The final report is to be completed no later than one year after enactment and shall be submitted in unclassified form, but may include a classified annex.

TITLE IV. OTHER PROVISIONS

*Section 401. Severability*

Section 401 provides that if any provision of this bill or its application is held invalid, the validity of the remainder of the Act and its application to other persons or circumstances is unaffected.

*Section 402. Effective Date*

Section 402 provides that except as provided in the transition procedures (Section 404 of the title), the amendments made by the bill shall take effect immediately.

*Section 403. Repeals*

Section 403(a) provides for the repeal of those sections of FISA enacted as amendments to FISA by the Protect America Act, except as provided otherwise in the transition procedures of Section 404, and makes technical and conforming amendments.

Section 403(b) provides for the sunset of the FISA Amendments Act on December 31, 2012, except as provided in Section 404 of the bill. This date ensures that the amendments by the Act will be reviewed during the next presidential administration. The subsection also makes technical and conforming amendments.

*Section 404. Transition Procedures*

Section 404 establishes transition procedures for the Protect America Act and the Foreign Intelligence Surveillance Act Amendments of 2008.

Subsection (a)(1) continues in effect orders, authorizations, and directives issued under FISA, as amended by Section 2 of the Protect America Act, until the expiration of such order, authorization or directive.

Subsection (a)(2) sets forth the provisions of FISA and the Protect America Act that continue to apply to any acquisition conducted under such Protect America Act order, authorization or directive. In addition, subsection (a) clarifies the following provisions of the Protect America Act: the protection from liability provision of subsection (l) of Section 105B of FISA as added by Section 2 of the Protect America Act; jurisdiction of the FISA Court with respect to a directive issued pursuant to the Protect America Act, and the Protect America Act reporting requirements of the Attorney General and the DNI. Subsection (a) is made effective as of the date of enactment of the Protect America Act (August 5, 2007). The purpose of these clarifications and the effective date for them is to ensure that there are no gaps in the legal protections contained in that act, including for authorized collection following the sunset of the Protect America Act, notwithstanding that its sunset provision was only extended once until February

16, 2008. Additionally, subsection (a)(3) fills a void in the Protect America Act and applies the use provisions of Section 106 of FISA to collection under the Protect America Act, in the same manner that Section 706 does for collection under Title VII.

In addition, subsection (a)(7) makes clear that if the Attorney General and the DNI seek to replace an authorization made pursuant to the Protect America Act with an authorization made under Section 702, as added by this bill, they are, to the extent practicable, to submit a certification to the FISA Court at least 30 days in advance of the expiration of such authorization. The authorizations, and any directives issued pursuant to the authorization, are to remain in effect until the FISA Court issues an order with respect to that certification.

Subsection (b) provides similar treatment for any order of the FISA Court issued under Title VII of this bill in effect on December 31, 2012.

Subsection (c) provides transition procedures for the authorizations in effect under Section 2.5 of Executive Order 12333. Those authorizations shall continue in effect until the earlier of the date that authorization expires or the date that is 90 days after the enactment of this Act. This transition provision is particularly applicable to the transition to FISA Court orders that will occur as a result of Sections 703 and 704 of FISA, as added by this bill.

Mr. BOND. Mr. President, before the recess I mentioned how the press picked up on the similarities between this bill and the Senate bill and how they kept asking me to help find out the big changes in the bill that no one could find. Well, they stopped asking me that question because they realized there is not much that is significantly different, save some cosmetic fixes that satisfied the House Democratic leadership. Since we started with a bipartisan product here in the Senate, that means we still have a very strong bipartisan bill before us.

I am very pleased that the strong liability protections the Senate bill offered are still in place and our vital intelligence sources and intelligence methods will be safeguarded. I am pleased this compromise preserves the ability of the intelligence community to collect foreign intelligence quickly and in exigent circumstances without any prior court review. I am also pleased that the 2012 sunset—3 years longer than any sunset previously offered in any House bill—will give our intelligence collectors the certainty they need and the tools they use to keep us safe. I am confident that the few changes we made to the Senate bill in H.R. 6304 will not diminish the intelligence community's ability to target terrorists overseas, and the Director of National Intelligence—the DNI—and the Attorney General agree.

I will highlight for my colleagues five of the six main tweaks to the Senate bill that we find in the bill before us, as nuanced as they may be. I say ''five'' because one of these tweaks I explained in detail before the recess. I trust all of my colleagues remember that discussion very clearly. It was that the civil liability protection provision was slightly modified but still ensures that the companies who may, in good faith, have assisted the Government in the terrorist surveillance program, or TSP, will receive relief. Another way to describe it is that we have essentially provided the district court with an appellate standard review just as we did in the Senate bill. Congress affirms in this legislation that the lawsuits will be dismissed unless the district court judge determines that the Attorney General's certification was not supported by substantial evidence based on the information the Attorney General provides to the court. The intent of Congress is clear. The Intelligence Committee found that the companies deserve liability protection. They were asked by legitimate Government authorities to assist them in a program to keep our country safe. They did it, and now they are being thanked by lawsuits designed not only to destroy their reputation but to destroy the program.

There are several misconceptions that were brought up in the discussions today. Several have said that we don't know what we are granting immunity for; we shouldn't grant it without reviewing the litigation; and there were 70 Members of the Senate who haven't even been briefed on the program. Well, the reason the Senate Select Committee on Intelligence was set up was to review some of the most important and highly classified intelligence-gathering activities of the intelligence community. It was agreed, as we all believe very strongly, that these are very important tools. No. 1, they must be overseen carefully to make sure that the constitutional rights, the privacy rights of American citizens, are protected, and at the same time, within the constitutional framework, the ability of the limited authority of the intelligence community to collect the intelligence is not inhibited. That is what the Senate Intelligence Committee has done in reporting out this bill on a 13-to-2 vote. I am very pleased that our colleagues showed confidence in us by passing this, essentially the same measure, 68 to 29 in February.

There are some who say we don't even know whom we are granting immunity to or what we are granting it to. Very simply, the people—the carriers, the good citizens—who responded to the request to protect our country from terrorist acts are now being sued, and some of them who didn't even participate may be sued. They can't say whether they participated. We are only saying if the Attorney General provides information to be judged on an appellate standard that is not without substantial supporting evidence, then these companies should be dismissed, either because they didn't participate or they participated in good faith.

It does not, as I pointed out, say the Government cannot be sued. There are some who believe—and I think they are wrong—that the President's TSP was unlawful. That can be litigated in the court system. It is being litigated. I will discuss further Judge Walker's opinion and why I think it is wrong and it will not stand up, but that doesn't change the fact that at the time the Attorney General told these American companies, these good citizens, that it was lawful for them to participate and they needed that help, they provided that help, and helped to keep our country safe. We should not thank them by slapping them with lawsuits that would not only destroy their reputation, endanger their personnel here and abroad, but potentially disclose even more of the operations of our very sensitive electronic surveillance program. The more the terrorists who wish to do us harm learn about it, the better able they are to defend against it.

These three amendments all seek to destroy that protection provided by good corporate citizens, patriotic Americans who are responding to a directive of the President, approved by the Attorney General.

Moving on to the first of the five items I haven't discussed, the first item is the concept of prior court review that was included in this language. It is important for all of us to understand that prior court review is not prior court approval. Prior court approval occurs when the court approves the actual acquisition of electronic surveillance as it does in the domestic FISA context. Prior court review, on the other hand, is limited to the court's review of the Government's certification and the targeting and minimization procedures. The prior court review contained in this bill is essentially the same as it was under the bipartisan Senate bill. However, the timing has been changed to allow the court to conduct its review before the Attorney General and the DNI authorize actual acquisition.

The bottom line here is that what many of us feared in prior court approval scenarios has been avoided. To ensure that will always remain the case, we have included a generous ''exigent circumstances'' provision offered by House Majority Leader HOYER that allows the Attorney General and the DNI to act immediately if intelligence may be lost or not timely acquired. I thank Leader HOYER for that suggestion. Thus, a finding of exigent circumstances requires a much lower threshold than an emergency under traditional FISA.

One of our nonnegotiables in reaching this agreement is that the continued intelligence collection would be assured and uninterrupted by court procedures and delays. It is only because this broad ''exigent circumstances'' exemption allows for continuous collection that I can wholeheartedly support this nuanced version of prior court review of the DNI and the AG authorizations.

Second, we agreed to language insisted upon by House Speaker PELOSI regarding an ''exclusive means'' provision. I am confident that the exclusive means provision we have agreed to will not—and indeed cannot—preclude the

President from exercising his constitutional authority to conduct warrantless foreign intelligence surveillance. That is the President's article II constitutional power that no statute can remove, and case law, including recent statements in opinions by the FISA Court itself, reaffirmed this.

I am aware, as several people have discussed, of the district court's ruling last week in California where, in a suit against the Government, the judge stated in dicta that:

> Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted.

Interestingly, Judge Walker ignored legislative history which acknowledged the President's inherent constitutional authority. Even though it may have been placed at the lowest ebb, if you agree with that interpretation of the constitutional limitations cited in the Senate Intelligence Committee report on the Senate FISA bill, he still has that authority.

For a variety of reasons, I strongly believe Judge Walker's decision will not stand on appeal. As to the court's comments on exclusive means, there is a fair amount of dictum standing in opposition to his opinion. I happen to think it is right.

For example, the FISA Court in 2002 ruled In re: Sealed Case—a very important decision which I urge everybody to read, if they have time—noted with approval the U.S. Fourth Circuit's holding in the Truong case that the President does have ''inherent authority to conduct warrantless searches to obtain foreign intelligence information.''

The Truong case involved a U.S. person in the United States, and the surveillance was ordered by the Carter administration without getting a warrant. The Fourth Circuit upheld that action in the criminal prosecution of Truong.

These decisions, along with others like them, were ignored by the analysis of the district court judge last week. At most, this exclusive means provision only places the President at his lowest ebb under the third prong of the steel seizure case analysis, which I do not accept as being valid. But if you use that test, it still exists.

That is exactly where the President was when FISA was passed in 1978, and the revised exclusive means provision in this bill does not change that fact.

We should remember, however, even at its lowest ebb, the President's authority with respect to intercepting enemy communications is still quite strong, especially when compared to the nonexistent capability of Congress to engage in similar interception activities.

It has been said that the President initiated this without any congressional notice. I was not among them at the time, but I understand the Gang of 8 was thoroughly briefed before they started this program. The Gang of 8, for those who may be listening and may not be aware, consists of the Republican and Democratic leaders and second leaders in this body and the other body and the Democratic and Republican leaders of the House and the Senate Intelligence Committees. I believe these people were briefed on this program, and I understand that advice was given in that meeting that we could not change the FISA statute to enable the collection of vital information in any timely fashion; that we could not wait to start listening in on foreign terrorists abroad, possibly plotting against this country, until we passed it.

I think they were right. It has been 15 months since we were told that we needed to revise FISA. Outside of one 6-month, 15-day patch that we elected to adopt last August, we have not been able to change it. I hope a mere 15 months will allow us to change it. But the fact is, had we not had the concurrence of the Gang of 8 in the TSP, it is likely we would not be talking with shock and horror about 9/11, but we would be talking about other similar incidents occurring in the United States.

I believe with respect to the Speaker's own language, conditional language that she offered to us, it actually reinforces the President's article II authority. That bill language we accepted states:

> If a certification . . . for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision and shall certify that the statutory requirements have been met.

The obvious implication from this language is if a certification is not based on statutory authority, then citing statutory authority would be unnecessary. This language acknowledges that certifications may be based on something other than statutory authority; namely, the President's inherent constitutional authority. Furthermore, the DNI and Attorney General have assured me there will not be any operational impediments due to this provision. From a constitutional perspective, this language actually improved upon what we were looking at before in the Senate.

What Congress is clearly saying in this language is FISA is the exclusive statutory means for conducting electronic surveillance for intelligence purposes.

I am well aware that some will argue that there is no nonstatutory or constitutional means, but I can remember a long time ago when I was in a basic constitutional law course in law school that the Constitution trumps statutes. What the Constitution gives in rights or powers or authority cannot be exterminated, eliminated, or taken out by statute.

The courts have clearly said the President has that constitutional authority. I mentioned the Carter administration and the Truong case, but on a historical note, it is interesting to note that when President Clinton ordered a warrantless physical search, not electronic eavesdropping but a more intrusive, actual physical search of Aldrich Ames' residence in 1993, Congress responded by seeking to bolster the President's authority by updating FISA to include physical searches.

Aldrich Ames is a U.S. citizen, probably still in prison. Let's pause and think about that: President Clinton ordered a warrantless physical search of an American citizen inside the United States, and what did Congress do? Congress sought to assist the President instead of accuse him of illegal activity. It sought to help him. I would hope some of my colleagues would take a similar approach as we did with President Clinton before.

Third, as a part of our compromise with the House Democrats, we agreed to replace our version of what we call a carve-out from the definition of electronic surveillance with their definition of a carve-out which they call construction. Operationally, there is no difference between the two approaches, but we think our approach is more forthright with the American people because we put our carve-out right up front instead of burying it several chapters later in title VII of FISA as they wanted to do.

Why did they do this? I am sure this is not of great moment to anybody here, but let me say that it was clear from negotiations the other side wanted to be able to come out of the negotiations and say: We wrestled the Republicans back to the original definition of ''electronic surveillance'' in the 1978 FISA Act, but they failed to mention they buried their carve-out deep in this legislation, and it has the same effect.

They also failed to remind folks it was the original language of the 1978 FISA Act that, due to technology changes, got us into this mess in the first place.

Last year, when the DNI first asked us to modernize FISA, he requested we create a technology-neutral definition of ''electronic surveillance.'' I believed then and I still believe we should redefine ''electronic surveillance.'' FISA is complicated enough, and we should be forthright with the American people.

But some other leaders prefer for political reasons to bury construction provisions deep within the bill instead of presenting an upfront, crystal-clear carve-out. One consequence of their approach is that the same acquisition activities the Government uses to target non-U.S. persons overseas will trigger both the definition of electronic surveillance in title I of FISA and the construction provision in section 7.

Essentially, we have agreed to build an unnecessary internal inconsistency in statute as a political compromise. I reluctantly agreed to do this because the DNI and the Attorney General assured us that going for the carve-out

now would not create any operational problems for the intelligence community, but we should fix this in the future during less politically charged times.

For historical note, it should be remembered that the American Government was able to intercept radio communications long before we got into this stage of the intercepts without getting court orders. They were intercepting overseas communications which might have been coming into the United States, and they followed the same procedure that we do now. That was called the procedure of minimization for innocent conversations. Just like the case back when the radio interceptions were going forward, there is not, as I have said before, any evidence that we have seen that innocent Americans were being listened in on.

The bugaboo that this gives the intelligence community the right to listen in on ordinary citizens' conversations willy-nilly, without any limitations, is absolutely false. That is why we built in the protections in the law. That is why we have the layers of supervision to make sure it does not happen.

Fourth, we included a provision for coordinated inspector general audits of the TSP. However, the IGs will not review the substance of the legal reviews related to the President's TSP. In other words, they will not review whether the program was lawful.

I know some colleagues are saying the opposite in the media, but I encourage them to read the language because it is accurate. It is accurate that the IGs will not review whether the program was lawful.

The Senate Intelligence Committee already conducted an exhaustive review of the TSP and found no legal or unlawful conduct. There is no need for an IG audit to second-guess the bipartisan determination. Numerous IGs have already conducted reviews, and several reviews are ongoing. I cannot imagine the IG finding out anything different than they already have or that the Intelligence Committee has found for that matter. But it does make for good politics in an election year to say Congress mandated these reviews even if, in some cases, they will simply be doing reviews that have already been done. To reach agreement, we reluctantly agreed to a more redundant review on the overly taxed intelligence community.

I offer to those who want to challenge the lawfulness of the President's Terrorist Surveillance Program that this bill does not block plaintiff suits against the Government or Government officials. We only offer civil liability protection for providers in the bill. The court case I mentioned earlier against the Government will be able to proceed unaffected by this legislation.

Fifth, and finally, we agreed to a 5-year sunset instead of 6 years. I don't like sunsets. As intelligence community leaders have told us, there are no sunsets in fatwahs against the United States issued by al-Qaida leaders. I only agreed to a 6-year sunset in the Senate bill as a bipartisan compromise. But even with a 5-year sunset, Congress is unlikely to take up FISA reform again in the fall of a Presidential election year, and I trust they will have the good wisdom to push the sunset out longer so they don't find themselves in an election year going through the same drill. Regardless, there is little operational impact.

Remember, it is the job of the House and Senate Intelligence Committees to conduct ongoing, continuing oversight of electronic surveillance, as well as the rest of the intelligence community's programs. If we see the need to make changes before sunset, we will. A sunset does not change that.

In the end, I am proud to say we accomplished our collective goals of making sure we have a bill with clear authorities for foreign targeting, with strong protections for U.S. persons, and with civil liability protection for those providers who allegedly assisted with the President's TSP. We are in a better position today than we were a few months ago legislatively because we not only have the Senate bill before us in essence all over again—and one that received 68 votes the last time—but we have it before us already having passed the House. We know we have a bill we can send straight to the President that the Attorney General and DNI would support and the President can sign into law.

Should we fail to do so, there is a real danger we could fall back into the trap we were in last summer when because of the existing underlying outmoded FISA bill, we put the intelligence community out of business of collecting much vital intelligence during a brief period, far too long, but brief nevertheless.

Why is having essentially the Senate bill with minor tweaks before us all over again a major bipartisan victory? I answer: Because the Senate bill we passed a few months ago was the delicate bipartisan compromise that took months to produce. We had the bipartisan product that increased civil liability protections more than ever before and gave our intelligence operators the tools they needed to keep us safe. I am proud of that bipartisan bill, proud to have negotiated with the House to bring it back to the Senate with essentially the same position in a major bipartisan victory for all sides.

Mr. President, I will reserve the rest of my comments in appreciation of my colleagues. I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask if the Senator from Missouri will yield for two questions?

The PRESIDING OFFICER. The Senator from Missouri has used his time.

Mr. SPECTER. Will the Chair repeat that?

The PRESIDING OFFICER. The Senator from Missouri has used his entire 29 minutes allocated under the previous order.

Mr. SPECTER. Mr. President, I will yield myself 5 minutes from my time on the amendment which is scheduled later this afternoon.

The PRESIDING OFFICER. Does the Senator from Missouri consent to being questioned by the Senator from Pennsylvania?

Mr. BOND. Of course. I would be honored.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. The first question I have relates to the Senator's contention that the action by the Intelligence Committee is sufficient.

We know from the representations made earlier today that some 70 Members of the Senate have not been briefed on this subject, and the House leadership has said that the majority of the House Members have not been briefed on this subject. There is no question that a Member's constitutional authority cannot be delegated to another Member. Under the procedures of the Senate and the House but focusing on the Senate, which is where we are, the committees hear the matters, they file reports, they make disclosure to the full body, and the full body then acts.

The question I have for the Senator from Missouri is: How can some 70 Members of the Senate be expected to cast an intelligent vote granting retroactive immunity to a program that the Senators have not been briefed on and don't know about, in light of the clear-cut rule that we cannot delegate our constitutional responsibilities?

Mr. BOND. Well, to reply to my friend—who served in the past on the Intelligence Committee, I believe—that committee was set up to handle matters that involved the most critical classified information. The committee was set up, long before I came to the Senate, to provide a forum, a bipartisan group of Senators with a very able staff, to go over everything that was done in the intelligence community, to oversee it, to make sure it was proper, to make sure it stayed within the guidelines and to provide support and change it where necessary.

Now, I have fought very strongly, alongside my colleague, the chairman, to get the full committee briefed on all these programs. As I have said before, the terrorist surveillance program was not briefed to the full committee, it was briefed and then oversight held with eight people. This, to me, was a mistake. I believe it should have been briefed to the entire committee, but the members of that group of eight did know about it and were briefed about it.

Now, I might say to my good friend, the Senator from Pennsylvania, that we have many important committees putting out legislation on the floor. No person can participate in all the committee work. No person can be involved

in every committee. So we have to take the reports, and usually on a bipartisan agreement or disagreement, based on what our colleagues in those committees have studied, have reviewed, and have found to be the case. In this case, an overwhelmingly bipartisan majority of 13 to 2, after studying the bill and the question for 6 months and engaging in about 2 solid months of hard work, found out it was appropriate to give retroactive liability protection to these companies that had acted in good faith.

We were shown the certifications and the authorizations that went to them, and I believe, based on my legal background, that those were adequate and sufficient for these companies to participate. Let us remember, these were critical times. We had just experienced an attack. We were being threatened with more attacks. The Government went to some of these—not all of them but some—companies and said: Please help us. You must help us. We believe in the committee that their actions should not be punished but should be rewarded by preventing them from being harassed by lawsuits.

The legality of the program, if it is to be judged, was not one for a judgment for those companies to make, but it will be played out in Judge Walker's and other courtrooms.

Mr. SPECTER. Mr. President, on my time, which we are on, may I say, before moving to the second brief question, that I admire what the Senator from Missouri has done as vice chairman. I see his diligent work, and I know what the Intelligence Committee is involved with because I served on it for 8 years and chaired it in the 104th Congress. But when the Senator from Missouri delineates even the fewer members within the Intelligence Committee who were briefed, it underscores my point, and that is that most Senators haven't been briefed.

While it is true every Senator does not know what is in every committee report, at least every Senator has access to it, and it is not a matter where there are secret facts and there has been no briefing of them, or where there has been no disclosure and they are called upon to vote. Significantly, the Senator does not deny that no Senator can delegate his constitutional authority, and that is exactly what 70 Senators will be doing.

Let me move within my 5-minute time limit because time is fleeting and there is a great deal to argue.

The PRESIDING OFFICER. The Senator has used 6 minutes. There is 4 minutes remaining.

Mr. SPECTER. We have here litigation which has been ongoing in the Federal court in San Francisco for several years, and a very extended opinion was filed on July 20 of 2006 by Chief Judge Walker on the telephone case on the state secrets doctrine, and that case is now on appeal to the Court of Appeals for the Ninth Circuit.

Here we have a context where the Congress has been totally ineffective in limiting executive authority, where the Executive has violated the specific mandate of the National Security Act of 1947 to brief all members of the Intelligence Committee. It hasn't been done. The Congress has been ineffective on the Foreign Intelligence Surveillance Act, where the Supreme Court denied cert, as I said earlier today, and ducked the decision. Although from the dissenting opinion in the Sixth Circuit, they could have found the requisite standing. Now we have Chief Judge Walker coming down with a 56-page opinion last Wednesday, which does bear on the telephone case. I concede, as the Senator from Missouri has said, that the telephone companies have been good citizens. But there is a way to save them harmless with the amendment I offered in February to substitute the Government in the shoes of the telephone companies.

Have they had problems with their reputation? Well, perhaps so, but they can withstand that. Have they had legal expenses? Well, those can be compensated by indemnity from the Government. We are all called upon to make sacrifices. My father, who served in World War I, was wounded in action. My brother served in World War II. I served 2 years in the Korean war, stateside. I don't think the telephone companies, given their positions, as regulated companies, have been asked for too much. I think it is highly unlikely they would ever have to pay a dime, but that could all be handled by substitution, so we look at a situation where we can both have this electronic surveillance program continue and not give up court jurisdiction through court stripping.

So that brings me to my question: Does the Senator from Missouri now know of any case—there have been jurisdictional issues of a variety of sorts—but any case involving constitutional rights, which has been pending for more than 3 years and is in midstream on appeal to the Court of Appeals for the Ninth Circuit—from a very learned opinion handed down by Chief Judge Walker in 2006—when the Congress has stepped in and taken the case away from the courts, in a context where there is no other way to get a judicial determination on the constitutionality of this conduct?

Mr. BOND. Mr. President, I am happy to answer my colleague. He has stated that the Executive has violated the laws. Not under the constitutional authority that I have outlined. The FISA Court itself recognized what he fails to understand; that it is not a question of the carriers being held liable for any amount of money. Because I agree with him, they are not going to find anybody liable. But what they would do, by continuing having this out in open hearing, is to disclose the most secretive methods and procedures used by our intelligence community, giving the terrorists and those who seek to do us harm a roadmap for getting around it and avoiding those intercepts.

Now, what it would also do is expose those companies to tremendous public scorn and possibly even to injury to their property or to their personnel. Where they operate overseas, they might be attacked. When we started this debate, my colleague, the senior Senator from Illinois, was talking about how an unwarranted disclosure of a question about one of the vitally important exchanges operating in Chicago had cost billions of dollars to that exchange.

When you leak out something that is classified, when you leak out something that is secret, you can have a tremendous impact, and every shareholder of that exchange and every shareholder, whether it be in your pension fund or anyone else, of one of the carriers that might be drawn out and drawn into court in one of these actions, would lose significantly.

Now, to answer the question put specifically by the Senator from Pennsylvania, the cases against the Government are not blocked. The cases against the Government are not blocked. If we are looking for a means of determining the constitutionality, which I believe exists—he obviously doesn't believe exists. OK, we have a disagreement. He is a learned lawyer, and I studied constitutional law a long time ago. We have different views. I can line up a bunch of constitutional law professors on my side. I am sure he can do the same. But that court can go forward because a suit really is a suit against the government.

I think he is right when he is saying he doesn't want to hurt the companies. I don't believe any significant number of Members of this body want to hurt the employees or their shareholders of the companies that may have participated because they were true American heroes. But if he wants to solve the problem that he has—getting court review—then there is no bar in this legislation to a suit against the Government, a Government officer, or a Government agent.

Mr. SPECTER. Mr. President, on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is advised he has used all his time—13 minutes.

Mr. SPECTER. I yield myself 3 more minutes.

The PRESIDING OFFICER. The Senator has 3 minutes.

Mr. SPECTER. On my time, Mr. President.

When the Senator from Missouri talks about being exposed to risks or physical harm, that is happening to American soldiers every day around the world, as we know. It happened to my father serving in World War I. There are certain risks, physical or otherwise, which have to be sustained in a democracy doing our duty. We talk about money, about costs. Dollars and cents don't amount to a hill of beans when you are talking about constitutional rights.

When the Senator from Missouri talks about the case can continue

against the Government, that is a fallacious argument. The Government has the defense of governmental immunity. The telephone companies do not have that.

I offered the amendment in February to have the Government step into the shoes of the telephone companies with no different defenses. They would have state secrets but no governmental immunity. That was turned down. It is a very different matter to drop suits as to the telephone companies. They do not have governmental immunity. It is very different. Significantly, when challenged for any case which has been going on for years, with these kinds of opinions by the Chief Judge in San Francisco and on appeal to the Court of Appeals for the Ninth Circuit, for the Congress to step in and take away jurisdiction is an anathema. In the context of congressional ineffectiveness on oversight on separation of powers and in the context of the Supreme Court of the United States, which, as I elaborated earlier today, has ducked it, the only way to get this decision is to let the courts proceed. Congress is ineffective on curtailing executive authority. That is why I think it is so important that we can both keep this surveillance program and at the same time protect constitutional rights.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has consumed 15 minutes, so he has 45 minutes remaining on his amendment.

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, could the Presiding Officer please indicate what the order of sequence of events is at this point?

The PRESIDING OFFICER. The Senator from New Mexico is authorized to offer his amendment with 1 hour of debate equally divided.

Mr. BINGAMAN. Let me defer to my friend from Michigan. Let me indicate I will plan to use the first 15 minutes of the 30 minutes allocated to me to make a statement now, and then Senator CASEY from Pennsylvania will take 5 minutes, and then Senator LEVIN from Michigan will have the remaining 10 minutes. That is my plan.

I believe the Senator from Michigan wanted to state a question.

Mr. LEVIN. Mr. President, parliamentary inquiry. I thank my friend from New Mexico.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Under the plan that was just stated, if 10 minutes is yielded to this Senator, can the 10 minutes be used at any time this afternoon or must it follow immediately in sequence to either Senator CASEY or Senator BINGAMAN?

The PRESIDING OFFICER. The 10 minutes would have to be used sometime this afternoon.

Mr. LEVIN. At any time this afternoon. I thank the Presiding Officer.

AMENDMENT NO. 5066

Mr. BINGAMAN. Mr. President, I ask to call up amendment No. 5066.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Mr. CASEY, and Mr. SPECTER, proposes an amendment numbered 5066.

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

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

The amendment is as follows:

(Purpose: To stay pending cases against certain telecommunications companies and provide that such companies may not seek retroactive immunity until 90 days after the date the final report of the Inspectors General on the President's Surveillance Program is submitted to Congress)

Beginning on page 88, strike line 23 and all that follows through page 90, line 15, and insert the following:

''(a) REQUIREMENT FOR CERTIFICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law other than paragraph (2), a civil action may not lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the district court of the United States in which such action is pending that—

''(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

''(B) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

''(C) any assistance by that person was provided pursuant to a directive under section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 553), or 702(h) directing such assistance;

''(D) in the case of a covered civil action, the assistance alleged to have been provided by the electronic communication service provider was—

''(i) in connection with an intelligence activity involving communications that was—

''(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

''(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

''(ii) the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

''(I) authorized by the President; and

''(II) determined to be lawful; or

''(E) the person did not provide the alleged assistance.

''(2) LIMITATION ON IMPLEMENTATION.—

''(A) IN GENERAL.—The Attorney General may not make a certification for any civil action described in paragraph (1)(D) until after the date described in subparagraph (C).

''(B) STAY OF CIVIL ACTIONS.—During the period beginning on the date of the enactment of the FISA Amendments Act of 2008 and ending on the date described in subparagraph (C), a civil action described in paragraph (1)(D) shall be stayed by the court in which the civil action is pending.

''(C) DATE DESCRIBED.—The date described in this subparagraph is the date that is 90 days after the final report described in section 301(c)(2) of the FISA Amendments Act of 2008 is submitted to the appropriate committees of Congress, as required by such section.''.

Mr. BINGAMAN. Mr. President, this is an amendment cosponsored by Senators CASEY and SPECTER. The main thrust of this amendment is to make a point that this legislation which is currently before us puts the cart before the horse. As soon as we enact the legislation, it essentially grants telecommunications companies retroactive immunity for their past actions, but then after the fact, after they have been granted that retroactive immunity, it requires that an in-depth investigation occur regarding what those activities actually were.

The purpose of the amendment I am offering is simply to put the horse and the cart in the right order. I believe this chart makes the case very well. Let me just allude to this chart.

First, let's look at the process for dismissing lawsuits under the current bill, the way the bill now pends. That is the top line here. You can see the first step would be to enact provisions that would set up a procedure for the telecom companies to seek the retroactive immunity.

Second, in the middle here, in accordance with the underlying provisions, the pending civil cases would almost certainly be promptly dismissed as soon as the Attorney General makes the necessary certifications.

Then the last step, over here at the right—it is very difficult to read from any distance, but the last step says, ''IG's investigation and report to Congress.'' The last step would be investigation about whether the companies' participation in the President's warrantless wiretapping program was lawful and whether the relevant inspectors general can report back to Congress with their findings within a year. That is a requirement in the bill, that they do that report within 1 year.

Basically, the current bill's approach is to grant the immunity first and investigate later, after the companies have already been provided with legal liability protection for whatever it is later determined they have been engaged in. The amendment I am offering would change this by modifying the timing of the process that enables these telecom companies to seek immunity, and it changes it so that the investigation of what has occurred would occur first. Only after that investigation has been completed would we allow the immunity to be granted.

Under the amendment—this is the bottom part of this chart—the first step would still be to enact the legislation establishing the procedures for companies to seek immunity. At the same time, the amendment would stay all of the pending court cases against the telecom companies, thereby putting all those cases on hold. The second

step would be to allow the inspectors general—that is, from each of these Federal agencies that are designated in the statute—allow the inspectors general to conduct their investigation and to inform Congress about what they found. The amendment would then give Congress 90 days to review those findings, after which time the companies could go ahead and seek dismissal of their lawsuits. So the dismissal of the lawsuits would be the last step and not the first step and could only occur after the investigation was complete and after Congress had an opportunity to review their report that has been done.

The bill does recognize that it is important to understand all the facts surrounding the President's warrantless program. I am glad the legislation requires that the relevant inspectors general come to Congress with a report on the subject. This review will cover the establishment and implementation and use of the surveillance program, as well as the participation of private telecom companies.

However, as I have discussed, the bill also allows the same telecom companies to immediately seek and to obtain retroactive immunity for their participation in the program as soon as the bill becomes law. And that is a mistake, in my view. I find it troubling that Congress would confer immunity before the full extent of the companies' participation in the program is known. Maybe these companies acted in good faith, as some of my colleagues have argued. Maybe they did not. I don't know, myself, what the facts are, but, like most Members of Congress who do not sit on the Intelligence Committee or the Judiciary Committee, I received very little information regarding what actually did occur. I do know, however, that their participation in an unlawful, warrantless surveillance program is a serious issue. It deserves the in-depth review we call for in this legislation, but it deserves that review before we grant those companies blanket protection for their past actions. If we go down this path without first conducting the thorough review, we may very well look back with great regret.

To me, a much more sensible approach would be to have the comprehensive IG report submitted to Congress before companies are allowed to seek dismissal of their suits. The amendment would stay all of the civil cases against the telecom companies. It would allow time for the inspectors general to investigate the circumstances surrounding the President's warrantless surveillance program. It would give Congress the 90 days to review what is found in the IG's report.

While retaining the overall substance and structure of the bill, this would give Congress an opportunity, even though it is a brief opportunity, to at least review the inspectors general report before the companies would be permitted to apply for immunity. If Congress does not affirmatively pass legislation within 90 days of getting the report from the inspectors general, then the companies would be free to seek relief from the court.

I would also like to take just a minute to discuss what the amendment would not do. The amendment is not a deal breaker. The amendment would not remove or alter the substantive provisions in the immunity title of the bill. With passage of this amendment, those provisions would remain intact. Personally, I am opposed to retroactive immunity, but the amendment I am offering does not change the substance of those provisions.

Additionally, by staying the pending lawsuits, the companies would not be subject to the costs of litigation during the development of the IG report or while Congress reviews the report's findings. Proceedings in these cases would be suspended until the called-for report is delivered to Congress and the 90 days have passed.

Some of my colleagues have expressed concerns that unless we immediately grant the telecom companies retroactive immunity, they will refuse to provide assistance in the future. I think that is unfounded. Clearly they are under an obligation to do so under the language of this bill.

Regardless of whether Senators generally favor the legislation or are adamantly opposed to it; that is, the underlying legislation, I hope my colleagues will agree that this amendment is a reasonable modification which would, in fact, improve the bill.

Let me point out one other red herring that has come up. In a letter to Senate leadership dated yesterday, July 7, the administration urged that my amendment:

> . . . fails to address the risk that on-going litigation will result in the release of sensitive national security information, a risk that, if realized, could cause grave harm to the national security.

I suggest the Attorney General and the Director of National Intelligence need to read the amendment I am offering. As I stated, the amendment puts all of the cases on hold. There would be no ongoing activity during the time that proceedings in these cases were stayed, so there is no activity that could create a risk of releasing sensitive information.

This is a good amendment. It would improve this bill. It would make it more logical and certainly improve our ability to understand what it is we are being asked to grant immunity for. I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER (Mr. SANDERS). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I yield myself 10 minutes in opposition.

When the inspector general audit provisions were first discussed in the House and Senate, there was a great concern that these audits would be used to delay or deny essential civil liability protections. Unfortunately, this amendment shows that these concerns were justified.

When negotiating this compromise legislation with House Majority Leader HOYER, I agreed in good faith to a limited inspector general review of the President's terrorist surveillance program even though this program has been reviewed up and down on a bipartisan basis by the Senate Intelligence Committee and no abuse or wrongdoing had been found.

Now, in what I could only assume is a political move to undermine the critical civil liability protections in this bill, this amendment delays any liability protection until 90 days after the inspector general review of the bill is completed. What is supposed to happen after that is anything but clear, but I can only assume that will be followed by yet another effort to delay liability relief. That is extraordinarily and unacceptably unfair to those providers that assisted the Government in the aftermath of the September 11 terrorist attacks. We owe them our thanks, not our continued partisan maneuvering.

Earlier, we heard a justification for exposing these providers to public light, having participated in a classified program. The assertion was made: It is like our troops who go abroad and go under fire. Mr. President, as the father of a son who spent 20 months in the last 3 years as a marine sniper in Iraq, I can tell you that they go under tremendous threat and tremendous danger. But they are extremely well trained, they are extremely well supported, and they are extremely well armed.

To say with a straight face that we can subject private companies to that, private companies with American citizens working for them, and that we don't care if they are attacked when they don't have any protection, they don't have any weapons, they don't have any training, I think goes way too far.

That is not reasonable. Let's not hear any more of that stuff, that they should be put in the same position as our trained military men and women who go into battle accepting the risks of battle. These people, these good American citizens, did not expect to be under physical attack.

How often are we going to tell those patriotic Americans we have to delay further any halt to the lawsuits so we can ''review'' the terrorist surveillance program? Enough is enough. Inspectors general have very clear roles in our Government. They determine if there is waste, fraud, or abuse. Their review under title IV of this bill is essentially for these purposes. They will not determine whether the TSP was lawful. They will not determine whether the providers acted in good faith. That is for the court to do.

So exactly what purpose does it serve to delay liability relief to these companies? The only purpose I can think of is to appease these liberal activists who

have tried repeatedly throughout this FISA debate to tie the hands of the intelligence community and punish these companies with frivolous lawsuits.

What message are we sending to all of those private partners who help our intelligence community, our military, our law enforcement community on a daily basis far beyond the FISA context: Help us now, but we cannot guarantee that years later you will not be taken to the cleaners because you did. Is that an incentive? Is that the way we want to deal with fellow Americans whose help we need?

I appreciate there is serious debate about whether the President has article II authority to conduct surveillance. But this is a debate that should not impact whether these providers, who trusted their Government, who in good faith, on the word of the Attorney General, helped to ensure our homeland did not suffer another terrorist attack. And we think they should be treated fairly and protected.

We need to remember the Senate Intelligence Committee conducted an exhaustive review of the TSP. It found no evidence of illegal or unlawful conduct either by the providers or the Government. We agreed on a bipartisan basis, ratified by the Senate, that the providers acted in good faith. So I do not see how waiting to give them the fair and just relief they deserve advances any goals. It is more likely, the longer these lawsuits, these frivolous lawsuits go on, that our most sensitive sources and methods will be revealed. It becomes much more likely that the providers who helped us will refuse to do so unless we go through a lengthy process to compel them.

We went without cooperation for some time when the act expired, and it was only on the assurance of prompt action that they were able to withstand shareholder pressure and the advice of lawyers not to worry.

The Attorney General and the DNI sent a letter on July 7. It says:

> Any FISA modernization bill must contain effective legal protection for those companies sued because they're believed to have helped the Government prevent terrorist attacks. Liability protection, a fair and just result, is necessary to ensure the continued assistance of the private sector.
>
> H.R. 6304 contains such protection, but the amendment addressed in this letter

Essentially the Bingaman amendment—

> would unnecessarily delay implementation of the protections with the purpose of deferring any decision on this issue for more than a year.
>
> Accordingly, we as well as the President's other senior advisors will recommend that the President veto any bill that includes such an amendment. The Intelligence Committee has recognized the intelligence community cannot obtain intelligence it needs without assistance from these companies. We recognize that the companies in the future may be less willing to assist the Government if they face the threat of lawsuits, and we know that a delay could result in the very degradation and the cooperation that this bill was designed to provide. Continued delay in protecting those who provided assistance will be invariably noted by those who may some day be called upon to help us again.
>
> Finally, by raising the prospect that the litigation at issue could eventually proceed, this amendment fails to address the risks that ongoing litigation will result in release of national security sensitive information, a risk that if realized could cause grave harm to national security.

I reserve the remainder of my time on this side. I ask unanimous consent that after the Senator from Pennsylvania is recognized, the chairman of the committee be recognized for 10 minutes.

I ask unanimous consent that this letter addressed to Leader REID from the DNI and the Attorney General be printed in the RECORD.

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

JULY 7, 2008.

Hon. HARRY REID,
*Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR MR. LEADER: This letter presents the views of the Administration on an amendment to the Foreign Intelligence Surveillance Act of 1978 (''FISA'') Amendments Act of 2008 (H.R. 6304) that was not covered in our letter of June 26, 2008. As we stated in that letter, we strongly support enactment of H.R. 6304, which would represent an historic modernization of FISA to reflect dramatic changes in communications technology over the last 30 years. This bill, which passed the House of Representatives by a wide margin of 293–129, is the result of a bipartisan effort that will place the Nation's foreign intelligence effort in this area on a firm, long-term foundation. The bill provides our intelligence professionals the tools they need to protect the country and protects companies whose assistance is vital to this effort from lawsuits for past and future cooperation with the Government.

As we have previously noted, any FISA modernization bill must contain effective legal protections for those companies sued because they are believed to have helped the government prevent terrorist attacks in the aftermath of September 11, 2001. Liability protection is the fair and just result and is necessary to ensure the continued assistance of the private sector. H.R. 6304 contains such protection, but the amendment addressed in this letter would unnecessarily delay implementation of the protections with the purpose of deferring any decision on this issue for more than a year. This amendment would reportedly foreclose an electronic communication service provider from receiving retroactive liability protection until 90 days after the Inspectors General of various departments, as required by section 301 of H.R. 6304, complete a comprehensive review of, and submit a final report on, communications intelligence activities authorized by the President between September 11, 2001, and January 17, 2007. The final report is not due for a year after the enactment of the bill. Any amendment that would delay implementation of the liability protections in this manner is unacceptable. Providing prompt liability protection is critical to the national security. Accordingly, we, as well as the President's other senior advisors, will recommend that the President veto any bill that includes such an amendment.

Continuing to deny appropriate protection to private parties that cooperated in good faith with the Government in the aftermath of the attacks of September 11 has negative consequences for our national security. The Senate Intelligence Committee recognized that ''the intelligence community cannot obtain the intelligence it needs without assistance from these companies.'' That committee also recognized that companies in the future may be less willing to assist the Government if they face the threat of private lawsuits each time they are alleged to have provided assistance, and that the ''possible reduction intelligence that might result from this delay is simply unacceptable for the safety of our Nation.'' These cases have already been pending for years, and delaying implementation of appropriate liability protection as proposed by the amendment would mean that the companies would still face the prospect of defending against multi-billion-dollar claims and would continue to suffer from the uncertainty of pending litigation. Indeed, the apparent purpose of the amendment is to postpone a decision on whether to provide liability protection at all. Such a result would defeat the point of the carefully considered and bipartisan retroactive liability protections in H.R. 6304—to provide for the expeditious dismissal of the relevant cases in those circumstances in which the Attorney General makes, and the district court reviews, the necessary certifications—and could result in the very degradation in private cooperation that the bill was designed to prevent. The intelligence community, as well as law enforcement and homeland security agencies, continue to rely ont he voluntary cooperation and assistance of private parties in other areas. Continued delay in protecting those who provided assistance after September 11 will invariably be noted by those who may someday be called upon again to help the Nation. Finally, by raising the prospect that the litigation at issue could eventually proceed, this amendment fails to address the risk that ongoing litigation will result in the release of sensitive national security information, a risk that, if realized, could cause grave harm to the national security.

Deferring a final decision on retroactive liability protection for 15 months while the Inspectors General complete the review required by H.R. 6304 is also unnecessary. The Senate Intelligence Committee conducted an extensive study of the issue, which included the review of the relevant classified documents, numerous hearings, and testimony. after completing this comprehensive review, the Committee determined that providers had acted in response to written requests or directives stating that the activities had been authorized by the President and had been determined to be lawful, and that the providers ''had a good faith basis'' for responding to the requests for assistance they received. Accordingly, the Committee agreed to the necessary legal protections on a 13–2 vote. Similarly, the Intelligence Committee of the House of Representatives has been extensively briefed and has exercised thorough oversight in regard to these intelligence matters. We also have made extraordinarily sensitive information available to the Judiciary Committees of both the Senate and House.

The Senate passed a prior version (S. 2248) of the current pending bill, which included retroactive liability protection, by a vote of 68–29. Both Houses of Congress, by wide bipartisan margins, have now made the judgment that retroactive liability protection is the appropriate and fair result. The Congress has been considering this issue for over two years and conducted extensive oversight in this area. During this period, we have emphasized the critical nature of private sector cooperation in protecting our national security and the difficulties of obtaining such cooperation while issues of liability protection remained unresolved. Further delay will damage our intelligence capabilities.

Thank you for the opportunity to present our views on this crucial bill. We reiterate our sincere appreciation to the Congress for working with us on H.R. 6304, a long-term FISA modernization bill that will strengthen the Nation's intelligence capabilities while protecting the liberties of Americans. We strongly support its prompt passage.

Sincerely,

MICHAEL B. MUKASEY,
*Attorney General.*
J.M. MCCONNELL,
*Director of National Intelligence.*

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, is there any time remaining on the 15 minutes that I had set aside?

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. BINGAMAN. I ask the Senator from Pennsylvania that I use two of those to respond to this latest statement. Then I will defer to him for his statement.

Mr. President, I want to respond to the statement by the Senator from Missouri about what all of the reports from the inspectors general would essentially deal with. I believe he said waste, fraud, and abuse, which is sort of the general purview of inspectors general.

That is not my understanding. I understand the inspectors general have been asked to essentially do a review of this.

The Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, the Department of Defense, and any other elements of the intelligence community that participated in the President's surveillance program—

Shall all work together to do a report which will look into—

all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;

access to legal reviews of the Program and access to information about the Program;

communications with, and participation of, individuals and entities in the private sector related to the Program;

interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and

any other matters identified by any such Inspector General that would enable that Inspector General to complete a review of the Program with respect to such Department of element.

I believe the review we are talking about here, and that we are legislating or proposing to legislate, is intended to tell the Congress and tell anybody who reads the report what this program consisted of. That is information we do not have today. And it is entirely appropriate that we get that report before we grant immunity.

That is the thrust of my amendment, I hope all of my colleagues will support it. I appreciate my colleague from Pennsylvania yielding me additional time to speak in response.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I have limited time, and I know my colleague from New Mexico, Senator BINGAMAN, did an excellent job of outlining his amendment. I will skip much of what I was going to read in my statement.

Basically, what we are talking about is a time out. We are giving the Congress the opportunity to review the inspectors general report before the Congress chooses to authorize limited immunity for the telecom firms.

It is actually very simple. Basically, what we are saying is, the amendment simply allows the Congress to say: Wait a minute. Hold on. We should take a deep breath before we decide to authorize a Federal district court to grant telecom firms legal immunity for their actions related to the administration's warrantless surveillance program.

Let's figure out what this program entailed. Let's figure out what happened. Let's figure out what the telecom firms actually did, what they actually did when it came to wiretapping and surveillance.

So under this amendment, the pending lawsuits would remain stayed while the inspectors general complete their report. If the firms did nothing wrong, as they have proclaimed, they will be vindicated by the final inspectors general report. Then the Congress will have the confidence to grant these firms the immunity for which they ask.

So I think many Members of this body would have buyer's remorse if they voted for limited immunity without the understanding of what the President's surveillance program did and did not do. This amendment would prevent that buyer's remorse by allowing the Congress to better understand the conduct of the telecommunications firms before we decide to grant sweeping legal immunity for such conduct.

I encourage my colleagues, all Members of the Senate, to vote for this amendment. It strikes the right balance. It is about accountability. It is also about the rule of law. It is a reasonable balance to strike on very important issues, the issues of security and how we are going to implement any kind of program which involves wiretapping and surveillance.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I ask Senator BOND, the vice chairman of the committee, to yield me 10 or 11, potentially even 12 minutes.

Mr. BOND. I make a very generous allotment of 12 minutes. If he needs more, I am anxious to hear what he has to say.

Mr. ROCKEFELLER. I appreciate my colleague yielding me time.

Mr. President, Senator BINGAMAN, who I greatly respect in all ways, has offered an amendment altering the liability protections of title II. That is it. His amendment would postpone the implementation of the liability provisions of the bill until 90 days after the submission of the final report of the inspectors general required under title II.

Now, I appreciate the Senator's desire to have more information out there. But I want the Senator to contemplate, and the Senate as a whole to contemplate, what we are asking. We are talking about a year for the inspectors general to complete their reports.

Does it really work that way? Is it really a flat year? Are we going to send out Federal marshals to have them all do their reports on the exact day? Probably it will stretch a little bit. Maybe it will not; maybe it will.

But you cannot assume it will not. Then you have to add on 90 days. Then you can get to the question of the immunity. I am really baffled by that because what it, in effect, says is, we are almost certainly going to be going through a period of something, which I have not heard discussed today during this entire debate, and that is the actual collection of intelligence that involves highly classified material of a foreboding nature for a long period of time until the Senator from New Mexico and/or the Senate can be convinced that it is worthwhile to give immunity or to understand this program.

Now, I want to make an even more basic point: By inserting this amendment, requesting this amendment be passed, I hope the good Senator does understand that he is undoing a very carefully calibrated compromise between the Senate-passed bill and the House-passed bill that is on title II, taking months and months of negotiations to get to the point where Speaker PELOSI, for example, who was violently against the bill, and title II in particular, and STENEY HOYER, who was very much against title II, the immunity portion of the bill, where they could say, on the floor of the House: We think sufficient progress has been made in the negotiations that we will vote for this bill, which the House did by about 70 percent.

Now, that is going from the House not even considering title II. I mean, they considered and rejected it. It was a sea change.

It was a sea change, and one has to have been there to see how the change took place, the good faith bargaining on the part of Vice Chairman BOND, myself, our mutual staffs, working with the DNI and others, long hours and long days with which we have arrived at something which, if we pass this today, will go to the President to be signed. If we accept this amendment or, for that matter, accept the Specter amendment that follows, it will have to go back to the House, which will not take it up, which will not consider it, which will undo everything, and there will be no bill.

Is that important? Yes, it is. Why is it important? Because the chance of not being able to collect on extremely foreboding matters around this world will come to a halt, either because the PATRIOT Act terms have expired or because the companies will withdraw in disgust. In any event, the bill would be vetoed, as the vice chairman said.

So it would be the end of the bill. Therefore, I oppose this amendment.

As I will say about each of these amendments—well, I just did—it undoes everything that has been done for the purpose of making a perfecting amendment to satisfy a particular need of a particular Senator. I also must oppose this amendment because there is no reason for delaying the liability protection provisions. There is not a sufficient reason. It is true the Select Committee struggled to get access to details about the President's surveillance program for many months, but in the end we succeeded. We went from maybe eight, more likely four, sometimes six, to all four committees in the House and the Senate, Judiciary and Intelligence. We heard the necessary testimony. We went to the EOP. We read all the documents, and our chiefs of staff were allowed to do the same thing. We read the legal reasoning used to justify within the executive branch and the role of the private sector. We did all of that, not only our committee but also the House Intelligence Committee, and both Judiciary Committees spent considerable time looking at this issue. I am satisfied we have a basis for taking action now.

On national security grounds, we have to, in my judgment. We haven't talked about that today. We have talked about refined points of constitutional niceties and all the rest of it. I don't denigrate that, but there is something called the protection of the Nation. I take that very seriously. I take that very, very seriously. So a form of liability protection has passed the Senate and the House of Representatives a total of three times, once in the Senate and twice in the House. We should not now reverse these actions by passing the provisions of suspension.

Let me be clear. I strongly support the requirement in this bill for a comprehensive review of the President's surveillance program by the inspectors general. They will be very tough and very thorough and embarrass a lot of people. A report on their general review is one of the best ways to inform the American people about the facts. Litigation is an imperfect mechanism to bring facts to the public, rather a terrible mechanism, because of something called the State secrets privilege which is involved, which means the people can't know anything, that a lot of people dealing with the court can't know anything, that the companies can't know anything. It is a closedown. People have to understand that. It is not an open court. You are not getting a traffic ticket. It is a highly complex, nuanced matter which is rigidly guarded by rules. You could argue the rules, but there they are. Unfortunately, if this amendment passes, the fact that litigation is still pending may have the effect of limiting the amount of information that will be released to the public in the report of the inspectors general, the opposite of what the distinguished Senator wants. Certain facts that might be releasable if the litigation were resolved might be held back, if the Government anticipated a continuing need to assert the State secrets privilege in litigation, which it would.

It is also important to note that this amendment, if it were to pass, the liability protection provisions that the Senator is trying to get at would not go away. In other words, if his amendment passed and we took this long delay, nothing would affect the progress of the liability legislation and that possibility. So it is an amendment which doesn't accomplish anything. The provisions would still go into effect after 90 days, unless new legislation is passed. Let's hope that doesn't happen. The new Congress, thus, might be launched into a contentious debate next summer, instead of working with the new President on a new agenda. That is the point of the Cardin amendment, that the date was changed to December 2012, so that the next President, whoever it might be—it is very close—will have a chance to review and perhaps act upon what we have done here in the next term, which is good. I urge defeat of the amendment.

I have one more thing to say, with the indulgence of my colleague. The senior Senator from Pennsylvania and I were engaged in earlier debate over the access Senators have had, both with myself and with the vice chairman, to the Government letter sent to the telecommunications companies requesting their cooperation during the period of 9/11 to January of 2007. The Senator from Pennsylvania lamented the fact that these documents were kept to only the members of the Intelligence and Judiciary Committees and not shared with the full Senate.

I share the view of the Senator that these documents should be viewed by all Senators, and I have advocated this very position to senior officials of the Bush administration for many months. But recognizing the administration's unwillingness to extend this access, the Senate Intelligence Committee did the next best thing. We were able to get declassified the relevant facts upon which the committee and, ultimately, the full Senate reached the judgment that a narrowly drawn immunity bill remedy might be appropriate.

For the record, our committee report, 110–209, accompanying S. 2248, the FISA amendments——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ROCKEFELLER. I ask unanimous consent for 1 additional minute.

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

Mr. ROCKEFELLER. And dated October 26, 2007, includes a lengthy declassified explanation of the committee's review and conclusions as well as a description of the representations made by the Government in the letters sent to the companies during the period of time covered by the bill. So for the past 8 months, this public report has been available not only to all Senators—here it is, I have labeled it, pages 8 through 12, right here—but to the general public as well.

I ask unanimous consent that that portion be printed in the RECORD.

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

TITLE II OF THE FISA AMENDMENTS ACT OF 2007

Title II of this bill reflects the Committee's belief that there is a strong national interest in addressing the extent to which the burden of litigation over the legality of surveillance should fall on private parties. Based on a review of both current immunity provisions and historical information on the President's program, the Committee identified three issues relating to the exposure of electronic communication service providers to liability that needed to be addressed in this bill.

First, the Committee considered the exposure to liability of providers who allegedly participated in the President's surveillance program. Second, the Committee considered the absence, in current law, of a procedural mechanism that would give courts an appropriate role in assessing statutory immunity provisions that would otherwise be subject to the state secrets privilege. Third, the Committee sought to clarify the role of state public utility commissions in regulating electronic communication service providers' relationships with the intelligence community. The Committee addressed these three issues, respectively, in sections 202, 203, and 204 of the bill.

RETROACTIVE IMMUNITY

Sections 201 and 202 of the bill provide focused retroactive immunity for electronic communication service providers that were alleged to have cooperated with the intelligence community in implementing the President's surveillance program. Only civil lawsuits against electronic communication service providers alleged to have assisted the Government are covered under the provision. The Committee does not intend for this section to apply to, or in any way affect, pending or future suits against the Government as to the legality of the President's program.

Section 202 was narrowly drafted to apply only to a specific intelligence program. Section 202 therefore provides immunity for an intelligence activity involving communications that was designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, that was authorized in the period between September 11, 2001 and January 17, 2007, and that was described in written requests to the electronic communication service provider as authorized by the President and determined to be lawful.

The extension of immunity in section 202 reflects the Committee's determination that electronic communication service providers acted on a good faith belief that the President's program, and their assistance, was lawful. The Committee's decision to include liability relief for providers was based in significant part on its examination of the written communications from U.S. Government officials to certain providers. The Committee also considered the testimony of relevant participants in the program.

The details of the President's program are highly classified. As with other intelligence matters, the identities of persons or entities who provide assistance to the U.S. Government are protected as vital sources and methods of intelligence. But it reveals no secrets to say—as the Foreign Intelligence Surveillance Act, this bill, and Title 18 of the U.S. Code all make clear—that electronic

surveillance for law enforcement and intelligence purposes depends in great part on the cooperation of the private companies that operate the Nation's telecommunication system.

It would be inappropriate to disclose the names of the electronic communication service providers from which assistance was sought, the activities in which the Government was engaged or in which providers assisted, or the details regarding any such assistance. The Committee can say, however, that beginning soon after September 11, 2001, the Executive branch provided written requests or directives to U.S. electronic communication service providers to obtain their assistance with communications intelligence activities that had been authorized by the President.

The Committee has reviewed all of the relevant correspondence. The letters were provided to electronic communication service providers at regular intervals. All of the letters stated that the activities had been authorized by the President. All of the letters also stated that the activities had been determined to be lawful by the Attorney General, except for one letter that covered a period of less than sixty days. That letter, which like all the others stated that the activities had been authorized by the President, stated that the activities had been determined to be lawful by the Counsel to the President.

The historical context of requests or directives for assistance was also relevant to the Committee's determination that electronic communication service providers acted in good faith. The Committee considered both the extraordinary nature of the time period following the terrorist attacks of September 11, 2001, and the fact that the expressed purpose of the program was to ''detect and prevent the next terrorist attack'' in making its assessment.

On the basis of the representations in the communications to providers, the Committee concluded that the providers, in the unique historical circumstances of the aftermath of September 11, 2001, had a good faith basis for responding to the requests for assistance they received. Section 202 makes no assessment about the legality of the President's program. It simply recognizes that, in the specific historical circumstances here, if the private sector relied on written representations that high-level Government officials had assessed the program to be legal, they acted in good faith and should be entitled to protection from civil suit.

The requirements of section 202 reflect the Committee's determination that cases should only be dismissed when providers acted in good faith. Section 202 applies only to assistance provided by electronics communication service providers pursuant to a ''written request or directive from the Attorney General or the head of an element of the intelligence community. . . that the program was authorized by the President and determined to be lawful.''

Section 202 also preserves an important role for the courts. Although the bill reflects the Committee's determination that, if the requirements of section 202 are met, the provider acted in good faith, the section allows judicial review of whether the Attorney General has abused the discretion provided by statute in certifying that a provider either furnished no assistance or cooperated with the Government under the terms referenced in the section.

In determining whether to provide retroactive immunity, the Committee weighed the incentives such immunity would provide. As described above, electronic communication service providers play an important role in assisting intelligence officials in national security activities. Indeed, the intelligence community cannot obtain the intelligence it needs without assistance from these companies. Given the scope of the civil damages suits, and the current spotlight associated with providing any assistance to the intelligence community, the Committee was concerned that, without retroactive immunity, the private sector might be unwilling to cooperate with lawful Government requests in the future without unnecessary court involvement and protracted litigation. The possible reduction in intelligence that might result from this delay is simply unacceptable for the safety of out Nation.

At the same time, the Committee recognized that providers play an essential role in ensuring that the Government complies with statutory requirements before collecting information that may impact the privacy interests of U.S. citizens. Because the Government necessarily seeks access to communications through the private sector, providers have the unparalleled ability to insist on receiving appropriate statutory documentation before agreeing to provide any assistance to the Government.

The Committee sought to maintain the balance between these factors by providing retroactive immunity that is limited in scope. The provision of retroactive immunity was intended to encourage electronic communication service providers who acted in good faith in the particular set of circumstances at issue to cooperate with the Government when provided with lawful requests in the future. Restricting that immunity to discrete past activities avoids disrupting the balance of incentives for electronic communication service providers to require compliance with statutory requirements in the future. Under this bill and existing statutory provisions, providers will only be entitled to protection from suit for their future activities if they ensure that their assistance is conducted in accordance with statutory requirements.

The Committee believes that adherence to precise, existing statutory forms is greatly preferred. This preference is reflected in section 203 of the bill, which establishes procedures by which civil actions against those who assist the Government shall be dismissed upon a certification by the Attorney General that any assistance had been provided pursuant to a court order or a statutorily-prescribed certification or directive. The action the Committee proposes for claims arising out of the President's program should be understood by the Executive branch and providers as a one-time response to an unparalleled national experience in the midst of which representations were made that assistance to the Government was authorized and lawful.

PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES

Section 203 of this bill provides a procedure that can be used in the future to seek dismissal of a suit when a defendant either provided assistance pursuant to a lawful statutory requirement, or did not provide assistance. This section, a new section 802 of FISA, reflects the Committee's recognition that the identities of persons or entities who provide assistance to the intelligence community are properly protected as sources and methods of intelligence.

Under the existing statutory scheme, wire or electronic communication providers are authorized to provide information and assistance to persons with authority to conduct electronic surveillance if the providers have been provided with (1) a court order directing the assistance, or (2) a certification in writing signed by the Attorney General or certain other officers that ''no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required.'' See 18 U.S.C. 2511(2)(a)(ii). Current law therefore envisions that wire and electronic communication service providers will play a lawful role in the Government's conduct of electronic surveillance.

Section 2511(2)(a)(ii) protects these providers from suit as long as their actions are consistent with statutory authorizations. Once electronic communication service providers have a court order or certification, ''no cause of action shall lie in any court against any provider of wire or electronic communication service . . . for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter.'' Id. The Protect America Act and Title I of this bill provide similar protections from suit for providing information or assistance in accordance with statutory directives. All of these immunity provisions are designed to ensure that wire and electronic communication service providers assist the Government with electronic surveillance activities when necessary, and recognize the good faith of those providers who assist the Government in accordance with the statutory scheme.

To the extent that any existing immunity provisions are applicable, however, providers have not been able to benefit from the provisions in the civil cases that are currently pending. Because the Government has claimed the state secrets privilege over the question of whether any particular provider furnished assistance to the Government, an electronic communication service provider who cooperated with the Government pursuant to a valid court order or certification cannot prove it is entitled to immunity under section 2511(2)(a)(ii) without disclosing the information deemed privileged by the Executive branch. Thus, electronic communication providers are prohibited from seeking immunity under section 2511(2)(a)(ii) for any assistance they may have provided to the intelligence community, with the approval of the FISA Court, after January 17, 2007. Providers who did not assist the Government are similarly unable to extract themselves from ongoing litigation, because the assertion of the state secrets privilege makes it impossible for them to demonstrate their lack of involvement.

By addressing the situation in which an entity is prohibited from taking advantage of existing immunity provisions because of Government restrictions on disclosure of the information, Section 203 seeks to ensure that existing immunity provisions have their intended effect. The Committee also intends to reassure providers that as long as their assistance to the Government is conducted in accordance with statutory requirements, they will be protected from civil liability and the burden of further litigation.

The procedure in section 203 allows a court to review a certification as to whether an individual either assisted the Government pursuant to a lawful statutory requirement or did not assist the Government, even when public disclosure of such facts would harm the national security. Because an assertion of state secrets over the same facts would likely prevent all judicial review over whether, and under what authorities, an individual assisted the Government, this provision serves to expand judicial review to an area that may have been previously non-justiciable. In addition, the statute explicitly allows the court to review for abuse of discretion the Attorney General's certification that a person either did not assist the Government or cooperated with the Government pursuant, to statutory requirements.

PREEMPTION

Section 204 of the bill preempts state investigations or required disclosure of information about the relationship between individual electronic communication service providers and the intelligence community. The provision reflects the Committee's view that, although states play an important role in regulating electronic communication service providers, they should not be involved in regulating the relationship between electronic communication service providers and the intelligence community.

Mr. ROCKEFELLER. I hope very much that the Senator's amendment will be defeated. I thank the Chair.

Mr. BOND. I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, with the goodwill of the vice chairman, he has granted me a couple of moments to enter a couple documents in the RECORD. We have had several good days of debate or good hours of debate on the FISA bill going back to before the recess. I guess that would be several months. In the course of a discussion of a bill as lengthy and complex as this, several arguments have been made that warrant response, but there isn't always time to give the response. In the interest of establishing an accurate legislative history to accompany the bill, as manager of the bill, I ask unanimous consent to print in the RECORD a statement providing such clarifications and corrections.

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

H.R. 6304, FISA AMENDMENTS ACT OF 2008, RESPONSE TO VARIOUS POINTS IN PRE-RECESS DEBATE, JULY 8, 2008

Mr. President, prior to the recess, we had several good days of debate on the FISA bill. Inevitably, in the course of discussion of a bill as lengthy and detailed as this, several arguments have been made that warrant a response in the interest of an accurate legislative history. As a manager of the bill, I would like to take a few moments to clear up several matters.

EXCLUSIVITY

Sections 102(a) and (b) are the bill's main exclusivity provisions. Section 102(a) strengthens present exclusivity law by providing, in a new section 112 of FISA, that only an express statutory authorization for electronic surveillance or the interception of domestic communications shall constitute an exclusive means in addition to specifically listed statutes. Section 102(b) amends section 109 of FISA, the Act's key criminal offense provision, so that the criminal offense and the exclusivity provision dovetail exactly.

These main parts of section 102 are well understood. There has been some confusion, however, about a conforming amendment in section 102(c), which performs a useful but distinctly minor role in the overall exclusivity section.

Section 102(c) adds a detail to the section of the U.S. criminal code (18 USC 2511), which gives immunity from suit to companies who have received a certification from the Attorney General. It requires the Government to identify in the certification the specific statutory provision that authorizes the company's assistance ''if a certification . . . for assistance to obtain foreign intelligence information is based on statutory authority.''

Several colleagues have suggested, or at least strongly intimated, that this language acknowledges the President's constitutional authority to conduct warrantless surveillance of the kind involved in the President's Terrorism Surveillance Program. Any such argument is inconsistent with both the language of the provision and the intent of its drafters.

To understand the purpose of section 102(c), we need to look at the course of negotiations about it. In its proposed amendment to our Intelligence Committee bill, the Senate Judiciary Committee recommended the following language: ''A certification . . . for assistance to obtain foreign intelligence information shall identify the specific provision of the Foreign Intelligence Surveillance Act of 1978 . . . that provides an exception from providing a court order, and shall certify that the statutory requirements of such provision have been met.''

As the Judiciary Committee pointed out in its report, this language responded to the need of providers to have clarity regarding the legality of their actions and entitlement to immunity.

After the Judiciary Committee sequentially reported our bill, there were extensive discussions with the administration about this language. In the course of those discussions, the Department of Justice noted that FISA, as drafted in 1978, was only intended to regulate particular activities, those that constitute ''electronic surveillance,'' a term that is carefully defined in FISA. Indeed, the nuance in FISA's definition of electronic surveillance, as well as its very detailed parameters, led us to decide not to alter the definition of electronic surveillance in FISA in this compromise bill. Activities that do not constitute electronic surveillance within the meaning of FISA, or the interception of domestic wire, oral or electronic communications, were not restricted by FISA's original exclusivity provision and the same will be true under this bill. Thus, theoretically there may be activities that fall outside of the statute's restrictions but are not subject to an explicit statutory ''exception from providing a court order,'' as that term was used in the Judiciary Committee amendment.

These discussions led to the language in the current bill, which was included as part of Senator Feinstein's exclusive means amendment in the original Senate debate in February. The amendment was intended to ensure that the provider has as much information as possible, while still recognizing that, going back to the birth of FISA, activities may be conducted side-by-side with FISA, although not under the authority of FISA, if they do not fall within FISA's definition of electronic surveillance.

Section 102(c) was not intended to permit, and its language would not permit, any activities that would violate the main parts of the exclusive means provision, whatever the legal justification. Any suggestion that Congress would take away in a conforming amendment the central achievement of the overall exclusivity section makes no sense.

Indeed, the bill makes it painstakingly clear: any person who engages in electronic surveillance outside of FISA or the U.S. criminal code is committing a criminal offense. Given this statutory requirement, the Attorney General cannot lawfully certify that electronic surveillance outside of FISA satisfies ''all statutory requirements,'' as is required and will continue to be required for a certification in section 2511 of title 18.

Whether or not the President has constitutional authority to conduct surveillance—and there is widespread disagreement here on that point—the language of section 102(c) simply cannot be read to recognize any authority to conduct electronic surveillance that is inconsistent with FISA.

ASSESSMENT OF COMPLIANCE

In debate on the bill, the question has been raised whether the decision not to include in the final compromise a provision specifically addressing the authority of the FISA court to assess compliance with minimization procedures in section 702 represents a determination that the court should not have that authority.

Minimization procedures are specific procedures that are reasonably designed to minimize acquisition and retention, and prohibit dissemination, of nonpublic information concerning United States persons consistent with the need to obtain, produce, and disseminate foreign intelligence information. Compliance with them is central to the protection of the privacy of Americans. The Protect America Act failed to provide for court review and approval of minimization procedures. This bill corrects that omission. The PAA also failed to provide for rules on the use of information acquired under it. This bill corrects that omission by making section 106 of FISA applicable to collection under its foreign targeting provisions. That section explicitly mandates that federal employees may only use or disclose information concerning U.S. persons in accordance with required minimization procedures.

Although section 702 does not have a provision that mandates compliance reviews, as the original House bill contained, the bill before us today recognizes the authority of the FISA court to assess compliance with the procedures that it has approved. The courts of the United States are not advisory bodies. All of them, including the FISA court, have the inherent authority of any other court that exercises the judicial power of the United States to ensure that the parties before them are complying with their orders and the procedures they approve.

An amendment to the original bill that was offered by Senator Whitehouse, who had strongly advocated on the Senate floor in support of judicial review of compliance with minimization procedures, makes the Congress's recognition of this inherent court authority clear. That language, which the Senate adopted by unanimous consent and which is section 109(d) in the final bill, specifically states that no provision of FISA will be construed to reduce or contravene the inherent authority of the FISA court ''to determine or enforce compliance with an order or rule of such court, or with a procedure approved by such court.''

The decision in negotiating the compromise of this bill not to include in section 702 a separate provision for minimization compliance reviews by the court, should be understood, as we understood in the Senate when considering Senator Whitehouse's amendment, to represent satisfaction that the amendment adequately recognizes the authority of the FISA court to assess compliance.

EXIGENT CIRCUMSTANCES

The next issue that deserves clarification is the exigent circumstances exception to prior court approval. The bill requires the

Government to obtain prior court approval of targeting and minimization procedures before beginning collection under the new procedures. There is one exception to this requirement: in exigent circumstances, the Attorney General and Director of National Intelligence may authorize collection to begin immediately.

In section 702(c)(2), the bill describes an exigent circumstances determination to be ''a determination by the Attorney General and the Director of National Intelligence that exigent circumstances exist because, without immediate implementation of an authorization under subsection (a) [of section 702], intelligence important to the national security may be lost or not timely acquired and time does not permit the issuance of an order pursuant to subsection (i)(3) prior to the implementation of such authorization.''

In both Houses, there has been some discussion about the meaning of the phrase ''exigent circumstances'' and the expectations of Members about the use of this authority. While the bill does not define the phrase ''exigent circumstances'' standing alone, it does describe the limits of the appropriate use of the authority: a determination by the Nation's highest law enforcement official, the Attorney General, and highest intelligence official, the DNI, that (a) without immediate implementation ''intelligence important to the national security may be lost or not timely acquired'' and (b) time does not permit the issuance of a FISA court approval order prior to implementation.

To the extent that auxiliary aids are needed to assist in defining ''exigent circumstances,'' at least three are available.

First, section 702 as a whole demonstrates the clear intent of Congress that prior judicial approval is strongly preferred. To the extent practicable, the Government's submissions of certifications and procedures to the FISA court with regard to annual authorizations shall precede the effective date of those authorizations by at least 30 days. On receiving Government submissions, the FISA court is to complete action on them within 30 days unless the court exercises its limited extension authority.

Those provisions, working together, implement the design of the Congress to ensure that judicial review will ordinarily precede implementation. The benefit of doing so is obvious. The intelligence community, telecommunication providers who are asked to implement Government directives, and the American public will be assured that the procedures and certifications that ensure the lawfulness of collection have been approved before collection begins. In light of the centrality of prior review in section 702, and the significant benefits flowing from it, exceptions should be rare.

Second, if more is needed to define ''exigent circumstances,'' the dictionary definition of ''exigent'' is a tool of first resort outside the text and structure of the Act. For example, the Random House College Dictionary defines ''exigent'' as ''requiring immediate action or aid; urgent, pressing.'' ''Urgent'' in turn is defined as ''pressing, compelling or requiring immediate action or attention; imperative.''

Third, the interpretation of the bill by agencies charged with its administration is an acknowledged guide, particularly, as here, where that interpretation has been offered to the Congress in the course of the legislative process. In writing to the Speaker on June 19, the Attorney General and the DNI explained: ''The exigent circumstances exception is critical to allowing the Intelligence Community to respond swiftly to changing circumstances when the Attorney General and the Director of National Intelligence determine that intelligence may be lost or not timely acquired. Such exigent circumstances could arise in certain circumstances where an unexpected gap has opened in our intelligence collection efforts.''

The recognition that the ''exigent circumstances'' provision is an ''exception'' to prior court approval that it is applicable to ''changing circumstances'' and ''unexpected gaps,'' when considered in the light of the text and structure of section 702 and the ordinary meaning of ''exigent,'' all convey, as I believe, that this authority should be used only rarely, when urgent and unexpected action is truly required.

We intend to monitor the use of this authority carefully, so that we can address any abuses at the time of the sunset, if necessary.

TITLE II—DOCUMENTARY SUPPORT FOR ATTORNEY GENERAL CERTIFICATION

During the pre-recess debate, a suggestion was made that the bill establishes clear limits on what documents the district court may review in determining whether substantial evidence supports a certification by the Attorney General on a provider's entitlement to immunity.

The burden is on the Attorney General to provide to the court the equivalent of an administrative record that satisfies the substantial evidence test. While I agree that the parties cannot seek discovery to provide the court with information as to whether the substantial evidence test is met, the bill does not limit what the Attorney General may submit, in his or her discretion, to provide substantial evidence to support the certification.

A certification under section 802 shall be given effect unless the court, in accordance with subsection (b), finds that it is not supported by substantial evidence ''provided to the court pursuant to this section.'' The phrase ''this section'' covers the entire section. Thus, the scope of the evidence that the Attorney General may submit to sustain the substantial evidence burden is not dependent on any particular subsection of section 802 but is drawn from the entirety of the section including, importantly, all of the substantive requirements for the implementation of liability protection.

Section 802(b)(2) provides that in reviewing a certification under section 802 the court may examine the court order, certification, written request, or directive described in the substantive provisions of section 802. This authority ensures that the court will be able to examine those documents. But it does not limit the Attorney General to those documents in supporting a certification under section 802. For example, the Attorney General may determine that providing substantial evidence to support a certification that a person did not provide assistance requires evidence that is not included in communications with that person. Section 802 therefore should not be read as a limit on what may be submitted to the court by the Attorney General. As for the method by which additional information may be provided, section 802 imposes no limit on what the Attorney General may include within a certification or annexed to it.

Mr. ROCKEFELLER. I also point out, there was an op-ed piece in support of the FISA bill in today's New York Times which I call to the attention of my colleagues. It was written by Mr. Morton Halperin and entitled ''Listening to Compromise.'' Mr. Halperin, in addition to being executive director of the Open Society Policy Center, has a lengthy career of public service in both Democratic and Republican administrations.

Mr. President, I ask unanimous consent to have printed in the RECORD Mr. Halperin's op-ed in support of the bill as it appeared in today's New York Times.

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

[From the New York Times, July 8, 2008]

LISTENING TO COMPROMISE

(By Morton H. Halperin)

Two years ago, I stated my belief that the Bush administration's warrantless wiretapping program and disregard for domestic and international law poses a direct challenge to our constitutional order, and ''constitutes a far greater threat than the lawlessness of Richard Nixon.''

That was not a casual comparison. When I was on the staff of the National Security Council, my home phone was tapped by the Nixon administration—without a warrant—beginning in 1969. The wiretap stayed on for 21 months. The reason? My boss, Henry Kissinger, and the director of the F.B.I., J. Edgar Hoover, believed that I might have leaked information to this newspaper. Even after I left government, and went to work on Edmund Muskie's presidential campaign, the F.B.I. continued to listen in and made periodic reports to the president.

I was No. 8 on Richard Nixon's ''enemies list''—a strange assemblage of 20 people who had incurred the White House's wrath because they had disagreed with administration policy. As the presidential counsel John Dean explained it in 1971, the list was part of a plan to ''use the available federal machinery to screw our political enemies.'' My guess is that I earned this dubious distinction because of my opposition to the Vietnam War, though no one ever said for sure.

Because I rejected the Nixon administration's use of national security as a pretext for broad assertions of unchecked executive power, I became engaged with the Foreign Intelligence Surveillance Act when it was proposed in the early 1970s. And because I reject the Bush administration's equally extreme assertions of executive power at the expense of civil liberties, I have been engaged in trying to improve the current legislation.

The compromise legislation that will come to the Senate floor this week is not the legislation that I would have liked to see, but I disagree with those who suggest that senators are giving in by backing this bill.

The fact is that the alternative to Congress passing this bill is Congress enacting far worse legislation that the Senate had already passed by a filibuster-proof margin, and which a majority of House members were on record as supporting.

What's more, this bill provides important safeguards for civil liberties. It includes effective mechanisms for oversight of the new surveillance authorities by the FISA court, the House and Senate Intelligence Committees and now the Judiciary Committees. It mandates reports by inspectors general of the Justice Department, the Pentagon and intelligence agencies that will provide the committees with the information they need to conduct this oversight. (The reports by the inspectors general will also provide accountability for the potential unlawful misconduct that occurred during the Bush administration.) Finally, the bill for the first time requires FISA court warrants for surveillance of Americans overseas.

As someone whose civil liberties were violated by the government, I understand this legislation isn't perfect. But I also believe—and here I am speaking only for myself—that it represents our best chance to protect I

both our national security and our civil liberties. For that reason, it has my personal support.

Mr. ROCKEFELLER. Mr. President, I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I would like to speak for a little while about one part of the bill, and I will have more to say tomorrow. I strongly oppose the blanket grant of immunity that is contained in this bill. I would hope Senators would reject what is an ill-advised legislative effort to engineer specific outcomes in ongoing Federal judicial proceedings. Basically, we are telling another branch of Government: Here is the way you have to come out in your decisions.

There is a way to cure that problem. Instead of the Congress telling the courts how they have to rule, we could adopt the Dodd-Feingold-Leahy amendment to strike title II from the bill. This would strike the retroactive immunity provisions, and it would allow for accountability for those who violated Americans' rights and violated the law. It would send a strong message that no one stands above the law in the United States.

I am not out to get the telephone companies. I just want us to know who it was in the administration who said: You may break the law. The American people ought to know who in the White House said, ''You may break the law,'' who it was who made the decision that somehow this President stands above the law.

The administration circumvented the law by conducting warrantless surveillance of Americans for more than 5 years. They were breaking the law, and then they got caught. The press reported this illegal conduct in late 2005. The Republican-controlled Congress did not ask the questions to find it out. The press found it out. Had they not done so, I have to assume this unlawful surveillance would still be going on today.

When the public found out that the Government had been spying on the American people outside of FISA for years, the Government and the providers were sued by citizens who believed their privacy rights were violated. They said: You are violating our privacy. We want you to be held accountable. But, of course, that is why the Founders created a system of Federal courts through the Constitution—so people can assert their rights before a fair and neutral tribunal without interference from the other branches of Government, so they have some way to say: I am not a Democrat. I am not a Republican. I am not rich. I am not poor. I am an American. I am seeking to have my rights upheld.

Title II of this bill would effectively terminate these lawsuits and those rights. It seeks to reduce the role of the court to a rubber stamp. So long as the Attorney General certifies that the Government requested the surveillance and indicated that it had been ''determined to be lawful,'' the cases will be dismissed and everybody is off the hook. It is not the court that says whether you followed the law. No, this bill allows the government to say: Oh, you are looking at us? Ah, we certify we followed the law. So, therefore, you courts have to let us off the hook because, after all, we said, whether we broke the law or not, we are following the law, so we are home free.

That is not a meaningful judicial inquiry. Thinking back to my days as a prosecutor in Vermont, that would be as if the police caught someone in a burglary, I charged them, and the defendant then told the judge: But I have determined that for me, your Honor, the burglary laws do not apply, so you have to let me go. I can't be prosecuted. I can't be held accountable. Nobody would take that seriously. We should not take this seriously. We should not do something that does not give the plaintiffs their day in court. It is not just a heavy thumb on the scales of justice; it is a whole hand and an arm on the scales of justice, and I cannot support it.

If we look at the publicly available information about the President's program, it becomes clear that title II is designed to tank these lawsuits, pure and simple, but then to allow the administration to avoid any accountability for their actions. The Senate Intelligence Committee said in a report last fall that the providers received letters from the Attorney General stating that the activities had been ''authorized by the President'' and ''determined to be lawful.''

Guess what. These are precisely the ''magic'' words that will retroactively immunize the providers under title II of this bill. Mr. President, the fix is in. The bill is rigged, based on what we already know, to ensure that the providers get immunity and the cases get dismissed.

What it says is, if you are in charge, you can just go out and break the law, and then when they look at you, send a letter to the court saying: I have determined that when I broke the law, I did not really break the law, so you have to let me off the hook.

Lewis Carroll once wrote a book about that. I think it was called ''Alice in Wonderland.'' So what if Americans' rights were violated. So what if statutes were violated. So what if those privacy-protecting statutes provide for damages. This bill makes our courts the handmaidens to a coverup, and it is wrong. It tells the courts—the U.S. Federal courts—it tells them: Take part in a coverup. I cannot support something that does that. It is wrong.

Make no mistake, if title II becomes law, there will be no accountability for this administration's actions in a court of law. We would take away the only viable avenue for Americans to seek redress for harms to their privacy and liberties.

Those who claim that American citizens can still pursue their privacy claims against the Government know that sovereign immunity is a roadblock. They know that cases against the Government have already been dismissed for lack of standing. They know about the Government's ability to assert the state secrets doctrine and various other legal defenses and protections for Government officials. They know these suits will go nowhere. They know, and it is wrong for them to suggest otherwise. This is a red herring if there ever was one.

The report of the Select Committee on Intelligence in connection with its earlier version of the bill that also included retroactive immunity is telling. The Select Committee on Intelligence wrote:

> The Committee does not intend for this section to apply to, or in any way affect, pending or future suits against the Government as to the legality of the President's program.

And later wrote:

> Section 202 makes no assessment about the legality of the President's program.

But neither that bill nor this one makes any allowance for such suits against the Government to proceed to a decision on its merits. That is precisely what is lacking in this measure: an avenue to obtain judicial review and accountability.

Now, those who support retroactive immunity for the telecommunications carriers and dismissal of the suits against them without providing an effective avenue to challenge the program or obtain judicial review of its legality—well, what they are doing is supporting unaccountability, pure and simple. They are saying: Everybody is off the hook. I am not out to get the telephone companies. All I want to know is, who in our Government said: You may break the law. And this bill is going to make sure we never find out.

In fact, the case that did proceed to decision in the Federal court in Michigan was appealed by the Government, was vacated and dismissed for lack of ''standing.'' So the judicial decision on the merits that the President's program of warrantless wiretapping of Americans was a violation of law and the Constitution was effectively wiped from the books.

I note again that the proponents of this retroactive immunity have not and cannot say that the administration acted lawfully. They do not say the administration acted lawfully because they know the administration did not act lawfully.

Even if one believes the telephone companies merit protection, there is simply no good reason why Congress must act now to deal with the issue of the ongoing lawsuits against providers. The claim that these lawsuits will somehow ''bankrupt'' the providers is belied by the record demonstrating the financial health of these companies today despite the ongoing litigation.

Even the most alarmist critics of the lawsuits acknowledge it would be years

and probably at least two trips to the U.S. Supreme Court before we have any enforceable final judgments.

If there is such a risk, well, what does that say? It says there were violations and that people's rights were violated. Now, I have said before that I would support the Government stepping into the shoes of these defendants, of these telephone companies, if we want to protect them. It is simple. If you are that concerned about the telephone companies, exclude them. Substitute the U.S. Government. But we should not protect them if the cost of protecting them is all accountability and the cost of never getting a judicial determination on the merits of the cases whether the Government violated the law.

Americans have a right to know.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. LEAHY. Mr. President, I ask unanimous consent for an additional 30 seconds.

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

Mr. LEAHY. I believe the rule of law is important. I trust our courts to handle even the most difficult and sensitive disputes. That is the courts' role in our constitutional scheme, not ours. Title II of this bill would have Congress decide these cases by legislative fiat.

We do not want to diminish our Federal judiciary and risk selling out large numbers of Americans whose fundamental rights may have been violated. We should not pass this bill unamended. I urge my colleagues to cast a vote for accountability and support the Dodd-Feingold-Leahy amendment.

I strongly oppose the immunity provisions contained in this bill, and I have supported every effort to strike them. But if we cannot eliminate these ill-advised provisions, then I agree that Senator BINGAMAN's amendment to delay a decision on immunity until after the inspectors general have conducted their review of the warrantless surveillance program makes good sense.

I worked hard to include the inspectors general amendment as a part of this FISA bill. For that provision to have its full effect, we should delay any grant of retroactive immunity until we know what the final report says.

Senator BINGAMAN's amendment would stay all pending cases against the telecom companies related to the warrantless surveillance program and delay the effective date of the immunity provisions in title II of the bill until 90 days after Congress receives the inspectors general reports.

I have maintained throughout this debate that it makes little sense for Senators—many who have never been given the opportunity to view key documents relevant to the warrantless surveillance program—to cast an uninformed vote on retroactive immunity. That is buying a pig in a poke. To mix farm metaphors, the Bingaman amendment puts the horse back in front of the cart.

First, let's get the facts. And then, only after reviewing the relevant facts that the administration claims support granting retroactive immunity, determine whether Congress should attempt to legislatively determine the result of the 40 or so Federal cases alleging violations of fundamental rights of Americans.

Again, I believe the retroactive immunity provisions in this bill should be stripped entirely. But if that cannot be accomplished, then I support Senator BINGAMAN's amendment as a commonsense way to ensure that the Senate makes a fully informed decision on retroactive immunity.

I yield the floor.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 5059

Mr. SPECTER. Mr. President, I now call up my amendment No. 5059.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 5059.

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

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

The amendment is as follows:

(Purpose: To limit retroactive immunity for providing assistance to the United States to instances in which a Federal court determines the assistance was provided in connection with an intelligence activity that was constitutional)

On page 90, strike lines 17 through 21 and insert the following:

''(1) REVIEW OF CERTIFICATIONS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a certification under subsection (a) shall be given effect unless the court finds that such certification is not supported by substantial evidence provided to the court pursuant to this section.

''(B) COVERED CIVIL ACTIONS.—In a covered civil action relating to assistance alleged to have been provided in connection with an intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, a certification under subsection (a) shall be given effect unless the court—

''(i) finds that such certification is not supported by substantial evidence provided to the court pursuant to this section; or

''(ii) determines that the assistance provided by the applicable electronic communication service provider was provided in connection with an intelligence activity that violated the Constitution of the United States.

Mr. SPECTER. Mr. President, I believe that history will look back at the period of time between 9/11 and the present as the greatest expansion of the executive authority in the history of this country. We have seen the unauthorized military commissions. We have seen the extraordinary rendition to the frequent invocation of state secrets, privilege, and the misuse of so-called signing statements.

The signing statements represent a fundamental failure of the Congress to utilize its constitutional authority. When the Constitution provides that there is a presentment by both Houses, the President either signs it or vetoes it, and the widespread practice has now come into play where the President signs and issues a signing statement undercutting key provisions of the legislation. I introduced a bill to give Congress standing to challenge that in court. It has gone nowhere because of the impossibility of overriding a veto and because of the considerations of case in controversy.

We have seen, in the context of the evolving issues, the total ill-effectiveness of Congress to provide the oversight of the Intelligence Committees. The National Security Act of 1947 expressly provides that matters such as the terrorist surveillance program should be submitted to the Intelligence Committees, but that has not been done. Only a portion of the Intelligence Committees have been briefed. Most of the limited briefing was done only when the administration needed some support for the confirmation of General Hayden as CIA Director. We have seen the provisions of the Foreign Intelligence Surveillance Act of 1978 bypassed by the executive branch on a claim of constitutional authority under article II, power as Commander in Chief, contrasted with the congressional authority under article I.

A Detroit Federal court declared the terrorist surveillance program unconstitutional. The Court of Appeals for the Sixth Circuit reversed, in a 2-to-1 decision on the ground of the lack of standing, with the dissenter filing an opinion showing ample basis for standing. The Supreme Court of the United States refused to review the case. They called it a denial of certiorari. That is the major constitutional confrontation of our era, between the President asserting article II powers as Commander in Chief and the explicit statutory provision enacted by Congress in 1978 providing for the exclusive means of having wiretapping. Instead, we have warrantless wiretapping.

The legislation pending now would provide retroactive immunity. I suggest retroactive immunity in a context that we could both preserve the electronic surveillance and leave the court with jurisdiction in one of two ways. One, by substituting the Federal Government as the party defendant of the telephone companies, in the shoes of the telephone companies with no more, no less rights; or secondly, requiring, as my amendment does, that the Federal district court would decide constitutionality. No one is denying the

telephone companies have been good citizens.

The argument has been made that, well, there may be money damages or there is a matter of public image which is involved. Well, monetary damages and public image, in my judgment, don't measure up to the right of privacy. Just as Oliver Wendell Holmes, in a 1928 case almost a century ago, said that wiretapping was ''dirty business''—and it remains dirty business—it may be necessary on national security grounds, but it has to be done within the confines of the law. That can be decided only by the courts, especially in the atmosphere that we have where the Congress has been so ineffective and where the Supreme Court of the United States ducked the issue on the case coming out of the Sixth Circuit, where there was ample grounds for finding standing to proceed with that case.

Within the past 6 days, there has been a major development on this issue as a result of a judgment handed down by Chief Judge Vaughn Walker of the U.S. district court in San Francisco. Judge Walker is the same judge who has the telephone company cases which were consolidated and sent to him under Federal rules on a multidistrict panel. Judge Walker found flatly that the President exceeded his constitutional authority when he ignored the Foreign Intelligence Surveillance Act. This is the exact language in the 56-page opinion:

> Congress appears clearly to have intended to—and did—establish the exclusive means for foreign intelligence surveillance activities to be conducted. Whatever power the executive may otherwise have had in this regard, FISA—

The Foreign Intelligence Surveillance Act—

> limits the power of the executive branch to conduct such activities.

So now we have the judge who is hearing these telephone cases having said that such surveillance is unconstitutional. FISA covers not only the traditional wiretaps but explicitly covers pen registers and trap-and-trace devices which could include whatever it is the telephone companies were allegedly doing. On that subject, we do not know the full extent of what the telephone companies are doing. All we have are the allegations and the legal papers. Here, Congress is being asked to pass upon a program on which most Members have not been briefed. As stated earlier on the floor today, 70 Members of the Senate would be called upon to vote on a program when they don't even know what it is. The House leadership has pointed out that most of the Members of the House of Representatives have not been briefed.

In an exchange with the Senator from Missouri today, I raised the fundamental constitutional point that Members' constitutional responsibilities cannot be delegated. You can't delegate them to a minority of the Senate, but that is what we are being asked to do. It is a pig in a poke. The old expression describes it very well. We don't even know what the program is, and we are being asked to ratify it.

The issue was put to the Senator from Missouri, the chief defender of this bill, of any precedent where you have a case pending before Judge Walker, an extended opinion in July of 2006 on appeal to the Court of Appeals for the Ninth Circuit. If this act is passed, it will be unceremoniously jerked out from under the court. I asked him if there is any case in history, and I would repeat that challenge to the distinguished chairman of the committee.

What we have left is judicial review. Without judicial review, there is no way to effectuate the constitutional doctrine of separation of powers, which is so fundamental in our society. Even when the proponents of the bill talk about money and business reputation—no one is challenging the good citizenship of the telephone companies, and the likelihood of monetary damages is extremely remote. But if the Government were to be substituted as the party defendant, that is a matter of dollars and cents which hardly comports to the fundamental issues which are involved in civil liberties.

It is understandable that Congress continues to support law enforcement powers because of the continuing terrorist threat. No one wants to be blamed for another 9/11. My own briefings on the telephone companies' cooperation with the Government have convinced me of the program's value so that I voted for it, even though my amendment to substitute the Government for the telephone companies was defeated in the Senate's February vote. Similarly, I am prepared to support it again as a last resort, even if it cannot be improved by providing for judicial review, the pending amendment. However, since Congress has been so ineffective in providing a check and balance, I will fight hard—and I am fighting hard—to secure passage of this amendment to keep the courts open. It is our last refuge, our last big stand when the stakes are high, and they invariably are. When Congress addresses civil liberties and national security, Members frequently must choose between the issues of two imperfect options. Unfortunately, we too often back ourselves into these corners by deferring legislation until there is a looming deadline. Perhaps that is why so many of my colleagues have resigned themselves to accepting the current bill without seeking to improve it further.

Although I am prepared to stomach this bill if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I do not believe it is too late to make this bill better. Perhaps the Fourth of July holiday will inspire the Senate to exercise its independence from the executive branch, now that we are back in Washington.

How much time do I have remaining, Madam President?

The PRESIDING OFFICER (Mrs. MCCASKILL). There are 32 minutes remaining.

Mr. SPECTER. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Who yields time to the Senator from Rhode Island?

Mr. ROCKEFELLER. I yield as much time as the Senator requires.

Mr. WHITEHOUSE. Madam President, I appreciate very much the courtesy of my chairman in allowing me some time. I should not take more than 10 minutes.

Once more we find ourselves debating President Bush's warrantless wiretapping program, a self-inflicted wound that this administration has visited upon our Government.

The way this Senator sees it at least, the Bush administration broke faith with the American people with its warrantless surveillance program, and now we in Congress are meant to clean up the administration's mess. Unfortunately, we are doing so with a legislative fix that in one critical area—immunity for the phone companies—misapplies the substantial evidence standard, trespasses constitutional boundaries, and breaks dangerous new ground in American law.

We would not be in this position if the Bush administration had sought and received a court order in the first place, as it easily could have. There would be no debate over granting immunity since a company following a court order is protected. Or the Bush administration could have used FISA procedures to seek and receive lawful assistance from telecommunications companies. But the administration chose to go outside the law. I suspect the administration wanted to prove a point about the President's article II authority, so it deliberately avoided these well-established mechanisms. If so, the Bush administration deliberately walked these telecommunications companies into this problem and this litigation to vindicate ideological ambitions. But the problem is now before us.

I have worked diligently and across the aisle to try to develop thoughtful solutions to the problem. In February, with the distinguished Senator from Pennsylvania, Senator ARLEN SPECTER, the learned ranking member of the Judiciary Committee, I offered a bipartisan amendment that would have substituted the U.S. Government for the telecommunications companies if it was determined they acted in good faith and with the reasonable belief that compliance was lawful.

Similarly, I supported an amendment offered by Senators DIANNE FEINSTEIN and BILL NELSON, drawn from the Specter-Whitehouse amendment, that offered immunity to those companies that acted, again, in good faith and with the reasonable belief that compliance was lawful.

Good faith is the proper standard here. It is the standard repeatedly referenced by respected Members in this

Chamber who have asserted that any telecommunications company that assisted the Government acted in good faith.

My friend, Senator MARTINEZ, said:

> The fact is that these companies acted in good faith, and they acted in good faith when they were called upon to assist our intelligence professionals.

My friend on the Judiciary Committee, Senator KYL, noted:

> [t]he general rule that private citizens acting in good faith to assist law enforcement are immune from suit.

Senator CHAMBLISS, my colleague on the Intelligence Committee, argued that America's telecommunications carriers ''should not be subjected to costly legal battles and potentially frivolous cases . . . merely for their good faith-assistance to the Government.''

Senator ALLARD said that ''the U.S. Government owes these patriotic companies and their executives protections based on the good-faith effort they made in working with our intelligence community.''

Senator BOND, vice chairman of the Intelligence Committee, noted that ''the intelligence community advised us . . . that these companies acted in good faith, and we in the committee agreed with them.''

We seem to have agreement amongst Members in this body that good faith is the proper standard. So we should let a court, which has available to it the procedural mechanisms necessary to get to the bottom of this in a confidential manner, make the determination, the fundamental determination: Did these companies, if they received Government requests, act in good faith? We may in this body assume it to be true, but it is not our role as Members of Congress to decide on the good faith of an individual litigant in a matter that is before a court.

Many Senators have not even been read into the classified materials that would allow us to reach an informed conclusion about good faith. We as a body are incapable of making an informed conclusion because as a body, we have not had access to the necessary materials. So we should provide a fair mechanism for a finding of good faith by a proper judicial body with the proper provisions for confidentiality.

This simple determination can be made with limited proceedings based largely on the record of any documents provided to the companies. We ask so little—a proper hearing, applying a proper standard. Unfortunately, the Bush administration opposed this option, and I have not had the chance to offer this amendment. For all its talk, the Bush administration was evidently and tellingly not confident that a good-faith threshold could be met.

So instead of requiring a finding of good faith, the bill states that immunity will be granted if the Attorney General's certification is ''supported by substantial evidence.'' It is worth drilling down to some lawyering for a moment to reflect on what ''substantial evidence'' means in this context.

The first point is that ''substantial evidence'' standard is essentially a meaningless standard, given the minimal showing necessary to be granted immunity. The elements as to which substantial evidence must exist are these: The intelligence activity was ''authorized by the President''; ''designed to detect or prevent a terrorist attack''; and ''the subject of a written request or directive . . . indicating that the activity was (I) authorized by the President; and (ii) determined to be lawful.''

That is it. That is achieved by simply putting into evidence the piece of paper containing the Attorney General's certification.

But the substantial evidence standard implies more than that, and it is out of place here. This standard is typically applied in what is called a ''sufficiency challenge''—a judicial inquiry into whether there is substantial evidence to support a jury verdict. I cannot tell you how many sufficiency challenges I have withstood as an attorney general and U.S. attorney. It is standard fare in criminal cases.

The substantial evidence standard is also frequently used for judicial review of an administrative agency's adjudication or rulemaking.

So the substantial evidence standard is used to review the results of adversarial proceedings where the parties had a chance to make their case and build their record, and the court then reviews to determine whether there is substantial evidence to support the agency's or jury's determination.

The substantial evidence standard is a standard used to weigh the result of an adversarial process. Not so here. Here the court will apply the substantial evidence standard to an Attorney General's unilateral certification. That is bad lawyering. That is discouraging, when it would have been so easy to get this right.

Let me close with a few words about the constitutionality of title II. It is a core principle of our system of separated powers that no branch of Government may exercise powers allocated to another branch. The United States Supreme Court has said that the Framers of the Federal Constitution felt in drafting our Constitution ''the sense of a sharp necessity to separate the legislative from the judicial power.'' This sense of sharp necessity, the Court said, was ''prompted by the crescendo''—the words the Court used—''the crescendo of legislative interference with private judgment of the courts.''

If you wish to see a case of legislative interference with private judgment of the courts, look no further than what we are doing today.

Plaintiffs in the telecom litigation have brought causes of action alleging that their core constitutional rights were violated. By providing immunity, Congress is telling the judicial branch: You cannot hear an entire category of constitutional claims. Congress is intruding upon a core function of the judicial power—the resolution of constitutional disputes.

The U.S. Supreme Court has warned on more than one occasion, most recently in the 1988 case of Webster v. Doe, that ''a serious constitutional question would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.''

This statute has as its very purpose to deny a judicial forum to these colorable constitutional claims.

I further note that Congress stepping in to pick winners and losers in ongoing litigation on constitutional rights not only raises separation of powers concerns but it veers near running afoul of the due process and takings clauses. Article II of this bill is the most extreme measure Congress, as best as I can find, has ever taken to interfere in ongoing litigation. Congress usually provides at least a figleaf of an alternative remedy when it takes away the judicial one. For example, in the National Childhood Vaccine Injury Act, Congress put a stop to Federal court actions but provided an alternative path for claims to be heard. The Public Readiness and Emergency Preparedness Act eliminated liability for people who take certain countermeasures during or after a pandemic outbreak. But a special fund for victims was established by Congress.

Today's effort is a naked intrusion into ongoing litigation. Where will that stop? Will Congress be able to rove at will through litigation anywhere in the judicial branch, picking winners and losers as we like? We don't just trespass on the separation of powers; we trespass onto dangerous ground.

If I were a litigant, I would challenge the constitutionality of the immunity provisions of this statute, and I would expect a good chance of winning.

I spoke before the Independence Day recess about article I of this bill, how proud I am of the work that went into it and the exemplary results we have achieved. Chairman ROCKEFELLER, in particular, but many others as well, deserves commendation, first for resisting the Bush administration's unseemly efforts to create a legislative stampede and, second, for thoughtfully crafting an improved and modernized FISA Act that contains many new important protections for Americans. I will incorporate my reference of my previous remarks on that subject, but suffice it to say as an attorney general and a U.S. attorney who has run wiretap vehicles, article I is a fine piece of legislation which makes it all the more disappointing that the Bush administration will not tolerate an amendment to article II that allows for a proper hearing before the proper court set to the proper standard. It would be so easy to get article II right. So close and yet so far.

I close by reiterating my deep anger that the Bush administration unnecessarily created this mess in the first place, my frustration with the solution that Congress has established to the immunity question, and my hope that our great judicial branch will vindicate the error we in the legislative branch make today.

Mr. SPECTER. Madam President, I had hoped to ask a couple questions of the distinguished Senator from Rhode Island. I consulted with the chairman, who wants to be recognized next. It would be my request, if I may have Senator WHITEHOUSE's attention, that he stay on the floor to engage in a discussion, a colloquy with me when the chairman has concluded.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Madam President, Senator SPECTER has offered an amendment altering the liability protections of title II. His amendment would require the district court to assess the constitutionality of the President's warrantless wiretapping program before it could dismiss cases against telecommunications companies that met statutory requirements for liability protection.

Although I appreciate the Senator's desire to ask the court to address the constitutionality of the President's program once and for all, he has picked the wrong mechanism to ask the court to answer his question.

First, Senator SPECTER's amendment would completely undermine, as I said before, the delicate compromise in front of us today. People say: Well, we are freshly back in town, newly minted, widely open. I am sorry, this was a bill which just got through on a thread, and it will probably get close to 70 votes, a compromise already accepted by the House with 70 percent of their votes, and I think that balances the protection of liberties and also does something I have stated I think is rather important; that is, it allows the collection of intelligence to continue in order to protect the United States of America.

Senator SPECTER's amendment also would require the court to consider a difficult constitutional question that otherwise would not be at issue in the cases.

Title II does not cover cases against Government actors. This exclusion was intentional. Cases against the Government for any unlawful or unconstitutional actions Government actors may have undertaken should be allowed to proceed. Arguments over the constitutionality of the President's actions can and should be litigated in those proceedings.

The amendment, however, injects this complicated constitutional question about the interplay of the fourth amendment and separation of powers into cases requesting civil damages from private companies. The amendment does not require that there be a relationship between the companies and this constitutional question. It does not ask whether the companies were aware of the scope of the President's program, nor does it ask whether the companies' actions were done in good faith or even whether they were legal. Indeed, if the court finds that the President's program violated the Constitution, the cases against the company will not be dismissed even if that company had no involvement in the unconstitutional components of the President's program.

Madam President, this is simply unfair. A company should not be subjected to liability solely because the Government acted unconstitutionally. A company should not be subjected to liability solely because the Government acted unconstitutionally. Any accountability and liability should be based on actions of the company, which is what title II is about.

Imposing this barrier to liability protection is also inconsistent with our expectation about the role companies are expected to play when they receive Government requests for information. Our existing statutory approach is based on the idea that the Government requires prompt cooperation from the telecommunications companies. Although we expect those companies to seek documentation from the highest levels of Government, they are not expected to assess the constitutionality of particular requests on which they lack, to say the least, complete information.

The ongoing litigation is complicated by classified information issues that make it virtually impossible for the cases to move forward. But if the cases could proceed without regard to the classified information at issue, the court would not consider the question of whether the President's program was constitutional. Instead, it would ask whether the companies were entitled to immunity based on existing law.

In addition, a case against any particular company is necessarily limited to the facts relevant to that company. The court would, therefore, not be provided a comprehensive look at the President's program in any of those cases.

We should not ask the district court to assess whether the President's program is constitutional when the answer to that question is unnecessary to resolve the underlying litigation between the plaintiffs and the carriers, and the court does not have sufficient facts to address that far-reaching question of constitutionality. We are talking about apples and oranges, but it is apples here that we are concerned with.

I urge my colleagues to oppose this amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I do wish to engage in a colloquy with the Senator from Rhode Island, but first, with the chairman having just completed, I would like to respond to some of his contentions and engage in a question or two with the chairman.

When the Senator from West Virginia argues that my amendment would undermine the delicate compromise which the Intelligence Committees have reached, that is what the full Senate is supposed to do. The committees deliberate, the House and the Senate come to a conference report, they bring the matter to the Senate, and then it is up to the full body to make a determination. So there is nothing unusual about disagreeing with the compromise, however delicate.

The chairman argues that it would require the courts to consider difficult constitutional issues. That is exactly what the courts are supposed to do. The full impact of Chief Judge Vaughn Walker's decision and how far-reaching it goes has not been felt, understood, or analyzed in the course of only 6 days—an opinion which runs more than 50 pages. We are dealing with court-stripping in the middle of litigation that has been going on for years. Judge Walker's opinion concerning the telecom companies was in July 2006, with the telephone companies now on appeal.

It really goes back to the fundamental principle of Marbury v. Madison, when Chief Justice Marshall made the determination that it is up to the courts to decide what the Constitution means, and we would be undercutting that judicial process in midstream.

Earlier, I posed a question to the Senator from Missouri, which if the chairman wishes to answer would be fine. I know and I admire what Senator ROCKEFELLER has done. I have worked with him since he was elected in 1984, and we worked together on the Veterans' Committee and on intelligence matters and on many major matters. When the history is written, there will be a famous handwritten letter disclosed by Senator ROCKEFELLER to the administration about how deeply he feels and how deeply he cares about these matters. But I questioned the Senator from Missouri, who is a member of the bar and quite a scholar on constitutional law, if there had been any case known to him picked up in midstream after years of work in the district court and pending on appeal. It really goes right to the heart of Marbury vs. Madison.

You have Chief Judge Walker having flatly decided that the terrorist surveillance program is unconstitutional, and you have Chief Judge Walker leaving aside the issues of standing but saying:

> Plaintiff amici hint at the proper showing when they refer to ''independent evidence disclosing that plaintiffs have been surveilled'' and a ''rich lode of disclosure to support their claims.''

Going to the standing issue. Although not decided, why not let the courts finish it? You have these decisions. Why not keep the current program in effect and not interrupt the courts and have the judicial decision?

So when the chairman raises the point that it would require the courts to consider difficult constitutional questions, I agree with him, but that is what the Federal courts are supposed to do, and it really is untoward for the Congress to step into the middle of it. I know of no case like it. And here we are being asked to strip the court of jurisdiction when they are in midstream, where they may well find some important facts to some important matters in the course of the judicial decisions which would influence Congress.

We have the amendment offered by the distinguished Senator from New Mexico, Mr. BINGAMAN, which would call upon the inspector general to find out what the facts are on immunity since, as I say, we are being asked to pass on this when we don't know the full import. And I support the Bingaman amendment. I am an original cosponsor of it. Well, similarly, what Chief Judge Walker may find here may be very important.

But let me raise the first of two questions with the chairman.

Mr. ROCKEFELLER. May I respond to the Senator's observation?

Mr. SPECTER. Certainly. I will yield.

Mr. ROCKEFELLER. I would say to my distinguished friend from Pennsylvania that Judge Walker's case is not, under any circumstance, going to be stopped by whatever happens here. It will not happen, and it will, therefore, continue. The bill only addresses cases against carriers, is the point I was trying to make. Judge Walker—his case is a case against the Government. This bill is not against the Government. It is against what happens to the carriers, or in this particular case whether they get liability. The Government is not the point. The carriers are the point. The case continues, and we have not intervened in a malicious or malevolent way.

Mr. SPECTER. Well, Madam President, by way of reply, I understand that this provision only concerns the telephone companies, and I understand the chairman's argument about good faith. But good faith is not determinative in and of itself. If the conduct violates the Constitution, there is a constitutional violation no matter how good the faith may be. It would be a good reason to indemnify, to substitute, to hold them harmless, but not to exonerate them for a constitutional violation.

The chairman says companies should not be held liable if the Government acted unconstitutionally. That is not correct as a matter of law. Where the telephone companies are aiders and abetters and accessories before and after the fact and really act jointly with the Government, they can be liable.

Mr. ROCKEFELLER. That is quite an assumption to make, I say to the Senator.

Mr. SPECTER. Let me finish the reply, and I will be glad to yield again.

When the argument is made that only the case against the telephone companies is involved, that is not quite accurate. It is being dismissed. It is no coincidence that Chief Judge Walker handed this opinion down a few days—6 days—before it was publicly known that the Senate would be taking up this issue. And he went out of his way to raise the issue about standing and the rich lode of disclosure. So if this act is passed and retroactive immunity is granted, it will remove the telephone companies, true, and there will be another case standing, but there will be no judicial determination of the constitutionality of what the telephone companies did.

Chief Judge Walker has those cases against the telephone companies too, and he has pretty well given a roadmap as to what he is going to do because he said the terrorist surveillance program is unconstitutional and the Foreign Intelligence Surveillance Act covers pen registers and trap-and-trace devices, covering whatever it is the telephone companies did here; although, again, we do not know for sure. So where he said the terrorist surveillance program is unconstitutional and the statute covers pen registers and trap-and-trace devices, to remove the case from him at this stage will eliminate a determination of the constitutionality of whatever it is the telephone companies did and really flies in the face of the historic role of the courts since 1803 in Marbury vs. Madison.

Now I am glad to yield to the chairman.

Mr. ROCKEFELLER. I will just reply very briefly with three points, and when you are finished, I would like to yield to—or hopefully the vice chairman will yield to the senior Senator from Virginia.

The one point is that this is not a bill we are addressing here about the Government. We are doing it about carriers, and particularly in title II.

Secondly, I am interested in what the ranking member of the Judiciary Committee feels might be the result if we went the Judge Walker route regardless of its inapplicability, in my view, to this situation when it went through the appeal process.

I am not a lawyer. Right now I wish I were, but I am not. Usually, I am glad I am not. But it seems to me that you would be looking at a period of appeals going right on up to the Supreme Court that might last 3 or 4 years. I am not experienced in how long these things take. But this is a matter that might take that kind of time and that causes me to raise again the question I have raised several times with the vice chairman this afternoon: The only thing that we appear to be discussing in the Senate is rights and liberties. I think I have yet to hear almost any word about the security of the Nation and what the purpose of the Intelligence Committee is, what the purpose of intelligence is, what the purpose of collection is, how the collection is done, who does it, how important is it to how we gauge our situation in the world, where we need to deploy, where we need to be watching.

This is extraordinarily serious stuff but not a word does it get in the Senate, which is two-thirds made up of lawyers—and I honor every one of them. But we are picking at ''would the Constitution allow'' this or that. I am looking at something which to me is very clear. This is all about carriers, this particular bill. My name isn't Judge Walker. I haven't issued the opinion. If my name were Judge Walker, and it was an opinion, it would be about constitutionality. We are not addressing that in this bill.

The Senator earlier said: Look, we are here. Why not duke it out and get all the substitutes and arrangements and compromises back on the table again. I know that does work in some fashion. But I think the vice chairman and I and our staffs could say that what was achieved over the last month or so could probably never be achieved again, which is to get the House to agree. JOHN CONYERS is chairman of the Judiciary Committee, who was gracious and polite but unfriendly to this bill. There is the question of the Blue Dogs. You can say always these are questions—on farm bills, on steel bills, on automobile bills, on whatever bills.

This is a particular type of emergency based upon the fact that we are still, under my definition, under attack. Not that we have not been attacked, but we have been able to interdict, because of intelligence, some of those attacks—or all of those attacks. This is a very different matter than running an ordinary piece of legislation through the Senate.

If 20 or whatever Judiciary plus Intelligence is in the Senate—35, whatever that is. No, because there are some cross-memberships. Let's say 20. Understand, the others have not been read in. I have said they could have found out the information that has been available for a full year. Any Senator has the ability to go and read intelligence, if they wish to do that. It sort of implies that the Senate, as a matter of habit, comes to full agreement and full understanding that 80 out of 100, as opposed to 20 or 25 out of a 100, fully understand what is at stake in the amendments to a bill and then to the final passage of a bill.

I think the Senator knows that is not the way it works. I think the Senator, although he says we should not delegate, knows we delegate all the time.

Mr. SPECTER. Will the Senator yield?

Mr. ROCKEFELLER. I will. That takes various forms. Sometimes it will be that I am very much on the edge of how I am going to vote on something, and I go to a particular Senator—it might be the Senator from Pennsylvania—and say: I have this feeling and I have that feeling, I am right on the cusp of which way I should vote.

Mr. SPECTER. Will the Senator yield?

Mr. ROCKEFELLER. I will.

Mr. SPECTER. For the first time, I take sharp distinction with the chairman when he says there has been no recognition about the importance of intelligence or the workings of the Intelligence Committee or of special expertise.

Mr. ROCKEFELLER. I wasn't talking about special expertise—I was talking about: We have not talked about the threat.

Mr. SPECTER. If I may continue?

Mr. ROCKEFELLER. Yes.

Mr. SPECTER. If I may continue, no recognition of the work of the Intelligence Committee—let me limit it to that—which was certainly said.

I take sharp exception because I served 8 years on the committee and served as chairman for 2 years. I think I know what the Intelligence Committee does and what its work is.

I take sharp exception to the suggestion that there is not a full awareness on the part of this Senator as to the terrorism threat. I made that explicit. When I said that if I have to take this bill, I will, because of the threat of terrorism, just as I voted for the bill earlier when my substitution amendment was not adopted.

But when the chairman says that this has gone through a laborious process with the House and is a delicate compromise—that happens all the time. It happens all the time. You are right in the middle of it, you have seen it, and I know, too, because I have been there. I have been here 28 years, and I know exactly what goes on.

When you say this ought to be accepted, I disagree. This bill can be made better.

When you say you deal with the intelligence function and not the constitutional function—again, I sharply disagree. We have to legislate on what is constitutional. We may have a different opinion than Chief Judge Walker, but we cannot ignore the question of constitutionality. If it takes 3 or 4 more years, we are talking about civil rights and constitutional rights.

Mr. ROCKEFELLER. My point.

Mr. SPECTER. This program has been continued on a temporary basis. It has been extended. The intelligence chiefs have been satisfied with that.

I don't like to extend it. I would like to resolve it now. But if it takes the courts longer—the Supreme Court ducked the Detroit case. If it takes them years to decide this, that is the price of constitutional rights.

If you take a look at the history of this country, if you take just one case, Plessy v. Ferguson, in 1896, I believe, to Brown v. Board in 1954, to eliminate separate but equal, you come to a constitutional doctrine.

I am prepared to take my time, if I can find the requisite number of votes in this body.

Madam President, how much time remains on each side?

The PRESIDING OFFICER. The Senator from Pennsylvania has 20 minutes remaining. The Senator from West Virginia has 34 minutes remaining.

Mr. SPECTER. Madam President, this is as good a time as any to move forward with a question or two, which I would like to have in a colloquy with Senator WHITEHOUSE. This issue has been raised before, but I would like your views on it, Senator WHITEHOUSE. You have a distinguished record as an attorney, U.S. attorney, attorney general, serving with distinction on the Judiciary Committee for the past year and a half.

I raised the issue earlier about the constitutional authority of a Member to delegate his authority, recognizing that there are many matters where we accept committee reports, but at least Senators have access to material. When I was chairman of the Judiciary Committee—the tradition is to tell the chairman and the ranking member about a program such as the terrorist surveillance program. I was blindsided by it, in mid-December of 2005. We were on a Friday, the final day of the argument on the PATRIOT Act. We were about to go to final passage, when the New York Times published its paper. That morning Senators said they had been prepared to vote for it but no longer were. As chairman of the committee, I could not be briefed on the program.

Since that time, there has been a change of heart to an extent but, as stated on the floor of the Senate earlier, some 70 Members of this body will be voting on retroactive immunity for a program they do not know or understand. The majority of the House, according to House leadership, has not been briefed on the program.

Do you have any doubt that we may not constitutionally delegate our authorities to vote?

Mr. WHITEHOUSE. Does the distinguished Senator yield me time to reply?

Mr. SPECTER. I would like a reply as to whether it is your view, as a constitutional matter, Members of Congress can delegate their authority to vote.

Mr. ROCKEFELLER. If the Senator from Rhode Island would give me 30 seconds, I would be grateful.

Mr. WHITEHOUSE. I have no objection, of course.

Mr. ROCKEFELLER. The fact of the matter, I say to the senior Senator from Pennsylvania, is that there are 37 Members of the Senate who have been briefed on this matter—not 20 but 37. We decided to do a little bit of homework: Fifteen on the Senate Intelligence Committee, 19 on the Senate Judiciary Committee, that is 34—minus 4 crossover members; 2 leadership on each side, Senator ROBERTS and the Appropriations Committee chairman and, I suspect, vice chairman, plus Senator LEVIN and Senator MCCAIN, who are ex officio.

That is not bad.

Mr. SPECTER. Madam President, the statistics I have are, out of the House there have been 21 House Intelligence Committee members briefed and as many as 40 Judiciary Committee members; in the Senate, 15 on the Intelligence Committee and 19 on the Judiciary Committee for a bicameral total of 95, which is 17.75 percent of the entire Congress. But if you take the chairman's figures, you still have a majority of Members of Congress who have not been briefed, who are, in effect, delegating their authority to vote on a matter where they don't know what they are granting immunity for.

But I refer, again, to the Senator from Rhode Island, if he cares to answer the question.

Mr. WHITEHOUSE. Of course, I did say in my remarks that I believed that this body is incapable of making a determination as to the good faith of the telecommunications companies for the reason the distinguished Senator from Pennsylvania has indicated, to wit, very few of us, less than a majority and certainly not all of us, have been briefed as to what the actual facts are, what was provided, if anything, to the telecommunications companies that would support our finding of good faith.

As I said in my remarks, I think essentially every Senator who has spoken to this question has implicitly referred to good faith, directly referred to good faith as the implicit standard.

I view it, although I defer to the far greater experience and learning of my colleague from Pennsylvania—I see it less as a constitutional issue of deference than one of legislative prudence. I think it is not prudent for us as a Senate to take it upon ourselves to make the good-faith determination. I think that is a determination that should be made by a judicial tribunal, it should be made with appropriate provision for confidentiality, and it should be made by the judicial agency that customarily makes good-faith determinations.

It isn't our legislative role to do that. So I agree with the concern of the distinguished Senator about this. I see it less as a constitutional limitation on my ability as a Senator to cast my vote, which I think is untrammeled. I can cast my vote about things I know nothing about, have not studied on, am totally uninformed, if I wish. It would be bad and imprudent for me to do it, but I do not believe the Constitution prevents me from doing it, so I see it more as a matter of legislative prudence.

Mr. SPECTER. Madam President, one final question. Does the Senator from Rhode Island know of any case which has been pending in the Federal courts for at least 3 years, as the telephone company case has, with the opinion by Chief Justice Walker in July of 2006 and now pending on appeal in the Ninth Circuit, where the Congress stepped in to take away the jurisdiction by a grant of immunity as proposed in this legislation?

Mr. WHITEHOUSE. I am aware of none. I cannot guarantee that our research has been complete and exhaustive. But, certainly, the recent efforts that Congress has done where an immunity from liability has been an issue, either responding to pandemics or responding to vaccines, what Congress has done there is to create an alternative remedy.

I am aware of no precedent for the Congress of the United States stepping into ongoing litigation, choosing a winner and a loser, allowing no alternative remedy. And I believe the constitutional problem with doing that as a separation of powers matter is particularly acute where the cause of action that is being litigated in the judicial branch is a constitutional claim. And Judge Vaughan is listening to constitutional claims. That is the subject matter of the litigation.

So I believe it will be determined by a court that ultimately this section of the legislation is unconstitutional, in violation of the separation of powers, because we may not, as a Congress, take away the access of the people of this country to constitutional determinations heard by the courts of this country.

Mr. SPECTER. Judge Walker is certainly listening to constitutional claims. He may even be listening to the Senate. Somebody may be listening on C–SPAN 2.

I thank the distinguished Senator from Rhode Island for his candid answers.

How much time is remaining?

The PRESIDING OFFICER (Mr. LAUTENBERG.) The Senator has 13 and a half minutes remaining.

Mr. SPECTER. Mr. President, I reserve the remainder of my time.

Mr. LEAHY. Mr. President, I strongly oppose a blanket grant of immunity. I also urge Senators to reject this ill-advised legislative effort to engineer a specific outcome in ongoing Federal judicial proceedings. No one should stand above the law in the United States.

The administration circumvented the law by conducting warrantless surveillance of Americans for more than 5 years. They got caught. The press reported this illegal conduct in late 2005. Had the media not done so, this unlawful surveillance may still be going on today.

When the public found out that the Government had been spying on the American people outside of FISA for years, the Government and the providers were sued by citizens who believed that their privacy rights were violated. That is why we have Federal courts—so people can vindicate their rights before a fair and neutral tribunal, without interference from the other branches of government.

Title II of this bill is apparently designed to terminate these lawsuits. It seems to reduce the role of the court to a rubber stamp. So long as the Attorney General will certify that the Government requested the surveillance and indicated that it had been ''determined to be lawful,'' the cases are to be dismissed and everybody is off the hook. That is not a meaningful judicial inquiry. That doesn't give the plaintiffs their day in court. It is not just a heavy thumb but a whole hand and arm on the scales of justice, and I cannot support it.

Here is what the report of the Select Committee on Intelligence said in connection with reporting its earlier version of retroactive immunity:

> The Committee has reviewed all of the relevant correspondence. The letters were provided to electronic communications service providers at regular intervals. All of the letters stated that the activities had been authorized by the President. All of the letters also stated that the activities had been determined to be lawful by the Attorney General, except for one letter that covered a period of less than sixty days. That letter, which like all the others stated that the activities had been authorized by the President, stated that the activities had been determined to be lawful by the Counsel to the President.

So if anyone had any doubt where the criteria in the bill come from, there it is. Do those words seem familiar? Do the criteria carefully worded for inclusion in the bill now make sense?

I expect that the American people remember the testimony before the Judiciary Committee of James Comey and FBI Director Mueller about the period of time when Attorney General Ashcroft was in the hospital, senior advisers at the Justice Department had advised against extending approval for the warrantless wiretapping program and the Counsel to the President, Alberto Gonzales, went to John Ashcroft's hospital room seeking to get Attorney General Ashcroft to override the acting Attorney General's concerns. Some time thereafter, the program was apparently adjusted in some way, but only after FBI Director Mueller spoke to the President and several high-ranking officers threatened to quit the administration. That period could account for the Select Committee on Intelligence's reference to a letter and period of less than 60 days when it was the Counsel to the President who had ''determined'' the activities ''to be lawful.''

Senator SPECTER has long said that he supported judicial review of the legality of the President's warrantless wiretapping program. During the last Congress, when he chaired the Judiciary Committee, he introduced a bill that would have allowed the courts to review the legality of the administration's warrantless surveillance program. Unfortunately, he later modified the bill in his discussions with the White House that made it unacceptable and ineffective in my view and it was never passed. I have always supported allowing the courts the opportunity to review the legality of those activities.

I believe that independent judicial review will reject the administration's claims to authority from the Authorization for the Use of Military Force that overrides FISA. I believe that the President's claim to an inherent power, a Commander-in-Chief override, derived somewhere from the interstices or penumbra of the Constitution's article II will not prevail over the express provisions of FISA.

Indeed, Chairman ROCKEFELLER seemed to concede as much this morning when he asserted that nothing in his bill should be taken to mean ''that Congress believes that the President's program was legal.'' He characterized the administration as having made ''very strained arguments to circumvent existing law in carrying out the President's warrantless surveillance program.'' At various points Senator ROCKEFELLER alluded to the administration's argument that the Authorization for the Use of Military Force was some sort of statutory override authority and the administration's claim that the President has what Senator ROCKEFELLER called ''his all-purpose powers,'' which I understand to be the administration's argument that inherent authority from article II of the Constitution creates a Commander-in-Chief override, and said that these are not justifications for having circumvented FISA.

Consistent with Justice Jackson's now well-accepted analysis in the Youngstown Sheet & Tube case, when the President seeks to act in an area in which Congress has acted and exercised its authority, the President's power is at its ''lowest ebb.'' So I believe that the President's program of warrantless wiretapping contrary to and in circumvention of FISA will not be upheld based on his claim of some overriding article II power. I do not believe the President is above the law.

What is most revealing is that the administration has worked so feverishly to subvert any such independent judicial review. That sends a strong signal that the administration has no confidence in its supposed legal analysis or its purported claims to legal authority. If it were confident, the administration would not be raising all manner of technical legal defenses but would work with Congress and the courts to allow a legal test of its contentions and the legality or illegality of its actions.

This amendment now offered by Senator SPECTER is more limited than I would have liked. It says its purpose is to allow the courts to review the constitutionality of the assistance provided by the electronic communication services in connection with the program. Exactly how the courts get to such a review is not clear. Although I do not believe that this expressly allows the court to conduct the kind of comprehensive judicial review required to make a real determination about the legality of this program, and a fair decision about the merit of these lawsuits, it nevertheless seeks in spirit to provide judicial review. In the hope that it might provide an avenue to accountability for the illegal actions of this administration, I will support it.

In so doing I should note that I do not believe that Congress can take away the authority of the Federal courts to consider unconstitutionality or illegality in the course of meaningful judicial review. Senator ROCKEFELLER emphasized this morning that the parties to the ongoing cases are to be ensured ''their day in court'' and that they are ''provided the opportunity to brief the legal and constitutional issues before the court.'' These statements do not have meaning unless the legal issues and constitutional issues presented by these cases can be considered. The value of the Specter amendment lies in making the issue of constitutionality explicit.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, I ask unanimous consent to speak as in morning business.

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

ENERGY

Mr. THUNE. Mr. President, like so many of my colleagues, I spent the week of the Fourth of July traveling my State of South Dakota. I met with members of the general public at an energy forum, met with small businesses, folks in the tourism industry. Everywhere I went it was the same story: High gas prices are crippling the American economy.

I remember stopping in the small town of Parkston and visiting with someone who manages a small café there, and visiting with them about the impact that high gas prices are having on their business.

She said: Well, it is not really the weekend travelers, the RV owners, the people who camp, but it is those people who are commuting to work every single day who now do not have the money to eat out nearly as often.

Of course, Parkston is a small town. It is about 20 miles, give or take, from Mitchell, SD. There are a number of people who commute back and forth. It is those commuters who are feeling the most economic hardship as a result of high energy prices.

I attended my parents' 65th wedding anniversary in my hometown of Murdo. In my hometown, tourism, the visitor industry, is the very lifeblood of that community. I grew up in that business, worked in restaurants, motels, that sort of thing. And I even had a forum, as well, with members of the tourism industry in South Dakota in Rapid City when I was home just to gauge the impact of high fuel prices on their individual businesses.

The Rapid City mayor, who owns a campground, said: I think we are going to reach a tipping point where the very foundations of the travel industry could be shaken.

Bill Honerkamp, president of the Black Hills, Badlands and Lakes Association said tourism fell about 7 percent in the region in May, and numbers for the rest of the summer are barely holding steady.

Teddy Hustead, president of the popular South Dakota tourist stop Wall Drug, said tourist stops were down 1 percent in June. But he went on to say that Wall Drug needs to be up 4 to 5 percent to be a healthy, growing, viable concern, and it is hard to grow a business when gas is increasing by 10, 20, and 25 percent every single year.

Sean Casey, the vice president of another popular South Dakota tourist destination, Bear Country USA, noted that visitation is down 7 percent for the year 2008. And he went on to say: Energy is pinching us. I always joke that we are going to a model like the space shuttle—two visitors at $10 million each.

Jo Casky of the Spearfish Convention and Visitors Bureau noted that convention is dropping because of high gas prices. One particular convention was booked with a prediction of 1,200 to 1,400 attendees. That is unlikely now because of the rising pump prices.

Casky said: We are now at about 800. As soon as gas started getting to the $4 mark, we started to see reservations back off.

High gas prices are having a dramatic impact on families, small businesses, the tourism industry, the airline industry, the agricultural industry, and virtually every sector of the American economy.

I toured a UPS facility in Sioux Falls, SD. Many of my colleagues may have heard what they are doing in terms of dealing with the price of fuel. They actually now, as they diagram routes for their drivers, diagram routes that only allow them to make right turns so they do not sit in a left-turn lane and idle thereby using more energy.

My point is that people are taking extraordinary steps to deal with the high cost of energy. Higher costs for companies such as UPS, transportation companies, get passed on to consumers in the form of higher prices for everything they buy. They are looking for leadership in Washington, DC. But instead of leadership, they have seen a decade of inaction, as arguably the most important issue of impacting the American economy has been left unattended.

We have done nothing to affect the basic law of supply and demand. Some argue, and perhaps rightly so, that high energy costs are partly a function of the weak dollar. They would be, as I said, accurate to say that because oil is denominated in dollars. When it takes $1.57 to purchase a Euro, it is going to make anything denominated in dollars more expensive.

There are those who think speculators are driving up the cost of energy in this country, and it is true that trading in energy commodities has increased dramatically over the past 30 years since the exchanges were created. I, for one, happen to believe we need to look for ways to define the degree to which speculation is impacting energy prices in this country and also look at what we can do to address that issue in a way that makes matters better and not worse.

Trading since 2004 on the NYMEX Exchange has nearly tripled. So we need to make sure our farmers, our ranchers, our airlines, our trucking companies, have the opportunity and ability that they need to manage risk. That is what those markets were created for. We also need transparent markets where all traders are subjected to the same sets of rules.

I believe we need more cops on the beat. We need to make sure the CFTC has the funding it needs to do its job and to enforce our laws. I think we can do some things, such as codifying CFTC position limits and transparency for foreign boards of trade. I guess my point is that there are a number of things we can do to address the impact that speculators may be having on the price of energy in this country. And, frankly, I think that is a role and responsibility that Congress should fill.

But if you take the weak dollar, and you take speculators out of the equation, we still have a major problem and a major crisis in this country. That problem is that we have greater demand for energy than we have supply. We use about 86, 85 to 86 million barrels of oil every single day worldwide. Of that amount, the United States uses about 20 million barrels or about 24 percent of the total. Of that amount of 20 million barrels that the United States uses every single day, about 12 million barrels are imported.

In other words, 60 percent of the oil that we use every single day in America comes from outside the United States. We are transporting and shipping and transferring about a half trillion dollars every single year of American wealth outside of the United States to petro dictators who are being enriched by that American wealth and using it in ways that I think most of us would disagree with; in fact, in many ways to support terrorist organizations in places around the world.

Now, we cannot solve our dangerous dependance upon foreign sources of energy absent affecting that basic law and rule of supply and demand. We have to find more energy in this country. We should be taking steps now to add supply and to reduce our demand.

One of the things we need to continue to support and intensify, in my view, is our commitment toward renewable energy. I want to read something that Tom Friedman said in an op-ed on June 29. The op-ed was titled ''Anxious in America.''

But he said:

> My fellow Americans. We are a country in debt and in decline, not terminal, not irreversible, but in decline. Our political system seems incapable of producing long-range answers to big problems or big opportunities. We are the ones who need a better functioning democracy. More than the Iraqis and Afghans, we are the ones in need of nationbuilding as it is our political system that is not working.

He goes on to say:

I continue to be appalled at the gap between what is clearly going to be the next great global industry, renewable energy and clean power, and the inability of Congress and the administration to put in place the bold policies we need to ensure that America leads that industry.

Well, one of the things that we did, and it was a moonshot in terms of renewable energy and making an investment in our future, is the renewable fuels standard. Last December there were 80 Senators who voted to increase the renewable fuels standard to 36 billion gallons by the year 2022. That was a policy that was put in place less than a year ago, and yet already we have people, Members of the Senate, politicians in Washington, who are talking about rolling that back. That could be the absolute worst thing that we do.

We do not need less energy in this country, we need more energy in this country. We need more renewable fuels. The 8 or 9 billion gallons of renewable energy that we produce in this country every single year today is taking pressure off gasoline and oil prices by, according to a study conducted by Merrill-Lynch, up to about 15 percent.

In the current market economy that is about 50 to 60 cents per gallon of gasoline. Someone has said it is ethanol and corn prices that are driving up the cost of everything we buy in this country, and particularly with regard to this whole food-versus-fuel debate. But the American Truckers Association recently did a study which found that in late 2004 it cost about 16 cents per box of cereal to transport that box of cereal to the marketplace. Today it costs about 36 cents per box of cereal. So we have seen a 20-cent increase in the transportation cost for a box of cereal. Couple that with the fact that the amount of corn in a box of Corn Flakes is about 10 cents per box, and you can see what is driving up the cost of everything in our economy. It is the increasing price per barrel of oil, increasing price of energy in this country.

We need to speed cellulosic ethanol to the marketplace. We need to increase the blends of ethanol. We need not fewer gallons of renewable energy in this country, we need more gallons of renewable energy. I hope those in Washington, in the administration and Congress, who are talking about considering rolling back the renewable fuels standard would reconsider that and think about the importance of renewable energy and what it can do for America's future and our dangerous dependence on foreign sources of energy.

The second thing, of course, we have to do is we have to increase our domestic supply. That means the Outer Continental Shelf. That means the oil shale in places in the Western States. It means ANWR. It means coal to liquid. It means nuclear. It means wind. We have all of these domestic energy supplies in this country, and we have heard people say it would take 5 to 100 years to develop some of these energy supplies. Well, that is what they were saying 5 or 10 years ago about many of these same things.

We did not do it then, and now we are paying a price for it. Is it not our job as policymakers to be looking down the road to future generations to make decisions that are in the best interests of America's future. There is not any issue, I would argue, that is more important to America's future than energy security because it ties directly into and correlates directly into our national security.

We have to have more domestic supply, and the last thing we have to do is we have to use less. We have to find more sources of energy, more domestic sources of energy, so we do not continue to get 60 percent of that energy from outside the United States. And we have to figure out ways in this country to use less energy.

I have a bill that I have introduced. I am on a bill that Senator MCCONNELL, the Republican leader, has introduced which has 43 cosponsors. I have introduced a bill of my own to deal with this energy situation. I am working with a group of both Republicans and Democrats. We need to put the politics aside, the partisanship aside, and work on getting a solution for the American people.

In the bill that I introduced, one of the things I include is a provision that requires that of additional Government lands that are leased for energy production—whether they be offshore, whether they be oil shale in the Western States, whether it be ANWR, the lease revenue, half of the lease revenue that comes into the Federal Government be plowed back into research and development and new technologies, in renewables, alternative sources of energy, things like plug-in hybrid cars, cellulosic advanced biofuels, hydrogen fuel cells.

Those are the types of things we also need to be investing in to make sure that not only are we increasing the supply of energy in this country, the amount that we have, but also that we are using less.

We can do this. We can put aside the finger-pointing and the blame game and do something for our energy future. I believe when people come together, and when they decide that this is an important priority for America's future, we can get this done.

But we can't do it by saying no to every proposal put on the table. My colleagues on the other side—many of them; not all, but many—have said no to offshore production, no to oil shale, no to nuclear, no to coal to liquid, no to additional refinery capacity. We can't solve this problem by saying no. We have to start saying yes to more domestic production and to more measures that would allow us to conserve and reduce the amount of energy we use. We have to get serious about this issue. It starts with addressing that fundamental law and rule of supply and demand. We can do all these other things, the dollar can start firming up, we can address the role of speculation in the marketplace. But at the end of the day, we don't solve the problem unless we get serious about increasing our domestic supply of energy and reducing and using less energy. When we do that, we will see the price per barrel start to come down, the price per gallon of gasoline start to come down, and we will see the American economy, in places such as South Dakota, where tourism and agriculture are so critically important, start to rebound and start to draw more visitors to the tourism industry and to make sure our farmers continue to produce food and fiber in a way that allows them to maximize their return on investment and not get choked with high input costs coming from higher energy costs.

I hope before we adjourn for the August recess, we will come together behind an energy proposal and plan that is good for America's future, that emphasizes renewables, more domestic supply and production, and addresses the important issue of conservation. But we can't do that by continuing to say no. I ask my colleagues on both sides to quit saying no and to start saying yes to America's energy independence. Say no to our dangerous dependence upon foreign energy but yes to making America energy independent and making this country more prosperous for America's future.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, on behalf of the leadership and the floor managers, I have been asked to propound a unanimous-consent request that the following Senators be recognized, assuming they are here on the floor in time to be recognized: I will speak now for about 15 minutes, to be followed by Senator CARPER for 10 minutes. I see my distinguished friend, the Senator from Mississippi; if he could indicate how much time he would like.

Mr. COCHRAN. About 8 minutes.

Mr. WARNER. He is to be joined by Senator WICKER.

Mr. COCHRAN. Yes, he is in the Chamber as well.

Mr. WARNER. All right.

Mr. WICKER. About 8 minutes also.

Mr. WARNER. All right. And Senator STABENOW, I do not see her, but let's put her down for 10, and Senator CORNYN.

Mr. CORNYN. I would need 15 minutes. If I can yield back some time, that would be great.

Mr. WARNER. With that in mind—I do not see any other Senators seeking recognition—I ask it in the form of a unanimous consent.

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

The Senator from Virginia.

Mr. WARNER. Mr. President, I rise, along with the distinguished chairman and ranking member of the Intelligence Committee on which I am privileged to serve. I commend my chairman and ranking member for the extraordinary capability with which they have handled this controversial issue of

the FISA legislation and the bipartisanship they have shown. Our committee voted 13 to 2 on this measure which is now before the Senate. Currently, we have the Bingaman and Specter amendments. I join my chairman and ranking member in opposing these two amendments. They seek in one way or another to remove or render useless one of the most important sections of the FISA Amendments Act which is liability protection for the telecommunication carriers that assisted our Government with the President's terrorist surveillance program or TSP. Without the title II liability protection, the other sections of the FISA Amendments Act would become irrelevant because the carriers would not cooperate in the authorized programs.

This would be unfortunate, because the FISA Amendments Act is a critical piece of legislation for America's present and future security that achieves an important balance between protecting civil liberties and ensuring that our dedicated intelligence professionals have the capabilities they need to protect the Nation. The bill ensures that the intelligence capabilities provided by the Protect America Act, enacted in August 2007, remain sealed in statute.

Reforming FISA has not been an easy process. I would like to thank Chairman ROCKEFELLER and Vice Chairman BOND for the work they have done to garner bipartisan support for the FISA Amendments Act. It would be unfortunate if that work were undone by one of these amendments.

If passed, the Specter amendment would prohibit the dismissal of the lawsuits against the telecommunications carriers if the President's Terrorist Surveillance Program were found to be unconstitutional by the courts. With all due respect to my colleague from Pennsylvania, I believe that whether the President acted within his constitutional authorities should be treated separately from the issue of whether the carriers acted in good faith.

The extensive evidence made available to the Intelligence Committee shows that carriers who participated in this program relied upon our Government's assurances that their actions were legal and in the best interest of the security of America.

Mr. President, I would like to call the Senate's attention to the report which accompanied the version of the FISA Amendments Act passed by the Senate Intelligence Committee by a vote of 13–2. Based on the committee's extensive examination of the President's TSP, the report noted that the executive branch provided written directives to the carriers to obtain their assistance with the program. After its review of all of the relevant correspondence, the committee concluded that the letters ''stated that the activities had been authorized by the President [and] had been determined to be lawful'' The committee report added the following:

> On the basis of the representations in the communications to providers, the Committee concluded that the providers, in the unique historical circumstances of the aftermath of September 11, 2001, had a good faith basis for responding to the requests for assistance they received. Section 202 makes no assessment about the legality of the President's program. It simply recognizes that, in the specific historical circumstances here, if the private sector relied on written representations that high-level Government officials had assessed the program to be legal, they acted in good faith and should be entitled to protection from civil suit.

The Senate Intelligence Committee believed, by a vote of 13–2, that the companies acted in good faith and that they deserve to be protected. I agree and I believe that the TSP was legal, essential, and contributed to preventing further terrorist attacks against our homeland.

But, even if one were to disagree that the President acted within his article II powers, I cannot see the wisdom in seeking to punish the carriers and their shareholders for something the Government called on the carriers to do with the assurance that the action was legal.

The Specter amendment would put the companies, and their millions of shareholders, in legal limbo, waiting while the Government litigates unrelated constitutional claims. Historically, the Supreme Court has been reluctant to adjudicate constitutional disputes between the political branches of our Government, suggesting that a constitutional question could take years to resolve, if it can be resolved. Lawsuits against the companies would likely continue in the interim which would: Have negative ramifications on our intelligence sources and methods; likely harm the business reputations of these companies; and cause the companies to reconsider their participation—or worse—cause them to terminate their cooperation in the future.

I believe it would be unfair to use private companies as a substitute to adjudicate constitutional claims properly directed against the Government. My colleagues should keep in mind that individuals who believe that the Government violated their civil liberties can pursue legal action against the Government, and the FISA Amendments Act does nothing to limit that legal recourse. As noted by my colleague from West Virginia, the case that was before Judge Walker—which addresses a constitutional challenge against the government—can proceed.

Bottom line, companies who participate in this program do so voluntarily to help America preserve its freedom and the safety—individually and collectively—of its citizens. I have long supported the idea of a ''volunteer force'' for our military and I believe a ''volunteer force'' of citizens and businesses who do their part to protect our great Nation from harm is equally important. I fear that if we are forced to draft companies into compliance when our Nation calls them to duty, ultimately our security will suffer. Without this retroactive liability provision, I believe companies will no longer voluntarily participate. This will result in a degradation of America's ability to protect its citizens.

It is for these reasons that I urge my colleagues to oppose the Specter amendment and any other amendment that would change the FISA Amendments Act.

I yield the floor.

I wish to conclude by saying that as I view this situation, I liken the private sector that has responded to the request of the Federal Government, which has been given assurances by the Federal Government, to the all-volunteer military force we have today. It is imperative that within the private sector there be elements, primarily these corporations and companies which have come forward to provide the technical assistance and also the facilities by which to implement the FISA program. They have done it by and large voluntarily. The program could not succeed without their participation. Therefore, they ask no more than what is justly owed to them, and that is protection from the lawsuits. I hope we can turn back these two amendments and proceed to final passage and that the Senate will go on record as supporting the essential nature of the FISA program.

ENERGY CRISIS

Mr. WARNER. Mr. President, I rise to turn to the question that confronts America today; namely, the energy crisis. I use the word ''crisis'' advisedly, because today no less than a third of Americans are absolutely struggling night and day to find the funds necessary to meet ever increasing food prices and ever increasing energy prices. It is for that reason I have taken a step. I wish to repeat that. I have simply taken a step to write the Secretary of Energy and to write the Comptroller General, the head of the GAO, to determine what are the facts relating to the 1973–1974 energy crisis, how America addressed that crisis, and the actions taken by the President and the Congress in 1973–1974. Again, Congress acted unanimously to back the President in imposing a national speed limit, that speed limit for the purpose of lessening the demand for gasoline and hopefully to have consequent savings at the gas pump.

That is a chapter in American history. I remember it quite well. I was privileged at that time to be Secretary of the Navy. Indeed, the Department of Defense, although at war in Vietnam, came forward and participated to try and help America work its way through that energy crisis. The national speed limit was the centerpiece of that program.

I ask unanimous consent now to print in the RECORD the letters I sent to the Secretary of Energy and the Comptroller General at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WARNER. I thank the Presiding Officer.

Again, I am not taking a position that at this time we should invoke a new initiative in the Congress to pass legislation calling for a national speed limit because I simply do not have the facts. I am on a fact-finding mission. But if those facts come forward, as I believe they will, and show that this will help alleviate and lessen the demand at the pump and the cost to the American citizen, then I am quite likely to try—more than that, I am quite probably going to try—and garner support on both sides of the aisle to push forward with this legislation. I say so because I come back again to about a third of America at this point in time is frantically trying to make ends meet. We have to come up with a solution. We have to lead in the Congress, and hopefully the President will join. We have that duty.

Therefore, these two letters going to, certainly, the GAO, an impartial arbiter of the facts and finder of the facts, will provide this Chamber with the information necessary to make an informed judgment as to whether to go forth with legislation. I deem that the Secretary of Energy will reflect, quite understandably, the policy of an administration toward such a measure to bring about alleviation of the pressures at the gas pump today and on families.

Again, this step is in the category of conservation of energy. My colleagues—and I have participated with them—are looking at, in my opinion, three areas of addressing this problem: short-term, which is conservation, that is the only way to bring about some immediate measure of relief; secondly, intermediate steps, which I outlined in my speech here; and lastly, the long term. Much has been said about long-term steps. I take pride and push aside any sense of humility because for several years I have stood on this floor and urged offshore drilling, even put forth a measure here in this body which was defeated which called for the right of my State, Virginia, and such other States that might wish to join, through the Governor and the State legislature's participation, agreeing to drilling offshore of Virginia for gas. I am not suggesting I brought about a change of thinking in the administration, but the President now supports that concept. Indeed, a number of my colleagues now support that concept. I opine that I believe in due course the Congress will provide the President with legislation to take those important steps. But that offshore drilling will not lessen the price today at the pump.

It will not help a case which was the final straw to decide that I would embark on this course, when I read an article about the meals on wheels program where the shut-ins at home, who for economic reasons and physical reasons and other reasons can't go out and get their meals. They rely upon a system of volunteers to bring the meals to their homes. But that program is beginning to founder because the volunteers simply cannot afford the additional cost of gasoline. I don't know about my colleagues, but this causes me severe heart palpitations and concern. The reporter said to me, when he interviewed me on this an hour or so ago, a national reporter: All right, Senator, are you willing to drive at a slower rate? What sort of car are you driving?

I told him what type of car I drive. I said: There are occasions when I drive over 55 miles an hour, 60 miles an hour, sometimes 65. But I am willing to give up whatever advantage to me to drive at those speeds with the fervent hope that that modest sacrifice on my part will help those people across this land tonight and tomorrow and in the indefinite future dealing with this financial crisis.

I point out also that in 1973–1974, these were automobiles, how well I remember, without growth of the quick production lines that started after World War II. America was flourishing. Then all of a sudden, the Arabs put an oil embargo on this country and took away our ability to get fuel. The President reacted quickly. The Congress reacted quickly. We put in that limit. In due course, the pressure on the pump declined and gas fell to about $2 a gallon. In 1995, 20 years after the enactment of this legislation by the Congress and the President, the 55 miles was lifted. Mind you, it wasn't one President; it was a series of Presidents who endorsed this program of conservation in terms of the reduction of speed. I don't know. At one time I used to be a pretty good mechanic on automobiles, but they have now gotten a degree of complexity that is beyond my grasp. I rely on my son, who has devoted much of his life to auto racing.

He is a wonderful mechanic and an engineer on cars. He said the carburetion system—he argued with me about this when I spent the past weekend with him—shook his fist at me: I don't want this 55-mile-per-hour limit. And that is good advice. But he said the carburetion systems in cars today are better than they were in 1973 and 1974, and I judge that to be the case.

So I asked in my letters: Analyze the technical capabilities of the cars today, and could we anticipate bringing about a savings at the gas pump by virtue of a national speed limit? So we have to get the facts and put them together.

But I ask my colleagues, as they proceed to work on this issue—and I am all for the renewables, but that is long term. Offshore drilling: long term. We have to focus now on what measures we can take to help people now, if not long term.

I know colleagues are getting the same calls and the same letters I am receiving from those people who, frankly, feel very oppressed by this rapid development. Although it has increased basically a dollar a gallon in the last year, so much of it has come on in the last 120 days, unanticipated in speed and causing great hardship here at home.

I yield the floor.

EXHIBIT 1

U.S. SENATE,
*Washington, DC, July 3, 2008.*

Hon. SAMUEL W. BODMAN,
*Secretary of Energy,*
*Washington, DC.*

DEAR SECRETARY BODMAN: I write today with respect to the high cost of gasoline. Today, the average cost of a gallon of regular gasoline is more than $4.10. This is an increase of well over a dollar a gallon from a year ago.

As you know, each and every day, Americans struggle to cope with this rapid, record increase in fuel costs. Across the United States, individual Americans are taking their own initiatives to find ways to reduce gas consumption through driving less, altering daily routines, and even changing or cancelling family vacation plans.

To date, as far as I can determine, the federal government has taken few, if any, initiatives to join in this national effort to help address this ever increasing crisis.

I believe it is essential that we continue to modernize our energy infrastructure and develop a reliable, commonsense American energy strategy—one that includes new supplies from domestic exploration and extraction, encourages conservation, and promotes the use and advancement of clean, renewable energies.

I am among a group of many senators today who are working in a bipartisan fashion to find a solution. For the past several years, I have supported permitting the Commonwealth of Virginia to explore and extract energy offshore if its Governor and General Assembly so desire. This concept has just recently gained the support of the administration and a growing number of colleagues in Congress.

However, the truth is that new technologies and new sources of energy will not provide meaningful relief for years to come as new technologies are developed and as new sources of energy are discovered and extracted. We must be straight with the American public and not raise hopes that these efforts will provide immediate solutions and possible relief.

There are ways to give some immediate relief. In my view: new conservation efforts are the quickest way to see an immediate reduction in the price of gas at the pump. The American public is already doing its part through individual means of cutting back.

On a federal level, on May 22, 2008, Senator Bingaman and I introduced, and the Senate unanimously passed by voice vote, a sense-of-the-Senate resolution (S. Res. 577) that urged the President to initiate, among all federal departments and agencies of the executive branch, a reduction of their daily consumption of gasoline—if only by a small percentage.

To my knowledge, the administration has not responded to the Senate's action. In the absence of pending administration action, Congress should join with the public and make the concepts in the sense-of-the-Senate resolution a mandatory law.

Turning to another concept, I call to your attention action taken by the Congress and the executive branch during a similar petroleum shortage that occurred in 1973 and 1974. In January 1974, the President signed into

law ''The Emergency Highway Energy Conservation Act'' (public Law 93–239), which passed both the House and Senate unanimously. This law was enacted in an effort to conserve fuel.

Specifically, the law put forth inducements for states to reduce speed limits to 55 miles per hour (mph) on all major highways. Failure to do so would jeopardize the ability of states to secure federal highway funds. The law was originally intended to be temporary, ceasing to be in effect if the President declared that there was no longer a fuel shortage or on or after June 30, 1975, whichever occurred first.

According to a Congressional Research Service report, the law resulted in reduced consumption of 167,000 barrels of petroleum a day, a roughly 2 percent reduction in the nation's highway fuel consumption. In addition, the National Academy of Sciences found that the law saved up to 4,000 lives per year from highway accidents. Given the significant increase in the number of vehicles on America's highway system from 1974 to 2008, one could assume that the amount of fuel that could be conserved today is far greater.

Given the fuel savings of the act, and the resulting significant decrease in highway fatalities attributable to the national speed limit, Congress made the national speed limit permanent in December 1974. In 1995, the law was repealed.

The purpose of this letter is to ask you to study this era of conservation, as I have, to determine whether the administration, with the support of Congress; should take similar action today.

According to the U.S. Department of Energy Web site, engineering data shows that fuel efficiency decreases rapidly above 60 mph. Specifically, for every 5 mph an individual drives over 60 mph, that individual essentially is paying an extra 30 cents per gallon in fuel costs.

As Congress continues to look for ways to ease this national problem, I put to you the following questions. I will share your responses with my colleagues.

(1) Given the significant technological improvements since 1974, at what speed is the typical vehicle traveling on America's highways today most fuel efficient?

(2) If a national speed limit was enacted similar to the 1974 law, but the speed limit under that law was consistent with most fuel efficient speed for the typical vehicle traveling on America's highways, what would be a reasonable projection for total fuel savings? And, what would be the savings for the average citizen who owns and operates a vehicle?

(3) If a new national speed limit was enacted consistent with the two questions listed above, how many fewer barrels of petroleum a day would Americans consume? Is it reasonable to believe that there would be a reduction in price at the pump? And, if so, what are the ranges you could project for cost reductions?

(4) If the federal government took the initiative to reduce its oil consumption, consistent the concepts of the sense-of-the-Senate resolution (S. Res. 577) how many fewer barrels of petroleum a day would be saved by the federal government?

Given that Congress, upon its return next week, will be vigorously considering all options, your response to this request could be of great help to my colleagues and me. Again, years ago, the Emergency Highway Energy Conservation Act worked. The administration's advice, after examining this era and these concepts, would be helpful.

With kind regards, I am

Sincerely,

JOHN WARNER.

U.S. SENATE,
*Washington, DC, July 8, 2008.*

Hon. GENE DODARO,
*Acting Comptroller General of the United States, Government Accountability Office, Washington, DC.*

DEAR MR. DODARO: I write today with respect to the high cost of gasoline. Today, the average cost of a gallon of regular gasoline is more than $4.10. This is an increase of well over a dollar a gallon from a year ago.

As you know, each and every day, Americans struggle to cope with this rapid, record increase in fuel costs. Across the United States, individual Americans are taking their own initiatives to find ways to reduce gas consumption through driving less, altering daily routines, and even changing or cancelling family vacation plans.

To date, as far as I can determine, the federal government has taken few, if any, initiatives to join in this national effort to help address this ever increasing crisis.

I believe it is essential that we continue to modernize our energy infrastructure and develop a reliable, commonsense American energy strategy—one that includes new supplies from domestic exploration and extraction, encourages conservation, and promotes the use and advancement of clean, renewable energies.

However, the truth is that new technologies and new sources of energy will not provide meaningful relief for years to come as new technologies are developed and as new sources of energy are discovered and extracted. We must be straight with the American public and not raise hopes that these efforts will provide immediate solutions and possible relief.

There are ways to give some immediate relief. In my view, new conservation efforts are the quickest way to see an immediate reduction in the price of gas at the pump. The American public is already doing its part through individual means of cutting back.

On a federal level, on May 2, 2008, Senator Bingaman and I introduced, and the Senate unanimously passed by voice vote, a sense-of-the-Senate resolution (S. Res. 577) that urged the President to initiate, among all federal departments and agencies of the executive branch, a reduction of their daily consumption of gasoline—if only by a small percentage.

To my knowledge, the administration has not responded to the Senate's action. In the absence of pending administration action, Congress should join with the public and make the concepts in the sense-of-the-Senate resolution a mandatory law.

Turning to another concept, I call to your attention action taken by the Congress and the executive branch during a similar petroleum shortage that occurred in 1973 and 1974. In January 1974, the President signed into law ''The Emergency Highway Energy Conservation Act'' (Public Law 93–239), which passed both the House and Senate unanimously. This law was enacted in an effort to conserve fuel.

Specifically, the law put forth inducements for states to reduce speed limits to 55 miles per hour (mph) on all major highways. Failure to do so would jeopardize the ability of states to secure federal highway funds. The law was originally intended to be temporary, ceasing to be in effect if the President declared that there was no longer a fuel shortage or on or after June 30, 1975, whichever occurred first.

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As Congress continues to look for ways to ease this national problem, I ask you to examine the following questions:

(1) Given the significant technological improvements in automobile design and function since 1974, at what speed is the typical vehicle traveling on America's highways today most fuel efficient?

(2) If a national speed limit was enacted similar to the 1974 law, but the speed limit under that law was consistent with most fuel efficient speed for the typical vehicle traveling on America's highways, what would be a reasonable projection for total fuel savings? And, what would be the savings for the average citizen who owns and operates a vehicle?

(3) If a new national speed limit was enacted consistent with the two questions listed above, how many fewer barrels of petroleum a day would Americans consume? Is it reasonable to believe that there would be a reduction in price at the pump? And, if so, what are the ranges you could project for cost reductions?

(4) If the federal government took the initiative to reduce its oil consumption, consistent the concepts of the sense-of-the-Senate resolution (S. Res. 577) how many fewer barrels of petroleum a day would be saved by the federal government?

Given that Congress is vigorously considering all options, your response to this request could be of great help to my colleagues and me.

With kind regards, I am

Sincerely,

JOHN WARNER.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the pending business on the Foreign Intelligence Surveillance Act is an amendment which I have pending, No. 5059. We started at 4 o'clock, and we are due for 2 hours. I stepped off the floor for just a few minutes for necessaries and have come back to find a unanimous consent proposal for some six speakers. I have talked to a number of Senators on the floor, and they are in morning business.

It seems to me the orderly procedure would be to allow us to finish our bill. I understand any Senator can come out and ask for unanimous consent. But, candidly, my good friend from Virginia, I wish you had given me notice.

Mr. WARNER. Mr. President, I felt I was acting at the personal request of

Chairman ROCKEFELLER and the ranking member when I did this. I inquired on the floor as to the desires of other Senators. I regret, my dear friend, I would not have done this in any way to deter your ability to do what you feel you have to do on this bill.

So at this point in time, certainly the floor is open to additional unanimous consent. But I do bring to your attention the Senators who are currently in the Chamber are here as a consequence of the UC that I proposed at the request of the two managers.

Mr. SPECTER. Well, with all due respect to my good friend from Virginia, I was on the floor all afternoon, you sitting there and me sitting here. But that is water over the dam.

My request, Mr. President, is that—the only Senator on this list who I have ascertained is going to speak to the bill is Senator CARPER; he is on the list now for 10 minutes—we conclude the bill, or the alternative: to move ahead with the balance of the times reserved until tomorrow morning.

Mr. WARNER. Mr. President, again, Senators on the floor can certainly speak for themselves, but I point out I think the Chair advised the managers as to the time remaining on both sides of the bill.

Am I not correct, I ask the Presiding Officer? Could you inform the Senate as to the times remaining under the UC to which my good friend from Pennsylvania refers?

The PRESIDING OFFICER. The Senator from Pennsylvania has 10 minutes remaining. The Senator from West Virginia has 33 minutes remaining. The Senator from New Mexico has 14 minutes. The Senator from Missouri has 5 minutes. The Senator from Connecticut has 21 minutes.

Mr. WARNER. Mr. President, I leave it to the Chair to address that. I think the Senator from Pennsylvania should be recognized for the purpose of his 10 minutes, but I am not sure we are in a position to foreclose other Senators who have been waiting here patiently to address the Senate on other matters.

It seems to me the Senator from Pennsylvania should revise the request to enable him to have his 10 minutes and Senator CARPER his 10 minutes and then allow the Chamber to proceed with other matters. It seems to me that is a fair resolution to this problem.

Again, I apologize if I was acting—as I was so asked to do—contrary to the Senator's wishes.

Mr. SPECTER. Mr. President, with respect to waiting, I have been here since 11 o'clock this morning on this bill.

Mr. President, I ask unanimous consent that Senator CARPER be recognized, as he is, for 10 minutes, and that the other Senators subject to the unanimous consent request be accorded the time given to them, and that the remainder of the time reserved be scheduled for tomorrow at the discretion of the majority leader.

Mr. WARNER. Mr. President, I will not object. I wish to thank my colleague for what I think is a very fair resolution to this situation.

Mr. CARPER. Mr. President, may I be recognized?

The PRESIDING OFFICER. Is there objection?

Mr. CARPER. Mr. President, reserving the right to object, I am told we cannot shift the time until tomorrow. I am told we need to use the time that has been allocated today. That is my understanding.

Mr. SPECTER. Mr. President, will the Senator repeat his reservation, please.

Mr. CARPER. Mr. President, I understand—and I look to the Parliamentarian and to the Presiding Officer—I am told the Senate is required to use the time that has been allocated for the discussion of these amendments today, and there is additional time for it tomorrow in tomorrow's debate before we begin voting. But we need to use up the time that is allocated for this afternoon and this evening.

I would inquire of the Presiding Officer, is that your understanding as well?

Mr. SPECTER. Mr. President, parliamentary inquiry: I heard the Chair say there is 10 minutes remaining of my time.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Well, that time is yielded to Senator CARPER, so that would take all the time allotted to this Senator.

The PRESIDING OFFICER. Does the Senator withdraw his unanimous consent request?

Mr. SPECTER. Well, there has been an objection to it, as I understand.

The PRESIDING OFFICER. Is there objection?

Mr. CARPER. Reluctantly, I must object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Delaware.

Mr. CARPER. Mr. President, I believe under the unanimous consent agreement entered earlier, I am recognized for 10 minutes, and I ask unanimous consent that my time be counted against time controlled by Senator ROCKEFELLER.

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

Mr. CARPER. Mr. President, I rise today to speak in support of the FISA compromise legislation that is before us this week. I believe reasonable people can disagree about this measure, and I certainly respect the views of those who oppose it. But I wish to take a moment this afternoon to explain, first, why I am supporting this bipartisan compromise and, second, to encourage my colleagues and others to do so as well.

All of us know we live in a dangerous world today. We face serious threats to our safety and to our security. At the same time, we face a difficult balancing act between, on the one hand, the need to protect our country and the safety of our citizens and, on the other hand, the need to preserve our civil liberties.

All too often, the Bush administration's approach has been, at least in my judgment, misguided. Many opponents of the FISA legislation before us are rightly concerned that civil liberties have been ignored and in some cases violated.

I believe that is why, to some extent, many critics of this bill have focused so heavily—almost exclusively, in fact—on the legislation's retroactive immunity provisions. I regret the majority of my colleagues in the House and the Senate do not see eye to eye with those critics regarding immunity. However, I wish to take a few minutes to explain why most of us who support this bill in its amended form believe that granting immunity is fair.

During the extraordinary national emergency that followed the September 11 attacks upon our Nation, the Federal Government reached out—

Mr. SPECTER. Mr. President, will the Senator from Delaware yield for a moment?

Mr. CARPER. Mr. President, I am happy to yield to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I understand the Senator from Delaware is using time from Senator ROCKEFELLER.

Mr. CARPER. That is correct.

Mr. SPECTER. So my time would remain. I had thought there was 13 minutes remaining. Is there only 10?

The PRESIDING OFFICER. Ten minutes is all that remains.

Mr. SPECTER. I thank the Chair, and I reserve the remainder of my time, however the scheduling may work out.

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

Mr. CARPER. Reclaiming my time, if I may, Mr. President, during the extraordinary national emergency that followed the September 11 attacks upon our Nation, the Federal Government reached out to some of America's major telephone carriers. We asked them to help intercept communications between sources in our country and terrorists located overseas.

A number of our phone companies responded in good faith and agreed to help. They did so, however, only after receiving written directives from our Government's senior national security and law enforcement officials that their cooperation—the cooperation of the telecommunications companies—was both lawful and constitutionally sound.

It does not seem fair, at least to me, that these companies now should be made victims of their own good-faith cooperation and assistance in the ongoing fight against terrorism. That is why I support immunity for phone companies that can demonstrate in Federal court that their participation in the program was found to be lawful by the Bush administration.

With that said, however, I believe the issue of immunity has taken on a significance that goes beyond its actual importance. This is not to suggest that immunity is unimportant, but the more critical aspects of this FISA bill seem to have been overlooked. In my view, those portions of the bill matter more—much more.

Rather than looking backward, at immunity, our real focus should be on what this FISA bill does going forward. I believe this legislation strikes the right balance in providing our intelligence networks with the tools they need to protect our country without diminishing our civil liberties. The administration has overreached on this front before. The FISA legislation before us, though, is a significant improvement over current law and will help to ensure that neither this administration nor the next administration will overreach again.

Now, how does it do that? First of all, this compromise bill makes it crystal clear that FISA is the exclusive means to conduct surveillance, ensuring that neither this President nor our next President can go around the law.

Second, the bill mandates reports by the inspectors general of the Justice Department, the Department of Defense, and our intelligence agencies that will provide the relevant congressional committees here and in the House with the information we need to conduct needed oversight.

Third, the compromise bill—this compromise bill—establishes a shorter sunset period of 4½ years instead of what had been proposed earlier, 6 years. In addition, this compromise bill—for the first time—requires FISA Court warrants for surveillance of Americans overseas.

I applaud both Senator ROCKEFELLER and Senator BOND, as well as my friend, Congressman STENY HOYER of Maryland, for their collective work in negotiating this compromise. They know, as I do, that this compromise is not ideal. It is not perfect. But, in my view, it is the best bill we can agree on at this time. It represents the best chance we have today to protect both our national security and our civil liberties.

For all these reasons, I am supporting this legislation. I hope my colleagues—Democratic and Republican—will join me in supporting the efforts of those who have crafted it.

Mr. President, if I could, I wish to end today with a pledge: Should this bill pass and be signed into law—and I hope it will—I will work with my colleagues in the next Congress and with the next President and his administration to make additional improvements that our country and our citizens may need and deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I think under the order there is time for me to speak at this point.

The PRESIDING OFFICER. The Senator has 10 minutes remaining.

MEDICARE

Mr. COCHRAN. Mr. President, I think the Senate should support an 18-month extension of current Medicare law with the inclusion of a 1.1-percent increase in physician reimbursements. We should also make an effort to identify long-term improvements that will strengthen a system that is badly in need of repair.

New legislation is important and urgent because of the expiration on June 30, 2008, of the Medicare, Medicaid, and SCHIP Extension Act. This extension, which was signed on December 29, 2007, delayed cuts to payments under the physician fee schedule from taking effect until July 1, 2008.

Unfortunately, despite the knowledge that bipartisan negotiations were ongoing and could have achieved passage in time to prevent these cuts, the majority leadership chose to force a vote on H.R. 6331, a bill which the administration had promised to veto. My vote against the immediate passage of H.R. 6331 was a vote to protect the beneficiaries of Medicare and ensure their access to affordable and high-quality health care in the future. The fact is that providing health care to the constituents we represent must remain one of our top priorities. It is a priority that should transcend party politics.

In its current form, H.R. 6331 includes over $17 billion in new spending that comes at the expense of some of Medicare's more vulnerable participants, and it restricts seniors' private coverage through cuts to Medicare Advantage plans. Medicare Advantage is an important and widely used program that offers seniors quality health care at a low cost. This bill would result in a $13.6 billion cut from Medicare Advantage over the next 5 years and a $50 billion cut within 10 years. Specifically, over 2 million seniors would lose access to their private fee-for-service plans, reducing benefits to a one-size-fits-all plan and reversing what the program was intended to do in the first place.

This issue is particularly relevant in my State. Seventy-nine percent of the people in my State who are enrolled in Medicare Advantage plans are also enrolled in private fee-for-service plans. I cannot in good conscience vote for a bill that would put their access to health care in jeopardy.

The Senate should work to develop a bill that will accurately reflect the cost of providing quality care. If we don't, we risk a disruption in physician services to those who need care the most and we risk increasing the cost of health care. We must mitigate the negative impact of expiring provisions on providers and benefits.

The first step is to extend the current Medicare law until a compromise can be reached. We all understand that temporary fixes can only carry us so far. We need a long-term solution that fixes the sustainable growth rate to control costs, a long-term solution that recognizes the importance of increasing Medicare reimbursements, and a long-term solution based on bipartisan compromise. Anything less is not sustainable.

UNANIMOUS CONSENT REQUEST—S. 3118

Mr. COCHRAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 776, S. 3118, a bill to preserve Medicare beneficiary access to care. I further ask unanimous consent that the bill be read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Ms. STABENOW. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, reserving the right to object, I would first indicate to my friend, the Senator from Mississippi, that, in fact, we have a bill in front of us that had 355 votes—a huge bipartisan majority—that addresses strengthening Medicare for our seniors. We are only 1 vote—1 Republican vote—shy of passing it here in the Senate.

My colleague also raises the concern about cutting Medicare Advantage. There are no Medicare Advantage cuts in the rates in this bill at all. There is a small change that doesn't even start until 2011.

So as a result of the fact that we have in front of us a bill to immediately address the concerns about access that my colleague has raised, I would object to his unanimous consent request.

The PRESIDING OFFICER. Objection is heard.

The Senator from Mississippi is recognized.

Mr. WICKER. Mr. President, I am disappointed that the Senator from Michigan has objected to the unanimous consent request. I certainly hope, though, that we can have a conversation about this issue and move eventually to the consideration of S. 3118 as Senator COCHRAN suggested.

The American Medical Association has requested an 18-month fix—an 18-month extension—to give the medical community and Congress time to enact a permanent fix to the sustainable growth rate formula. This legislation—the Grassley bill—would provide for this 18-month extension. It would also provide an 18-month extension with a one-half percent increase in 2008 and a 1.1-percent increase in 2009 in physician reimbursement. This, I might add, is identical to the provision in the Stabenow bill, S. 2785, the Save Medicare Act, which was, in fact, a bipartisan bill and a bill I was happy to cosponsor.

The bill Senator COCHRAN just asked for unanimous consent to consider also increases Medicare payments for ground ambulance services, it extends the authorization for the Medicare

Rural Hospital Flexibility Program grants, and it provides important provisions for community hospitals and for rural home health care.

The bill does make certain noncontroversial changes to the Medicare Advantage Program. It also extends critical programs involving Medicare, and it eliminates the double IME windfall to Medicare Advantage Programs. But it doesn't contain the controversial provider offsets that the legislation which was offered by the majority leader would have done and which the President promised to veto.

The legislation Senator COCHRAN just asked unanimous consent to consider could be passed tonight, sent to the President for his signature tomorrow, and the Members of the majority party in this Congress could claim a victory, and a bipartisan victory at that.

I believe it is important for people to understand the history of this legislation.

The Senate and House have been legislating to prevent these provider cuts from going into effect since the year 2002. For the past 6 years, as a Member of the House of Representatives, I have voted numerous times to prevent these physician cuts from going into effect, and each time, these cuts have been prevented. That has been done on a nonpartisan, bipartisan basis without political wrangling.

Indeed, this year, just a few days ago, before the Fourth of July recess, Chairman BAUCUS and Ranking Member GRASSLEY were on the verge of presenting a bipartisan package which would have prevented these cuts from going into effect and prevented this entire controversy. They were moments away before the rug was pulled out from under them by the leadership in this body.

Why is it different this year? Why have we been able to do this on a nonpartisan basis, prevent these cuts from going into effect to the providers, to the physicians, and the harm that would ensue to the Medicare recipients in the past? Why is it different this year? It is clear to me that members of the Democratic leadership in this body and in the other body have decided to turn this so-called ''doc fix'' into a political issue.

I was struck by the exchange between the minority and the majority leader on the night of June 26 when Senator MCCONNELL requested of the majority leader, after the cloture had not been invoked, that we have a simple 30-day extension in order to continue to work on this issue. In objecting to that unanimous consent request for a simple 30-day extension so we could continue to work on this, it became obvious to me what a political issue this is becoming. The majority leader, in objecting, mentioned elections this year for three House seats in which the Democrats won. He went on to say that this time next year, there would be 59 Democrats in the Senate at least. He mentioned the President's approval rating—and this is all in the CONGRESSIONAL RECORD, page S6233 of the CONGRESSIONAL RECORD, if Members would like to follow along—he mentioned the President's approval rating. He mentioned numbers of people in the Senate who are up for reelection this year, and he even mentioned polling before suggesting that his Republican friends did not truly want to prevent these cuts from taking effect.

There is not a single Member of the Senate who wants these cuts to take effect. There is not a single Member of the House of Representatives who wants these cuts to take effect. But the majority leader said that night: The only way out of this is to accept this legislation; it is this legislation or nothing, in effect. I will say this much for the distinguished Democratic leader of the Senate: He was open and frank about what is really at issue here. This is very much about this year's elections and less about preventing the cuts to doctors.

Now, what are we wrangling about here? We are wrangling about the offsets to prevent the cuts from going into effect, particularly what it would have done to Medicare Advantage, a program that some 22,000 Mississippians depend upon and a program I would like to protect for them.

Now, we have a disagreement. The Senator from Michigan sees this differently than I do. There are people who would tell you that the bill offered to us that night would have gutted the Medicare Advantage Program. Medicare Advantage offers seniors a choice between regular Medicare and traditional insurance in the form of Medicare Advantage. These insurers offer the same services as traditional Medicare, but in addition, they offer options Medicare does not. In Mississippi, this means seniors may choose to have increased coverage of things such as diabetes management, increased cancer screening, or lower cost-sharing in the form of lower premiums and copays.

Admittedly, Medicare Advantage is not a perfect program. I believe there is a certain bipartisan consensus that we should take a look at the plan's enrollment and billing practices. Physicians back home in my State of Mississippi tell me this, and I want to work with them. The amount of payments to these plans is also an issue that needs to be looked at. But the Medicare bill that the majority leader would have forced upon us on that Thursday night of June 26, 2008, would have included provisions that did not enjoy bipartisan support. If that bill had passed, American seniors and Mississippi seniors would have lost their choices. They would have been told: Take it or leave it.

Fewer choices and less competition are not good for America's seniors and certainly not good for our health care system. If Medicare Advantage needs adjusting, we should consider standalone Medicare Advantage legislation.

The PRESIDING OFFICER. The junior Senator from Mississippi must know that his time has expired.

Mr. WICKER. I wonder if I may have an additional 2 minutes, Mr. President. I don't see anyone here at this moment. I wonder if I may have an additional 2 minutes to wrap up.

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

Mr. WICKER. I thank the Chair.

There is overwhelming support for fixing the sustainable growth rate. Doctors deserve better than to be involuntarily paired with a poison pill provision that cannot pass this Congress on its own merits. I repeat, there is not a single Member of this Senate who wants these cuts to go into effect.

The issue of Medicare Advantage is so important because of the competition. If we are ever going to solve the future of funding on the issue of Medicare as a whole, if we are going to have that goal that the AMA wants of 18 months to look at a permanent fix to this issue, if we are going to prevent the train wreck that looms a few short years from now on the funding of Medicare as a whole, then we are going to have to inject competition. But let's not use it as a political football. Let's not adopt offsets on which there have been no hearings. Let's not change basic Medicare policy in the form of a pay-for for a temporary fix.

What we are looking at is two vastly different approaches to health care reform: the traditional Medicare, one size fits all, take it or leave it, that would lead us to a Canadian-style, single-payer type plan for the entire United States of America, or injecting this little bit of competition to see if we can help control the cost of the Medicare Program. That is what we are making this stand about, and that is why I hope eventually we will adopt the unanimous consent request Senator COCHRAN has made and move to a bipartisan plan we can all support and prevent these doctor cuts from going into effect.

I yield the floor. I thank the Chair for indulging me on the time.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Michigan.

Ms. STABENOW. Mr. President, I ask unanimous consent that following the remarks of Senator CORNYN, who I understand will be speaking after myself, Senator LEVIN be recognized as under the previous order, and Senator CHAMBLISS be recognized to speak for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, it is important to understand what the choices in front of us are. Always we have a choice in terms of priorities, of how to proceed. As the person who has coauthored the bill in the last several sessions that would change completely the way we provide physician payments, I certainly support long-term

solutions, something called the SGR, sustainable growth rate. I believe the way it is set up, it is wrong, and we need to fundamentally change and stop this process of trying to make sure we don't see cuts happen in Medicare every single year. I certainly agree with that position.

What we have in front of us is a choice—a choice between a bill that has 355 votes in the House on a bipartisan basis—there are not a whole lot of times we see 355 people coming together on an issue such as this in the House, and 59 Members of the Senate. We had a majority. We had 59 votes. We have seen an effort to continue to filibuster the process from moving forward, and we are tomorrow going to see whether we will have one more additional Republican who stands with us, stands with the AARP, the American Medical Association, who stands with, most importantly, our seniors, who stands with the disability community, who stands with those who are concerned about access to Medicare in this country. We only need one vote. That is where we are right now.

I find it interesting, when we look at the motion that was made before about the bill my Republican colleagues wish to bring to the floor, in that bill, we see cuts in oxygen services, in speciality wheelchairs, large cuts in graduate medical education in order to pay for the bill. That is one choice. Or we have the choice in front of us that passed with 355 votes in the House and has 59 votes right now in the Senate which would take some smaller cuts out of graduate medical education and would do something very small and in the future to Medicare Advantage.

What is Medicare Advantage? In my mind, Medicare Advantage is part of the effort to privatize Medicare. We all remember former Speaker Newt Gingrich saying we cannot directly stop Medicare, so we are going to make sure it withers on the vine. Part of that withering has been to divert more and more dollars away from physicians and away from community care into private for-profit companies, private fee-for-service companies.

The argument was in the beginning that competition from the private sector, more choice will bring down costs and that they would be able to take 97 percent of the normal Medicare rate because it would cost less to bring down prices because of competition.

What has happened? What have we heard from the Congressional Budget Office? What have we heard from those who only analyze this issue? In fact, the exact opposite is happening. More and more rate increases have occurred. We now have a group that was getting 97 percent of the full rates, supposedly lowering costs, now on average getting 113 percent, and the Congressional Budget Office told us if we cap the rate to these private businesses at 150 percent of regular Medicare, we would still save money.

Because of the strong feeling of the Republicans and the President indicating he wants to protect them at all costs, in this particular bill we are not addressing the rates. There is no inability for people to get a choice through private care. There is none of that. There is no rate reduction, even though, in my mind, we ought to be doing that.

All that is done in this bill is a process that does not even take effect until 2011—not next year, not the year after, but the year after that—which is a process called deeming. I will not go into all of it now except to say it addresses how the private companies interact with those that are not part of their group or part of their network. That is all this addresses in Medicare Advantage. One would think the sky is falling based on what we have heard.

The reality is, AARP—a pretty good barometer of what seniors are thinking in this country—and a wide variety of organizations have come together very strongly in support of the bill in front of us that only needs one vote. Why? Because that is the bill that will strengthen Medicare for the future.

We need to act now. We are past time to act on this issue because, in fact, there are consequences already, even though the physician cut has not taken effect.

I received a letter this week and I wish to read it. I received a letter recently from a constituent named Kay about her father. Her father needs his physical therapy as part of his treatment for Parkinson's. I know what that is like. My grandmother died of Parkinson's. It is a very tough disease. He lives at home confined to a wheelchair most of the time due to Parkinson's. Despite rising gas prices, Kay and her sister drive her father three times a week—about 80 miles round trip—for his therapy. But last week, they were informed that Medicare would not pay for his therapy because the Medicare exemption process for physical therapy had expired.

We only need one more vote. If we had one more vote, Kay would not be worried about whether her father with Parkinson's can get the physical therapy he needs.

Kay wrote me:

> I will go down swinging to help my dad. Can you go back in and fight for us? We need these services extended. Please fight for us . . . go back onto the floor and reopen this.

And vote again.

Our leader, I am proud to say, understands all of the stories, not only of Kay but of all the seniors across the country who are so desperately worried about what is going to happen with Medicare. Our leader has come to the floor and said we are going to vote ''yes'' again. We are only one vote short, only one vote.

The practical reality is, in my home State alone, it affects 1.4 million seniors and people with disabilities and over 90,000 veterans who are TRICARE beneficiaries, people who have served in our military. Military health care, TRICARE, is tied to Medicare. So if the Medicare cuts take effect, our veterans also will be affected and there will be a cut.

This is serious. We are past time, at this point, to be debating this issue. We need to vote, we need to pass it, and we need to send it to the President.

There are so many positive provisions in this bill for the future. It addresses assets for low-income seniors; preventive services; rural services which are so important to so many parts of Michigan; also the effort to move ahead and modernize the system with e-prescribing, so we can actually read the physician's handwriting, so we can actually have an electronic system that speaks to the future; and also telehealth which in so many parts of our country—again, Michigan is a real example of focusing on telehealth and the way to expand services to rural communities; expanding mental health services. There are so many important pieces to this bill.

Fundamentally, the difference between what was suggested by my Republican friend from Mississippi and from what is in front of us is whether we are going to have any kind of accountability at all for this effort that has begun to privatize Medicare.

We know from the testimony we received from the Congressional Budget Office that for 85 percent of the seniors in traditional Medicare, they actually pay more in premiums because of the overpayments on Medicare Advantage. Again, that is not even in this bill. That is not even in this bill. We still need to address that point. There is a small change that does not take effect until 2011, but because of that, colleagues on the other side of the aisle are willing to let this whole bill go down and a dramatic cut in physicians' services take effect. They are willing to let us lose the help for rural America, the effort to modernize Medicare with electronic e-prescribing, with telehealth, to focus on seniors who need mental health services. They are willing to let the whole thing go down and, in fact, have proposed, as I said earlier, an alternative plan, that rather than touch the for-profit folks in the health care system right now that are, in my mind, too many times undermining what is happening in traditional Medicare—not always; there are some positive aspects, but too many times. Instead of that, they bring forward an alternative that focuses on oxygen services and specialty wheelchairs and other areas in which to receive their cuts.

Mr. President, I ask unanimous consent for 2 additional minutes, as my colleague from Mississippi did prior to me.

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

Ms. STABENOW. I thank the Chair.

I feel so strongly about this, Mr. President. We spent a lot of time and effort and a lot of goodwill. A lot of people have worked together on both sides of the aisle, with good decisions

and good ideas that have come together on how to strengthen Medicare through this bill. It is obviously something that has wide bipartisan support because, again, we are talking about a huge overwhelming vote in the House of Representatives—355 people. Now we have the opportunity in front of us tomorrow, with all of our physician community, health care providers, senior organizations, AARP, disability groups, those who serve the Parkinson's patients and other patients who are suffering from particular diseases, consumer groups all across America coming together and saying this makes sense.

We need to make sure Medicare is available for our seniors. These are Draconian cuts and we want to stop them and we are willing to do it in a very balanced way. I thank our chairman of the Finance Committee for his leadership on something that is reasonable and balanced. We know him to be a reasonable person who does things in a balanced way. This doesn't gut Medicare or Medicare Advantage. It doesn't even touch the rates. It doesn't touch the companies, other than to address one part of the way they deal with those who are out of State or out of service through the process called ''deeming,'' that doesn't take effect until 2011.

Frankly, if that is the only part people disagree with, these cuts are now. These physical therapy cuts started last week. I would urge my colleagues, step up and be the one vote. We have until 2011 to change that part of the bill they do not like. But the therapy cuts started last week, and the physician cuts are going to start in a couple of weeks. That is the sense of urgency we should feel if we are concerned about the seniors in this country—about Medicare beneficiaries. Now is the time. It is real simple. It is real simple.

Tomorrow afternoon we will have the opportunity to vote yes on something overwhelmingly supported by the people of this country, and I urge my colleagues to step up. We only need, Mr. President, one more vote.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, Medicare provides important health care benefits for our Nation's seniors. Since 1965, the Federal Government has promised that those over the age of 65 years, or those afflicted with certain disabilities, will have access to health care. Unfortunately, Congress has had a checkered history of keeping that promise.

The vote we had 2 weeks ago, to which the distinguished Senator from Michigan just alluded, and one we will apparently have tomorrow afternoon, should be an embarrassment to Congress but not for the reasons that she and others have suggested. We should be looking to solve the looming problems with Medicare permanently, not just with temporary patches or fixes. We need a permanent solution. We should keep our promise to seniors that they can rely on Medicare and provide fair compensation for the physicians to make sure our seniors will actually have access to that coverage.

I have repeatedly heard from seniors in Texas who depend on Medicare that they find it hard to even find a physician who will accept below-market Medicare reimbursement rates. Even if we pass an 18-month extension now, I am not optimistic Congress will seriously consider permanent reform before the next round of scheduled cuts. And I shudder to think whether we can prevent the 20-percent cut that will occur 18 months from now.

This, of course, should not be about partisan politics, which it has become, because this is about people's lives. The Medicare Program, simply put, is in a nosedive headed for bankruptcy. As this chart demonstrates, without a long-term solution, the future is bleak indeed for Medicare providers.

This chart depicts how the practice costs of physicians continue to go up year after year. Yet because of a law Congress passed in 1997, Medicare reimbursement rates continue to be projecting downward. You can see the gap here. No wonder many physicians are no longer able to accept Medicare patients.

In Texas recently, a survey of physicians indicated that only 58.1 percent of physicians currently accept new Medicare patients because reimbursement rates are so low that they are below market and physicians cannot afford to accept those patients and those low Medicare reimbursement rates.

Congress needs to step up with a permanent solution, not the kind of shameful temporary patches and fixes that require physicians and other health care providers to come hat in hand to Congress every 6 months or 12 months or 18 months and that leave Medicare beneficiaries in doubt—our seniors—about whether, in fact, Congress will do its duty.

No one gets to conduct their business this way, other than the Congress. If you were in the private sector, a small or large business, you would be out of business or behind bars if you tried to operate your business the same way Congress has dealt with Medicare reimbursement rates.

The Medicare trustees expect future costs to increase at a faster pace than both workers' earnings and the economy overall. As a matter of fact, the Medicare Hospital Insurance Fund will be exhausted by 2019, and Part B premiums will have to increase rapidly to match expected expenditure growth. The Medicare trustees have warned Congress more than once to act, cautioning that the sooner the solutions are enacted, the more flexible and gradual they can be.

Mr. President, Medicare is a ticking time bomb. Today, Congress should be all about debating and preserving Medicare. Instead, we have been presented a bill that turns a blind eye to this smoldering powder keg of long-term Medicare problems and the terribly flawed physician payment system. Rather than real reform, the majority party—the Democratically controlled Senate—has presented us with a bill that prolongs damaging and rigid price controls, sets up increased premiums and increased taxes, abandons some private sector options, and keeps Medicare on the path toward more health care rationing.

Why would anyone be proud of this? The distinguished Senator from Michigan was saying that all they needed is one more vote to pass this partisan bill. Why would anyone be proud of this temporary fix, these price controls, along with submarket reimbursement rates, so that while we make the promise of Medicare coverage, the actuality of access is diminishing with each day?

This partisan bill bypassed not only the minority in the Senate, it bypassed the Senate Finance Committee as well. Now we are told by the majority leader that he will refuse the opportunity to offer any amendments when the bill comes to the floor. The Democratic-controlled majority has not held one hearing or introduced one piece of legislation in the last 6 months that begins to address the long-term problems.

Mr. President, I intend to offer a bill that will begin the process of reform and permanently eliminate the periodic cuts that are almost never allowed to go into effect. I think seniors and physicians and the American people deserve explanations and answers, and ultimately solutions, rather than more posturing and just kicking the can down the road.

It is worth taking a few minutes to recall how we got here in the first place.

In 1997, Congress was struggling with rising costs under Medicare and passed the Balanced Budget Act, which established something called the sustainable growth rate, or a formula which was intended to serve as a restraint on Medicare spending. Thus, the Federal Government instituted arbitrary price controls in an effort to reduce Medicare spending. What was the result? Well, the SGR—the sustainable growth rate—formula and arbitrary price controls have reduced access to quality care for beneficiaries.

While the first 2 years after implementation the SGR resulted in positive updates for physician payments, decreases in payments have been required every year since 2002. But what has been the experience of Congress? This chart indicates that except for the first year, in 2002, Congress has acted to reverse the cuts that have come with a temporary patch, and temporary fix after temporary fix. In fact, I think one could be forgiven for wondering whether Congress ever intended these cuts to take effect in the first place.

Thank goodness we haven't because continuing to cut into the muscle and

then into the bone of the Medicare system means that the promise of Medicare coverage is a hollow one indeed for patients, for seniors, who are increasingly having a very difficult time finding physicians who can accept Medicare rates because they are so low.

As you can see from this chart, not only has Congress, except for 2002, not allowed these cuts to go into effect based on temporary patches, it has actually provided a very modest update in most years, except for 2007, when it just got back to zero. But the fact is, Congress never really intended or was never prepared to allow these cuts to go into effect. Most of the time, if you look for how Congress has attempted to ''pay for'' or find revenue to offset this reversal of these cuts, all it amounts to is budgetary gimmicks and games.

As the American Medical Association has noted, ''every temporary intervention has increased the cost of a permanent solution.'' Thus, seniors and physicians find themselves coming back to Congress every 6 months or every 18 months hat in hand seeking to prevent these cuts with the kind of histrionics that we see on the Senate floor today and that we saw by the majority leader just 2 weeks ago after the failed cloture vote—not a serious discussion of public policy but, rather, a political action designed to gain partisan advantage.

At this point, to repeal the SGR formula created by Congress will cost an estimated $250 billion or more. That is a big number, and a major reason Congress has been unable to pass, or more likely unwilling to even debate, a long-term solution. While many of my colleagues have spoken at great length about their grandiose plans to reform the entirety of America's health care system, they seem to whistle past the Medicare graveyard.

We can and we must do better. What good is Medicare if there is no access to coverage? Even with reversing the Draconian cuts in reimbursement, as I said, many doctors refuse to even see patients with Medicare because the payments are so low. Yet Congress is seen patting itself on the back saying: Didn't we do a good job? Only to have more and more seniors unable to find doctors willing to accept Medicare payments.

Physician reimbursement cuts have been looming over the heads of seniors and physicians for years. Yet Congress repeatedly puts off until tomorrow what desperately needs to be done today.

What does the bill before use to pay for reversing these cuts for 18 months? Well, it undermines the one private sector alternative to traditional Medicare—Medicare Advantage—currently subscribed to by about 450,000 Texas seniors, leading to less choices, fewer services, and, yes, more government control.

We have a choice. Do we pass the hot potato once again, praying that we are not the ones who get burned, or do we stand up, do the responsible thing, and actually take decisive action by reforming the broken SGR formula for Medicare reimbursement?

While some in Congress seem determined to have the Government control all health care decisions, competition in the private sector holds real promise for the future of health care, and we do not have to look very far to find the proof. All we have to do is look at Medicare Part D, the prescription drug program that we passed a few short years ago.

The Congressional Budget Office recently released a report showing how effective Part D has been in lowering drug prices for seniors. This year, Part D expenses will be almost half that of the original projections 2 years ago. Competition by private companies that provide benefits for seniors under Medicare Part D has actually created about $40 billion in savings this year. What's more, Part D will be returning roughly $4 billion this year in unused funds due to cheaper than expected drug purchases.

Still, with the resounding success of Medicare Part D and the competition we should look to as a model, not one to be discarded or gutted or cannibalized in an effort to pay for this temporary patch, many of my colleagues want to give up on the private sector alternatives to traditional Medicare. Competition created by programs such as Medicare Advantage has the potential to save more money in the long run and to provide more choices and better quality services to Medicare beneficiaries.

I would be the first one to say that Medicare Advantage is far from perfect. As a matter of fact, I have heard from many of my constituent physicians who have complaints about the way Medicare Advantage is run. But it would be a terrible mistake to gut it. We ought to fix it, not gut it.

Rather than abandoning the principles of the benefits of competition in health care, we should work to make it better. With the results of Medicare Part D as an example, we should work to increase the role of nongovernment entities in lowering costs and increasing access and affordability of health care.

These are only a few of the reasons why, over 3 months ago, in anticipation of the looming physician payment cuts set for July 1, I introduced legislation that solves this problem permanently. This legislation I called Ensuring the Future Physician Workforce Act of 2008. It provides positive reimbursement updates for providers, it eliminates the ineffectual expenditure cap, and increases incentives for physician data reporting. At the same time, this bill facilitates adoption of health information technology by addressing costs and legislative barriers; it educates and empowers physicians and beneficiaries of Medicare spending and benefits usage, and studies ways to realign the way that Medicare pays for health care.

My bill does not mandate whether physician payments should be based on utilization, performance, care coordination or any other methodology, but it does start to lay down a new path toward reform, innovation, and restoration of the eroded physician-patient relationship. It does say the providers and beneficiaries should not be the ones to be punished by Congress's failure to act. We have to decide now.

Mr. President, I ask unanimous consent for 3 additional minutes to speak.

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

Mr. CORNYN. Mr. President, we have to decide now whether Medicare is worth protecting or whether political gamesmanship and partisan politics are going to take over. While it is costly to fix Medicare and the SGR, stalling will be far more expensive. So while some of my colleagues on the other side of the aisle may be content with another shortsighted, short-term fix, I suggest we debate and pass a bipartisan solution that will keep the promise of Medicare for seniors but also make sure there will be access to that coverage by providing fair compensation for physicians. Why should we, and why should they, settle for less?

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, title II of the bill before us, which amends the Foreign Surveillance Intelligence Act, would authorize retroactive immunity for telecommunications companies that collected intelligence information inside the United States in defiance of the clear requirements of the Foreign Surveillance Intelligence Act as it was then on the books.

The argument has been made that we must provide such immunity because these telecommunications companies responded to requests from the Government in a time of great uncertainty, after the events of September 11, 2001. I have some sympathy for their situation, but I also have sympathy for innocent Americans who may have had their privacy rights violated as a result of illegal actions taken by telecommunications companies at the behest of an administration that has all too frequently tried to place itself above the law.

The bill before us makes no effort to reconcile these competing interests. Instead, it requires the dismissal of all civil suits against telecommunications companies that may have illegally disclosed confidential communications of their customers at the behest of U.S. Government officials. Dismissal would also be required even if the disclosure violated the constitutional rights of innocent U.S. citizens whose confidential communications were illegally disclosed.

The so-called judicial review authorized in this bill is totally unsatisfactory. Under title II of the bill, the FISA Court would be permitted to review these cases only to determine

whether the Attorney General or the head of an element of the intelligence community told telecommunications companies that the Government request had been authorized by the President and ''determined to be lawful,''—presumably determined by anybody—even if nobody could reasonably have believed that the request actually was lawful. A judicial review that is limited to determining whether the administration claimed that its actions were legal is a sham review that provides no justice at all. Of course the administration claimed its actions were legal. Indeed, the Intelligence Committee report on this bill specifically states that the administration's letters requesting assistance from telecommunications companies made the claims that they were legal.

I do not believe this congressional grant of retroactive immunity is fair. I do not believe it is wise. And I do not believe it is necessary.

Retroactive immunity is not fair because it leaves innocent American citizens who may have been harmed by the unlawful or unconstitutional conduct of telecommunications companies at the behest of the administration without any legal remedy. It is hard to understand how the Attorney General can claim, as he does in a letter dated July 7, 2008, that this is a ''fair and just result.''

Those who have been harmed are not likely to have any recourse against the Government officials who asked telecommunications companies to disclose the private information of their customers because the Government officials enjoy qualified immunity for actions taken in their official capacity. These officials do not even have the burden of demonstrating that their actions were legal and constitutional to be immune from suit.

Nor is retroactive immunity wise, because it sets a dangerous precedent of retroactively eliminating rights of U.S. citizens and precludes any judicial review of their claim. If we act here to immunize private parties who cooperated with executive branch officials in a program that appears to have been illegal on its face, our laws and their prohibitions will be less of a deterrent to illegal activities in the future. This would be a terrible precedent if a future administration is as inclined as the current one to place itself above the law.

Finally, retroactive immunity is not necessary for the intelligence community to collect intelligence against terrorists using newly available technology. They have the right to use newly available technology—''they'' being the intelligence community—under title I of this bill. Title I provides that the Attorney General and the Director of National Intelligence direct telecommunications companies to assist in collection programs, and these directives are enforceable by court order as has been the case since the Protect America Act was adopted last August.

We are collecting needed intelligence information today pursuant to that act, without any retroactive immunity for telecommunications companies, and there is no reason why we cannot continue to do so in the future under title I of the bill without the retroactive immunity provided in title II.

The administration argues that if we do not provide retroactive immunity to telecommunications providers, ''companies in the future may be less willing to assist the Government.''

But let's be clear what we are talking about here. Telecommunications companies have prospective immunity if they assist the Government in a manner that is authorized by this bill. Moreover, they can be compelled to do so under the bill, as has also been the case since the enactment of the Protect America Act. What companies might be less willing to do is to assist the Government in intelligence gathering efforts that are illegal. And what is wrong with that? Do we want to encourage companies to assist a future administration in unlawful intelligence-gathering efforts?

Nor is retroactive immunity necessary to protect telecommunications companies that acted in good-faith reliance on representations from administration officials. There are other ways in which we can recognize their equity without insulating misconduct from judicial review and without denying any relief to innocent U.S. citizens who may have been harmed.

For example, we can safeguard these interests by substituting the United States as the defendant in cases against telecommunications companies, or by requiring that the United States indemnify telecommunications companies for any damages in such cases. In either case, we could cap damages to make sure that the taxpayers are not required to pay an unreasonable burden as a result of unlawful decisions by the administration. We could also provide a measure of protection to American citizens whose rights have been violated by limiting the immunity provided to those cases where the telecommunications companies demonstrate that they had a reasonable basis for a good-faith belief that the assistance they were providing was lawful, a requirement that is notably absent from the bill before us.

The Bingaman amendment is a very modest proposal which does not decide the retroactive immunity question or remove the retroactive immunity provision from the bill. It leaves the retroactive immunity provision in the bill but postpones the effective date of that immunity until 90 days after Congress receives the comprehensive inspector general report required by the bill.

This amendment, the Bingaman amendment, does not have any effect at all on title I of the bill, which allows the intelligence community to collect information using newly available technology. The Bingaman amendment allows title I to go into law without change and without delay. The inspector general report may give us important information that helps us understand the extent to which the administration's actions were illegal or unconstitutional, and the extent to which innocent U.S. citizens may have been damaged by these actions. The delayed effective date in the Bingaman amendment would give us the opportunity to consider this information, not just assurances of administration officials, before retroactive immunity goes into effect and cases are dismissed. That information required to be provided to us by the inspector general is surely relevant to this issue.

If we adopt the Bingaman amendment, we will have highly relevant information about the extent to which illegal or unconstitutional actions were taken against innocent American citizens and the extent to which those citizens were harmed by those actions. The Bingaman amendment gives us the opportunity to take this additional information into account before retroactive immunity takes effect, while at the same time preventing any harm to telecommunications companies by staying any litigation against them until the information becomes available.

We can pass this bill and we can ensure that the intelligence community continues to have the authority to collect information on suspected terrorists without surrendering the rights of Americans whose privacy may have been violated.

I support the Bingaman amendment as a way to introduce a bit of balance into the process of protecting the privacy of innocent Americans while recognizing some equity in the position of the telecommunications companies.

I yield the floor and yield back my time.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today to discuss H.R. 6304, the FISA Amendments Act. I am disappointed that after so many months of negotiations, after the Senate passed similar legislation in February, and after the House passed this bill by 293–129, the Senate is stalling enactment of necessary changes to FISA by debating amendments which would gut this bill of a valuable provision liability relief for our telecommunications carriers.

The three amendments we debate today would singularly undermine months of hard work by the Senate Intelligence Committee and the House to reach an agreement on this bill. In particular, Senators DODD and FEINGOLD have offered an amendment striking title II of the bill which provides liability relief to those telecommunication carriers who currently face lawsuits for their alleged assistance to the Government after September 11. Senator SPECTER has offered an amendment that would require the courts to determine the constitutional merits of the

President's terrorist surveillance program, TSP in cases against private parties. And, Senator BINGAMAN has offered an amendment which would needlessly delay liability relief for a review of the President's TSP to be completed, which Members of this body have already done. I do not support any of these amendments.

Over 40 lawsuits have been filed against our communications providers alleging statutory and constitutional violations, seeking billions of dollars in damages. These suits are not intended to bring justice to any individual; rather, they are a fishing expedition. The lawyers who brought these cases hope to use our court system to discover some claim or discover some standing for their clients; yet none of the plaintiffs in any of these lawsuits have any evidence to illustrate that they were subjects of the President's TSP or that they suffered any harm. As a result, I wonder how a court could uphold that any of these individuals even have a claim to raise. The President has stated repeatedly that in the wake of 9/11, the TSP intercepted communications of suspected terrorists, including those communicating with individuals inside the U.S. or whose communications pass through the U.S. To date, this program has been reviewed by numerous Inspectors General, the Department of Justice, our intelligence community and Congress. Do we need to add the courts to the list? The Foreign Intelligence Surveillance Court is already on that list.

As a member of the Select Committee on Intelligence, I had access to the classified documents, intelligence, and legal memorandum, and heard testimony, related to the President's TSP program. After careful review, as stated in the committee report accompanying the Senate's FISA legislation, the committee determined ''that electronic communication service providers acted on a good faith belief that the President's program, and their assistance, was lawful.'' The committee reviewed correspondence sent to the electronic communication service providers stating that the activities requested were authorized by the President and determined by the Attorney General to be lawful. The committee concluded that granting civil liability relief to the telecommunications providers was not only warranted, but required to maintain the regular assistance our intelligence and law enforcement professionals seek from them and others in the private sector. It was clear in discussions within the committee that most of us were concerned about the harm the Government could face if it cannot rely on the private sector. Without this provision, the harm faced by the Government will become a reality.

I cannot understate the importance of this assistance, not only for intelligence purposes but for law enforcement too. The Director of National Intelligence and the Attorney General stated, ''Extending liability protection to such companies is imperative; failure to do so could limit future cooperation by such companies and put critical intelligence operations at risk. Moreover, litigation against companies believed to have assisted the Government risks the disclosure of highly classified information regarding extremely sensitive intelligence sources and methods.'' There is too much at stake for us to deny those who assist the Government the liability relief they need, and deserve, or to delay its implementation.

Senator SPECTER'S amendment asks the courts to review and determine the constitutionality of the President's TSP before dismissing any lawsuit against the telecommunication carriers. This amendment not only severely undermines the findings of this body, but also calls into question the activities of the other political branch in our Government, the executive. The courts would be granted access to highly sensitive, executive branch intelligence activities, which they are not experienced in, and be required to make a legal determination on the constitutional authorities of the President. The courts usually avoid these types of decisions, and rightfully so. Moreover, the courts should not issue mere advisory opinions, yet this amendment requires the court to determine the constitutionality of a Presidential program when the government is not a party to these actions. Even with the passage of this bill the government or a Government official can still be sued for a TSP violation. If a plaintiff brought an action against the Government, the courts could then determine the constitutionality of the program; however, Congress should not hold America's private companies hostage until the courts review what Congress and others already have found. Further, regardless of the Government's program, our companies should not be held liable for assistance that they were assured was lawful. Let the Government carry the burden for its own actions.

Similarly, Senator BINGAMAN'S amendment would stay all of the lawsuits brought against the communications carriers until the inspectors general conducted a review of the TSP. Various inspectors general have reviewed already the President's program. The review called for by the FISA Amendments Act is nothing new. I see no reason to delay liability relief like this. The scope of the IGs' review included by this legislation is not intended to be a legal determination of the TSP. Instead, the FISA Amendments Act calls for the IGs to review each respective agency's access to the legal reviews of the program and grants the IGs access to communications with the private sector related to the program. Any review conducted pursuant to this legislation will have no impact on the lawsuits brought against private corporations. The only thing this amendment does is hold the cases up in court for over a year while the reviews are completed. This is purely political and Congress should not play games with our national security, or even when U.S. companies and their customers' money are involved.

Finally, Senators DODD and FEINGOLD offer the same amendment that they did in February, to completely strike Title II of the bill which provides this liability relief. This same amendment failed to pass the Senate in February by 31–67. As I have stated, I support Title II, and believe the Senate has already shown its lack of support for this amendment.

Mr. President, I oppose all three amendments offered to the FISA Amendments Act and urge my colleagues to do the same. It is time for the Senate to stop delaying enactment of a FISA bill and to reject these amendments which would gut the bill of much needed relief for our telecommunications providers.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I will use leader time for my presentation.

The PRESIDING OFFICER. The leader is recognized.

Mr. REID. Mr. President, the Senate will soon vote on the FISA bill, which represents a final result of negotiations among the White House and Democrats and Republicans in Congress.

I opposed the version originally passed by the Senate. Although improvements have been made in the version now before this body, the legislation continues to contain provisions that will lead to immunity to the telecommunications companies that cooperated with the Bush administration's warrantless wiretapping program. For that reason, I have no choice but to vote no.

Having said that, I am pleased that President Bush and the congressional Republicans finally agreed to negotiate a better bill. For months, the President insisted it was his way or the highway. The White House refused to come to the negotiating table, repeatedly demanding that the House simply pass the Senate's bill. I commend our Democratic colleagues in the House for standing up to insist on more protections for the privacy of innocent Americans.

This debate has shown once again that protecting the American people is not a Democratic or Republican issue. Democrats want to provide our intelligence professionals all the tools they need to fight terrorism. We must also protect the privacy of law-abiding Americans and protect against abuses of our Constitution.

We all know that in the darkest corners of the Earth lie evil people who seek to harm our country and our people. We all agree on the need to monitor the communications of terrorists in order to protect the American people. But despite what the President insists, America is strengthened by our

reverence for our law and our Constitution.

I am grateful for the efforts of congressional leaders who have worked tirelessly, and at times it may have seemed endlessly, to craft this compromise bill. Senators FEINGOLD and DODD deserve special recognition for reminding us that our Constitution must always come first. I have to compliment Senator ROCKEFELLER—a very difficult assignment he has, being the chairman of this most important committee, but he does it with great dignity.

This version of this legislation is better than the bill the Senate passed in February and better than the flawed Protect America Act signed by the President last summer.

This legislation now includes Senator FEINSTEIN's amendment to reaffirm FISA as the exclusive means by which the executive branch may collect surveillance. This provision is Congress's direct response to the strained argument of President Bush's lawyers that Congress meant to repeal the very clear and specific requirements of FISA when Congress passed the authorization for the use of military force in Afghanistan. Congress flatly rejects that argument as having no basis in fact or in law.

This bill includes Senator LEAHY's important amendment requiring a comprehensive IG review of the President's program as well as greater judicial supervision.

This bill requires the U.S. Attorney General to develop guidelines to ensure compliance with the fourth amendment and prevent reverse targeting; that is, targeting someone abroad when the real purpose is to acquire the communications of a person here in the United States.

This bill provides for increased congressional oversight, requiring extensive reporting to the Judiciary Committee and Intelligence Committees about the implementation of the new provisions and their impact on U.S. persons.

This bill rejects changes to the definition of electronic surveillance, a change sought by the administration that could have had unforeseen and far-reaching consequences for FISA's protections for the privacy of law-abiding Americans.

This bill ensures that the law expires in 4 years, requiring the next President and Congress to evaluate its effectiveness.

Let me in passing say that Senator LEAHY, the chairman of the Judiciary Committee, worked hard on this. As you know, there was a joint referral. Again, Senator LEAHY worked, as he does on all pieces of legislation, tirelessly and for the good of this country.

These changes I have mentioned add checks on the expansive executive powers contained in the original bill. But, as I said, despite these improvements, this legislation certainly needs more work. That is why I oppose it and why I am committed to working with the new President to improve it.

Congress should not wait until the 2012 expiration to improve this legislation. I will work to ensure that Congress revisits FISA well before 2012, informed by the oversight that will be conducted in the coming months by the Judiciary Committee and the Intelligence Committees and by the reports of the inspectors general. Next year, for example, Congress will be required to revisit a number of provisions of the PATRIOT Act. That may provide a suitable occasion to review the related issues in this FISA legislation.

While the bill before us does include some improvements to title I's intelligence collection procedures, I oppose totally title II. I think it is just way out of line.

Title II establishes a process where the likely outcome is immunity to the telecommunications carriers that participated in the President's illegal warrantless wiretapping program. That is what it was. The bill does not provide any protection for the Government officials who designed and authorized the program. That is good. It also, of course, does not preclude a challenge to the constitutionality of the legislation in Federal district court.

Nobody should read title II of this bill as a judgment on the legality of the President's warrantless wiretapping program because it is not. Nobody should expect that a grant of immunity is anything other than a one-time action. This was made clear in the Senate Intelligence Committee report that accompanied an earlier version of this legislation. Service providers should clearly understand that no grant of immunity will be forthcoming if they cooperate with future Government requests that do not comply with the procedures outlined in this legislation.

The current lawsuits against the telecom companies seek accountability.

These lawsuits could have been a vehicle to achieve a public accounting of the President's illegal warrantless wiretapping program. That is why it is important that the Democratic negotiators forced the President to submit his program to a comprehensive inspectors general review. That review should finally provide a full airing of this entire sorry episode. The bill requires the inspectors general of the relevant agencies to complete a comprehensive review of the President's surveillance program within a year. By the time that report is issued, President Bush will have left office. Although his term will have come to an end, the work of uncovering this administration's abuses of power is just beginning. Future Presidents, future Congresses, and the American people will learn from President Bush's abuses of power in a positive fashion.

The debate on this FISA legislation may be nearing an end, but the history books are yet to be written. Throughout this fight, a small number of lonely voices insisted that there is no contradiction between liberty and security. As new facts have become known, their numbers have swelled, and the voices have grown louder. I am confident that when it is all known, the condemnation of President Bush's blatant disregard for the Constitution will be deafening. I hope that because those voices refused to be silenced, the next President and all future Presidents will not waiver from a path that protects the American people without compromising our core American values based upon our Constitution.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 5064

(Purpose: To strike title II)

Mr. DODD. Mr. President, before the Majority Leader leaves the floor, I thank him personally but also collectively for his leadership on this issue. This is an act of courage on his behalf, given the arguments made by the other side, and his leadership on this created the possibility for us to offer this amendment to strike title II. I share his thoughts. He expressed them very well. I wish to identify myself with them. This is not at all about questioning the need for security. We all understand that. This is a simple question. Should the telecom industry be granted immunity, without us being able to determine whether their actions are legal? It may come out that the courts determine they were legal. If so, we move forward. All we are asking is that the opportunity be given to determine the legality of their actions.

The majority leader has made it clear why it is important. This is about the Constitution and the rule of law. It seems to me a very simple request and, as such, I ask unanimous consent to lay the pending amendment aside and call up amendment No. 5064.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. DODD], for himself, Mr. FEINGOLD, Mr. LEAHY, Mr. REID, Mr. HARKIN, Mrs. BOXER, Mr. SANDERS, Mr. WYDEN, Mr. KENNEDY, and Mr. DURBIN, proposes an amendment numbered 5064.

Strike title II.

Mr. DODD. Mr. President, it is very simple. Strike that section of the bill that grants immunity to a number of telecommunications companies that, for a period of roughly 5 or 6 years, literally vacuumed up phone conversations, faxes, e-mails, photographs, on a wholesale basis, of virtually every American citizen. The only reason it has come to a halt is because there was a whistleblower who identified the program. Otherwise the program would be ongoing. Again, none of us argue, at least I don't argue at all, about the importance of having the ability to get the cooperation of an industry that could help us identify those who would do us harm. That is not the debate.

The debate is whether there is an appropriate means by which those warrants are sought before these telecom companies would begin to turn over the private conversations, e-mails, and communications of American citizens. That is what this debate is about. It is a simple debate on whether we keep this section of the bill or strike it out and allow the judicial branch, a coequal branch of Government, to determine whether the acts by the executive branch were constitutional and if they were they legal.

If this amendment is not adopted, it will be a vote by the legislative body that determines whether they were legal. We are not competent or the appropriate constitutionally delegated body to perform that function. That is why we have three coequal branches of Government. The executive branch made this decision. We in the legislative branch have an obligation to insist that the judicial branch determine the legality of the actions taken.

I wish to thank as well my colleague, Senator FEINGOLD of Wisconsin, my lead cosponsor, but also to mention, if I may, Senator LEAHY, who has been a stalwart on this effort and always a great crusader against those who would do harm to the rule of law. I also want to thank Senator REID, the Majority Leader, and Senators HARKIN, BOXER, SANDERS, WYDEN, KENNEDY, DURBIN, KERRY, and CLINTON for their support for this amendment. I also thank, if I may, JAY ROCKEFELLER, who chairs this committee. While I am highly critical of title II of the bill, I have great respect for him and the work he has tried to do in leading the Intelligence Committee on this difficult issue. While I still have major reservations about title I of this bill, the fact that title II still exists in this bill makes it impossible to be supportive of this legislation, if that is retained in the bill that we vote on tomorrow.

For many Americans, the issue may seem a very difficult one to follow. It may seem like another squabble over a corporate lawsuit. But in reality, it is so much more than that. This is about choosing between the rule of law and the rule of men. You heard our colleague, Senator LEVIN, and the Majority Leader eloquently describe the situation as it presently exists.

For more than 7 years, President Bush has demonstrated time and time again, unfortunately, that he neither respects the role of Congress nor does he apparently respect the rule of law on these matters. Today, we are considering legislation which will grant retroactive immunity to the telecommunications companies that are alleged to have handed over to this administration the personal information of virtually every American, every phone call, every e-mail, every fax, and every text message, and all without warrant.

Some may argue that, in fact, the companies received documentation from the administration stating that the President authorized the wiretapping program and that, therefore, it is automatically legal. These advocates will argue that the mere existence of documentation justifies retroactive immunity; that because a document was received, companies should be retroactively exonerated from any wrongdoing. But as the Intelligence Committee has already made clear, we already know that the companies received some form of documentation with some sort of legal determination.

But that logic is deeply flawed. Because the question is not whether the companies received a document from the White House. The question is, were those actions legal?

It is a rather straightforward and surprisingly uncomplicated question. Did the companies break the law? Why did the administration not go to the FISA Court as they were required to do under the Foreign Intelligence Surveillance Act?

Since 1978, that court has handled 18,748 warrants, and they have rejected 5 since 1978, in almost 30 years, according to a recent published report in the Washington Post. So the issue raised for me is, why didn't these companies go before that court to determine whether a warrant was justified? Why did they decide merely to rely on some letter or some documentation, none of which has ever been established as a legal justification for their actions?

Either the companies complied with the law as it was at the time or they didn't. Either the companies and the President acted outside the rule of law or they followed it. Either the underlying program was legal or it was not. If we pass retroactive immunity, not a single one of these questions will ever be answered—ever. Because of this so-called compromise, Federal judges' hands will be tied and the outcome of these cases will be predetermined. Retroactive immunity will be granted.

So this is about finding out what exactly happened between these companies and the administration. It is about holding this administration to account for violating the rule of law and our Constitution. It is about reminding this administration that where law ends, tyranny begins. Those aren't my words, where the law ends, tyranny begins. Those words were spoken by the former British Prime Minister, Margaret Thatcher.

It is time we say no more, no more trampling on our Constitution, no more excusing those who violate the rule of law. These are our principles. They have been around since the Magna Carta, even predating the Constitution. They are enduring. What they are not is temporary. And what we should not do at a time when our country is at risk is abandon them. That is what is at stake this evening and tomorrow when the vote occurs.

Allowing retroactive immunity to go forward is, by its very nature, an abandonment of those principles. Similar to generations of American leaders before us, we too are confronted with a choice. Does America stand for all that is right with our world or do we retreat in fear? Do we stand for justice that secures America or do we act out of vengeance that weakens us?

Whatever our political party, Republican or Democratic, we are all elected to ensure that this Nation adheres to the rule of law. That is our most fundamental obligation as Members of this great body, to uphold the rule of law—not as partisans but as patriots serving our Nation. The rule of law is not the province of any one political party or any particular Member of the Senate but is, rather, the province of every American who has been safer because of it.

President Bush is right about one thing. The debate is about security. But not in the way he imagines. He believes we have to give up certain rights in order to be safer. This false dichotomy, this false choice that to be more secure, you must give up rights is a fundamentally flawed idea. In fact, the opposite is true. To be more secure, you must defend your rights.

I believe the choice between moral authority and security is a false choice. I believe it is precisely when you stand up and protect your rights that you become stronger, not weaker. The damage done to our country on 9/11 was both tragic and stunning, but when you start diminishing the rights of your people, you compound that tragedy. You cannot protect America in the long run if you fail to protect the Constitution of the United States. It is that simple.

As Dwight Eisenhower, who served our country as both President and as the leader of our Allied forces in Europe during World War II, said:

> The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.

That is why I believe history will judge this administration harshly for their disregard for our most cherished principles. If we do not change course and stand for our Constitution at this hour, for what is best for our country, for what we know is just and right, then history, I am confident, will most certainly decide that it was those of us in this body who bear equal responsibility for the President's decisions—for it was we who looked the other way, time and time again.

This is the moment. At long last, let us rise to it. Support the amendment I am offering on behalf of myself and the other Members I mentioned earlier. We must put a stop to this idea of retroactive immunity. It is time we stood for the rule of law. That is what is at stake. The FISA Courts were created specifically to strike the balance between a secure nation and a nation defending its rights. That is why the law has done so well for these past 30 years, amended many times, to keep pace with the changes of those who would do us great harm.

At this very hour, in the wake of 9/11, to say we no longer care about that, that we will decide by a simple majority vote to grant retroactive immunity to companies who decided that a letter alone was enough legal authority for them to do what they did is wrong.

I have pointed out before in lengthy debate, not every phone company participated in the President's warrantless wiretapping program. Not everyone did. There were those who stood up to the administration and said, without a warrant, without proper legal authority, we will not engage in the vacuuming up of the private information of American citizens. They should be recognized and celebrated for standing for the rule of law.

For those who decided they were going to go the other way, let the courts decide whether that letter, that so-called documentation, was the legal authority that allowed them to do what they did for more than 5 long years.

Tomorrow we will vote around 11 o'clock on this amendment. I commend Senator BINGAMAN and Senator SPECTER. They have offered amendments as well dealing with other parts of this legislation for which I commend them. But I hope my colleagues, both Democrats and Republicans, would think long and hard about this moment. Senator CARL LEVIN of Michigan said something very important toward the conclusion of his remarks: That this in itself becomes a precedent, that some future administration, fearing they would not get permission from a FISA Court to engage in an activity that violated the privacy of our fellow citizens will no doubt use the vote tomorrow, if, in fact, those who are for retroactive immunity prevail. They will cite that act by this body as a legal justification for some future administration circumventing the FISA Courts in order to do exactly what was done in this case. It becomes a legal precedent.

So there is a great deal at risk and at stake with this vote tomorrow. It is about the rule of law. It is not about whether you care about the security of our Nation. Every one of us cares deeply about that, and we want to do everything we can to thwart those who would do us great harm. This is about the simple issue of whether a court of law ought to determine whether these companies violated the Constitution. Did they or didn't they? If they did not, so be it. If they did, then those to whom they did harm ought to be compensated at what marginal or minimal level one would decide. But let the court decide this. Let's not decide it by a simple vote here and set the precedent that I think we would regret for years and years to come.

With that, Mr. President, I yield the floor.

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

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

## MOTORCOACH SAFETY

Mr. BROWN. Mr. President, today the National Transportation Safety Board presented its final report on the Atlanta motorcoach accident involving the Bluffton University baseball team last March.

The crash resulted in the deaths of five players on that team: Tyler Williams, Cody Holp, Scott Harmon, Zack Arend, and David Joseph Betts. The driver, Jerome Niemeyer, and his wife Jean were also killed in the crash. Many of the other passengers—33 in all—were treated for injuries.

For the families of those who lost loved ones and the families whose sons survived but now struggle with the aftermath, today has been highly anticipated.

Only hours after news of the accident hit home, these families pledged to improve safety measures on motorcoaches so that preventable—preventable—fatalities would not occur in the future.

For John Betts, who lost his son David in the crash, it was important to take the accident and make it into something positive in honor of his son and the other bright, talented young men who died that morning. Motorcoach safety became his crusade.

I spoke to Mr. and Mrs. Betts today and their son and daughter and talked to other parents of survivors and one who had died, and I think about their courage and their commitment and their passion to do this in the names of their sons, to fight for motorcoach safety so this tragedy does not befall other families. The Betts family sees upgrading the safety laws for motorcoaches as an opportunity to save the lives of future riders. Mr. Betts sees it also as a way to memorialize David and his teammates and, as he puts it, to make the world they lived in better than it was when they left it.

The Motorcoach Safety Enhancement Act, which I introduced last November along with Senator HUTCHISON from Texas, would address the shortfall in safety regulations for motorcoaches.

Today's final report echoes the recommendations the NTSB has been publishing for years and aligns itself with the safety improvements incorporated into our legislation. Specifically, the National Transportation Safety Board underscored major safety shortfalls that the Motorcoach Safety Enhancement Act addresses, such as development of a motorcoach occupant protection system, improved passenger safety standards, enhanced safety equipment and devices, and required onboard recorders with the capability to collect crash data.

Many of the injuries sustained in motorcoaches could be prevented by incorporating high-quality safety technologies that exist today but are not widely used, such as crush-proof roofing and glazed windows to prevent ejection. More basic safety features, such as readily accessible fire extinguishers and seatbelts—simple seatbelts—for all passengers, are still not required on motorcoaches. As a father of four, I find it particularly disturbing to know students are still riding in vehicles without even the option of buckling up. Seatbelts, window glazing, fire extinguishers—these are not new technologies. These are commonsense safety features that are widely used. Yet mandating them, as recommended by the NTSB, has been languishing for years.

The Motorcoach Safety Enhancement Act would instruct the Secretary of Transportation to enact these and other safety features and to establish a timeframe so these safety requirements do not spend any more time in limbo.

Sadly, the Bluffton University baseball team's fatal accident was not unique. We have witnessed story after story about motorcoach accidents. One happened in Texas, which precipitated Senator HUTCHISON's involvement in this effort. This bill takes the lessons learned from the tragic events of the Bluffton University baseball team's motorcoach accident and aims to correct them for future riders.

It is my hope that in the future parents will not have to endure the anguish and the grief that the Betts family members experienced and the family members of Tyler Williams and Cody Holp and Scott Harmon and Zack Arend and, as I said, the Betts family. I applaud the Betts family and the other Bluffton University parents for their courageous fight, for their persistence, and for their dedication to improving motorcoach safety in the midst of so much personal pain. Those families are truly remarkable.

I urge this body to swiftly pass the Motorcoach Enhanced Safety Act.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators allowed to speak therein for up to 10 minutes each.

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

IDENTIFYING BENEFICIARIES

Mr. DURBIN. Mr. President, the inspector general of the Social Security Administration recently issued a report taking the Centers for Medicare and Medicaid Services to task for its failure to take steps to implement the inspector general's recommendation that the agency stop using Social Security numbers as a beneficiary identifier. I support the inspector general's efforts and would like to bring this issue to the attention of my colleagues.

Social Security numbers were originally created to administer the Social Security Program. Over time, the public and private sectors began to use Social Security numbers for a variety of other purposes.

Use of Social Security numbers is a convenient method to identify individuals. But wide-spread use of Social Security numbers also increases the risk of identity theft and fraud. In 2006, the Federal Trade Commission reported that more than 8 million Americans were victims of identity theft in the prior year.

Identity thieves can obtain an individual's personal information by stealing mail or a wallet or rummaging through your trash. That personal information can be used to obtain a credit card in your name, write bad checks from a bank account created in your name, or authorize the electronic transfer of funds from your bank account to a different account.

A Social Security number is a key piece of information used in identity thefts. Recognizing this threat, many public and private entities have taken steps to limit the use and display of Social Security numbers.

Last year, the Office of Management and Budget called on Federal agencies to safeguard personally identifiable information. It required agencies to establish plans to eliminate unnecessary collection and use of Social Security numbers and to explore alternatives to Social Security numbers.

A number of Federal agencies are reducing the use of Social Security numbers. The Department of Veterans Affairs no longer displays Social Security numbers on new veteran identification cards. The Department of Defense is issuing health cards that no longer display Social Security numbers. And the Office of Personnel Management has directed health insurers participating in the Federal Employees Health Benefit Program to eliminate Social Security numbers from insurance cards.

Unfortunately, the Centers for Medicare and Medicaid Services continues to display Social Security numbers on Medicare identification cards. Consumers Union and others have noted this practice needlessly places Medicare beneficiaries at risk for identity theft.

The Social Security Administration urges people not to carry their Social Security cards with them in order to protect against theft. But Medicare beneficiaries are instructed to carry their Medicare identification cards with them—cards with the very same Social Security number on them. Why would CMS increase senior citizens' vulnerability to identity theft?

I first raised this concern in 2005 and successfully offered an amendment to the Senate version of the fiscal year 2006 Labor-HHS-Education appropriations bill to require CMS to provide a report to Congress outlining a plan to move away from using Social Security numbers on Medicare identification cards.

CMS prepared a report and provided estimates of the cost and time it would take to switch to an identification system other than Social Security numbers. But it has failed to implement that plan.

Last month, the inspector general of the Social Security Administration issued a report that examined how CMS is responding to an IG recommendation in 2006 to remove Social Security numbers from Medicare cards. The inspector general found that CMS has not done anything beyond preparing the report to Congress.

The inspector general made his position clear. The report states:

> Given the millions of individuals at risk for identity theft and OMB's directive to eliminate unnecessary uses of [Social Security numbers], we believe immediate action is needed to address this significant vulnerability.

The report also declares:

> We do not believe a Federal agency should place more value on convenience than the security of its beneficiaries' personal information.

It is very disappointing that CMS is not taking recommended steps to protect Medicare beneficiaries from identity theft.

Private health insurers have moved away from using Social Security numbers. Other Federal agencies have too. It is time for CMS to do the same.

TRIBUTE TO DR. BOBBY R. HIMES

Mr. MCCONNELL. Mr. President, I rise to note with sadness the passing of Dr. Bobby R. Himes, a retired Campbellsville University professor and star Kentuckian who will be greatly missed. After over four decades of service to his students, his community and the Commonwealth of Kentucky, he leaves behind many loved ones and a great legacy of accomplishment. He was 76 years old.

Known to students and colleagues as ''Mr. Campbellsville University,'' Dr. Himes taught 7,940 students over his long career, according to grade books he kept in his possession. He first came to Campbellsville University in 1961 at the age of 29 and retired in 2001 as a history and political science professor. More than 4,000 Campbellsville students took his popular class ''United States History Since 1877,'' which began in 1961.

Dr. Himes grew up in Hartford, KY, and always remained proud of his hometown. In his recent book ''Life in the Shadows of Hartford College and Campbellsville University,'' he wrote, ''I could not have grown up in a better place or time. Nowhere could there have been better people to nurture a young boy, a young man and now an old man.''

Dr. Himes graduated from Hartford High School in 1950 and earned his bachelor's degree in history and political science from Kentucky Wesleyan College in 1959. He earned a master's degree in social science from Appalachian State University in 1961, did other graduate work at Western Kentucky University, and did his doctoral studies at Vanderbilt University. He also wore our country's uniform for 4 years in the U.S. Air Force, serving in the Korean War.

Dr. Himes's renown as a teacher was legendary. Several years ago I was on a plane from Kentucky to Washington, DC, when a young woman introduced herself to me as one of his former students. She had only the highest praise for him. I made sure to tell Dr. Himes about that afterwards. The impact he had on this young woman's life, and thousands of young people's lives, cannot be understated.

Let me point out that my wife, Secretary of Labor Elaine Chao, was a big fan of Dr. Himes as well. When she first met him she was new to Kentucky and just getting to know people. Dr. Himes was so friendly and helpful, they soon became fast friends. He was a great guide to the people and places in Kentucky.

Dr. Himes was always actively engaged with the world around him, and so it is no surprise he was involved in political campaigning and public service as well. His first campaign experience came when he was in the third grade at Wayland Alexander Elementary School he supported Wendell L. Willkie in the 1940 Presidential election.

Luckily, that first loss did not deter him from politics completely. Moving to Taylor County, KY, in 1961, Dr. Himes went on to serve in leadership posts for local campaigns. He then became chairman of the Taylor County Republican Party in 1982, a position he held for 10 years.

Dr. Himes was twice named the Campbellsville/Taylor County Chamber of Commerce Educator of the Year. He was also named the 2001 Business and Professional Women's Club Man of the Year and the 2004 Central Kentucky News-Journal Man of the Year. He received the Outstanding Social Studies Teacher Award from the Kentucky Council for the Social Studies in 1982.

Dr. Himes was a member of Campbellsville Baptist Church, and he belonged to the Honorable Order of Kentucky Colonels. He was perhaps the biggest fan of Lady Tiger Basketball at Campbellsville University, and the team recognized his support by creating the Bobby Himes Award, which honors dedication, determination and loyalty.

Dr. Himes served under five Presidents during his tenure at Campbellsville University. Dr. Michael V. Carter, the current president, said upon hearing the news, ''We thank God for the life and career of Dr. Bobby Himes and his service to Campbellsville University and humanity.''

My prayers and those of the people of Kentucky are with his wife Erlene and the Himes family after this sad loss. I hope the wonderful memories of Dr. Himes's long and fruitful life can give them some strength during this difficult time.

In his book, Dr. Himes looked back at his own success and wrote, ''What a career, what a life for a rural Kentucky boy! My granddad Himes would be pleased.''

What a life, indeed. Kentucky and our Nation have lost a great American with the passing of Dr. Bobby R. Himes. And I have lost a dear beloved friend.

## VOTE EXPLANATIONS

Mr. TESTER. Mr. President, last night my flight to Washington was diverted to Columbus, OH, due to bad weather. As a result, I missed rollcall vote No. 163, to invoke cloture on the motion to concur with House amendment No. 2 to the Senate amendments to the housing bill. Had I been present, I would have voted ''yea.''

Mr. THUNE. Mr. President, last night, due to weather delays and an unexpected flight diversion to Columbus, OH, I missed the rollcall vote concerning cloture on the motion to concur with House amendment No. 2 to the Senate amendments to the housing bill, H.R. 3221. Had I been present for this vote, I would have voted ''aye.''

## REMEMBERING SENATOR JESSE HELMS

Mr. COCHRAN. Mr. President, I was saddened by the news of the death of our former colleague, Jesse Helms of North Carolina. It was a privilege to work with him when he served as chairman of the Agriculture Committee. He was always courteous and respectful of the interests of all of the members of the committee. His conscientious efforts to be fair and resourceful in achieving a consensus on the provisions of legislation providing Federal Government support for the producers of food and fiber were deeply appreciated by me as a Senator from the State of Mississippi, which is so heavily dependent on farming and agribusiness.

I also admired his warmhearted and friendly manner. He was the epitome of the Southern gentleman. He was forceful and combative in his arguments in support of the issues he believed in, and he was never afraid to say what he thought, even though he knew he might not be supporting the prevailing view.

His wife Dot was one of the most precious Senate Wives Club members. My heartfelt sympathies go out to her and all the members of the family of our departed colleague.

Mr. BROWNBACK. Mr. President, I rise to pay tribute to a great patriot—and a good friend—who passed away on our Nation's Independence Day.

It seems somehow so fitting that Senator Jesse Helms should have left us on July 4, the anniversary of America's foundational document. Senator Helms was, above all else, a patriot who loved his country and the ideals we embody as a nation. And he spent his entire adult life defending those ideals, beginning with his service in the U.S. Navy in World War II.

Jesse always fought for what he believed in, even at great personal—or political—cost. Two things friends and foes alike acknowledged, and admired, about Senator Helms were that you always knew where he stood and that his word was as good as gold. He was a man of enormous integrity, as all who dealt with him on a personal and professional level can testify.

While he was a formidable politician, there were some things that, for Jesse, were more important than political success or winning elections.

He spent much of his three decades in the Senate standing up for the principles he believed so deeply in, even if that meant taking on powerful opposition, sometimes in his own party. But as Jesse famously said, ''I didn't come to Washington to be a 'yes man' for any president, Democrat or Republican . . . I didn't come to Washington to get along and win any popularity contests.''

What he did win in Washington was the enduring affection of people on both sides of the political aisle who found that this tough-as-nails politician was also a gracious, generous, compassionate human being. As Linda Chavez so aptly said in tribute to Senator Helms, ''he took his politics seriously, but he didn't use political differences as an excuse for bad manners.'' He embodied southern charm, good manners, and courtliness. He seemed to recognize that there is never a contradiction between standing up strongly for your political and philosophical principles and always treating people, including those who disagree with you, in a way that always respects their human dignity.

Nor was this just a public display of good manners—Jesse Helms' Christian charity extended to his private life as well. Having been active in the pro-life movement for a long time I can't tell you how many times I have heard the accusation that pro-lifers only care about life from conception to birth—after that, they have no interest in caring for their fellow human beings.

Well, suffice it to say that Senator Helms disproved this caricature. Jesse and his wife Dot were always what I like to call ''pro-life and whole-life.'' In 1963, after 21 years of marriage, they adopted a disabled child, their son Charles, after they read a newspaper article in which the child, who was 9 at the time, wished for a mother and a father for Christmas. Senator Helms never used adopting a child with cerebral palsy to soften his image as a hard, uncaring right-wing ideologues—in fact, he refused to talk about it in interviews. But Charles was, he said, a great blessing and was the center of his family. He served for years on the boards of private charities to help others with cerebral palsy.

For those young people who had the opportunity to work with him, he was a wonderful mentor. More than anything else, he loved to talk to young people, give them guidance and encouragement, and show them the ropes of public service. Those who knew the dynamics of his office testified that he was always more accessible to young people than he was to high-powered lobbyists. One of his great legacies is the Jesse Helms Center near his hometown of Monroe, NC, an organization centered on young people and dedicated to assuring that future generations fully understand and appreciate the blessing and opportunities of this great country.

What is perhaps most obvious about Senator Helms was that he was, simply put, a political giant. He was among the first to take up the pro-life cause in Congress, and his dedication to that cause never wavered. He was a lifelong opponent of communist tyranny, and his leadership in key Cold War battles was indispensible. Ronald Reagan could never have achieved all that he did achieve without Senator Helms strong and steady leadership as chairman of the Foreign Relations Committee.

And that was not all the Reagan revolution owed to Jesse Helms. Like Ronald Reagan, he left the Democratic Party after many years as a Democrat because he believed it no longer embodied the principles he believed in. He was on the cutting edge of transforming the solid south from the Roosevelt coalition to the Reagan coalition. His support for Ronald Reagan in his State's primary in 1976 was the key to Reagan's victory, and the beginning of the revival of his fortunes that led to the Reagan landslides of 1980 and 1984.

Senator Helms' political leadership will be missed, but his impact on our Nation will remain as his lasting legacy. We mourn the passing of this great American, and we offer our heartfelt condolences to his family, his friends, and to the people of his beloved North Carolina and across the Nation who loved him.

## HEALTHY AMERICANS ACT

Ms. CANTWELL. Mr. President, I stand today for the 47 million Americans who are uninsured and looking to Congress to address an issue that has reached critical proportions.

I stand for the millions of Americans who are underinsured and cannot afford to pay the difference between their

health costs and their meager coverage.

I stand for the millions of Americans who have lost their health coverage along with their jobs.

And, I stand for the small businesses that cannot afford to cover the costs of their employees.

That is why I am joining Senators RON WYDEN, BOB BENNETT, and many of my other colleagues in taking the first steps towards a bicameral, bipartisan, comprehensive solution for all called the Healthy Americans Act.

The Healthy Americans Act recognizes that our health care system is fundamentally broken and requires Congress, the President, and the Federal Government as a whole to engage in a serious dialogue about our country's health care priorities and the solutions that can make those priorities attainable.

The Healthy Americans Act guarantees affordable, high quality, permanent health coverage for all Americans. It provides benefits equal to those available to Members of Congress, and gives incentives for individuals to make a commitment to prevention, wellness, and disease management.

It changes the crumbling foundation on which we have built our system, challenges the status quo, and makes a commitment to the right of all Americans to live their lives without fear of losing, or not being able to afford health coverage.

This solution is affordable for us. In fact, according to independent studies, this piece of legislation is fully paid for using the $2.2 trillion currently spent on health care in America and saves $1.48 trillion over 10 years.

The benefit to Americans will be profound.

The Healthy Americans Act changes the way we think of health care in America through the modernization of fundamental relationships in our current system. By redefining the relationship between employers, employees, and health insurance, we give the American people a choice when it comes to the coverage, the cost, and the benefits they need for their families and their health.

The Healthy Americans Act marks the beginning of a comprehensive, bipartisan effort to health care reform. There will be many challenging issues to consider as my colleagues and I work to provide every American with quality coverage. These include concerns over the potential disruption that such a profound change to the system would have on those with existing coverage, as well as the lack of a publicly sponsored health plan option.

I hope to work with Senators WYDEN, BENNETT, and my Senate colleagues in ensuring that this legislation addresses those concerns, as well as others that may be raised in the future.

Although complex, the health care crisis is one that we cannot afford to ignore any longer. Together, we can turn the health care system in American into a transparent, affordable, efficient and healthy system that can help those that need it most.

## NEW MARKETS TAX CREDIT

Mr. SMITH. Mr. President, I wish today to talk about the impact the new markets tax credit has had in revitalizing distressed neighborhoods in my home State of Oregon.

The new markets tax credit has become a vital financing tool to organizations throughout Oregon, like United Fund Advisors and Portland Family of Fund, to invest in and nurture business opportunities in our low income communities that are in need of investment capital.

The New Markets Tax Credit was signed into law in 2000 with the goal of using a modest Federal tax credit as an incentive to attract private investment capital to viable urban and rural markets that private investors often overlook and I am happy to report that the credit has done just that.

The Treasury Department reported that as of July 1, 2008, the credit is responsible for $11 billion of new investment going into economically distressed communities across the country. More than $600 million in NMTC-supported projects have been launched in Portland alone with the promise to create more than 9,000 construction and permanent jobs for city residents.

United Fund Advisors and its sister organization Portland Family of Funds are but two organizations using the credit in my home State, but I hold up their works as an example of how the NMTC can work.

United Fund Advisors and Portland Family of Funds recognized the potential of downtown Portland. Since 2002, through their CDEs, they have been awarded $165 million in credits, which they have used to attract investors to finance vital community services, as well as businesses in neighborhoods that have suffered from chronic poverty and disinvestment.

In downtown Portland, the credit has financed several community facility projects, including the Community Transitional School, which is an elementary school that serves homeless children throughout the city. The school serves over 200 homeless children a year and has been in operation since 1990. However, it was unable to secure the financing it needed to support the $3.5 million rehabilitation of its facility to create a safe, stable and permanent home for the school. The credit was used to attract financing from U.S. Bancorp to make the project possible and the school now expects to open the doors to its new 9,500-square-foot facility this fall.

The credit also provided the gap financing necessary to develop a drug rehabilitation facility within the Union Gospel Mission and to rehabilitate a theater and community space in the Portland Armory, which had been lying vacant for about 35 years.

The credit has been used to reclaim abandoned commercial space and encourage business development and economic activity in downtown Portland. Portland Family of Funds used the credit to assist a minority developer finance the development of two business condominiums designed to bring minority- and women-owned businesses into the downtown Portland market. In addition, the credit financed the Portland Small Business Loan Fund which provides financing to new and emerging small businesses operating in low-income neighborhoods in the city.

None of the projects that I just described would have been completed without the new markets tax credit. Last year the GAO published a report on the NMTC and found that 88 percent of the NMTC investors would not have invested in the low-income community or business without the subsidy provided by the credit.

I am a strong supporter of the NMTC because of its potential to bring communities and businesses that have traditionally been left out of the mainstream financial market into the mainstream market.

I hope my colleagues will join me to support the extension of the new markets tax credit, which is currently set to expire at the end of this year. Our cities and rural communities need this program, and I will do all I can to see that it is extended and expanded.

## IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering over 1,000, are heartbreaking and touching. To respect their efforts, I am submitting every e-mail sent to me through energ_prices@crapo.senate.gov to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

Senator—I am getting sick and tired of hearing from Easterners who live in New York or Washington, DC, and can walk to the corner store and who have mass transit options readily available constantly harping about raising gas prices even higher in order to get people to use less gas. The logic is absolutely heinous.

We live seven miles east of Mountain Home; we have no other options but to drive to get anywhere, and, if it is snowing real hard, our only option is our supposedly-evil

SUV; our other cars won't make it out of our steep driveway. Buying gasoline is not a choice, it is not a luxury—it is a necessity. We've already cut our consumption, we've limited our trips into Boise to the absolute minimum and we even try to consolidate our trips into town as much as possible.

Any further cuts will require some major changes—the biggest one would be my seriously considering quitting school. I'm currently pursuing my Master's degree in History at BSU, I hope to graduate in May—but if gas prices go up to the eight or ten dollars a gallon that I've heard many of the so-called environmentalists advocate, I won't be able to continue driving up to Boise three to four times a week. We also have to limit our driving to one trip to Mountain Home each day to my husband's office in our most gas-efficient vehicle, and none on the weekends. If that means that one of us has to sit around for hours waiting for the other one so be it. Our trips to the base to the Commissary and BX will have to be made in conjunction with a workday trip in to town, and we may stop making them altogether unless they were in conjunction with a trip to the hospital—the savings would probably be outweighed by the gas costs.

Moving is not an option—my husband and I are both Air Force retirees who invested our savings, an immense amount of sweat equity, and a lot of love in our ultimate dream house on a beautiful lot on forty acres. This is our home. We love living in the country the same way many people love living in the city. They have their rapid transit that is highly subsidized by the government; why are we paying for their lifestyle so that they can play holier than thou and harp about mine being evil?

My husband and I are actually quite lucky—we're retirees who can make choices about when and where we want to be places—they're hard choices, but at least they're our choices. Most people do not have that luxury. I keep thinking about the many people who were out here working on our house, most of whom drove from Boise. They didn't have a choice, they had to make the drive. They did, however, have an alternative funding source—they could pass their costs on to us, which is what is now happening with all businesses and commodities—and everything is just going to keep getting more and more expensive as this goes around in a lovely little circle. Remember the 70s and inflation? If we do not find a way to stop this pretty soon, we're going to see inflation like we've never seen it before. . .

I'm all for ''alternative energy;'' I'd be thrilled to use a vehicle that runs on ''alternative energy''—if there was one available and I could afford it. Additionally, the government has been funding research into ''alternative energy'' for years now—do not make me raise even more funds for it every time I fill up my gas tank. On top of that—do not you think that whoever it is who finally makes a vehicle that does run on ''alternative energy'' will be able to make an awful lot of money on it? Why should I be paying for the R&D for their huge profits? Stop wasting your time and my money conducting show trial hearings of oil executives and do something useful like maybe suspending the stupid rules about mandatory floors on ethanol usage—with the floods in the midwest and the even higher corn prices that is going to raise gas prices even higher. Drill everywhere we can get oil. Use the shale oil. Build nuclear plants. Do it now so that ten years from now your successor won't be saying ''oh, well, we would have had to do that ten years ago for it to have done any good so we might as well not do it now that gas prices have risen to fifteen dollars a gallon. . .''

Oh, and by the way—why haven't the Republicans been all over the Democrats about the fact that they were going to fix everything that was wrong in the world once they had control of Congress? Could you guys please make some noise about the fact that some things aren't George Bush's fault but should be laid at the feet of the Democratically-controlled Congress?

TAMARA, *Mountain Home.*

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Honorable Senator, I am absolutely astonished and even sickened at the shameful interrogation of the oil company executives that was conducted by Senator Durbin, Maxine Waters and others. Also, Senator McCain for insinuating that the 'Speculators' are to blame for the high price of oil. Why is so much time being spent pointing the finger of blame at people who did not cause this problem in the first place?

These committees should be spending their time removing the restrictions that have minimized access to the resources of our own country as quickly as possible. I urge you to meet with the Senators who somehow do not understand that it is their own actions that have brought us to this place.

They have stifled production, placed their own taxes on our fuel supply and even threaten to penalize and take away profits from the very companies who can invest those profits back into increasing the available supplies, finding new resources in an environmentally friendly way and developing cleaner fuels. With sufficient resources, the private sector will be able to solve this problem.

You must convince other congressmen that the only solution is to get out of the way and remove the restrictions that prohibit qualified companies from increasing domestic production of energy.

Thank you for the work you do on our behalf.

RAMONA.

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Dear Senator Crapo, I would first like to thank you for the way you voted in the recent issues. I would also like to have my voice heard on the energy crisis. I feel that you should take the restrictions off the oil company and allow them to drill for oil. I feel that the U.S. is getting into a situation such as Germany and Japan during World War II. They did not have the resources so that they were in a position of weakness. I feel that the energy crisis is brought about because of special interest at the expense of our national security. I also feel that they should allow nuclear energy. It would certainly solve many problems and other countries have been using it.

Sincerely,

JACKIE, *Pocatello.*

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Senator Mike: I am not severely damaged by the gas prices because I can still afford to drive. But I am more cautious, and am much more conservative in my driving. The cost between $2 gas and $4 gas is about what many families pay for the cell phone service per month. Most people haven't put things into perspective properly.

There are lots of explanations of the reason for the high prices and they seem to point at two reasons: foreign demand (China and India) and the commodity speculators. Neither of these can be fixed. However, the exchange value of the dollar can be fixed, and we can announce that we are going to start new oil exploration and drilling in the Gulf of Mexico (Not ANWR).

Those two solutions sound reasonable and obtainable. Thanks for listening.

BOB, *Gooding.*

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Fuel prices are seriously affecting my family's income. My wife and I are new parents, and my wife is staying at home with the baby most of the time. I am a struggling mortgage loan originator, fighting to try and keep my family afloat in a suffering housing market. I live in Emmett, and my office is in Boise, so like many, many other folks from Emmett, I commute to work. The increase in fuel prices has caused me to cut down the amount of time I spend at the office. What used to cost about $27 to get back and forth to work 4 times now costs over $50. And that is with driving my 32 mpg Hyundai.

Gas prices didn't used to be a deciding factor in the work and recreational activities that we did. But, at $4 a gallon for fuel, we cannot afford to get out as much as we used to, which limits the amount of money we spend on other activities. I'm sure I'm not alone and, with hundreds of thousands of Idahoans not spending as much money on recreational activities, it is further hurting our local and national economies.

I firmly believe that we as a nation are able to and need to develop alternative fuels AND drill for fossil fuels in an environmentally-responsible way. With advances in technology, I am sure that it is possible. No one needs to drill through the head of a caribou in order to get oil. With the oil available in ANWR and the newly-discovered North Dakota oil reserves, we have the potential for enough fuel to sustain our nation and stimulate the economy until further advances in alternative energy sources can be achieved.

Please do everything you can to minimize the hurt we Idahoans are feeling due to the sky-high energy costs. Struggling young families like mine are fighting just to keep our heads above water and gas prices are threatening to push us under.

Sincerely,

HOUSTON, *Emmett.*

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My wife and I live in a small rural community in Idaho. We try to make one big trip each summer, and we visit my wife's family in Utah once a month. We both drive mid-sized American-made cars that are fairly economical, but [the cost] to fill our gas tank has gone from $30 to $60.

This is $30 less that we can spend on groceries. Our grocery bill has also increased by $20–$40 a month. We have one small child and hope to have another next year, and I know my salary is not going to keep up with 7% inflation. It is not just fuel we are worried about. Our house is entirely electric because natural gas is not available in our neighborhood and, before we switched our utility bill to level pay, we were paying outrageous charges to heat and cool our house. Idaho has some of the cheapest electric power in the nation, and our electric bill in January was nearly $400.00. Idaho seems to be anti-coal fired plants, but I am not. I lived next to a coal-fired plant in West Virginia and didn't notice any ill effects. However, I would rather see increased hydro, nuclear, and geothermal energy production. Nuclear is clean, and I think it is the way to go.

Geothermal and hydro are both regular and efficient methods of producing power. I am not in favor of wind farms; their source of energy is inconsistent at best, and I do not think the technology is quite good enough to place solar power above nuclear or coal. I support drilling in ANWR and other offshore sites in the U.S. ANWR is some of the most desolate and unattractive tundra wasteland you will ever see. Drilling could be accomplished there with virtually no ill effects to humans and very minimal effects to the few species who can survive the harsh tundra climate. Anything we can do to research and drill for that shale-oil found throughout the mountainous West would be beneficial. I would hope that American auto makers can

use technology to make more fuel-efficient vehicles that are less reliant on petroleum. I think ethanol is a piece of the puzzle, but it can never replace petroleum and is not the ultimate solution. I'm sure you do not want a novel, so I'll end on that note.

CHRIS, *Burley*.

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Dear Mr. Crapo, You're so right about the gas prices affecting those of us in Idaho. So many of us are in rural areas that do not offer the services of a bigger city, i.e. specialized physicians, food and clothes shopping, automotive and farming equipment and supplies, etc. While you say the average Idaho household is spending $50 more/month, I can attest to the fact that it is more like $100 more/month, especially where we must travel approximately ten miles to the nearest town. Those people who are on repeat chemo or dialysis treatments are really taking it in the pocket book!

We need to tap into the alternative energy resources in our country and stop relying on other Third World countries who commit atrocities against humanity. Meanwhile, since it is an emergency in terms of the USA economic status, let us try, just try, to depend on the oil reserves and resources in the U.S. and Canada and see where that takes us. I do not see (in my limited experience) how it would make us any less of a super power. Frankly, we'd be setting a good example.

Thank you for considering my request to be heard as a lifetime citizen of Idaho and the USA.

MELANIE, *Silverton*.

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I am a recently (February) divorced woman; mid-50's living in Blackfoot. I have been doing okay, being able to make ends meet. Recently I had to change my taxes. At the present time, I have no real estate, which should change by December. Being single again my taxes have changed to take out another $284.00 per month.

Meanwhile, I have a mother, widowed, in her late 80s that I have to travel to Idaho Falls from Blackfoot to help with bills, doctor appointments, grocery shopping, keeping the yard mowed and all the things that go with helping to assist in the care of an elderly parent. She is fairly competent, and I am really lucky, but she is getting weaker and shakier. I worry.

Just last month alone, my gas bill went from $100.00 per month to $180.00. This is huge for me. Considering I work for a salary and receive no overtime, I guess you could say I have a 'fixed' income. I really cannot get a second job because I really need to be able to leave at a moment's notice if I need to take care of her needs. The gas is actually dipping into my savings I pay myself each month.

This has caused a lot of emotional feelings for me. I am torn between where I should be and how much it is going to cost me to get there. These choices should not be weighed between gas prices and a mother in need.

I hope something can be done about this. When I purchase gas, I get physically sick in my stomach and I feel angry. My car gets 28 mpg on the freeway, thank goodness. Imagine if I had a truck or something less conservative.

Sincerely,

CATHY, *Blackfoot*.

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The Honorable Senator Crapo: I appreciate the opportunity to share the personal feelings on high fuel costs, and the impact these high energy costs are having on us. I believe that legislative bodies need to get together and ''act'' in a way that will ensure that my children, and theirs, will have a way of life free from most of the stress and concerns concomitant we are struggling with today, in the way of high energy costs. We must execute a well-thought-out plan that does not band-aid the current situation, at the expense of the future. Quite frankly, I would rather pay my share now, if it means my children will have the opportunity to live in a world where they can focus on being all they can be, without fear of making trade-offs between the fuel it takes to get them to work, and the food or health care that they need to survive. Finally, we need to act now (not next session, or the one after that). Election year, or not . . . I will be more prone to vote out candidates that procrastinate on this urgent topic, at the expense of being popular with their constituents in an election year (and I believe that candidates would actually be more popular, if they acted, rather than delayed).

These are my positions. I am no authority. I believe a plan like this could be achieved, if we could all learn to work together (particularly the Legislature) and assemble a 20-year plan that alleviates much of our dependence on foreign oil, to wit:

Our oil companies are doing just fine, thank you. While I would not be in favor of a windfall tax on oil profits, that would merely be passed along to consumers, in the form of further fuel price increases, I would be in favor of a large tax deduction for increasing refinery capacity so long as an equal investment was made in alternative forms of energy development (wind, solar, seas, geothermal, etc).

Establishing legislation that requires all automakers selling cars in the U.S. to develop, by 2018, models of reliable, economical, and efficient electric-based commuter vehicles, enabling local transportation, thus decreasing pollution and allowing consumer cost avoidance for fossil-fuel unless traveling longer distances. This would include fuel-cell, rechargeable, etc. vehicles.

Speed up the approval of nuclear power generating permits to ensure we have the generating capacity to begin the shift to electric vehicles.

Mandate approval of local option taxes as the Federal level, allowing citizens to tax themselves for transportation plans that reduce $CO_2$ emissions (it is clear our own State Legislature is asleep at the wheel on this subject). Like No Child Left Behind, we have proven it is possible to require state governments to ''act'' in positive ways.

Open up ANWR to exploration, drilling, and oil production, along with environment preservation regulations that require ''logical'' and ''thoughtful,'' yet inexpensive ways of minimizing our footprint in this, and all areas (including offshore) that may produce the fuels we need to get to an electric-based commuter mentality. Require environmentalists to ''prove'' the impact, not speculate, and enact the needful, but minimum.

Require all oil companies to invest in infrastructure that allows for the delivery of alternative fuels (e.g., hydrogen) in a stepwise, U.S.-wide plan that allows for a complete mapping of these services in the next fifteen years.

Provide tax-incentives, or perhaps Federal Grants to companies that can develop technologies that allow for the generation of clean power right in our homes (advanced solar cells, fuel cells, etc.).

We need to act now, as the answers are sure to be long in the making. But we also need to take some chances (ANWR) that allow us to make it to the next stage of technological maturity. We need this balance: Current energy exploration and local production along with equal investments in the deployment of new energy source technologies. We also need to enable investments in all the underpinning services and infrastructure that make this future vision come to fruition (alternative fuel delivery infrastructure, home power transfer technology, etc.).

PAT, *Boise*.

## HONORING TROOPER DAVID SHAWN BLANTON, JR.

Mr. BURR. Mr. President, I wish to honor the life of North Carolina State trooper David Shawn Blanton, Jr., who was tragically killed on June 17 during a routine traffic stop near Canton, NC. David is the 59th North Carolina State trooper to have been killed in the line of duty.

David was only 24 years old and was a 2-year veteran of the North Carolina Highway Patrol. He was a native of Sylva, NC, and a 2002 graduate of Smoky Mountain High School, where he was a football and wrestling star.

We are all grateful for David's dedication to protecting the citizens of North Carolina. He lived in Cherokee with his wife Michaela, who had just given birth to their son Tye 2 weeks prior to his untimely passing.

David was a member of the Eastern Band of the Cherokee Indian Tribe and the first member of that tribe to serve with the highway patrol. In addition to being a State trooper, David volunteered as the junior varsity softball coach at Smoky Mountain High School.

Along with his wife Michaela and son Tye, David is survived by his father David S. Blanton Sr., stepmother Jennifer Blanton, mother Jeanell Youngbird, younger brothers, Jerry R. Blankenship, Jim Kye Blankenship, Jesse J. Blanton, and sister Natalie E. Blanton.

David's friends, family, fellow troopers, and the people of North Carolina are mourning this very tragic loss.

I know that there are no words that I can offer to help comfort Michaela and other members of the Blanton family, but I hope my colleagues in the Senate will join me in keeping them in our thoughts and prayers.

David gave his life in service to our State, and this ultimate sacrifice should never be forgotten.

I send my deepest condolences to all who had the privilege of knowing this young man who gave his life in service to our State.

## ADDITIONAL STATEMENTS

### TRIBUTE TO BARBARA MORGAN

• Mr. CRAPO. Mr. President, I am proud to announce the return of NASA mission specialist, teacher in space Barbara Morgan, not to Earth—that was 10 months ago—but to Idaho and Boise State University where she has been hired in a newly created position that will develop education initiatives in science, math, engineering, and technology. Barbara flew on the Shuttle *Endeavor*, Mission STS–118, from August 8–21, 2007. She served as a mission specialist onboard *Endeavor*, working as a robotic arm operator in the

International Space Station assembly mission and conducting a teaching lesson from space, of which I was fortunate enough to be a part on the ground in Boise.

Barbara is a teacher by training. In 1985, she was selected to be the backup candidate for the NASA Teacher in Space Program, and trained with the late Christa McAuliffe for 4 months. After the shuttle tragedy in 1986, she returned to Idaho and taught second and third grades at McCall-Donnelly Elementary School. She continued to work with NASA's Education Division as the space designee, speaking publicly, designing curriculum, serving on the National Science Foundation's Federal Task Force for Women and Minorities in Science and Engineering, and as an education consultant. In 1998, NASA began the Astronaut Educator Program which replaced its Teacher in Space Program and Barbara was selected to train as a mission specialist. She began her 2-year training period that year and, upon completion in 2000, was given technical duties with NASA. She continued her duties and ongoing training in preparation for Mission STS–118 last summer.

In a preflight interview before STS–118, Barbara's extraordinary commitment to learning was revealed as she recounted of the beginning of her pilot training. She came to flight training with no flying background, and her initial pilot training experience was in a Cessna. Being unfamiliar with the communication language between pilots and air traffic controllers, she went to Radio Shack and bought a radio that gave her access to air traffic control so she could listen and become familiar with the language. In the course of that interview, one of Barbara's insights about the basics of learning, be it in a career or in school, revealed itself in a fine point about the importance of ''learning the language.'' She observed that once you master the ''language,'' be it an actual language or a set of terms used in a particular vocation or field of study, things become much easier. She understands very well that learning the ''language'' is the pathway to success.

Barbara has learned many languages, from that of an elementary school teacher to that of a pilot and NASA astronaut. Boise State University is very fortunate that she will be bringing her science, math, and engineering language skills to its students. It has been an honor for me to pay tribute to Barbara's remarkable achievements today and in the past, and I am certain that there will be many more to come. I offer her, Clay, and their children my heartfelt congratulations and an enthusiastic ''Welcome home to Idaho!''●

## TRIBUTE TO MAJOR GENERAL GALEN JACKMAN

● Mr. LEVIN. Mr. President, I wish to publicly commend and congratulate MG Galen B. Jackman, U.S. Army, upon his retirement after more than 35 years of military service. During the last 3 years, from July 2005 through July 2008, Major General Jackman served as the Army Chief of Legislative Liaison. He was instrumental in improving the understanding of Members of Congress and staff concerning a wide range of Army issues, in particular an understanding of the Army's role in the wars in Iraq and Afghanistan, the resource requirements for an army at war, and the effect of those wars on the Army and its soldiers and their families. Major General Jackman worked tirelessly to ensure that soldiers and Army civilians had the resources necessary to maintain the Army as the world's preeminent land service. He forged effective relationships with congressional Members and staff, always responding quickly and effectively to congressional requests for information and assistance, and has been an invaluable advisor to the Secretary and Chief of Staff of the Army.

General Jackman's assignment as Army Chief Legislative Liaison was the capstone to an outstanding career of service to our Nation. Prior to assuming this position, Major General Jackman served as the Commanding General, U.S. Army Military District of Washington and Commander, Joint Force Headquarters-National Capital Region, Fort Lesley J. McNair, Washington, DC. His other joint assignments include service as the Deputy for Training and Readiness, United States Pacific Command, and Director of Operations, United States Southern Command.

Major General Jackman served as the Chief of Staff and Assistant Division Commander, Support, for the 10th Mountain Division, Light, Fort Drum, NY, deploying with the Division in support of OPERATION JOINT FORGE, Bosnia-Herzegovina June 2000 to July 2001.

He began his service to our Nation in 1973 as a rifle platoon leader, Company A, 1st Battalion, Airborne, 508th Infantry, 82d Airborne Division, Fort Bragg, NC. His leadership positions include serving as a support squadron commander in 1st Special Forces Group, Airborne, Fort Bragg, NC; Commander, 2d Brigade, 7th Infantry Division, Light, Fort Ord, CA, and director, Combined Arms and Tactics Directorate, U.S. Army Infantry Center and School, Fort Benning. In his numerous leadership and command positions throughout his distinguished career, Major General Jackman demonstrated an unwavering commitment to the welfare of his soldiers and their families. Throughout his career, he played an important role in the development of the future officers and leaders of the Army.

Major General Jackman holds a master of science degree in procurement and contract management from the Florida Institute of Technology and a bachelor of arts degree from the University of Nebraska. He is a graduate of the Industrial College of the Armed Forces.

His outstanding Service has been recognized with numerous military awards including the Distinguished Service Medal, the Defense Superior Service Medal, with Oak Leaf Cluster; the Legion of Merit, with Oak Leaf Cluster; the Defense Meritorious Service Medal; and the Meritorious Service Medal, with 2 Oak Leaf Clusters. He proudly wears the Expert Infantryman Badge, the Master Parachutist Badge, the Air Assault Badge and the Ranger Tab.

Major General Jackman is married to the former Ms. Cathy Dowd. They have two children David, 20, and Patrick, 18. David will be a senior at Gilford College this fall, while Patrick will attend Virginia Military Institute. I also congratulate them on their husband's and father's retirement from the Army. The demands of military life are such that military families also sacrifice and serve the Nation along with their soldier.

Mr. President, the Army, the Congress, and the Nation have benefited greatly from the service of such a great leader and soldier. He will be sorely missed.●

## MESSAGE FROM THE HOUSE

At 4:23 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 802) to amend the Act to Prevent Pollution from Ships to implement MARPOL Annex VI.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 6377. An act to direct the Commodity Futures Trading Commission to utilize all its authority, including its emergency powers, to curb immediately the role of excessive speculation in any contract market within the jurisdiction and control of the Commodity Futures Trading Commission, on or through which energy futures or swaps are traded, and to eliminate excessive speculation, price distortion, sudden or unreasonable fluctuations or unwarranted changes in prices, or other unlawful activity that is causing major market disturbances that prevent the market from accurately reflecting the forces of supply and demand for energy commodities.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–6881. A communication from the Acting General Counsel, Department of Defense, transmitting a legislative proposal that would increase the authorized strength for Army general officers; to the Committee on Armed Services.

EC–6882. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Pennsylvania Regulatory Program'' (Docket No. PA–151–FOR) received on July 7, 2008; to the Committee on Energy and Natural Resources.

EC–6883. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revisions to Emission Reduction Market System'' (FRL No. 8575–3) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6884. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Atrazine; Pesticide Tolerances'' (FRL No. 8364–1) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6885. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Direct Final Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana'' (FRL No. 8688–1) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6886. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Flumioxazin; Pesticide Tolerance'' (FRL No. 8370–2) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6887. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''US Filter Recovery Services, Inc., Under Project XL'' ((RIN2090–AA15)(FRL No. 8687–6)) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6888. A communication from the Acting Chair, Federal Subsistence Board, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2008–2009 Subsistence Taking of Fish and Shellfish Regulations'' (RIN1018–AU71) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6889. A communication from the Director, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Rule to Amend the Listing for the Preble's Meadow Jumping Mouse to Specify Over What Portion of Its Range the Subspecies is Threatened'' (RIN1018–AV64) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6890. A communication from the Chief of the Branch of Listing, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Kootenai River Population of the White Sturgeon'' (RIN1018-AU47) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6891. A communication from the Acting Chair, Federal Subsistence Board, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Subsistence Management Regulations for Public Lands in Alaska—2008-09 and 2009-10 Subsistence Taking of Wildlife Regulations'' (RIN1018-AV69) received on July 7, 2008; to the Committee on Environment and Public Works.

EC–6892. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Capital Costs Incurred to Comply with EPA Sulfur Regulations'' ((RIN1545-BE97)(TD 9404)) received on July 7, 2008; to the Committee on Finance.

EC–6893. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Employment Tax Adjustments'' ((RIN1545-BG50)(TD 9405)) received on July 7, 2008; to the Committee on Finance.

EC–6894. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Time for Filing Returns'' ((RIN1545-BE62)(TD 9407)) received on July 7, 2008; to the Committee on Finance.

EC–6895. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''QAB Closing Agreement Procedure'' (Rev. Proc. 2008-38) received on July 7, 2008; to the Committee on Finance.

EC–6896. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 7702A Closing Agreement Procedures'' (Rev. Proc. 2008-39) received on July 7, 2008; to the Committee on Finance.

EC–6897. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 7702 Closing Agreement Procedures'' (Rev. Proc. 2008-40) received on July 7, 2008; to the Committee on Finance.

EC–6898. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 817(h) Closing Agreement Procedures'' (Rev. Proc. 2008-41) received on July 7, 2008; to the Committee on Finance.

EC–6899. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Section 7702(f)(8) and Section 101(f)(3) Automatic Waiver'' (Rev. Proc. 2008-42) received on July 7, 2008; to the Committee on Finance.

EC–6900. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Meaning of Statutory Reserves in Multi-State Taxpayers'' (Rev. Rul. 2008-37) received on July 7, 2008; to the Committee on Finance.

EC–6901. A communication from the Director, Import Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures'' (RIN0625-AA73) received on July 7, 2008; to the Committee on Finance.

EC–6902. A communication from the President of the United States, transmitting, pursuant to law, notification of his intent to designate the Republic of Serbia and the Republic of Montenegro as separate beneficiary developing countries under the Generalized System of Preferences; to the Committee on Finance.

EC–6903. A communication from the Assistant General Counsel for Regulatory Services, Office of Postsecondary Education, Department of Education, transmitting, pursuant to law, the report of a rule entitled ''The Teacher Education Assistance for College and Higher Education Grant Program and Other Federal Student Aid Programs'' (RIN 1840-AC93) received on July 7, 2008; to the Committee on Health, Education, Labor, and Pensions.

EC–6904. A communication from the Director, Office of Congressional Affairs, Federal Election Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period of October 1, 2007, through March 31, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6905. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-417, ''Street Sweeping Improvement Enforcement Amendment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6906. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-416, ''Nuisance Properties Abatement Reform and Real Property Classification Amendment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6907. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-415, ''Affordable Housing Clearinghouse Directory Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6908. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-411, ''Fiscal Year 2008 Other-Type and Local Appropriations Adjustment Temporary Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6909. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-408, ''Golden Triangle BID Amendment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6910. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17-410, ''AED Installation for Safe Recreation and Exercise Temporary Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–6911. A communication from the Attorney, Office of the Secretary, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''OST Technical Corrections'' (RIN2105-AD74) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6912. A communication from the Acting Director of Regulations, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Pipeline Safety: Protecting Unusually Sensitive Areas from Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines'' (RIN2137-AD98) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6913. A communication from the Attorney, Bureau of Transportation Statistics, Department of Transportation, transmitting,

pursuant to law, the report of a rule entitled ''Revision of Airline Service Quality Performance Reports and Disclosure Requirements'' (RIN2139-AA12) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6914. A communication from the Senior Trial Attorney, Office of Chief Counsel, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Railroad Operating Rules: Program of Operational Tests and Inspections; Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails'' (RIN2130-AB76) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6915. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Protected Resources, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Notice of OMB Approval of Collection-of-Information Requirements for the Atlantic Large Whale Take Reduction Plan'' (RIN0648-AS01) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6916. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Lycoming Engines IO, (L)IO, TIO, (L)TIO, AEIO, AIO, IGO, IVO, and HIO Series Reciprocating Engines, Teledyne Continental Motors TSIO-360-RB Reciprocating Engines, and Superior Air Parts, Inc. IO-360 Series Reciprocating Engines with Certain Precision Airmotive LLC RSA-5 and RSA-10 Series Fuel Injection Servos'' ((RIN2120-AA64)(Docket No. FAA-2008-0420)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6917. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Avidyne Corporation Primary Flight Displays'' ((RIN2120-AA64)(Docket No. FAA-2008-0340)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6918. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 757 Airplanes'' ((RIN2120-AA64)(Docket No. FAA-2008-0011)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6919. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; McCauley Propeller Systems Propeller Models'' ((RIN2120-AA64)(Docket No. FAA-2006-25173)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6920. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A310-304, -322, -324, and -325 Airplanes; and A300 Model B4-601, B4-603, B4-605R, B4-620, B4-622, B4-622R, F4-605R, F4-622R, and C4-605R Variant F Airplanes'' ((RIN2120-AA64)(Docket No. FAA-2007-0345)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6921. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 757 Airplanes'' ((RIN2120-AA64)(Docket No. FAA-2007-0339)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6922. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737-100, -200, -200C, -300, -400, and -500 Series Airplanes'' ((RIN2120-AA64)(Docket No. FAA-2007-29062)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6923. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2B19 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0047)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6924. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Fokker Model F.27 Mark 050 and F.28 Mark 0100 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2007–0394)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6925. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 727 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2007–0227)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6926. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0175)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6927. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Hawker Beechcraft Corporation Models B200, B200GT, B300, and B300C Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0392)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6928. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; PILATUS AIRCRAFT LTD. Model PC–12, PC–12/45, and PC–12/47 Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0070)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6929. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Various Transport Category Airplanes Equipped with Auxiliary Fuel Tanks Installed in Accordance with Certain Supplemental Type Certificates'' ((RIN2120–AA64)(Docket No. FAA–2007–0389)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6930. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Saab Model SAAB–Fairchild SF340A and SAAB 340B Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0017)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6931. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; MORAVAN a.s. Model Z–143L Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0345)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6932. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, and 1S1 Turboshaft Engines'' ((RIN2120–AA64)(Docket No. FAA–2005–21242)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6933. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; APEX Aircraft Model CAP 10B Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2008–0056)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6934. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter France Model EC130 B4 Helicopters'' ((RIN2120–AA64)(Docket No. FAA–2007–28228)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6935. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Avidyne Corporation Primary Flight Displays (Part Numbers 700–00006–000, –001, –002, –003, and –100)'' ((RIN2120–AA64)(Docket No. FAA–2008–0340)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6936. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Saab Model SAAB–Fairchild SF340A and SAAB 340B Airplanes'' ((RIN2120–AA64)(Docket No. FAA–2007–29331)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6937. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 2171)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6938. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3273)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6939. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3272)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6940. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3270)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6941. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3262)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6942. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3265)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6943. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments'' ((RIN2120–AA65)(Amdt. No. 3264)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6944. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2C10, –2D15, and –2D24 Airplanes'' ((RIN2120–AA4)(Docket No. 2007–NM–340)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6945. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2B19 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–341)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6946. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2B19 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–144)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6947. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–103)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6948. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–044)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6949. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–043)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6950. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737–200 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–107)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6951. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 767 Airplanes'' ((RIN2120–AA64)(Docket No. 2004–NM–80)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6952. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–258)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6953. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2B19 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–216)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6954. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Lindstrand Balloons Ltd. Models 42A, 56A, 77A, 105A, 21A, 260A, 60A, 69A, 90A, 120A, 180A, 240A, and 310A Balloons'' ((RIN2120–AA64)(Docket No. 2008–CE–013)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6955. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–188)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6956. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Cessna Aircraft Company 172, 182, and 206 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–052)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6957. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–185)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6958. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330 Airplanes and A340–200 and –300 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–268)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6959. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–100, –100B, –100 SUD, –200B, –200C, –200F, –300, 747SP, and 747SR Series Airplanes Powered by General Electric CF6–45/50 and Pratt & Whitney JT9D–70, JT9D–3 or JT9D–3 or JT9D–7 Series Engines'' ((RIN2120–AA64)(Docket No. 2007–NM–083)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6960. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Empresa Brasileira de Aeronautica S.A. Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –45LR, –145XR, –145MP, and –145EP Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–139)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6961. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL–600–2B19 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–216)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6962. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Alexandria Aircraft, LLC Models 17–30, 17–31, 17–30A, 17–31A, and 17–31ATC Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–050)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6963. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations'' ((RIN2120–AA64)(Docket No. 2005–20245)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6964. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassult Model Fan Jet Falcon, Fan Jet Falcon Series C, D, E, F, and G Airplanes; Model Mystere-Falcon 200 Airplanes; and Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–138)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6965. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12, PC–12/45, and PC 12/47 Airplanes'' ((RIN2120–AA64)(Docket No. 2008–CE–019)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6966. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes'' ((RIN2120–AA64)(Docket No. 2002–NM–211)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6967. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Construcciones Aeronauticas, S.A. Model C–212 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–164)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6968. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 727–200 Series Airplanes Equipped with an Auxiliary Fuel Tank System Installed in Accordance with Supplemental Type Certificate SA1350NM'' ((RIN2120–AA64)(Docket No. 2007–NM–230)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6969. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–104)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6970. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pacific Aerospace Corporation Model FU24–954 and FU24A 954 Airplanes'' ((RIN2120–AA64)(Docket No. 2007–CE–099)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6971. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Wilkes-Barre, PA'' ((RIN2120–AA66)(Docket No. 2007–AEA–11)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6972. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Vinalhaven, ME'' ((RIN2120–AA64)(Docket No. 08–ANE–92)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6973. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Swans Island, ME'' ((RIN2120–AA66)(Docket No. 08–ANE–91)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6974. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Lewistown, PA'' ((RIN2120–AA66)(Docket No. 07–AEA–14)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6975. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; New Albany, MS'' ((RIN2120–AA66)(Docket No. 07–ASO–25)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6976. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Indianapolis, IN'' ((RIN2120–AA66)(Docket No. 08–AGL–2)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6977. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Black River Falls, WI'' ((RIN2120–AA66)(Docket No. 08–AGL–4)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6978. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Walden, CO'' ((RIN2120–AA66)(Docket No. 2007–ANM–17)) received on July 7 , 2008; to the Committee on Commerce, Science, and Transportation.

EC–6979. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Susquehanna, PA'' ((RIN2120–AA66)(Docket No. 08–AEA–14)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6980. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Subury, PA'' ((RIN2120–AA66)(Docket No. 08–AEA–15)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6981. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Sherman, TX'' ((RIN2120–AA66)(Docket No. 2007–ASW–11)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6982. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Stonington, ME'' ((RIN2120–AA66)(Docket No. 08–ANE–93)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6983. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Winona, MS'' ((RIN2120–AA66)(Docket No. 07–ASO–24)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6984. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Carrabassett, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-96)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6985. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Rumford, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-94)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6986. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Bridgton, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-95)) received on July 7 , 2008; to the Committee on Commerce, Science, and Transportation.

EC–6987. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment and Removal of Class E Airspace; Centre, AL'' ((RIN2120-AA66)(Docket No. 07-ASO-23)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6988. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Eurocopter France Model EC130 B4 Helicopters'' ((RIN2120-AA64) (Docket No. 2007-SW-06)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6989. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Dover-Foxcroft, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-97)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6990. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Bridgton, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-95)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6991. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; BAE Systems Limited Model BAe 146-100A, -200A, and -300A Series Airplanes'' ((RIN2120-AA64) (Docket No. 2007-NM-050)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6992. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes'' ((RIN2120-AA64) (Docket No. 2006-NM-054)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6993. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Sierra Hotel Aero, Inc. Models Navion, Navion A, Navion B, Navion D, Navion E, Navion F,

Navion G, and Navion H Airplanes'' ((RIN2120-AA64) (Docket No. 2007-CE-024)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6994. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–081)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6995. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737–600, -700, -700C, -800, and -900 Series Airplanes; and Model 757–200, -200PF, -200CB, and -300 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–014)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6996. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(Docket No. 2007–NM–042)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6997. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Fokker Model F27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes'' ((RIN2120–AA64)(Docket No. 2006–NM–285)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6998. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Stonington, ME'' ((RIN2120–AA66)(Docket No. 08–ANE–93)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–6999. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Fort Kent, ME'' ((RIN2120–AA66)(Docket No. 08–ANE–90)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7000. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Swans Island, ME'' ((RIN2120–AA66)(Docket No. 08–ANE–91)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7001. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Seneca, PA'' ((RIN2120–AA66)(Docket No. 07–AEA–17)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7002. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Gettysburg, PA'' ((RIN2120–AA66)(Docket No. 07–AEA–20)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7003. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Cranberry Township, PA'' ((RIN2120–AA66)(Docket No. 07–AEA–18)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7004. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Bradford, PA'' ((RIN2120–AA66)(Docket No. 07–AEA–21)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7005. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Danville, KY'' ((RIN2120-AA66)(Docket No. 07-ASO-26)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7006. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Lady Lake, FL'' ((RIN2120-AA66)(Docket No. 08-ASO-03)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7007. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Low Altitude Area Navigation Routes; St. Louis, MO'' ((RIN2120-AA66)(Docket No. 07-ACE-1)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7008. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Rockport, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-98)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7009. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Carrabassett, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-96)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7010. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Dover-Foxcroft, ME'' ((RIN2120-AA66)(Docket No. 08-ANE-97)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7011. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Passenger Facility Charge Program, Debt Service, Air Carrier Bankruptcy, and Miscellaneous Changes'' ((RIN2120-AI68)(Docket No. 2006-23730)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7012. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Aircraft Engine Standards for Life-Limited Parts'' ((RIN2120-AI72)(Docket No. 2006-23732)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7013. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Standards: Safety Analysis'' ((RIN2120-AI74)(Docket No. 2006-25376)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7014. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Nationality and Registration Marks, Non Fixed-Wing Aircraft'' ((RIN2120-AJ02)(Docket No. 2007-27173)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7015. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Proposed Establishment of Class E5 Airspace; Eagle Pass, TX'' ((RIN2120-AA66)(Docket No. 08-ASW-3)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7016. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Marshalltown, IA'' ((RIN2120-AA66)(Docket No. 07-ACE-4)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7017. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Monticello, IA'' ((RIN2120-AA66)(Docket No. 07-ACE-3)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7018. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Canby, MN'' ((RIN2120-AA66)(Docket No. 07-AGL-2)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7019. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace; Poplar Bluff, MO'' ((RIN2120-AA66)(Docket No. 07-ACE-9)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7020. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes'' ((RIN2120-AA64)(Docket No. 2006-NM-199)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7021. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Bombardier Model CL-600-2B19 Airplanes'' ((RIN2120-AA64)(Docket No. 2007-NM-246)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7022. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa 'PZL-Bielsko' Model SZD-50-3 'Puchacz' Gliders'' ((RIN2120-AA64)(Docket No. 2007-CE-100)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7023. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Franklin, PA'' ((RIN2120-AA66)(Docket No. 07-AEA-19)) received on July 7 , 2008; to the Committee on Commerce, Science, and Transportation.

EC–7024. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Milford, PA'' ((RIN2120-AA66)(Docket No. 08-AEA-13)) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7025. A communication from the Assistant Secretary of Transportation (Administration), transmitting, pursuant to law, a report relative to the inventories of commercial and inherently governmental positions in the Department; to the Committee on Commerce, Science, and Transportation.

EC–7026. A communication from the Regulatory Ombudsman, Federal Motor Carrier Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hours of Service of Drivers'' (RIN2126-AB14) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DORGAN, from the Committee on Indian Affairs, without amendment:

H.R. 65. A bill to provide for the recognition of the Lumbee Tribe of North Carolina, and for other purposes (Rept. No. 110–409).

By Mr. HARKIN, from the Committee on Appropriations, without amendment:

S. 3230. An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2009, and for other purposes (Rept. No. 110–410).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SMITH (for himself and Ms. CANTWELL):

S. 3228. A bill to amend the Internal Revenue Code of 1986 to allow a credit for green roofs; to the Committee on Finance.

By Ms. CANTWELL:

S. 3229. A bill to increase the safety of the crew and passengers in air ambulances; to the Committee on Commerce, Science, and Transportation.

By Mr. HARKIN:

S. 3230. An original bill making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2009, and for other purposes; from the Committee on Appropriations; placed on the calendar.

By Mr. KERRY:

S. 3231. A bill to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks; to the Committee on Commerce, Science, and Transportation.

By Mr. CORNYN:

S. 3232. A bill to authorize and request the President to award the Medal of Honor to James Megellas, formerly of Fond du Lac, Wisconsin, and currently of Colleyville, Texas, for acts of valor on January 28, 1945, during the Battle of the Bulge in World War II; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BINGAMAN:

S. 3233. A bill to promote development of a 21st century energy system to increase United States competitiveness in the world energy technology marketplace, and for other purposes; to the Committee on Energy and Natural Resources.

## ADDITIONAL COSPONSORS

S. 34

At the request of Mr. ENZI, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 34, a bill to promote simplification and fairness in the administration and collection of sales and use taxes.

S. 43

At the request of Mr. ENSIGN, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 43, a bill to amend title II of the Social Security Act to preserve and protect Social Security benefits of American workers and to help ensure greater congressional oversight of the Social Security system by requiring that both Houses of Congress approve a totalization agreement before the agreement, giving foreign workers Social Security benefits, can go into effect.

S. 439

At the request of Mr. REID, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 439, a bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation.

S. 604

At the request of Mr. LAUTENBERG, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 604, a bill to amend title 10, United States Code, to limit increases in the certain costs of health care services under the health care programs of the Department of Defense, and for other purposes.

S. 826

At the request of Mr. MENENDEZ, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 826, a bill to posthumously award a Congressional gold medal to Alice Paul, in recognition of her role in the women's suffrage movement and in advancing equal rights for women.

S. 991

At the request of Mr. DURBIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 991, a bill to establish the Senator Paul Simon Study Abroad Foundation under the authorities of the Mutual Educational and Cultural Exchange Act of 1961.

S. 1376

At the request of Mr. BINGAMAN, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 1376, a bill to amend the Public Health Service Act to revise and expand the drug discount program under section 340B of such Act to improve the provision of discounts on drug purchases for certain safety net provides.

S. 1689

At the request of Mr. BINGAMAN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1689, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1748

At the request of Mr. COLEMAN, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of S. 1748, a bill to prevent the Federal Communications Commission from repromulgating the fairness doctrine.

S. 1906

At the request of Mr. BAUCUS, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1906, a bill to understand and comprehensively address the oral health problems associated with methamphetamine use.

S. 1907

At the request of Mr. BAUCUS, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1907, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to understand and comprehensively address the inmate oral health problems associated with methamphetamine use, and for other purposes.

S. 1926

At the request of Mr. DODD, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1926, a bill to establish the National Infrastructure Bank to provide funding for qualified infrastructure projects, and for other purposes.

S. 1998

At the request of Mr. DURBIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 1998, a bill to reduce child marriage, and for other purposes.

S. 2051

At the request of Mr. CONRAD, the name of the Senator from Colorado

(Mr. SALAZAR) was added as a cosponsor of S. 2051, a bill to amend the small rural school achievement program and the rural and low-income school program under part B of title VI of the Elementary and Secondary Education Act of 1965.

S. 2059

At the request of Mrs. CLINTON, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2059, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 2140

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2140, a bill to award a Congressional Gold Medal to Francis Collins, in recognition of his outstanding contributions and leadership in the fields of medicine and genetics.

S. 2173

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 2173, a bill to amend the Elementary and Secondary Education Act of 1965 to improve standards for physical education.

S. 2283

At the request of Mr. CRAPO, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2283, a bill to preserve the use and access of pack and saddle stock animals on public land administered by the National Park Service, and Bureau of Land Management, the United States Fish and Wildlife Service, or the Forest Service on which there is a historical tradition of the use of pack and saddle stock animals.

S. 2510

At the request of Ms. LANDRIEU, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 2510, a bill to amend the Public Health Service Act to provide revised standards for quality assurance in screening and evaluation of gynecologic cytology preparations, and for other purposes.

S. 2576

At the request of Mr. CRAPO, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 2576, a bill to amend the Internal Revenue Code of 1986 to allow a credit for qualified expenditures paid or incurred to replace certain wood stoves.

S. 2682

At the request of Mrs. CLINTON, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2682, a bill to direct United States funding to the United Nations Population Fund for certain purposes.

S. 2702

At the request of Mr. SALAZAR, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2702, a bill to amend title XVIII of the Social Security Act to improve access to, and increase utilization of, bone mass measurement benefits under the Medicare part B Program.

S. 2760

At the request of Mr. LEAHY, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 2760, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the National Guard, enhancement of the functions of the National Guard Bureau, and improvement of Federal-State military coordination in domestic emergency response, and for other purposes.

S. 2771

At the request of Ms. LANDRIEU, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 2771, a bill to require the President to call a White House Conference on Children and Youth in 2010.

S. 2858

At the request of Ms. MIKULSKI, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2858, a bill to establish the Social Work Reinvestment Commission to provide independent counsel to Congress and the Secretary of Health and Human Services on policy issues associated with recruitment, retention, research, and reinvestment in the profession of social work, and for other purposes.

S. 2932

At the request of Mrs. MURRAY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2932, a bill to amend the Public Health Service Act to reauthorize the poison center national toll-free number, national media campaign, and grant program to provide assistance for poison prevention, sustain the funding of poison centers, and enhance the public health of people of the United States.

S. 3114

At the request of Mr. LIEBERMAN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 3114, a bill to provide safeguards against faulty asylum procedures, to improve conditions of detention for detainees, and for other purposes.

S. 3118

At the request of Mr. COCHRAN, his name was added as a cosponsor of S. 3118, a bill to amend titles XVIII and XIX of the Social Security Act to preserve beneficiary access to care by preventing a reduction in the Medicare physician fee schedule, to improve the quality of care by advancing value based purchasing, electronic health records, and electronic prescribing, and to maintain and improve access to care in rural areas, and for other purposes.

S. 3141

At the request of Mrs. MURRAY, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 3141, a bill to provide for nondiscrimination by eligible lenders in the Federal Family Education Loan Program.

S. 3164

At the request of Mr. MARTINEZ, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 3164, a bill to amend title XVIII of the Social Security Act to reduce fraud under the Medicare program.

S. 3167

At the request of Mr. BURR, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Nevada (Mr. ENSIGN), the Senator from Oklahoma (Mr. INHOFE), the Senator from Texas (Mrs. HUTCHISON) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. 3167, a bill to amend title 38, United States Code, to clarify the conditions under which veterans, their surviving spouses, and their children may be treated as adjudicated mentally incompetent for certain purposes.

S.J. RES. 43

At the request of Mr. WICKER, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S.J. Res. 43, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. RES. 602

At the request of Mr. NELSON of Nebraska, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. Res. 602, a bill supporting the goals and ideals of ''National Life Insurance Awareness Month''.

S. RES. 607

At the request of Ms. MIKULSKI, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. Res. 607, a resolution designating July 10, 2008, as ''National Summer Learning Day''.

AMENDMENT NO. 4979

At the request of Mr. NELSON of Florida, the names of the Senator from Vermont (Mr. SANDERS) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of amendment No. 4979 intended to be proposed to S. 3001, an original bill to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 5009

At the request of Mr. CRAPO, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of amendment No. 5009 intended to be proposed to H.R. 3221, a bill to provide needed housing reform and for other purposes.

AMENDMENT NO. 5010

At the request of Mr. CRAPO, the name of the Senator from Georgia (Mr.

ISAKSON) was added as a cosponsor of amendment No. 5010 intended to be proposed to H.R. 3221, a bill to provide needed housing reform and for other purposes.

AMENDMENT NO. 5064

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of amendment No. 5064 proposed to H.R. 6304, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

AMENDMENT NO. 5066

At the request of Mr. BINGAMAN, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Florida (Mr. NELSON) were added as cosponsors of amendment No. 5066 proposed to H.R. 6304, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH (for himself and Ms. CANTWELL):

S. 3228. A bill to amend the Internal Revenue Code of 1986 to allow a credit for green roofs; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today to introduce a bill to provide a residential and commercial tax credit for the installation of green roofs. I am pleased to have my colleague Senator CANTWELL join me in this effort by serving as original cosponsor of this bill.

The bill creates a tax credit for the installation of green roofs on residential and commercial property. On the residential side, the credit is 30 percent of the cost of installing a green roof, with a cap of $2,000. On the commercial side, the credit is 10 percent of the cost installing a green roof, without a cap. In my home state of Oregon, the city of Portland utilizes green roofs extensively. To date, the city has installed or plans to install over 100 green roofs.

Green roofs provide many environmental and cost benefits. One of the more significant benefits provided by green roofs is stormwater management and energy savings. When it rains, water washes over roofs, streets, driveways, sidewalks, parking lots, and other surfaces. Rain water picks up pollutants, such as oil, pesticides, metals, chemicals, and soil. The polluted stormwater then drains into the storm system that eventually makes it way into our rivers and streams. The pollutants can endanger water quality of lakes, rivers, streams and waterways, making them unhealthy for people, fish, and wildlife. During rainstorms, green roofs act as a sponge, absorbing much of the water that would otherwise run off. The roofs serve as a natural rainwater filter by utilizing the vegetation root system's natural filtering processes. The benefit of this process increases as the vegetation on the rooftop matures.

In addition to the storm water benefits, green roofs also absorb air pollution, collect airborne particulates, store carbon, provide living environments that provide habitats for birds, insects and other small animals, reduce outside noise transfer and insulate buildings from high temperatures.

I believe that we have a responsibility to encourage efforts to conserve our natural resources. Oregon continues to build on a long history of innovation in environmental policy and practice. We urge our colleagues to support this important piece of legislation.

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By Ms. CANTWELL:

S. 3229. A bill to increase the safety of the crew and passengers in air ambulances; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, I come to the floor today to ask for my colleagues' support for the Air Medical Service Safety Improvement Act of 2008, a measure that redefines our commitment to improving the safety for the flight crews, flight nurses, and passengers aboard emergency air medical service helicopters and fixed wing aircraft.

These EMS aviation operations provide an important service to the public by transporting seriously ill patients or donor organs to emergency care facilities. Each year, on average, air medical companies transport about 350,000 patients by helicopter and 100,000 by fixed wing aircraft.

Providing emergency air medical service is dangerous work. Unfortunately, we have been reminded of this fact all too many times this year, most recently by the tragic crash in Arizona.

I first became involved in the issue of emergency air medical service safety when an EMS helicopter crashed near my hometown in Washington state. On September 29, 2005, an Airlift Northwest EMS transport helicopter crashed into the waters of Puget Sound at Browns Bay, just north of Edmonds, Washington. On board were pilot Steve Smith, and nurses Erin Reed and Lois Suzuki. There were no survivors. Over time, I have communicated with both Erin's mother and sister about their loss.

The cause of the crash remains unknown as EMS transport helicopters are not required to have a ''black box'' or flight data recorder on board, and only part of the helicopter could be recovered from Puget Sound. Some in the area think the wind, rain, and heavy fog were to blame. Others claim that the helicopter sounded like it was having engine trouble.

All we do know is that three people dedicated to saving lives were lost in the ocean that night. And sadly, their story is not uncommon.

According to a study by Johns Hopkins University, one in four medical helicopters will crash during its 15 years of service. In just the last six months, there have been nine medical helicopter crashes and 16 deaths.

This alarming epidemic of accidents has opened the eyes of the Federal Aviation Administration, National Transportation Safety Board and policymakers in recent days. But the recent spike in accidents is not a new trend. In fact, between January 2002 and January 2005, there were 55 crashes of medical helicopters. On January 25, 2006, the NTSB released a report identifying recurring gaps in safety that must be addressed, including: Less stringent requirements for emergency medical operations conducted without patients on board; a lack of aviation flight risk-evaluation programs; a lack of consistent, comprehensive flight dispatch procedures; and no requirements to use technologies such as terrain awareness and warning systems that have the power to enhance flight safety.

At my request, Section 508 of S. 1300, a bill to reauthorize the FAA incorporated the NTSB recommendations for addressing these gaps. Subsequent to that bill's introduction in the spring of 2007, I had the opportunity to discuss with stakeholders how to improve upon the language. The bill I am introducing today is essentially the amendment I filed this May when the FAA reauthorization bill was on the floor. Given the uncertain status of that legislation, and in light of the recent events, I felt the urgency to transform the amendment into stand-alone legislation.

This bill will implement new procedures and improve standards already in place through strengthened safety requirements, comprehensive flight dispatch and flight following procedures, improved situation awareness of helicopter air crews, and better data available to NTSB investigators at crash sites.

It is time to put black boxes in these helicopters.

It is time to require the same safety standards regardless of whether or not a patient is on board.

It is time to evaluate potential risks before take-off.

It is time to improve the situational awareness of air medical flight crews.

If not, we are bound to witness more tragedies.

I am committed to these changes and I ask my colleagues to lend their support in making the skies safer for the men and women who dedicate their lives to getting critically injured patients the medical attention they need.

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By Mr. BINGAMAN:

S. 3233. A bill to promote development of a 21st century energy system to increase United States competitiveness in the world energy technology marketplace, and for other purposes; to

the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am pleased today to introduce the 21st Century Energy Technology Deployment Act to begin to address our need to accelerate the deployment of advanced, clean energy technologies and help establish the United States as a leader in these technologies that will be in great demand in the coming years.

The Energy Committee has had numerous hearings on the challenges we face in the coming decades regarding new energy. Meeting our energy security needs while diverting from our current pathway towards catastrophic climate change will require significant investment. I'm convinced that making this investment is not only the right thing to do for future generations, but that it will pay real dividends to the U.S. economy if we can position ourselves to lead the rest of the world in this necessary transition.

There have been many good proposals advanced to begin our journey down the path towards a more sustainable energy policy. Some of these proposals have even been enacted into law through energy bills in 2005 and 2007, but I think there is general agreement in this body that much remains to be done.

The missing ingredient that this bill seeks to supply concerns traversing the so-called ''valley of death.'' This is the part of the development cycle of a new technology when the technology has been demonstrated at a lab or pilot scale and is ready to be demonstrated at a commercial scale. It is here, we are told, where new technologies, and particularly capital-intensive energy technologies, often languish for want of funding. Banks traditionally aim for moderate risk and predictable returns and simply have very little incentive to bet on unfamiliar technologies with speculative returns. Venture capitalists, who are more comfortable with technology risk, simply can't supply the billions of dollars necessary to push these technologies forward at the pace we need.

This bill can help fill this financing gap between the venture capital community and the banking community and I hope it will act as a catalyst for continuing conversation on this vital topic.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3233

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''21st Century Energy Technology Deployment Act''.

**SEC. 2. PURPOSE.**

The purpose of this Act is to promote the domestic development and deployment of the advanced, clean energy technologies required for the 21st century through the establishment of a 21st Century Energy Deployment Corporation that will provide for an attractive investment environment through—

(1) the development of a stable secondary market for clean energy technology deployment loans; and

(2) the cooperation and support of the private capital market in order to promote access to affordable debt financing for accelerated deployment of advanced clean energy technologies and first-of-a-kind commercial deployments.

**SEC. 3. DEFINITIONS.**

In this Act:

(1) ADVISORY COUNCIL.—The term ''Advisory Council'' means the Energy Technology Advisory Council of the Corporation.

(2) BOARD OF DIRECTORS.—The term ''Board of Directors'' means the Board of Directors of the Corporation.

(3) BREAKTHROUGH TECHNOLOGY.—The term ''breakthrough technology'' means a clean energy technology that—

(A) receives a high rating according to the criteria established by the Advisory Council for meeting the objectives of this Act; but

(B) has been impeded in the development of the technology due to perceived high technical risk by the commercial financial sector.

(4) CLEAN ENERGY TECHNOLOGY.—The term ''clean energy technology'' means a technology related to the production, use, transmission, control, or conservation of energy that will contribute to meeting objectives of the United States—

(A) to reduce the need for additional energy supplies by using existing energy supplies with greater efficiency or by transmitting energy with greater effectiveness through United States energy infrastructure;

(B) to diversify the sources of energy supply of the United States to include supplies that are environmentally sustainable; or

(C) to stabilize atmospheric greenhouse gas levels thorough reduction, avoidance, and sequestration of energy-related emissions.

(5) CORPORATION.—The term ''Corporation'' means the 21st Century Energy Deployment Corporation established by section 5.

(6) NATIONAL LABORATORY.—The term ''National Laboratory'' has the meaning given the term in section 2 of the Energy Policy Act of 2005 (42 U.S.C. 15801).

(7) NOVEL TECHNOLOGY.—The term ''novel technology'' means a clean energy technology that, as determined by the Advisory Council or the Secretary—

(A) has been sufficiently demonstrated; and

(B) has not been widely deployed on a commercial scale.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(9) SECURITY.—The term ''security'' has the meaning given the term in section 2 of the Securities Act of 1933 (15 U.S.C. 77b).

(10) STATE.—The term ''State'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

(11) TECHNOLOGY RISK.—The term ''technology risk'' means risk of project failure generally considered by lenders due to the lack of operating applications of the technology.

**SEC. 4. ENERGY TECHNOLOGY DEPLOYMENT GOALS.**

(a) GOALS.—Not later than 1 year after the date of enactment of this Act, the Secretary, after consultation with the Advisory Council, shall develop and publish near-, medium-, and long-term goals for the deployment of clean energy technologies through the Corporation to establish or promote—

(1) sufficient electric generating capacity using clean energy technologies to meet the energy needs of the United States;

(2) clean energy technologies in vehicles and fuels that will end the reliance of the United States on foreign sources of energy and insulate consumers from the price shocks of world energy markets;

(3) a domestic commercialization and manufacturing capacity that will establish the United States as a world leader in clean energy technologies across multiple sectors;

(4) installation of sufficient infrastructure to allow for the cost-effective deployment of clean energy technologies in each region of the United States;

(5) the transformation of the building stock of the United States to zero net energy consumption;

(6) the recovery, use, and prevention of waste energy in the industrial sector;

(7) domestic manufacturing of clean energy technologies on a scale that is sufficient to make the cost to the consumer less than current technologies;

(8) domestic production of raw materials (such as steel, cement, and iron) using clean energy technologies so that the United States will become a world leader in sustainable production of the materials;

(9) a robust, efficient, and interactive electricity transmission grid that will allow for the implementation of clean energy technologies, distributed generation, and demand-response in each State; and

(10) such other goals as the Secretary and Advisory Council determine to be consistent with the purposes of this Act.

(b) PERFORMANCE TARGETS.—Taking into account the goals established under subsection (a), the Advisory Council shall publish 5- and 10-year numerical targets, and annual interim targets, to guide and measure the performance of the Corporation toward supporting the deployment of clean energy technologies and achieving other goals developed under that subsection.

(c) INITIAL TARGETS.—Until the first publication by the Advisory Council of targets under subsection (b), in establishing the deployment priorities of the Corporation, the Corporation shall consider deploying—

(1) commercial-scale carbon capture and storage from electricity generation capturing at least 10,000,000 short tons per year by 2015;

(2) solar photovoltaic systems with a power production cost of 14 cents per kilowatt-hour;

(3) concentrated solar power systems with a power production cost of 6 cents per kilowatt-hour;

(4) wind power systems greater than 100 kilowatts with a power production cost of—

(A) 3.6 cents per kilowatt-hour by 2012 for land-based sites with average wind speeds of 13 miles per hour; and

(B) 5 cents per kilowatt-hour by 2015 for offshore wind systems with average wind speeds of 15 miles per hour;

(5) new enhanced geothermal systems generation capacity with a power production cost of 5 cents per kilowatt-hour by 2023;

(6) technologies to realize a 20 percent improvement in energy intensity by energy-intensive industries by 2020; and

(7) advanced energy systems to achieve net-zero energy use in new residential and commercial buildings by 2025 through a 60 percent-reduction in building energy use.

(d) PORTFOLIO REQUIREMENT.—To the extent practicable and consistent with the purpose of this Act, not less than 75 percent of the support provided by the Corporation under this section shall be for breakthrough technologies.

(e) REVISIONS.—

(1) GOALS.—The Secretary shall revise the goals established under subsection (a), from time to time as appropriate, to account for advances in technology and changes in energy policy.

(2) PERFORMANCE TARGETS.—The Advisory Council shall revise the performance targets under subsection (b), from time to time as appropriate, to account for advances in technology and changes in energy policy.

**SEC. 5. 21ST CENTURY ENERGY DEPLOYMENT CORPORATION.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the 21st Century Energy Deployment Corporation, which shall be a body corporate under the direction of a Board of Directors.

(2) BOARD OF DIRECTORS.—Subject to other provisions of law (including regulations), the Board of Directors shall determine the general policies that govern the operations of the Corporation.

(3) OFFICES.—

(A) PRINCIPAL OFFICE.—The Corporation shall—

(i) maintain the principal office of the Corporation in the District of Columbia; and

(ii) for purposes of venue in civil actions, be considered to be a resident of the District of Columbia.

(B) OTHER AGENCIES AND OFFICES.—The Corporation may establish other agencies or offices in such other places as the Corporation considers necessary or appropriate for the conduct of the business of the Corporation.

(b) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The Board of Directors shall consist of—

(A) the Secretary, who shall serve an ex-officio member of the Board; and

(B) 9 members who shall—

(i) be appointed by the President for staggered 4-year terms, as determined by the President; and

(ii) have experience in banking or financial services relevant to the operations of the Corporation, including—

(I) at least 1 individual with substantial experience in the development of energy projects;

(II) at least 1 individual with experience in the electric utility industry; and

(III) at least 1 individual with experience in the banking industry.

(2) REMOVAL.—Any appointed member of the Board of Directors may be removed from office by the President for good cause.

(3) VACANCIES.—Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President, but only for the unexpired portion of the term.

(4) COMPENSATION; TRAVEL EXPENSES.—A member of the Board of Directors shall not be compensated for service on the Board of Directors but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Board of Directors.

(c) ENERGY TECHNOLOGY ADVISORY COUNCIL.—

(1) IN GENERAL.—The Corporation shall have an Energy Technology Advisory Council consisting of—

(A) 5 members selected by the Secretary; and

(B) 3 members selected by the Board of Directors.

(2) QUALIFICATIONS.—The members of the Advisory Council shall—

(A) have relevant scientific expertise; and

(B) include representatives of—

(i) the academic community;

(ii) the private research community; and

(iii) National Laboratories.

(3) DUTIES.—The Advisory Council shall—

(A) develop a rating system for projects and clean energy technologies to determine how well the projects and clean energy technologies address the purpose of this Act and establish a priority for the projects and clean energy technologies for financial assistance under this Act, taking into account—

(i) the extent to which a project or clean energy technology will enhance the energy security of the United States;

(ii) the potential the project or clean energy technology has to enhance the competitiveness of the United States in providing energy technologies likely to be in demand throughout the world;

(iii) the potential benefits of the project or clean energy technology in averting climate change; and

(iv) the potential of the technology, once deployed, to become financially self-sustaining;

(B) advise on the technological approaches that should be supported by the Corporation to meet the technology deployment goals established by the Secretary; and

(C) set risk and default rate targets for individual technologies, such that the maximum practicable ratio of breakthrough technologies to novel technologies is developed.

(4) TERM.—

(A) IN GENERAL.—Members of the Advisory Council shall have 3-year staggered terms, as determined by the Secretary and the Board of Directors.

(B) REAPPOINTMENT.—A member of the Advisory Council may be reappointed.

(5) COMPENSATION.—A member of the Advisory Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Advisory Council.

**SEC. 6. CLEAN ENERGY TECHNOLOGY DEPLOYMENT SECURITIZATION.**

(a) IN GENERAL.—The Corporation may purchase, and make commitments to purchase, any debt instrument associated with the deployment of clean energy technologies.

(b) DISPOSITION OF DEBT OR INTEREST.—The Corporation may hold and deal with, and sell or otherwise dispose of, pursuant to commitments or otherwise, any debt described in subsection (a) or interest in the debt.

(c) PRICING.—

(1) IN GENERAL.—The Corporation may establish requirements, and impose charges or fees, which may be regarded as elements of pricing, for different classes of sellers or services.

(2) CLASSIFICATION OF SELLERS.—For the purpose of paragraph (1), the Corporation may classify sellers as necessary to promote transparency and liquidity and properly characterize the risk of default.

(d) ELIGIBILITY.—The Corporation shall establish criteria and mechanisms such that, to the maximum extent practicable, sellers will be able to determine the eligibility of loans for resale at the time of initial lending.

(e) AGGREGATION OF SMALL SCALE PROJECTS.—The Corporation shall work with Federal, State, local, and private sector entities to develop debt instruments that aggregate projects for clean energy technology deployments on a residential or small commercial scale.

(f) SECURITIZATION.—

(1) IN GENERAL.—The Corporation may lend on the security of, and make commitments to lend on the security of, any debt that the Corporation is authorized to purchase under this section.

(2) AUTHORIZED ACTIONS.—On such terms and conditions as the Corporation may prescribe, the Corporation may—

(A) borrow;

(B) give security;

(C) pay interest or other return; and

(D) issue notes, debentures, bonds, or other obligations or securities.

(g) LENDING ACTIVITIES.—

(1) IN GENERAL.—The Corporation shall determine—

(A) the volume of the lending activities of the Corporation; and

(B) the type of loan ratios, risk profiles, interest rates, maturities, and charges or fees in the secondary market operations of the Corporation.

(2) OBJECTIVES.—Determinations under paragraph (1) shall be consistent with the objectives of—

(A) providing an attractive investment environment for clean energy technologies;

(B) making the operations of the Corporation self-supporting over the long term; and

(C) meeting the targets established by the Advisory Council.

(h) NO FEDERAL GUARANTEE.—The Corporation shall insert appropriate language in all of the obligations and securities of the Corporation issued under this section that clearly indicates that the obligations and securities (together with the interest)—

(1) are not guaranteed by the United States; and

(2) do not constitute a debt or obligation of the United States or any agency or instrumentality other than the Corporation.

(i) EXEMPT SECURITIES.—All securities issued or guaranteed by the Corporation shall, to the same extent as securities that are direct obligations of or obligations guaranteed as to principal or interest by the United States, be considered to be exempt securities within the meaning of the laws administered by the Securities and Exchange Commission.

(j) OTHER AUTHORIZED PROGRAMS.—

(1) IN GENERAL.—The Secretary may contract with the Corporation to provide financial services and program management for grant, loan, and other credit enhancement programs authorized under any other provision of law.

(2) ADMINISTRATION.—In administering any other program under contract with the Secretary, the Corporation shall, to the maximum extent practicable (as determined by the Corporation)—

(A) administer the program in a manner that is consistent with the terms and conditions of this Act; and

(B) minimize the administrative costs to the Federal Government.

**SEC. 7. FEDERAL OWNERSHIP OF OBLIGATIONS.**

(a) IN GENERAL.—In order to maintain sufficient liquidity, the Corporation may issue notes, debentures, bonds, or other obligations for purchase by the Secretary of the Treasury.

(b) PUBLIC DEBT TRANSACTIONS.—For the purpose of subsection (a)—

(1) the Secretary of the Treasury may use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code; and

(2) the purposes for which securities may be issued under that chapter are extended to include any purchase under this subsection.

(c) MAXIMUM OUTSTANDING HOLDING.—The Secretary of the Treasury shall not purchase any obligations under this section if the purchase would increase the aggregate principal amount of the outstanding holdings of obligations under this section by the Secretary

to an amount that is greater than $1,500,000,000.

(d) RATE OF RETURN.—Each purchase of obligations by the Secretary of the Treasury under this section shall be on terms and conditions established to yield a rate of return determined by the Secretary to be appropriate, taking into account the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the purchase.

(e) SALE OF OBLIGATIONS.—The Secretary of the Treasury may at any time sell, on terms and conditions and at prices determined by the Secretary, any of the obligations acquired by the Secretary under this section.

(f) PUBLIC DEBT TRANSACTIONS.—All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this section shall be treated as public debt transactions of the United States.

**SEC. 8. GENERAL PROVISIONS.**

(a) IMMUNITY FROM IMPAIRMENT, LIMITATION, OR RESTRICTION.—

(1) IN GENERAL.—All rights and remedies of the Corporation (including any rights and remedies of the Corporation on, under, or with respect to any mortgage or any obligation secured by a mortgage) shall be immune from impairment, limitation, or restriction by or under—

(A) any law (other than a law enacted by Congress expressly in limitation of this paragraph) that becomes effective after the acquisition by the Corporation of the subject or property on, under, or with respect to which the right or remedy arises or exists or would so arise or exist in the absence of the law; or

(B) any administrative or other action that becomes effective after the acquisition.

(2) STATE LAW.—The Corporation may conduct the business of the Corporation without regard to any qualification or law of any State relating to incorporation.

(b) POWERS.—Subject to subsection (c), the Corporation shall have all the powers of a private corporation incorporated under the District of Columbia Business Corporation Act (D.C. Code, sec. 29 et seq.).

(c) ADMINISTRATION.—

(1) PERFORMANCE-BASED COMPENSATION.—A significant portion of potential compensation of all executive officers of the Corporation shall be based on the performance of the Corporation, all without regard to any other law except as may be provided by the Corporation or by a law enacted after the date of enactment of this Act that expressly limits this paragraph.

(2) USE OF OTHER AGENCIES.—With the consent of a department, establishment, or instrumentality (including any field office), the Corporation may—

(A) use and act through any department, establishment, or instrumentality;

(B) use, and pay compensation for, information, services, facilities, and personnel of the department, establishment, or instrumentality.

(d) FINANCIAL MATTERS.—

(1) INVESTMENTS.—Funds of the Corporation may be invested in such investments as the Board of Directors may prescribe.

(2) FISCAL AGENTS.—

(A) IN GENERAL.—Any Federal Reserve bank or any bank as to which at the time of the designation of the bank by the Corporation there is outstanding a designation by the Secretary of the Treasury as a general or other depository of public money, may be designated by the Corporation as a depositary or custodian or as a fiscal or other agent of the Corporation.

(B) DEPOSITARY OF PUBLIC MONEY.—If designated for that purpose by the Secretary of the Treasury, the Corporation—

(i) shall be a depositary of public money, under such regulations as may be promulgated by the Secretary of the Treasury;

(ii) may also be employed as a fiscal or other agent of the United States; and

(iii) shall perform all such reasonable duties of such depositary or agent as may be required.

(e) TAXATION.—

(1) IN GENERAL.—Subject to paragraph (2), the Corporation (including the franchise, activities, capital, reserves, surplus, and income of the Corporation) shall be exempt from all taxation imposed by any State or local political subdivision of a State.

(2) REAL PROPERTY.—Any real property of the Corporation shall be subject to taxation by a State or political subdivision of a State to the same extent according to the value of the real property as other real property is taxed.

(f) JURISDICTION.—Notwithstanding section 1349 of title 28, United States Code, or any other provision of law—

(1) the Corporation shall be considered an agency covered by sections 1345 and 1442 of title 28, United States Code;

(2) all civil actions to which the Corporation is a party shall be considered to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value; and

(3) any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which the Corporation is a party may at any time before trial be removed by the Corporation, without the giving of any bond or security and by following any procedure for removal of causes in effect at the time of the removal—

(A) to the district court of the United States for the district and division embracing the place in which the same is pending; or

(B) if there is no such district court, to the district court of the United States for the district in which the principal office of the Corporation is located.

(g) ANNUAL REPORTS.—Not later than 1 year after incorporation of the Corporation and annually thereafter, the Corporation shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce in the House a report that includes—

(1) a description of—

(A) the technologies supported by activities of the Corporation and how the activities advance the purposes of this Act;

(B) the performance of the Corporation on meeting the goals established by the Secretary;

(C) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses;

(D) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the proxy statement of the Corporation for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the performance of the Corporation; and

(E) the comparability of the financial performance of the Corporation with the performance of other similar businesses; and

(2) the proxy statement of the Corporation for the annual meeting of shareholders for the preceding year.

(h) AUDITS BY THE COMPTROLLER GENERAL.—

(1) IN GENERAL.—The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—The representatives of the Government Accountability Office shall—

(A) have access to the personnel and to all books, accounts, documents, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to, under the control of, or in use by the Corporation and necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians;

(C) be authorized to obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to the audit without cost to the Comptroller General; and

(D) have the right of access of the Comptroller General to such information be enforceable pursuant to section 716(c) of title 31, United States Code.

(3) REPORT.—

(A) IN GENERAL.—The Comptroller General shall submit to Congress a report on each audit conducted under this subsection.

(B) CONTENTS.—The report shall include a description of—

(i) the scope of the audit;

(ii) any surplus or deficit;

(iii) income and expenses;

(iv) sources and application of funds;

(v) such comments and information as is necessary to inform Congress of the financial operations and condition of the Corporation; and

(vi) any recommendations as the Comptroller General considers appropriate.

(4) ASSISTANCE AND COST.—

(A) IN GENERAL.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes.

(B) REIMBURSEMENT.—On the request of the Comptroller General, the Corporation shall reimburse the General Accountability Office for the full cost of any audit conducted by the Comptroller General under this subsection.

(i) ANNUAL INDEPENDENT AUDIT.—

(1) IN GENERAL.—The Corporation shall have an annual independent audit made of the financial statements of the Corporation by an independent public accountant in accordance with generally accepted auditing standards.

(2) CONTENT.—In conducting an audit under this subsection, the independent public accountant shall determine and report on whether the financial statements of the Corporation—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) to the extent determined necessary by the Director, comply with any disclosure requirements imposed under this Act.

**SEC. 9. OVERSIGHT BY THE SECRETARY.**

(a) DUTIES.—The Secretary shall—

(1) oversee the operations of the Corporation; and

(2) ensure that—

(A) the Corporation operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

(B) the operations and activities of the Corporation foster liquid, efficient, competitive, and resilient energy finance markets;

(C) the Corporation carries out the statutory mission of the Corporation only through activities that are authorized under and consistent with this Act; and

(D) the activities of the Corporation and the manner in which the Corporation is operated is consistent with the public interest.

(b) FINANCIAL REPORTS.—

(1) IN GENERAL.—The Corporation shall submit to the Secretary annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Secretary shall require.

(2) CONTENTS OF ANNUAL REPORTS.—Each annual report shall include—

(A) financial statements prepared in accordance with generally accepted accounting principles;

(B) any supplemental information or alternative presentation that the Secretary may require; and

(C) an assessment (as of the end of the most recent fiscal year of the Corporation), signed by the chief executive officer and chief accounting or financial officer of the Corporation, of—

(i) the effectiveness of the internal control structure and procedures of the Corporation; and

(ii) the compliance of the Corporation with designated safety and soundness laws.

(3) SPECIAL REPORTS.—The Secretary may require the Corporation to submit other reports on the condition (including financial condition), management, activities, or operations of the Corporation, as the Secretary considers appropriate.

(4) ACCURACY.—Each report of financial condition shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the Board of Directors of the Corporation to make the declaration, that the report is true and correct to the best of the knowledge and belief of the officer.

(c) MANAGEMENT AND OPERATION STANDARDS.—The Secretary shall establish standards, by regulation or guideline, for the Corporation relating to—

(1) the adequacy of internal controls and information systems;

(2) the independence and adequacy of internal audit systems;

(3) the management of market risk, including standards to provide for systems that measure, monitor, and control market risks and, as warranted, to establish limitations on market risk;

(4) risk management processes, including the adequacy of oversight by senior management and the Board of Directors and of processes and policies to measure, monitor, and control material risks, including reputational risks, and for adequate, well-tested business resumption plans in the case of disruptive events;

(5) the management of credit and counterparty risk, including systems to identify concentrations of credit risk and prudential limits to restrict the exposure of the Corporation to a single counterparty or groups of related counterparties;

(6) the maintenance of adequate records, in accordance with consistent accounting policies and practices to enable the Secretary to evaluate the financial condition of the Corporation; and

(7) such other operational and management standards as the Secretary determines to be appropriate.

(d) FAILURE TO MEET STANDARDS.—

(1) IN GENERAL.—If the Secretary determines that the Corporation fails to meet any standard established under subsection (c), the Secretary may require the Corporation to submit an acceptable plan to the Secretary within a reasonable time that specifies the actions that the Corporation will take to correct the deficiency.

(2) REQUIRED ORDER ON FAILURE TO SUBMIT OR IMPLEMENT PLAN.—If the Corporation fails to submit an acceptable plan within the time specified by the Secretary or fails in any material respect to implement a plan accepted by the Secretary, the Secretary shall, by order, require the Corporation to correct the deficiency.

(e) PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.—

(1) IN GENERAL.—The Secretary shall prohibit the Corporation from providing compensation to any executive officer that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

(2) FACTORS.—In making any determination under paragraph (1), the Secretary may take into consideration any factors the Secretary considers relevant, including any wrongdoing on the part of the executive officer.

(3) WITHHOLDING OF COMPENSATION.—In carrying out paragraph (1), the Secretary may require the Corporation to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of reasonableness and comparability of compensation.

(4) PROHIBITION OF SETTING COMPENSATION.—In carrying out paragraph (1), the Secretary may not prescribe or set a specific level or range of compensation.

**SEC. 10. ISSUANCE OF COMMON STOCK TO EXPAND OPERATIONS.**

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, the Corporation may prepare a strategic plan for issuing common stock to raise the capital needed to expand the operations of the Corporation in carrying out this Act.

(b) CONSIDERATION OF ALTERNATIVES FOR GOVERNANCE.—The strategic plan shall include consideration of alternatives for restructuring the Board of Directors to allow for a majority of the Members to be selected by voting common stockholders.

(c) EVALUATION AND RECOMMENDATION.—The strategic plan shall—

(1) evaluate the relative merits of the alternatives considered; and

(2) include the recommendation of the Corporation on a proposed alternative.

(d) TRANSMITTAL.—On completion of the strategic plan, the Corporation shall submit copies of the strategic plan to the President and Congress, along with any recommendations for legislative changes required to implement the plan.

(e) IMPLEMENTATION.—Subject to subsections (f) and (g), subsequent to submitting a strategic plan pursuant to this section, the Corporation may implement the strategic plan.

(f) REQUIREMENT FOR PRESIDENTIAL APPROVAL.—The Corporation may not implement the strategic plan without the approval of the President.

(g) NOTIFICATION OF CONGRESS.—

(1) IN GENERAL.—The Corporation shall notify Congress of any intent to implement the strategic plan if the Corporation determines, in consultation with the Secretary and other appropriate agencies of the United States, that no further legislation is required for the implementation.

(2) IMPLEMENTATION.—The Corporation may not implement the strategic plan under this subsection earlier than 60 days after notification of Congress.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 5067. Mr. REID proposed an amendment to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation.

SA 5068. Mr. REID proposed an amendment to amendment SA 5067 proposed by Mr. REID to the bill H.R. 3221, supra.

## TEXT OF AMENDMENTS

**SA 5067**. Mr. REID proposed an amendment to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; as follows:

At the end add the following:

This title shall become effective in 3 days.

**SA 5068.** Mr. REID proposed an amendment to amendment SA 5067 proposed by Mr. REID to the bill H.R. 3221, moving the United States toward greater energy independence and security, developing innovative new technologies, reducing carbon emissions, creating green jobs, protecting consumers, increasing clean renewable energy production, and modernizing our energy infrastructure, and to amend the Internal Revenue Code of 1986 to provide tax incentives for the production of renewable energy and energy conservation; as follows:

In the amendment, strike ''3'' and insert ''2''.

## NOTICES OF HEARINGS

### COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a legislative hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, July 15, 2008, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony regarding legislation to improve the availability of financing for deployment of clean energy and energy efficiency technologies and to enhance United States' competitiveness in this market. Specific bills to be considered are S. 3233, introduced by

Senator BINGAMAN and S. 2730, introduced by Senator DOMENICI.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by e-mail to rachel_pasternack@energy.senate.gov.

For further information, please contact Rachel Pasternack at (202) 224–0883 or Michael Carr at 202–224–8164.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. LEVIN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs will hold a hearing entitled, ''Tax Haven Banks and U.S. Tax Compliance.'' The Permanent Subcommittee on Investigations hearing will examine how financial institutions located in offshore tax havens, including Liechtenstein and Switzerland, may be engaged in banking practices that could facilitate, and in some instances have resulted in, tax evasion and other misconduct by U.S. clients. The hearing will also examine how U.S. domestic and international tax enforcement efforts could be strengthened. The Subcommittee expects to issue a Subcommittee staff report in conjunction with the hearing summarizing its investigative findings. A witness list will be available Monday, July 14, 2008.

The Subcommittee hearing is scheduled for Thursday, July 17, 2008, at 9:30 a.m., in room 106 of the Dirksen Senate Office Building. For further information, please contact Elise Bean of the Permanent Subcommittee on Investigations at 224–9505.

## AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON WATER AND POWER

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Subcommittee on Water and Power, be authorized to meet during the session of the Senate to conduct a hearing on Tuesday, July 8, 2008, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

## PRIVILEGES OF THE FLOOR—H.R. 6304

Mr. FEINGOLD. Mr. President, I ask unanimous consent that during the Senate's consideration of the FISA Amendments Act, Beckett Jackson, Ross Schulman, and Alex Tausanovitch, interns in my Judiciary Committee office, be granted the privilege of the floor.

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

Mr. BINGAMAN. I ask unanimous consent that Matthew Pedilla, who is an intern in my office, be granted the privilege of the floor during the pendency of this discussion.

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

Mr. COCHRAN. Mr. President, I ask unanimous consent that Sara Love Swaney, who is a member of my staff, be given floor privileges for the remainder of the day.

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

## AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House with respect to H.R. 3221.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A message from the House of Representatives to accompany H.R. 3221, an act to provide needed housing reform, and for other purposes.

Mr. REID. I now ask unanimous consent that all postcloture time be considered yielded back, and that the motion to concur be agreed to and the motion to reconsider be laid upon the table.

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

CLOTURE MOTION

Mr. REID. Mr. President, I move to disagree to the amendments of the House, adding a new title and inserting a new section to the amendment of the Senate to H.R. 3221, and I send a cloture motion 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 legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to disagree to the amendments of the House, adding a new title and inserting a new section, to the amendment of the Senate to H.R. 3221, the Foreclosure Prevention Act.

Harry Reid, Christopher J. Dodd, Debbie Stabenow, John D. Rockefeller, IV, Jeff Bingaman, Ken Salazar, Joseph R. Biden, Jr., Max Baucus, Patty Murray, Barbara A. Mikulski, Charles E. Schumer, Sheldon Whitehouse, Sherrod Brown, Bill Nelson, John F. Kerry, Robert P. Casey, Jr., Benjamin L. Cardin, Frank R. Lautenberg.

Mr. REID. I ask unanimous consent that the mandatory quorum be waived.

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

AMENDMENT NO. 5067

Mr. REID. Mr. President, I now move to concur in the amendment of the House adding a new title to the amendment of the Senate to H.R. 3221 with the amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 5067.

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

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

The amendment is as follows:

At the end add the following:

This title shall become effective in 3 days.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5068 TO AMENDMENT NO. 5067

Mr. REID. I have a second-degree amendment at the desk. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 5068 to amendment No. 5067.

The amendment is as follows:

In the amendment, strike ''3'' and insert ''2''.

## TRIBUTES TO SENATOR JESSE HELMS

Mr. DODD. Mr. President, I ask unanimous consent that the tributes to Senator Helms in the CONGRESSIONAL RECORD be printed as a Senate document and that Senators be permitted to submit statements for inclusion until August 1.

## ORDERS FOR WEDNESDAY, JULY 9, 2008

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. tomorrow, July 9; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of H.R. 6304, the FISA legislation, as under the previous order. I further ask that there be an additional 10 minutes for debate under the control of Senator SPECTER.

Finally, I ask that following the votes in relation to FISA, the Senate stand in recess until 2:15 to allow for the Republican caucus luncheon.

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

## PROGRAM

Mr. DODD. Mr. President, Senators should be prepared to begin voting at approximately 11:15 a.m. tomorrow. There will be up to five rollcall votes in relation to the FISA legislation.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DODD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 7:54 p.m., adjourned until Wednesday, July 9, 2008, at 9:30 a.m.

## DISCHARGED NOMINATION

The Senate Committee on Homeland Security and Governmental Affairs was discharged, pursuant to an order of the Senate on January 9, 2007, from further consideration of the following nomination and the nomination was placed on the Executive Calendar:

*ERIC M. THORSON, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY.

*NOMINEE HAS COMMITTED TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.